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DOING BUSINESS IN BRAZIL

INTRODUCTION

This document serves as a guide for those who are interested in doing business in Brazil, providing the main information required to invest in the country, such as economic, tax, labor, environmental, intellectual property, and competition aspects.

This guide, in order to provide a better service, includes the main topics regarding the matter, such as bankruptcy, compliance, regulated markets, and real estate aspects, fulfilling the purpose of broadening the views on the particularities of the country and allowing a more facilitated entry of foreign capital.

It is important to emphasize that our Doing Business in Brazil is not intended to serve as an investment recommendation, and that the interested party should seek specialized and technical advice.

As it is not possible to exhaust all the topics covered, if you have any questions, do not hesitate to contact us.

May, 2024

CONTENTS

THE BRAZILIAN POLITICAL STRUCTURE, LEGAL SYSTEM AND ECONOMY

OVERVIEW

As well as being the largest economy and country of South America, the Federative Republic of Brazil ("Brazil") is also the world's fifth largest country by land mass (almost 8.6 million square kilometers) and the seventh largest country by population (more than 200 million people). In 2022, according to the International Monetary Fund ("IMF"), Brazil had the twelfth largest gross domestic product expenditure (GDP) and has the eighth largest purchasing power parity in the world.

It is the only lusophone (Portuguese-speaking) country in otherwise-Spanish-speaking Latin America and the largest lusophone country in the world. Furthermore, regarding international matters, Brazil is a member of the G20 and one of the BRICS nations, along with Russia, India, China and South Africa.

BRAZIL´S POLITICAL AND ECONOMIC BACKGROUND

Before the enactment of Brazil´s Federal Constitution ("Constitution") in 1988, Brazil was ruled by a military dictatorship that lasted around two decades[1], so the enactment of the Constitution marked the re-democratization of Brazil.

Even though the Constitution was enacted in 1988, it has been subject to over 70 amendments since. It regulates the entire Brazilian legal system and is characterized by being largely democratic and liberal, to the extent that it guarantees fundamental rights (*Direitos Fundamentais*) to its citizens.

Shortly after the re-democratization, Brazil went into a turbulent political period, which included the impeachment of Brazil´s first president to be directly elected by popular vote after the military dictatorship of 1964, Fernando Collor de Mello[2].

[1] Brazil´s military dictatorship took place from 1964 to 1985.

[2] Fernando Collor de Mello's presidential term in office was from 1990 to 1992.

In order to achieve economic and political stability, new policies were implemented by the former presidents Itamar Franco[3] and Fernando Henrique Cardoso[4], who opened Brazil´s economy to international trade and reinforced relations with international financial centers. It was only in 1994, with the successful launch of the Real Plan, that the stabilization process achieved its turning point.

The Real Plan was a groundbreaking achievement against the inflationary spiral that afflicted Brazil for over one decade and aimed, among other things, at a reduction of the social inequality and truly sustainable growth. It was also in the early 1990s that Brazil initiated a series of economic and administrative reforms aiming the modernization of the Brazilian State and economy. Such reforms included the privatization of state-owned companies incorporated during the authoritarian period and the democratization of the public administration, setting Brazil on the road to economic development.

During president Luiz Inácio Lula da Silva's[5] term in office, Brazil was able to substantially reduce social inequality with the deepening and improvement of federal income distribution programs, combined with favorable international conditions for Brazilian exports and the adoption of successful counter-cyclical fiscal measures during the 2008-2009 global financial crisis. Macroeconomic measures previously implemented during former President Cardoso terms in office were maintained, and Brazil achieved significant growth rates.

After this period of a relative fiscal stability, the first term of President Dilma Rousseff[6] eased the government's fiscal policy and boosted the funding granted by state-owned public banks to parts of the private sector.

Despite that, former president Rousseff's so-called "new economic matrix" resulted in a disastrous imbalance in Brazil's public accounts. During her second term[7], the commodities crisis significantly affected the Brazilian economy (at the time, commodities represented 6,8% of Brazil's internal gross product according to UNCAT in 2014), which contributed to the sharp contraction of the economy and significant decreases in government revenues.

In late 2015, the Brazilian House of Representatives (*Câmara dos Deputados*) accepted an impeachment request against President Rousseff, who was charged with administrative misconduct in the performance of her duties, in disregard of the federal budget and the Fiscal Responsibility Law. Subsequently, the Senate impeached President Rousseff, and Michel Temer, her vice-president, officially became Brazil´s President.

Once President Temer took office, he initiated a series of economic reforms aimed at once again achieving economic stability and sustainable growth. President Temer proposed major reforms regarding public spending and the national social security policy, which proved unpopular and lacked political support, especially after Joesley Batista[8] recorded conversations in which Batista represented that President Temer was involved in bribery that were subsequently leaked to the press.

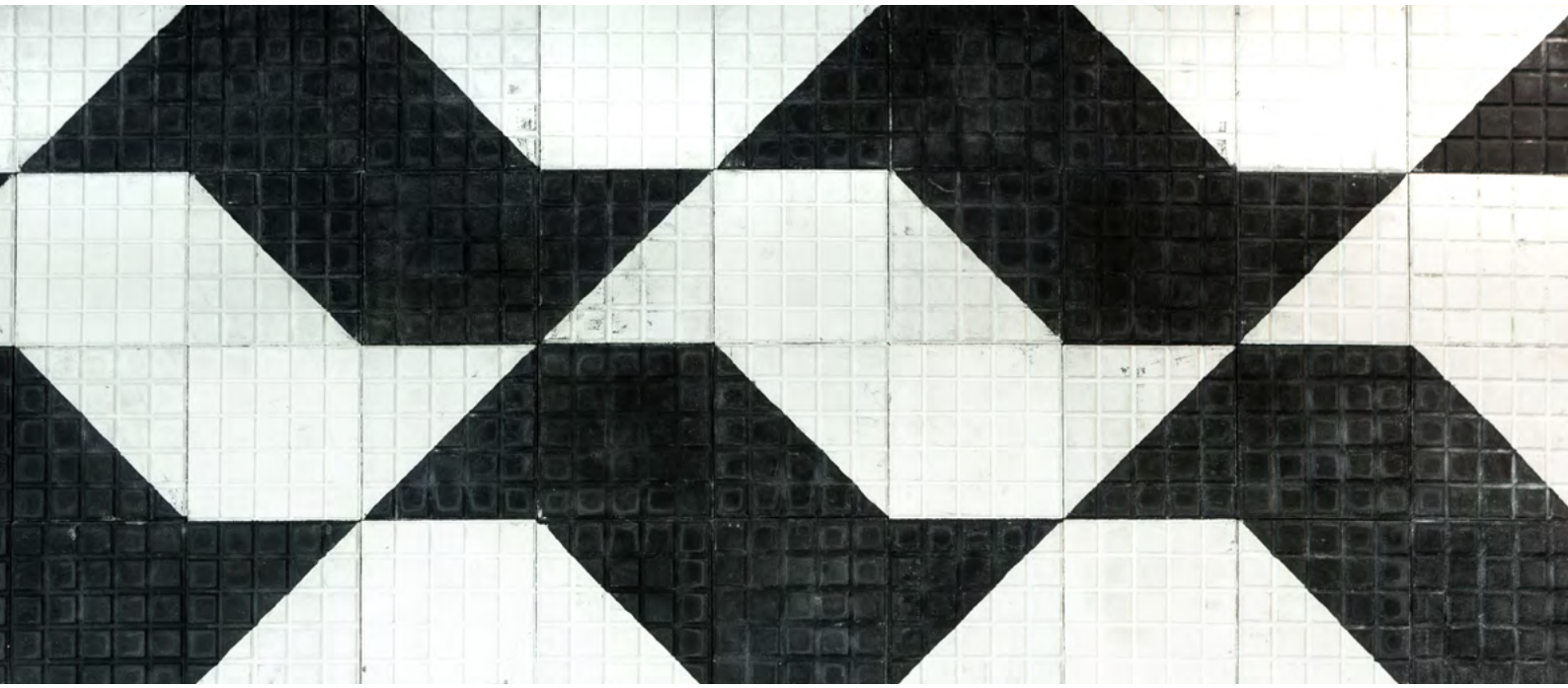
[3] Itamar Franco's presidential term in office was from 1992 to 1994.

