Country Guide
Brazil

Prepared by

DEMAREST

LexMundi
Bringing the best together™

lexmundi.com

Legal Aspects of Doing Business in Brazil

A Summary

May 2021

DEMAREST

Demarest

In April of 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 70 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.

Demarest has developed many long-term relationships with valuable clients, from multinational corporations to small and medium-sized businesses.

The philosophy of this success is simple. Demarest invests primarily in people, sponsoring graduate education programs in Brazil and worldwide, as well as internships at leading international law firms. Demarest's lawyers are accomplished professionals; they are individuals of integrity, committed to upholding the highest standards of excellence and ethics.

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.

Welcome to Demarest

Our Offices

São Paulo

Av. Pedroso de Moraes, 1201
São Paulo SP 05419-001
T +55 11 3356 1800
F +55 11 3356 1700

Rio de Janeiro

Praia do Flamengo, 200 - 15th floor
Rio de Janeiro RJ 22210-901
T +55 21 3723 9800
F +55 21 3723 9822

Brasília

Edifício General Alencar Castro SEPS EQ
702/902 4th floor Bloco B Asa Sul
Brasília DF 70390-025
T +55 61 3243 1150
F +55 61 3243 1153

New York

375 Park Avenue 36th Floor
New York NY 10152
T +212 371 9191
F +212 371 5551

www.demarest.com.br

Contact

Paulo Coelho da Rocha

+55 11 3356 1822
procha@demarest.com.br

Organized by

João Luis Ribeiro de Almeida

+55 21 3723 9804
jalmeida@demarest.com.br

Index

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.

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 on the basis of 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 with regard to pecuniary and waivable rights, which cover most commercial transactions.

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.

BANKING AND FINANCE

1 Industry Overview

Brazil has an open economy and international trade and investment are elements of paramount importance to the Brazilian economy. Driven by strong market players and seeking to enhance the economic environmental conditions that in turn would boost investors' confidence, the Brazilian Financial Sector has benefited from several key improvements introduced to its legal and regulatory framework in recent years.

Regarding the underpinning tenets 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 organ responsible for establishing the monetary and credit policies that would ensure the constant stability of the local currency. CMN is complemented by the Central Bank of Brazil ("BACEN"), which has the legal duty of controlling inflation and financial stability. In relation 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 Administrative Council for Economic Defense ("CADE") have adjusted and entered into a cooperative protocol to oversee transactions involving financial institutions and the potential financial and market competition impacts thereof. In accordance with the Federal Constitution, participation of foreign capital, in the form of direct investment in the stock of financial institutions, requires prior authorization of the Federal Government, by means of a Presidential decree to attest to the existence of the Brazilian interest in the given investment.

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

The legal definition of financial institutions takes into account the performance of three activities solely reserved for banks, namely: fundraising, intermediation and investment of resources of their own or those of third parties, in domestic or foreign currency, and the custody of financial assets owned by third parties. Public banks are fundamental players, for instance BNDES, Caixa Econômica Federal ("CEF") and Banco do Brasil ("BB") are responsible for providing the majority of the financial resources, mostly in connection with economic and social development activities.

The legal entities authorized by law to operate — contingent upon the 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 respective BACEN prior authorizations to operate, the securities brokers (CTVMs) and the securities distributors (DTVMs) also require permission from CVM to operate. Such entities generally perform intermediation of securities purchase and sale, in addition to investment analysis, management of securities portfolios and other services related to the capital markets. "Home broker" tools have become very popular, allowing clients to access the services online, in addition to real-time support and assistance. As a consequence, there has been a significant expansion of activities in the investment service market in recent years, yielding a very promising outlook for business opportunities in the near term.

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. All such investment transactions are grounded on the statutory principles and rules related to the allocation of foreign investment and remittance of funds abroad set forth in Law 4,131/1962, as amended.

Brazil has a number of agencies devoted to the promotion of investment, in most cases governmental. The main agencies 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 Amazon Development Superintendency (*Superintendência de Desenvolvimento da Amazônia* - SUDAM), and the Northeastern Development Superintendency (*Superintendência do Desenvolvimento do Nordeste* - SUDENE).

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

(i) Development of activities involving nuclear energy. The Brazilian federal government has a monopoly over exploring, exploiting, processing, industrializing, and selling radioactive minerals and their byproducts, 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);

(ii) Development of activities involving oil and natural gas. The Brazilian federal government has a monopoly over research and exploration of natural deposits of oil and natural gas, as well as over their refining and transportation. The importation and exportation of oil and natural gas byproducts are also 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 performing the aforementioned activities, provided that they abide by the conditions set out in law (Federal Constitution, Article 177, items I, II, III and IV); and

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

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

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

(ii) 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 flight routes between Brazil and the U.S., the increase of foreign ownership in the country will encourage competition and promote economic growth.

(iii) 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);

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

(v) 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 in 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 Office of Supplementary Pensions.

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

Financial and monetary policy in Brazil is the responsibility of the CMN. It supervises monetary, credit, budgetary, fiscal, and public debt matters. 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. BACEN and CVM, in turn, are responsible for the markets' actual implementation of such regulations and for supervision.

The law states that BACEN shall:

(i) execute the currency and credit guidelines established by CMN;

(ii) regulate and supervise Brazilian financial institutions, both public and private;

(iii) control the flow of foreign currency inbound and outbound; and

(iv) supervise Brazilian financial markets.

3.2 Main Types of Financial Institutions

Brazilian law defines financial institutions as entities that perform 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 may be public or private.

BACEN is the constitutional authority empowered to admit the incorporation and operation of financial institutions; in the case that financial institutions would consider foreign capital equity investments, as per specific Federal Constitution rule, there must be previous authorization from the Federal Executive Branch in the form of a Presidential Decree.

The public financial sector consists primarily of the following entities:

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

(ii) 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;

(iii) 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 (the latter 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, service companies' and individual's short and medium-term financing; 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 is:

- investments in companies by holding temporary equity interests therein;
- financing production by supplying fixed and working capital;
- management of third-party resources;
- purchase and sale of precious metals on the physical market, on its own and on third-parties' behalf, and of any securities on the financial and capital markets;
- trading on futures stock exchanges as well as on organized over-the-counter markets, on its own and on third-parties' behalf;
- participating in the process of issuance, subscription for resale, and distribution of securities;
- foreign exchange transactions (only upon specific authorization granted by the BACEN); and

- coordinating companies' reorganizations and restructurings by rendering advisory services, holding equity interests, and/or lending.

Investment banks may also render 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 to finance goods and assets for individuals and legal entities, or/and provide working capital to the latter.

3.2.5 Leasing companies

Leasing companies engage in leasing activities, with special tax treatment, related to national or foreign movable assets, and to real properties acquired for own use by the leaseholder.

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

The Brazilian National Monetary Council issued on April 26, 2018, Resolution No. 4,656 ("Resolution"), regulating the authorization to operate, the transfer of corporate control, corporate reorganization and the liquidation of fintechs specialized in loan and financing transactions through an electronic platform.

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

The main goal of the Resolution is to create an environment of diversification among the economic agents that operate in the credit segment and, thus, to promote 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 advisors 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 SCD is to carry out loan and financing transactions and to acquire credit rights exclusively through an electronic platform. The SCD may only transact out of its own equity. The SEP, in turn, is used to intermediate lending and financing transactions between parties, known as P2P (peer-to-peer) operations, also exclusively through an electronic platform. SEP will collect financial resources from creditors and, after negotiating within an electronic platform, it will direct such funds to the respective debtors. In no event shall SEP be able to use its own resources to carry out credit operations. In this sense, an SEP will execute certain instruments that will link the funds made available by the creditors to SEP and the corresponding credit operation with the debtor.

3.2.7 Open Banking

The joint operation of digital banking systems using open platforms and an array of finance-related businesses of different sectors is a practice that has been generating openings for technology innovation to thrive within the Brazilian financial market, which brings with it an upsurge of Fintechs forging their place in the Open Banking segment in Brazil.

From BACEN's perspective, Open Banking 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).

Considering the intersection of the banking system with all the new services and products offered by Fintechs to the public, BACEN has paved the way for the development of Open Banking in Brazil. Besides editing the Communiqué No. 33,455, BACEN has opened for public consultation of the market specific draft rulings that are expected to be enacted in the third quarter of 2020.

Open Banking in Brazil has been undergoing an implementation process aimed at increasing the efficiency in the credit and payment markets in order to promote a greater degree of competitiveness and a higher level of social and financial inclusion of the population that will ultimately enjoy access to new financial products and services. BACEN expects that Open Banking in Brazil will help clients and users of the banking sector to gradually gain a better understanding of the importance of budgeting, as well as looking for and making more profitable financial deals. All of this under a regulated and safe digital environment.

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

- 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);
- client's personal data and information (contingent upon client's prior consent, as applicable, in accordance with the Brazilian LGPD);
- transactional data pertaining to each client (deposit, checking and investment accounts, credit operations, among others); and
- money transfer, use of payment services.

BACEN expects that the observance of the upcoming Open Banking rules shall be mandatory only to large financial institutions qualified under the more complex business and compliance categories. The mandatory application of such rules will gradually be extended to other institutions, in accordance with a BACEN-structured action plan to be rolled out in 2020.

Along with the expected official BACEN regulation, self-regulation of the banking system entities (chiefly represented by the Brazilian Bank Federation FEBRABAN) will play a fundamental role in the Open Banking launch process. This is particularly the case of technological and operational proceeding standardization, including cybersecurity and systems interface integration, required always to be in compliance with the thresholds and protocols mandated by 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. As a general rule, foreign investors are not required to have a bank account in the country in order to invest in Brazilian companies.

For sophisticated investment structures and instruments, however, a case-by-case analysis must be conducted to identify whether a bank account is required.

Foreign entities or nonresident individuals are allowed to open and maintain accounts denominated in Brazilian currency at authorized Brazilian banks. Accounts denominated in foreign currency are only available for residents and nonresidents 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 financing, checking accounts, credit assignments, leasing, export finance, real estate finance, rural credit transactions, and others.

Corporations are able to obtain financing domestically and internationally. International loan transactions must be registered with SISBACEN (the Electronic System of Registration of the BACEN) through the Financial Transaction Registry (*Registro de Operações Financeiras* - ROF).

Government and governmental agencies do not provide direct financial support to foreign investors. However, since the Federal Constitution ensures equality of rights between nationals and foreigners residing in the country, BNDES requires that borrowers have headquarters and administration in Brazil regardless of whether their capital stock is held by foreign investors.

With limitation to the foregoing 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 of the structure according to which the importer or a financial institution prepays for exports with certain tax benefits. The exporter assumes the commercial debt, which shall be repaid upon export of the related products, without the need for further financial flows in the future.

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

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

The agreed-upon interest may 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 may be converted into a direct investment or currency loan. In this case, tax benefits are cancelled and the exporter shall be subject to the payment of all unpaid taxes plus the relevant ancillary charges provided in applicable laws.

Export prepayment financing may 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 shall have right upon making 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 to the exporter to produce and to sell goods to be exported in the future.

According to current regulations, ACCs can be provided for 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 12th 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:

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

(ii) 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 with a financing period ranging from two to ten years. The remaining 15% 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 and part of the interest rate it would normally charge in the event that the export or import transaction was not being financed under PROEX.

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

6.5 BNDES- Exim Credit Facilities for Foreign Trade

BNDES also offers a few credit facilities designed to create competitive conditions for the internationalization of Brazilian companies.

Financing to export goods and services falls into two categories:

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

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

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

Requests may also be made to foreign banks that provide international guarantees for financing operations.

The information provided in this section, and further information about 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. Only if the borrower and the lender so agree, upon default the borrower may transfer such assets to the lender as payment-in-kind of the outstanding debt.

Also, upon judicial and (in certain cases) extra-judicial 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 by a public deed (in Portuguese, *escritura pública*) prepared 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 private credit instrument or certificate (in Portuguese, *hipoteca cedular*). The maximum term for a mortgage according to the Brazilian Civil Code is 30 years, although it may 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 deteriorates or depreciates, and the borrower does not offer additional collateral, the loan accelerates. 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 143,100.00 - one hundred and forty-three thousand and one hundred Brazilian Reais – or about USD 37,200.00 – thirty-seven thousand 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.

Conventional 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, 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.

A pledge is ranked the same as a mortgage for bankruptcy purposes. 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 143,100.00 - one hundred and forty-three thousand and one hundred Brazilian Reais – or about USD 37,000.00 – thirty-seven thousand 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 – give a lender fiduciary ownership of an asset or right. 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, title automatically reverts to the original owner (borrower).

When a fiduciary lien is created, possession of the asset is deemed to be 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 domestic 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 enjoys greater protection in the event of a borrower's bankruptcy (similar to U.S. Chapter 7 - Liquidation). A lender may take possession of an asset *de pleno jure*, while the borrower's other creditors have to abide by the terms and other conditions of a bankruptcy proceeding. That is, since ownership is deemed to be transferred over to the lender, the asset is not in theory considered part of the bankrupt estate for the purposes of apportioning among creditors in a bankruptcy proceeding.

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

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

FOREIGN INVESTMENT

1 General Rules

Foreign investment has been welcomed in Brazil for a long time and it constitutes an important source of capital for the development of the Brazilian economy. The basic law governing foreign investment was enacted in 1962 (Law 4,131) and was amended in 1964 (Law 4,390). The stability of Brazilian foreign investment legislation is a clear indication of the country's desire and firm commitment to attract and welcome 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 the Central Bank of Brazil—"BACEN"). Foreign participation, however, is limited or forbidden in the few areas of activities explained later in this chapter.

BACEN is responsible for:

(i) managing the daily control over foreign capital flows in and out of Brazil (risk capital and loans under any form);

(ii) setting forth the administrative rules and regulations for registering investments;

(iii) monitoring foreign currency remittances; and

(iv) allowing repatriation of funds. It has no jurisdiction over the quality of the investment and cannot restrict the remittances of funds from equity or loans, which are based on registration with the BACEN through its Electronic System of Registration.

- In the event of a serious balance of payment deficit, BACEN may limit remittances of profits and prohibit remittances as capital repatriation for a limited period of time. This limitation, however, has never been applied even during Brazil's most difficult balance of payments problems.

Foreign investments in currency must be officially channeled through financial institutions duly authorized to deal in foreign exchange (commercial banks). Foreign currency must be converted into Brazilian currency and vice-versa through the execution of an exchange contract with a commercial bank. Foreign investments may also be made 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 BACEN. The choice of one market or the other was mandatory and depended on the nature of the remittance of funds.

In March 2005, BACEN unified both markets, extinguishing the differences between them and enacted more flexible exchange rules. As a consequence, 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 investments in currency or in assets and equipment must be registered with BACEN. Such registration grants the foreign investor the right to receive dividends and interest and to repatriate the investment.

Since August 2000, foreign investments in capital have had to be registered with the Electronic System of Registration of the online data system of BACEN. As for foreign loans, they also became subject to registration in the Electronic System of Registration of BACEN, as of February 2001.

The amount registered with BACEN as foreign investment includes the sum of

(i) the original investment (whether in cash or in kind);

(ii) subsequent additional investments (including the capitalization of credits); and

(iii) potential reinvestment of profits. This aggregate amount constitutes the basis for repatriation of capital and computation of any eventual capital gains tax, 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. The foreign currency to be remitted has to be purchased on the exchange market directly from any commercial bank, upon presentation of a corporate act declaring dividends and relevant financial statements. Up to January 30, 2017, in order to enable the outflow of funds, the distribution of profits also had to be registered in the Electronic System of Registration of BACEN, in the form of Foreign Direct Investment (*Investimento Externo Direto* - IED). As of January 30, 2017, such registration is no longer necessary. No further approval or consent of BACEN is necessary, and there is no limitation on the amounts to be remitted if the original investment has been registered with BACEN as described above.

Payments of profits directly abroad are also permitted under Brazilian rules. If the Brazilian subsidiary holds an overseas bank account with sufficient balance to pay the related profits, such funds might be utilized to pay the foreign investor directly abroad. In this case, registration of the distribution of profits within the BACEN electronic system is required.

5 Repatriation of Capital

Foreign capital invested in Brazil may be repatriated at any time, and there is no minimum period of investment.

Repatriation of the investment up to the amount stated in the Foreign Direct Investment mode of the Electronic System of Registration of BACEN may be made free of any tax. As a general rule, any surplus over the registered amount will be treated as a capital gain, 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 other ways to fund Brazilian companies through note/bond issues and commercial papers placed outside Brazil under private and public placements. In recent years, BACEN has authorized a large volume of bonds, fixed-rate notes, floating-rate notes, commercial papers and fixed- or floating-rate certificates of deposit, to be traded abroad. Nonetheless, currently foreign loans with an average maturity term of up to 180 days are subject to a 6% financial transactions tax ("IOF"). Interest paid to foreigners is subject to withholding tax. Another source of funding has been the issuance of ADRs - American Depositary Receipts, and IDRs - International Depositary Receipts.

7 Restrictions on Foreign Ownership of Companies

Foreign capital may be freely invested in Brazil, and enjoys the same treatment granted to Brazilian capital, with the few exceptions noted in item II.2 above.

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 recommendable 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 fitting for wholly owned subsidiaries or restricted joint ventures.

In the event, however, the partners wish for the company to issue debentures or other securities in the future, to become a publicly held company, or to admit other groups of investors, then the adoption of a corporation structure is preferable. A corporation is also preferable for ventures having 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 commerce. Both have state jurisdiction. A business entity, such as the limited liability company and the corporation, must be registered at the board of commerce of the state where the company's head office is located, as well as at the board of commerce of any other state the company opens a branch. Simple partnerships, associations, and foundations are registered at civil registries of legal entities. Corporate documents, such as amendments to the articles of associations or by-laws, as applicable, as well as certain minutes of partners meetings, must be filed with the respective registry of the company.

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.

On September 20, 2019, the Economic Freedom Law (Law 13,874/19) was enacted, which changed the requirement for a limited liability company to hold at least two partners. With the creation of a sole proprietorship, the incorporation of a limited liability company by a single person is permitted.

The partners may be legal entities or individuals, Brazilian or foreigner. If the partners are not Brazilian residents, they must have an attorney-in-fact in Brazil with powers to represent them in corporate matters in general 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 shall 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 prepared in accordance with the Brazilian Civil Code. This agreement should clearly contain the partners' intentions for the company, such as the company's purposes, capital stock, administrators, authority of the administrators, etc.

On June 10, 2020, the DREI (Department of Business Registration and Integration) issued Normative Instruction No. 81/2020 ("IN No. 81/2020"), which changed the requirement for a limited liabilities company to indicate in its corporate name the company's corporate purpose, 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 indicated, it must correspond to the activity actually performed by the respective company.

The incorporation of a limited liability company occurs with the registration of the articles of association of the company at the board of commerce 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 federal taxpayer identification number ("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 needs to 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 may be required, such as registrations with governmental agencies (for example, the Brazilian Health Surveillance Agency - *ANVISA*). In case the company carries out import and/or export activities, such company will need to obtain a license issued by the Foreign Trade Department, called RADAR.

Except in a sole proprietorship, as mentioned above, the amendments to the articles of association require the approval of partner(s) representing at least 75% of capital stock and must also be registered at the board of commerce.

Limited liability companies must adopt an accounting system, which consists of regular bookkeeping of commercial and financial information related to their activities.

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 foreigners that hold equity in Brazilian companies must be registered with the National Register of Legal Entities to obtain a corporate taxpayer identification number (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 may 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, the partners may 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, following which the referred transfer, with the new corporate structure, shall be reflected in the subsequent amendment and restatement of the company's articles of association.

As a general rule, no minimum capital stock is required (exceptions in case of obtaining certain licenses). Nevertheless, the capital stock should be consistent with the company's initial operational needs. In the event that more is needed, the partners may 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 may 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 may not 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 residents in Brazil. The manager will be in charge of the company's management and representation.

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.

As a general rule, 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, would also be applicable to companies, or a group of companies under common control, that had in the previous financial year assets greater than BRL 240,000,000.00 (two hundred forty million reais) or annual gross revenue greater than BRL 300,000,000.00 (three hundred million reais). As a result of this law, some Boards of Commerce understood that if a company incorporated under a limited liability company (or any other corporate type) meets those requirements, the specific rules previously applicable only to corporations regarding the obligation to publish their financial statements in the Official Gazette and in another widely read newspapers would be applied to this company as well.

As a result, since 2007, this issue has been the subject of several debates in the Brazilian legal community, since some Brazilian lawyers understand that publication is not mandatory for limited liability companies considering that there is no express mention in the law related to the need for publishing the financial statements. There are many good arguments in favor of and against both interpretations. A decision in a lawsuit filed in 2008 ordered that the publication of the financial statements was mandatory; however, even after this judicial decision, only some Boards of Commerce[1] enforcing such a requirement for publication have been requesting confirmation that the financial statements had been published in order to file the Minutes of the Partners' Meeting or the General Shareholders' Meeting that have approved the financial statements of the companies that meet the requirements set forth in the law. Many companies have filed a *writ of mandamus* in order to be released from publishing its financial statements. In 2017, the Regional Federal Court, 3rd Circuit, unanimously decided to dismiss the obligation for limited liability companies to publish its financial statements, as provided to in the Resolution issued by Board of Commerce of São Paulo No. 02/2015.

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 may be of different types, according to the advantages, rights and restrictions attributable to the shareholders. The two major types of shares are common and preferred. Corporations are also allowed to issue debentures.

[1] Since 2010 the Board of Commerce of the State of Minas Gerais, since 2011 the Boards of Commerce of the States of Rio de Janeiro, Tocantins, Goiás, and since 2015 the Board of Commerce of São Paulo.

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 may also be privately held.

Only publicly held corporations may 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. Corporations' bylaws must be approved by the inaugural general meeting and may be amended by a special general meeting.

To validly exist, a corporation must file with the board of commerce the minutes of the inaugural shareholders' meeting and the approved bylaws, a complete list of all the subscribers of the capital stock, and if the capital is paid in cash, the bank receipt for the initial ten percent (10%) payment. 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 general rule, after submitting the relevant documents to the board of commerce, filing usually occurs within five (5) days, unless the board of commerce 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. In the same way, a corporation's shareholders, whether legal entities or individuals, must be enrolled with the CNPJ or the CPF, as the case may be.

Corporations must adopt an accounting system that consists of standard bookkeeping of commercial and financial information related to their activities, in addition to a ledger of nominative shares; a ledger of nominative share transfers; a ledger of minutes from the general meeting of shareholders; a ledger of shareholder attendance; a ledger of minutes from executive board meetings; and a ledger of opinions and minutes from the oversight council's meetings.

Unless otherwise provided for by law or bylaws, shareholder decisions require a simple majority of votes, without abstentions being taken into account.

Regarding such shareholders' meetings, the Law 14,030/2020 enacted on July 20, 2020, allows the shareholders to participate and vote remotely in such meetings by means of a digital platform, provided that the necessary regulatory requirements established in the Law are observed.

The corporation may be managed by a board of officers and a board of directors (required in case of publicly held corporations), or just by 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.

A board of officers is the corporation's executive body, consisting of at least two officers who must be Brazilian residents. The officers represent the corporation and perform all acts necessary for its normal operation.

As a general rule, 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 meetings and board of officers' meetings, annual reports, balance sheets, and other financial statements must be published in the Brazilian Official Gazette and in another widely read newspaper.

IN No. 81/2020 changed the Brazilian Corporation Law's requirement regarding call notices of shareholders meetings, to provide that publication of the call notice must be made three times in total, in the Brazilian Official Gazette and in another widely read newspaper.

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*), general 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 2011 a new type of corporate structure was created, the *Empresa Individual de Responsabilidade Limitada* - EIRELI (which is an individual limited liability company). The EIRELI is formed only by one person, Brazilian or foreigner. Since EIRELI was created, there has been a discussion whether or not a legal entity could form an EIRELI. However, in 2018 the National Department of Business Registration and Integration ("DREI" - a Brazilian Federal authority which regulates the Boards of Commerce) established that EIRELI could be formed by legal entities, Brazilian or foreigner.

To validly exist, the EIRELI's charter shall be filed before the board of commerce of the state where it is located.

The EIRELI shall have a minimum capital of one hundred (100) times the highest minimum wage in force in Brazil, which shall be totally subscribed and paid in on the date of its incorporation, and its owner shall be liable for its obligations up to the amount of its capital stock. The assignment and transfer of EIRELI's ownership is allowed. However, it is not allowed that an individual be the owner of more than one EIRELI.

The rules applicable to a limited liability company shall be applied, *mutatis mutandis*, to an EIRELI.

IN No. DREI 81/2020 established that the board of commerce may 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 2,200-2 of August 24, 2001.

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.

As a general rule - except for certain regulated sectors such as telecommunications, aviation and rural land - there are no limitations on the percentage of capital stock of a Brazilian company that may be held by a foreign investor, or special prior approvals to be obtained apart from antitrust approvals by the Administrative Council for Economic Defense ("CADE") (for more details on these rules, please see Chapter XII below – Competition Law).

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 acquisition vehicle, which receives direct investment from the foreign entity and is used as the vehicle for acquisition, and if necessary, for arranging funding.

As a general rule, Brazilian companies are acquired using the same mechanisms generally used internationally. Buyers and sellers execute an agreement setting forth terms and conditions of the acquisition, including the usual representations and warranties relating to the business being acquired. The accuracy of these representations and warranties and the general situation of the business are determined prior to closing through due diligence reviews 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, have to be residents of Brazil) of its choice.

Pursuant to Brazilian tax laws, capital gains from the sale of assets (including shares or quotas of capital) located in Brazil by a non-resident are taxable in Brazil, even if both seller and acquirer are non-residents. In this last situation, the tax may be due on the date of the sale and/or payment thereof, 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 actual share 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 may have the right for 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 regulatory approvals to carry out the acquisition.

Pursuant to Brazilian tax laws, the sale of a majority of capital triggers the requirement for certain tax "clearance" certificates of the target company, which will be required for filing acquisition documents.

2.2 Mergers

Brazilian law provides 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*). In the context of an acquisition, a *fusão* is rarely used (usually regarded as a too troublesome with virtually no gains in comparison to the *incorporação*). A *cisão* is often used 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 used when a portion of the purchase price is to be paid with stock 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 on a *fusão*, *cisão* or *incorporação*, the company to be sold should be analyzed to verify if it will be able to produce debt clearance certificates from the tax authorities – a requirement under Brazilian law for any company that intends to merge with/or into another company, or to undergo a spin-off.

As in the case of acquisitions, mergers also require certain tax "clearance" certificates of the target company, which will be required for filing merger documents.

2.3 Joint Ventures

Apart from incorporating a new company or acquiring an existing one, foreign investors may also consider entering into joint ventures with Brazilian parties or other foreigners. 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, by-laws, shareholder' 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 pursuant to the rules of the Brazilian Securities and Exchange Commission ("*Comissão de Valores Mobiliários*" or "CVM"). A 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 actually 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 which assure the FIP's influence on the company's strategy.

The FIP must be managed by a legal entity authorized by the CVM to do so, including financial institutions. The FIP has been commonly used due to its tax advantages. However, in the past few years the tax authorities have been trying to restrict such advantages. For this reason, the tax impacts of investing in a FIP must be analyzed on a case-by-case basis.

A question often asked by foreign investors interested in acquiring a Brazilian company is whether they should acquire assets or stock. While in other countries an asset acquisition may provide far better insulation from the liabilities of the company selling the assets, in Brazil that may not always be the case, in particular with respect to tax and labor liabilities.

Brazilian tax law stipulates that the assets that once belonged to a company may 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, thereby exposing the purchasing company to great potential risk of having 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.

Hence, although an asset deal may in fact provide some insulation from the selling company's past liabilities, each situation should be analyzed on a case-by-case basis, not only to ensure that the structure makes sense from a tax perspective, but also to verify if the asset deal is ultimately worth the additional efforts involved in comparison to a stock deal.

3 Trends and Developments

M&A activity continues at a very strong pace in Brazil, driven in large part by privatizations being carried out by the current government. In addition, many sectors of the Brazilian economy such as oil & gas, energy and infrastructure, and a few others are under a financial restructuring that will require assets to be sold as part of an attempt to reduce leverage, which will further incentivize investment. Other sectors, including agribusiness, education, health, technology and resilient consumer goods will continue to benefit from inherent capabilities of the Brazilian economy.

At the same time, Brazil continues to be an important destination for many funds that were raised for private equity purposes and which had Brazil as a primary focus.

In terms of the regulatory environment, we expect to see Brazilian GAAP continuously revised and applied according to IASB standards. In addition, we expect improvements to the regulatory framework for certain sectors involving infrastructure (such as ports, waterways, railroads, etc.) and other key sectors for Brazil, such as agriculture. On the other hand, certain issues around foreign ownership of rural land continues to present a barrier to investment for the foreseeable future, however there is increasing discussion to liberalize legislation in this regard.

CAPITAL MARKETS

1 Publicly-Held Corporations

1.1 General Overview

Publicly held corporations 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 is mandatory.

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 other things, 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 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 substitute by split 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 may combine their interest to jointly appoint a director and its substitute if the combined interest surpasses 10% of the company's capital stock.

Since the amendment to the Brazilian Corporations Law implemented by Law 12,431/2011, non-shareholder individuals can be appointed as directors.

1.1.2 Board of executive officers

Executive officers are responsible for day-to-day management as appointed by the board of directors, and must be residents in Brazil. They have individual responsibilities established by the by-laws and the board of directors. One of the officers of a publicly-held company is designated as t Investor Relations Officer and is responsible for providing information to the company's shareholders, the CVM, and the organized securities market where the securities are traded.

1.1.3 Oversight council

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

1.2 Disclosure of material information

1.2.1 Periodic and occasional disclosure of information

Publicly-held corporations are subject to the reporting rules established by Securities Law, which require the company to provide periodic information to the CVM and the organized securities market where the securities are traded, including, but not limited to, the Shelf-Document Report (as defined below) and 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*. In addition, the company is required to file with the CVM all shareholders' agreements, documents related to annual general meetings, such as call notices, management proposal related to the agenda, 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.

Since 2010, as a replacement for the previous IAN form (similar to the US 20-F-based Form), the CVM introduced a shelf-document report (in Portuguese, *Formulário de Referência*, "Shelf-Document Report"), which must be presented and submitted to a complete update annually, or whenever the specific events set forth by CVM Regulation 480, as amended, occur. Inspired by the "shelf registration system" model developed by the International Organization of Securities Commissions — IOSCO, the Shelf-Document Report is equivalent to its "shelf document" and is intended to provided information to investors periodically and at the time of issuance of securities (in the latter case, through its incorporation by reference).

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

Pursuant to CVM rules, directors and officers, members of the oversight council, if installed, as well as members of the audit committee or any other technical or advisory committee, are required to disclose, to the company, the CVM, and the organized securities market where the 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 publicly-held 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 Regulation 358, as amended, any material negotiation conducted by controlling shareholders, directors and officers, shareholders entitled to appoint directors and members of the oversight council, as well as investors of a publicly held company, resulting in increases or decreases of interest of multiples of 5%, triggers the disclosure obligation of such persons, who must report to the company, among other information, the ownership percentage held (including others 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 therewith. Interests (or rights thereof) 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 Securities Law, a publicly-held 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 securities

1.3.1 Mandatory offerings

According to CVM Regulation 361, as amended, public offerings for acquisition of securities (in Portuguese, *Oferta Pública de Aquisição de Ações*, "OPA") are generally required:

(i) for delisting a publicly-held company in the organized securities market;

(ii) as a result of disposal of the controlling interest of a publicly-held 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

Such OPAs are generally:

- subject to registration with the CVM;
- intermediated by a financial institution;
- 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
- pursued through an auction in the organized securities market on which the securities are traded.

a. Delisting procedure

The procedure for delisting a publicly held 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.

b. Disposal of controlling interest

(i) Other disclosure and public-offering-related obligations may apply if a significant percentage acquired by an investor results, under Brazilian Corporations Law, in 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 publicly-held 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.

c. Other offerings

A public offering for acquisition of shares is also mandatory should the controlling shareholder of a publicly-held company, or a party related thereto, 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 (6) months, acquisition reduces liquidity of the shares.

Also, according to the CVM Regulation 361, an investor may acquire the controlling interest of a company through a public offering for acquisition of shares, either hostile or not. Such voluntary offering is generally not subject to registration with the CVM, except if the offering involves exchange of securities.

1.3.3 Tender offers - by-laws

Certain by-laws of publicly-held companies may require a public offering to be launched should an investor reach the threshold, and for the price determined, according to the provisions of the by-laws. Since this public offering is not provided for in Brazilian laws and regulations, a case-by-case analysis of each set of by-laws must be made to ascertain the applicable rules.

1.3.4 Other rules

For the purposes of execution of any sort of public offering for the acquisition of shares, the offeror must hold confidential any information regarding the offer until it is duly released to the market, as well as ensure that its directors, employees, advisors 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 shall not negotiate with the shares issued by the referred company, nor conduct research and create public reports about the company and the operation.

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, do not prevent the offeror to sell 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) performing 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 regulations, an investor may acquire controlling interest of 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 practices of corporate governance. The listing segments were designed to trade shares issued by corporations voluntarily agreeing to abide by additional corporate governance practices and disclosure requirements along with those already imposed by applicable Brazilian law. 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 applicable law to be a publicly-held corporation, the issuer must agree to:

- ensure that shares of the issuer representing at least 25% of its total capital are effectively available for trading;
- adopt offering procedures that favor widespread ownership of shares whenever making a public offering;
- comply with minimum quarterly disclosure standards;
- 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;
- maintain and publish a schedule of corporate events available to shareholders; and
- submit to *B3* a Code of Conduct and the company's Securities, applicable, at least, to the controlling shareholders and to the company's management members and staff.

Also, the chairman of the Board and the Chief Executive Officer may not be the same person. The listed companies have the maximum term of three years to rearrange their management structure, as applicable, to comply with such new requirement.

To become a Level 2 company, in addition to the obligations imposed by applicable law to be a publicly-held corporation, 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:

  (a) any transformation of the company into another corporate form;

  (b) any merger, consolidation or spin-off of the company;

(c) approval of any transaction between the company and its controlling shareholder or parties related to the controlling shareholder;

(d) approval of any valuation of assets to be delivered to the company in payment for shares issued in a capital increase;

(e) appointment of an expert to ascertain the fair value of the company in connection with any deregistration and delisting tender offer from Level 2; and

(f) 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 it elects to delist 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 by-laws.

Finally, among other specific changes, the execution of any tender offer of the company's shares will require 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 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.

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 publicly-held corporations 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 relevant 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 advisors). Brazilian legislation prohibits trading of securities based on privileged information[2] 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:

- warnings,
- fines, which vary according to the relevant transaction,
- temporary disqualification up to 20 years to exercise the position of director or oversight council member of a publicly-held company or any other entity registered with the CVM,
- suspension of authorization or registration to operate in capital markets;
- temporary disqualification, up to 20 years, to operate in capital markets;
- 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
- temporary prohibition, up to 10 years, to operate directly or indirectly in one or more types of transaction in the securities market.

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 Securities Law in 2017, implemented by Provisional Measure No. 784, administrative fine amounts were heavily increased and now can range up to a maximum of the following values:

(a) BRL50,000,000.00 (fifty million reais); or

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

(b) double the value of the issue, offer or irregular operation; or

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

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

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

Criminal penalties range from 1 to 5 years in prison, and fines that can reach up to three times the illegal gain resulting from insider trading.

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, regulated by the CVM. Accordingly, securities transactions are subject to CVM regulation. The main activities related to these 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 with the CVM of the offering (Articles 19 and 21 of the 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 Securities Law), and

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

3.1.2 Definition of public offering

An offering of securities in Brazil is deemed to be public if:

- any sales efforts (meaning the use of any form of communication directed at the general public for direct or indirect promotion of subscription or disposal of securities) is conducted in Brazil designed for the "general public"; or
- though not aimed at the general public, Brazilian investors have access to the information about the offering, and no precautions are taken to allow this access only to investors in countries, or locations where the offering is authorized.

For purposes of CVM regulation, "general public" means any class, category or group of persons, whether individualized or not in such capacity, except for those who hold prior, strict and customary commercial, credit, corporate or labor relationship with the issuer.

3.1.3 "Quiet period" and lock-up period

During the "Quiet Period" (in Portuguese, *Período de Silêncio*), the issuer, the underwriter — from its time of hiring —, and the managers of all institutions involved in a public offering, within sixty days before filing the public offering registration, or on the date of approval of the public offering, whichever occurs last, are prohibited from publicly disclosing any information regarding the offering or the issuer, except for information related to the corporation's ordinary activities. In addition, the issuer and the intermediary institutions involved are subject to a "Lock-up Period", until publication of the notice of closing, during which they may not perform any transaction with securities of the relevant issuer, or securities referenced therein, except in cases expressly provided for in relevant regulation.

3.1.4 Exemption upon request

Except as described in 3.1.7 below, the CVM has not enacted to date any general rule waiving registration of a public offering of securities, even if issued abroad[3]. However, CVM Regulation 400, as amended, expressly allows the CVM to waive registration of the issuer and/or the securities offering, or some of its requirements (such as prospectus, offering initial notice, 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) conformity to different procedures for offering securities in more than one jurisdiction, as long as equality of treatment with local investors is assured;

(iii) the plan for distribution of securities;

(iv) the target market through the offering, including geographic location and quantity; and/or

(v) if the offering is aimed only at Qualified Investors or Professional Investors (defined below).

Such regulation does not specify the details for each of these situations, leaving analysis to the CVM on a case-by-case basis.

3.1.5 Definition of professional investors

The category of "Professional Investors" is recent and 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;

[3] There is no similar rule in Brazil to Rule 144A - enacted in the US - which provides for a general exemption in certain circumstances for qualified institutional buyers.

(iv) individual or legal entities that hold financial investments in an amount exceeding BRL 10,000,000.00 (ten million reais) 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; and

(viii) non-resident investors.

Moreover, it is important to note that special social security regimes instated by the Union, the States, the Federal District or the Municipalities may 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

Regulation recently amended the definition of "Qualified Investors", which now includes:

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

(b) legal entities and individuals owning financial investments in an amount greater than BRL 1,000,000.00 (one million reais) and that additionally attest in writing their qualified investor condition;

(c) in relation to 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

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

3.1.7 Automatic exemption

In accordance with the rules set forth by CVM Regulation 476, as amended, certain public offerings of securities are automatically exempted from registration if placed with limited sales efforts. Such exemption requires:

(i) the offering to seek no more than 75 Professional Investors;

(ii) the securities to be acquired, or subscribed, by no more than 50 Professional Investors;

(iii) the securities offering not to be pursued through a public sales effort;

(iv) all material information to be disclosed to investors — although there is no need for a prospectus;

(v) no public offering of the same security to occur within the following four months after the exempted offering;

(vi) the securities offered must be issued in Brazil;

(vii) traded only among Qualified Investors and after the ninetieth day after completion of the exempted offering; and

(viii) the issuer to:

(a) have audited its annual financial statements;

(b) disclose such statements on its website within three (3) months after completion of the fiscal year;

(c) disclose material information reports; and

(d) not trade its securities based on material, non-disclosed information.

3.1.8 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. A corporation will be qualified as an EGEM provided that it meets the following requirements:

(i) publicly traded for at least three years;

(ii) timely compliance with CVM requirements for the last 12 months; and

(iii) has a free float equal to or greater than BRL 5,000,000,000.00 (five billion reais).

To benefit from the EGEM's automatic registration, the issuer and leading distribution underwriter must submit a request to the CVM, submitting, among other documents, a specific application declaring qualification as an EGEM and a standard prospectus. Following CVM approval, the offering registration takes effect within five business days. However, the CVM may, at any time, convert this application into a standard registration procedure, if these requirements are not strictly observed.

3.1.9 Equity crowdfunding

In 2017, CVM Regulation 588 instituted the possibility of public offerings of securities for small-sized companies, aptly named *"Equity Crowdfunding"*. These offerings are automatically exempt from CVM registration, being made instead 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 10,000,000.00 (ten million reais) in the fiscal year prior to that of the offering, and cannot be a publicly-held corporation. These offerings must have a target resource value of up to five million reais (BRL 5,000,000.00) and a maximum offering period of, at most, 180 days.

3.1.10 Primary and secondary public offerings

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

3.1.11 Securities distribution program

Publicly-held corporations that have already carried out public offerings of their securities may file a securities distribution program with the CVM for distribution of securities within two (2) years after such filing.

3.1.12 Additional lots

Securities regulations authorize an offering to be increased without having to change the registration statement:

(i) by a decision of the underwriter (greenshoe) should the demand be greater than expected or

(ii) by a decision of the offering party (hot issue), only for purposes of price stabilization[4].

Such increases are limited to 20% or 15% of the number of securities initially offered, respectively, and may be individually or collectively exercised.

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.

According to the applicable regulations, only foreign publicly-held or similar companies are authorized to issue the underlying assets of BDRs. As per CVM's regulations, the qualifications of a foreign issuer comprises, in addition to the location of the company, the sum of assets that the company owns abroad, in the target market, rather than the source of domestic revenue for the respective issuer. Accordingly, assets held by foreign entities in Brazil shall be considered in order for it to be qualified as a foreign publicly-held corporation.

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 publicly-held corporations 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 set forth by applicable governing law, regulations, and self-regulations are followed.

---

[4] Limitation for the hot issue introduced by CVM Regulation 601/18, which amended CVM Regulation 400.

3.2 Intermediation

3.2.1 Securities intermediation

Intermediation of securities transactions in Brazil, or the performance 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 done 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.

Accordingly, a foreign entity that wants to practice intermediation of securities in Brazil would, among other conditions, have to

(i) be headquartered in Brazil (through a subsidiary) and obtain specific authorization by the Central Bank and the CVM; or
(ii) obtain specific authorization from the federal government (Ministry of Development, Industry and Foreign Trade) to develop activities in Brazil, in addition to those referred in the prior item, which will require the setting up of a branch in Brazil; or
(iii) hire an institution that is part of the Brazilian SDS duly authorized to perform such activities.

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

3.3 Securities Analysis

3.3.1 Analysis activities

According to CVM Regulation 598, as amended, to be replaced by CVM Resolution 20, once it becomes effective on April 1, 2021, the analysis of securities disclosed to the general public in Brazil is subject to CVM supervision. Accordingly, an individual intending to professionally perform this activity in Brazil must be certificated 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 regulation or in the code of conduct previously approved by the CVM. Also, an individual or legal entity intending to professionally perform 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 comply with the following requirements, among others:

(i) a university degree;
(ii) passing technical exams 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 by-laws or articles of association a provision authorizing this activity;
(ii) designation of at least one individual registered with the CVM for 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 under CVM rules.

3.3.2 Reports

There are certain restrictions and mandatory disclosure for analysis reports, including:

(i) being written in clear, objective language, differentiating interpretations from facts;
(ii) naming a primary accredited analyst to prepare the report;
(iii) adding a disclaimer to alert that the analysis contains personal opinions and that they were independently developed; and
(iv) disclosing any potential conflict of interests by any member of the analysis team.

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 Regulation 558, as amended, to be replaced by CVM Resolution 21, once it becomes effective on July 1, 2021. Accordingly, an individual or legal entity intending to professionally perform this activity in Brazil must be previously authorized by the CVM, pursuant 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 degree in Brazil or abroad;

(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 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 by-laws or articles of association a provision authorizing this activity;

(ii) designation of at least one individual registered with the CVM for such activity; and

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

Also, a “Great Wall” must be maintained between asset management and other departments of the legal entity, to prevent conflicts of interest.

3.4.4 Ongoing obligations

Ongoing obligations that asset managers are required to comply with include:

(i) general reporting obligations; and

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

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

The offering, trading, and management of investment funds ("Funds") in Brazil is subject to the supervision of, and registration with, the CVM. Funds are non-corporate condominiums aimed at trading financial assets by an asset manager.

4.1.2 Management services

Management services include those related directly or indirectly to Fund maintenance, which are provided by an asset manager or a third party duly authorized to do so.

The asset manager is the primary party responsible for the Fund's transactions and is also required to provide shareholders with material information affecting the Fund's activities.

Management services include:

(i) management of the Fund's portfolio;

(ii) investment advice;

(iii) securities treasury, control, and processing activities;

(iv) distribution of shares;

(v) book-entry share activities;

(vi) custody; and

(vii) rating activities.

Third parties do not have to be hired to provide management services, except for the services described in items (iii) to (vi) above, for which the manager is required to have special authorization.

4.1.3 Forms of incorporation

According to the Fund's by-laws, the Fund may be incorporated as:

(i) an open-end condominium, under which voluntary transfer of shares is not allowed, but redemption of shares is permitted, or

(ii) a closed-end condominium, under which redemption occurs upon expiry of the Fund or the class of shares, but voluntary transfer of shares is generally allowed. For both forms the amortization of shares is permitted, in accordance with the provisions of the Fund's by-laws.

4.1.4 Distribution

As a general rule, distribution of shares issued by Funds requires intermediation by institutions in the Brazilian SDS (as defined above), and delivery to investors of a copy of the Fund's by-laws and prospectus describing the offering.

Distribution of shares issued by closed-end Funds also depends on prior registration with the CVM, provided that in such distributions it is possible to have automatic exemption if the requirements detailed in section 3.1.7 above are met.

4.1.5 Classification and limits

The portfolio's mix is the basis for the following types of Funds:

(i) fixed-income;

(ii) stock;

(iii) multi-market; and

(iv) currency exchange.

Securities regulation also provides for a new type of fixed-income fund, named "Simple Fund", which allows investors that aim at low risk investments with reduced costs.

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

4.1.6 Professional and qualified investors

Funds targeting Qualified Investors or Professional Investors (defined above respectively 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 related to the Fund's investment policy and the risks involved must be included in the prospectus and the Fund's by-laws, and also during the Fund's activities, in a specific report.

4.1.8 By-laws

A Fund's main corporate documents are its by-laws, which contain information related to its management, investment policy, risks, duration, and description of shares.

4.2 Structured Funds

In addition to the rules described above, the CVM supervises other Funds, some of which are described below, designed to be the vehicle for certain transactions.

4.2.1 Private Equity Investment Fund ("FIP")

As per CVM Regulation 578, as amended (which replaced CVM Regulation 391), FIPs are created under a closed-end condominium 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 publicly-held corporations, in which the FIP effectively participates in the decision process. FIP investors must be Qualified Investors (defined above). Securities regulation also allows the FIP's to grant personal guaranties upon prior approval by its shareholders in a general meeting.

The main changes introduced by CVM Regulation 578 are: the possibility for the FIP (i) to invest in debentures, limited to 33% of its subscribed capital; (ii) to invest in quotas of limited liability companies (*sociedade limitada*), provided that the requirements set forth by such regulation are met; and (iii) to create different classes of quotas with different economic rights.

4.2.2 Real Estate Investment Funds ("FII")

Federal Law 8,668/1993, as amended, and CVM Regulation 472, as amended, provides for FIIs, which are non-corporate vehicles managed by financial institutions. FIIs are closed-end funds that invest most of their equity in real estate or related rights. Since the Fund has no corporate veil, the manager is the fiduciary owner of the underlying assets, separated from the manager's assets.

FIIs must distribute at least 95% of profits to their shareholders based on balance sheets dated June 30 and December 31 of each year. Additionally, FII shareholders do not have any "*in rem*" right to real estate and projects invested in by the FII, and are not personally liable for any legal or contractual obligation concerning the FII real estate or projects or its manager, except for the obligation to pay in all subscribed shares.

4.2.3 Receivables Investment Funds ("FIDCs")

As per CVM Regulation 356, as amended, FIDCs are either closed- or open-end Funds that invest more that 50% of their equity in receivables that are realized or to be realized, backed by financial or commercial transactions, including those involving property financing and services. Only Qualified Investors are authorized to subscribe or acquire shares issued by FIDCs.

Additionally, the CVM provides for a subtype of FIDC, called a Non-Standardized Receivables Investment Funds ("FIDC-NP"), which aims only at Professional Investors and is regulated by CVM Regulation 444, as amended. The FIDC-NP is authorized to invest in certain receivables which increase the risk assumed by investors, such as receivables:

(i) due with payments pending,
(ii) from public entities,
(iii) related to ongoing lawsuits,
(iv) whose existence or assignment to the FIDC-NP may be challenged,
(v) originated by companies under bankruptcy or similar proceedings;
(vi) that haven't been realized, with unknown face value; and
(vii) any other type of receivable not covered under CVM regulations.

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 national 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, as of October 14, 2020, regulates the public offering of financial bills and provides for situations in which the rules under CVM Regulations 400 and 476, as amended, apply to public offerings of such securities.

Each financial bill must have a minimum face value of BRL 50,000.00 (fifty thousand reais), which must be increased to BRL 300,000.00 (three hundred thousand reais) in case such financial bill qualifies as a subordinated debt, and the issuance must last for at least two years (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 BACEN Regulation 4733, which allows the issuing financial institution to buy back up to 5% of its financial bills (only 3% if such financial bill qualifies as a subordinated debt), which must be held in its treasury.

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 12,431/2011, as amended.

Such 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 therein. Such securities may be summarized as follows:

(i) 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;

(ii) 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, including:
  (a) priority projects bonds (including infrastructure bonds);
  (b) shares issued by FIDCs incorporated as closed-end condominiums; and
  (c) certificates of real estate receivables. A prior specific authorization for issuance of PPS is deemed necessary according to the regulations enacted by the respective supervising authority; and

(iii) 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" (*Certificados de Recebíveis Imobiliários (CRIs)*), were created by Law 9,514/1997 and represent an enforceable promise to pay, in cash, for credits related to the real estate business. 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. CVM Regulation 414, as amended, applies to CRIs issuances and public offerings.

Agribusiness-backed securities, known as "agribusiness-receivables certificates" (*Certificados de Recebíveis do Agronegócio - CRAs*), were created by Law 11,076/2004 and represent an enforceable promise to pay, in cash, for credits related to agribusiness. Prior to the new CVM Regulation 600, issued on August 1, 2018, which regulates CRAs, CRI regulations (both Law 9,514/1997 and the CVM's regulations concerning CRIs) were extended to CRAs. Note that Law 9,514/1997 still applies to CRA for specific matters.

For further information about CRA, please refer to section XXVII.2.1.5 below.

4.5.1 Securitization company

Among the special purpose vehicles used for securitization, the securitization company occupies 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 publicly-held 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. In order to avoid risk sharing among independent transactions, the securitization company may segregate each set of receivables linked to different issuances into separate equities to be managed under a fiduciary regime.

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 also very strong in Brazil.

1 Brazilian Labor Code

Most of 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, intending 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 Legal limit of Regular Working Hours

The Brazilian legislation stipulates that working hours in Brazil are limited 44 hours per week or eight hours per day (item XIII, Article 7 of the Brazilian Constitution), unless provided for otherwise through a convention or an agreement entered into with the relevant labor union. The Labor Reform also authorized the "12x36" work system (twelve hours of work followed by thirty-six hours of rest), provided that the weekly working hours' constitutional limit is observed.

1.2 Vacation

Upon completion of each period of twelve months of work, employees are entitled to paid vacation of up to thirty calendar days, plus an additional payment equal to one-third that amount.

1.3 Minimum Wage

Employees in Brazil are entitled to a mandatory federal minimum monthly wage, which is annually adjusted by the Brazilian government (BRL 1,100.00 – one thousand and one hundred reais - as of January 1, 2021). 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 to that, collective bargaining agreements may also set a minimum salary, which shall be granted if higher than the Federal/State minimum wages.

1.4 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 shall 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, in January of the calendar year to which the 13th salary corresponds.

1.5 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.

1.6 Overtime Pay

Employees in Brazil are entitled to overtime pay with an additional allowance of at least 50% the hourly rate; overtime work on Sundays and holidays, when authorized, must be paid with the applicable additional allowance. The applicable collective bargaining agreement may set higher overtime allowances.

1.7 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 may extend maternity leave for an additional two-month 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;

1.8 Paternity Leave

Employees in Brazil are entitled to five (5) days of paternity leave; Law 13,257/2016 establishes that employers may 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.

1.9 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 may have additional rules on prior notice.

1.10 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. This authorization may also be granted by the Economy Ministry or by the workers' union, if some requirements are met.

Work on Sundays and holidays, when authorized and not offset with rest days, must be paid in double and, if comprises overtime, must be paid with the applicable overtime allowance.

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")

Companies must pay 20% to 31.8% of payroll to the INSS; additionally, employees have 7,5% to 14% (as of January 1, 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 Unemployment Savings Fund ("*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' Unemployment Savings Fund, in a blocked account at the "*Caixa Econômica Federal*" (Federal Savings Bank). If an employee is dismissed without cause, the employee is entitled to withdraw 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 a 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.

If the employee is not required to work during the notice period, the payments above must be made within 10 days of the date when notification of dismissal was served. If the employee is required to work during the notice period, then termination dues must be paid on the first business day after 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 may 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 may 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 shall 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 due 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

Currently, the Brazilian law does not have any provision obliging companies to take specific procedures in cases of mass termination.

According to recurrent decisions issued by the Brazilian Labor Courts, it is mandatory to negotiate with the unions an additional termination package before mass redundancies effectively occur, under the pain of having the terminations annulled and the company compelled to negotiate with the union.

For this purpose, the courts understand mass redundancy 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 certain establishment. However, there is no definition on the minimum number of terminated employees that would be considered as a mass termination.

Notwithstanding, as of November 2017 Law No. 13,467/2017 stated that collective dismissals shall be treated the same as an individual dismissal, and that no previous authorization of the labor union is necessary.

This matter is generating several controversies, since the previous jurisprudential understanding has as a basis a constitutional interpretation that cannot be put aside due to the issuance of an ordinary law, and has continued to be applied by the labor courts.

In view of the above, a case-by-case analysis is recommended.

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 foreigners. However, it is still necessary to obtain certain authorizations for foreigners to work in Brazil.

Foreigners must obtain a residence permit and a temporary work visa to work in Brazil. In regard to the types of work visas that would be appropriate for foreigners who would be assigned to work in Brazil, we clarify that such foreigner will need to have **(i)** a valid visa, which allows him/her to enter the country and **(ii)** the appropriate Residence Permit, which is the authorization that will allow the individual to remain working in Brazil.

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 foreigner 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, he/she has 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 foreigner 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 aspects of each kind of visa based upon the current legislation in force.

2 Residence Permit for Investors

This Residence Permit is appropriate for the foreigner 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 foreigner into the capital stock of a Brazilian Company, under one of the following conditions:

(i) At least five hundred thousand Reais (BRL 500,000.00) if the investment is made in a pre-existing or recently incorporated company; or

(ii) Between one hundred and fifty thousand Reais (BRL 150,000.00) to five hundred thousand Reais (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 foreigners to execute an employment contract with the Brazilian company.

3 Residence Permit for Officers and Managers

This Residence Permit is applicable to foreigners who will occupy directorial positions in Brazil, i.e., administrator positions, duly indicated in the Brazilian company's Articles of Association as an administrator, and with powers to 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 foreigner will be one of the following:

(i) Proof of direct foreign investments in the company, in the amount of at least six hundred thousand Reais (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

(ii) Proof of direct foreign investments in the company, in the amount of at least one hundred and fifty thousand Reais (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 ten (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.

According to Brazilian legislation it is not possible to have a general manager who is not a Brazilian resident.

Under this Residence Permit, the immigration department does not require the foreigner to execute an employment agreement with the Brazilian company; thus, the foreigner may be hired as an effective employee of the company, or as a non-employed officer (see below specific comments on these types of engagement).

4 Residence Permit for Work Purposes with an Employment Agreement with a Brazilian Company

This type of Temporary Residence Permit is appropriate for foreigners who will be hired as employees in Brazil, to hold positions that do not involve management.

Thus, foreigners 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 cancelled.

For this Residence Permit, the local employer has to demonstrate the compatibility between the professional qualification/experience of the foreigner and the activity that he/she will be performing in Brazil.

It is also required that at least two thirds (2/3) of the Brazilian entity's employees are Brazilian nationals.

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 (2) 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 foreigners 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 (1) year, however, it is possible to request a renewal of the residence permit for an additional period of one (1) 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 foreigners 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 (1) year, however, it is possible to request a renewal of the residence permit for an additional period of one (1) 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.

If the request is based only on the desire of the local company to retain the foreigner's services, it will be necessary to engage the individual as a regular employee, as per Brazilian Labor Law.

7 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.

8 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 2 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.

9 Individual Income Tax

Upon arrival in Brazil, foreigners holding a permanent visa or a temporary visa with an employment contract with a Brazilian company are deemed taxpayers and subject to the same income tax laws applicable to other residents of Brazil.

As a taxpayer in Brazil, his/her worldwide income will be subject to Brazilian income taxation. A tax credit may be granted to income taxes paid in other countries, provided that certain conditions are met.

BUSINESS OPERATION TAXES

Taxation in Brazil is a vast and complex field, comprising numerous federal, state and municipal taxes[5]. 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 to Finance 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"), Tax on Vehicle Ownership ("*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").

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 (twenty thousand reais) per month.

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

[5] Currently, the Brazilian Congress is analyzing proposals for a tax reform in order to simplify the tax system, although the discussions on this subject have been delayed in the Brazilian Congress due to the crisis resulting from the Covid-19 pandemic.

(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 78,000,000.00 (seventy eighty million reais) 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.

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 pre-payment 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.

1.3 Contribution to Social Integration Plan ("*Contribuição para o Programa de Integração Social*" - "PIS") and Contribution to Finance Social Security ("Cont*ribuição 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.

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 byproducts, 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.

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 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.

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) may 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, 18% on products imported, sold, or transferred within the state, and 25% on communication services.[6] Other rates may also apply depending on the specific product, service or state in which the transaction occurs. Rates may also vary for interstate transactions: imported products or products with an imported content greater to 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. This rule was approved by Constitutional Amendment 87/15 the amount will be paid partially to the origin state and partially to the destination state. From 2019 onwards, the ICMS will be paid 100% to the destination state. 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 regime *("Substituição Tributária do ICMS - ICMS/ST")*, in which case the tax due on the entire commercial chain of the product shall 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 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 which 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, may implement the ICMS/ST system for transactions within their territory or shipping products to taxpayers located in their territory.

[6] Recently, additional rates were instituted in the State of São Paulo involving some economic segments that went into effect as of this year (2021).

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. Rates vary from 2% to 5%, depending on the municipality.

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.

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.

It is important to mention that there is a tax reform underway that may change several aspects of tax law in Brazil.

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 Subsecretariat of Trade Defence and Public Interest (SDCOM), part of the Secretariat of Foreign Trade (SECEX), both of which are under the Ministry of Economy. SDCOM 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 (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 National Health Surveillance 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 express, 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 general rule, the express RADAR allows companies to make imports limited to a total value of USD 50,000.00 (fifty thousand dollars) in every six-month period, the limited RADAR allows companies to make imports limited to a total value of USD 150,000.00 (one hundred and fifty thousand dollars) 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 general 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 1,464/2014[7].

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 general 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).

[7] Available at: (http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&idAto=52329)

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[8]. Among the main improvements promised by this initiative are those related to facilitating the requirement of import licenses, such as:

(i) importer requiring the import license only once, for several operations;

(ii) consenting bodies analyzing the requirement through the same platform; and

(iii) consenting bodies performing jointly the physical verification of the product.

The general rules on import licensing are provided for in SECEX Ordinance 23/2011[9].

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:

(i) the green channel, in which the goods are released without further examination;

(ii) the yellow channel, in which the documents are examined and if no problems are identified, the goods are released;

(iii) the red channel, in which the documents and the goods are examined and if no problems are identified, the goods are released; and

(iv) the grey 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[10] and in the RFB Normative Instruction 680/2006[11].

---

[8] Decree 8.229/2014 (planalto.gov.br)

[9] SECEX Ordinance 23/2011, articles 12 to 29 (mdic.gov.br)

[10] Decree no. 6,759 of February 5, 2009, Articles 542 to 579 (planalto.gov.br)

[11] RFB Normative Instruction 680 of October 2, 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:

(i) imports of goods that shall be booked as fixed assets of the importer;

(ii) imports of inputs to be used in the manufacture of products by the importer; and

(iii) 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:

(i) importation on behalf of another company ("*importação por conta e ordem*"); and

(ii) importation 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 just 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 shall 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%[12] - some goods are subject to different rates; and

(v) **FREIGHT SURCHARGE FOR RENOVATION OF MERCHANT MARINE (AFRMM):** calculated at a 25% 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 general 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.

[12] 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 2%, 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. In order to obtain this export incentive, a certain percentage (around 60%) of local content in the exported goods is required.

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 1,612/2016[13].

[13] RFB Normative Instruction 1,612/2016 (receita.fazenda.gov.br)

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*.

3 Trade Agreements

Brazil is a member of the Latin American Integration Association (ALADI)[14], 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.

[14] Current ALADI members: Original: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Other members: Cuba, Nicaragua and Panamá.

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[15]. Through Economic Mutual Assistance Agreements, the goal is to establish a free-trade zone throughout MERCOSUL and with all associate members.

Since January 1, 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 1, 1995. As such, a Common External Tariff (TEC) was established with the goal of preventing cash-flow 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 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.
- Safeguard measures.

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. 8058/2013 and SECEX Order 8/2019.

[15] 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)

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 retards 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[16]. 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:

(i) all interested parties have had opportunity to express their opinions about the investigation;

(ii) dumping, injury and causal link to the domestic industry are affirmatively determined on a preliminary basis; and

(iii) 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 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.

[16] SECEX Ordinance n. 41/2018 (mdic.gov.br)

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:

(i) reviews related to the imposition of the duty (due to change in circumstances; sunset review); and

(ii) 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:

(i) they are still necessary to prevent or to remedy serious injury, and

(ii) 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. 1,751/1995, dated December 19, 1995, which is based on the WTO Agreement on Subsides and Countervailing Measures (ASCM). Such Decree is currently under public consultation, to be updated later on, as was the case with the Anti-dumping regulation.

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

1 SUDENE Area

Investment in the northeast of Brazil can be carried out using 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.

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. Said 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 may allocate its income tax reduction as 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, in relation to 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*").

3 Manaus Free Zone

It is possible for any company to establish an affiliate in the Manaus Free Zone, which may benefit from an exemption of Import Duties on imported goods for internal consumption in the Free Zone, 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 material, parts, and components without paying import duties and IPI, provided that said goods are used to make products listed in the manufacturer's project in accordance with the basic production process established by the tax authorities for said products. When the final product leaves the Manaus Free Zone 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 of the Tax on Manufactured Products ("IPI").

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 industrial process involving incremental improvements and effective gain in quality or productivity, 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) Accelerated 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 with 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.

(vi) 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 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 may not be combined with the tax incentives mentioned in items "(i)" to "(v)" above and with other specific deductible donations allowable by law.

COMPETITION LAW

1 Introduction

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

Brazilian Competition Law enforcement is centered on the Brazilian Competition Defense System ("SBDC"), which is divided into the Administrative Council for Economic Defense ("CADE"), and the Secretariat for the Promotion of Competition and Competitiveness ("SEAE").

Such division accommodates the preventive, repressive and advocacy functions of the SBDC. Specifically, CADE embodies the preventive and repressive roles via merger control and anticompetitive conduct prosecution, whereas SEAE acts on the expansion of 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, in addition to a General Superintendence (the "GS"), composed of multiple units led by a General Superintendent[17].

Mergers subject to mandatory filing before CADE are initially reviewed by the GS, which may issue a terminative clearance decision provided that a transaction does not result in competition 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.

The Brazilian Competition Law has adopted a pre-merger review regime under which the parties to a transaction must comply to a standstill obligation, prohibiting closing before a final clearance decision is issued by the GS and confirmed, when applicable, by the Tribunal[18].

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

[18] It is worth emphasizing that the Brazilian Competition Law provides for the possibility that a reporting commissioner may authorize the preliminary implementation of a merger, whenever certain complex conditions are present.

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

Parties that fail to comply with the standstill obligation may face 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 and the opening of an investigation into potential anticompetitive conducts[19]. To date, the highest gun-jumping fine ever applied by CADE reached BRL 57 million[20], in December 2019.

The burden to file a transaction before CADE falls upon all involved parties. Effectively, 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 authority has accepted filings based on more preliminary documents[21]. 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:

(i) Effects: the transaction or agreement is either wholly or partially performed within the Brazilian territory, or it produces effects (actual or potential) in Brazil;

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

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

[20] APAC No. 08700.003660/2019-85, related to the global acquisition of control by IBM of Red Hat, Inc.

[21] 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.

(iii) Revenues: at least one of the groups involved in the transaction or agreement must have had gross revenues in Brazil (including export sales) in excess of BRL 750 million in the year prior to the transaction, in parallel with at least another group having had registered gross revenues (including export sales) in Brazil in excess of BRL 75 million in the year prior to the transaction[22].

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[23], (ii) there is a common undertaking for the exploitation of a business activity[24], (iii) the companies involved share risks and results from the business activity referred therein; and (iv) the parties are competitors in the relevant 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.

(a) Merger review is concluded in up to 30 (thirty) days under the fast-track procedure, which is available to non-complex mergers only. Namely: (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 two-hundred (200) points, as long as the transaction does not lead to a combined market share above 50% or in (v) other cases not included in any of the situations above that do not result in competition concerns, to be determined at CADE's discretion.

[22] According to CADE's Resolution No. 2/2012, modified by CADE's Resolution No. 9/2014, "group of companies" shall be understood as: (i) 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% (twenty percent) of its capital stock or voting capital. For investment funds, Resolution No. 2, as modified, sets forth that "members of the same economic group" should be understood as, 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.

[23] If the associative/collaborative agreements are valid for less than two (2) years or for an indefinite term, CADE must be notified before their renewal, and the continued effectiveness of the agreement for two (2) or more years will depend on CADE's prior approval.

[24] 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 scenario, such activity may, at least theoretically, be exploited by for-profit corporations in the private sector.

(b) Mergers that entail relevant concentration 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 authority conducts 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, as economic studies, recurrent interactions with CADE's personnel and possibly a remedy negotiation may be required for the approval of the transaction.

For transactions that entail competition-related concerns[25], the Brazilian Competition Law provides for the possibility of negotiating remedies. They can be structural or behavioral, but preferably the latter. Remedy negotiations may be conducted 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 said 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 conducts

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

The Brazilian Antitrust Law did not specify which deeds constitute anticompetitive conducts, taking a general approach in its 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[26], shall constitute an anticompetitive conduct:

(i) to limit, restrain, or in any way harm free competition or free enterprise;

(ii) to dominate a relevant market of a certain product or service[27];

(iii) to increase profits on a discretionary basis; or

(iv) to abuse a dominant position[28].

---

[25] 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 and (iii) efficiency and technological/economic development, a relevant part of which to be shared with consumers, are the types of efficiencies considered in CADE's merger review. We do highlight that a transaction has never been approved solely on the basis of efficiencies, but their existence aids the process of obtaining approval for the merger.

[26] Pursuant to the Brazilian Competition Law's article 2, all conducts deemed anticompetitive with effects in Brazil trigger CADE's prosecution (i.e. international cartels).

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

[28] The Brazilian Competition Law defines that that any market player holding at least twenty percent (20%) of a relevant market holds a dominant position, as a rule of thumb.

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

(i) price fixing;
(ii) territorial and client-base restrictions;
(iii) exclusivity agreements;
(iv) refusal to deal;
(v) tie-in arrangements;
(vi) price discrimination;
(vii) resale price-maintenance, among others.

The Brazilian Competition Law's enforcement is executed in 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 conducting the fact-finding phase via the request of information from public and private sector entities, dawn raids[29], 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 conducts (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, with the former necessarily being reviewed by the Tribunal, whereas the latter will become final after a fifteen (15) day waiting period has elapsed[30].

The decision issued by the Tribunal is final and is not challengeable by a higher administrative court or authority, it may only be annulled or modified by the Brazilian judiciary branch.

As such, the Brazilian Competition Law sets forth that 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.

[29] Provided that a judicial warrant is granted.

[30] As in merger control cases, the Tribunal's Commissioners may call-back the shelving decision for further review within the fifteen (15) day waiting period.

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;

(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;

(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 the administrative investigation, Law 8,137/1990 states that crimes against the economic order occur via an abuse of economic power through domination of the market or elimination of competition, even if partially, by means of agreements or alliances among competitors (i.e. collusive conducts), 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 conducts; (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, orient 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) applicant shall be the first to inform of the violation;

(ii) applicant shall cease his/her involvement in the infraction completely, as of the date of the proposal;

(iii) authorities must not have sufficient 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 and collect information and documents to prove the violation beyond a reasonable doubt.

If all of 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[31], 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, as long as 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 may 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 in that sense, as long as 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.

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

6 Settlement Agreement

The Brazilian Competition Law's article 85 sets out that CADE may, based 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 (the "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 proceeding's phase at the time of the request.

If a proposal is made when the case is still under the General Superintendence's review, the negotiation deadline will be established at the discretion of the authority. Alternatively, if a proposal is made when the case has already been brought to the Tribunal for a final decision, then 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;

(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 the parties would be subject to. Such discounts will consider the moment upon which the marker was requested and the degree of the settling party's cooperation.

With respect to 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 from 30% to 50% of the expected fine in the event of a conviction; (ii) for the second defendant, the reduction is from 25% to 40% of the expected fine; (iii) from the third defendant on, the reduction is up to 25% of the expected fine (this is the applicable discount considering the stage of the Administrative Proceeding); (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 Judiciary 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 damages 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 conducts 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 an anticompetitive conduct, or by the defendants when claiming that the effect reduced the actual harm suffered.

Damages claims are not as common in the Brazilian context as in other legal systems, such as in the United States or the European Union, but the tide is slowly turning. Aiming to improve the damages claims scenario in Brazil, the legislative branch issued Senate Bill of Law No. 283/2016, which is currently being discussed in the House of Representatives as Bill of Law No. 11,275/2018 (the "Bill of Law").

The Bill of Law, which is currently in progress, has the purpose of leveling the controversial procedural issues regarding competitive damages claims, while providing additional tools for individuals to file this type of lawsuit, containing provisions regarding the statute of limitations, double reimbursement of damages suffered and non-presumption of the pass-on effect, among other provisions.

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-voidability of judicial control, as provided for in article 5, item XXXV, which states that: "*the law shall not exclude from the appreciation of the Judiciary any injury or threat to a right*".

7.3 Civil Courts and Arbitration

Due to the number of cases involving antitrust matters being submitted to its consideration, the Judicial branch has sought ways to improve the provision 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, since competition law rules are in force, the arbitrator must apply competition law as a system, analyzing all of the provisions involved, adopting the necessary measures to ensure that his decision is restricted to the available rights of the parties involved in the procedure.

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 trade and service marks, certification marks and collective marks, 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), 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 2017 the BPTO issued Normative Instruction No. 70/2017 and Resolution 199/2017 establishing new rules and formalizing certain requirements in relation to the recordal or registration of technology transfer agreements (*i.e.* industrial property licensing and assignment, technology supply, specialized technical assistance services and franchise agreements).

Normative Instruction No. 70/2017 introduced an explanatory note to be included in the certificate of recordal or registration of agreements, with the following content: ***"The BPTO did not analyze the agreement under the fiscal perspective and under the legislation governing the remittance of capital abroad."***

The above new rule indicates that BPTO shall cease its exaggerated intervention in private contracts, such as posing changes or questioning remuneration provisions agreed to by the contracting parties. The tax and remittance rules were not changed, but BPTO will not make its own analysis and requirements regarding tax and remittance aspects.

2 Trademarks

As stated, Brazil is a signatory of the Paris Convention, and therefore, trademarks which have been registered with the appropriate governmental agencies of other signatory countries have priority in being granted 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.

Trademark protection in Brazil is obtained by registering the trademark with the BPTO. However, Law 9,279 introduced two exceptions to this rule:

(i) For well-known trademarks special protection is granted, regardless of whether or not 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.

(ii) For any person who in good faith, at the date of priority claim or of the application filing with the INPI by a third party was using an identical or similar mark for at least 6 (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 6-month period after the ordinary term (called the extraordinary term) against payment of a surcharge. A trademark registration may be cancelled if:

(i) it is not used for five years from the date of its registration;

(ii) its use is interrupted for more than five consecutive years; or

(iii) the mark has been used in a modified form that implies alteration in 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 into 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 which require the registration of trade names with the Commercial Registry. Even though the Paris Convention demands that the protection of trade names shall 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 by submitting special requests at the commercial registries of each state where protection is desired.

2.1 Madrid Protocol

On October 2, 2019, Decree No. 10.033/19 was published, entering into force 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 the country, Brazilian titleholders who wish to register their trademarks in any of the other 120 countries that are part of the Agreement may do so directly with the BPTO, filing a single international application and paying only one fee.

The BPTO will also receive trademark applications from foreign and Brazilian companies that enter the Protocol and choose Brazil as their designated country.

The BPTO, as designated office, will have up to eighteen months to make a first 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 needed to seek tools 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.

As in other countries, in order to analyze the registrability of the trademark in a multiclass system, the BPTO Examiner will perform an anteriority search made exclusively in the classes claimed in the application under analysis, except for the cases of correspondence in the former national classification, as is currently the case.

2.2 Trademark Licensing Agreements

Trademarks may be subject to licensing agreements, provided that they are registered or in the process of registration with the BPTO.

However, trademark applications cannot generate royalties. It means that the trademark has to be duly granted by the BPTO before remittance of royalties.

3 Patents

Industrial Property Law establishes two types of patents: patents of invention and 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 results in an inventive procedure, is new, and has an inventive activity and industrial application.

Patent protection is obtained by the patent granting by BPTO. An invention patent is valid for a period of 20 years, calculated from filing date of the patent application. However, given that a patent process may take years, the Industrial Property Law assures that the patent validity period cannot be shorter than 10 years as from the date patent is granted. Utility models are valid for 15 years as of the filing date. However, as it happens in the case of invention patents, the Industrial Property Law assures that the utility model validity period cannot be shorter than 7 years as of its granting date.

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 capable 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 does not meet local market requirements.

It is important to highlight that the BPTO has been taking several measures to decrease the backlog[32] 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 in the United States (USA), as well as using the results of searches made in other countries.

[32] 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.

3.1 Patent Licensing Agreements

Patents may 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 license agreement before the BPTO.

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, may 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 may, at any time, request examination by the BPTO as regards the novelty and originality of its industrial design.

Registration is valid for a period of ten years as of the filing date and can be extended for three consecutive five-year periods.

4.1 Industrial Design Licensing Agreements

Industrial designs may be subject to a licensing agreement if they are duly registered with the BPTO or in the process of registration.

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.

5 Technology Supply

Technology in Brazil is defined as know-how not protected by a patent of invention or utility model. The basic concept of the Brazilian rules with regard to the use of technology by a Brazilian party has been that technology is subject to "transfer" to a Brazilian party rather than to a "license" (this rationale prevails since 1975 due to the former (and revoked) BPTO Normative Act 15). In other words, technology may be assigned ("sold") but not licensed. Nevertheless, the parties can agree with some restrictions to the use of the technology, such as confidentiality obligations. In consideration of the "sale", the supplier may be entitled to certain fees during the term of the agreement, but the recipient should be free to use the technology after expiration of the agreement.

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 by 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 possibly also the right to use the technology of implementation or management of related business or operational system developed or retained by the franchisor.

The new Law 13,966, known as the Franchising Law, modifies some aspects of Law 8.955 of 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 must include mandatory pieces of information that shall 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 consider whether or not to engage in the business investment.

A franchisee may obtain the cancellation 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 cancellation 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 general rule, agreements relating 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 following purposes:

(i) Remittance of royalties abroad, in which case the agreement must also be registered with the Brazilian Central Bank;

(ii) Deductibility of payments as operational expenses for Brazilian income tax purposes. In this case, registration at the Brazilian Central Bank is also necessary; and

(iii) Enforcement of the obligations *vis-à-vis* third parties.

As regards item (iii) above, registration of a licensing agreement with the BPTO is not mandatory for documents issued by the licensee to prove the use of licensed trademarks or patents to be accepted as proof of actual use by the BPTO, in the event of cancellation on the grounds that lack of use is requested by a third party.

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) the rules for marketing software; and

(c) the 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 fifty years from the first day of January of the year following the software’s publication or, in the absence of publication, fifty years from the date of the software's creation.

In terms of protection for foreigners, the law applies the international principle of reciprocity. Protection is extended to foreigners domiciled outside Brazil, as long as the country where the software was created grants the same rights to Brazilians.

The aforementioned Software Law 9,609 determines that authorship of the software is already assured, regardless of its registration. However, the author may pursue registration of the software with the INPI 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 is created by two or more authors, the duration of seventy years starts after 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 may register his/her work with specialized entities in accordance with the nature of the work.

11 Tax Aspects

11.1 Withholding Income Tax (IRRF)

As a general rule, the payment (credit, delivery, employment or remittance) of royalties or fees abroad under intellectual property rights agreements are 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).

The IRRF is an ordinary burden on the beneficiary of the payment abroad, and, as a rule, it is deducted from the amount to be paid. Nevertheless, the parties may 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 may generate credits for the beneficiary domiciled abroad that may 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:

(i) supplying technology;

(ii) providing technical support (i.e., technical support services or specialized technical services) with or without technology or know-how transfer;

(iii) transferring and licensing trademarks;

(iv) transferring and licensing to exploit patents;

(v) administrative assistance and those of similar nature; and

(vi) royalties of any kind.

CIDE is not levied on 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).

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%[33] on 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 at courts that these specific transactions do not characterize a service rendering and should not subject to the levy of PIS/COFINS-Importation.

[33] 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%. Said innovation became effective on May 1, 2015.

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.

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

As a general rule (applicable to any and 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 establishes specific conditions and limits for the deductibility of certain intellectual property rights expenses. These specific conditions for tax deductibility should be analyzed on a case-by-case basis. But as a general rule, the deduction of royalties for the use/exploitation of patents, technology supply (including software licensing agreements with assignment of the respective source code considered technology transfer) or technical support, is limited to 1% to 5% of the net sales price of the product (or services) connected to the patent, technology supply, or technical support. This 1% to 5% limit varies in accordance with the business and the essentiality of the product/service to the Brazilian economy, as per Finance Ministry Ordinance 436 of 1958 (and amendments). Royalties deductions for the use of trademarks are limited to 1% of the net sales price of the products (or services) bearing the trademark, when the trademark is not connected to technology supply, technical support, or patent exploitation. The deduction of royalties for the use/exploitation of patents, trademark, technology supply, or technical support also depends on registering the respective agreement at the National Institute of Industrial Property (INPI) and the Central Bank of Brazil. Please note that the payment of the royalties mentioned herein is not subject to Brazil's transfer pricing rules.

DATA PRIVACY AND CYBERSECURITY

1 General Overview

General principles and provisions on data protection and privacy are provided for in the Federal Constitution, the Brazilian Civil Code, as well as in other laws and regulations that address particular types of relationships or activities, such as the Consumer Protection Code, labor laws and norms governing financial institutions and other entities authorized to operate by the Brazilian Central Bank. Furthermore, the Brazilian Internet Act (Law No. 12,965/14) and its regulatory decree No. 8,771/2016, establishes principles and guarantees for internet users, including protection of their personal data in the digital environment, as well as the rights and duties of internet connection and application providers, including their liability.

The Brazilian General Personal Data Protection Law, No. 13,709/2018 ("LGPD") intends to protect the fundamental rights of freedom and privacy of the data subjects (individuals), as well as the free development of their personality.

The LGPD was sanctioned in 2018 and came into force on September 18, 2020, even though its administrative sanctions will only be applicable as of August 1, 2021, as stated in the Brazilian Law No. 14,010/2020. Since its entry into force, the other provisions of the LGPD are applicable, such as the rights of data subjects.

2 The LGPD

Under the LGPD, processing of personal data includes any operation related to a natural person who can be identified, such as the collection, classification, access, reproduction, transmission, elimination, etc., of personal data.

The LGPD is highly inspired by the GPDR – *General Data Protection Regulation* (the European Data Protection Regulation), however the Brazilian legislation takes on certain particularities and require adaptations, even for European entities that process personal data under the following circumstances:

(a) processing is carried out in Brazil (even when personal data is only collected in Brazil);

(b) processing has the purpose of offering goods or services to data subjects located in Brazil; or

(c) personal data from data subjects located in Brazil (including foreigners) are processed.

The LGPD establishes the following sanctions:

- Simple fine of up to 2% of the revenue of the legal entity based in Brazil, limited to 50 million Reais **per each** infraction.
- Daily fine, limited to 50 million Reais.
- Publication of the infraction, following due investigation and confirmation of its occurrence.
- Blocking and/or elimination of the personal data in question for the infraction.
- Partial suspension of the operation of the database to which the violation refers.
- Suspension of the exercise of the activity of processing of personal data to which the infraction refers, for 6 months.
- Partial or total prohibition of the exercise of activities related to data processing.
- Warning, indicating the deadline for the adoption of corrective measures.

Furthermore, companies will have the duty to report to data subjects and the supervisory authority ("National Data Protection Authority" or "ANPD") the security incidents that may cause significant risk or damage to data subjects. Failure to comply with such norm and other rules set out in the LGPD will subject companies to the aforementioned sanctions.

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:

- mineral resources (Mining Code – Decree Law 227/1967);
- fishing (Decree Law 221/1967);
- activities involving wild fauna in general (Hunting Code - Law 5,197/1967);
- water use (Water Code - Decree No. 24,643/1934, and the national policy for the use of water resources - Law 9,433/1997);
- use and protection of Atlantic (tropical) Forest Biome (Law 11,428/2006);
- administrative and criminal infractions (Law 9,605/1998 and Decree 6,514/2008);
- air emissions involving stationary and mobile sources (Conama Resolution 382/2006 and 436/2011, and Conama Resolutions 15/1995 and several others));
- management of soil and contaminated areas (Conama Resolution 420/2009).
- waste management (National Policy on Solid Waste Management – Law 12,305/2010);
- environmental licensing for potentially pollutant activities (Supplementary Law 140/2011 and Decree 8,437/2015);
- forests (Brazilian Forestry Code - Law 12,651/2012); and
- access to biodiversity (Law 13,123/2015);

The development of environmental concerns worldwide and the enactment of numerous international agreements resulted in a growing consciousness in Brazil bringing about the adoption of a National Policy Law for the Environment in 1981 (Law 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 mirrored in legislation countrywide was ultimately consummated with the enactment of the National Environmental Criminal and Administrative Law in 1998 (Law 9,605/98), which was further regulated in 2008 by Decree No. 6,514/2008.

In 1985, another important law was enacted: Law 7,347/1985, which created Public Civil Actions. Similar to American class actions, the Brazilian law allows the public prosecutors to file lawsuits aimed at protection of 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 nuclear-damage penalties to coastal-management rules as well as from the creation of conservation units to the requirement to implement environmental-education systems in schools, among others.

Additionally, the states and sometimes the municipalities (when there is a local and specific interest) throughout the country are empowered to 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

With regard to industrial activities, applicable regulations generally require environmental licenses and permits *prior* to the commencement of a company's activity.

As for pollution-control systems, these are implemented to a large extent in industrialized centers like the states of São Paulo and Rio de Janeiro. Both the lack of environmental permits and the act of polluting can be deemed criminal acts and trigger criminal sanctions in addition to administrative penalties (warnings, fines, interdiction of the company's activities, among others), and civil sanctions (obligation to repair or compensate for environmental damages).

3 Environmental Liability

Environmental liability, under Brazilian law, may occur at three different independent levels:

(i) civil;
(ii) administrative, and
(iii) criminal.

It is said that the three spheres of liability mentioned above are "different and independent" because, on the one hand, one sole action by the offender (legal entity and individuals) may generate environmental liability at the three levels: civil, administrative, and criminal, and 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 results from action or omission, directly or indirectly, of the offender that results in environmental damage of any kind and 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 (piercing of the corporate veil).

In addition to the environmental damage, there is the possibility of individual and collective non-pecuniary (moral) damages.

With regard to environmental civil liability, two more national rules are worth mentioning: strict liability and joint liability. The general provisions concerning civil environmental liability in Brazil provide for strict liability, i.e., sanctions are imposed regardless of fault. Joint liability will be mostly acknowledged in circumstances of outsourcing the transportation and final disposal of waste/residues or in the case of contaminated areas, when there is more than one agent responsible for the same environmental damage.Administrative liability results from an action or omission by the offender that involves violation of a rule of environmental protection, irrespective of actual occurrence of environmental damage.

With respect to the applicable sanctions, the competent environmental authority may apply the following penalties: warning, fines of up to BRL 50,000,000.00 (fifty million reias), embargo on work or activity and their respective areas, demolition of work, partial or total suspension of activities, and restriction of rights (suspension or cancellation 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 hinder any acts involving the offenses set forth in the referred act. 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.

4 Environmental Licensing

In Brazil, most industrial activities are qualified as potentially pollutant, therefore demanding compliance with specific requirements pertaining to the environmental licensing of such activities.

The environmental licensing generally involves a three-step administrative proceeding, involving the issuance of three different (although connected) licenses by the competent environmental agency:

(i) Preliminary License – approves the environmental viability of a certain project, as well as its location;

(ii) Installation License – authorizes the implementation/construction of the project;

(iii) Operation License – authorizes the commencement of the company´s activities.

In addition, in the case that the activity's environmental impact is qualified as "significant", the issuance of the preliminary license will be conditioned to the submission of an Environmental Impact Study and Report (EIA/RIMA), and also to additional legal requirements (such as public hearings, payment of compensatory measures, among others).

Specifically in connection with licensing, Supplementary Law 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);

(ii) Municipal, for activities that cause 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 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.

5 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 the aforementioned Law in 2009. The proceeding, updated in 2017, has also been adopted in other states, due to the lack of a Federal Regulation on the subject.

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.

6 Post-Consumption Liability

The National Policy on Solid Waste Management (Law 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.

Such regulations establish 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, medicines, electronics, lubricant oils, packaging and fluorescent lamps

. 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. The Law also provides for the elimination of all dumps in the country and substitution with proper landfills.

Companies' associations are entering into sectoral agreements at the federal and state level, determining chained obligations of manufacturers, importers, wholesalers and retailers responsible for the return of post-consumption products and packaging.

7 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 relevant 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 a legal reserve depends on where the property is located and the vegetation (biome) in the region, varying from 80%, 35% and 20%.

The Forestry Code also created a nationwide electronic system encompassing the environmental information on rural proprieties - the Rural Environmental Registry -, 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.

Law 12,651/2012 determined that the federal and state authorities should implement Environmental Regularization Programs 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.