[4] Fernando Henrique Cardoso's first presidential term in office was from 1995 to 1998 and was reelected for a second term from 1998 to 2002.

[5] Luiz Inácio Lula da Silva's first presidential term in office was from 2003 to 2006 and was reelected for a second term from 2007 to 2010.

[6] Dilma Rouseff's first presidential term in office was from 2011 to 2014.

[7] In 2014, Dilma Rouseff was reelected for a presidential term in office from 2015 to 2018; however, it lasted only until May 2016, when her impeachment occurred.



However, former President Temer was able to approve a labor law reform (Law No. 13.467/2017) and the reorganization of state-owned companies (Law No. 13.303/2016).

In 2018, Brazil held federal and state general elections in which Jair Messias Bolsonaro was elected the new Brazilian President[9]. Once President Bolsonaro took office on January 1, 2019, a strong reduction of the Federal Government structure took place, and he proposed a series of regulatory, social and economic reforms. During his term, the Congress approved the Social Security Constitutional Reform, which became effective on November 12, 2019 (Constitutional Amendment No. 103) and the Economic Freedom Act to reduce regulatory issues in Brazil (Law No.13.874/2019). During President Bolsonaro´s term in office, the Congress and Paulo Guedes, Minister of Economic at the time, were engaged in discussing proposed fiscal, tax and administrative reforms; however, until this day, none of them have been approved.

Also during former President Bolsonaro´s term, the Federal Government was moving forward with an aggressive privatization program coordinated by Minister Marcelo Sampaio. Despite the many controversial environmental, political and civil rights discussions in which Brazil had become involved in during 2019, the economic and regulatory agenda was moving forward, and the Legislative, Judiciary and Executive branches were working with independence and a reasonable collaboration, showing the existence of strong and stable institutions.

In contrast to the country's current economic challenges, most of which originated with the COVID-19 pandemic, the solid macroeconomic foundations established under prior presidential administrations, the strength of the Brazilian domestic market, and an efficient, transparent, well-regulated banking system have combined to make Brazil an attractive destination for international investment.

[8] Joesley Batista is a Brazilian businessman, who was responsible for the expansion and internationalization process of JBS S.A., the largest meat-packing company in the world and one of the main agribusiness companies in Brazil. Batista and his company are involved and have pled guilty in several allegations of bribery. From September 2017 to October 2018, the Brazilian court kept Batista on remand for illegal profit on the financial market.

[9] Jair Messias Bolsonaro's presidential term in office was from 2019 to 2022.

According to the United Nations Conference for Development and Trade (UNCTAD), Brazil reached the seventh position as the country that received more foreign direct investment (FDI) in 2021. Even with the 23% global reduction in the flow of FDI, Brazil had an increase of foreign direct investment from US$28 billion in 2020 to US$58 billion in 2021 (UNCTAD 2021), achieving growth of 133%.

In addition to the global challenges brought on by the COVID-19 pandemic, Brazil went into a turbulent political period involving both republicans, who wanted the reelection of President Bolsonaro, and democrats, who wanted the election of former president Luiz Inácio Lula da Silva. In 2022, current President Luiz Inácio Lula da Silva was elected.

THE BRAZILIAN POLITICAL STRUCTURE

Brazil is a federative republic, with broader powers granted to the Federal Government compared to the US federal system. Both for political and administration matters, Brazil is comprised of a Union, States , Federal District (Distrito Federal) and Municipalities , which are autonomous under the Constitution.

The Constitution states that "t*he Legislative, the Executive and the Judiciary are the branches of government, independent and harmonious among themselves.*"

Regarding the **Legislative branch**, Brazil´s National Parliament is formed by the bicameral National Congress (*Congresso Nacional*). The House of Representatives (*Câmara dos Deputados*) is formed by 513 members directly elected for a four-year term. The Federal Senate is formed by 81 directly elected members who are elected for an eight-year term but where one-third and two-thirds are alternatively renewed every four years (first one-third and then the remaining two-thirds).

Brazil is divided administratively into 26 states plus the Federal District of Brasília. Each state is entitled to elect three members to the Senate, while members of the House of Representatives are elected proportionally based on each state's population, with three members being the minimum representation in the House.

At the state level, the **Legislative branch** is composed by representatives, also elected for a four-year term, and, at the municipal level, the Legislative branch is constituted by the city representatives, also elected for a four-year term.

Regarding the **Executive branch**, Brazil has a presidential system, established by the Constitution. Also, each state is governed by its own constitution, which must respect the provisions of the federal Constitution, and is headed by a governor. At the municipal level, the Executive branch of each municipality is headed by a mayor.

The Brazilian president is elected by direct vote for a four-year term (and can be reelected for one additional term) who acts as the head of the Executive branch. The Executive branch's powers include the right to appoint ministers of state, as well as key executives to selected administrative and political offices.

At the state level, the Executive branch is formed by governors, elected for a four-year term (with the possibility of reelection), and, at the municipal level, the Executive branch is formed by mayors, elected for a four-year term (with the possibility of reelection).

At last, the **Judiciary branch** is constituted by the Supreme Court, the Superior Court of Justice, the Superior Court of Labor, the Military Superior Court, and a network of lower federal and state courts.

THE BRAZILIAN LEGAL SYSTEM

The Brazilian legal system follows a European tradition. It's a civil law system in which the main source of law is statute, with judicial precedent playing a subsidiary role.

The Constitution is the supreme law, establishing fundamental principles for the Brazilian legal system, and no law, regulation or judicial decision can contradict it.