8 Biodiversity Law

Access to biodiversity resources in Brazil is currently regulated by Federal Law 13,123/2015.

Previous regulation by Provisional Measure 2,186/2001 was highly criticized by the market due to its focus on excessive governmental control and sanctioning of activities broadly characterized as bio-piracy.

The enactment of the 2015 Biodiversity Law has been announced as recognition by the Federal Government of the previous excesses and an attempt to balance the need of control over the exploitation of genetic resources/traditional knowledge and the realities of the industry.

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. However, the protocol will only come into force 90 days after ratification with the Secretary-General of the United Nations – i.e., on June 2, 2021.

9 International Law

Finally, it should be noted that Brazil is a 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, and UNCLOS, among many others. Rules reflecting such agreements are being enacted at the national level so as to comply with relevant international obligations.

CONTRACT LAW

The Brazilian Civil Code, in force since January 11, 2003, provides for the general principles of Contract Law and rules regarding most legal agreements; e.g. distribution, agency, lease, free lease; whereas the remaining contractual types are either governed by specific statutes (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 statute) before its execution in order to ascertain if it meets the formal and substantial requirements set forth by 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). 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, i.e. 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. Indeed, the contractual conditions must neither diverge from nor infringe on statutory rules, which in most cases prevail over the mutual agreement between the parties.

According to the Introductory Law to the Rules of Brazilian Law, the law applicable to international agreements is the law of the place 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 shall 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 the case that 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.

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 shall 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 relevant 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".

LITIGATION / ARBITRATION

1 Litigation in Brazil

The Brazilian Judiciary 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 evidences sufficient color of right (*fumus boni iuris*) and danger in case of delay of judgement (*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 is clearly easier for one of the parties (regardless if the plaintiff or the defendant) to evidence 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. 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 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 the first instance decisions are rendered by a single judge, the appellate courts' decisions are rendered by a judging panel, composed of three (3) 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 permits the reporting judge to render a final decision on the merits by himself/herself, if the appeal or the appealed decision runs against a binding precedent or decision taken in repetitive cases by the Brazilian Supreme Court / Superior Court.

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) that are rendered during first trial proceedings, steering them towards 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 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.

In the beginning, 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 view of this fact, 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.

2 General Overview of Criminal Liability

Brazilian criminal law operates under a culpability verification or by a subjective responsibility system, with the necessity to have a clear chain of causation as a condition for establishing criminal liability. Criminal liability is personal, which means that only the person who is directly related to the unlawful act may be held liable for the crime.

A company cannot be held criminally liable for its actions, with the exception of environment-related offenses, in accordance with the Brazilian Federal Constitution, in article number 225. Its employees, managers, officers and legal representatives, however, can be held liable for any criminal act committed, even if acting on behalf of the company.

As previously mentioned, though, the chain of causation is a prerequisite for the establishment of criminal liability; therefore, only the employees, managers, officers and legal representatives who took part in the offense may be criminally responsible.

Any charges filed must describe the unlawful conduct of each defendant, clarifying their participation in the criminal act for them to be held criminally liable for the alleged offense. Strict liability is not accepted in the Brazilian criminal system.

It is important to stress that those taking part in an offense committed through a corporate entity are subject to varying degrees of culpability, according to their conduct.

Nevertheless, the mere fact of a person to hold a management position in a particular company is not sufficient to establish criminal responsibility. Directors, managers, legal representatives or employees of a company not involved in the offense - whether due to lack of authority or interference on the subject, either because they were not in the company upon the occurrence of the facts - cannot have criminal liability according to our legal standards and superior court precedents.

3 Tax-Related Crimes and Consequential Criminal Liability

Tax evasion consists of 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.

(iv) 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 employing fraud to **exempt oneself** in part or in full from paying taxes, as well as failing to withhold taxes or social contributions owed by the legal deadline, are also punishable from six months to two years of incarceration.

It is worth noting that the Federal Supreme Court 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 may 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 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 related to tax crimes, the police authority might 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 set forth in Article 5, Item X, of the Federal Constitution.

In the current Brazilian scenario, it appears that, many times, the authorities attribute to taxpayers the practice of tax crimes in everyday situations of mere non-compliance with the tax legislation, in which there is no fraud, intent or any element that justifies criminalization.

In a decision on December 18, 2019, most of the ministers of the Supreme Court decided to consider a crime punishable by imprisonment from 6 months to 2 years, plus 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 related to the circulation of goods and on the provision of interstate, intercity and communication services.

According to recent judgements (which are not definitive because it is possible for interested parties to appeal), the non-payment of the tax will be subject to criminalization as long as there is reiteration 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 Federal Revenue, the Central Bank, the Securities Commission and the Financial Intelligence Unit (former COAF), which has increased the chances of a criminal tax issue in the daily life of Brazilian companies.

4 Labor-Related Crimes and Consequential Liability

Brazilian legislation sets forth ample 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 sets forth as a crime, in Article 203, the frustration, through fraud or violation, of a labor right assured by existing labor laws, punishable with imprisonment from 1 (one) to 3 (three) years.

Within the context of subjective responsibility, the manager responsible for failure to comply with such labor laws may be held criminally liable for the offense resulting from lack of compliance.

Although not mentioned in the chapter of the Brazilian Criminal Code that sets forth crimes against labor organization, a few other offenses related to labor issues are also worth mentioning.

The crime of diminishing an employee to a condition similar to a slave by submitting him/her to forced labor, exhausting working hours, demeaning labor conditions, or restricting his/her freedom in any way through debt contracted with the employer, as set forth in Article 149 of the Brazilian Criminal Code, is punishable by incarceration of two to eight years, plus a fine to be defined by the court.

Exposing one's life or health to direct and imminent danger is also considered a crime, as set forth in Article 132 of the Brazilian Criminal Code, punishable by incarceration of three months to one year, if a greater injury doesn't 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 may be held liable for bodily injury or even involuntary manslaughter.

Regarding bodily injury, an offense provided for under Article 129 of the Brazilian Criminal Code, the applicable penalty is incarceration from three months to one year for unintentional injuries.

In the event of involuntary manslaughter, the applicable penalty is incarceration from one to three years, which may be extended by a third if:

(i) the crime occurs due to failure to comply with professional technical regulation;

(ii) the agent fails to provide immediate aid to the victim or doesn't seek to mitigate the consequences of his/her act; or

(iii) flees to avoid being caught in the act.

5 Bankruptcy Law Violations and Consequential Criminal Liability

Law 11,101/2005 (hereinafter, Bankruptcy Law), which regulates bankruptcy and judicial and extra-judicial restructuring in Brazil, provides for crimes related to this matter in Articles 168 to 178, for which the applicable penalties vary from incarceration from two to six years up to detention from one to two years, plus a fine to be defined by the court.

Article 179 specifically stipulates that the company's directors, managers, officers, councilors and even its trustee shall be held equivalent to the debtor or bankrupt party for criminal purposes.

Under Article 180, the court order that grants judicial or extra-judicial restructuring is a condition precedent to criminal liability where the aforementioned crimes are concerned.

6 Crimes Against the Environment and Consequential Criminal Liability

As already mentioned before, criminal liability in Brazil is, as a rule, individual and personal. The Federal Constitution, however, provides for exceptions to this rule, allowing corporate criminal liability.

The 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 may be held criminal liability if the environmental crime is committed (i) by a decision of its legal or contractual representative or his collegial body and (ii) in the interest or benefit of the entity. In addition, corporate liability does not exclude the criminal liability of individuals, authors, co-authors or participants of the crime.

Law 9,605/1998, the Federal Law concerning crimes against the environment, provides for offenses committed against 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 comprised from said pollution.

Moreover, Decree No. 6,514/2008 provides for administrative infractions against the environment and sets forth the administrative proceeding for investigation of such infractions as well as applicable penalties.

Lack of proper licensing is also considered a serious offense, which may 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 such licenses are also 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 with the environmental damage but also to any party cognizant of the criminal conduct and negligent in impeding such offense from being committed, despite being able to do so. Brazilian Superior Court of Justice (STJ) had the position that corporate criminal liability was only 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 corporate criminal liability independently from individual criminal liability. The Justices have determined that the Constitution does not require the criminal liability of legal entities for environmental crimes to the simultaneous prosecution of individuals theoretically responsible within the company.

Since then, both STF and 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 may be held criminally liable for a crime against the environment notwithstanding the possibility of personally penalizing the individuals involved with such offense.

In situations in which the existence of a legal entity becomes an obstacle to the recovery of damages caused to the environment, Law 9,605/1998, in Article 4, provides for piercing corporate veils. Where penalties are concerned, individuals may 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 may replace a penalty that deprives freedom, provided that the conditions set forth in Article 7 of Law 9,605/1998 are met.

Legal entities, in compliance with the dispositions set forth 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, banishment from public-private partnerships, as well as any government subsidies or grants) and rendering services to a community.

7 Consumer-relations Crimes and Consequential 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, among other things, for 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 certain aspects of the commercialized products/services, either by omitting or rendering false or incorrect information on labels, casings, packages or advertising, thus misleading the consumer.

The applicable penalties for such offenses vary from incarceration 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).

Law 8,137/1990, in Article 7, also sets forth crimes against consumer relations, punishable by incarceration from two to five years, or a fine.

8 Crimes Related to Economic Laws and Consequential Criminal Liability.

Law 8,137/1990 provides, in its Article 4, for the following conducts considered as crime 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.

Law 12,529/2011 also provides for administrative infractions against the economic order in its Article 36, establishing that the acts under any circumstance, which have as object or may have the following effects shall be considered violations to the economic order, regardless of fault:

(i) to limit, restrain or in any way injure 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 shall 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 may face a fine, as will its managers, if directly or indirectly responsible for the offense. Other applicable sanctions are set forth in Article 37 and may be imposed cumulatively with the previously mentioned ones or individually.

In addition to the pecuniary fines above, and considering the gravity of the violation, the following may 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, from one to three consecutive weeks;

(ii) ineligibility for official financing or to participate in bidding processes involving purchases, sales, 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) imposing compulsory licensing of patents held by the violator;

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

Law 12,529/2011 also provides for a deferral (leniency) program, set forth in Articles 86 and 87, according to which, where crimes against the economic order, provided for under Law 8,137/1990, are concerned, 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 to antitrust offences takes place both in the administrative and criminal spheres.

In the administrative sphere, the occurrence of a violation of the economic order takes place regardless of its agent's malicious intent, even if harmful effects are merely potential and have not yet materialized. 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 may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

9 Crimes Involving the National Financial System and Consequential Criminal Liability

Considered as the Brazilian “white collar crime legal system”, Law 7,492/1986 provides for crimes against the financial system and crimes damaging 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 a special substantiality.

The white-collar crime law thus addresses harmful or dangerous acts that attack goods or interests affiliated with the state's financial policy, which is to say, 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 of 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 may also encompass those that take on or manage insurance, exchanges, consortiums, 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 set forth 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 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, there may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

10 Money Laundering Crimes and Consequential Criminal Liability

Law 9,613/1998, known as the “money laundering law”, lists transactions defined as money-laundering-related crimes. This law was updated in 2012 by the Law 12,683/2012 and it was updated to the newest anti-money laundering policies.

Money laundering consists of activities or operations seeking to provide a legal appearance 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.

It is worthwhile to mention that the law does not specify the crimes that may 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, what is intended through punishment of money laundering is 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 a series of legal assets that may be included within the protection of the social order and society itself.

The Federal Money Laundering Law also created the Council for the Control of Financial Activities ("COAF"), which has the purpose of governing and applying administrative penalties, as well as examining and identifying activities suspected to be illegal, as set forth 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 notify public authorities whenever they become aware of suspicious transactions, such as transactions with high values and fractional deposits.

In August of 2019, the Brazilian federal government issued Provisional Measure No. 893, which changed the name of COAF to FINANCIAL INTELLIGENCE UNIT (UFI), moving the structure to the Central Bank.

In this way, banks, jewelers, insurance companies and art auctioneers, for example, have a legal obligation to collaborate with the authorities, reporting acts of possible concealment of illicit goods and values to the UFI.

It should be noted that the UFI has an administrative structure, and cannot request the launch of a police investigation, and it cannot promote measures such as breach of bank secrecy.

UFI is allowed to, for example:

(i) receive and organize data, and prepare Financial Intelligence Reports, to contribute to the authorities in the investigation of crimes.

(ii) elaborate rules aimed at certain sectors 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 to entities and persons who fail to comply with the legal rules on preventing money laundering. Banks, which are regulated by the Central Bank, or Insurance companies, which are regulated by 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 may be punished with incarceration from three to ten years, plus a 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 conduct 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 a breach of bank confidentiality may be authorized to determine whether the crime was committed or not. Such breach has to 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 intimacy, as set forth in Article 5, item X, of the Constitution.

In addition, due to the Federal Law No. 13.964/2019, investigations of money laundering may use undercover police officers, and controlled action techniques.

In this sense, police officers will be able to infiltrate on 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.

11 Crimes Against Social Security and Consequential Criminal Liability

Regarding crimes against the social security system, two specific offenses are worthy of mention: 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 consists of 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 generating event.

In terms of undue appropriation of social-security contributions, Article 168-A of the Brazilian Criminal Code states that it consists of a 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 incarceration 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 the 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.

12 Crimes Against Intellectual Property Rights and Unfair Competition and Consequential Criminal Liability

Law 9,279/1996, informally known as “industrial property law”, governs the rights and obligations of industrial property. Protection of rights related to 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 sets forth crimes against intellectual and industrial property rights, in Articles 183 to 194.

Applicable punishment for such crimes varies 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 alteration of a trademark, or
(iii) manufacturing products whose application for industrial design has been approved; and
(iv) 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 may be increased from a third to a half of the originally imposed punishment.

Law 9,279/1996 also provides for crimes related to unfair competition, set forth under Article 195. Unfair competition occurs under questionable means through the use of incorrect and harmful methods, seeking 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 in the development of activities involving the creation and use of intellectual work.

Some of the conduct listed as unfair competition includes:

(i) unauthorized use of a third party's corporate name or confidential information;
(ii) diversion of clientele;
(iii) deliberately misleading consumers; and
(iv) disclosure or employment of fraudulent means or false statements concerning a competitor with the intention of obtaining a competitive advantage;

(v) among other types of fraud.

All practices related to 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 related to unfair competition are punishable by incarceration 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 harmed party may 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 partial or total reproduction of copyrighted material, without the author's specific and express authorization, with an economic purpose, constitutes a crime punishable by incarceration 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.

13 Corruption Related Crimes and Consequential 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 consists of offering or promising an undue advantage to a public official, to lead him to perform, omit or delay the performance of an act inherent to his position. The applicable penalty is imprisonment from two to twelve years, plus a fine to be defined by the court.

Passive corruption consists of soliciting or receiving for oneself or another party, directly or indirectly, even if not holding the position or prior to holding it, however 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 consists of promising, offering or giving directly or indirectly an undue advantage to a foreign public official, or a third party, to lead him to perform, omit or delay the performance of an act inherent to his position and related 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 consists of demanding for oneself or another party directly or indirectly, even if not holding the position or prior to holding it, however by reason of it, an undue advantage. The applicable punishment was changed by the Law No. 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 No. 3,678/2000, 4,410/2002, 5,015/2004 and 5,687/2006, all of which intend to ensure that no public servant is corrupted in their relationship with private entities.

Decree No. 3,678/2000 resolves issues regarding offenses related to the corruption of foreign public officials and the measures that must be adopted by the signatory states.

Decree No. 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 No. 5,015/2004 has the main purpose of reiterating the criminalization of corruption, as well as establishing measures against such practices and the liability of the legal persons involved.

Decree No. 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 public international organization employees.

Moreover, the Law 12,846/2013 provides for the strict liability of legal entities, in an administrative and civil sphere, for the practice of 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 temporarily. Likewise, foreign legal entities with registered office, branch or representation in the Brazilian territory could be held liable for any of the offences provided by law.

It should be noted that, despite the absence of legal provision holding legal entities criminally liable, this act implicates severe administrative and civil penalties, as fines that varies from 0,1 to 20 percent of the gross revenue of the entity in the preceding year, or between BRL 6,000.00 (six thousand Brazilian reais) to BRL 60,000,000.00 (sixty million Brazilian reais), if it is not possible to estimate the gross revenue, full compensation for the damages, publication of judicial sentence, loss of assets, partial suspension and interdiction of the activities, prohibition of contracting with public agencies and prohibition to receive public incentives, subsidies, grants, donations or obtain loans, and, finally, the compulsory dissolution.

Such measures, both administrative and civil, also provides 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 harmful act, besides the possible criminal liability, which in accordance with subjective culpability can only be held criminally liable in case of willful conducts.

In contrast to the severe penalties above mentioned, the legal text allows the application of a more lenient sentence for companies with effective compliance programs, as well as the reduction up to two thirds of the fine for companies that cooperate with the investigations and sign a leniency agreement.

14 Securities Law Violations and Consequential Criminal Liability

Law 6,385/1976, which regulates the stock market and established the Brazilian Securities and Exchange Commission (CVM), provides, in its Articles from 27-C to 27-F, for crimes against the stock market.

As set forth under such provisions, the practices of 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 consists of performing simulated or embezzlement-related operations with the purpose of artificially altering the securities market functioning structure, in order to obtain undue advantage or profit, or to cause damage to third parties. It constitutes 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 consists of using relevant confidential information that is not, and should not, be made available to the general public, due to its potential to provide undue advantage in negotiations. This crime is punishable with 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 consists of holding any office or acting on the securities market as an institution, individual, or collective manager, independent auditor, or securities analyst, without proper authorization or registration at the appropriate administrative authorities, as required by law or regulation. This offense is punishable with imprisonment from six months to two years, plus a fine to be set by the court.

Concerning criminal liability, in observance of subjective responsibility, only individuals may be held liable for the aforementioned offenses.

Specifically regarding insider trading, it must be noted 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.

15 Criminal Organizations

The Criminal Organizations and Special Techniques of Investigation Law (Law 12,850/2013) came into force in 2013, establishing the crime of criminal organization, considered when four or more people come together in an organized way and with division of activities to take any kind of advantage practicing criminal offenses.

The major changes brought by the new Law are related to the forms about proving the existence of a criminal organization. The main changes are described below.

First, there is the institution of rewarded collaboration ("*colaboração premiada*"). Article 4 of Law 12,850/2013 sets out the possibility of one of defendants to have his sentence reduced by one to two thirds in the case 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, avoiding the assignment of the benefit in the event that it is not achieved.

Law 12,850/2013 also provides, in its Article 8, the institute of the controlled action. Police authorities delay immediate arrests being made for a later time, which will help agents to gather a larger amount of evidence, facilitating the prosecution and the punishment of a criminal act committed by a Criminal Organization.

Lastly, Article 3, item VII of the mentioned Law brings to light the figure of the undercover police agent. It is a State agent who infiltrates the criminal organization in order to gather as much evidence as possible related to the crimes committed.

16 Larceny and other frauds

The Brazilian Penal Code provides for crimes committed with the use of fraudulent means.

Larceny by trick, provided for in article 171 of the Penal Code, is the classic example and, in its standard format, follows as a model for other similar figures, such as those provided for in articles 172 to 179 of the Penal Code.

Larceny by trick consists of obtaining an illicit advantage to the detriment of someone else, inducing 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 agent to induce or keep the victim in error, with the purpose of obtaining an illicit patrimonial advantage. Punishment for this offense is imprisonment from 1 to 5 years, plus a fine to be defined by the court.

The same penalty is applied to those who practice the following acts: disposition of someone else's property, fraudulent sale, defraud of pledge, fraud in receipt of insurance or indemnity and fraud in the check payments.

In Brazil, many legal entities are becoming victims of the fraud crime, committed by employees linked to sensitive areas of the company, such as the Financial Department, Accounts Payable and Human Resources, for example.

In addition, banks and large business conglomerates find themselves indirectly linked to frauds practiced against their clients, requiring these people to register the facts before the police authority formalize an internal investigation, or for simple control in compliance.

Until Federal Law No 13.964/19, larceny by trick was considered a public criminal lawsuit that did not required any request of 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 offer a criminal complaint against the person under investigation, regardless of the victim's wishes.

Federal Law No. 13,964/19, however, added paragraph 5 to article 171 of the Penal 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 authorities the desire to criminally pursue the perpetrator of that crime.

If the victim is the Public Administration, direct or indirectly, or a child, an adolescent, a person with a mental disability, incapacitated, 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 Penal Code also establishes the crime of issuing a simulated duplicate, which consists of issuing 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 2 to 4 years, plus a fine to be defined by the court (article 172 of the Brazilian Penal Code).

There is also the provision for the crime of abuse of the incapacitated (art. 173 of the Penal Code), inducement to the practice of gambling, betting or speculation (Article 174 of the Penal Code), and fraud in commerce, which consists of selling as perfect of a false or deteriorated commodity, or to deliver one commodity in place of another (Article 175 of the Penal Code).

Article 177 of the Brazilian Penal Code provides for the crime of fraud and abuse in the constitution or management of a business corporation.

This crime consists of promoting the constitution of a business corporation by making, in prospectus or in communication to the public or the assembly, false communication about the constitution of the company, or fraudulently hiding facts related to it.

The punishment for this type offense is imprisonment from 1 to 4 years, plus fine (if the fact does not constitute a crime against the popular economy).

According to the article 177 of the Brazilian Penal Code, the same penalty shall be applied if the crime does not constitute 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 the assembly, makes a false statement about the economic conditions of the company, or hides fraudulently, in whole or in part, a fact related to them; II - to the director, manager or supervisor who, by any means, promotes a false listing of shares or other securities of the company; III - to the director or manager who borrows from society or uses, for his own benefit or that of a third party, the assets or social assets, 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 as pledge or surety the shares of the company itself; VI - the director or manager who, in the absence of a balance sheet, in disagreement with it, or by means of a false balance sheet, distributes fictitious profits or dividends; VII - the director, the manager or the supervisor who, through an intermediary, or colluding with a shareholder, obtains the approval of an account or opinion; VIII - to the liquidator, in the cases of nos. I, II, III, IV, V and VII; IX - to the representative of the foreign corporation, authorized to operate in the country, which performs the acts mentioned in nos. I and II, or give false information to the Government."

Article 178 of the Penal Code provides for the crime of irregular issuance of deposit or warrant. The punishment for this type offense is imprisonment from 1 to 4 years, plus fine.

Finally, article 179 of the Penal Code provides for the crime of execution fraud, which consists of the alienation, deviation, destruction or damage of assets, or simulation of debts. The punishment for this crime is imprisonment from 6 months to 2 years, plus fine.

17 Final Remarks

It is important to mention that Brazilian Criminal Law sets forth some legal benefits, which can be applicable to the above-mentioned crimes, depending on their penalties. The most common are: criminal settlement, conditioned suspension of proceedings and non-prosecution agreement.

17.1 Criminal Settlement

Crimes in which the maximum penalty does not exceed 2 years are considered a misdemeanor by article 61 of the Federal Law No. 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 consists of the immediate application of a penalty of restriction of right (e.g. monetary payment, temporary suspension of rights or rendering of community service) to the offender.

The criminal settlement do not require the offender to plead guilty to a crime and, for this reason, the acceptance of a criminal settlement does not implicate 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.

17.2 Conditioned suspension of the lawsuit

Crimes in which the minimum penalty is equal or does not exceed 1 year entitles the offender to the benefit of entering into a deferred prosecution agreement (suspension of the criminal lawsuit) with the Public Prosecutor's Office.

The situations that authorize the suspension of the lawsuit are provided for in article 89 of Law No. 9.099/95.

The proposal of suspension of the lawsuit consists of a probation period from 2 (two) to 4 (four) years of which the defendant may have to observe the following conditions:

- Compensation for damages, unless it is not possible to do so;
- Prohibition from visiting certain places (such as night clubs);
- Prohibition from traveling away from the city of domicile without a court order authorizing the trip;
- Monthly visits to the criminal court to inform and justify his activities.

When the probation period comes to an end without any violation of the established conditions, the judge closes the case.

17.3 Non-prosecution agreement

The recent edition of the Federal Law No. 13.964/2019 introduced the article 28-A to the Brazilian Penal Code, which allows the execution of a non-prosecution agreement.

According to the new article, the Prosecution might not file a criminal complaint against the person investigated in certain crimes committed without violence, and with a minimum penalty of less than 4 (four) years, upon the agreement to comply with certain measures.

The agreement to be signed between the Public Prosecutor, the investigated person and his 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: confession of the crime, compensation for the damages, unless it is impossible; waiving certain assets related to the offense; provision of services to the community; and payment of a fine.

The judge may return the case to the Public Prosecutor's Office if he considers the conditions proposed to the investigated to be inadequate, insufficient or abusive, and may also refuse to ratify the agreement, returning the case to the Public Prosecutor's Office to complete the investigations, or to offer 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 evidence for the purposes of applying the Anti-Corruption Law, for example, causing impacts to the company related to the investigated who has confessed to committing the crime.

INSOLVENCY, BANKRUPTCY, REORGANIZATION

1 Legal Framework

Federal Law No. 11,101/2005 (the "Bankruptcy and Reorganization Law"), as amended by the newly-enacted 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) Out of Court Reorganization with Court Confirmation (or Extrajudicial Reorganization).

The Judicial Reorganization and the Extrajudicial Reorganization are intended to give the company in an unhealthy financial situation the chance of reorganizing its activities in order to preserve its existence as a going concern. Consequently, it intends to provide sufficient means for a company to pay off its creditors in an orderly manner.

The Bankruptcy Proceeding has the purpose of liquidating the debtor'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 in the Bankruptcy and Reorganization Law. The term "Bankruptcy" is understood in Brazil as liquidation, similar to a Chapter 7 filing.

2 Bankruptcy Proceeding

The Bankruptcy Proceeding does not intend to reorganize 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 request can be filed by the company, its shareholders or partners, or any of its creditors. Although the Bankruptcy and Reorganization Law provides that the debtor has the obligation to file for self-bankruptcy, there are no penalties in case the debtor does not file a voluntary Bankruptcy Proceeding.

The Bankruptcy and Reorganization Law allows a company to file for self-bankruptcy if the company considers that it does not meet the requirements for commencing a Judicial Reorganization.

Bankruptcy Proceeding has to be ruled by a Court and is never automatically granted upon filing, given that the Court must accept the company's request. The entire proceeding is court-supervised and the trustee will be in charge of managing the company's assets and liabilities.

Although the company participates in the proceeding, the purpose of the bankruptcy is to maximize the recovery of assets to the benefit of the creditors; therefore, the interests of the company's partners and officers are subordinated to the interests of the creditors.

Bankruptcy and Reorganization Law sets out the requirements upon which creditors may request the bankruptcy of the debtor, some of which are outlined below:

(i) default to provide payment of any liquid obligation stated in a credit instrument in an amount higher than 40 minimum Brazilian monthly wages;

(ii) failure to pay, make a deposit of or post collateral to secure obligation subject to an enforcement proceeding;

(iii) arbitrarily advancing the liquidation of assets or making payment in a damaging or fraudulent way;

(iv) 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

(v) 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.

Once the Court accepts the filing and decrees that the company is bankrupt, the company is shut down, the officers are compulsorily removed from the company's management, and a trustee is appointed to liquidate the company. Under certain specific circumstances, the Court may rule that the company should continue operating for a specific period following the bankruptcy decree.

Further, a bankruptcy decree entails (i) acceleration of all company's debts; and (ii) conversion of foreign currency-denominated debts into national currency.

Upon being appointed to serve on the Bankruptcy Proceeding, the Trustee is expected to prepare an inventory and arrange the valuation of the assets. Following that, the assets are expected to 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 as of the date as of the date the trustee concludes the inventory of the assets.

The proceeds of the asset sales will be distributed to creditors pursuant to the credit priority rule in the Bankruptcy and Reorganization Law ("Liquidation Waterfall")..

The Liquidation Waterfall comprises (i) claims considered bankruptcy-remote (*créditos extraconcursais)*, which have priority over the claims impaired by the Bankruptcy; and (ii) claims impaired by the Bankruptcy Proceeding. Within each category of claims there is a priority rule, as follows:

1. Bankruptcy-remote claims:

(i) out-of-pocket expenses with the management of the Estate and the Bankruptcy Proceeding and labor claims strictly related to unpaid wages outstanding in the three months preceding the bankruptcy ruling limited to the amount equivalent to five Brazilian minimum wages;

(ii) the amounts effectively disbursed by the creditor of a Postpetition Financing (as defined below) arranged in a Judicial Reorganization Proceeding;

(iii) claims for restitution in cash;

(iv) remuneration of the trustee and labor credits arising from work performed or after the bankruptcy decree;

(v) credits arising from transactions entered into during a Judicial Reorganization (in the event of conversion of the Judicial Reorganization into a Bankruptcy Proceeding) or after the bankruptcy decree;

(vi) amounts provided by the creditors to the estate after the bankruptcy decree;

(vii) costs, fees and taxes related to the bankruptcy decree, management of the estate and sale of the assets;

(viii) court costs arising from lawsuits in which the estate has faced an unfavorable outcome; and

(ix) tax liability arising from facts that occurred after the bankruptcy ruling.

2. Claims impaired by the Bankruptcy Proceeding

(i) credits owed for labor relationships up to 150 Brazilian minimum monthly wages per creditor and those resulting from labor accidents;

(ii) secured credits, up to the amount of the asset offered as security;

(iii) tax credits, regardless of their nature and time of constitution, except for the bankruptcy-remote tax credits and tax penalties;

(iv)

(v) unsecured credits;

(vi) contractual penalties and monetary penalty due to breach of criminal or administrative law, including tax penalties;

(vii) subordinated credits (i.e. credits of equity holders and the 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 ruling.

During the Bankruptcy Proceeding, an investigation will be opened to assess whether the debtor, its shareholders and officers committed any fraud or wrongdoing that might have caused or helped cause the bankruptcy.

If fraud or wrongdoings are found, the debtor, its shareholders and officers may be sued for damages, in accordance with the general rules of civil liability. The Bankruptcy and Reorganization Law does not provide for a specific regime of civil liability of shareholders, officers and directors of insolvent or financially distressed companies.

As a rule, the officer, partner or shareholder is not personally responsible for the losses caused by the company to third parties or that it itself suffers as a result of its own activities, provided that such losses are derived from regular management acts, as considered those practiced by the administrator within its legal and statutory attributions, in compliance with the company's corporate purpose.

With respect to transactions executed by the debtor prior to the bankruptcy decree, it is worth noting that the Bankruptcy and Reorganization Law sets forth a preference period 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 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:

(i) payment of any unmatured debt or liability;

(ii) payment of matured debts by other means than those established in the relevant contract;

(iii) granting of mortgages or pledges to secure already-existing debt;

(iv) any act entered into by the debtor for free, during a period of two (2) years before the bankruptcy decree;

(v) waiver to assets which would be inherited by the debtor;

(vi) sale of business without the prior consent of the creditors or payment of their claims, if the remaining assets are not sufficient to cover such liabilities existing at the time such business has been sold;

(vii) registration of any right over or transfer of immovable property after the bankruptcy decree.

In all cases mentioned above, the 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 performed 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 state.

The Court in charge of the Bankruptcy Proceeding may void such fraudulent transaction upon request made by creditors, the trustee, or the Public Prosecutor within 3 years as of the bankruptcy decree. Such request should be made 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 state.

Finally, it is important to mention that a company under bankruptcy is prevented from doing business in the country until the conclusion of the proceeding. As a rule, the restriction of doing business in the country does not apply to the partners, shareholders, officers and directors of the bankrupt company.

3 Judicial Reorganization ("Recuperação Judicial")

The Judicial Reorganization is intended to give a company in an unhealthy 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 intends to provide sufficient means for a company to pay off its creditors and emerge from a financial crisis.

In order to be entitled to benefit from a Judicial Reorganization bail-out structure, the debtor:

(i) must prove that it has been in operation for at least two consecutive years;

(ii) must not have been declared bankrupt before, or, if so, must have obtained a final discharge court decision regarding its previous responsibilities;

(iii) must not have obtained judicial-reorganization benefits over the past five years preceding the request; and

(iv) must not have had its managers or controlling shareholders sentenced for any type of crime, provided for in the Bankruptcy and Reorganization Law.

The newly-enactment amendment to the Bankruptcy and Reorganization Law 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 results in coordination of the 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 may, 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 any attempt to separate the debtors would be 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 shall present a single consolidated plan for all debtors, which will be submitted to a vote at the 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).

Given that the Judicial Reorganization is not designed to wind up the debtor, its officers and directors 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 Bankruptcy 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, such trustee does not manage the company.

On the other hand, the Bankruptcy and Reorganization Law provides that removal of officers and managers of the debtor is authorized if any of them (i) has been sentenced for bankruptcy crimes and/or economic crimes pursuant to specific criminal law; (ii) has given cause for one to conclude that there are strong indicia of practice of any of the bankruptcy crimes provided for in the Bankruptcy and Reorganization Law; (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 creates or omits 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 court approval; (viii) refuses to provide information requested by the trustee and/or committee of the creditors; (ix) has her removal provided for in the reorganization plan.

Removal, however, depends on a court ruling preceded by pleadings of the interested parties and gathering of evidence. In other words, court proceedings are needed for an officer of the debtor to be removed from office by virtue of one of the situations provided for above.

All of the debtor's mature and unmatured debts up to the date of the filing 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 lease 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 are not subject to the Judicial Reorganization and must be paid according to their conditions. Also, obligations incurred by a debtor prior to the filing of a Judicial Reorganization will keep their original contractual conditions unless the reorganization plan provides otherwise.

In summary, the Judicial Reorganization comprises the following phases:

1. The debtor files the Judicial Reorganization proceeding seeking a decision authorizing it to take advantage of the Judicial Reorganization;
2. Upon fulfillment of several procedural and formal items, the Court grants a 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).
3. This “stay period” lasts 180 days as of the date when the decision that granted the reorganization protection was granted, subject to one extension of 180-days provided that the debtor did not cause any delay in the Judicial Reorganization.
4. Concomitantly with the processing order, the Court also appoints a trustee, which will be in charge of overseeing the debtor's activities and report them to the Court and to the creditors by means of periodic reports.

5. 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.
6. In parallel, within 60 days as of the date when the reorganization protection is granted, 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 feature related relevant feature related to the restructuring such as additional collateral granted.
7. 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 place-holder, and it is usual for debtors to subsequently file a new reorganization plan or amendments to the reorganization plan previously filed.
8. After the filing, creditors have the ability to object the reorganization plan.
9. If any objection to the reorganization plan is filed, the Court shall call a 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.
10. In the creditors' meeting, the creditors shall be represented by fully empowered attorneys-in-fact charged with carrying out discussions about the features of the reorganization plan, as well as challenging and proposing amendments to the reorganization plan, as necessary. However, the debtor shall always have the last word on the format of the reorganization plan. Creditors only have the power to approve or reject the reorganization plan and are not entitled to propose an alternative plan or impose changes to the plan to which the debtor does not agree.
11. According to the approval process provided for in the Bankruptcy and Reorganization Law, each class of creditors must either accept the reorganization plan or reject it. There are four classes of creditors provided for in the Bankruptcy and Reorganization Law: (i) Class One – Labor Claims: holders of credit rights deriving from labor legislation or indemnities arising from labor accidents; (ii) Class Two – Secured Claims: holders of credit rights secured by in rem collateral (i.e. mortgages, pledges etc.); (iii) Class Three – Unsecured Claims: unsecured creditors, as a whole, general privilege and special privilege; and (iv) Class Four – Micro and Small Business: creditors holding credit framed as micro or small business.
12. 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.

13. At its discretion, the court may 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) acceptance of more than one-half of claims in Real amount regardless of the classes of creditors; (ii) acceptance 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 accepted by one-third of the claims, in number of claims and Real amount if the dissenting class is either the Unsecured or Secured Claims or in number of claims if the dissenting class is either the Labor or the Micro- and Small Companies Claims.
14. 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.
15. Creditors may present an alternative reorganization plan in the following situations: (i) expiration of the stay period (as extended, if it is the case); 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 for in the BBL 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.
16. As a general rule, if the reorganization plan has not been approved in the creditors' meeting, the 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.
17. In the case that 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 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 may cause the conversion of the Judicial Reorganization into a Bankruptcy Proceeding.

The reorganization plan may 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, Postpetition Financing, among any other lawful means approved by the creditors.

As a general rule, the debtor has discretion to propose the payment conditions to creditors; however, already-matured labor claims should be paid within one year as of the approval of the reorganization plan. The 1-year deadline may be extended to two years provided that (i) the debtor provides sufficient guarantee for payment of the labor claims; and (ii) labor claimants approve the extension at the creditors' meeting. Similarly, wage-related claims up to 5 minimum wages that had been matured for three months prior to the filing should be paid within 30 days.

Additionally, the company under a Judicial Reorganization is not allowed to dispose of its fixed assets without a court and creditors' approval.

In general, there are two mechanism for a sale of fixed assets in the context of a Judicial Reorganization: (i) a sale under section 66 of the Bankruptcy and Reorganization Law, which requires court approval followed by potential objections by creditors; and (ii) a sale of an isolated business unit [*Unidade Produtiva Isolada – "UPI"*]. In both cases, provided that the sale is conducted under a competitive process pursuant to the Bankruptcy and Reorganization Law, the l sale and purchase will be clear of encumbrances and liabilities and free from succession, including labor, tax, anticorruption and environmental obligations.

The newly-enacted amendment to the Bankruptcy and Reorganization Law provides for seeking to stimulate the availability of new financing to debtors (the "Postpetition Financing") by (i) granting priority to the Postpetition Financing over other claims in the event of subsequent liquidation of the debtor; and (ii) insulating the Postpetition Financing, guarantees related thereto and corresponding credit priority from the uncertainty arising from litigation.

The Bankruptcy Court may, during the course of Judicial Reorganization, authorize Postpetition Financing secured by fiduciary liens and/or other security interest in non-recurring assets of the debtor or third parties to fund its activities, the restructuring expenses or the necessary measures to preserve the debtors' assets.

The Postpetition Financing will have priority over virtually all other claims against the debtor in the event of liquidation (see above) and potential reversal of the decision authorizing the Postpetition Financing will not adversely impact the Postpetition 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 may be the provider of the Postpetition 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 Postpetition Financing to a good-faith investor shall not be rendered void or unenforceable as a result of subsequent liquidation provided that the debtor has received the corresponding proceeds of the Postpetition Financing.

In addition, the credit priority of the Postpetition Financing and the guarantees granted to a good-faith investor shall not be adversely affected by modifications to the Bankruptcy Court's decision authorizing the Postpetition Financing provided that the funds have been already disbursed.

On the other hand, if the Judicial Reorganization is converted into liquidation prior to the full disbursement of the Postpetition Financing proceeds, 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 liquidation ruling.

4 Extrajudicial Reorganization

The Extrajudicial Reorganization allows a debtor and certain of its creditors to settle a reorganization plan aiming at restructuring the debtor's indebtedness. In some 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 Court ruling to be made in the context of an Extrajudicial Reorganization.

In summary, the Bankruptcy and Reorganization Law allows a debtor to file for Extrajudicial Reorganization and request a 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. Further, a debtor may 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 as of the filing date. Debtors may request that the Court convert the Extrajudicial Proceeding into a Judicial Reorganization Proceeding if they do not secure the required majority within the 90-day period.

All claims existing on the date of the filing except for tax claims and bankruptcy-remote claims (*créditos extraconcursais)* may be impaired by an Extrajudicial Reorganization. Consequently, the Bankruptcy and Reorganization Law, 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 union that represents the professionals of the debtor.

The original wording of the Bankruptcy and Reorganization Law did not explicitly provide for a stay period in Extrajudicial Reorganizations. Brazilian Courts, however, have consistently ruled that the processing of an Extrajudicial Reorganization warranted a stay period (similar to the Judicial Reorganization's stay) to prevent impaired claimants from taking actions and enforce claims against the debtor.

The newly-enacted amendment to the Bankruptcy and Reorganization Law 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.

Upon the filing of the Extrajudicial Reorganization, a public notice is released and creditors may challenge the reorganization plan within 30 days on the following limited grounds: (i) debtor has failed to meet the 50%-threshold to cram down the plan on non-supporting creditors; (ii) the reorganization plan entails acts forbidden by law or fraudulent transactions; and (iii) non-compliance with any other requirement or formality imposed by law that may apply to the case.

If an objection is filed, the Court shall make a ruling on the (i) allowance of credits; and (ii) confirmation of the reorganization plan and its imposition on the non-supporting creditors within the creditors subject to the Extrajudicial Reorganization.

Unlike the Judicial Reorganization, the rejection of the reorganization plan underlying the Extrajudicial Reorganization does not cause the liquidation of the debtor.

Once the Court makes a ruling on the reorganization plan, interested parties may appeal. As a general rule and pursuant to the Bankruptcy and Reorganization Law, such appeal neither stays the proceeding nor does it prevent 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, an important provision of the amendment to the Bankruptcy and Reorganization Law refers to the protection to creditors and investors against fraudulent conveyance claims related to transactions performed in the context of implementation of an Extrajudicial Reorganization Plan in the event of subsequent liquidation of the debtor.

Although the Bankruptcy and Reorganization Law provided such protection to transactions performed under a Judicial Reorganization Plan, there was no similar provision that applied to Extrajudicial Reorganizations. The amendment modified the relevant provisions of the Brazilian Bankruptcy and Reorganization Law to extend the protection to Extrajudicial Reorganizations.

REAL ESTATE

1 Introduction

Real estate regulation in Brazil is heavily rooted on the registry system inaugurated by Federal Law 6,015/1973. The most common matters are primarily governed by the Brazilian Civil Code and by Federal Laws 6,015/1973 ("Public Records Law"); 9,514/1997 ("Fiduciary Lien Law"); 8,245/1991 ("Lease Law"); and 5,709/1971 and Decree No. 74,965/1974 (both the "Rural Real Estate Legislation"), Federal Decree No. 59,566/1966 ("Rural Leases and Partnership Law") and Federal Law No. 4,504/1964 ("Rural Land Act"). Recently, due to the Covid-19 pandemic, different and innovative laws and administrative rules relating to real estate transactions and rural and urban properties were enacted. With most of them permanently in force, such grounding sets the course for a new trend in the real estate transaction, 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 & occupancy regulations and 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; 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 record of all title transfer, liens, encumbrances, physical changes and possession aspects over the real estates. Notary Publics are, in summary, responsible for drawing-up 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, among others.

The types of *in rem* rights over real estate in Brazil are: (i) ownership; (ii) surface; (iii) use; (iv) right-of-way; (v) enjoyment; (vi) habitation; (vii) acquisition; (viii) pledge; and (ix) right of floor slab ("Direito de Laje", which roughly translates to the right of the floor slab, allows for the obtaining a distinct title for construction on top of or under another building despite the fact that it sits on the same land). Some rights to guaranty are also *in rem* rights: such as mortgage, fiduciary lien, antichresis and seizure.

The classification of a property depends on its use and it is, therefore, not decisive where the property is located (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 can be 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 the regulations applicable to property records, rules, restrictions and other requirements depend on the classification of the property.

2 Recording of Acts and Information before the Competent Real Estate Registry Office

Federal Law 6,015/1973 was enacted to create the so-called public records, which serve the purpose of maintaining in public knowledge and in accordance with the sequential order of the events all acts and information related to a real property. This legislation assigned special emphasis on the recording of acts and information related to real estate and their title holders.

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, of 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[34]. With respect 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 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 may enter and execute relevant documents, deeds or perform necessary acts, but unless and until recordation is completed before the Competent Real Estate Registry Office, certain effects will not be achieved. Below are some 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;

(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 a real estate may procure recordation to make known such interest to the public in general as to protect it. This is the case, for instance, of:

[34] The Law governing Public Records dictates that recordation of relevant acts are made by means of registration (those which constitute the *in rem* right) or annotation (for all other acts or facts related to the property or its owner).

(i) Recordation of 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 *nm rem* right upon the recordation of the agreement, including for tax purposes.

3 Acquisition of Title over Real Estate

According to the Brazilian Civil Code, real estate may be acquired by:

(i) Bilateral instrument;

(ii) Adverse possession ("*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 in order for title to vest in their beneficiaries.

3.1 Bilateral Instrument

Real Estate acquisition by means of 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 ownership transfer by a sale), and "ITCMD" (in case of ownership transfer by a donation or inheritance transfer[35]), in addition to the Notary Public's costs. Other costs related to the deed registration on the property record files will be due.

[35] Please refer to items 7.3 and 7.4 below.

If the parties agree on an installed payment, the parties may execute a private or public instrument (commitment) governing acquisition contingent upon payment in full of installments. Such commitment might have the authority to constitute the *in rem* property acquisition right. The structure whereby the commitment is typically entered into comprises a down payment by the buyer, followed by a due diligence over the real estate, the seller and prior owners. Positive due diligence's 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.

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., cancellation 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 by means of a corporate act occurs in cases where a partner contributes into an entity's corporate capital real estate in exchange for stock underwritten. In this case, the relevant corporate act, normally a bylaws, 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.

It is worthy to point out that 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. These documents reveal the seller's financial liabilities and could 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;

(iii) Labor debts: require the acquirer to publicly acknowledge that the liabilities could cause the transaction to be undone.

3.2 Adverse Possession ("*Usucapião*")

Adverse possession is a form of acquisition of real estate by 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 and 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 triggers indemnification obligation by the land owner.

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 land owner.

A party that constructs a building in good faith is entitled to obtain indemnification from the land owner, as consideration for said owner having acquired by accession the building. 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 may procure the purchase of the land upon payment to the land owner of indemnification as consideration for the acquisition.

3.4 Inheritance Rights and Corporate Succession

Transfer of real estate by inheritance rights occurs upon the passing of its owner, followed by a judicial or extrajudicial proceeding in which the heirs claim theirs 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 heirs estate. As a condition for registration, the heir will be subject to the payment of the corresponding ITCMD[36].

While title issuance and registration are pending, it is possible to enter into agreements over the real estate, contingent upon the effective transfer.

[36] Please see item 7.4 below.

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 to ITBI to be assessed and collected upon title registration.

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 or 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 by means of a public deed, registered before the competent Real Estate Registry Office, or by a private instrument, most commonly use in financial operations.

Registration of public deed 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 may freely sell it to third parties, in which case the collateral survives the sale. This ultimately means that a third -party acquirer is exposed to the risk of foreclosure if the borrower defaults its obligations and triggers accelerated maturity of the debt, 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).

To use the mortgaged real estate to resolve its credit, a lender must follow certain steps, namely:

(i) File a judicial enforcement lawsuit, seeking judicial acknowledgement of the debt and its amount;

(ii) If the lender prevails, it is awarded foreclosure on the real estate;

(iii) Once seized, the real estate must be judicially sold in an auction (the lender is precluded from keeping the real estate as payment in-kind);

(iv) The proceeds from the sale will be used to pay judicial costs and the debt;

(v) If the proceeds from the sale are insufficient, the lender will still have a recourse against the borrower.

In a judicial reorganization scenario, a real estate encumbered by a mortgage could 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 a real estate (*"Alienação Fiduciária em Garantia")* is a transaction whereby 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 lender. The constitution of 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 the condition that default in payment of the debt will cause the title to the real estate to revert to the lender ("property consolidation"), which will have the obligation to auction the real estate to collect funds for the payment of the debt. This means that, unlike with the mortgage, taking into consideration that in the beginning of the foreclosure the ownership entitled to creditor on a fiduciary basis will turn into full ownership, the foreclosure of the collateral triggers the applicable transfer taxes[37].

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 which the borrower may incur in the event of failure to comply with the terms of the underlying credit agreement.

A fiduciary lien is created by means of a private or public instrument 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.

[37] Please see item 7.3.

The Borrower will not be able to sell the property nor create further encumbrances. Also, leases require borrower's express consent to be enforceable against them.

The foreclosure must follow certain steps, as follows:

(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 promote the registration of the property consolidation on his behalf;

(iii) Procure an extrajudicial auction sale of the property (the lender is precluded from keeping the real estate as payment in-kind);

(iv) The property 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 minimum amount in item "iv" is not achieved, a second auction will take place for an amount equivalent to the sum of the debt, auction expenses, insurance premiums, legal charges, including taxes, and common area expenses.

(vi) If the amount in item "v" is not achieved, the lender will acquire full title to the real estate and the borrower will be released from its obligations.

(vii) The proceeds from the sale will be used to pay the auction costs and the debt, provided that any amount remaining will be returned to the borrower[38];

(viii) If the proceeds from the sale are insufficient, the lender will be precluded from further recovering against the borrower. The only exception where the lender will be able to continue the foreclosure is in a certain revolving loans agreement executed with a financial institution.

In a judicial reorganization or bankruptcy proceeding, the encumbered real estate will not be reachable by other creditors that the borrower may have.

5 Acquisition of Rural Real Properties by Foreigners

Acquisition of rural real estate by foreign individuals or foreign legal entities is governed by the Rural Real Estate Legislation. This piece of legislation is centered on three main legal issues:

(i) A general limitation on the acquisition of rural real estates by any foreigner, individual or legal entity, subject to intended use of the property;

(ii) The matching of a foreign legal entity with a Brazilian legal entity with the majority of its capital is held, at any title, by an individual residing or legal entity based abroad or that are controlled directly or indirectly by a foreign individual or legal entity ("Brazilian Entities of Foreign Capital");

[38] The fiduciary sale was initially created as a means to secure real estate acquisition. Over time, its application was expanded to comprise other more complex transactions.

(iii) The discussion over the applicability of such restrictions for farmland acquisition and its rural lease[39] only, or for other types of rights over farmland, such as right of surface, usufruct or free lease.

Such restrictions and issues are applicable to urban properties. Lease agreements over rural real estate are also subject to these restrictions. The ongoing discussions relating to the restrictions before Brazilian Courts reached the Brazilian Supreme Court, where a ruling is expected soon. It is possible that the discussion will end and, consequently, the categorization of Brazilian Entities of Foreign Capital as a Brazilian Entity will be applied and, therefore, lift such restrictions, or not, depending on the decision rendered.

For rural land that is not located on border/frontier areas: authorization of the National Institute of Colonization and Agrarian Reform ("INCRA") is required for an acquisition of in rem rights or certain possession rights over rural land, not located on border/frontier areas, by a foreign legal entity, legal entity controlled by foreigners or foreign individual, and is contingent on a prior request/submission of an exploitation project (describing the intended use of such property) to INCRA and issuance of its prior authorization is a legal requirement to proceed with such transaction. This requirement is extensive to Brazilian entities controlled (by majority capital or directive power) by a foreign individuals or legal entities residing/based abroad and 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.

For rural land that is located on border/frontier areas: authorization of the National Security Council ("CDN") is required for an acquisition of any in rem rights or any possession rights over rural land located on border/frontier areas, by a foreign legal entity, legal entity controlled by foreigners or foreign individual, is contingent to a prior request/submission of an exploitation project (describing the intended use of such property) to CDN, and such request must be initially submitted to INCRA. Issuance of CDN's and INCRA's prior authorization is a legal requirement to proceed with such transaction. This requirement is extensive to Brazilian entities controlled (by majority capital or directive power) by a foreign individuals or legal entities residing/based abroad. Corporate transactions resulting in the indirect transfer of rural land located on border/frontier areas, or in corporate reorganizations that result in transfer of shares in an entity holding rural land are also subject to such prior authorization, but the respective authorization process is initiated directly before the CDN.

The acquisition of farmland without prior authorization might be considered null and void. The analysis of the validity of such acquisition depends on the time that the property was acquired, its use, its location and its area and other aspects. Considering that not only the law on farmland acquisition by foreigners, but 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.

[39] Please see item 6.2 below

The legal scenario dictates that foreign entities may 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 and the property registry before INCRA must be annually updated. 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 (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. The review made by any of these agents will initiate the procedures 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, the ongoing discussions relating to the restrictions before Brazilian Courts reached the Brazilian Supreme Court, where a ruling is expected soon. It is possible that the discussion will end and, consequently, the categorization of Brazilian Entities of Foreign Capital as a Brazilian Entity will be applied and, therefore, lift such restrictions, or not, depending on the decision rendered.

6 Leasing Real Estate

6.1 Urban Leases

Urban real estate leases are governed by the Lease Law. The legal framework introduced by the Lease Law is legislation promotes 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 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 a 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 said third party. This right applies irrespective of contractual provision. Nonetheless, if contractually stipulated, the tenant may wish to have the agreement registered 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 Lease Law. The tenant, on the other hand, may early terminate the agreement, 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 may, 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 in and of itself trigger the termination of the lease agreement, but the purchaser of a leased real estate has the right to terminate the agreement with a ninety (90) day prior notice after the registration of the sale on the real estate record files before the relevant Real Estate Registry Office. A validity clause eliminates this 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 Lease Law specifically governs built-to-suit lease agreements. The provisions of the Lease Law stipulate: (i) that the parties may 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 in the corresponding amount of up 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 and are defined as the transfer of possession by 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 an agricultural, livestock or agroindustry activity.

The Rural Leases and Partnership Law stipulates the minimum duration of rural leases, in accordance to 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.

Considering that unlike purchase and sale transactions, lease agreements are normally entered into by means of a private instrument that does not require registration, verification by the authorities of compliance with the restrictions is difficult. To address this issue, Instruction 43/2015, enacted by the National Justice Council, innovated the effective legislation by saying that lease agreements by foreign individuals or legal entities over rural real estate must be mandatorily entered into by means of a 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 said partnership as consideration 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 Real Estate Tax – IPTU (Municipal Tax)

A municipal tax accruing on the ownership of urban real estate annually and assessed over the value attributed by the municipal tax authorities to said 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 1st of each year, is subject to Urban Real Estate Property Tax payable to the municipality within whose jurisdiction the property is located. 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 Tax on Ownership of Rural Land- ITR (Federal Tax)

A federal tax accruing on the ownership of rural real estate annually 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 1st of each year, is subject to Rural Real Estate Property Tax, payable to the Federal Government. Calculation of ITR is based on information provided by the property owner to the Federal 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 Transfer 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 transfer tax rate will be applied on the higher value between: (i) the transaction actual price; or (ii) the value of the real estate as assessed by the municipality.

This tax does not apply in cases of contribution of the real estate to the capital in exchange for underwritten stock of companies that do not have its main income from real estate activity.

In several different cities there is a major discussion with respect to the value to be considered for ITBI purposes, generated by the Municipal Law that allows the municipality to establish a specific value to be considered for ITBI in certain transactions. In the case that such value is higher than the purchase price, the ITBI will be calculated upon the higher amount and such requirement can be challenged in State Court.

7.4 Real Estate Transfer Tax Accruing over Donation and Inheritance Transfers – 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 is also applicable to 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 and 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 may 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 one's real estate (the "servient" land). They may be either 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 to 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 may be paid or gratuitous 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 with respect to 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 cadaster thereof with the State and the federal environmental agencies.

It is important to note that the description of rural properties by way of satellite geo-referenced coordinates must be certified by INCRA and may lead to other legal measures/requirements with respect to 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).

It is also important to note that the 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.

In addition, 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 but if 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 would be still be due. The parties may (and should) agree to incorporate a provision in the deed of sale stipulating effective conclusion of the transaction as a prerequisite to the payment of realtor's commission.

Realtor's commission may 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.

INSURANCE, REINSURANCE AND COMPLEMENTARY PENSION PLANS AND HEALTH CARE

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 plan. 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 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 plan 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 Health Care System is a supplement to the Brazilian public health care system and is regulated by the Supplementary Health Care Council (*Conselho de Saúde Suplementar - CONSU*) and the Brazilian Private Health Care 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 health care, and self-management).

2 Legal Framework

Most general legal rules applicable to insurance and reinsurance contracts are set forth in the Civil Code and in the Supplementary Law 126/2007. Specific provisions on property, casualty, and life insurances – among others - are subject to specific regulations issued by CNSP and SUSEP. In the context of the Complementary Pension Funds and Supplementary Health Care System, contracts and the supplementary pension plans are subject to specific laws and regulations.

To the extent that these contracts involve “consumers” (as a rule, insurance agreements that are considered as consumer contracts and entities, such as small businesses, tend to fall under this concept), they are also subject to the Consumer Protection Code, which establishes guidelines and principles that are highly protective of consumers rights.

3 Licensing Process

The incorporation, transfer of controlling shares, or restructuring (among other acts) of insurers, reinsurers, capitalization companies, open private pension funds, and health care companies in Brazil involve a series of procedures set forth in legislation and depend on authorizations by SUSEP and ANS, including presentation of business plans and identification of shareholders.

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 in the ownership of Brazilian insurance companies, but direct control must be held by Brazilian entities, as provided for in local regulation.

The minimum capital of an insurance or open private pension company consists of the higher value between the base (fixed) capital and the risk-based capital (which must consider operational, credit, underwriting and market risks).

The minimum capital shall vary depending on the segment in which the company is rated.

Pursuant to 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.

In this regard the minimum base capital required is (i) BRL 15,000,000.00 (fifteen million reais) for Supervised framed in segment 1; (ii) BRL 8,100,000.00 (eight million and one hundred reais) for Supervised framed in Segment 3; BRL 3,960,000.00 (three million nine hundred and sixty thousand reais) for Supervised framed in Segment 4; and BRL 3,000,000.00 (three million reais) for Supervised that operate exclusively in microinsurance.

There are very detailed and specific rules regarding both calculation of the risk-based capital and the procedures necessary for adopting corrective and recovery plans.

4 Selling Insurances and Certification

An insurance broker, who may be an individual or a legal entity, is the facilitator legally authorized to intermediate sales of insurance contracts.

According to Brazilian law, an insurance company may not incorporate a sister brokerage company since broker's shareholders are prevented from holding corporate stake in insurance companies. Brokers and their shareholders are also prohibited from maintaining employment relationship or act as director or officer 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 currently regulated by Law n° 4594/1964, Decree Law n° 73/1966, and the regulatory Resolutions and Circulars issued by CNSP and SUSEP. According to this rules, the Insurance Broker, which may be an individual or legal entity, is the legally authorized intermediary to attract clients and promote insurance contracts between the insurance companies and the insureds.

A specific license is required by law for Insurance Brokers to operate in Brazil. After demonstrating the fulfilment of 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 126/2007, which must be a legal entity (with a professional liability insurance) authorized by SUSEP to intermediate reinsurance contracts.

Concerning certification, regulation addresses the need to certify insurance-company employees and similar persons at insurance companies accredited by SUSEP, whenever these firms operate in:

(i) average regulation and settlement;
(ii) internal control systems;
(iii) customer service; and
(iv) direct sales of insurance products, capitalization, and open supplementary pension funds.

Regulation also provides for the certification of the insurance brokers who act in the same areas previously mentioned, with exception of item (ii). However, the effects of the relevant rules have been suspended by SUSEP and the matter awaits further regulation.

5 Reinsurance

Brazilian legislation provides for three types of reinsurers: local, admitted and occasional. Admitted and occasional reinsurers are foreign companies, whereas local reinsurers are companies incorporated under Brazilian legislation with head offices in Brazil and organized as joint-stock companies.

As a rule, but still subject to the technical, contractual, operating and risk particularities, and to provisions of both CNSP and SUSEP, insurance regulation applies to reinsurers as well.

A local reinsurer must have at least BRL 60,000,000.00 (sixty million reais) in capital and must meet risk-based capital and solvency-margin requirements.

Admitted and occasional reinsurers are foreign companies registered at SUSEP that have net equity of least USD 100,000,000.00 (one hundred million dollars) and USD 150,000,000.00 (one hundred fifty million dollars), respectively, a power-of-attorney[40] appointing an individual attorney-in-fact domiciled in Brazil, and have submitted numerous documents, including their financial statements.

Admitted reinsurers must also establish a representative office in Brazil, authorized in advance by SUSEP and named as such, with the sole business of representing the admitted reinsurer. The representative must be domiciled in Brazil and hold power-of-attorney.

The representative office may be a Brazilian company or a branch office. A company registered as an admitted reinsurer is currently required to own at least 4/5 (four-fifths) of the representative office's capital, and there is no exception for reinsurance groups.

An admitted reinsurer must also keep an escrow-account with SUSEP worth a minimum of USD 5,000,000.00 (five million dollars) in the case that the admitted reinsurer operates in all lines of business; or a minimum of USD 1,000,000.00 (one million dollars) if it works solely with life reinsurance.

Lloyd's has been recognized as an admitted reinsurer, with a representative office located in Rio de Janeiro, and its Central Fund can be accepted as net equity for the purpose of the aforementioned minimum thresholds.

Rating requisites for admitted and occasional reinsurers are set out below:

[40] Exceptionally, upon consultation, SUSEP may authorize an insurance company or a local reinsurer to act as the attorney-in-fact of an occasional reinsurer.

ADMITTED	
Risk Rating Agency	Minimum Level Required
Standard & Poor	BBB
Fitch	BBB
Moody's	Baa3
AM Best	B+

OCCASIONAL	
Risk Rating Agency	Minimum Level Required
Standard & Poors	BBB
Fitch	BBB
Moody's	Baa2
AM Best	B++

There are two advantages that a local reinsurer has over admitted and occasional reinsurers:

- a preferencial offer of 40% of each cession; and
- exclusivity 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 maintain reserves under any circumstances in Brazil, however their headquarters cannot be located in tax havens[41].

Currently, the percentage that can be assigned from insurers to occasional reinsurers was increased to 95% of the total reinsurance premiums, considering the totality of their operations in each calendar year. The previous limit was 10%.

[41] Tax havens are countries or dependencies that do not tax income or that tax it at a rate of less than 20%, or whose internal laws provide relative secrecy as to the owners of corporations or their representatives.

Also, the percentage that can be transferred by local reinsurers to occasional reinsurers increased to 95% of the premiums related to underwritten risks, given the totality of their operations in each calendar year. The previously provided limit was 50%.

Admitted and local reinsurers must maintain a proper internal control system. There is no minimum structure for such purpose, but rather minimum elements that should be considered when setting up the internal controls of each admitted reinsurer, as listed by regulation[42].

The size and complexity of such structure depends on the complexity each company's operations. That way, all minimum elements and procedures may be contained in an extremely simple structure of one or two people, and in specific reports.

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 and operations.

6 Reinsurance Contracts

Brazilian insurers and local reinsurers may only assign risks in reinsurance and retrocession transactions to local, admitted, and occasional reinsurers, with or without the intermediation of reinsurance brokers.

Because Brazilian law was set up for establishing and developing a strong local reinsurance market, it provides local reinsurers with a preferential offer of 40% of every cession.

Reinsurers shall have five business days (for facultative contracts) and 10 business days (for automatic contracts) to formalize their interest in the full or partial acceptance of the risk, as long as under the same conditions offered abroad with silence being construed as refusal.

The preferencial offer does not apply to retrocession by local reinsurers, which, for their part, as well as insurers, may transfer 95%[43] of premiums issued for risks that they have underwritten in each calendar year.

Exceptions to this rules apply to the following lines:

- surety bond;
- export credit;
- rural credit; and
- domestic credit.

---

[42] SUSEP Circular 249, February 20, 2004, Article 2, items I to VII, Article 3, items I to VIII (Braz.) (amended by SUSEP Circular 363, May 21, 2008)

[43] Increase presented by the Decree No. 10.167/2019.

As for reinsurance contracts, regulation sets forth certain requisites whenever writing and structuring contractual documents, such as the need for:

(i) an insolvency clause, and

(ii) prohibition of direct-payment clauses (except in cases of the insolvency of the cedant, provided that payment of indemnity has not been made from the reinsurer to the cedant or from the cedant to the insured party, in case of optional contracts, or in all other cases whenever there is a clause that, in such case, calls for direct payment).

If there is intermediation of the contract, the intermediation clause cannot limit or restrict the direct relationship between cedants and reinsurers, nor grant powers to reinsurance brokers beyond those needed and appropriate to perform their jobs.

The contract must stipulate whether the broker has authorization or not to receive money for indemnity and premiums, whereby payment of indemnity to the broker will not represent fulfillment of the reinsurer's obligation until received by the cedant, and payment of premiums to the broker must be considered as immediate release of the cedant.

Regulation additionally sets out that, among other requisites:

(i) Contractual formalization of reinsurance transactions must take place within 270 days. After this period, if not formalized, reinsurance will be construed as non-existent from the outset; and

(ii) Contracts for reinsurance of risks located within domestic territory must stipulate submission of any disputes to Brazilian legislation and jurisdiction, allowing for an arbitration clause, which, according to specific legislation, may apply foreign law;

Notwithstanding the above, Supplementary Law 137/2010 amended Supplementary Law 126/2007 to allow CNSP to provide for risk transfer - reinsurance and retrocession transactions - with other persons further to the authorized reinsurance companies, in the case that local, admitted and occasional reinsurers do not have the necessary capacity.

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 National Petroleum Agency (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 regime ("Production Sharing Regime") to regulate E&P activities of an area with recent discoveries with large potential, 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 an Open Acreage bidding round (*Oferta Permanente*), in which there are areas constantly listed for interested parties to bid at any time. The first round of the Open Acreage bid was held in 2019.The second Open Acreage bidding round began on September 11, 2020, with its public bidding session held on December 4, 2020. Currently, the bidding round is in its final phase for the award of the subject and approval of the bid for the subsequent signing of the concession agreements, which is estimated to occur on June 30, 2021.

The 17th Bidding Round, with ninety-two (92) areas to be offered, is currently in its initial phase and ANP released its preliminary schedule. According to such schedule, the submission of bids shall occur on October 18, 2021, with the concession agreements expected to be executed in 2022.

ANP and the National Council for Energy Policy (CNPE) are jointly considering the areas to be offered at the upcoming bidding rounds, scheduled to take place in the next years, with three (3) rounds already approved. The 18th Bid Round under the Concession regime is expected to be held in 2022. The 7th Pre-Salt Production Sharing Bidding Round as well as the 8th Pre-Salt Production Sharing Bidding Round do not have an expected date, however, they should occur within the next few years.

In addition, the government projects potential investments in the sector until 2027 which, along with the regulatory agenda approved throughout 2017, 2018 and 2019, as well as the promotion of mature fields and basins, may unlock investments in the short-term.

According to the ANP, in 2020, Brazil registered records in both oil and natural gas production. Oil production increased 5,5% compared to 2019, having reached an average of 2.94 MMbbl /d (million barrels per day), while that of natural gas grew 4,1% in relation to the previous year, with an average of 127 MMm3 / d (million m3 per day).

In relation to the Pre-Salt production, figures for December 2020 verified an increase of 8,4% in relation to December 2019. The production originated in 119 wells and corresponded to 69% of the national production.

In December 2020, offshore fields produced 96,7% of oil and 81,5% of natural gas. The fields operated by Petrobras were responsible for 93,7% of the oil and natural gas produced in Brazil. However, fields with exclusive participation by Petrobras produced 38,3% of the total.

Also, ANP informed that, in December 2020, 260 areas under the Concession Regime, 3 areas under the Transfer of Rights Regime (*cessão onerosa*) and 5 areas under Production Sharing Regime, operated by 36 companies, were responsible for national production. Of these, 62 are offshore and 206 are onshore. Production took place in 6,489 wells, comprising 499 offshore and 5,990 onshore.

Despite the sector's opening to private companies in the late 1990s, *Petrobras* is still the dominant player in the country's oil sector, holding considerable market share in upstream, midstream and downstream activities.

2 Concession Regime

Under this regime, E&P business is governed by concession contracts preceded by bid rounds organized by the ANP. Through these concessions contracts, the Government grants companies or consortiums, 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.

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 recent 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 2, 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 consortiums 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.

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 last Annual Statistic Statement published by ANP, in 2019 Brazil had an installed refining capacity of approximately 2,400,000 barrels per day, divided among 17 refineries, 13 of which are owned by *Petrobras* and correspond to 98,6% of the total refining capacity, while the other 4 are privately held. The new Annual Statistic Statement to be disclosed by ANP with all 2020 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 is required to sell 8 of its 13 refinery assets. 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)*, one of the 8 refineries included in the divestment plan. The transaction, however, is still pending approval by the Board of Directors of Petrobras and the CADE. The sale processes of the other 7 refineries are currently ongoing.

5 Transportation

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 regulates 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 are 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 shall be 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.

Recognizing the importance of a transparent and non-discriminatory access regime to transportation network for the development of a competitive gas market, the Gas Law assures the access to third parties to the network even during the exclusivity period. An open season process shall be conducted to grant third parties interested in contracting available or idle capacity in the pipeline.

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) and resulted in a Bill of Law No. 4,476/2020 which is awaiting final approval from the House of Representatives. The goal to create a competitive market would include the sector unbundling, creation of an entry/exit system of tariff, coordination of the market by an independent agent, among other changes.

Although the Bill of Law is awaiting approval by the House of Representatives, the entry of new shippers in the market has been promoted by Petrobras with the sale of pipelines assets as part of its divestment program. In 2017, the 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 the last year and is in the process of selling the 10% interest in NTS and 51% interest in Petrobras Gás S.A. (*Gaspetro*), an entity with participation in many of the gas distribution companies with concessions of different states.

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 addition, the Decree No. 9,934/2019 created a committee for monitoring the opening of the Brazilian natural gas market (*Comitê de Monitoramento da Abertura do Mercado de Gás Natural – CMGN*), with the primary purpose of overseeing the implementation of such measures fostered by the New Gas Market program.

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 Annex I of the referred Normative Instruction permanently 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 with the subsequent importation with the benefits described in items I and II above; and
4. Purchases of raw materials and intermediary products with suspension of federal taxes.

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.

MARITIME LAW

1 General Rules

Maritime law is traditionally known as the oldest branch of law, and in Brazil this isn't too far from the truth. The basic law governing the matter was enacted in 1850 (Law No. 556) and is known as the Brazilian Commercial Code.

As a general rule, the Code sets out the entire private structure of relationships around ships, as well as the people involved in shipping activity, the main contracts, insurance, loss due to collision, gross average, and liabilities.

Alongside the issues treated by this imperial Act, there are other important laws 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 in order to adapt such an old Code to the requirements of the current maritime commercial scenario.

Navigation safety is an issue fundamental to the steady development of marine activity and, therefore, in Brazil, this issue remains under the competence of the Maritime Authority, duly exercised by Brazil's Navy through the Directors of Ports and Coasts.

Besides the investigative powers of the Maritime Authority, exercised through the Port Captaincies distributed throughout Brazil, the law entitles it to regulate the activity regarding navigation safety aspects and their relationship with other uses of the sea, such as cable installation, submarine scientific research, etc.

However, the said regulatory competence is, in fact, exercised by the Maritime Authority through the NORMAMs (Maritime Authority Rules), which also deal with the vessels' certification, classification societies, the foreign vessels in transit in Brazil, pilot services, naval inspection activities, ships ballast water, maritime meteorology, administrative investigation and others.

To better demonstrate the development of the maritime activity in the country, it is appropriate to describe the main institutions and their role in the maritime systematic and the Brazilian navigation.

2 The Port Captaincy

The Port Captaincy plays a fundamental role in marine-traffic regulation, as it is the means by which the Maritime Authority makes effective its rules. Its authority is related, among other items, to the safety at sea within Brazilian jurisdictional waters and to incidents which may cause pollution of waters under national jurisdiction.

The Port Captaincy is part of the federal administration, a subset of the Ministry of Defense, and it operates in Brazilian territory as the Maritime Authority through its representatives located in all organized ports and seaside locations. It has authority to make 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 equipment to be carried on board ships and platforms, establishes the limits of domestic navigation, and sets out rules related to naval inspections and surveys.

Given its authority 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 within the scope of its authority.

3 The Maritime Tribunal

The Maritime Tribunal, with jurisdiction over national territory, is a self-regulating body that assists the Judiciary, is connected to the Navy Command and its purpose is to judge on sea, river and lake matters. 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 related to accidents and relevant facts observed at maritime, lacustrine and fluvial navigation.

The proceedings start with the Port Captaincy's investigation whose conclusions, when duly referred to the Maritime Tribunal, will grant due judgment and imposition of penalties, that may vary from fine to suspension of the maritime activities, among others.

Although defined as a tribunal, the institution that is a subset of the Navy consists of an administrative body, and it 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 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 it needs to gather further evidence to ground its adjudication. For that purpose, there is a Special Navy Prosecutor at the Tribunal with authority to review the entire investigation, referred by the Port Captaincy and 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 are guidelines for state and federal courts' adjudication. Its judgments are limited to the technical aspects of the case, enforcement of which results in the imposition of administrative penalties, such as fines, suspension of seafarer's certificates, licenses, etc.

Despite of those attributions, the Maritime Tribunal is also competent to record marine mortgages and lies and to register shipping owners and vessels, according to their tonnage.

4 The Specialized Judicial Body in the State of Rio de Janeiro

To improve 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 judges in charge of bankruptcy and all corporate issues, considering this area was comprised into the Commercial Code.

Maritime activity is commonly governed by customary and written rules in a mix of sources from Common Law and Civil Law systems which require expert judges possessing familiarity with all such matters to try accordingly.

For this reason, the state of Rio de Janeiro has included maritime cases under the authority of these bodies dedicated to hearing corporate and commercial matters.

5 The Brazilian Agency of Waterway Transport-ANTAQ

Brazil's waterway transport market has been regulated by the Brazilian Agency of Waterway Transport (ANTAQ) since the adoption of Federal Law No. 10,233/2001. 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 authorize companies to offer maritime services within Brazilian ports and/or with Brazilian cargo, authorize foreign vessels to be chartered by Brazilian Shipping Companies, control Shipbuilding procedures, approve proposal for revision/adjustments of port rates, make rules for the Port Authorities, organize bidding process for the 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 COVID-19 situation, now expressly foreseen that ANTAQ has also competence to regulate the occupation and exploitation of port areas and facilities not provided for in specific legislation.

With the advent of ANTAQ, the entire industry came to be organized, supervised and regulated by it. ANTAQ´s role is essential, not only to the operation of vessels in Brazilian jurisdictional waters, but also to chartering of foreign ships and to activities related to the organized ports and terminals of private use.

6 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 Brazil's Maritime Authority at the location of the owner's residence or wherever the ship is supposed to be operated.

Vessels' registration is also important for the demarcation of Brazilian Law's extraterritoriality, since those rules are always applicable to every act performed on board of ships flying the Brazilian flag and which are registered in the country.

Vessels with more than 100 tons of gross tonnage must be registered at the Maritime Tribunal in Rio de Janeiro. For vessels with less than this volume, the registration is simple and remains under the competence of the Port Captaincy.

Registration may also take place abroad at any Brazilian embassy or consulate, which will issue temporary registration valid until the ship's arrival in the port where it will be registered definitively.

A ship may not be registered to foreigners who do not reside in Brazil, except for boats used for sport and recreation.

7 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 Brazilian maritime activities as a whole.

It is important in the maritime context to mention the Special Registry of Ships at the Maritime Tribunal, which enables the ship owner and/or carrier to obtain tax exemptions, increase the number of foreigners in the crew, hire insurance abroad, and receive financial aid from the Merchant Marine Fund.

This registration was created by Federal Law No. 9,432/1997 and is regulated by Federal Decree No. 2,256/1997 and it is a complementary registry to the Ship Registration.

Every Brazilian ship operated by Brazilian shipping companies is eligible for this registry. Foreign vessels might be eligible, depending on the navigation kind and in case of bareboat chartered by Brazilian shipping companies with due flag suspension.

8 Tax Incentives for Building, Maintaining/Repairing, and Converting Ships and Port Modernization

In order advance the naval industry in Brazil, the Brazilian Customs Code has provided for certain important tax exemptions on the importation of spare parts to maintain and repair ships. The same treatment is provided for the importation of spare parts and equipment for ship modernization and conversion.

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) transportation of imported goods must be done in ships flying the Brazilian Flag or chartered by Brazilian shipping companies; and

(c) ship modernization or conversion must be registered with the Maritime Tribunal in 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 already imported and used in the shipbuilding chain.

Law No. 11,033/2004 established a tax system for the Modernization and Growth of Port Infrastructure (REPORTO), which is intended to expedite the acquisition of capital goods by the beneficiaries thereof. This system was established in August 2004, and it 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.[44]

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.

When the REPORTO beneficiary is the direct importer of the goods, it will also benefit from suspension of the import duty, IPI, PIS-importation, and COFINS-importation taxes on the transaction. However, 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 is 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.

[44] Although the REPORTO tax system has been systematically extended annually until the year of 2020, for this year of 2021, until the present update date of this report, there has been no extension, which is under analysis by the Brazilian Legislative Chambers.

AVIATION LAW

1 General Rules

Aviation activity in Brazil is governed primarily by the Brazilian Aviation Code, adopted by Federal Law No. 7,565/1986 (the "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.

The Code provides an overview of concepts that apply to Brazilian air navigation, air traffic, aeronautical infrastructure, aircraft, crew, and services directly or indirectly related to flight.

Given the depth of private relationships related to flight, a code of laws regulating those issues was necessary to unify the legal system of civil aviation activity. Among the issues address above, the code deals with the concept of Brazilian air space, construction and operation of airports, air safety, aircraft, certification, registry, liabilities, and many other important topics to transporting people and cargo by air.

However, considering that the Code was enacted in 1986 and since then many 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 Code.

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

2 Brazilian Civil Aviation Agency- ANAC

Brazil's air transport market has been regulated by the Brazilian Civil Aviation Agency (ANAC) since the adoption of Federal Law No. 11,182/2005. The agency began operating in 2006 and replaced the Civil Aviation Department (DAC). ANAC is a federal autonomous body, which is linked to the Ministry of Transport, Ports and Civil Aviation. The agency 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 authorizes companies to manufacture aeronautical products and render air services at Brazilian airports by issuing a Certificate of Approval of Air Transport Company (CHETA) and recognizing those applicable to foreign Air Carriers. ANAC is also responsible for conceding air services on specific routes and for authorizing flight times for all airlines flying in and/or to Brazil by issuing an approval (HOTRAN).

Note that the agency also plays a special role into the legislative process of technical issues related to the field and is empowered to enact bidding rules addressed to the players of the sector involved into the air activity.

The agency also works as an administrative dispute settlement body for air carriers and airport operators. The entire public airport infrastructure is controlled by the Brazilian Airport Infrastructure Company (INFRAERO), a state-owned company, which is responsible for managing, operating and controlling all government-operated federal airports (i.e., those whose operations have not been transferred to private parties by way of concessions), including safety, operational conditions and infrastructure, all regulated by ANAC.

Also, 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 Airlines Companies

Recently, Law No. 13,842/2019 amended the Code and suspended all restrictions on foreign ownership interest in airline companies and in the management of Brazilian airlines, which motivated the expansion strategy.

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

Together with the increase in the foreign investment’s limit, there will also be changes in the management of airline companies that might be managed by foreign investors too.

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

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

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

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

The aforementioned 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 having signed Open Skies treaties with the United Kingdom, The Netherlands and Luxembourg.

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 be considered when providing air services.

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

Registration concludes when 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 within the Brazilian Aeronautical Registry in order to guarantee its legal effects against third parties.

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

5 Tax Benefits for Aircraft Maintenance and Repair

In order to advance the aviation industry in Brazil, the Brazilian Customs Code has provided some important tax exemptions for the importation of spare parts for aircraft production and repair.

Law No. 12,249/2010 established the Special Tax Incentive System for the Brazilian Aircraft Industry (RETAERO), which suspends the following taxes on the sale of inputs in the domestic market or importation of goods:

- PIS and COFINS taxes on the seller's income, when the buyer is a legal entity beneficiary of RETAERO;
- PIS-Importation and COFINS-Importation taxes, when the importer is a legal entity beneficiary of this system;
- IPI on the shipment of goods from the manufacturing or similar establishment when the buyer in the domestic market is a legal entity beneficiary of the system, and
- IPI on imports, when the importer is a manufacturing establishment owned by a legal entity beneficiary of the system. Related technology and technical assistance services may also benefit from PIS, COFINS, PIS-Importation and COFINS-Importation suspension.

On January 1, 2013, Decree No. 7,923/2013 entered into force and changed certain parts of the wording of Law No. 12,149/2010. The new wording of the Law defined the recipient of the special regime as the legal person that manufacture parts, tools, components, equipment, systems, subsystems, inputs and raw materials, or provides services of basic industrial technology, development and technological innovation, technical assistance and technology transfer to be employed in the maintenance, conservation, modernization, repair, review, conversion and manufacturing of products classified under heading 88.02 of the Mercosur Common Nomenclature (NCM). Before the amendment, only aircraft classified under heading 88.02 of NCM enjoyed the benefit.

The suspension of taxes under RETAERO is converted into the application of a zero rate of such taxes provided that the goods are applied on the production or maintenance of aircraft.

Companies may qualify for RETAERO for up to five (5) years as of June 14, 2010. Benefits under the system, in turn, may be enjoyed on acquisitions and imports within a five-year period of the date of qualification for RETAERO.

6 Remodeling of the passenger and cargo transport services

On December 13, 2016, ANAC approved the 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, baggage, ticket purchase, among others.

Through this review, together with the consolidation of the rules, all General Conditions of Air Transportation and assistance rights guaranteed to all passengers must be centered in one sole normative document. According to ANAC, the main goal of this change is to optimize the passengers' rights, making the Brazilian rules compatible with international market standards, together with encouraging 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 transport.

Recently, on August 7, 2019, ANAC Resolution No. 526 was also published, which brought some important changes related to the passenger and cargo transport 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 the technical and operational airworthiness requirements in the certification process for aircraft and airlines;

(iv) Aircraft operators of up to 19 seats and 3,400 kg or helicopters must follow the 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 aim to make modernization and simplification in the certification process viable by harmonizing concepts and adopting coherent technical parameters, thus establishing an even more favorable environment for the development of the sector.

7 DRONE Regulation

Considering the fast-growing number of unmanned aircraft in Brazil, the need arose to regulate the sector in order to ensure operational safety and the control of the equipment that has been used in the national territory as well as qualified professionals to operate this technology.

Thus, the following standards were published:

- ANAC: (RBAC-E) No. 94 – provides for the drone operational technical requirements, such as flight guidelines, equipment registration/classification, the pilots' 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.

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 National Mining Agency (hereinafter referred as "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 in it, which belong to the Brazilian Federal Government (article 20, IX FC).

Therefore, any mineral exploration and/or exploitation may only take place with a prior approval granted by the Brazilian Federal Government, through administrative procedures conducted before ANM according to Mining Code provisions.

Essentially, the mining segment structure in Brazil is composed of two competent authorities which duties complementary to each other:

- National Mining Agency (ANM), created by Law 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).
- Ministry of Mines and Energy (MME).

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 difference among them relates to the mineral substance purpose of exploitation, the miner (whether an individual or a legal entity) and the size limitation of the area for each mineral substance. Considering its applicability to all types of mineral substances, the most common regime is Authorization and Concession, explained below.

2 Foreign Participation

According to the Mining Code, the mining authorizations may be conceded both to Brazilian individuals or Brazilian entities.

Constitutional Amendment No. 06, of August 15, 1995 extinguished the distinction between companies of national and foreign capital, requiring only that the mining entity is Brazilian; i.e., that it has principal office and administration in the country, irrespective of capital origin and control.

In view of the above, currently, Brazilian regulations allow for the 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 related to activities conducted in border areas, explained in item 2.2 below.

2.1 Mining Entities

For the development of mining activity - considered from a business standpoint – any of the association forms existing in Brazil may be used; i.e., the mining entity may be organized under a corporation, a limited liability partnership, or as any other form deemed to be most beneficial.

Entities that seek authorization for exploration or exploitation, once incorporated and registered under the National Department of Commerce Registry, have 30 days to file before the ANM the bylaws or articles of associations and shareholders agreements in force, as well as any future modification thereof.

The entities holding Exploitation Permits located near or over the same mining zone may obtain permission for the formation of a Mining Consortium by means of a Federal Government Decree. The mining proximity, to which the Mining Code refers to for the formation of a consortium is not the physical proximity but, rather, it is that which enhances extraction productivity or its capacity.

Because this is an activity of national interest, some requirements must be observed as to the incorporation of operating entities and development of the work.

2.2 Real Estate and National Safety Aspects

Despite ANM's liberal understanding as to the presence of foreign capital entities in the mining segment, there are legal restrictions to international capital regarding activities that are carried out over the border line (with the exception of exploration and exploitation of mineral substances of immediate use in civil construction).

The legal definition of “border line” is: “the internal border 150 km (one hundred and fifty kilometers) wide, parallel to the earthly division line of the national territory”.

The competent body to govern over the operation of certain activities over the “border line” is the National Defense Council (CDN, the acronym for *Conselho de Defesa Nacional*). The interested parties must request from the CDN a prior authorization, meeting the following requirements, which must be expressed on the entities bylaws or articles of incorporation:

- 51% (fifty one percent) of the capital, at least, must be held by Brazilians;
- two thirds of the entities' employees must be Brazilian;
- the entities' administration must be composed, effectively, of Brazilian nationals (voting majority).

The proceeding for obtaining CDN's consent is commenced before the ANM itself, with the filing of the requirement and agency's first analysis. Besides the documentation usually required, the interested parties must present certain specific documents, such as:

(i) evidence of administrators' or quota holders' nationality; and
(ii) nominal relation, listing the nationality and number of shares of all shareholders, in the case of corporations.

Such documents will be forwarded for the Council's assessment and issuance of opinion, favorable or not, after which the process will return to the ANM following the normal course.

There are, still, restrictions to foreign participation - individuals or entities - in a company holding real estate rights over rural properties located over the “border line”. Considering that the easements needed for the mining activities are “integrating parts of the mines” – as defined on the Code – and that said easements are a real estate right (as pointed out even by the “border line” specific legislation), there must also be prior consent by CDN for the introduction of an easement.

Such foreign participation is subjected to the same procedures aforementioned, not only the head offices, but any facility with representation powers or delegations.

3 Mining Permitting Procedures Overview

As mentioned above, the Mining Code (article 2), provides for four types of 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 difference among them relates to the mineral substance purpose of exploitation, the miner (whether an individual or a legal entity) and the size limitation of the area for each mineral substance.

Notwithstanding, miners are required to submit their mining title request to ANM, with all documentation provided for in the Mining Code.

Considering its applicability to all types of mineral substances, the most common regime is Authorization and Concession.