In Brazil, the Federal Government, the states and each of the municipalities have their own authority to pass and enforce laws and to issue and collect taxes. The Federal Government has the exclusive jurisdiction to legislate business entities, contractual rules, commerce, financing, employment and intellectual property.

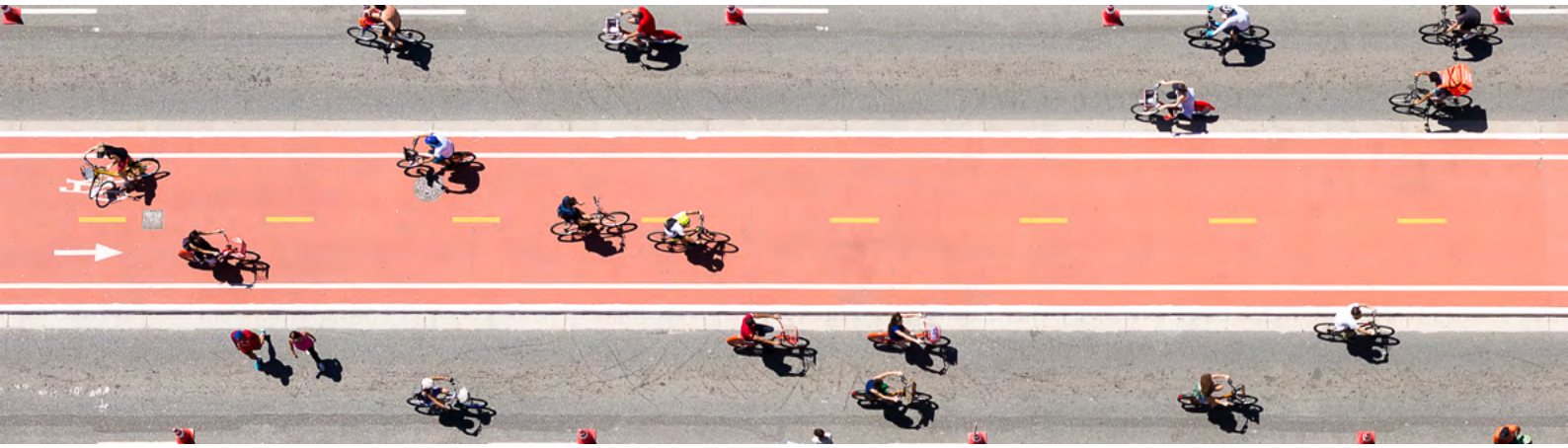
At the federal and state levels, there is an Executive, a Legislative and a Judiciary branch. Municipalities do not have a Judiciary branch.

The federal Judiciary branch is fully independent from the state judiciaries. The Federal Government and the states (including the Federal District of Brasília) have their own judicial systems. Within the federal Judiciary branch, there are specialized divisions, such as the Labor Justice System and the Military Justice System. Decisions by the Legislative and the Executive branches may be challenged in court as to their compliance with the Constitution and/or the law.

Business law is set out in many different statutes. However, two of them call for special mention: the Law of Introduction to the Norms of the Brazilian Law ("*Lei de Introdução às Normas do Direito Brasileiro*" or "LINDB ") and Law No. 10,406 of January 10, 2002, as amended (the "Brazilian Civil Code" or "Civil Code").

The LINDB is not a part of the Civil Code. It is a diploma that disciplines the application of law in general. Its function is to set the standards, indicating how to interpret or apply the law and to determine their term and effectiveness. The Civil Code sets out most rules on legal capacity, private contracts, business entities, statutes of limitation and family law.

International treaties executed by Brazil and ratified by the National Congress have the status of law in Brazil. Some of those treaties have a direct impact on the Brazilian business law, such as the Mercado Comum do Sul (MERCOSUL) treaty. Furthermore, arbitral practices are governed by Law No. 9.307/96, which provides that arbitral awards will produce the same outcomes as decisions rendered by the judiciary. The law stipulates that arbitral awards do not have to be ratified by the judiciary.



THE BRAZILIAN ECONOMY

Agribusiness is one of the most important actors for economic growth and export volume in the Brazilian economy, accounting for about 27.4% of gross domestic product in 2021, the highest since 2004 (27.53%). Brazil is the world's second-largest exporter and the biggest supplier of sugar, orange juice and coffee.

From 2000 to 2020, Brazil was the second-largest producer and exporter of soybeans. As of last year, it reached first place, with 126 million tons produced and 84 million exported.

Also, Brazil is an important producer of corn, cotton (fourth-largest producer), cocoa, tobacco, tropical fruits and forest products and has the world's largest commercial cattle herd, with 218,2 million livestock.

Brazil holds a noteworthy position in the chemical and textile industries, as well as in the pulp and paper sectors. Brazil is one of the largest eucalyptus fiber producers worldwide.

Like its supply of carbon-based fossil fuels, Brazil's proven mineral resources are extensive. Large iron and manganese reserves are important sources of industrial raw materials and export earnings. Deposits of nickel, tin, chrome, bauxite, beryllium, copper, lead, tungsten, uranium, zinc, gold, silver, and precious and semiprecious stones, as well as rarer minerals, are commercially mined.

Brazil has one of the most diversified manufacturing sectors in the world and the largest in Latin America.

The country's diverse industries include automobiles and parts, machinery and equipment, textiles, shoes, cement, computers, aircraft (including the first aircraft production facilities in the Southern Hemisphere) and consumer durables.

Petrobras, one of the largest companies in the world, is known for its oil and gas exploration capabilities in ultra-deep water. Brazil's known oil reserves are ranked among the 20 largest in the world, particularly when taking into account the ultra-deep pre-salt reserves.

Brazil's river network is the most extensive in the world, containing the largest volume of fresh water worldwide and placing the country among the leading producers of hydroelectric power. Hydroelectric powers provide most of the country's electricity.

Endowed with a large and varied array of natural resources, a diversified industrial sector, a sophisticated financial system and a large domestic market, Brazil is one of the most attractive investment destinations for foreign investors, especially as the Brazilian people and government show determination to maintain their commitment to a strong currency and continued modernization.

TYPES OF BUSINESS ENTITIES

A foreign company wishing to do business in Brazil can either create a branch office or incorporate a company in order to carry out its business. Because the formation of a Brazilian branch by a foreign company requires authorization granted by a Presidential Decree, the majority of foreign companies set up businesses in Brazil using subsidiaries or affiliated companies. In comparison to the incorporation of a subsidiary, establishing a branch in Brazil presents adverse tax impacts and other liabilities.

Corporate entities existing in Brazil are essentially regulated by the Civil Code and by Law No. 6,404 of December 15, 1976, as amended (the "Corporation Law"). There are several types of corporate entities guided by these laws, and the most widely used in Brazil are (i) the Limited Liability Company (*sociedade limitada or limitada*), mainly regulated by the Civil Code, and (ii) the Joint-Stock Corporation (*sociedade anônima or S.A.*), mainly regulated by the Corporation Law.

The liability of quota holders or shareholders, both in limited liability companies and joint-stock corporations, is generally restricted by the amount that they paid for their quotas or shares.