Essentially, the Authorization and Concession regime is composed of 2 phases:

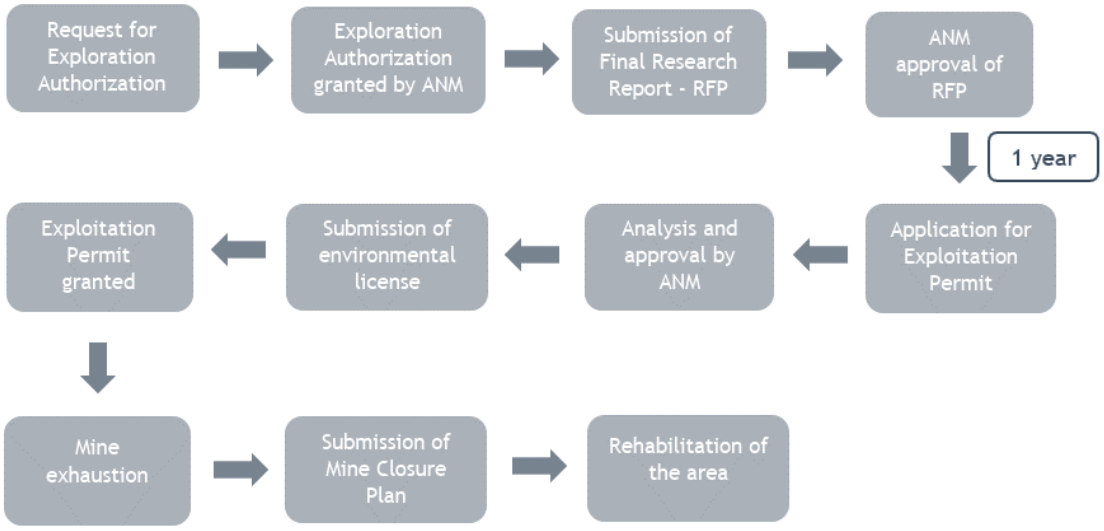
(i) **Exploration Phase (Exploration Authorization):** at this stage, mineral extraction is not allowed (as a general rule), and its purpose is to carry out all the work necessary for the definition of the deposit, its appraisal, and the determination of its economic viability. After the work is completed, the miner shall submit a document known as "Final Research Report" ("RFP") with the definition of the deposit.

After approval of the RFP, the preparatory stage for mining begins through presentation of the application for exploitation, within one year of the approval. At this stage, the presentation of environmental license will be required as a condition of the granting of the Exploitation Permit, as explained below. If such environmental license is not presented, the exploitation application may be rejected by ANM.

(ii) **Development Phase (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 therein until their beneficiation.

As a general rule, the Exploitation Permit grants to the miner the right to exploit the deposit until it is exhausted, provided that it does not cause the forfeiture of the title.

It is worth noting that further to the mining authorizations abovementioned, the miner must still obtain the relevant environmental licenses. In practical terms, both administrative procedures for obtaining the mining and environmental licenses must run together, as documents issued by ANM may be required by the environmental agency, and, in parallel, documents issued by environmental agency may be required by ANM for granting of Exploitation Permit.



3.1 Exploration Authorization

Companies interested in drilling a mine area, for the purposes of studying the existence of technically and economically feasible deposit, must apply for an 'Exploration Authorization' before ANM. The decision of ANM on the approval or not of the issuance of the Exploration Authorization is appealable. In the case that the decision is maintained, it can be appealed at a second stage, before the MME.

The Exploration Authorization can be assigned or transferred upon request to ANM.

Concerning the validity of the Exploration Authorization, we note that it shall be granted, according to ANM's own criteria, for no less than 1 year and not more than 3 years, with a single extension allowed upon duly justified request submitted for ANM's approval.

A legislative change through Decree No. 9.406/2018 restricted the possibility of successive extensions taking into consideration situations of: 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 in issuance, in any event.

The holder of the authorization is obliged to implement its exploration work, submitting to ANM the RFP on the existence of technically and economically feasible deposits, which is prepared under the supervision of an entitled technician, within the term of the authorization's validity or its renewal term. The non-submission of the technical report within the due term would subject the holder to the payment of a fine, calculated according to the hectares of the explored area.

It is possible for the holder of the Exploration Authorization to use public or private areas to explore. Concerning private areas, we inform that the landowner or occupiers are entitled to a negotiable fee for the occupation of the area and also to an indemnification for damages that may be caused and may arise due to the exploration works. In the case of use of public areas, the indemnification for damages is also applied, but the fee for the occupation is dismissed.

If the landowner or occupiers cannot reach an agreement on the abovementioned fees with the holder of the license, then the case shall be submitted to the Court's evaluation.

Once the Exploration Authorization is issued by ANM, the respective holder must:

(i) begin the exploration works within 60 days;

(ii) not interrupt the exploration works without justification (after commencement), for more than 3 consecutive months or for 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) an annual fee must be paid until the RFP is submitted to ANM. This Annual Fee per Hectare ("*Taxa Anual por Hectare*") is calculated according to the mineral substances involved, the area and the location of the mine and others, by criteria of ANM.

Once the RFP is approved, it begins the preparatory stage for mining through presentation of the application for exploitation, within one year as of the approval (extendable for equal period upon justification presented by the holder of the license). At this stage, the presentation of an environmental license will be required as a condition of the granting of the Exploitation Permit, as explained below. If such environmental license is not presented, the exploitation application may be rejected by ANM.

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 easements and Economic Development Plan (PAE), 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 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 from the publication of the Exploitation Permit, the holder of the mining concession must request from ANM the occupancy of the mine.

The holder of the mining concession must comply with all the requirements established in the Code, such as:

(i) initiate the mining works provided in the Mining Plan, within 6 months from the publication of the Exploitation Permit;

(ii) mining the field in accordance with the Mining Plan approved by ANM (non-compliance is subject to penalties that can either result in a warning 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 approval of ANM;

(vi) submit to ANM, by March 15 of each year, the report of the 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 notice the waiver of its title. In both cases, the requirement will be accompanied by a report of the works carried out and the status of the mine studied.

In case of suspension request, the miner is authorized to interrupt the activities while the request for temporary suspension of mining is pending decision by ANM. ANM will evaluate *in loco* the mining area and issue a technical report for the decision. If the requirement for the suspension of the works is denied or the waiver is consummated, ANM will suggest the necessary measures for the continuation of the works and application of the penalties, if applicable.

3.3 Mine Closure

The closure of the mine is a relatively new subject in Brazil and became a significant topic after a major environmental accident occurred in 2015 in the state of Minas Gerais. Following the incident, several mining fields were identified in a state of abandonment and potentially capable of causing environmental damage.

Therefore, according to an amendment in mining legislation (Decree No. 9.406/2018), the extinction of a mining title is subjected to: i) prior ratification of the renunciation request by ANM, and; ii) execution of the Mine Closure Plan, though prior approval by the ANM.

As a result of the above, the abandonment of the mining field and/or the unjustified interruption or suspension of the exploration and exploitation works for a period greater than those provided for in the law, as well as renunciations/waivers not made in accordance with the procedures above, will subject the mining company to penalties that may be imposed by ANM.

4 Statutory Royalty ("CFEM")

Applicable law in Brazil requires that the 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; on the revenue from the consumption; on the price of exportation, considering the Tax Authorities parameter price; on the amount of the foreclosure, in the scenario of a mineral good acquired at a public auction; on 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.

The payment of the statutory royalty is due whenever the exploitation works of the mineral rights commences. It is worth mentioning that it will not only be due as from the commercialization of the minerals resources extracted, as there is an understanding that the statutory royalties are paid in cases where the mineral is either utilized, processed or consumed by the mining company itself.

The rates to be levied on the sold mineral products vary according to the substance extracted. According to the modifications provided by Law 13.540/2017, the rates on the sold mineral vary from 1% to 3,5%.

5 Penalties

The Mining Code provides for the following penalties in view of noncompliance with obligations by the miner: (i) warning (art. 63, I); (ii) fines (art. 63, II), up to a maximum amount of approximately BRL 3,705.19[45] which is applied for each infraction and doubled in the case of recurrence; (iii) forfeiture of the mining title (art. 63, III); (iv) daily fine (art. 63, IV); (v) seizure of ores, goods and equipment (art. 63, V); vi) temporary, total or partial suspension of mining activities (art. 63, VI).

According to the amendment made by Law 14,066/2020 to art. 64 of the Mining Code, the maximum amount of fines will vary from BRL 2,000.00 to BRL 1,000,000,000.00, depending on the severity of the violation. However, the Administrative Rule 58/21 has not yet reflected the updated amount of the fines.

Forfeiture of mining titles is the most serious penalty provided under Brazilian mining legislation, since it is the loss of the mining title. It can be applied in the following situations:

(i) formal characterization of the abandonment of the deposit or mine;

(ii) non-compliance with the time periods for initiating and reinitiating exploration and exploitation work, despite having received a warning and a fine;

(iii) intentional carrying out of exploration work not in agreement with the conditions described in the Exploration Consent, despite having received a warning and a fine;

(iv) proceeding with high grading or the extraction of substances not included in the Exploitation Permit, despite having received a warning and a fine; and/or

(v) failure to comply with recommendations repeatedly made by the inspection agent, characterized by the third recurrence of violations with fines within the period of one year.

[45] Administrative Rule 58/21, that came into force on February, 28, 2021.

6 Relevant legislative changes

6.1 Mining Dams

In Brazil the mining industry plays a major role in the national economy. A big challenge faced by the mining industry is waste disposal management, resulting from the mineral processing. The primary 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 new. 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 Dam National Safety Policy (also known as "*Política Nacional de Segurança de Barragens*" or simply "PNSB") , applicable to all kind of dams, not only those intended for the mining sector.

The Dam National Safety Policy sets out general requirements for dam owners with respect to dam safety, including classifying dams based on risk, development of dam safety plans, and dam safety inspections and reviews.

Consequently, two years later, the ANM published Ordinance No. 416/2012 and Ordinance No.526/2013, regulating the specific aspects of the obligations applicable to mining dams.

Since the incidents that took place in 2015 and 2019, several legislative changes have been put forward. In 2020, the PNSB was amended by Federal Law No. 14,066 of September 30, 2020. In accordance with the amendment, the construction or raising of any dam using the "upstream" method is strictly forbidden, and such structures should be decommissioned by February 25, 2022.

A key element introduced by the Law is the provision for sanctions on companies that fail to comply with any obligation set forth in the PNSB, subjecting such companies to fines that may range from BRL 2,000.00 up to BRL 1,000,000,000.00, as well as suspension or forfeiture of the license or concession, embargoes on works and activities, and seizure of minerals, goods and equipment.

6.2 Deadlines for the granting of mining rights

In 2020, ANM issued Ordinance No. 22, which came into force on February 1, 2020, establishing the maximum deadline for ANM to carry out the analysis of certain requirements submitted in the mining proceedings, in accordance with the provisions in articles 11 and 18 of Decree No. 10.178/2019.

The Ordinance brought a significant change for the mining sector. If the ANM does not deliver a decision within the period established in the Ordinance, the requirement listed in Annex I will be tacitly approved. This means that the requirement will be considered approved if instructed with all the documentation and information necessary for its analysis.

It is important to highlight that under the terms of §3 of art. 2 of the Ordinance, even if tacitly approved, the ANM may further verify compliance with legal requirements.

6.3 Changes to Mineral Licensing Regime

Also in 2020, Federal Law No. 13,975/2020 was published, which authorized the exploitation of industrial clays, ornamental rocks, and calcium and magnesium carbonates under the licensing regime. As a consequence, for those miners interested in exploiting these substances, the change enables less bureaucracy, since the licensing regime is simpler when compared to the concession regime.

7 Changes to Area Availability Procedure ("*Disponibilidade de Áreas*")

In 2020, the ANM changed the procedure regarding area availability ("*áreas em diponibilidade*") through Resolution No. 24/2020. Now, areas previously linked to mining titles will be auctioned by ANM to third parties.

Until 2018, the criteria for selecting the most advantageous proposal in the area availability procedure was based on technical requirements. However, after the enactment of Federal Decree No. 9,406/2018, a new model was launched, according to which the areas may be subject to a prior public offer and, 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 hold-up in investments in the sector.

In 2020, ANM carried out the first public auction, comprising 502 areas all intended for mineral exploration. As a result, 185 areas were granted to interested parties. Following the first auction, the ANM published, on December 29, 2020, the second bid notice for the auction of the *áreas em disponibilidade*, for which 7,027 areas were offered.

Furthermore, as the Federal Government has shown interest in continuing with this new model, more auctions are expected to be launched soon.

8 Recent Legislation Proposals

Several changes to the current model adopted for the mining sector in Brazil have been proposed and have being under discussion in the House of Representatives over the last 5 years.

The well-known proposal for a new mining framework, Bill 5,807/2013, whose objective was a major change in the current mining system, after years of discussion (until 2017), was criticized for causing 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 of the Brazilian Mineral Industry Program, which brings about essential changes for the sector. At first, three Provisional Measures were signed interim measures that includes the creation of the National Mining Agency (ANM), changes in the Mining Code and the improvement of the legislation that deals with Financial Compensation for the Exploration of Mineral Resources (CFEM), statutory royalties.

The purpose of the Program is to increase the participation of the mining sector in Gross Domestic Product (GDP), generation of jobs and new investments. After the vote, two of the Provisional Measures were converted into law (Law No. 13.575/2017 that creates ANM and Law No. 13.540/2017 that brings changes to statutory royalties) and, unfortunately, the provisional measure that proposed changes in the Mining Code was not voted on within the constitutional term and lost effectiveness.

As a result of the loss of effectiveness of the Provisional Measure to amend the Mining Code, the Federal Government published Decree No. 9.406/2018 with some specific changes in the regulation to the Mining Code, as follows:

(i) Possibility of continuing the exploration work after approval of the RFP. The result, however, cannot be used for rectification or complementation of the RFP information.

(ii) The non-submission of the RFP will lead to the opening of the availability procedure. The previous legislation stated that if the RFP was presented after the mining title term expiry, the area was considered free for new requirements.

(iii) Inclusion of the reuse of wastes and tailings in the concept of exploitation work and incentives to mining fields destined to the reutilization, including through amendment of the Exploitation Permit by simplified process.

(iv) Admission of a single extension request for Exploration Authorization term, except if i) proved the 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 in issuance, in any case.

(v) Changes in the availability procedure, which may be preceded by a public offer to evaluate the attractiveness of the areas for electronic auction.

(vi) Prohibition of the successive extension of the "*Guia de Utilização*" term, issued for a period of one to three years, extendable one time only.

(vii) Adoption of international criteria for classification of resources and reserves.

(viii) Establishment of a 60-day term, counted from the formulation of the requirement, so that the miner can attest to the beginning of the environmental licensing, demonstrating every 6 months the status of the licensing.

(ix) Mandatory execution of the Mine Closure Plan before the extinction of the mining title and its inclusion as a mandatory requirement of the PAE, subject to ANM approval.

(x) Possibility of the mining right being given as a guarantee for a financing, pursuant to requirements to be regulated by the ANM.

(xi) Possibility of the ANM, after Mine Closure Plan approval, to put the area in availability or to block it.

(xii) Setting a time criteria of 5 years for application of the double penalty in the case of recurrence.

(xiii) Authorization so that the miner can interrupt the mining activities while the request for suspension is pending analysis by the ANM.

(xiv) New possibilities of fines, among them one for conducting mining activities without a mining title.

(xv) Establishment of conditions for exploration in an area declared a National Reserve or in areas under a monopoly regime.

Other bills that seek to repeal the restrictions on foreign capital in border areas, regulations for mining activities in indigenous lands and other relevant issues are still subject to a vote, but there is no forecast for their publication.

COMPLIANCE

1 Compliance in the Spotlight

To correspond to the requirements set forth by the international treaties against corruption, Brazil enacted Law No. 12,846/2013 (known as the "Brazilian Clean Company Act" or "BCCA") on August 1, 2013. Said law provides for the civil and administrative liability of legal entities for acts harmful to the public interest and against the Public Administration. In addition, Federal Decree No. 8,420/2015, enacted on March 18, 2015 regulates the Brazilian Clean Company Act and establishes the guidelines for evaluating an Integrity Program, under Brazilian authorities.

In this new legal scenario, 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 Public Administration through Compliance Policies.

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

- Law No. 12,846/13 - Brazilian Clean Company Act
- Federal Decree No. 8,420/15 – Regulation of Brazilian Clean Company Act
- Law Decree No. 2.848/40 - Criminal Code
- Law Decree No 3,689 – Criminal Procedure Code
- Law No. 12.850/13 – Criminal Organizations
- Law No. 13,303/16 – Public Companies' Law
- Law No. 12,529/11 – Competition Law
- Law No. 9,613/98 – Anti-Money Laundering Law
- Law No. 8,666/93 – Public Bidding Law
- Law No. 8,429/92 – Administrative Misconduct Law
- Law No. 13,869/19 – Abuse of Authority Law
- Law No. 7,492/1986 – White Collar Law
- Law no. 13,964 – Anticrime Law
- Law No. 13,608/18 – Reporting Channels Law
- Law No. 7,347 – Public Civil Action Law
- Law no. 13,303 – State-owned Company's Law
- Ordinance No. 909/15 – Evaluation of Integrity Programs
- Ordinance No. 910/15 – Administrative Responsibility and Leniency Agreements
- Law No. 12,813/13 – Conflict of Interest Law
- Central Bank Circular 3,978/20 – 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 public administration. Both foreign governments and public international organizations are encompassed by the term "public administration".

The Law provides for administrative and civil strict liability of legal entities, but it does not exclude the administrative and civil individual liability of its directors or officers or of any natural person who is a perpetrator, co-perpetrator or participant of the tort. Directors and officers shall only be held accountable in connection with a tort to the extent of their culpability under the Brazilian Criminal Code, 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: (i) to offer, promise or give any undue advantage to a national or foreign public official; (ii) to finance, pay, sponsor or by any other means facilitate such illegal acts; (iii) to use an interposed individual or legal entity to conceal or dissimulate the real objective or the identities of the beneficiaries of the acts committed; and (iv) to hinder the government's investigations or hearing activities, or to interfere in their actions.

In the context of public bids, such Law also prohibits: (i) frustrating or defrauding the competitiveness of a public procurement procedure by means of an arrangement, agreement or any other method; (ii) preventing, disturbing or defrauding the performance of any act in a public procurement procedure; (iii) removing or attempting to remove a bidder in public procurement procedure, by means of fraud or offering any kind of advantage; (iv) defrauding public procurement procedures or related contracts; (v) creating a legal entity to defraud a public procurement procedure or to enter into government's contract; (vi) 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 (vii) rigging bids, manipulating or defrauding the economic-financial balance of a government contract.

This broad definition of wrongful acts may lead to abuses on the part of the public administration in initiating investigations and proceedings against corporations. Its provisions may lead to various interpretations, 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

In the administrative branch, companies held liable for wrongful acts under the law shall be fined and required to publish the decision in the media.

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 administrative proceedings. If it is not possible to apply such criteria, the competent authority may apply a fine that varies from BRL 6,000.00 (six thousand reais) to BRL 60 million (sixty million reais). 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) cooperation in investigations of the legal entity; and (vii) existence of internal control mechanisms (effective Integrity Program).

In the judicial branch, competent authorities may apply the following sanctions: (i) forfeiture of property, rights or amounts representing advantage or profit directly or indirectly obtained from the infringement, 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/ individuals and the public administration and government officials, as there are no penalties for corruption acts practiced between solely private companies and individuals 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.

4 Integrity Programs

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 4% (four 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. 8,420/2015 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 detect and correct violations, fraud, irregularities and illicit acts committed against the public administration, either national or international."*

Minimum requirements for the program to be considered a mitigating factor include:

- engagement of senior management of the company;
- implementation of a code of ethics, code of conduct and compliance policies applicable to all employees and managers;
- extension of the program to third parties such as suppliers, service providers, agents and associated companies;
- periodic training;
- periodic risk assessment;
- proper accounting registries;
- internal controls that secure trustworthy financial reports;
- internal proceedings that prevent fraud and illicit acts;
- independence means and delegation of powers to the compliance officer;
- an open communication channel for reporting of irregular activity;
- disciplinary actions in case of violations;
- internal procedures to secure the immediate interruption of the detected violation, and damage remediation;
- appropriate checking measures for hiring third parties; and
- disclosing donations to political parties and candidates transparently.

5 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.

As per the new 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 new 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.

5.1 AML Policy

AML Policy must be documented and previously approved by the institution's board of directors and/or the board of officers. Furthermore, from now on the institution's personnel must be trained to deal with the combat of money laundering and financing of terrorism.

5.2 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. However, it did not change the way companies should conduct their Know Your Customer (KYC) and AML/CFT procedures.

5.3 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.

5.4 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.

5.5 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 new 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.

5.6 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.

5.7 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 new rules permit the institution to create specific sets of risk categories in order to enable the establishment of specific controls.

5.8 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.

5.9 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.

5.10 Politically Exposed Person ("PEP")

The new rules broaden the already existing concept of PEP. From now on, besides the individuals already enlisted, city counselors, mayors and state congressmen, as well as political parties' presidents and treasurers or equivalent must also be included.

6. Transparency

In Brazil, there are mechanisms based on transparency of public expenses, contracts, basic information regarding active and inactive public officials, among other parameters, that are generally made available through public databases.

In this regard, on July 30, 2020, the Ministry of Justice and Public Security ("Ministry") published Decree No. 369 ("Decree"), establishing procedures for the disclosure of information regarding the Ministry and its government officials. The Decree provides for the disclosure of information through active transparency, that is, regardless of requests from the general public, as long as the institutional objectives of the Ministry are aligned with the public interest.

AGRIBUSINESS

1 Concept and Importance of the Sector in the Economy

From 2000 to 2019 (third quarter period), agribusiness showed continuous growth in its exports. The cumulative increase of the external sales in the first three quarters of 2019 compared to the same period of 2000, represented 354% (IVE-Agro / Cepea). The expectation for 2020 is that Brazilian agribusiness will keep growing in comparison to 2019.

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

In 12 months (between October/2018 and September/2019), the export volumes (IVE Agro / Cepea) of almost all products considered in export indexes has increased 9%. The figures of the first three quarters of 2019 compared to the same period of 2018 are significant, with the highlights being corn (130%), cotton (114%), coffee (38%), ethanol (20%), wood (6%) and meat. On the other hand, orange juice and sugar have decreased shipments, respectively 9% and 20%.

Over the past nineteen years, from 2000 to 2019, the trade balance of Brazilian agribusiness (export revenues minus imports expenditures) grew by more than three times, which resulted in an increase of more than 350%.

Agribusiness is a strategic sector for the Brazilian economy and it has contributed strongly to the macro-economic stability of the country. Representing an important portion of Brazilian GDP (gross domestic product) in 2018, it may be the only sector with a significant growth compared with industry and services.

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 agro-industrial complex, which includes all companies that produce, process and distribute agriculture and animal husbandry products.

2 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 increase.

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 re-organization of the agricultural policy began on August 22, 1994, when the Law 8,929 was enacted and provided for the Rural Product Note (“CPR”). In addition, Law 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 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 offer.

Law 13,331, dated September 1, 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 7, 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".

2.1 New Instruments for the Financing of Agribusiness

2.1.1 Rural Product Note (Cédula de Produto Rural - CPR)

The CPR was introduced by the Law 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” (CPRF) is a CPR modality established by Law 10,210, dated February 14, 2001, which included Article 4-A to the Law 8,929/2000. Similar to the Physical CPR, the CPRF includes the description of the product and the respective amount negotiated; the difference lies in the settlement method. The CPRF 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 1, 2021.

2.1.2 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 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.

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

The Agribusiness Credit Rights Certificate (CDCA) was introduced by Law 11,076/2004. It is a freely traded credit instrument that represents a commitment to pay in cash the correspondent amount indicated thereof. 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 instrument. 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.

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.

2.1.4 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.

2.1.5 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 - new regulation by the Brazilian Securities and Exchange Commission (CVM) that regulates CRA - was issued on August 1, 2018. Before such regulation was issued, financing through CRA had been under the umbrella of CVM Regulation 414, applicable to CRI. Therefore, it will certainly guarantee greater effectiveness and legal certainty for such financing method.

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.

2.1.6 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 shall be incorporated and governed according to its own by-laws, which shall 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.

2.1.7 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.

2.1.8 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. Although PL 5,191 intends to include the new investment fund in the regulation of Federal Law 8,668/1993 (which regulates Real Estate Investment Funds – FII – as described in the Capital Markets chapter), the FIAGRO will have a range of characteristics different from those applicable to the FII, targeted to the demands of funding in the agribusiness sector. Among other investments related to the sector, FIAGRO will be able to invest in rural properties and agribusiness receivables certificates (CRA). Finally, the FIAGRO aims to be an attractive fundraising alternative to the sector, considering the tax incentives proposed by PL 5,191 for the fund and its investors. The draft Bill is still pending presidential approval for enactment, which likewise may introduce a few adjustments to the current proposed provisions.

3 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 4,505/64 as ruled by the Decree-Law 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.

3.1 Agricultural Partnership

The agricultural partnership is regulated by the Article 4 of Decree-Law 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% over the results obtained with the partnership.

3.2 Rural Lease

The rural lease is regulated by the Article 3 of Decree-Law 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 or not other goods, 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 the 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.

4 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 9,973/2000 and the enactment of Law 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 regulation 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, Animal Husbandry and Supply (MAPA).

5 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.

PUBLIC LAW AND FINANCING

Brazil has reached a prominent position in the global economy in the past decade.

The internal market, due to a successful income distribution plan, nowadays comprises more than one hundred million consumers with significant purchase power. International trade operations have quadrupled from 2002 to 2012. The traffic of airports and roads doubled in the same period. In agriculture, Brazil occupies the first place as exporter of beef, chicken, orange juice, coffee and sugar, and second place as exporter of soy.

Such scenario, however, cannot be sustained and furthered without the development of infrastructure projects towards the supply of the demands mentioned above. The government realized that the available infrastructure would not suffice the times to come based on the future outlook.

In 2017, the Brazilian Government launched *Avançar*, a new round of concessions that amount to BRL 190,000,000,000.00 (one hundred and ninety billion reais) in investments. According to the most recent information publicly available, up to March 31, 2018, 24% of the planned concessions related to *Avançar* were concluded and the remaining projects were in development. Moreover, the opportunities in the Brazilian Infrastructure sector are related not only to concessions, Public-Private Partnerships and public works contracted directly with the Brazilian Government, but also with the complex and wide-ranging supplies of goods and services required to perform such contracts, meaning great opportunities for all sizes of business. In this way, it becomes indispensable to know and understand the forms by which the relation between the government and the private may interact.

1 The Bidding Procedure

The public procurement bidding process is a constitutional requirement in Brazil in order to select the private party entering into an agreement with the Government. This requirement is meant to ensure that potential corruption is avoided when leaving the choice to the public agents.

In general, the principles applicable to Brazilian Public Procurements are provided by Article 37, XXI, of the Brazilian Constitution. The provision lists five fundamental guidelines that must be observed by the Direct and Indirect Public Administration (Union, States, Federal District and Municipalities) in the course of their activities:

- legality;
- impersonality;
- morality;
- publicity; and
- efficiency.

Most of the rules subsequently included in the relevant statutes stem directly from such constitutional provision.

The most important statute related to the subject is Law 8,666/1993 ("Bidding Law"), which established the general rules for bidding and contracts of the Administration, also ruling over the permission for foreign companies to participate in the procedure. To do so, such companies must have a legal representative in Brazil and need to meet, in international tenders, the requirements of the Bidding Law, upon presentation of equivalent translated and authenticated documents by the consulate of the foreign country.

Foreign companies are also allowed to participate in the bid procedures by means of a consortium. In the case that the consortium is formed with a Brazilian company, the latter will always be the leader. It is also important to bear in mind that according to the Bidding Law, the companies that form a consortium have joint and several liability.

Apart from the basic documentation common to both national and international companies, international companies already allowed to operate in Brazil need only a registered consent Decree to participate in the bid procedures. It is important to note that international companies compete with the national ones under equality principles in relation to guarantees, requirements and procedures.

1.1 Bidding Modalities

There are six modalities of bidding procedures, regulated by Law 8,666/1993:

(i) competition;
(ii) price survey;
(iii) invitation;
(iv) contest;
(v) auction; and
(vi) reverse auction (regulated by Law 10,502/2002).

1.1.1 Invitation

Invitation is a procedure intended for a certain number of participants and applies to purchase of goods and services up to BRL 176,000.00 (one hundred and seventy six thousand reais), or contracting public constructions or engineering services up to BRL 330,000.00 (three hundred and thirty thousand reais).

1.1.2 Price survey

Price survey applies in the purchase of goods and services valued between BRL 176,000.00 (one hundred and seventy six thousand reais) and BRL 1,430,000.00 (one million, four hundred and thirty thousand reais) or contracting public constructions or engineering services from BRL 330,000.00 (three hundred and thirty thousand reais) to BRL 3,300,000.00 (three million and three hundred thousand reais).

1.1.3 Competition

Competition is the modality adopted in order to purchase goods and services valued above BRL 1,430,000.00 (one million, four hundred and thirty thousand reais), or contracting public constructions or engineering services over BRL 3,300,000.00 (three million, three hundred thousand reais).

1.1.4 Contest

Contests are intended for the selection exclusively of scientific, technical or artistic work.

1.1.5 Auction

Auctions are intended for the sale of movable assets, sale of seized or confiscated goods and disposal of real property that belongs to the Government.

1.2 Bidding Types:

In addition to different modalities of bidding there are the admissible evaluation criteria, usually referred to as "types" of bidding.

The Bidding Law also mentions four types of bidding:

(i) lowest price;
(ii) best technique;
(iii) technique and price; and
(iv) highest bid or offer.

1.2.1 Lowest price

The "lowest price" type is the most common type of bidding for procurement in general, in which the lowest priced proposal wins the bid.

1.2.2 Technique and price

The "technique and price" bidding awards relative grades for the technical and the price proposals. A weighted average is calculated and the bids are ranked according to their final grades.

1.2.3 Best technique

In practice, the "best technique" is a very uncommon type, due to its complexity and relative ineffectiveness.

1.2.4 Highest bid or offer

The "highest bid or offer" is appropriate for auctions or for other biddings in which the government agency is the seller.

The evaluation of the bids must be conducted in accordance with the criteria previously set forth in the solicitation, always respecting the publicity principle. Any secret, confidential, subjective or classified element, criteria or factor that may directly or indirectly hinder the equality between bidders and the competition is strictly forbidden.

The bids will be analyzed in accordance with the provision set forth in the solicitation, which must contain all the necessary requirements to be fulfilled. The committee will examine the object's characteristics and the price with the subsequent choice of the most beneficial proposal.

After the qualification phase, the bidder may not withdraw its bid. Therefore, the winning bidder has the obligation to execute the agreement when summoned. Failure at this point will result in the application of penalties and loss of the bid bond possibly presented at the outset of the procedure.

2 Concessions & Public-Private Partnerships (PPPs)

Law 8,987/1995 ("Concessions Law") establishes general rules regarding concessions of public services. The services set forth in the Concessions Law could be provided alone or coupled with the construction of public works or facilities. The risk associated with the concession should be borne by the concessionaire, which shall recoup its investments from revenues collected from users.

PPPs are a means of concession of public services, which can be partially or totally subsidized by the Administration. It is regulated by Law 11,079/2004 ("PPPs Law") and involves a prior competition bid to choose the private party.

There are two modalities of concession under PPP:

(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, thus totally subsidized by it.

The PPPs Law provides that a PPP regime must be applied to the bodies of the direct Public Administration, including the Executive and Legislative powers, the special funds, the autonomous bodies, foundations and public companies, such as all entities that are, in some way, controlled by the federal entities.

The PPPs Law sets forth that contracts may, in an additional way, provide for the requirements and conditions for the authorization, by the public partner, of the transfer of control or the temporary administration of the PPP or the Specific Purpose Vehicle (SPV) to the financiers and the guarantors that do not have direct corporate commitment. The goal is for the SPV to be able to search for its financial restructuring while at the same time have guaranteed the continuity of the service provision. This Law, in addition, includes articles that cover concepts referring to the General Meetings, its structural issues and also the temporary administration.

3 Differentiated Regime for Public Contracts (RDC)

Created to meet the demand of civil works, mobility and health system for the FIFA Soccer World Cup in 2014 and the Olympics Games in 2016, the RDC is an alternative to Law 8,666/1993, conferring a fast track for the Administration's bids.

The RDC is regulated by Law 12,642/2011 and applies to bids and contracts necessary for:

(iii) Olympics and Paralympics Games, that took place in Rio de Janeiro in 2016;

(iv) FIFA's Confederations and World Cup, held in 2013 and 2014, respectively;

(v) infrastructure and services works for the airports of the main cities hosting the events mentioned in items (i) and (ii) above;

(vi) actions within PAC (a federal program for accelerating economic growth);

(vii) infrastructure and engineering services for SUS (public health system);

(viii) infrastructure and engineering services for criminal and socio-educational institutions; and

(ix) actions of bodies and entities that are focused on science, technology and innovation.

It is not mandatory to hire through the RDC – the option must be made expressly in the bid invitation.

The main differences between the RDC and the bidding model regulated by Law 8,666/1993 are:

(i) inversion of qualification and judgment phases: while in the traditional model the offers are analyzed prior to the capacity of the bidders, these phases are reversed in the RDC;

(ii) confidentiality of the Administration's budget, to avoid anti-competitive acts;

(iii) new criteria of judgment, such as “best artistic content” and “highest economic revenue”; and

(iv) possibility of contracting more than one private party for executing the same object, to increase efficiency.

4 Investments Partnership Program- PPI

The Investments Partnership Program (PPI) was created by Law No. 13,334 in September 2016, with the aim of extending and streamlining the public-private interactions, for the performance of public infrastructure and other privatization projects.

The PPI is applicable to public projects that (i) are already in execution stage or that will be executed through partnership agreements signed by the Federal Public Administration; (ii) will be executed through the signing 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 investments opportunities and of job creation, technological and industrial development incentives, according to Brazil's 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 services agreements, stability and legal certainty, in addition to facilitating the State's role in regulation, along with the self-sufficiency of public regulatory entities.

The main guidelines of the Program are the stability of public policies, legality, quality, efficiency and transparency in the State's performance, and the guarantee of legal certainty, not only to the 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:

4.1 6th Round of Airports Concessions

The government has announced a new round of airport concessions. Three clusters of airports located in the North, South and Central regions of Brazil will be submitted to public bid. Please see below other relevant information regarding the project:

Cluster	Airports	Initial award	Planned investments
North	Manaus	BRL 43 mi	BRL 4 bi
	Porto Velho		
	Rio Branco		
	Boa Vista		
	Cruzeiro do Sul		
	Tabatinga		
	Tefé		
Central	Goiânia	BRL 49 mi	BRL 4,5 bi
	São Luís		
	Teresina		
	Palmas		
	Petrolina		
	Imperatriz		
South	Curitiba	BRL 516 mi	BRL 8,9 bi
	Navegantes		
	Londrina		
	Joinville		
	Bacacheri		
	Pelotas		
	Uruguaiana		
	Bagé		
	Foz do Iguaçu		

The bidding documents were issued and auction will be held on April 07, 2021.

4.2 Public consultation for the concession of CODESA

The Brazilian Agency of Waterway Transport (ANTAQ) has carried out the public consultation procedure for the privatization of "Companhia Docas do Espírito Santo - CODESA" (a state-owned company responsible for the management of the Port of Vitória and Barra do Riacho, in the State of Espírito Santo) and the concession for both public ports (Port of Vitória and Barra do Riacho).

ANTAQ is revising the contributions presented through the public consultation. The auction is expected to occur in the third quarter of 2021.

4.3 Leasing of Port areas

The Brazilian Agency of Waterway Transport (ANTAQ) is holding promoted public tender bids for the leasing of an area and infrastructure in the port of Itaqui (four port terminals that handles fuel cargo) and in Pelotas (one port terminal that handles timber cargo).

There are upcoming bid procedures involving port terminals in the following ports: ***(i)*** Maceió (both liquid and solid bulk cargo); ***(ii)*** Fortaleza (solid bulk cargo); ***(iii)*** Santos (liquid bulk cargo); ***(iv)*** Paranaguá (solid bulk cargo); ***(v)*** Santana (vegetable bulk cargo); ***(vi)*** Suape (solid bulk/ grains) and ***(vii)*** Vila do Conde (mineral bulk cargo).

4.4 Sale of power distribution companies controlled by Eletrobras

The government initiated a process to sell six power distribution companies, all of them subsidiaries of Eletrobras, a Brazilian public power company, which is also under a privatization process. The following companies were sold under public tender bids:

(i) *Companhia Energética do Piauí* – CEPISA (responsible for the power distribution services in the state of Piauí) was sold to Equatorial (a Brazilian public-held power company) on July 26, 2018;

(ii) *Companhia de Eletricidade do Acre* – Eletroacre (responsible for the power distribution services in the state of Acre) was sold to Energisa (a Brazilian public-held power company) on August 30, 2018;

(iii) *Centrais Elétricas de Rondônia* – CERON (responsible for the power distribution services in the state of Rondônia) was sold to Energisa (a Brazilian public-held power company) on August 30, 2018;

(iv) *Boa Vista Energia S.A.* (responsible for the power distribution services in the state of Roraima) was sold to a consortium formed by Oliveira Energia and Atem;

(v) *Amazonas Distribuidora de Energia S.A.* (responsible for the power distribution services in the state of Amazonas) was sold to a consortium formed by Oliveira Energia and Atem in December 2018;

(vi) *Companhia Energética de Alagoas* – CEAL (responsible for the power distribution services in the state of Alagoas) was sold to Equatorial Energia in December 2018; and

(vii) *Companhia Energética de Brasília* – CEB (responsible for the power distribution services in the Federal District) was sold to Neoenergia in December 2020.

5 Contractual and Early Extension, and Re-bid

Law No. 13,448 was published in June 2017, editing rules and general guidelines for the extension and re-bid of partnership contracts in highway, railroad and airport sectors. The rules are applicable to the projects qualified for this purpose according to the Investments Partnership Program (PPI).

This Law provides three instruments for the contracts: (i) contractual extension; (ii) early extension; and (iii) re-bid.

The contractual and early extension are applicable for highway and railroad sectors according to the following rules:

(i) Contractual, in cases of end of contractual term, as long as 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; it can only be used in cases where the contractual execution is between 50-90% of the original term;

a. for highway concessions, it is necessary that at least 80% of the due obligatory works were executed between the initial concession term and the date of the extension request;

b. for railroad concessions, it is necessary to prove compliance with the security and production goals defined in the contract for three years in a five-year interval or compliance with security goals defined in the contract in 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 should have a provision for extension. The extension shall be for a shorter or equal period to what is set out in these documents. Any party can request the term extension. However, it is necessary that the contract has not been extended before.

The extensions should be submitted to public consultation, opened to suggestions for at least 45 days. The parties should sign a contractual amendment with the new terms and new investment schedule. The amendment must be submitted to the Federal Audit Court (TCU) together with the studies and reports regarding the case.

5.1 Re-bid

This instrument is applicable for highway, railroad and airport sectors.

This mode constitutes an amicable extinction of the concession agreements in place, in cases where the concessionaire is unable to comply with the contractual or financial obligations originally undertaken. The parties shall sign a contractual amendment formalizing the details of the agreement.

In order to allow the re-bid process, the original concessionaire must present: (i) the justification and technical elements that demonstrate the necessity and grounds for the process, with proposals for solution of the difficulties faced; (ii) waiver of the term for correction of failures and infractions, in the 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 by means of arbitration or other private dispute resolution instruments, and eventually paid by the new concessionaire. On the other hand, the Granting Authority will be responsible for the indemnification to the lessors of the original concessionaire.

The Law prohibits that the following persons participate in the re-bid process: (i) concessionaire or SPE originally contracted for the execution of the partnership contract; (ii) SPE's shareholders holding at least 20% of the stock at any time before the re-bid process. This limitation extends to the participation of these persons in consortia, capital stock or new SPE participating in the new bid.

In all cases, the responsible entity should present a technical study to support the extension or re-bid, with proper identification of the object, reason and other relevant information, which shall be subject to public consultation opened to suggestions for at least 45 days.

6 State-owned Companies

Law No. 13,303, published in June 2016, introduced rules regarding the legal status of state-owned companies, mixed corporations and its subsidiaries, in the Federal, State and Municipal scopes.

Regulating the administration of these kind of companies, this Law intends to promote the efficiency of such administration, establishing several governing and transparency mechanisms, concerning all the state-owned companies that carry out economic activities of manufacturing or commercialization of goods and provision of services, in order to enhance the legal certainty and the actions of the regulatory public entities. In this way, the Law establishes that the state-owned companies must make public, annually, its goals regarding the 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 these institutions, for the bidding procedures and for the contracts. In addition, it provides for the obligation to be guided by the social function of the company, related to the fulfillment of the 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 stricter the criteria for the appointment of its managers, 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 an academic education consistent with the position he/she is appointed to, and who must not be ineligible. In addition, he/she 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 in the directorship 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, with 25% of them being 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.

7 Project Financing

The National Economic and Social Development Bank (BNDES) has had a major role in project financing transactions in Brazil during the last decades, and has been supported by the 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 reached out to by project owners in Brazil include the investment fund of the *Fundo de Garantia por Tempo de Serviço* - FI-FGTS (in English - Government Severance Indemnity Fund).

In recent years, mainly due to the aftermath of the "Car Wash operation" investigation, there has been a retraction of BNDES funds and companies have started to seek other forms of private financing which 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).

SÃO PAULO
RIO DE JANEIRO
BRASÍLIA
NEW YORK

demarest.com.br/en

LEGAL ASPECTS OF **DOING BUSINESS IN BRAZIL**

A SUMMARY

2023

DEMAREST

About Demarest

In April of 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.

Demarest has developed many long-term relationships with valuable clients, from multinational corporations to small and medium-sized businesses.

The philosophy of this success is simple. Demarest invests primarily in people, sponsoring graduate education programs in Brazil and worldwide, as well as internships at leading international law firms. Demarest's lawyers are accomplished professionals; they are individuals of integrity, committed to upholding the highest standards of excellence and ethics.

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.

Welcome to Demarest

Our Offices

São Paulo

Av. Pedroso de Morais, 1201
São Paulo SP 05419-001
T +55 11 3356 1800

Rio de Janeiro

Praia do Flamengo, 200 - 15th floor
Rio de Janeiro RJ 22210-901
T +55 21 3723 9800

Brasília

SAFS Quadra 2 Bloco 1 Lote 9
Edifício Alvoran
Brasília DF 70297-400
T +55 61 3243 1150

New York

375 Park Avenue 36th Floor
New York NY 10152
T +212 371 9191

www.demarest.com.br

Main Contact

Paulo Coelho da Rocha

+55 11 3356 1822
procha@demarest.com.br

Organized by

João Luis Ribeiro de Almeida

+55 21 3723 9804
jalmeida@demarest.com.br

Index

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 2022, agribusiness has shown continuous growth in its exports. External sales in 2022 increased 774.63% (IVE-Agro/Cepea) compared to 2000. The expectation for 2023 is that Brazilian agribusiness will continue to grow in comparison to 2022.

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, 2021 and December,2022, the export volumes (IVE-Agro/ Cepea) of almost all products considered in export indexes increased by 12%. The products that registered the largest increase in exports within the period mentioned above, considering volume, were corn (+112.6%); soybean oil (+58.1); unprocessed meat (+27.6%); ethanol (+26.3%); cellulose (+21.8%); soybean meal (+18.7%); orange juice (+10.3%); and chicken meat (+4.2%).

In regard to the prices of the main exported products, only the price of pork dropped (a 1.2% decrease), while all other products registered an increase, particularly coffee (55%); corn (39%); ethanol (31%); and soybean oil (24%).

In 2022 agribusiness exports nearly reached the historic USD 160 billion mark, which represented a share of approximately 47% of the country's total exports, and contributed decisively to a trade surplus of USD 60 billion.

Agribusiness is a strategic sector for the Brazilian economy, and it has contributed strongly to the macro-economic stability of the country. Despite the 4.22% decrease in the agribusiness share of the Brazilian Gross Domestic Product (GPD) in 2022, and that the sector's share in the total GPD reached 24.8% in 2022, lower than the 26.6% registered in 2021, agribusiness continues to represent an important portion of that metric (CNA/ 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, Livestock and Supply (MAPA)

The Ministry of Agriculture, Livestock, and Food Supply (*Ministério da Agricultura, Pecuária e Abastecimento* - 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 re-organization 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"). 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:

(i) 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;

(ii) clarifications regarding the required format of **electronic signatures** in CPR issuance;

(iii) 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;

(iv) 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;

(v) 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

(vi) 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.

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" (CPRF) 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 CPRF includes the description of the product and the respective amount negotiated; the difference lies in the settlement method. The CPRF 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.

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 - new regulation by the Brazilian Securities and Exchange Commission (CVM) that regulates CRA - was issued on August 1, 2018. Before such regulation was issued, financing through CRA had been under the umbrella of CVM Regulation 414, applicable to CRI. Therefore, it will certainly guarantee greater effectiveness and legal certainty for such financing method.

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.

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 by-laws, 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, and is expected to enter into force on October 02, 2023.

Therefore, the regulation of FIAGRO will be included within the scope of CVM Resolution 175, and one of its annexes is expected to regulate this fund category in a manner that is specific and no longer temporary.

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.

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 legal system of civil aviation activity. Among the above-mentioned 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.

Provisional Measure 1089/21 ("MP"), which proposes a reformulation of civil aviation legislation, is currently under discussion at the Federal Senate, although it is already generating effects. Among other matters, the MP eliminates the difference between public air services (regular commercial transport) and private services (without compensation and for the benefit of the operator), in addition to altering values and practices that are subject to fees imposed by the Brazilian National Civil Aviation Agency ("ANAC") and facilitates/simplifies the construction of new airports and the international sale of local aircrafts.

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. The agency initiated operations in 2006, replacing the Civil Aviation Department (DAC). ANAC is an autonomous federal body linked to the Ministry of Infrastructure. The Agency 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, and to provide air services at Brazilian airports by issuing a Certificate of Approval of Air Transport Company (CHETA) and 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 authorizing flight times for all airlines flying in and/or from Brazil, through issuance of an approval (HOTRAN).

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 involved in air activities.

The Agency also acts as an administrative dispute settlement body for air carriers and airport operators. The entire public airport infrastructure is 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 (i.e., those whose operations have not been transferred to private parties by way of concessions), including safety, operational conditions and infrastructure, all regulated by ANAC.

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.

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 the United Kingdom, The Netherlands and Luxembourg.

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 for Aircraft Maintenance and Repair

In order to improve the aviation industry in Brazil, the Brazilian Customs Code has provided some important tax exemptions for the import of spare parts for aircraft production and repair.

Law No. 12,249/2010 established the Special Tax Incentive System for the Brazilian Aircraft Industry (RETAERO), which suspends the following taxes on the sale of inputs in the Brazilian market or import of goods:

(i) PIS and COFINS taxes on the seller's income, when the buyer is a legal entity beneficiary of RETAERO.

(ii) PIS-Import and COFINS-Import taxes, when the importer is a legal entity beneficiary of this system;

(iii) IPI on the shipment of goods from the manufacturing or similar establishment when the buyer in the domestic market is a legal entity beneficiary of the system.

(iv) IPI on imports, when the importer is a manufacturing establishment owned by a legal entity beneficiary of the system. Related technology and technical assistance services may also benefit from the suspension of PIS, COFINS, PIS-Import and COFINS-Import taxes.

On January 1, 2013, Decree No. 7,923/2013 entered into force, amending certain parts of the wording of Law No. 12,149/2010. The new wording defined the recipient of the special system as the legal person that manufactures parts, tools, components, equipment, systems, subsystems, inputs and raw materials, or provides services of basic industrial technology, development and technological innovation, technical assistance and technology transfer to be employed in the maintenance, conservation, modernization, repair, review, conversion and manufacturing of products classified under heading 88.02 of the Mercosur Common Nomenclature (NCM). Before the amendment, only aircrafts classified under heading 88.02 of NCM benefited from the Special System.

The suspension of taxes under RETAERO is converted into the application of a zero rate of such taxes, provided that the goods are applied on the production or maintenance of aircrafts.

Companies can qualify for RETAERO for up to five (5) years since June 14, 2010. Benefits under the system, in turn, can be enjoyed on acquisitions and imports within a five-year period of the date of qualification for RETAERO.

6 Other tax benefits

Law No. 14,355/22 establishes a reduced Withholding Income Tax ("WHT") rate over payments made by regular international air passenger and cargo transportation companies for the leasing of aircrafts or aircraft engines. The reduced WHT rates are as follows:

(i) 0% in 2023;

(ii) 1% in 2024;

(iii) 2% in 2025; and

(iv) 3% in 2026.

What is more, Law nº 14,592/23 established temporary PIS and COFINS exemption over revenues obtained from the regular air transportation of passengers until December 31, 2026. Remodeling services for passengers and cargo transport

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 7, 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 2, 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.

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 amongst 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 byproducts 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 byproducts 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 advisors 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 nonresident 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 nonresidents 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 cancelled 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) extra-judicial 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[1]. 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 there is a tax reform underway, which can potentially change several aspects of tax law in Brazil.

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 (twenty thousand reais) per month.

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

[1] Currently, the Brazilian Congress is analyzing proposals for a tax reform in order to simplify the tax system, although the discussions on this topic have been delayed in the Brazilian Congress due to the crisis resulting from the Covid-19 pandemic. Currently, following the 2022 presidential elections and subsequent change of government, the tax reform has become one of the priority projects.

(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 78,000,000.00 (seventy eighty million reais) 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 pre-payment 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).

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 byproducts, 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).

In March 2023, federal authorities introduced an exceptional export tax for petroleum crude oils, which will be levied until June 30, 2023.

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, 18% on products imported, sold, or transferred within the state. Other rates may also apply depending on the specific product, service, or state in which the transaction occurs. Rates may also vary for interstate transactions: imported products or products with an imported content greater to 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. Rates vary from 2% to 5%, depending on the municipality.

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.

CAPITAL MARKETS

1 Publicly Traded Companies

1.1 General Overview

Publicly traded 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), publicly traded 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 other things, 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 12,431/2011, non-shareholder individuals can be appointed as directors. In addition, the chairman of the board and the chief executive officer (CEO) of the publicly traded 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 3 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 publicly traded 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 publicly traded 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 publicly traded 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 publicly traded 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 publicly traded companies on an organized market that do not adopt plural voting by a company that adopts plural voting; and (ii) spin-off of a publicly traded 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

Publicly traded 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 Shelf-Document Report (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 related 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 a Shelf-Document Report (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 Shelf-Document Report, 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 Shelf-Document Report 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 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 publicly traded company, resulting in increases or decreases of interest of multiples of 5%, triggers the disclosure obligation 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 publicly traded 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 publicly traded company from the organized securities market;

(ii) as a result of disposal of the controlling interest of a publicly held 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.

a. Delisting procedure

The procedure for delisting a publicly traded 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.

b. 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 publicly traded 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.

c. Other offerings

An OPA is also mandatory should the controlling shareholder of a publicly traded 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 6 months, acquisition reduces liquidity of the shares.

1.3.3 Tender offers – bylaws

Certain bylaws of publicly traded 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, advisors 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 publicly traded company, the issuer must agree to:

(i) ensure that shares of the issuer representing at least 25% of its total capital are effectively available for trading (free float);

(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 publicly traded company, an issuer must agree to:

a. comply with all of the listing requirements for Level 1 corporations;

b. 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;

c. 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 deregistration 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;

d. 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;

e. prepare annual financial statements in English, including cash flow statements, in accordance with international accounting standards;

f. 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

g. 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 set forth 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 publicly traded 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 advisors). The Brazilian legislation prohibits the trading of securities based on privileged information[2] 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 publicly traded 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.

[2] 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 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 (fifty million reais); or

(ii) double the value 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 1 to 5 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) searching undetermined investors, by means of any persons, for certain securities;

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

(iv) trading conducted 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 in which: (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 relevant 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, with settlement 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, leaving analysis to 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 (ten million reais) 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 instated 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 (one million reais), 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 Shelf-Document 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., OPA 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), OPA 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

In 2022, the Brazilian Federal Government changed the rules on oversight fees that apply to public offerings of securities in Brazil, meaning that 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) has 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 aaa 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 shall 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 publicly traded 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 4 fiscal years: (a) has carried out public offerings subject to the ordinary registration system amounting to at least BRL 500,0 million of the respective fixed income security to be offered; or (b) has carried out at least 2 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 40,0 million in the fiscal year prior to that of the offering, and cannot be a publicly traded 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 10,0 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 publicly traded 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 provides for 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., relevant 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 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) 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

There are certain restrictions and mandatory disclosure for analysis reports, including:

(i) being written in clear, objective language, differentiating interpretations from facts;

(ii) naming a primary accredited analyst to prepare the report;

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

(iv) disclosing any potential conflict of interests by any member of the analysis team.

(v) 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, pursuant 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 has been recently published as the new regulatory framework for investment funds and will become effective as of October 2023 (certain aspects of the Resolution will become effective in the subsequent months). Once effective, this new rule will consolidate the existing 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 are currently 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 language of the rule, for negative equity –, noting that administrators and managers, in 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, as of April 2024, 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 related 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. Once such regulation becomes effective, as a general 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 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. 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 set forth 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 becomes effective, the qualification as "open" or "closed" shall be 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 related 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 respectively 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 related 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)

CVM Regulation 555 must remain as general rule of investment funds until CVM Resolution 175 becomes effective, when the investment funds previously regulated by CVM Regulation 555 will be generally referred to 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.

4.2.2 Private Equity Investment Fund

CVM Regulation 578 currently regulates private equity investment funds in Brazil (in Portuguese, *Fundos de Investimento em Participações,* "FIP"). Once CVM Resolution 175 becomes effective, the terms under CVM Regulation 578 will be incorporated into a new annex to such rule, and the FIPs will become one of the categories of investment funds regulated by CVM Resolution 175.

Under CVM Regulation 578, 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 publicly traded 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.

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 Regulation 472 are the main rules currently applicable to the incorporation and operation of FIIs. Once CVM Resolution 175 becomes effective, the terms under CVM Regulation 472 will be incorporated in a new annex to such rule, and the FIIs will become 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 related 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.

CVM Regulation 472 allows tender offers to be voluntarily launched by interested aiming at the acquisition of all or part of the quotas issued by publicly traded FII, provided that the offeror complies with specific rules established by the entity that manages organized markets in which the FII's quotas are traded.

4.2.4 Receivables Investment Funds

CVM Regulation 356 must remain as the applicable rule to Receivables Investment Funds (in Portuguese, *Fundos de Investimento em Direitos Creditórios*, "FIDC") until CVM Resolution 175 becomes effective.

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.

Only Qualified Investors are authorized to subscribe or acquire shares issued by FIDCs (such rule will change with CVM Resolution 175, which allows the general public to invest in certain FIDCs).

Additionally, the CVM currently provides for a subtype of FIDC, called a Non-Standardized Receivables Investment Funds (in Portuguese, *Fundos de Investimento em Direitos Creditórios Não Padronizados,* "FIDC-NP"), available only for investment by Professional Investors and regulated by CVM Regulation 444.

The FIDC-NP is authorized to invest in certain receivables which increase the risk assumed by investors, including the following examples of receivables: (i) credits due with pending payments, (ii) credits due from public entities, (iii) credits arising from ongoing lawsuits, (iv) receivables whose existence or assignment to the fund may be challenged, (v) credits originated by companies under bankruptcy or similar proceedings, (vi) credits with unknown face value and not yet performed, among others.

Once CVM Resolution 175 becomes effective, there will no longer be a division between FIDC and FIDC-NP. 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.

4.2.5 Agribusiness Investment Funds

Recently, a new category of investment fund aiming to boost investments in the agribusiness sector was created, by means of 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 related to the agribusiness sectors, and allowing FIAGROs to be incorporated either as closed- or open-end funds, which will foster complex investment structures.

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 related 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 regulation regarding the FIAGRO is issued, the CVM has initially opted to allow 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 national 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:

(i) investment project securities, including typical securities from securitization transactions:
   ( ) certificates of real estate receivables; and
   (a) shares issued by FIDCs incorporated as closed-end condominiums, which acquire receivables from non-financial institutions;
(ii) 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
(iii) 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 related to the 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 related to agribusiness activities. Note that Law 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.

Recently, 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 related to 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 occupies 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 publicly traded 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 has its grounding in article 170, item IV of the Brazilian Federal Constitution, establishing "free competition" as one of the guiding principles of Brazilian economic law.

Enforcement of the Brazilian Competition Law is centered on the Brazilian Competition Defense System ("SBDC"), which is divided into the Administrative Council for Economic Defense ("CADE"), and the Economy's Secretariat for Economic Monitoring ("SEAE").

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 the 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, in addition to a General Superintendence (the "GS"), composed of multiple units led by a chief superintendent[3].

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.

The Brazilian Competition Law has adopted a pre-merger review regime under which the parties to a transaction must comply to a standstill obligation, prohibiting closing before a final clearance decision is issued by the GS and confirmed, when applicable, by the Tribunal under discussion[4].

[3] 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.

[4] It is worth emphasizing that the 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.

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[5]. To date, the highest gun-jumping fine ever applied by CADE amounted to BRL 60 million[6], 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[7]. 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. We define them as follows:

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

(ii) 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).

(iii) Revenues: at least one of the groups involved in the transaction or agreement must have had gross revenue in Brazil (including export sales) in excess of BRL 750 million in the year prior to the transaction, in parallel with at least another group having had registered gross revenues (including export sales) in Brazil in excess of BRL 75 million in the year prior to the transaction[8].

---

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

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

[7] 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.

[8] According to CADE's Resolution No. 33/2022, "group of companies" shall be considered as: i) 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 its capital stock or voting capital. For investment funds, Resolution no.33, sets forth that "members of the same economic group" should be understood as, 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[9]; (ii) there is a common undertaking for the exploitation of a business activity[10]; (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.

[9] 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.

[10] 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[11], the 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 Antitrust 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 Antitrust 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[12], 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 service13;
(iii) to increase profits on a discretionary basis; or
(iv) to abuse a dominant position14.

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;

---

[11] 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.

[12] 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).

[13] 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.

[14] 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[15], 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[16].

The decision issued by the Tribunal is final and is not challengeable by a higher administrative court or authority, and it may only be annulled or modified by 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;

---

[15] Provided that a judicial warrant is granted.

[16] 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[17], 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.

[17] 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 when the case is still under the General Superintendence review, the negotiation deadline will be established at the discretion of the authority. Alternatively, if a proposal is made when the case has already been brought to the Tribunal for a final decision, then 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 acknowledgement 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 Economy's Secretariat for Economic Monitoring ("SEAE")

The Brazilian Competition Defense System is divided into the Administrative Council for Economic Defense ("CADE"), and the Ministry of Economy'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.

CONTRACT LAW

1 INTRODUCTION

The Brazilian Civil Code, in force since January 11, 2003, provides for the general principles of Contract Law and rules regarding most legal agreements, e.g., distribution, agency, lease, free lease; whereas the remaining contractual types are either governed by specific statutes (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 statute) before its execution in order to ascertain if it meets the formal and substantial requirements set forth by 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. That being the 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, i.e., 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. Indeed, 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 place 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 shall 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 the case that 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 in the Brazilian 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 shall 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 relevant 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 rule 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. In view of this, 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.

6 TERMINATION

It is extremely important that contractual relationships be carefully analyzed before carrying out 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 such 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 a 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 "eventual intent" has been frequently applied to the detriment of the original concept. "Eventual 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, 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. Case law has demonstrated that the job 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 consists of 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.

(iv) 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 employing fraud to **exempt oneself** from paying taxes, partially or fully, as well as failing to withhold taxes or social contributions owed by the legal deadline, are also punishable from six months to two years of incarceration.

It is worth noting that the Federal Supreme Court 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 may 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 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 related to tax crimes, the police authority might 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 set forth in Article 5, Item X, of the Federal Constitution.

In the current Brazilian scenario, it appears that, many times, the authorities attribute to taxpayers the practice of tax crimes in everyday situations of mere non-compliance with the tax legislation, in which there is no fraud, intent or any element that justifies criminalization.

In a decision on December 18, 2019, most of the ministers of the Supreme Court decided to consider a crime punishable by imprisonment from 6 months to 2 years, plus 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 related to the circulation of goods and on the provision of interstate, intercity and communication services.

According to recent judgements (which are not definitive because it is possible for interested parties to appeal), the non-payment of the tax will be subject to criminalization as long as there is reiteration 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 Federal Revenue, the Central Bank, the Securities Commission and the Financial Intelligence Unit (former COAF), which has increased the chances of a criminal tax issue in the daily life of Brazilian companies.

3 Labor-Related Crimes and Consequential Liability

Brazilian legislation sets forth ample 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 sets forth as a crime, in Article 203, the frustration, through fraud or violation, of a labor right assured by existing labor laws, punishable with imprisonment from 1 (one) to 3 (three) years.

Within the context of subjective responsibility, the manager responsible for failure to comply with such labor laws may be held criminally liable for the offense resulting from lack of compliance.

Although not mentioned in the chapter of the Brazilian Criminal Code that sets forth crimes against labor organization, a few other offenses related to labor issues are also worth mentioning.

The crime of diminishing an employee to a condition similar to a slave by submitting him/her to forced labor, exhausting working hours, demeaning labor conditions, or restricting his/her freedom in any way through debt contracted with the employer, as set forth in Article 149 of the Brazilian Criminal Code, is punishable by incarceration of two to eight years, plus a fine to be defined by the court.

Exposing one's life or health to direct and imminent danger is also considered a crime, as set forth in Article 132 of the Brazilian Criminal Code, punishable by incarceration of three months to one year, if a greater injury doesn't 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 may be held liable for bodily injury or even involuntary manslaughter.

Regarding bodily injury, an offense provided for under Article 129 of the Brazilian Criminal Code, the applicable penalty is incarceration from three months to one year for unintentional injuries.

In the event of involuntary manslaughter, the applicable penalty is incarceration from one to three years, which may be extended by a third if:

(i) the crime occurs due to failure to comply with professional technical regulation;

(ii) the agent fails to provide immediate aid to the victim or doesn't seek to mitigate the consequences of his/her act; or

(iii) flees to avoid being caught in the act.

4 Bankruptcy Law Violations and Consequential Criminal Liability

Law 11,101/2005 (Bankruptcy Law), which regulates bankruptcy and judicial and extra-judicial restructuring in Brazil, provides for crimes regarding these matters in articles 168 to 178, for which the applicable penalties range from incarceration, from two to six years, to detention, from one to two years, plus a fine to be defined by the court.

Article 179 specifically stipulates that the company's directors, managers, officers, councilors and even its trustee shall be held equivalent to the debtor or bankrupt party for criminal purposes.

Under Article 180, the court order that grants judicial or extra-judicial restructuring is a condition precedent to criminal liability where the aforementioned crimes are concerned.

5 Crimes Against the Environment and Consequential Criminal Liability

As already mentioned before, criminal liability in Brazil is, as a rule, individual and personal. The Federal Constitution, however, provides for exceptions to this rule, allowing corporate criminal liability.

The 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 may be held criminal liability if the environmental crime is committed (i) by a decision of its legal or contractual representative or his collegial body and (ii) in the interest or benefit of the entity. In addition, corporate liability does not exclude the criminal liability of individuals, authors, co-authors or participants of the crime.

Law 9,605/1998, the Federal Law concerning crimes against the environment, provides for offenses committed against 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 comprised from said pollution.

Moreover, Decree No. 6,514/2008 provides for administrative infractions against the environment and sets forth the administrative proceeding for investigation of such infractions as well as applicable penalties.

Lack of proper licensing is also considered a serious offense, which may 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 such licenses are also 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 with the environmental damage but also to any party cognizant of the criminal conduct and negligent in impeding such offense from being committed, despite being able to do so. The Brazilian Superior Court of Justice ("STJ") holds the position that corporate criminal liability was only 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 corporate criminal liability independently from individual criminal liability. The Justices have determined that the Constitution does not require the criminal liability of legal entities for environmental crimes to the simultaneous prosecution of individuals theoretically responsible within the company.

Since then, both STF and 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 may be held criminally liable for a crime against the environment notwithstanding the possibility of personally penalizing the individuals involved with such offense.

In situations in which the existence of a legal entity becomes an obstacle to the recovery of damages caused to the environment, Law 9,605/1998, in Article 4, provides for piercing corporate veils. Where penalties are concerned, individuals may 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 may replace a penalty that deprives freedom, provided that the conditions set forth in Article 7 of Law 9,605/1998 are met.

Legal entities, in compliance with the dispositions set forth 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, banishment from public-private partnerships, as well as any government subsidies or grants) and rendering services to a community.

6 Consumer-relations Crimes and Consequential 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, among other things, for 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 certain aspects of the commercialized products/services, either by omitting or rendering false or incorrect information on labels, casings, packages or advertising, thus misleading the consumer.

The applicable penalties for such offenses vary from incarceration 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).

Law 8,137/1990, in Article 7, also sets forth crimes against consumer relations, punishable by incarceration from two to five years, or a fine.

7 Crimes Related to Economic Laws and Consequential Criminal Liability.

Law 8,137/1990 provides, in its Article 4, for the following conducts considered as crime 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.

Law 12,529/2011 also provides for administrative infractions against the economic order in its Article 36, establishing that the acts under any circumstance, which have as object or may have the following effects shall be considered violations to the economic order, regardless of fault:

(i) to limit, restrain or in any way injure 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 shall 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 may face a fine, as will its managers, if directly or indirectly responsible for the offense. Other applicable sanctions are set forth in Article 37 and may be imposed cumulatively with the previously mentioned ones or individually.

In addition to the pecuniary fines above, and considering the gravity of the violation, the following may 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, from one to three consecutive weeks;

(ii) ineligibility for official financing or to participate in bidding processes involving purchases, sales, 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) imposing compulsory licensing of patents held by the violator;

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

Law 12,529/2011 also provides for a deferral (leniency) program, set forth in Articles 86 and 87, according to which, where crimes against the economic order, provided for under Law 8,137/1990, are concerned, 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 to antitrust offences takes place both in the administrative and criminal spheres.

In the administrative sphere, the occurrence of a violation of the economic order takes place regardless of its agent's malicious intent, even if harmful effects are merely potential and have not yet materialized. 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 may 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 Consequential Criminal Liability

Considered as the Brazilian “white collar crime legal system”, Law 7,492/1986 provides for crimes against the financial system and crimes damaging 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 a special substantiality.

The white-collar crime law thus addresses harmful or dangerous acts that attack goods or interests affiliated with the state's financial policy, which is to say, 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 of 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 may also encompass those that take on or manage insurance, exchanges, consortiums, 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 set forth 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 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, there may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

9 Money Laundering Crimes and Consequential Criminal Liability

Law 9,613/1998, known as the “money laundering law”, lists transactions defined as money-laundering-related crimes. This law was updated in 2012 by the Law 12,683/2012.

Money laundering consists of activities or operations seeking to provide a legal appearance 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.

The crime of money laundering is considered worldwide as a three-stage process, 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 its criminal source and are "washed" by being placed in the legit system. Money launders 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 may 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, what is intended through punishment of money laundering is 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 a series of legal assets that may be included within the protection of the social order and society itself.

The Federal Money Laundering Law also created the Council for the Control of Financial Activities ("COAF"), which has the purpose of governing and applying administrative penalties, as well as examining and identifying activities suspected to be illegal, as set forth 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 notify public authorities whenever they become aware of suspicious transactions, such as transactions with high values and fractional deposits.

In August of 2019, the Brazilian federal government issued Provisional Measure No. 893, which changed the name of COAF to Financial Intelligence Unit (UFI), moving the structure to the Central Bank.

In this way, banks, jewelers, insurance companies and art auctioneers, for example, have a legal obligation to collaborate with the authorities, reporting acts of possible concealment of illicit goods and values to the UFI.

It should be noted that the UFI has an administrative structure, and cannot request the launch of a police investigation, and it cannot promote measures such as breach of bank secrecy.

UFI is allowed to, for example:

(i) receive and organize data, and prepare Financial Intelligence Reports, to contribute to the authorities in the investigation of crimes.

(ii) elaborate rules aimed at certain sectors 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 to entities and persons who fail to comply with the legal rules on preventing money laundering. Banks, which are regulated by the Central Bank, or Insurance companies, which are regulated by 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 may be punished with incarceration from three to ten years, plus a 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 conduct 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 seals can be authorized 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 intimacy, as set forth in Article 5, item X, of the Constitution.

In addition, due to the Federal Law No. 13.964/2019, investigations of money laundering may use undercover police officers, and controlled action techniques.

In this sense, police officers will be able to infiltrate on 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 Consequential Criminal Liability

Regarding crimes against the social security system, two specific offenses are worthy of mention: 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 consists of 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 generating event.

In terms of undue appropriation of social-security contributions, Article 168-A of the Brazilian Criminal Code states that it consists of a 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 incarceration 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 the 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.

7 Crimes Against Intellectual Property Rights and Unfair Competition and Consequential Criminal Liability

Law 9,279/1996, informally known as "industrial property law", governs the rights and obligations of industrial property. Protection of rights related to 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 sets forth crimes against intellectual and industrial property rights, in Articles 183 to 194.

Applicable punishment for such crimes varies 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 alteration of a trademark, or

(iii) manufacturing products whose application for industrial design has been approved; and

(iv) 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 may be increased from a third to a half of the originally imposed punishment.

Law 9,279/1996 also provides for crimes related to unfair competition, set forth under Article 195. Unfair competition occurs under questionable means through the use of incorrect and harmful methods, seeking 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 in the development of activities involving the creation and use of intellectual work.

Some of the conduct listed as unfair competition includes:

(i) unauthorized use of a third party's corporate name or confidential information;

(ii) diversion of clientele;

(iii) deliberately misleading consumers; and

(iv) disclosure or employment of fraudulent means or false statements concerning a competitor with the intention of obtaining a competitive advantage;

(v) among other types of fraud.

All practices related to 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 related to unfair competition are punishable by incarceration 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 harmed party may 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 partial or total reproduction of copyrighted material, without the author's specific and express authorization, with an economic purpose, constitutes a crime punishable by incarceration 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.

8 Corruption Related Crimes and Consequential 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 consists of offering or promising an undue advantage to a public official, to lead him to perform, omit or delay the performance of an act inherent to his position. The applicable penalty is imprisonment from two to twelve years, plus a fine to be defined by the court.

Passive corruption consists of soliciting or receiving for oneself or another party, directly or indirectly, even if not holding the position or prior to holding it, however 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 consists of promising, offering or giving directly or indirectly an undue advantage to a foreign public official, or a third party, to lead him to perform, omit or delay the performance of an act inherent to his position and related 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 consists of demanding for oneself or another party directly or indirectly, even if not holding the position or prior to holding it, however by reason of it, an undue advantage. The applicable punishment was changed by the Law No. 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 No. 3,678/2000, 4,410/2002, 5,015/2004 and 5,687/2006, all of which intend to ensure that no public servant is corrupted in their relationship with private entities.

Decree No. 3,678/2000 resolves issues regarding offenses related to the corruption of foreign public officials and the measures that must be adopted by the signatory states.

Decree No. 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 No. 5,015/2004 has the main purpose of reiterating the criminalization of corruption, as well as establishing measures against such practices and the liability of the legal persons involved.

Decree No. 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 public international organization employees.

Moreover, the Law 12,846/2013 provides for the strict liability of legal entities, in an administrative and civil sphere, for the practice of 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 temporarily. Likewise, foreign legal entities with registered office, branch or representation in the Brazilian territory could be held liable for any of the offences provided by law.

It should be noted that, despite the absence of legal provision holding legal entities criminally liable, this act implicates severe administrative and civil/judicial penalties:

Within the administrative sphere, companies held liable for wrongful acts will receive 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.

In 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.

Such measures, both administrative and civil, also provides 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 harmful act, besides the possible criminal liability, which in accordance with subjective culpability can only be held criminally liable in case of willful conducts.

In contrast to the severe penalties above mentioned, the legal text allows the application of a more lenient sentence for companies with effective compliance programs, as well as the reduction up to two thirds of the fine for companies that cooperate with the investigations and sign a leniency agreement.

9 Securities Law Violations and Consequential Criminal Liability

Law 6,385/1976, which regulates the stock market and established the Brazilian Securities and Exchange Commission (CVM), provides, in its Articles from 27-C to 27-F, for crimes against the stock market.

As set forth under such provisions, the practices of 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 consists of performing simulated or embezzlement-related operations with the purpose of artificially altering the securities market functioning structure, in order to obtain undue advantage or profit, or to cause damage to third parties. It constitutes 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 consists of using relevant confidential information that is not, and should not, be made available to the general public, due to its potential to provide undue advantage in negotiations. This crime is punishable with 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 consists of holding any office or acting on the securities market as an institution, individual, or collective manager, independent auditor, or securities analyst, without proper authorization or registration at the appropriate administrative authorities, as required by law or regulation. This offense is punishable with imprisonment from six months to two years, plus a fine to be set by the court.

Concerning criminal liability, in observance of subjective responsibility, only individuals may be held liable for the aforementioned offenses.

Specifically, regarding insider trading, it must be noted 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.

10 Criminal Organizations

The Criminal Organizations and Special Techniques of Investigation Law (Law 12,850/2013) came into force in 2013, establishing the crime of criminal organization, considered when four or more people come together in an organized way and with division of activities to take any kind of advantage practicing criminal offenses.

The major changes brought by the new Law are related to the forms about proving the existence of a criminal organization. The main changes are described below.

First, there is the institution of rewarded collaboration ("*colaboração premiada*"). Article 4 of Law 12,850/2013 sets out the possibility of one of defendants to have his sentence reduced by one to two thirds in the case 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, avoiding the assignment of the benefit in the event that it is not achieved.

Law 12,850/2013 also provides, in its Article 8, the institute of the controlled action. Police authorities delay immediate arrests being made for a later time, which will help agents to gather a larger amount of evidence, facilitating the prosecution and the punishment of a criminal act committed by a Criminal Organization.

Lastly, Article 3, item VII of the mentioned Law brings to light the figure of the undercover police agent. It is a State agent who infiltrates the criminal organization in order to gather as much evidence as possible related to the crimes committed.

11 Larceny and other frauds

The Brazilian Penal Code provides for crimes committed with the use of fraudulent means.

Larceny by trick, provided for in article 171 of the Penal Code, is the classic example and, in its standard format, follows as a model for other similar figures, such as those provided for in articles 172 to 179 of the Penal Code.

Larceny by trick consists of obtaining an illicit advantage to the detriment of someone else, inducing 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 agent to induce or keep the victim in error, with the purpose of obtaining an illicit patrimonial advantage. Punishment for this offense is imprisonment from 1 to 5 years, plus a fine to be defined by the court.

The same penalty is applied to those who practice the following acts: disposition of someone else's property, fraudulent sale, defraud of pledge, fraud in receipt of insurance or indemnity and fraud in the check payments.

In 2021, a new law came into force, which added a new clause to the Brazilian Penal Code, aimed at increasing the penalty of fraud whenever committed through electronic means: imprisonment, from four to eight years, and 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 similarly deceptive means). Depending on the severeness of the outcome, this penalty can be increased by 1/3 to 2/3 (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 institute of popular economy, social assistance or charity.

In Brazil, many legal entities are victims of the fraud crime, committed by employees linked to sensitive areas of the company, such as the Financial Department, Accounts Payable and Human Resources, for example.

In addition, banks and large business conglomerates find themselves indirectly linked to frauds practiced against their clients, requiring these people to register the facts before the police authority formalize an internal investigation, or for simple control in compliance.

Until Federal Law No 13.964/19, larceny by trick was considered a public criminal lawsuit that did not required any request of 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 offer a criminal complaint against the person under investigation, regardless of the victim's wishes.

Federal Law No. 13,964/19, however, added paragraph 5 to article 171 of the Penal 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 authorities the desire to criminally pursue the perpetrator of that crime.

If the victim is the Public Administration, direct or indirectly, or a child, an adolescent, a person with a mental disability, incapacitated, 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 Penal Code also establishes the crime of issuing a simulated duplicate, which consists of issuing 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 2 to 4 years, plus a fine to be defined by the court (article 172 of the Brazilian Penal Code).

There is also the provision for the crime of abuse of the incapacitated (art. 173 of the Penal Code), inducement to the practice of gambling, betting or speculation (Article 174 of the Penal Code), and fraud in commerce, which consists of selling as perfect of a false or deteriorated commodity, or to deliver one commodity in place of another (Article 175 of the Penal Code).

Article 177 of the Brazilian Penal Code provides for the crime of fraud and abuse in the constitution or management of a business corporation.

This crime consists of promoting the constitution of a business corporation by making, in prospectus or in communication to the public or the assembly, false communication about the constitution of the company, or fraudulently hiding facts related to it.

The punishment for this type of offense is imprisonment from 1 to 4 years, plus fine (if the fact does not constitute a crime against the popular economy).

According to the article 177 of the Brazilian Penal Code, the same penalty shall be applied if the crime does not constitute 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 the assembly, makes a false statement about the economic conditions of the company, or hides fraudulently, in whole or in part, a fact related to them; II - to the director, manager or supervisor who, by any means, promotes a false listing of shares or other securities of the company; III - to the director or manager who borrows from society or uses, for his own benefit or that of a third party, the assets or social assets, 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 as pledge or surety the shares of the company itself; VI - the director or manager who, in the absence of a balance sheet, in disagreement with it, or by means of a false balance sheet, distributes fictitious profits or dividends; VII - the director, the manager or the supervisor who, through an intermediary, or colluding with a shareholder, obtains the approval of an account or opinion; VIII - to the liquidator, in the cases of nos. I, II, III, IV, V and VII; IX - to the representative of the foreign corporation, authorized to operate in the country, which performs the acts mentioned in nos. I and II, or give false information to the Government."

Article 178 of the Penal Code provides for the crime of irregular issuance of deposit or warrant. The punishment for this type of offense is imprisonment from 1 to 4 years, plus fine.

Finally, article 179 of the Penal Code provides for the crime of execution fraud, which consists of the alienation, deviation, destruction or damage of assets, or simulation of debts. The punishment for this crime is imprisonment from 6 months to 2 years, plus fine.

12 Cryptocurrency Regulation and consequent Criminal Liability

On December 21, 2022, the President of Brazil sanctioned Law No. 14,478/2022, which provides for the cryptocurrency regulation in Brazil and will enter into force 180 days after its publication, in other words, at mid-2023.

From the criminal perspective, this new Law will add a new type of larceny by trick to the Penal Code, which will apply 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 leading or keeping someone in error, through artifice, ruse, or any other fraudulent means. The penalty will be imprisonment of four to eight years, together with a fine.

The Law will also amend the anti-money laundering law, by include crimes carried out through the use of virtual assets in the list of crimes whose penalty can be increased by 1/3 to 2/3 if it is a repeat offense.

13 Final Remarks

It is important to mention that Brazilian Criminal Law sets forth some legal benefits, which can be applicable to the above-mentioned crimes, depending on their penalties. The most common ones are: criminal settlement, conditioned suspension of proceedings and non-prosecution agreement.

13.1 Criminal Settlement

Crimes in which the maximum penalty does not exceed 2 years are considered a misdemeanor by article 61 of the Federal Law No. 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 consists of the immediate application of a penalty of restriction of right (e.g., monetary 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 implicate 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.

13.2 Conditioned suspension of the lawsuit

Crimes in which the minimum penalty is equal or does not exceed 1 year entitles the offender to the benefit of entering into a deferred prosecution agreement (suspension of the criminal lawsuit) with the Public Prosecutor's Office.

The situations that authorize the suspension of the lawsuit are provided for in article 89 of Law No. 9.099/95.

The proposal of suspension of the lawsuit consists of a probation period from 2 (two) to 4 (four) years of which the defendant may have to observe the following conditions:

- Compensation for damages, unless it is not possible to do so;
- Prohibition from visiting certain places (such as night clubs);
- Prohibition from traveling away from the city of domicile without a court order authorizing the trip;
- Monthly visits to the criminal court to inform and justify his activities.

When the probation period comes to an end without any violation of the established conditions, the judge closes the case.

13.3 Non-prosecution agreement

The recent edition of the Federal Law No. 13.964/2019 introduced the article 28-A to the Brazilian Penal Code, which allows the execution of a non-prosecution agreement.

According to the new article, the Prosecution might not file a criminal complaint against the person investigated in certain crimes committed without violence, and with a minimum penalty of less than 4 (four) years, upon the agreement to comply with certain measures.

The agreement to be signed between the Public Prosecutor, the investigated person and his 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: confession of the crime, compensation for the damages, unless it is impossible; waiving certain assets related to the offense; provision of services to the community; and payment of a fine.

The judge may return the case to the Public Prosecutor's Office if he considers the conditions proposed to the investigated to be inadequate, insufficient, or abusive, and may also refuse to ratify the agreement, returning the case to the Public Prosecutor's Office to complete the investigations, or to offer 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 evidence for the purposes of applying the Anti-Corruption Law, for example, causing impacts to the company related to the investigated 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:

(i) Mineral resources (Mining Code – Decree Law 227/1967);

(ii) Fishing (Decree Law 221/1967);

(iii) Activities involving wild fauna in general (Hunting Code - Law 5,197/1967);

(iv) Water use (Water Code - Decree No. 24,643/1934, and the National Policy for the Use of Water Resources - Law 9,433/1997);

(v) Water quality, wastewater and stormwater standards (CONAMA Resolutions No. 357/2005 and 430/2011; Brazilian National Waters Agency (ANA) Resolution No. 603/2015, among other state and municipal regulations);

(vi) Dam safety (Law 12,334/2010 – recently updated by Law 14,066/2020, among other regulations)

(vii) Use and protection of Atlantic (tropical) Forest Biome (Law 11,428/2006);

(viii) Administrative and criminal infractions (Law 9,605/1998 and Decree 6,514/2008);

(ix) Air emissions involving stationary and mobile sources (CONAMA Resolution 382/2006 and 436/2011, and CONAMA Resolutions 15/1995 and several others);

(x) Management of soil and contaminated areas (CONAMA Resolution 420/2009).

(xi) Waste management (National Policy on Solid Waste Management – Law 12,305/2010);

(xii) Environmental licensing for potentially pollutant activities (Supplementary Law 140/2011 and Decree 8,437/2015);

(xiii) Forests and use of native vegetation (Brazilian Forestry Code - Law 12,651/2012; Decree 7,830/2012; Ministry of Environment Normative Instruction 2/2014; IBAMA's Normative Instructions 21/2014, 17/2021 and 8/2022; Law No. 9,985/2000);

(xiv) Access to biodiversity (Law 13,123/2015);

(xv) Use of polychlorinated biphenyls and asbestos (Laws 14,250/2021 and 9,055/1995, among others);

(xvi) Climate change and air quality standards (Law 12,187/2009 - National Climate Change Policy; Law 12,114/2009; Decree 9,578/2018; Decree 11,075/2022; and CONAMA Resolution 491/2018); and

(xvii) Payment for environmental services (Law 14,119/2021).

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 (Law 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 (Law 9,605/98), which was further regulated in 2008 by Decree No. 6,514/2008.

In 1985, another important law was enacted: Law No. 7,347/1985, which created Public Civil Actions. Similar 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 nuclear-damage penalties to coastal-management rules as well as from the creation of conservation units to the requirement to implement environmental-education systems in schools, among others.

Additionally, the states and sometimes the municipalities (when there is a local and specific interest) throughout the country are empowered to 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.

As for pollution-control systems, these are implemented to a large extent in industrialized centers like the states of São Paulo and Rio de Janeiro, but also on smaller cities. Both the lack of environmental permits and the act of polluting can be deemed criminal acts and trigger criminal sanctions in addition to administrative penalties (warnings, fines, interdiction of the company's activities, among others), and civil sanctions (obligation to repair or compensate for environmental damages).

3 Environmental liability

Environmental liability, under Brazilian law, may occur at three different independent levels:

(i) civil;

(ii) administrative, and

(iii) 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, in which more than one agent can be held liable for the environmental damage. 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 50,000,000.00 (fifty million reais), 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 cancellation 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 environmental claims are subject to a statute of limitations.

4 Environmental licensing

In Brazil, most industrial activities are qualified as potentially pollutant, therefore demanding compliance with specific requirements pertaining to the environmental licensing of such activities.

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 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);

(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 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. Simplified procedures can be established for certain activities. 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 not mandatory but can result in additional obligations for the project owner.

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.

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.

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 (Law 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 regulations establish 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, medicines, electronics, lubricant oils, packaging and fluorescent lamps. Certain states have enacted more strict regulations, which condition the implementation of reverse logistics systems to the issuance or renewal of projects' environmental licensing.

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.

Nonetheless, company associations are entering into sectoral agreements at the federal and state level, determining chained obligations of manufacturers, importers, wholesalers, and retailers responsible for the return of post-consumption products and packaging.

Inadequately 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 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 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 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.

9 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 -, 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.

Law 12,651/2012 determined that the federal and state authorities should implement Environmental Regularization Programs 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 14,285/2021 established that the 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.

10 Biodiversity Law

Access to biodiversity resources in Brazil is currently regulated by Federal Law 13,123/2015.

Previous regulation by Provisional Measure 2,186/2001 was highly criticized by the market due to its focus on excessive governmental control and sanctioning of activities broadly characterized as bio-piracy.

The enactment of the 2015 Biodiversity Law has been announced as recognition by the Federal Government of the previous excesses and an attempt to balance the need of control over the exploitation of genetic resources/traditional knowledge and the realities of the industry.

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.

11 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.

Note that, even when not ratified by the National Congress, Brazilian Environmental Protection Agencies sometimes incorporate norms or standards from the USA Environmental Protection Agency (“EPA/USA”) and other foreign environmental protection agencies, for setting monitoring obligations in environmental licenses or for recovery of damages.

12 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.

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 Floresta+ and Floresta+Carbono; and the recently published 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 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.

Finally, air quality standards in Brazil have been provided for through CONAMA Resolution 491/2018, which also sets forth 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 alleged reduction of the standards for air quality. States and municipalities also hold jurisdiction to establish additional standards and obligations relating to air emissions.

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:

(i) 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.

(ii) 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.

(iii) G – Governance: anticorruption 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 provides for the principles and guidelines for the establishment and implementation of the Socio-environmental Responsibility Policy ("PRSA") and management of socio-environmental risks by financial institutions and other institutions authorized to function by BACEN - guidelines which, at the time, would be applicable to institutions considering an evaluation of the principles of relevance and proportionality.

It is also noteworthy to consider BACEN Resolution No. 4,557/2017, which provides for a risk management structure (including socio-environmental risks) 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 were subject to updates in September and October 2021, as provided below, 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 substituted as of December 1, 2022.