However, in cases of fraud or illicit acts, Brazilian courts can "pierce the corporate veil," disregarding the corporate entity and holding partners directly liable for the entity's obligations. Experience shows that courts are most likely to pierce the corporate veil with respect to labor and tax obligations.

Foreign individuals or corporate entities investing in Brazil must be enrolled in the Brazilian Federal Revenue Office with the Brazilian Taxpayers' Registry (*Cadastro Nacional da Pessoa Jurídica* – "CNPJ "), which reports to the Ministry of Economy. They must also be registered before the Brazilian Central Bank ("BACEN").

Except for certain types of businesses (e.g., financial institutions) and those businesses subject to thin capitalization rules, there are no minimum capital stock requirements, and the capital stock may be allocated among the shareholders as the company sees fit.

LIMITED LIABILITY COMPANY (*SOCIEDADE LIMITADA*)

The Limited Liability Company is a type of company that establishes its rules based on the amount invested by each member. It is one of the predominant company types in Brazil, and its basic structure is set in the company's Articles of Association , with guidelines provided for in the Brazilian Civil Code and, alternatively, by the Corporations Law.

Limited Liability Companies are, in general, formed by one (Sociedade Limitada Unipessoal) or more quota holders, and all of them have joint liability for the total capital stock. The quota holders may be either legal entities or individuals, and it is not mandatory for a quota holder to have a Brazilian residence or nationality.

On the other hand, for a quota holder to exercise its power over the Limited Liability Company, the appointment of a Brazilian resident (with powers to receive subpoenas) as a formal representative is mandatory.

The Articles of Association of a Limited Liability Company must contain (i) the name and personal details of the quota holder(s), (ii) the name of the company, accompanied by the expressions "*Limitada*" or "*Ltda*," (iii) a description of the company's business, (iv) the

address of its headquarters, (v) limits on the duration of its existence, if applicable, and (vi) the amount of participation of each quota holder in the capital stock of the company and its conditions of payment.

As mentioned above, except in very specific cases, there is no requirement as to the minimum capital that must be paid upon initial subscription. However, applicable law establishes that the capital stock of a Limited Liability Company may only be increased after it has been fully paid up.

The capital stock of a Limited Liability Company is divided into quotas representing the amount of money, credits, rights and/or assets contributed by the quota holders to incorporate the company. The quotas cannot be represented by securities or certificates. The respective ownership and number of quotas are established in the Articles of Association. Therefore, any transfer of the ownership of the quotas will require an amendment to the Articles of Association, which must be signed by, at least, the majority of the quota holders.

Limited Liability Companies may distribute retained earnings to their quota holders. If the quota holders are individuals or legal entities resident or domiciled abroad, the dividends remitted abroad are subject to prior registration with BACEN. Similar to a common law company, the distributions of Limited Liability Companies do not need be proportional to the percentage of the quota holders. In addition, there are no restrictions on the distribution and remittance of profits abroad. The distribution of profits and dividends are not subject to income tax in Brazil.

Limited Liability Companies are not required by law to publish amendments to their Articles of Association in the Government Official Gazette or other corporate acts, except in the event of (i) capital reduction, (ii) merger, (iii) spin-off, (iv) amalgamation or (v) the convening of a quota holders' meeting, unless all quota holders are present or have been notified of the place, date, time and agenda of the meeting. However, the Articles of Association are publicly available.

Large companies (even those not organized as Joint-Stock Corporations) are subject to the bookkeeping and accounting requirements set forth in the Corporation Law, as well as to the requirement of having their financial statements audited by an independent auditor accredited by the Brazilian Securities and Exchange Commission (CVM).

The qualification for "large-sized company" was outlined in Law No. 11.638, of December 28, 2007 and was defined as the company (or group of companies under common control) that presents total assets over R$240 million or annual gross revenues over R$300 million.

RESOLUTIONS

If a Limited Liability Company has 11 or more quota holders, resolutions must be taken at a general meeting (known as Assembleia) held with at least eight days' prior notice at a first call or at least five days' prior notice at a second call.

If a Limited Liability Company has 10 or fewer quota holders, the meetings do not need to be held in accordance with the applicable rules. In such cases, meetings can be called with greater flexibility. In both cases, if all quota holders are present at the Assembleia or the meeting, whatever the case may be, the prior notices may be dismissed.

Applicable law allows the possibility of adjourning a quota holders' meeting or a

general meeting (Assembleia) to resolve such matters, offering greater agility in decision-making on the company's internal affairs. This will apply whenever all partners approve a written resolution.

MANAGEMENT

A Limited Liability Company can be managed by one or more quota holders or by a third party designated by the quota holders. The appointment of managers that are not quota holders is conditional on the unanimous consent of the quota holders (if the capital is not fully paid up) or by the two-thirds vote of the quota holders (if the capital is fully paid up). Foreign persons may be appointed to management positions as long as they manage to constitute a Brazilian resident representative in their name, with powers to receive subpoenas.

Quota holders can retain control over certain decisions by reserving certain rights and imposing restrictions on management acts in the Articles of Association. Quota holders can also enter into an agreement to regulate the conduct of the company's business and define the relationships between the partners.

A Limited Liability Company may also choose (although it is not common), at its sole discretion, to establish a board of directors, typical of a Joint-Stock Corporation, according to the Corporation Law.

SINGLE-SHAREHOLDER LIMITED LIABILITY COMPANY (*SOCIEDADE LIMITADA UNIPESSOAL / SLU*)

The Single-Member Limited Liability Company was created through Law No. 13,874/2019.

The main purpose of the creation of this statute was to simplify the process of companies' incorporation in Brazil, with the idea to create a company type with one single quota holder that could be incorporated without the high cost of the Capital Stock required by the so-called "*Individual Limited Liability – EIRELI*".

The main characteristics (and advantages) of this type of company are:

- It does not need more than one quota holder to be incorporated;
- It does not require a minimum amount of Capital Stock, reducing the initial investment costs;
- It separates the entrepreneur's personal assets from the company's assets; and
- It is possible to incorporate more than one company in this format.

The Single-Member Limited Liability Company was not created specifically to replace the EIRELI, but such replacement is currently happening naturally.

JOINT-STOCK CORPORATION (*SOCIEDADE ANÔNIMA*)

A joint-stock corporation, or S.A., is regulated by the Corporation Law. The capital stock of the S.A. is divided into shares that represent fractions of it. Depending on the rights agreed upon by their shareholders, the shares may be common or preferred and may be divided into different classes and series. According to the Corporation Law, the shares do not need to have a par value and can be book-entry shares or represented by certificates.

In general, common shares give shareholders voting rights, while preferred shares have special rights, often of a financial nature, and generally do not grant voting rights.

A Joint-Stock Corporation keeps records of its shareholders in its own corporate books, while, the ownership of quotas in a Limited Liability Company is set out in the Articles of Association.

Joint-Stock Corporations incorporated after 2001 may issue nonvoting preferred shares for up to 50% of the company's total capital stock. Nonvoting preferred shares must be issued with at least one of the following rights: (i) priority in the distribution of fixed or minimum dividends or (ii) priority in capital repayment (with or without a premium).

The Bylaws (*Estatuto Social*) of an S.A. must state the corporation's subscribed capital and may also establish an authorized capital. The authorized capital consists of a limit (in Brazilian currency or number of shares) on which the subscribed capital may be increased by resolution of the board of directors without an amendment to the Company's Bylaws, as opposed to the usual capital increase process that requires approval by the shareholders at their general meeting and a proper amendment to the Company's Bylaws.

An S.A. may be incorporated by a public or private subscription of shares. In either case, all shares must be subscribed by at least two shareholders, and a minimum of 10% of the capital must be paid upon its incorporation. The paid-in capital must be deposited in a commercial bank until all formalities for incorporation of the company have been completed.

The incorporation of a company by public subscription requires (i) preliminary registration of the share issue with the CVM, (ii) intermediation by a financial institution, (iii) approval of the incorporation at a general meeting called by the subscribers and (iv) appraisal of any assets transferred to the company as payment for shares.

Incorporation by private subscription may take place at a general meeting of the subscribers or by a public deed of incorporation published simultaneously with subscription for the shares. If any of the shares are paid for in a form other than currency, a general meeting must be called to approve the appraisal report of the assets to be used as payment.

A Joint-Stock Corporation may be either publicly or closely held. A publicly held company must be registered with the CVM, along with its securities, which may be traded on the stock exchange or on the over-the-counter market. The securities of a private company are not available to the general public.

Other securities that may be issued by an S.A. are subscription warrants and bonds (debentures). Despite not being part of the capital stock, the rules relating to the ownership and circulation of shares also apply to these securities.

DEBENTURES

Debentures are debt securities that grant their holders credit rights against the issuer. The conditions of these credit rights held by the debenture holders against the S.A. must be set out in the respective deed of issue. Debentures may be convertible into shares, may be collateralized and may be subordinate or senior in relation to the other creditors of the S.A.

SUBSCRIPTION WARRANTS

An S.A. with authorized capital may issue negotiable securities called subscription warrants (*Bônus de Subscrição*). These securities entitle their holders to subscribe for shares when the corporate capital of the company is increased, subject to the conditions set out in the corresponding certificates.

INCORPORATION OF AN S.A.

All constitutional documents must be filed with the Board of Trade (*Junta Comercial*) as described below and subsequently published in a newspaper where the company has its principal place of business.

SHAREHOLDERS' AGREEMENT

By means of a shareholders' agreement, the shareholders can establish terms regarding the purchase and sale of their shares and preemptive rights for the acquisition of shares. A shareholders' agreement is recognized under the Corporation Law, which provides that such agreement is binding for the company's management as long as it is duly filed at the company's head office.

SHAREHOLDERS' RIGHTS

As a general rule, shareholders have the following basic rights: (i) participation in the company's profits, (ii) participation in the distribution of the company's assets if the company is wound up, (iii) supervision of the company's management, (iv) preemptive rights in the subscription of shares, participation certificates, convertible debentures and subscription warrants and (v) the right of withdrawal from the company under the circumstances stipulated by law. Disputes among shareholders or between the shareholders and the company may be resolved by arbitration, as so defined in the company's bylaws.

SHAREHOLDERS' MEETINGS/GENERAL MEETINGS

Shareholders' meetings are called and commenced pursuant to the Corporation Law and the company's bylaws. The meetings provide a forum to consider and determine matters connected to the company's purpose, as well as to adopt any resolutions deemed advisable for its protection and development. Such powers, however, are limited to the company's business purposes, applicable law and its bylaws.

There are two kinds of General Meetings:

- Annual General Meeting, held every year during the first four months after the closing of the fiscal year in order to:
    1. receive the management accounts and to examine, discuss and vote on the financial statements;
    2. appreciate the destination of the net profit of the fiscal year and the distribution of dividends;
    3. elect the board of directors, the officers and the fiscal counsel, if applicable; and
    4. approve the monetary adjustment to the capital stock.
- Extraordinary General Meeting, which may address all other matters and may take place at any time during the year.

The publication of the minutes of any shareholders' meeting and of the annual financial statements is mandatory for the S.A. The Joint-Stock Company must keep and maintain corporate books in order to register share transfers, share titles, shareholders' meetings, officers and audit council.

MANAGEMENT BODIES

Shareholders may choose to divide the corporate management into two levels: the board of directors and the executive officers, who may also be organized as an executive board. An S.A. is not required to have a board of directors, except in the case of publicly held and authorized capital companies and financial institutions, where the establishment of the board of directors is mandatory.

If existent, the board of directors' powers provided by the Corporation Law include supervising and electing the executive officers and any additional power invested in it by the Company's Bylaws. When installed, the executive officers must comply with its decisions.

The executive officers and the directors may reside abroad; however, these members must appoint an attorney-in-fact residing in Brazil who is authorized to receive subpoenas in connection with any corporate litigation. The attorney-in-fact must remain a resident of Brazil during the term of office and for at least three years after the expiration of the term of office of the director/officer.

When a board of directors is installed, the executive officers must comply with its decisions.

COMPARISON CHART BETWEEN A LIMITED LIABILITY COMPANY AND AN S.A., ACCORDING TO BRAZILIAN LAW

LIMITED LIABILITY COMPANIES (LTDA.)	JOINT-STOCK CORPORATIONS (S.A.)
APPLICABLE LAW	
The Brazilian Civil Code and, in the absence of statutory provisions in the Civil Code, the provisions of the Corporation Law (Law No. 6.404/76) shall be applied, if such alternative applicability is expressly established by the Articles of Association.	The Corporations Law.
DISTRIBUTION OF PROFITS/DIVIDENDS	
If allowed by the Articles of Association or with the consent of all quota holders, dividends do not need to be distributed in proportion to the quota holders' equity holdings.	Article 202, § 2 of Corporation Law requires the distribution and the payment of mandatory dividends (25% of the net income). The dividends shall be distributed in proportion to each shareholder's ownership interest. However, preferred shares can be awarded priority upon the receipt of dividends. The shareholders can only deliberate about the allocation of profits after (i) the deduction of accumulated losses and income tax, (ii) the deduction of profit-sharing due to employees, officers, directors and the holders of beneficiary parties and (iii) the allocation to the legal reserve.
ALLOCATION OF PROFITS	
The quota holders are free to determine the allocation of profits.	Before any other allocation, including the distribution of the dividends, at least 5% of the profits shall be applied for the formation of the statutory legal reserve (which must not exceed 20% of the corporate capital).
APPROVAL OF ANNUAL ACCOUNTS	
The financial statements should be approved at a quota holders' meeting held within the first four months of the fiscal year.	The financial statements should be approved at an annual general meeting held within the first four months of the fiscal year.