Accordingly, financial institutions, and similar institutions in Brazil, must comply with the following set of main rules: (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; and (vii) BACEN Resolution No. 140/2021. It should be noted that rules applicable as per each resolution may differ for specific types of financial institutions defined therein.

In sum, the rules above provide for obligations for different types of financial institutions, and other similar institutions, to:

(i) maintain social, environmental, and climate related risk management structures

(ii) provide for policies compatible with the Social, Environmental, and Climate Responsibility Policy, as defined by BACEN; and

(iii) 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.

Each of the rules above came into effect throughout 2022, bringing different applicable dates depending on the case. The deadlines for internalizing their requirements vary according to the type of institution and obligations set out[18].

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.

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[19]. Additionally, environmental risks are defined as: the possibility of losses to the institution caused by events associated with environmental degradation[20]. 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.

---

[18] Most of BACEN's ESG rules mentioned in this chapter have entered into effect as of December 2022. However, BACEN Resolution No. 151/2021, which provides for social, environmental and climatic risk disclosure, will enter into effect in June 2023 for smaller financial institutions, while other specific dates will be set out for institutions whose size is classified as less than 1% of Brazil's Gross Domestic Product (GDP).

[19] 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.

[20] 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.

Finally, climate risks are divided into two types, defined as follows:

(i) 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.

(ii) 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. 4945/2021 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.

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.

Finally, BACEN Resolution No. 140/2021 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; or **(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.

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:

(i) CVM Resolution No. 14/2020: Resolution that defined 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.

(ii) CVM Normative Instructions No. 80/2022 and 81/2022, updated versions of Normative Instructions No. 480/2009 and No. 481/2009, as per Resolutions CVM No. 59/2021 and No. 87/2022: These norms relate to the rules on disclosure of information by issuers of securities. In 2021, CVM added information contained in the Reference Form information requirements to increase transparency on disclosure of publicly traded companies' environmental, social and corporate governance practices (ESG). In this sense, certain requirements for disclosures related to ESG and sustainability issues are established. Within these requirements, CVM adopted a "practice-or-explain" concept so that issuers that do not release sustainability reports or equivalent documents, or do not have key performance indicators for environmental and social issues and/or policies to this respect, must explain why they do not do so.

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[21] the option to either disclose their ESG practices or to explain the reason for the lack of ESG measures.

[21] 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.

In sum, four ESG measures are listed in the regulation, focusing mainly on social and governance topics:

(i) 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.

(ii) 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.

(iii) The third measure emphasizes the need for ESG performance indicators in compensation policies, especially in cases of variable compensation of executives.

(iv) 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.

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, 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:

(i) Mandatory incorporation of environmental, climate, and social risks in the general structure of the Internal Controls System (SCI) and the Risk Management Structure (EGR).

(ii) 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.

(iii) 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[22]. 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").

3 Opportunities for Sustainable Business

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:

(i) 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.

[22] 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 socialwashing refers to the same activity regarding social claims.

(ii) 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.

(iii) 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.

(iv) 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).

(v) 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.

(vi) Decree No. 11,075/2022, which institutes the procedures for developing Sectoral Plans for the Mitigation of Climate Change, in accordance with Brazil's Nationally Determined Contribution to the Paris Agreement; and establishes the National System for the Reduction of Greenhouse Gas Emissions. Further regulation is still required to render the decree fully effective. In parallel, there are ongoing discussions regarding possible repealing or amendments to the Decree.

(vii) Federal Law No. 14,590/2023 modified Law No. 11,284/2023 to authorize the trading of carbon credits involving forest concessions. As per this law, a forest concession is the onerous delegation of the right to carry out forest management and restoration activities, as well as the exploitation of products and services in management units, through a bidding process, including specifically for sustainable management. The Law enables the inclusion of a provision for the transfer of ownership of carbon credits in the concession contract, even transferring the right to trade certificates representing carbon credits and associated environmental services. During the term of the concession contract, the concessionaire can trade the products resulting from management and restoration activities, and the exploitation of products and services, including carbon credits and non-timber forest services.

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.

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.

4 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, socialwashing, 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) Anticorruption 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. 11,075/2022 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.

5 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 sectorial associations are discussing and publishing ESG guidelines for companies and institutions, including the Brazilian Banks Federation (FEBRABAN), the Brazilian Association of Financial and Capital Market Institutions (ANBIMA), 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.

FOREIGN INVESTMENT

1 General Rules

Foreign investment has been welcomed in Brazil for a long time and it constitutes 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 related 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"), pursuant to which 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 of 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 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 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 terms of Law No. 14,286 for 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 attract and welcome 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 explained later in this chapter.

BC is responsible for:

(i) managing the daily control over foreign capital flows in and out of Brazil (risk capital and loans under any form);

(ii) establishing administrative rules and regulations for registering investments;

(iii) monitoring foreign currency remittances; and

(iv) allowing repatriation of funds. It has no jurisdiction over the quality of the investment and cannot restrict the remittances of funds from equity or loans, which are based on registration with BC through its Electronic System of Registration.

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 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 the online data system of BC. Meanwhile, foreign loans also became subject to registration in the Electronic System of Registration of BC, from February 2001 onwards.

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. This aggregate amount constitutes the basis for repatriation of capital and computation of any eventual capital gains taxes, 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. The foreign currency to be remitted must be purchased on the fx market directly from any financial institution authorized to operate in the fx market, upon presentation of a corporate act declaring dividends and relevant financial statements. Until January 30, 2017, to enable the outflow of funds, distribution of profits also had to be registered in the Electronic System of Registration of BC, in the form of Foreign Direct Investment (*Investimento Externo Direto* – IED). 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 under Brazilian rules. If the Brazilian subsidiary holds an overseas bank account with sufficient balance to pay the related profits, such funds can be utilized to pay the foreign investor directly abroad. In such case, manual registration of the distribution of profits within the BC electronic system is required.

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 any taxes, provided that such investment does not exceed the amount established in the Foreign Direct Investment mode of BC's Foreign Capital Reporting System (*SCE - IED*) . Generally, any surplus over 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 issues 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 term to maturity of up to 180 days are subject to a 6% financial transactions tax ("IOF"). On the other hand, Decree 10,997, of March 15, 2022, established that foreign loans contracted on March 18, 2022, or later, are subject to a 0% IOF tax, regardless of its 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 granted to Brazilian capital, with the few exceptions informed in our Investment Policies section (page 26).

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 2,200-2 of August 24, 2001.

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 the largest purchaser of medicines in Brazil. The Ministry of Health's 2022 budget for the purchase of medicines in 2022 amounted to little over BRL 30 billion (INTERFARMA Guide 2022).Law No. 9,782/99 establishes SNVS actions and provides for the competence of the Federal Government. The Brazilian National 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 supplement to the Brazilian public healthcare system – regulated by the Brazilian National 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 competencies of the ANS, which include the regulation of the Supplementary Health System, especially in regard to the operation of private healthcare plan operators.

There is also Law No. 9,656/1998, which is directly related to the sector and provides for private healthcare plans and insurance, which are the 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 of the following sectors:

(i) Pesticides;

(ii) Pharmaceutical supplies;

(iii) Food;

(iv) Medicines;

(v) Cosmetics;

(vi) Health Products

(vii) Pharmacies and drugstores

(viii) Blood, tissues, cells, and organs

(ix) Sanitizing products.

Additionally, ANVISA is responsible for reviewing standards related to the 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 are issued by ANVISA:

(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 the operation of the companies. 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.

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): With regard to pesticides, the agency responsible for carrying out registration in Brazil is the Ministry of Agriculture, Livestock and Food Supply (MAPA), while ANVISA is only responsible for the Toxicological Assessment of the product.

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 internationalcompany 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 be registered with the respective union/professional councils related to the company's activities. The company must appoint a technician who must also be registered with the respective professional council. The 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 3,000,000.00 depending on how serious the violation is;

(iii) cancellation 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 as well as 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 the covered health services.

INSOLVENCY, BANKRUPTCY AND REORGANIZATION

1 Legal Framework

Federal Law No. 11,101/2005 (the "Bankruptcy and Reorganization Law"), 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) Out of Court Reorganization with Court Confirmation (or Extrajudicial Reorganization).

The Judicial Reorganization and the Extrajudicial Reorganization are intended to give the company – within the landscape of an unhealthy financial situation – the chance of reorganizing its activities in order to preserve its existence as a going concern.

The Bankruptcy Proceeding has the purpose of liquidating the debtor'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 in the Bankruptcy and Reorganization Law. 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, its shareholders or partners, or any of its creditors. Although the Bankruptcy and Reorganization Law provides that the debtor has the obligation to file for self-bankruptcy, there are no penalties applicable in case the debtor does not file a voluntary Bankruptcy Proceeding.

The Bankruptcy and Reorganization Law allows a company to file for self-bankruptcy if the company considers that it does not meet the requirements for commencing a Judicial Reorganization.

Bankruptcy Proceeding has to be ruled by a Court and is never automatically granted upon filing, given that the Court must accept the company's request. The entire proceeding is court-supervised, and the trustee will be in charge of managing the company's assets and liabilities.

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 partners and officers are subordinated to the interests of the creditors.

The Bankruptcy and Reorganization Law sets out the requirements upon which creditors can file for bankruptcy of the debtor, as outlined below:

(i) default to provide payment of any liquid obligation stated in a credit instrument in an amount higher than 40 minimum Brazilian monthly wages;

(ii) failure to pay, make a deposit of or post collateral to secure obligation subject to an enforcement proceeding;

(iii) arbitrarily advancing the liquidation of assets or making payment in a damaging or fraudulent way;

(iv) 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

(v) 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.

Once the Court accepts the filing and rules that the company is bankrupt, the company is shut down, officers are compulsorily removed from the company's management, and a trustee is appointed to liquidate the company. Under specific circumstances, the Court can rule that the company continue operating for a specific period following the bankruptcy ruling.

A bankruptcy decree entails (i) acceleration of all company's debts; and (ii) conversion of foreign currency-denominated debts into national currency.

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 Bankruptcy and Reorganization Law ("Liquidation Waterfall").

The Liquidation Waterfall comprises (i) claims considered bankruptcy-remote (*créditos extraconcursais)*, which have priority over the claims impaired by the Bankruptcy; and (ii) claims impaired by the Bankruptcy Proceeding. Within each category of claims there is a priority rule, as follows:

1. BANKRUPTCY-REMOTE CLAIMS:

(i) out-of-pocket expenses with the management of the Estate and the Bankruptcy Proceeding and labor claims strictly related to unpaid wages outstanding in the three months preceding the bankruptcy ruling limited to the amount equivalent to five Brazilian minimum wages;

(ii) the amounts effectively disbursed by the creditor of a Postpetition Financing (as defined below) extended in a Judicial Reorganization Proceeding;

(iii) claims for restitution in cash;

(iv) compensation of the Trustee and labor credits arising from work performed or after the bankruptcy ruling;

(v) credits arising from transactions carried out during a Judicial Reorganization (in the event of conversion of the Judicial Reorganization into a Bankruptcy Proceeding) or after the bankruptcy ruling;

(vi) amounts provided by the creditors to the estate after the bankruptcy ruling;

(vii) costs, fees and taxes related to the bankruptcy ruling, management of the estate and sale of the assets;

(viii) court costs arising from lawsuits in which the estate has faced an unfavorable outcome; and

(ix) tax liability arising from facts that occurred after the bankruptcy ruling.

2. CLAIMS IMPAIRED BY THE BANKRUPTCY PROCEEDING

(i) credits owed for labor relationships up to 150 Brazilian minimum monthly wages per creditor and those resulting from labor accidents;

(ii) secured credits, up to the amount of the asset offered as security;

(iii) tax credits, regardless of their nature and time of constitution, except for the bankruptcy-remote tax credits and tax penalties;

(iv) unsecured credits;

(v) contractual penalties and monetary penalty due to breach of criminal or administrative law, including tax penalties;

(vi) subordinated credits (i.e. credits of equity holders and the 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

(vii) interest on claims accruing after the bankruptcy ruling.

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 Bankruptcy and Reorganization Law 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.

In regard to transactions carried out by the debtor prior to the bankruptcy decree, the Bankruptcy and Reorganization Law 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 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:

(i) payment of any unmatured debt or liability;

(ii) payment of matured debts through means different from those established in the relevant contract;

(iii) granting of mortgages or pledges to secure already existing debt;

(iv) any act entered into by the debtor for free, during a period of two (2) years before the bankruptcy ruling;

(v) waiver to assets which would be inherited by the debtor;

(vi) sale of business without the prior consent of the creditors or payment of their claims, in the event that the remaining assets are not sufficient to cover such liabilities existing at the time such business has been sold;

(vii) registration of any right over, or transfer of, immovable property after the bankruptcy decree.

In all cases mentioned above, the 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 state.

The Court in charge of the Bankruptcy Proceeding can void such fraudulent transaction upon request made by creditors, the trustee, or the Public Prosecutor within 3 years counted from the implementation of the bankruptcy ruling. 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 state.

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:

(i) must prove that it has been in operation for at least two consecutive years;

(ii) must not have been declared bankrupt before, or, if so, must have obtained a final discharge court decision regarding its previous responsibilities;

(iii) must not have obtained judicial-reorganization benefits over the past five years preceding the request; and

(iv) must not have had its managers or controlling shareholders sentenced for any type of crime provided for in the Bankruptcy and Reorganization Law.

The newly-enactment amendment to the Bankruptcy and Reorganization Law 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 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).

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 Bankruptcy 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, such trustee does not manage the company.

On the other hand, the Bankruptcy and Reorganization Law provides that removal of officers and managers of the debtor is authorized if any of them (i) has been sentenced for bankruptcy crimes and/or economic crimes pursuant to specific criminal law; (ii) has given cause for one to conclude that there are strong indicia of practice of any of the bankruptcy crimes provided for in the Bankruptcy and Reorganization Law; (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 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 court ruling preceded by pleadings of the interested parties and gathering of 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 mature and unmatured debts up to the date of the filing 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 lease 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 are not subject to the Judicial Reorganization and must be paid according to their conditions. 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 comprises the following phases:

1. The debtor files the Judicial Reorganization proceeding seeking a decision authorizing it to take advantage of the Judicial Reorganization;
2. Upon fulfillment of several procedural and formal items, the Court grants a 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).
3. This “stay period” lasts 180 days from the date when the decision that authorized the reorganization protection was granted, subject to one extension of 180 days, provided that the debtor did not cause any delay in the Judicial Reorganization.
4. Concomitantly with the processing order, the Court also appoints a Trustee, which will be in charge of overseeing the debtor's activities and report them to the Court and to the creditors through periodic reports.

5. 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.
6. In parallel, within 60 days from the date when the reorganization protection is granted, 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 feature related relevant feature related to the restructuring such as additional collateral granted.
7. 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.
8. After the filing, creditors can object to the reorganization plan.
9. If any objection to the reorganization plan is filed, the Court must call a 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.
10. 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 the reorganization plan, as necessary.
11. According to the approval process provided for in the Bankruptcy and Reorganization Law, each class of creditors must either accept the reorganization plan or reject it. There are four classes of creditors provided for in the Bankruptcy and Reorganization Law:
    (i) Class One – Labor Claims: holders of credit rights deriving from labor legislation or indemnities arising from labor accidents;
    (ii) Class Two – Secured Claims: holders of credit rights secured by in *rem* collateral (i.e. mortgages, pledges etc.);
    (iii) Class Three – Unsecured Claims: unsecured creditors, as a whole, general privilege and special privilege; and
    (iv) Class Four – Micro and Small Business: creditors holding credit framed as micro or small business.
12. 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.

13. At its discretion, the 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) acceptance of more than one-half of claims in Real amount regardless of the classes of creditors; (ii) acceptance 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 accepted by one-third of the claims: in number of claims and Real amount if the dissenting class is either the Unsecured or Secured Claims; or in number of claims if the dissenting class is either the Labor or the Micro- and Small Companies Claims.
14. 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.
15. Creditors may present an alternative reorganization plan in the following situations: (i) expiration of the stay period (as extended, if it is the case); 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 for in the Bankruptcy and Reorganization Law 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.
16. As a general rule, if the reorganization is not approved at the creditors' meeting, the 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.
17. 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 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, Postpetition 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 claimants 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 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 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 under section 66 of the Bankruptcy and Reorganization Law, which requires court approval, followed by potential objections by creditors; and (ii) sale of an isolated business unit [*Unidade Produtiva Isolada – "UPI"*].

In both cases, provided that the sale is carried out under a competitive process pursuant to the Bankruptcy and Reorganization Law, the sale and purchase will be clear of encumbrances and liabilities, and free from succession, including labor, tax, anticorruption and environmental obligations.

The amendment to the Bankruptcy and Reorganization Law aims to stimulate the availability of new financing to debtors (the "Postpetition Financing") by (i) granting priority to the Postpetition Financing over other claims, in the event of subsequent liquidation of the debtor; and (ii) insulating the Postpetition 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 Postpetition Financing secured by fiduciary liens and/or other security interest in non-recurring assets of the debtor or third parties to fund its activities, the restructuring expenses or the necessary measures to preserve the debtors' assets.

The Postpetition Financing will have priority over virtually all other claims against the debtor in the event of liquidation (see above) and potential reversal of the decision authorizing the Postpetition Financing will not adversely impact the Postpetition 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 Postpetition 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 Postpetition Financing to 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 proceeds of the Postpetition Financing.

In addition, the credit priority of the Postpetition Financing and the guarantees granted to a good-faith investor must not be adversely affected by modifications to the Bankruptcy Court's decision authorizing the Postpetition Financing, provided that the funds have already been disbursed. On the other hand, if the Judicial Reorganization is converted into liquidation prior to the full disbursement of the Postpetition Financing proceeds, 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 liquidation ruling.

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 Court within the context of an Extrajudicial Reorganization.

In summary, the Bankruptcy and Reorganization Law allows a debtor to file for Extrajudicial Reorganization and request a 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 Court convert the Extrajudicial Proceeding into a Judicial Reorganization Proceeding unless they secure the required majority within the 90-day period.

All claims existing on the date of the filing except for tax claims and bankruptcy-remote claims (*créditos extraconcursais)* may be impaired by an Extrajudicial Reorganization. Consequently, the Bankruptcy and Reorganization Law, 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 union that represents the professionals of the debtor.

The original wording of the Bankruptcy and Reorganization Law 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 (similar to the Judicial Reorganization stay) in order to prevent impaired claimants from taking actions and enforcing claims against the debtor.

The amendment to the Bankruptcy and Reorganization Law 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.

Upon the filing of the Extrajudicial Reorganization, a public notice is released, and creditors can challenge the reorganization plan within 30 days, on the following limited grounds:

(i) debtor has failed to meet the 50%-threshold to cram down the plan on non-supporting creditors;

(ii) the reorganization plan entails acts forbidden by law or fraudulent transactions; and

(iii) non-compliance with any other requirement or formality imposed by law that may apply to the case.

If an objection is filed, the Court will make a ruling on the (i) allowance of credits; and (ii) confirmation of the reorganization plan and its imposition on the non-supporting creditors within the creditors subject to the Extrajudicial Reorganization.

Unlike the Judicial Reorganization, the rejection of the reorganization plan underlying the Extrajudicial Reorganization does not cause the liquidation of the debtor.

Once the Court rules on the reorganization plan, interested parties can appeal. Generally, and pursuant to the Bankruptcy and Reorganization Law, 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, an important provision of the amendment to the Bankruptcy and Reorganization Law refers to the 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 liquidation of the debtor.

Although the Bankruptcy and Reorganization Law did provide such protection to transactions carried out under a Judicial Reorganization Plan, there was no similar provision that applied to Extrajudicial Reorganizations. The amendment modified the relevant provisions of the Brazilian Bankruptcy and Reorganization Law to extend the protection to Extrajudicial Reorganizations.

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 plan. 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 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 plan 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 Health Care System is a supplement to the Brazilian public health care system and is regulated by the Supplementary Health Care Council (*Conselho de Saúde Suplementar - CONSU*) and the Brazilian Private Health Care 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 health care, and self-management).

2 Legal Framework

Most general legal rules applicable to insurance and reinsurance contracts are set forth in the Civil Code and in the Supplementary Law 126/2007. Specific provisions on property, casualty, and life insurances – among others - are subject to specific regulations issued by CNSP and SUSEP. In the context of the Complementary Pension Funds and Supplementary Health Care System, contracts and the supplementary pension plans are subject to specific laws and regulations.

To the extent that these contracts involve "consumers" (as a rule, insurance agreements that are considered as consumer contracts and entities, such as small businesses, tend to fall under this concept), they are also subject to the Consumer Protection Code, which establishes guidelines and principles that are highly protective of consumers rights.

3 Licensing Process

The incorporation, transfer of controlling shares, or restructuring (among other acts) of insurers, reinsurers, capitalization companies, open private pension funds, and health care companies in Brazil involve a series of procedures set forth in legislation and depend on authorizations by SUSEP and ANS, including presentation of business plans and identification of shareholders.

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 in the ownership of Brazilian insurance companies, but direct control must be held by individuals or legal entities, meeting certain requirements, as provided for in local regulation.

The minimum capital of an insurance or open private pension company consists of the higher value between the base (fixed) capital and the risk-based capital (which must consider operational, credit, underwriting and market risks).

The minimum capital shall vary depending on the segment in which the company is rated.

Pursuant to 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.

In this regard the minimum base capital required is (i) BRL 15,000,000.00 (fifteen million reais) for Supervised framed in Segment 1 or 2; (ii) BRL 8,100,000.00 (eight million and one hundred reais) for Supervised framed in Segment 3; (iii) BRL 3,960,000.00 (three million nine hundred and sixty thousand reais) for Supervised framed in Segment 4; and (iv) BRL 3,000,000.00 (three million reais) for Supervised that operate exclusively in microinsurance.

There are very detailed and specific rules regarding both 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 in financial markets, due to potential issues such as the risk of environmental damage that results in financial losses, threat to the stability of the financial system, as well as social impacts.

As a result, the Brazilian financial market and regulatory agencies, such as SUSEP, are incorporating 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 fulfilled 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 its turn, supervised companies must develop a materiality study regarding sustainability risks to which they are exposed, so that such risks can be identified, assessed and classified.

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, 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 its quantitative risk measurements methodologies, projections of events associated with sustainability risks, including long-term forecast, and record 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 related to the policy.

Finally, supervised companies must draft a Sustainability Policy in order to establish principles and guidelines to be fulfilled when carrying out its business. These companies must also draft a Sustainability Report, describing the actions implemented to enforce the Sustainability Policy and the most important aspects relating to the management of the sustainability risks to which they are exposed.

5 Selling Insurances and Certification

An insurance broker, who may be 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 might also be retained by group insurance policyholders.

According to Brazilian law, an insurance company may not incorporate a sister brokerage company since broker's 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 n° 4594/1964, Decree Law n° 73/1966, and the regulatory Resolutions and Circulars issued by CNSP and SUSEP. According to these rules, the Insurance Broker, which may be an individual or legal entity, is the legally authorized intermediary to attract clients and promote insurance contracts between the insurance companies and the insureds.

A specific license is required by law for Insurance Brokers to operate in Brazil. After demonstrating the fulfilment of 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 126/2007, which must be a legal entity (with a professional liability insurance) authorized by SUSEP to intermediate reinsurance contracts.

Concerning certification, regulation addresses the need to certify insurance-company employees and similar persons at insurance companies accredited by SUSEP, whenever these firms operate in:

(i) average regulation and settlement;
(ii) internal control systems;
(iii) customer service; and
(iv) direct sales of insurance products, capitalization, and open supplementary pension funds.

Regulation also provides for the certification of the insurance brokers who act in the same areas previously mentioned, with exception of item (ii). However, the effects of the relevant rules have been suspended by SUSEP and the matter awaits further regulation.

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 innovation introduced a new form of purchasing insurance via an intermediate company that processes insurance purchase orders directly from consumers (through resources such as smartphone and computer apps). As a result, insurers gained a new method to approach and market their products on the internet.

6 Reinsurance

Brazilian legislation provides for three types of reinsurers: local, admitted and occasional. Admitted and occasional reinsurers are foreign companies, whereas local reinsurers are companies incorporated under Brazilian legislation with head offices in Brazil and organized as joint-stock companies.

As a rule, but still subject to the technical, contractual, operating and risk particularities, and to provisions of both CNSP and SUSEP, insurance regulation applies to reinsurers as well.

A local reinsurer must have at least BRL 60,000,000.00 in capital and must meet risk-based capital and solvency-margin requirements.

Admitted and occasional reinsurers are foreign companies registered at SUSEP that have net equity of at least USD 150,000,000.00 (one hundred fifty million dollars), a power-of-attorney appointing an individual attorney-in-fact domiciled in Brazil, and have submitted numerous documents, including their financial statements.

Admitted reinsurers must also establish a representative office in Brazil, authorized in advance by SUSEP and named as such, with the sole business of representing the admitted reinsurer. The representative must be domiciled in Brazil and hold power-of-attorney.

The representative office may be (i) a Brazilian company or a branch office, owned by the admitted reinsurer; or (ii) a third party contracted to perform such representation services.

An admitted reinsurer must also keep an escrow-account with SUSEP worth a minimum of USD 5,000,000.00 (five million dollars) in the case that the admitted reinsurer operates in all lines of business; or a minimum of USD 1,000,000.00 (one million dollars) if it works solely with life reinsurance.

Rating requisites for admitted and occasional reinsurers are set out below:

Risk Rating Agency	**Minimum Level Required**
Standard & Poor's	BBB
Fitch	BBB
Moody's	Baa2
AM Best	B++

There are two advantages that a local reinsurer has over admitted and occasional reinsurers:

(i) a preferential offer of 40% of each cession; and

(ii) exclusivity 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 maintain reserves under any circumstances in Brazil, however their headquarters cannot be located in tax havens[23].

[23] Tax havens are countries or dependencies that do not tax income or that tax it at a rate of less than 20%, or whose internal laws provide relative secrecy as to the owners of corporations or their representatives.

Through new rules applicable to reinsurance and retrocession operations, certain provisions regarding the limits of reinsurance cession were amended, as follows:

(i) Intragroup restrictions were dismissed. Previously limited to 50%, such limit is no longer a requirement.

(ii) Limits on global cessions 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 total operations per calendar year.

(iii) For local reinsurers, retrocession cessions increased up to 70% of the premiums relating to the underwritten risks (except for financial, rural and nuclear risks), considering total operations per calendar year.

Admitted and local reinsurers must maintain a proper internal control system. There is no minimum structure for such purpose, but rather minimum elements that should be considered when setting up the internal controls of each reinsurer, as listed by regulation[24].

The size and complexity of such structure depends on the complexity 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 and operations.

7 Reinsurance Contracts

Brazilian insurers and local reinsurers may only assign risks in reinsurance and retrocession transactions to local, admitted, and occasional reinsurers, with or without the intermediation of reinsurance brokers.

Because Brazilian law was set up for establishing and developing a strong local reinsurance market, it provides local reinsurers with a preferential offer of 40% of every cession. Such provision was maintained by the new rules published in 2022.

As for reinsurance contracts, regulation sets forth certain requisites whenever writing and structuring contractual documents, such as the need for:

(i) an insolvency clause, and

(ii) prohibition of direct-payment clauses (except in cases of the insolvency of the cedant, provided that payment of indemnity has not been made from the reinsurer to the cedant or from the cedant to the insured party, in case of optional contracts, or in all other cases whenever there is a clause that, in such case, calls for direct payment).

[24] CNSP Resolution 416/2021

If there is intermediation of the contract, the intermediation clause cannot limit or restrict the direct relationship between cedants and reinsurers, nor grant powers to reinsurance brokers beyond those needed and appropriate to perform their jobs.

Regulation additionally sets out that, among other requisites:

(i) Contractual formalization of reinsurance transactions must take place within 180 days. After this period, if not formalized, reinsurance will be construed as non-existent from the outset; and

(ii) Contracts for reinsurance of risks located within domestic territory must stipulate submission of any disputes to Brazilian legislation and jurisdiction, allowing for an arbitration clause, which, according to specific legislation, may apply foreign law;

Notwithstanding the above, Supplementary Law 137/2010 amended Supplementary Law 126/2007 to allow CNSP to provide for risk transfer - reinsurance and retrocession transactions - with other persons further to the authorized reinsurance companies, in the case that local, admitted and occasional reinsurers do not have the necessary capacity.

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 trade and service marks, certification marks, collective marks and position marks, 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 2017 the BPTO issued Normative Instruction No. 70/2017 and Resolution 199/2017 establishing new rules and formalizing certain requirements in relation to the recordal or registration of technology transfer agreements (*i.e.* industrial property licensing and assignment, technology supply, specialized technical assistance services and franchise agreements).

Normative Instruction No. 70/2017 introduced an explanatory note to be included in the certificate of recordal or registration of agreements, with the following content: "*The BPTO did not analyze the agreement under the fiscal perspective and under the legislation governing the remittance of capital abroad.*"

The abovementioned rule establishes that BPTO must cease its exaggerated intervention in private contracts, such as posing making amendments or questioning remuneration provisions already agreed on by the contracting parties. Such rule did not amend tax and remittance rules, but provided that the BPTO will not carry out its own analysis and requirements regarding tax and remittance aspects.

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 INPI by a third party, had been using an identical or similar mark for at least 6 (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 6-month period following the ordinary term (called the extraordinary term) against payment of a surcharge. A trademark registration can be cancelled 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 2, 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.

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.

However, trademark applications cannot generate royalties, which means that the trademark must be duly granted by the BPTO before remittance of royalties.

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 (ten) years for the invention patent and 7 (seven) years for the utility model patent, counting from the granting date”. However, on May 7, 2021, the Superio Federal Court (“STF”) ruled on the Direct Unconstitutionality Action - ADI 5529, filed by the Attorney General's Office (“PGR”) in 2016, which had as its object 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 7, 2021.

The BPTO has been adopting several measures to decrease the backlog[25] 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

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.

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.

---

[25] 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.

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.

5 Technology Supply

Technology in Brazil is defined as know-how not protected by a patent of invention or utility model. The basic concept of the Brazilian rules regarding the use of technology by a Brazilian party has 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 revoked) BPTO Normative Act 15). In other words, technology may be assigned ("sold") but not licensed. Nevertheless, the parties can agree with some restrictions to the use of the technology, such as confidentiality obligations. In consideration of the "sale", the supplier may be entitled to certain fees during the term of the agreement, but the recipient should be free to use the technology after expiration of the agreement.

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 cancellation of the franchise agreement even after it is signe,d 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 cancellation 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 following purposes:

(a) Remittance of royalties abroad;

(b) Deductibility of payments as operational expenses for Brazilian income tax purposes; and

(c) Enforcement of the obligations vis-à-vis third parties.

Concerning item (iii) above, registration of a licensing agreement with the BPTO is not mandatory for documents issued by the licensee to prove the use of licensed trademarks or patents to be accepted as proof of actual use by the BPTO, in the event of cancellation on the grounds that lack of use is requested by a third party.

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 fifty years from the first day of January of the year following the software’s publication or, in the absence of publication, fifty 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 is extended to foreign individuals domiciled outside Brazil, provided that the country where the software was created grants the same rights to Brazilians.

The aforementioned 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).

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.

CIDE is not levied on 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).

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%[26] on 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 at courts that these specific transactions do not characterize a service rendering and should not subject to the levy of PIS/COFINS-Importation.

[26] 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%. Said innovation became effective on May 1, 2015.

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.

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 establishes specific conditions and limits for the deductibility of certain intellectual property rights expenses on the calculation of IRPJ.

These specific conditions for tax deductibility must be analyzed on a case-by-case basis. But as a rule, the deduction of royalties for the use/exploitation of patents, technology supply (including software licensing agreements with assignment of the respective source code considered technology transfer) or technical support, is limited to a span of 1% to 5% of the net sales price of the product (or services) connected to the patent, technology supply, or technical support. This 1% to 5% limit varies depending on the business and the essentiality of the product/service to the Brazilian economy, as per Finance Ministry Ordinance 436 of 1958 (and amendments). Royalty's deductions for the use of trademarks are limited to 1% of the net sales price of the products (or services) bearing the trademark, when the trademark is not connected to technology supply, technical support, or patent exploitation. The deduction of royalties for the use/exploitation of patents, trademark, technology supply, or technical support also depends on registering the respective agreement at the National Institute of Industrial Property (INPI) and the Central Bank of Brazil (the new Law No. 14,286/21, dated December 30, 2021, will no longer require registration of the agreement with the Central Bank of Brazil from December 30, 2022 onwards. This law also grants more flexibility of royalty payments among controlled parties, although deductibility limits will continue to be applicable as the same). Please note that the payment of the royalties mentioned herein is not subject to Brazil’s transfer pricing rules.

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 Secretariat (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 National Health Surveillance 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 general rule, the limited RADAR allows companies to make imports limited to a total value of USD 150,000.00 (one hundred and fifty thousand dollars) 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 general 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[27].

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 general 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).

[27] 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[28]. Among the main improvements promised by this initiative are those related to facilitating the requirement of import licenses, such as:

(i) importer requiring the import license only once, for several operations;

(ii) consenting bodies analyzing the requirement through the same platform; and

(iii) consenting bodies performing jointly the physical verification of the product.

The general rules on import licensing are provided for in SECEX Ordinance 23/2011[29].

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:

(i) the green channel, in which the goods are released without further examination;

(ii) the yellow channel, in which the documents are examined and if no problems are identified, the goods are released;

(iii) the red channel, in which the documents and the goods are examined and if no problems are identified, the goods are released; and

(iv) the grey 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[30] and in the RFB Normative Instruction 680/2006[31].

---

[28] Decree 8.229/2014 (planalto.gov.br)

[29] SECEX Ordinance 23/2011, articles 12 to 29 (mdic.gov.br)

[30] Decree no. 6,759 of February 5, 2009, Articles 542 to 579 (planalto.gov.br)

[31] RFB Normative Instruction 680 of October 2, 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:

(i) imports of goods that shall be booked as fixed assets of the importer;

(ii) imports of inputs to be used in the manufacture of products by the importer; and

(iii) 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:

(i) importation on behalf of another company ("*importação por conta e ordem*"); and

(ii) importation 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 just 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 shall 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%[32] - 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 general 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.

[32] 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[33].

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*.

[33] RFB Normative Instruction 2,126/2022 (receita.fazenda.gov.br)

3 Trade Agreements

Brazil is a member of the Latin American Integration Association (ALADI)[34], 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[35]. Through Economic Mutual Assistance Agreements, the goal is to establish a free-trade zone throughout MERCOSUL and with all associate members.

Since January 1, 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 1, 1995. As such, a Common External Tariff (TEC) was established with the goal of preventing cash-flow 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 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:

(i) Anti-dumping measures.

(ii) Countervailing measures.

(iii) Safeguard measures.

[34] Current ALADI members: Original: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Other members: Cuba, Nicaragua and Panamá.

[35] 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. 8058/2013 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 retards 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[36]. 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:

(i) all interested parties have had opportunity to express their opinions about the investigation;

(ii) dumping, injury and causal link to the domestic industry are affirmatively determined on a preliminary basis; and

(iii) 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

[36] 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:

(i) reviews related to the imposition of the duty (due to change in circumstances; sunset review); and

(ii) 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:

(i) they are still necessary to prevent or to remedy serious injury, and

(ii) 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

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:

( ) Financial support from the Northeast Investment Fund ("*Fundo de Desenvolvimento do Nordeste*");

(i) Income tax reduction;

(ii) Import Duties and IPI exemption or reduction in imports; and

(iii) State and municipal incentives.

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 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*").

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 material, 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 of the Tax on Manufactured Products ("IPI").

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 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 through a convention or an agreement entered into with the relevant labor 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 hoursis 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.

1.2 Vacation

Upon completion of each period of twelve months of work, employees are entitled to paid vacation of up to thirty calendar days, plus an additional payment equal to one-third that amount.

1.3 Minimum Wage

Employees in Brazil are entitled to a mandatory federal minimum monthly wage, which is annually adjusted by the Brazilian government (BRL 1320.00 – as of May 01, 2023). 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.

1.4 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, in January of the calendar year to which the 13th salary corresponds.

1.5 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.

1.6 Overtime Pay

Employees in Brazil are entitled to overtime pay with an additional allowance of at least 50% of the hourly rate. Overtime work on Sundays and holidays, when authorized, must be paid with the applicable additional allowance. The applicable collective bargaining agreement may set higher overtime allowances.

1.7 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 discounts.

1.8 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.

1.9 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.

1.10 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. This authorization can also be granted by the Ministry of Labor and Employment, if certain requirements are met.

Work on Sundays and holidays, when authorized and not offset with rest days, must be paid in double and, if it comprises overtime, must be paid with the applicable overtime allowance.

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 1, 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.

LITIGATION AND ARBITRATION

1 Litigation in Brazil

The Brazilian Judiciary 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 evidences sufficient color of right (*fumus boni iuris*) and danger in case of delay of judgement (*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 is clearly easier for one of the parties (regardless if the plaintiff or the defendant) to evidence 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. 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 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 the first instance decisions are rendered by a single judge, the appellate courts' decisions are rendered by a judging panel, composed of three (3) 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 permits the reporting judge to render a final decision on the merits by himself/herself, if the appeal or the appealed decision runs against a binding precedent or decision taken in repetitive cases by the Brazilian Supreme Court / Superior Court.

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) that are rendered during first trial proceedings, steering them towards 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 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.

In the beginning, 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 view of this fact, 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.

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 Chapter XII below – Competition Law).

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, by-laws, 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 great risk of having 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 in the 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 2022 and at the beginning of 2023, such as:

(i) the Government's actions to stall inflation through the increase of interest rates;

(ii) the continued reduction in liquidity;

(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 inflation), whereas others may require more time (such as liquidity and valuation issues).

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 new Brazilian government is focused on approving a new government spending regime, coupled with a tax reform, both of which will drain a lot of the political efforts throughout 2023. The lack of control of the Brazilian Congress will be a significant hurdle for the new 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 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, mining 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

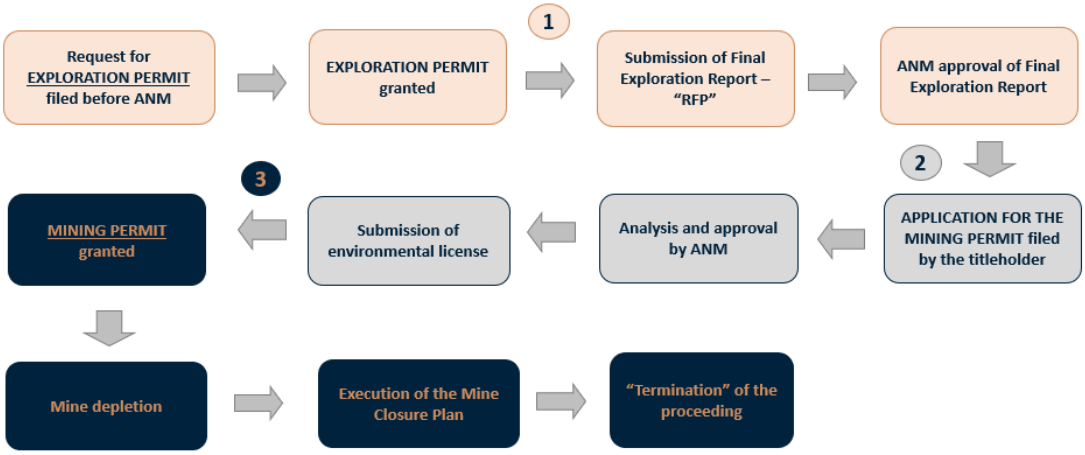
As described above, the authorization/concession regime is the most common, due to its applicability to all types of mineral substances. Essentially, the Authorization and Concession regime is composed of 2 phases:

(i) **Exploration Phase (mining title "Exploration Authorization"):** throughout this stage, mineral extraction 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 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.

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 easements, 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 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 approval of ANM;

(vi) submit to ANM, by March 15 of each year, the report of the 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 notice the waiver of its title. In both cases, the requirement must be submitted together with a report of the works carried out and the status of the mine studied.

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 application 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 approved previously by the ANM.

In 2021, the ANM issued Resolution No. 68/2021, which established the requirements of the PFM. Subsequently, suchResolution 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.

The Resolution set the deadlines for PFMs to be updated pursuant to the new requirements.

In addition, the mining proceedings with a granted title authorizing exploitation works had to present an updated PFM until May 04, 2022. As for mining proceedings which have requested a deadline extension to commence exploitation works, new PFM must be presented until June 01, 2023. Finally, the mining proceedings under application for Mining Permit phase, must present the PFM in 12 months, counted from the date of granting of the respective Mining Permit.

4 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) cancellation 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, 2023, 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 01, 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. The Resolution has already undergone changes as such discussions progress in Brazil.

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[37]. 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.

[37] Resolution 90/2021 came into force on March 02, 2022.

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.

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 Deadlines for ANM to render decisions

In 2020, ANM issued Ordinance No. 22, which came into force on February 1, 2020, establishing the maximum deadline for ANM to carry out the analysis of certain requirements submitted in the mining proceedings, in accordance with the provisions set forth in articles 11 and 18 of Decree No. 10,178/2019.

The Ordinance introduced a significant change for the mining sector. If the ANM does not deliver a decision within the period established in the Ordinance, the requirement listed in Annex I will be tacitly approved. This means that the requirement will be considered approved if instructed with all the documentation and information necessary for its analysis.

It is important to highlight that under the terms of Paragraph 3 of art. 2 of the Ordinance, even if tacitly approved, the ANM can further verify compliance with legal requirements.

6.4 Availability Procedure ("*Disponibilidade de Áreas*")

In 2020, the ANM changed the availability procedure of areas for research 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 hold-up 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.

6.5 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.

The Brazilian National Congress is urgently processing Bill No. 191/2020, which intends to set the rules for carrying out mining activities within indigenous lands. The Bill, however, has been severely questioned by environmentalists and other stakeholders. If approved, indigenous people affected by mining activities will be entitled to receive compensation for the use of its lands, in addition to the "royalties", due to their stake in the mining results. In 2023, the withdrawal of such Bill from the procedure was requested.

Currently, the Brazilian National Congress is processing Bill No. 1890/2021, which intends to amend the Mining Code. The proposal has been widely debated but is still in its early stages.

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 National Petroleum Agency (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 4, 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 basins. ANP held the first cycle for the Open Acreage bidding round for fields under the Production Sharing regime. 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. The last concession bidding round (which was not part of the Open Acreage system) was the 17th Bidding Round, held on October 07, 2021, and ended with five auctioned blocks.

According to the ANP, in 2022, the production of natural gas in Brazil presented an increase of 3.1% in comparison with the year of 2021, reaching an average of 137.9 MMm3/d (million m^3 per day). The oil production increased 4% in comparison with previous year, registering an average of 3, MMbbl /d (million barrels per day).

According to the latest ANP Annual Report of Resources and Reserves, an increase of 12.2% in proved oil reserves (1P), 9.7% in proved and probable reserves (2P), and 11.1% in proved, probable, and possible reserves (3P) was recorded for 2022 compared to 2021. Also, ANP informed that, in March 2023, 238 areas under the Concession Regime, 6 areas under the Transfer of Rights Regime (*"cessão onerosa"*) and 9 areas under Production Sharing Regime, operated by 47 companies, were responsible for national production. Of these, 68 are offshore and 186 are onshore. Production took place in 5,564 wells, comprising 505 offshore and 5,059 onshore.

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 consortiums, 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 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 consortiums 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 last Annual Statistic Statement published by ANP, in 2021 the national production of oil derivatives increased 3.4%, reaching 2,000,000 barrels per day, which represents around 79% of the total refining capacity. It was observed a growth of 9.1% in relation to the refined volume of 2020.

In 2021 Brazil had an installed refining capacity of approximately 2,400,000 barrels per day, divided among 18 refineries, 12 of which were owned by *Petrobras* and corresponding to 82,3% of the total refining capacity, while the other 6 were privately held. The new Annual Statistic Statement to be disclosed by ANP with all 2022 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. The sale of the facilities LUBNOR and REMAN is awaiting the approval of the governmental bodies.

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. Petrobras announced that it will assess the right moment to carry out a new bidding process for this asset. 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 will 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.

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.

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.

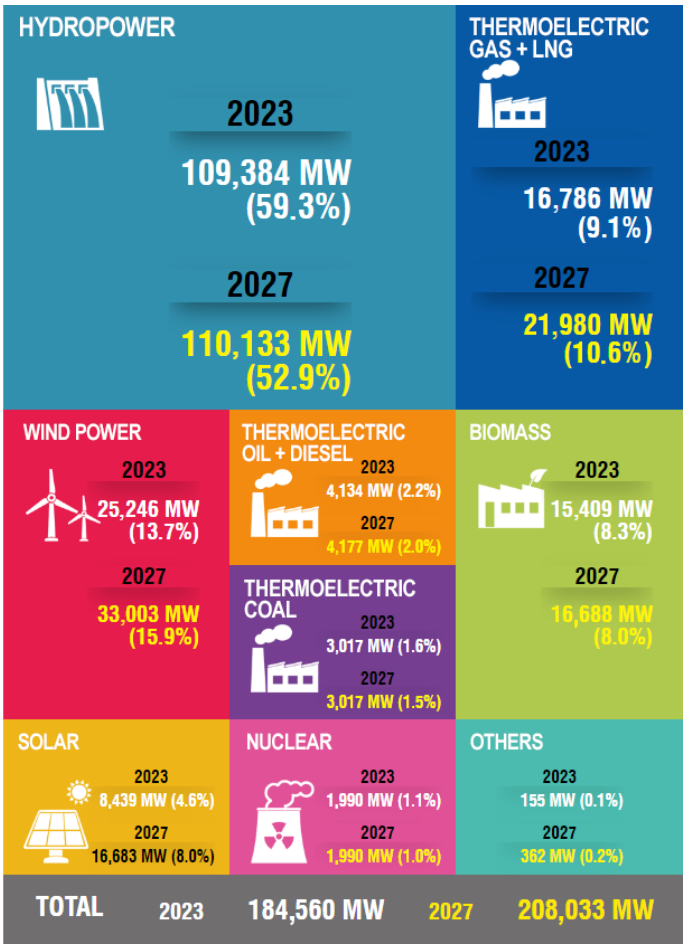
POWER AND RENEWABLES

1 Brazilian Energy Sector overview

Brazil is one of the leading countries when it comes to renewable energy, having 85.9% of its electricity generated by renewable sources. The main electricity source in Brazil is hydropower, representing more than 59.3% of the total supply. Wind (13.7%), solar (4.6%) and biomass (8.3%) are other abundant sources increasingly explored[38].

In May 2023, the installed capacity of Brazil's Electric System was amounted to184,560 MW. By 2027, this capacity is expected to increase by more than 23,000 MW, resulting in a total capacity of 208,000 MW.

Regarding the energy transmission sector, Brazil had 179,311 km of transmission lines at the end of 2022, and it is estimated that 37,268 km of new transmission lines will be implemented by 2027.



[38] Thermoelectric nuclear, and other source powerplants represent 14,1% of the matrix.

According to the Brazilian Electric System Operator (ONS), in line with the "2031 Ten Year Energy Expansion Plan"[39] ("Expansion Plan"), the share of renewable energy sources, including solar energy, is expected to continue to grow in the coming years.

The solar matrix is expected to increase from 4.6% of total installed capacity in 2023 to 8% in 2027, according to official ONS data.

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 energy 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 energy 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 energy sector is ruled by public institutions engaged in a governance structure.

The Brazilian National Council for Energy Policy ("CNPE") aims to oversee and formulate policies and guidelines for the entire electricity sector. Acting under the CNPE, the Energy Sector Monitoring Committee ("CMSE") is responsible for monitoring and permanently assessing the continuity and the security of energy supply in the country.

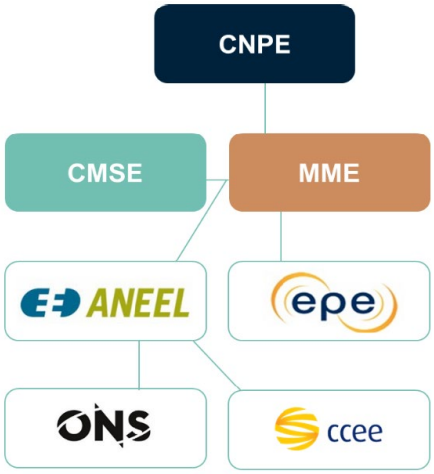
Directly connected to the CNPE and CMSE is the Ministry of Mines and Energy ("MME"), arm of the federal government responsible for minerals, energy and electricity matters. The MME works together with the Energy Research Company ("EPE"), which carries out studies and surveys concerning the electricity sector planning.

Following the MME directives, the Brazilian Electricity Regulatory Agency ("ANEEL"), is part of the indirect public administration and is responsible for the regulation and supervision of the electricity energy sector.

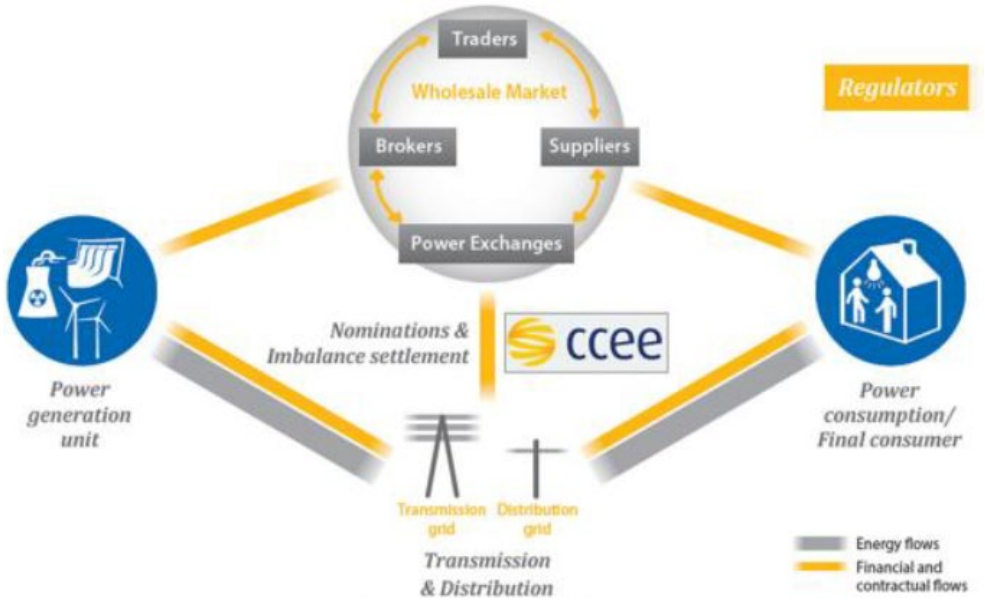
[39] Official Expansion Plan elaborated by Energy Research Company and the Ministry of Mines and Energy

Finally, we have two Institutions which are regulated and audited by ANEEL: the ONSONS, 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:



2 The Trading Environments

In Brazil, electricity services are classified as 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 consumers to generate energy through renewable sources, which are nowadays represented mostly by solar power sources. Within this structure, the energy surplus generated by the consumers is injected into the 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, known as "Free Consumers", 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.

3 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 title 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 Free Contracting Environment.

Retailer Trading Agents are entities that own an authorization title to represent free consumers before the CCEE.

Free Consumer Agents must have a minimum consumption of 500 kW. Ordinance No. 465 of 2019, issued by the Ministry of Mines and Energy, established a gradual reduction of the minimum consumption. In conclusion, from January 2023 onwards, the minimum consumption amount required to become a "free consumer" will be of 500kW[40].

Special Consumers are units with an installed load of 500 kW or more. They can choose their power supplier, as long as the power comes from wind, small hydroelectric plants, biomass, or solar sources with an installed power capacity of up to 30 MW.

The Free Consumers and Special 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 settle Energy Purchase Agreements, freely negotiating its conditions, obligations and prices.

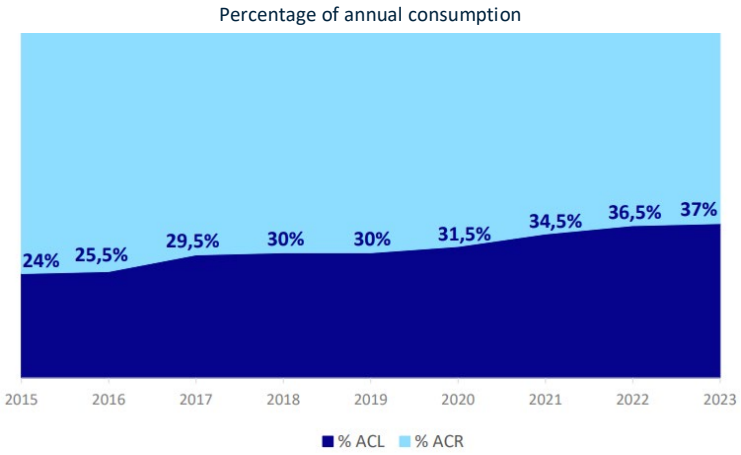
Captive Consumers are those attended by the local Energy Distribution Concessionaire and subject to public tariffs calculated by ANEEL.

4 Foreign investment

Currently, although the Brazilian energy 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 accounts for 37% of the total national energy consumption in 2023. Such number is bound to grow even further, given that the requirements to being classified as a Free Consumer were lowered and the landscape of freedom for all consumers to contract energy is expected to be a reality sometime in the near future – Bill No. 414/2021, which regulates the freedom for all consumers to contract energy, has already been approved in the Senate and will still be voted in the House of Representatives.

[40] For consumers connected to High Voltage lines, as authorized by Ordinance No. 50 of 2022



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 energy sector. There are certain requirements in place, but none especially designed for the acquisition of shares by foreign companies.

5 Environmental benefits and products

In Brazil, there are certain ways of selling other products associated with renewable energy, 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 9 billion.

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.

6 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.

7 Specific litigation aspects

Within the Free Contracting Environment, 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 enacted in 2007 was idealized 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 Personal 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 already 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 and the dosimetry regulation for the application of administrative sanctions, 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.

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:

(i) with the consent of the data subject;

(ii) for compliance with a legal or regulatory obligation by the controller;

(iii) by the public administration, 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;

(iv) for carrying out studies by research entities, ensuring, whenever possible, the anonymization of personal data;

(v) 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;

(vi) for the regular exercise of rights in judicial, administrative or arbitration procedures;

(vii) for the protection of the life or physical safety of the data subject or a third party;

(viii) to protect health, exclusively, in a procedure carried out by health professionals, health services or sanitary authorities;

(ix) 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

(x) for the protection of 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 her/his 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;
- to protect 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 natural person to whom the personal data that are object of processing ("Data Subject") has the right to request from the data controllers:

(i) proof of the existence of the processing;

(ii) access to the data held by the controller;

(iii) correction of incomplete, inaccurate or out-of-date data;

(iv) anonymization, blocking or deletion of unnecessary or excessive data or data processed in noncompliance with the provisions of the LGPD;

(v) portability of the data to another service provider or product provider, by means of an express request, pursuant with the regulations of the national authority, and subject to trade secrets and industrial secrets;

(vi) deletion of personal data processed with the consent of the data subject, except in the situations provided in Article 16 of the LGPD;

(vii) information regarding public and private entities with which the controller has shared data;

(viii) information regarding the possibility of denying consent and the consequences of such denial;

(ix) revocation of consent;

(x) lodge a complaint with the ANPD; and

(xi) review of decisions made solely based on automated processing of personal data affecting her/his interests, including decisions intended to define her/his personal, professional, consumer and credit profile, or aspects of her/his personality.

2.4 Data Protection Officer ("DPO")

(i) Data processing agents must appoint a Data Protection Officer ("DPO")41, whose activities consist of:

(ii) accepting complaints and communications from data subjects, providing explanations and adopting necessary measures;

(iii) receiving communications from the national authority and adopting necessary measures;

(iv) advising the entity's employees and contractors regarding necessary practices in regard to personal data protection; and

(v) carrying out duties determined by the controller or set forth in complementary rules.

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;

---

[41] Small processing agents do not have to appoint a DPO, according to the Resolution 02 of CD/ANPD/2022. Small processing agents means micro-enterprises, small businesses, startups, legal entities governed by private law, including non-profits, as well as natural persons and depersonalized private entities.

However, if the small processing agent (i) perform high-risk processing of personal data, (ii) earn gross revenue higher than, in each calendar year, greater than than R$ 360,000.00 (three hundred and sixty thousand reais) and equal to or less than R$ 4,800,000.00 (four million, eight hundred thousand reais); **or** (iii) belong to a de facto or de jure economic group, whose global revenue exceeds item ii a DPO must necessarily be appointed.

(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 (2%) 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 fifty million reais (BRL 50,000,000.00) per infraction;

(iii) daily fine, subject to the maximum total of fifty million reais (BRL 50,000,000.00);

(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) v) recidivism;

(vi) vi) degree of damage;

(vii) vii) cooperation of the offender;

(viii) 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 a maximum of two working days.

PUBLIC LAW AND FINANCING

Over the last years, the scarcity of resources in the Brazilian public budget has driven the government to seek large investments in the infrastructure sector through private initiative. Different measures adopted by the government aim to boost total infrastructure investment and attract foreign equity via public concessions, partnerships and privatization.

In 2020, the Brazilian Government launched a Long-Term Integrated Infrastructure Plan, the *Plano Integrado de Longo Prazo para a Infraestrutura 2021-2050,* introduced by Federal Decree No. 10,526/2020, which aims to increase private investment and improve the use of public budget in the infrastructure sector. The goal of the plan is to increase investments to exceed 3% of the Gross Domestic Product (GDP) over the next 15 years, which will bring a positive socioeconomic return, according to the General Guide for Socioeconomic Analysis of Cost-Benefit for Infrastructure Projects, developed by the Ministry of Economy.

Furthermore, the plan also presents large-scale projects in progress, that are supported by the Federal Government, involving both initiatives funded by the federal public budget, concessions, and authorizations, as well as actions developed in states, the Federal District and also municipalities that receive federal support. According to Federal Decree No. 10,526/2020, the plan must be updated every two years.

Also, the current government is structuring a new investment plan in order to leverage the infrastructure sector, based on six strategic axes: (i) transportation; (ii) social infrastructure; (iii) digital inclusion and connectivity; (iv) urban infrastructure; (v) water for all; and (vi) energy transition. In accordance with these strategic axes, president Lula promises to invest BRL 23 billion in infrastructure within one year through foreign capital.

The Federal Government has recently announced measures aimed at fostering concessions and public-private partnerships. There are two highlighted measures,

(i) Structural measures, which aims 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, to protect investors in the capital market, to improve the operation of institutions that support banking and capital markets, and to streamline the process of using guarantees.

(ii) Definition of parameters for the calculation of continuous nature expenses derived from the set of partnerships contracted by the Federal Government, states and municipalities, in order 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 regard not only concessions, Public-Private Partnerships and public works contracted directly with the Brazilian Government, 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.

1 The Bidding Procedure

The public procurement bidding process is a constitutional requirement in Brazil in order to to select the private party entering into an agreement with the Government. Such requirement is aimed at ensuring that potential corruption is avoided when leaving the choice to government agents.

In general, the principles applicable to Brazilian Public Biddings are provided for in Article 37, XXI, of the Brazilian Constitution. The provision lists five fundamental guidelines that must be observed by the Direct and Indirect Public Administration (Federal Government, States, Federal District and Municipalities) in the course of their activities:

(i) legality;
(ii) impersonality;
(iii) morality;
(iv) publicity; and
(v) efficiency.

Most of the rules subsequently included in relevant statutes stem directly from such constitutional provisions.

Since 1993, the most important statute regulating public procurement in Brazil was Law 8,666/1993 ("Bidding Law"), which established the general rules for bidding and contracts of the Administration.

After years of discussion and minor improvements, the Brazilian government sanctioned Law 14,133/2021 ("New Bidding Law") in 2021, aiming to consolidate, modernize and improve the Brazilian government procurement legal framework. Since the New Bidding Law provided for a two-year transition period to ensure adequate implementation across the three levels of government, both statutes are concurrently in force until April 2023, and the invitation to bid must indicate which of them is the applicable law of the procedure, since it is not possible to combine both laws. However, on March 31, 2023, the Federal Government enacted Provisional Measure[42] No. 1,167/23, which changes the date of repeal of the Bidding Law, as well as the Special System for Public Contracting (Articles 1 to 47-A, set forth in Law No. 12,462/11) and the Auction Modality Law (Law No. 10,520/2002). The original deadline (April 01, 2023) was extended, adding nine months for federal, state, and municipal government entities and agencies to execute contracts under the previous system, while they adjust to the new rules.

International companies that intend to participate in international public biddings must meet the requirements of the Bidding Law/New Bidding Law, depending on the rules provided by the bid notice, upon presentation of equivalent translated and authenticated documents, in the form of regulation issued by the Federal Executive Branch.

[42] Provisional measures in Brazil are rules enforced by the Law, sent by the president of Brazil for analysis by the National Congress. Provisional Measures must be edited in situations of priority and urgency according to the law in force.

International companies are also allowed to participate in bid procedures through a consortium. In this case, regardless of whether the company is foreign or not, it is necessary to indicate the leading company of the consortium, which will be responsible for its representation before the Administration. The New Bidding Law removed a requirement that in case of a consortium formed by a Brazilian company and foreign companies, the Brazilian company had to be the consortium leader. In case of biddings ruled by the older statute, this rule remains applicable. It is also important to bear in mind that, according to the Bidding Law, companies that form a consortium have joint and several liability.

1.1 Bidding Modalities

There are five modalities of bidding procedures, regulated by Law 14,133/2021:

(i) Reverse Auction
(ii) Competition
(iii) Contest
(iv) Public Sale
(v) Competitive dialogue.

In its turn, the Bidding Law establishes different types of public procurement procedures:

(i) Competitive bidding
(ii) Live or electronic reverse auction
(iii) Auction
(iv) Price quotation
(v) Invitation to bids

1.1.1 Reverse Auction

Reverse Auction is the mandatory bidding modality for acquisition of common goods and services, whose judgment criteria can be the lowest price or the highest discount.

1.1.2 Competition

Competition is the modality of bidding for contracting special goods and services and common and special engineering works and services, whose judgment criteria can be: lowest price; best technique or artistic content; technique and price; higher economic return or greater discount.

1.1.3 Competitive Selection

Competitive Selection is the bidding modality for choosing a technical, scientific or artistic work, whose judgment criteria will be the best technique or artistic content, and for awarding or remuneration to the winner.

1.1.4 Public Sale

Public sales are 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 works, services, and purchases 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. The use of this modality is restricted to public procurement that aims to create a contract that involves the following conditions: (i) technological or technical innovation; (ii) the agency or entity must not adapt solutions available on the market to have its needs met; and (iii) the public administration alone cannot determine technical specifications with sufficient precision.

1.1.6 Non-applicability or unfeasibility of the procurement process

The New Bidding Law, similarly to the provisions of the Bidding Law, establishes that the procurement process is not applicable, or is unfeasible, in the following cases:[43]

(i) Acquisition of materials, equipment, products, or contracting of services that only an exclusive manufacturer, company, or sales representative 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;

[43] 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.

(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 are necessary in the case of facilities and locations.

For cases in which a public procurement process is waived or deemed unfeasible, the contracting public authority must justify its decision and initiate a contracting procedure through the following documents:

(i) documents that formalize the demand and, as the case may be, a preliminary technical study, risk analysis, terms of reference, basic engineering design or detailed engineering design;

(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.

1.2 Bidding Judgment Criteria:

There are six types of judgment criteria in bidding procedures, regulated by Law 14,133/2021:

(i) lowest price;

(ii) biggest discount;

(iii) best technique or artistic content;

(iv) technique and price;

(v) highest bid, in the case of public sale; and

(vi) higher economic return.

1.2.1 Lowest price

The “lowest price” criterion is the most common type of bidding for procurement in general, in which the lowest priced proposal wins the bid.

1.2.2 Biggest discount

The “biggest discount” criterion considers the less 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

The “best technique or artistic content” criterion will exclusively consider 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 judgment criterion may be used for contracting projects and works of technical, scientific or artistic nature.

1.2.4 Technique and price

The “technique and price” criterion considers the highest score obtained from grading the characteristics attributed to the technical and price aspects of the proposal.

The judgment by technique and price must be carried out through: a) analysis of the qualification and experience of the bidder, proven through the submission of certificates of works, products or services previously performed; b) attribution of grades to matters of a qualitative nature, considering the demonstration of knowledge of the object, the methodology and the work program, the qualification of the technical teams and the list of products to be delivered; c) grading of the bidder's performance in previous contracts verified in the supporting documents and in a unified registry available on the National Public Contracting Portal.

1.2.5 Highest bid

The “highest bid” judgment criterion is used in the case of public sales.

1.2.6 Higher economic return

The “higher economic return” criterion, used exclusively for the conclusion of efficiency contracts, considers the greatest savings for the Administration, and the remuneration must be fixed at a percentage that will be proportional to the savings obtained in the execution of the contract.

1.2.7 Participation of international companies in federal bids

On February 12, 2020, the Special Secretariat for Debureaucratization, Management and Digital Government of the Ministry of Economy enacted Rule No. 10/2020 ("**IN 10/2020**"), which allows international companies that do not operate in Brazil to participate in public Federal Government biddings. Their participation in bids will now require registering with the Unified Registration System for Suppliers (*Sistema de Cadastramento Unificado de Fornecedores*), "**Sicaf**". This rule came into force on May 11, 2020.

IN 10/2020 amends Rule No. 3/2018, which regulates Sicaf's Federal Government procurement operating rules.

IN 10/2020 aims to reduce red tape so that international companies can easily participate in Federal Government bids, 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, in the event that a contracted party fails to comply with the provisions under the law or in case a contracted party fails to perform the respective agreement, public authorities (Contracting Party) can apply the following penalties:

(i) warning;

(ii) fines (amount established in the respective agreement);

(iii) temporary suspension from participating in bids and ban from being contracted by the Government; and

(iv) declaration 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 concessions of public services. The services set forth in the Concessions Law can be provided alone or coupled with the construction of public works or 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 Administration. PPPs are regulated by Law 11,079/2004 ("PPPs Law") and involve a prior competition bid to select the private party.

There are two modalities of concession under PPP:

(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.

The PPPs Law provides that a PPP regime must be applied to the bodies of the direct Public Administration, including the Executive and Legislative powers, the special funds, the autonomous bodies, foundations and public companies, such as all entities that are, in some way, controlled by federal entities.

Additionally, the PPPs Law sets forth 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 or the Specific Purpose Vehicle (SPV) to the financiers and the guarantors that do not have direct corporate commitment. The goal is for the SPV to be able to search for its financial restructuring while at the same time ensuring the continuity of the service provision. This Law, in addition, includes articles that cover concepts referring to the General Meetings, its structural issues and also the temporary administration.

3 Investments Partnership Program- PPI

The Investments Partnership Program (PPI) was created by Law No. 13,334 in September 2016, with the aim of extending and streamlining public-private interactions, for the performance of public infrastructure and other privatization projects.

The PPI is applicable to public projects that (i) are already in 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 investments 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 State'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 State'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 carried out the public consultation procedure for privatization of the "Organized Port of Santos – SP".

Such project intends to improve the quality and the operational efficiency of the services provided, through investments and the participation of the private sector.

The project is currently pending approval by the control bodies .

In 2023, the Brazilian Federal Government opposed to 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 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 currently under study
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

PROJECT	TYPE OF PROJECT	INVESTMENTS (CAPEX)	STATUS
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 currently under study
Crato (Ceará)	PPP	BRL 14,073,800	Project currently under study
Corumbá (Mato Grosso do Sul)	PPP	BRL 16,234,400	Auction expected to take place in November 19, 2023
Consórcio Pajeú (Pernambuco)	PPP	BRL 218,753,600	Project in the Public Hearing phase
Consórcio Conder (Paraná)	PPP	BRL 25,834,900	Project currently under study
Consórcio Alto Sertão (Bahia)	PPP	BRL 21,252,400	Project currently under study
Colatina (Espírito Santo)	PPP	BRL 24,309,830	Project awaiting Auction
Camaçari (Bahia)	PPP	BRL 63,746,851	Project awaiting publication of the Bidding Notice
Ariquemes (Rondônia)	PPP	BRL 13,756,600	Project currently under study
Araçatuba (SP)	PPP	BRL 31,665,400	Project currently under study
Araguari (Minas Gerais)	PPP	BRL 23,666,500	Project currently under study
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 13,018,200	Project currently under study

3.4 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 10,886,096,477	Project currently awaiting analysis by the TCU
Ferrogrão Railway EF-170 – MT/PA	BRL 25,190,000,000	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 in the Public Hearing phase
Rumo Malha Sul	BRL 10,300,000,000	Project currently under study

4 Contractual and Early Extension, and Re-bid

Law No. 13,448 was published in June 2017, editing rules and general guidelines for the extension and re-bid 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).

This Law provides three instruments for the contracts: (i) contractual extension; (ii) early extension; and (iii) re-bid.

The contractual extension and early extension are applicable for highway and railroad sectors according to 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 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 public consultation, 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 Federal Audit Court (TCU), together with the studies and reports regarding the case.

4.1 Re-bid

This instrument is applicable for highway, railroad and airport sectors.

This modality constitutes 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 re-bid process, the original concessionaire must submit: (i) the justification and technical elements that demonstrate the necessity and grounds for the process, with proposals for 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 Granting Authority will be responsible for the indemnification to the lessors of the original concessionaire.

The Law prohibits that the following persons participate in the re-bid process: (i) concessionaire or SPE originally contracted for the execution of the partnership contract; and (ii) SPE's shareholders holding at least 20% of the stock at any time before the re-bid process. Such limitation extends to the participation of these persons in consortia, capital stock or new SPE participating in the new bid.

In all cases, the responsible entity should present a technical study to support the extension or re-bid, with proper identification of the object, reason and other relevant information, which must be subject to public consultation opened to suggestions for at least 45 days.

On May 19, 2023, the first rebidding auction of Brazil was held at 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 rebidding took place after the previous operator voluntarily returned the concession to the public authorities, 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 its subsidiaries, within the Federal, State and Municipal scopes.

Upon regulation of the administration of such companies, the Law intends to promote the efficiency of such administration, establishing several governing and transparency mechanisms, concerning all state-owned companies that carry out economic activities of manufacturing or trading of goods and provision of services, in order to enhance the 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 the 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 to 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 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

The Brazilian National Bank for Economic and Social Development ("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 which 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 inaugurated by Federal Law 6,015/1973. The most common matters are primarily governed by the Brazilian Civil Code and by Federal Laws 6,015/1973 ("Public Records Law"); 14,382/2022 ("Electronic System of Public Records Law"); 9,514/1997 ("Fiduciary Lien 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 due to Covid-19 pandemic are still valid and will be in force on a definitive basis. With these new rules permanently in force, such grounding sets the course for 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 & occupancy regulations and 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 estate. 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) use; (iv) right-of-way; (v) enjoyment; (vi) habitation; (vii) 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). Certain rights to guarantee are also *in rem* rights: such as pledge, mortgage, fiduciary lien, antichresis and seizure.

The classification of a property depends on its use. Therefore, the location of the property isn't 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[44]. 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 a special online service called the "Centre 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 is being established in Brazil. Thus, not all information about real properties in Brazil are available online. For more detailed information, refer directly to the competent registration division.

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.

---

[44] 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).

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, in order for 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[45]), 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.

[45] 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., cancellation 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[46].

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.

[46] 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 public deed 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).

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, seeking judicial acknowledgement of the debt and its amount;

(ii) if the lender prevails, it is awarded foreclosure on the real estate;

(iii) once seized, the real estate must be judicially sold in an auction (the lender is precluded from keeping the real estate as payment in-kind);

(iv) the proceeds from the sale will be used to pay judicial costs and the debt; and

(v) if the proceeds from the sale are insufficient, the lender will still have an appeal against the borrower.

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. This means that, unlike with the mortgage, the foreclosure of the collateral triggers the applicable transfer taxes[47], 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, 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 nor create further encumbrances. Also, leases require the borrower's express consent to be enforceable against them.

The foreclosure must follow certain steps, as follows:

(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;

[47] Please see item 7.3.

(iii) procure an extrajudicial auction sale of the property (the lender is precluded from keeping the real estate as payment in-kind);

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;

(iv) if the minimum amount in item "iv" is not achieved, a second auction will take place for an amount equivalent to the sum of the debt, auction expenses, insurance premiums, legal charges, including taxes and common area expenses;

(v) if the amount in item "v" is not achieved, the lender will acquire full title to the real estate and the borrower will be released from obligations;

(vi) 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[48]; and

(vii) if the proceeds from the sale are insufficient, the lender will be precluded from further recovering against the borrower. The only exception where the lender will be able to continue the foreclosure is in a certain revolving loans agreement executed with a financial institution.

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 7, 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.

5 Acquisition of Rural Real Properties by Foreigners

Acquisition of rural real estate by foreign individuals or foreign legal entities is governed by the Rural Real Estate Legislation. This piece of legislation is centered on three main legal issues:

(i) A general limitation on the acquisition of rural real estates by any foreign individual, individual or legal entity, subject to intended use of the property.

(ii) The matching of a foreign legal entity with a Brazilian legal entity that holds the majority of its capital is held, at any title, by an individual residing abroad or legal entity based abroad or that are controlled directly or indirectly by a foreign individual or legal entity ("Brazilian Entities of Foreign Capital").

[48] The fiduciary sale was initially created as a means to secure real estate acquisition. Over time, its application was expanded to comprise other more complex transactions.

(iii) The discussion over the applicability of such restrictions for farmland acquisition and its rural lease[49] only, or for other types of rights over farmland, such as right of surface, usufruct, or free lease.

Such restrictions and issues are not applicable to urban properties. Rural lease agreements over rural real estate are also subject to these restrictions. The ongoing discussions related to the restrictions before Brazilian Courts reached the Brazilian Superior Court, where a ruling is expected soon. It is possible that the discussion will end and, consequently, the categorization of Brazilian Entities of Foreign Capital as a Brazilian Entity will be applied. Therefore, such restrictions can be lifted, or not, depending on the decision rendered.

For rural land that is not located on border/frontier areas: authorization of the National Institute of Colonization and Agrarian Reform ("INCRA") is required for an acquisition of *in rem* rights or certain possession rights over rural land not located on border/frontier areas, by a foreign legal entity, legal entity controlled by foreigners or foreign individual, and is contingent on a prior request/submission of an exploitation project (describing the intended use of such property) to INCRA and issuance of its prior authorization is a legal requirement to proceed with such transaction. This requirement is extensive to Brazilian entities controlled (by majority capital or directive power) by a foreign individuals or legal entities residing/based abroad and 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.

For rural land that is located on border/frontier areas: authorization of the National Security Council ("CDN") is required for an acquisition of any in rem rights or any possession rights over rural land located on border/frontier areas, by a foreign legal entity, legal entity controlled by foreigners or foreign individual, is contingent to a prior request/submission of an exploitation project (describing the intended use of such property) to CDN, and such request must be initially submitted to INCRA. Issuance of CDN's and INCRA's prior authorization is a legal requirement to proceed with such transaction. This requirement is extensive to Brazilian entities controlled (by majority capital or directive power) by a foreign individuals or legal entities residing/based abroad. Corporate transactions resulting in the indirect transfer of rural land located on border/frontier areas, or in corporate reorganizations that result in transfer of shares in an entity holding rural land are also subject to such prior authorization, but the respective authorization process is initiated directly before the CDN.

The acquisition of farmland 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 cancelled or refused, as applicable. The analysis of the validity of such acquisition depends on the time when the property was acquired, its use, its location, and its area, among other aspects. Considering that not only the law on farmland acquisition 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.

[49] Please see item 6.2 below

This legal landscape establishes that foreign entities 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 and the property registry before INCRA must be annually updated. 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 (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. The review made by any of these agents will initiate the procedures 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 soon. It is possible that the discussion will end and, consequently, the categorization of Brazilian Entities of Foreign Capital as a Brazilian Entity will be applied and, therefore, lift such restrictions, or not, depending on the decision rendered.

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.

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 (6) different governmental authorities and at least two (2) non-governmental organizations in Brazil, namely:

(i) 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.

(ii) 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.

(iii) 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

(iv) 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 radio-frequency 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 imposes fines for regulatory infringement, among others.

(v) 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.

(vi) 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).

(vii) 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.

(viii) 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:

(i) 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

(ii) 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 the present moment, and although under revision by Anatel, the Agency has preferred to regulate five (5) telecommunication services, as follows:

(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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, in case of collective interest services, there are less than five thousand (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. Finally, 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.

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):

(i) 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

(ii) 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 cancelling authorizations or imposing new obligations on telecom service providers.

The allocation of spectrum by Anatel can be carried out as follow:

(i) 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

(ii) 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, 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 sixty (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 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 in the coming 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 fifteen (15) years. It can be extended for additional periods of up to fifteen (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.

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 ten (10) years (for radio broadcasting) or fifteen (15) years (for TV broadcasting).

Such authorizations are subject to the following requirements and obligations, among others:

(i) Seventy percent (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 ten (10) years, who will mandatorily carry out management activities and define the content of the programming.

(ii) The same individual cannot participate in the administration or management of more than one broadcaster within the same location.

(iii) The transfer to third parties of the concession, authorization or permission depends on prior approval by the Brazilian Congress.

(iv) Programming and content aired by FTA broadcasters must fulfil 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 ten (10) years, or by legal entities incorporated under Brazilian laws and headquartered in Brazil. Additionally, for more than ten (10) years, at least seventy percent (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:

(i) 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.

(ii) 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:

(i) improving people's quality of life and promoting efficiency gains in services through the IoT;

(ii) promoting professional training for the development of IoT solutions and job creation in the digital economy;

(iii) increasing productivity and fostering the competitiveness of Brazilian IoT companies through innovations in the sector;

(iv) seeking partnerships with the public and private sectors for the implementation of the IoT; and

(v) 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 Strategy ("E-Ciber") sets out strategic goals to guide the country's approach from 2020 to 2023. Such goals include making Brazil a reference nation in the cybersecurity area and strengthening the country's resilience towards 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.

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.

However, the structuring of the vast majority of venture investments in Brazil tend to follow foreign legislations and are recurrently structured abroad, in which it is common to see venture firms (local and foreign) requesting Brazilian startups in their primary investment rounds to incorporate foreign parent companies for receiving their investment and swapping equity interest. In view of this growing industry and the acknowledgement 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).

As of 2023, we have noticed a conservative approach from investors in regard to new investments in startups. This is in line with global trends, due to the lack of liquidity in the markets, rising cost of capital, and increasing difficulty of access to capital markets in Brazil by developing companies. In parallel, we have also noticed an uptick in reorganizations and rearrangements of certain investments that have already been made, as well as in emergency fundings by shareholders, to certain startups, as a means to keep businesses going.

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/ME); 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).

The Law also 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. The new Law also establishes that the investor who makes investments in the aforementioned modalities 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. In addition, it also establishes that the investor will not be liable for the company's debts, even in the event of Judicial Reorganization, and the provisions concerning the piercing of the corporate veil will not extend to such investor – which is a major innovation for the Brazilian legal framework.

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.

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.

In addition, 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.

Although other relevant topics such as labor, tax and regulatory issues were not addressed by the Law, there is no question that the Legal Framework for Startups will represent an important step towards a more secure legal environment that encourages investment in innovative entrepreneurship.

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 foreigners. However, it is still necessary to obtain certain authorizations for foreigners to work in Brazil.

Foreigners must obtain a residence permit and a temporary work visa to work in Brazil. In regard to the types of work visas that would be appropriate for foreigners who would be assigned to work in Brazil, we clarify that such foreigner will need to have **(i)** a valid visa, which allows him/her to enter the country and **(ii)** the appropriate Residence Permit, which is the authorization that will allow the individual to remain working in Brazil.

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 foreigner 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, he/she has 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 foreigner 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 aspects of each kind of visa based upon the current legislation in force.

2 Residence Permit for Investors

This Residence Permit is appropriate for the foreigner 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 foreigner into the capital stock of a Brazilian Company, under one of the following conditions:

(i) At least five hundred thousand Reais (BRL 500,000.00) if the investment is made in a pre-existing or recently incorporated company; or

(ii) Between one hundred and fifty thousand Reais (BRL 150,000.00) to five hundred thousand Reais (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 foreigners to execute an employment contract with the Brazilian company.

3 Residence Permit for Officers and Managers

This Residence Permit is applicable to foreigners who will occupy directorial positions in Brazil, i.e., administrator positions, duly indicated in the Brazilian company's Articles of Association as an administrator, and with powers to 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 foreigner will be one of the following:

(i) Proof of direct foreign investments in the company, in the amount of at least six hundred thousand Reais (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

(ii) Proof of direct foreign investments in the company, in the amount of at least one hundred and fifty thousand Reais (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 ten (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 foreigner to execute an employment agreement with the Brazilian company; thus, the foreigner may be hired as an effective employee of the company, or as a non-employed officer (see below specific comments on these types of engagement).

4 Residence Permit for Work Purposes with an Employment Agreement with a Brazilian Company

This type of Temporary Residence Permit is appropriate for foreigners who will be hired as employees in Brazil, to hold positions that do not involve management.

Thus, foreigners 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 cancelled.

For this Residence Permit, the local employer has to demonstrate the compatibility between the professional qualification/experience of the foreigner and the activity that he/she 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 (2) 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 foreigners 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 (1) year; however, it is possible to request a renewal of the residence permit for an additional period of one (1) 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 foreigners 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 (1) year, however, it is possible to request a renewal of the residence permit for an additional period of one (1) 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 foreigner's services, it will be necessary to engage the individual as a regular employee, as per Brazilian Labor Law.

7 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.

8 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 2 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.

9 Individual Income Tax

Upon arrival in Brazil, foreigners holding a permanent visa or a temporary visa with an employment contract with a Brazilian company are deemed taxpayers and subject to the same income tax laws applicable to other residents of Brazil.

As a taxpayer in Brazil, his/her worldwide income will be subject to Brazilian income taxation. 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 water and sanitation sector and regulation comprise the following public services:

(i) *Clean drinking water supply*: Every Brazilian has the right to have drinking water and it is the city's responsibility to ensure the supply of water to each home;

(ii) Sewage collection and treatment: All sewage must be collected and the dirty water from bathrooms, sinks and drains must be treated before it is returned to the environment;

(iii) Rainwater drainage: Draining rainwater to prevent flooding is also part of sanitation. It is the city's role to keep the street water drainage system clean and fully operational; and

(iv) Waste collection and street cleaning: The collection of garbage from all houses, as well as street sweeping and cleaning, is also a right under the current sanitation law.

2 The New Water and Sanitation Regulatory Framework

2020 was a very important year for the water and sanitation sector. The president of Brazil signed into law, with vetoes, the New Water and Sanitation Regulatory Framework. As a result of the approval, Federal Law No. 14,026, was published in the Brazilian Federal Official Gazette on July 16, 2020, including the provisions stated below.

The new Water and Sanitation Regulatory Framework is an important milestone for attracting private companies into the sector. In the current scenario, mostly state-owned enterprises ("**SOE**") and government-owned companies are the providers water and sanitation services. The new law will bring greater legal security and regulatory consistency, increase competition and efficiency, attract investments and new opportunities to the sector. All improvements were established for the government to achieve its main goal - ensuring universal access to water and sanitation services.

Among the main provisions of the New Water and Sanitation Regulatory Framework, the following stand out:

(i) *Universal access goals*: ensure access to 99% of the population with drinking water and 90% of the population with sewage collection and treatment, by December 31, 2033;

(ii) Increase competition and participation of private companies:

a. Mandatory bidding proceeding for all rendering or delegation of services, with the participation of the government and private stakeholders;

b. The new law expressly bans the provision of water and sanitation services under Service Delegation Agreements (*contrato de programa*) that are not preceded by a bidding procedure. Currently, the rendering or delegation of all water and sanitation services must be preceded by a bidding procedure. Automatic renewal of Service Delegation Agreements is also banned; and

c. services delegation agreement signed with state-owned companies can now be replaced with a concession agreement. Such replacement can occur due to the sale of a controlling interest of an SOE. Mayors can only sell corporate control after the end of the state of public emergency (COVID-19).

(iii) *Standardized regulation:* granting the National Water Agency (Agência Nacional de Águas – "ANA") the power to edit reference standards to regulate water and sanitation services. Brazil has the largest number of water and sanitation regulators in the world;

(iv) *Dumps:* extends the deadlines of the Brazilian National Policy on Solid Waste (under Law 12,305, 2010) for cities to close open dumps. The new deadlines range from December 31, 2020 to August 2, 2023. The deadlines depend on the number of residents in the town – the smaller the town, the longer the deadline;

(v) granting of financial aid to low-income families to pay for the costs of rendering services and provision of services free of charge for connection of residences to the sewage network;

(vi) Conditions of Validity of Agreements: Contractors must prove their financial solidity - either through their own resources or by contracting debt, in order to facilitate universal access to services.

(vii) Regular and in-force agreements will remain in effect until the end of their respective terms. However, contractors must prove their financial solidity in order to maintain the agreement valid. Also, these agreements must be amended if they do not include the new universal access goals; and

(viii) New agreements must have essential clauses provided under the future law. Otherwise, such agreements may be declared nulled.

In the year following the publication of the new framework, Decrees No. 10,710, of May 31, 2021 and No. 10,588, of December 24, 2020 were published. Respectively, these decrees addressed the methodology to verify the economic and financial capacity of service providers and the regularization of operations; and the technical and financial support provided for in the Water and Sanitation Regulatory Framework.In 2023, the decrees were repealed after the publication of Federal Decrees No. 11,466/2023 and No. 11,467/2023, which aim to guarantee the necessary conditions for the universalization of services by 2033.

The changes proposed by the Federal Government increase the deadlines for adjusting to the rules established in the legislation, thus allowing municipalities and basic sanitation service providers to comply with such requirements by December 2025.

What is more, the legal restrictions unlock public and private investments in the Brazilian sanitation sector, with the aim of expanding the participation of the private sector. Such changes will allow for investments of BRL 120 billion by 2033. The suspension of the 25% limit for the carrying out of Public-Private Partnerships (PPP) by the states is an example of change that can potentially attract investments.

According to data disclosed by the Federal Government of Brazil, the abovementioned adjustments will enable 1,113 municipalities to regain access to basic sanitation resources provided by the Federal Government. As a result, these municipalities can meet the universalization target, thus creating a new opportunity for state companies to prove their economic and financial capacity to carry out the investments.

Recent changes also extended the deadline for regionalization to December, which will prevent 2,098 other municipalities that are not yet regionalized from being denied access to federal resources within the scope of sanitation.

DEMAREST