TRANSFER OF SHARES OR QUOTAS	
Quota holders may transfer their quotas to third parties, unless such transfer is hindered by partners representing at least half of the company's corporate capital.There is no restriction on the transfer of quotas between the quota holders. However, the Articles of Association may create a regulation relating to the transfer of quotas.	As a general rule, transfers are allowed and are not conditional on any approval as long as the transfer is duly registered in the share transfer book and in the share register book. The bylaws or the shareholders' agreement may lay out certain restrictions.
LIABILITY OF PARTNERS/SHAREHOLDERS	
The liability is limited to the amount invested by each member. If the corporate capital is not fully paid, all partners are jointly and severally responsible for its payment.	Liability is limited to the issue price of shares subscribed for or acquired.
RESOLUTIONS	
If the company has 10 or fewer partners, resolutions are deliberate in a meeting as established by the Articles of Association. If the company has 11 or more partners, the rules established in the Brazilian Civil Code must be followed with regard to the general meeting. The meetings may be waived if all members agree through written resolution. The prior notice requirements for the meeting may be waived if all partners attend the meeting or declare in writing their knowledge of the location, date, time and agenda.	While resolutions are passed at general meetings, prior notice is required to be published in a newspaper of general circulation, respecting the terms prescribed in the Corporation Law and the bylaws. The notice requirements for the meeting may be waived if all shareholders attend the meeting or declare in writing their knowledge of the location, date, time and agenda.
CORPORATE BOOKS AND RECORDS	
Optional.	Certain corporate books are mandatory.
AMENDMENTS TO THE ARTICLES OF ASSOCIATION/BYLAWS	
Amendments to the Articles of Association have to be approved in writing by partners representing the majority of the corporate capital (i.e., 50% + one quota). Amendments to the Articles of Association are enforceable against third parties when registered at the authorized Board of Trade. A meeting is not necessary in order to amend the Articles of Association if all the partners consent.	Amendments to the bylaws have to be approved by a majority of the shareholders at an extraordinary general meeting. Amendments to the bylaws are enforceable against third parties when registered at the Board of Trade and published.

CAPITAL INCREASE	
The corporate capital can only be increased when it has been fully paid by the subscribers.	The corporate capital can only be increased when at least three-quarters has been paid by the subscribers.
QUORUM	
FOR RESOLUTIONS: A majority of the corporate capital is required for election and removal of the managers, remuneration of the managers, bankruptcy filing, selection of the liquidator, amendments to the Articles of Association, and approval of a takeover, merger or liquidation of the company. Two-thirds vote of the quota holders election and removal of the managers who are not partners (when the corporate capital is fully paid). Unanimity is only required when transforming the corporate type (e.g., from a "limitada" to an S.A. and vice versa) if the Articles of Association do not provide for the possibility of transformation and when electing a manager who is not a quota holder before the corporate capital is fully paid-in. QUORUM FOR A PARTNERS' MEETING: Requires three-quarters of the corporate capital, on the first call, and any quorum, on the second call. The partners are allowed to increase the quorum through the Articles of Association.	FOR RESOLUTIONS: • As a general rule, decisions at the general meeting are made by a majority vote of the shareholders present. • Qualified Quorum: At least 50% of the shareholders with voting rights are required for the creation of preferred shares, the creation of a new class of shares, changes in the rights or preferences of any class of shares, a reduction in the mandatory dividend, the approval of any takeover or merger, and amendment of the corporate purpose. QUORUM FOR A GENERAL MEETING: Requires one-quarter of the shareholders with voting rights, on the first call, and any quorum, on the second call. However, for amendments to the bylaws, the minimum quorum on the first call is two-thirds of the voting shareholders and any number on the second call. These quorum requirements can be increased by the bylaws.
CAPITAL	
There is no public subscription.	Private or public subscription.
ISSUANCE OF TRANSFERABLE SECURITIES	
It is not possible to issue most transferable securities.	It is possible to issue several kinds of transferable securities to raise funds in the market.

MANAGEMENT	
Managed by one or more individuals (quota holders or non-quota holders) appointed in the Articles of Association or in a separate document.	Managed by a board of directors – not mandatory in private companies – and officers. There must be at least one officer, resident in Brazil or not. The board of directors is composed of at least three members who are elected by the General Shareholders' Meeting, and the officers are elected by the board of directors.
RESPONSIBILITY OF THE MANAGERS	
As a general rule, the officers are responsible for any abuse of power, illegal actions, or violations of the Articles of Association that result in liability for the company, its partners or third parties. Officers are responsible if they use their corporate rights and assets for their own benefit or for a third party's benefit without previous consent by the quota holders. Officers may be held responsible for labor, social security and administrative obligations, even if there is no malicious intent or culpability (objective responsibility). Officers are responsible for damages caused to the company. This responsibility can be limited upon the approval by the quota holders' financials presented by the officers. The mechanism used to limit said responsibility is less formal, less regulated and less efficient in LTDAs.	As a general rule, all managing members are responsible for fault, fraud, abuse or excess of powers, illegal actions, or violations of the company's bylaws that result in liability for the company, its partners or third parties. Managers are responsible for ill-intentioned actions, even when acting in accordance with law or the bylaws. Managers may be held responsible for labor, social security and administrative obligations, even if there is no malicious intent or culpability (objective responsibility). Managing members are responsible for damages caused to the corporation. This responsibility can be limited upon the approval by the shareholders of the company's financials, which are to be presented by the managers during the mandatory general shareholders' meeting.
DISCLOSURE OF INFORMATION	
As a general rule, there are no obligations to publish such corporate documents as financial statements and quota holders' meetings. However, publication is required upon (i) capital reduction, to protect the creditors, (ii) merger, (iii) spin-off, (iv) amalgamation and (v) the quota holders' meeting convocation, unless all quota holders are present or were notified of the place, date and time, and agenda of the meeting. In some states, according to the respective Board of Trade, based on Law No. 11,638/2007, large companies may have to publish their minutes of general quota holders' meetings that involve the deliberation of the approval of the financial statements of the previous year and their respective financial statements (as it is in São Paulo, for example).	It is required to publish certain information (i.e., financial statements, accounting balance, minutes of shareholders' meetings, minutes of board of directors' meetings and other information) required by law. However, a private with less than 20 shareholders and a net equity not exceeding BRL 10 million may choose to (i) convene its general shareholders' meeting through a notice sent to each shareholder, (ii) not publish its financial information if such information is registered in the Board of Trade and (iii) perform the publications required by law exclusively electronically.

PAYMENT OF DIVIDENDS

Corporations may pay dividends to shareholders out of profits. If the shareholder is an individual or legal entity that is resident or domiciled abroad, the remittance of dividends abroad is conditioned upon prior BACEN registration of the inward investment. The distribution of dividends is not subject to taxation. There is no withholding tax on dividends to a nonresident.

Joint-Stock Corporations may also pay interest on net equity (*juros sobre o capital próprio*) pursuant to Law No. 9,249/95 and Law No. 9,430/96. Payment of interest on net equity is conditional on the existence of profits of at least twice the sum of the interest to be paid or credited. Interest on net equity is calculated by applying the Brazilian long-term interest rate (TJLP) to the company's adjusted net equity.

REGISTRATION PROCEDURE

Both S.A.s and Limitadas must file their corporate deeds of incorporation, subsequent amendment, and minutes of shareholders' and quota holders' meetings with the Board of Trade in the state where the company is headquartered.

CNPJ ENROLLMENT

All Brazilian corporate entities, prior to the initiation of their activities, shall enroll before the CNPJ, registering all of their establishments located in Brazil or abroad. A foreign legal entity is also required to enroll before the CNPJ if it owns stocks or quotas of Brazilian legal entities or other goods and rights in Brazil, including investments.

Recently, the Federal Revenue Office enacted Normative Instruction No. 1,863, dated December 28, 2018 ("RFB Instruction No. 1,863"), which sets forth the new rules applicable to enrollment before the CNPJ.

RFB Instruction No. 1,863 aims to provide further mechanisms against corruption, money laundering and tax evasion by means of promoting transparency through the identification of the effective beneficiaries and ultimate owners of companies, investment funds, company groups, consortiums, and other corporate entities or associations with activities in Brazil.

RFB Instruction No. 1,863 sets forth the new information that is now required for the enrollment of an entity before the CNPJ: (i) information on the individuals representing such entity in Brazil and (ii) the corporate ownership chain up to the level of the natural person characterized as the ultimate beneficial owner of the relevant entity.

For the purposes of RFB Instruction No. 1,863, "ultimate beneficial owner" means (i) the individual who ultimately, directly or indirectly, possesses, controls or "significantly influences" the relevant entity or (ii) the individual on whose behalf a transaction is conducted.

Currently, a CNPJ number can be automatically assigned to a foreign investor upon registration of its investment with BACEN. The registration of the investment by the foreign investor must be preceded by (i) the electronic enrollment of both the Brazilian company and foreign investor with BACEN, which is evidenced by an individual registry number called *Cadastro de Empresas do Banco Central* or CADEMP and (ii) the electronic enrollment of the foreign entity before the CNPJ (this is only applicable to the foreign entity as the Brazilian company will already be enrolled at this stage). Once compliance is verified by BACEN, the data is sent to the Federal

Revenue Office in Brazil, which then generates a CNPJ number for the foreign investor and returns it to BACEN, usually one day after remittance.

CPF ENROLLMENT

Individuals domiciled abroad are required to register with the Brazilian Federal Taxpayers' Registry of Individuals (*Cadastro de Pessoas Físicas* or "CPF") if they own stocks or quotas of Brazilian legal entities or other goods and rights in Brazil, including investments.

Registering a CPF of nonresident individuals can be requested in Brazil by an attorney-in-fact. It is also possible to register at the nearest Brazilian embassy or consulate, but the procedure in Brazil is more agile .

The attorney-in-fact must present the following documents in order to obtain the CPF enrollment of the nonresident individual: (i) a certified copy of the individual's identity card or passport, (ii) the identity card of the attorney-in-fact and (iii) power-of-attorney with specific powers to obtain CPF enrollment. Besides such documents, the attorney-in-fact will have to inform the Federal Revenue offices of the names of the foreign individual's parents.

All powers-of-attorney issued abroad must be notarized by a public notary and certified by apostille. If not in Portuguese, powers-of-attorney (as well as the individual's identity card or passport) must be translated into Portuguese by a certified sworn translator and registered before the Registry of Deeds and Documents in Brazil.

All the documents set out above must be presented by the attorney-in-fact first at the Post Office (*Agências dos Correios – Empresa Brasileira de Correios e Telégrafos*), the Federal Savings Bank (*Caixa Econômica Federal*) or the Bank of Brazil (*Banco do Brasil*) and then filed with the Federal Revenue Service in Brazil.

FOREIGN INVESTMENT IN BRAZIL

Brazil allows non-residents to invest in the vast majority of the country's economic sectors, and investors do not face a broad range of legal restrictions. However, foreign exchange is currently subject to strict control by the Central Bank of Brazil ("BCB"). Therefore, any transaction between a non-resident and a resident in the country is subject to foreign exchange regulations, and it must be carried out through the Brazilian Official Exchange Market.

Foreign investors can invest in Brazil in two main ways: direct investment and indirect investment. In brief, direct investment refers to the direct holding of shares or quotas of Brazilian companies, while indirect investment is characterized by investment in the Brazilian capital market.

The primary rule applicable to foreign investments is Federal Law No. 4.131/62, referred to as the "Foreign Capital Statute", which provides for the investment of foreign capital and the remittance of funds abroad.

This structure empowers the National Monetary Council ("CMN"), the BCB and the Brazilian Securities and Exchange Commission ("CVM") to enact regulations providing specific procedures for the registration of various types of foreign investment in Brazil.

After more than two years of extensive discussions with the market and its operators, on December 30, 2021, the Law 14.286/21, referred to as the "New Foreign Exchange Law," was finally published, aiming to modernize, simplify, and consolidate the existing legislation. Certain provisions of the Foreign Capital Statute were revoked by the New Foreign Exchange Law.

Instead of registration, the new regulation indicates that the responsible party is required to provide information regarding exchange transaction related to a foreign investment (e.g., the remittance abroad of dividends, interest, and repatriation of principal), subject to specific monetary thresholds.

Additionally, the regulation states that payments between certain persons and entities residing, domiciled or headquartered in Brazil and entities headquartered abroad which are not carried out through the Brazilian Official Exchange Market are considered illegitimate foreign exchange transactions. In such cases, the remitting party can be subject to an administrative fine of up to 100% of the amount of the relevant transaction, pursuant to Decree No. 23.258/1933.

BCB's Resolution No. 278/22 regulates foreign capital entering or existing in Brazil and its registration procedures. The registration, which is completed electronically, applies to foreign direct investment (foreign investment in equity) and foreign credit (financing and loans), among other procedures.

Moreover, pursuant to Normative Ruling No. 1863/2018 by the Brazilian Internal Revenue Service ("IRS"), foreign companies must be enrolled with the Federal Taxpayer Registry in order to hold assets and rights subject to public registration in Brazil.

MAIN REGULATORY ENTITIES

The CMN, the BCB, and the CVM provide the main regulation and specific procedures for the registration of various types of foreign investment in Brazil.

NATIONAL MONETARY COUNCIL – CMN

Law No. 4.595, of December 31, 1964, created the CMN along with the BCB. It is the main body of the National Financial System ("SFN") and has the responsibility to formulate currency and credit policies. CMN's purposes are to stabilize the national currency and maintain Brazil's economic and social development, being in charge of releasing the general rules with which all institutions that operate in the financial system must comply.

Its competencies, among others specified in the Article 4 of the aforementioned Law, are: (i) to regulate the constitution, operation and supervision of those who carry out activities under the SFN, as well as the application of the penalties; (ii) discipline the activities of Stock Exchanges and public funds brokers; and (iii) apply to foreign banks that operates in Brazil the same prohibitions or equivalent restrictions that are in force in their head offices in relation to Brazilian banks installed there or that wish to establish themselves there.

BRAZILIAN SECURITIES AND EXCHANGE COMMISSION – CVM

Law No. 6.385 created CVM on July 12, 1976, with the objective of inspecting, regulating, disciplining, and developing the capital market in Brazil.

CVM is an autarchy under a special regime, related to the Brazilian Ministry of Economy, with its own legal personality and patrimony, endowed with independent administrative authority and financial and budgetary autonomy. It is managed by a president and four directors, nominated by the Brazilian President and approved by the Brazilian Senate.

CVM's competencies are (i) to regulate the capital market, with observance of the policy defined by the CMN; (ii) to permanently supervise the activities and services of the securities market, in addition to the conveyance of information concerning the market; (iii) to propose to the CMN the eventual fixing of maximum price limits, commissions, emoluments, and any other advantages charged by the intermediaries of

the market; and (iv) to supervise and inspect publicly traded companies.

CENTRAL BANK OF BRAZIL - BCB

BCB was created by Law No. 4.595, of December 31, 1964. It is a federal autarchy that is part of the SFN, with its own legal personality and assets.

BCB's general competence is to comply with and enforce the provisions and rules issued by CMN. More objectively, BCB is in charge of: (i) issuing banknotes and coins; (ii) determining the partial or total withdrawal of demand deposits and other securities from financial institutions; (iii) performing rediscounting and loan operations with public and private financial institutions; (iv) exercising control over credit and foreign capital; (v) inspecting financial institutions and applying penalties; (vi) granting authorizations to financial institutions; (vii) performing purchase and sale operations of federal government bonds; and (viii) representing the country before foreign and international financial institutions.

INDIRECT FOREIGN INVESTMENT

Indirect investment is accomplished by purchasing securities in the capital market. For such investment to be viable, there are certain regulations that establish guidelines for the investment to take place, thus enabling non-resident investors to benefit from all the securities available in Brazil's capital market. If made through the security markets, foreign investments in publicly held companies benefit from a favorable tax regime.

The investments of non-resident investors in Brazil—and the respective financial transfers—shall comply with the provisions of CMN, especially regarding CMN's Resolution No. 4,373, of September 29, 2014, in addition to the foreign exchange rules and specific legislation, provided by BCB and CVM, mainly regarding to CVM's Resolution No. 13, of November 18, 2020 ("CVM Resolution No. 13"), which provides for the registration, operations, and disclosure of information of non-resident investors in the country.

Prior to the start of the operation in Brazil, the non-resident investor must obtain registration with CVM through its legal representative in Brazil (which must be a financial institution). The registration request will be automatically approved upon presentation of the information required in CVM Resolution No. 13.

Thus, the financial institution, acting on behalf of the non-resident investor as his legal representative will be responsible for: (i) providing information to Brazilian market authorities, including periodic information required by CVM; (ii) registering all transactions carried out by the investor; (iii) registering and updating the foreign investment with BCB; (iv) registering and updating information related to the investor and investor's transactions with CVM; and (v) receipt of notices on behalf of the investor, for legal or administrative proceedings involving the investor or its transactions in the Brazilian capital markets. The non-resident investor must also sign a custody agreement with a local institution authorizing the institution to render services of depositary/custodian of assets and submit a copy of such agreement to CVM.

As well as the possibility of operating in the capital market, in an organized way, CVM also foresees the acquisition or sale of securities outside of an organized market, which is allowed in specific hypotheses.

INVESTMENT IN PUBLICLY HELD COMPANIES

Publicly held companies are permitted to raise funds through public offerings of their securities, which can be traded in the secondary market. For information regarding Public Offerings, please see the Public Offerings chapter below. Foreign investors registered as described above can access both possibilities of investment in Brazil.

Publicly held companies have to comply with specific obligations imposed by law and by regulations, which are issued mostly by CVM. Once a publicly held company has been registered with the CVM, it must provide information on a regular basis to its regulator and to the market. It is important to point out that the basic information contained in the company's registration form must be kept updated and CVM must be informed of any change.

Also, publicly held companies can be subject to listing rules if they voluntarily choose to comply with the stock exchange corporate governance levels, such as Novo Mercado, Nível 1, Nível 2, Bovespa Mais, and Bovespa Mais Nível 2.

Regarding shareholders' rights provided in Brazilian Law, we would like to introduce below the main rights to appoint members to corporate bodies.

Law No. 6.404/76 ("Corporation Law") gives the holders of at least 15 percent of the total number of voting shares in a publicly held company the right to elect and remove one member of the Board of Directors in a separate vote at the annual shareholders' general meeting. Holders of preferred shares without voting rights—or with restricted voting rights—that represent at least 10 percent of the capital of a publicly held company are also entitled to elect and remove one member of the board.

Regarding about Fiscal Council, foreseen in the Article 161 of the Corporation Law, its composition will be made up of, at least, three and, at most five members, and alternates in equal number, shareholders or not, elected by annual shareholders' general meeting. When the operation is not permanent, it will be installed by the annual shareholders' general meeting upon request of the shareholders that represents, at least, one-tenth of the voting shares, or five percent of preferred shares without voting rights. Furthermore, the Corporation Law establishes, as a rule, the election by absolute majority, but to ensure the proportional character of the filling of positions was allowed the election up to two members by separate vote.

CVM's Resolution No. 70 establishes a scale, in accordance with the capital stock, reducing the minimum percentage of equity interest necessary for the exercise of some rights provided by the Corporation Law mentioned above.

REMOTE VOTING CARD

CVM created the remote voting card ("RVC") in 2015, which consists of an electronic document released by the company before specific shareholders' meetings, with the purpose of facilitating the cast of votes by the shareholders. CVM Resolution 81, of March 29, 2022, as amended ("CVM Resolution No. 81"), granted the voting instructions sent through the RVC the status of a direct vote from the shareholder, as if made in the general meeting. CVM intended that this would substantially reduce voting costs for shareholders and lower some of the barriers to participation at shareholders' meetings.

The RVC is mandatory when the publicly held company calls the annual shareholders' meeting or an extraordinary shareholders' meeting in which the Board of Directors and Fiscal Council members are elected, pursuant to Article 121, sole paragraph, of the Corporation Law, and Section III, Article 26 and following of CVM Resolution No. 81. Without prejudice, the companies may also choose to disclose the RVC at any extraordinary shareholders' meeting, according with the terms and conditions set forth in the referred Section, pursuant to Article 26, paragraph 2, of CVM Resolution No. 81.

Lastly, companies are required to file the RVC with CVM and the B3 S.A.—Brasil, Bolsa, Balcão—one month prior to the shareholders' meeting.

Each investor must verify with the custodian of their securities the maximum deadline to exercise the voting right.

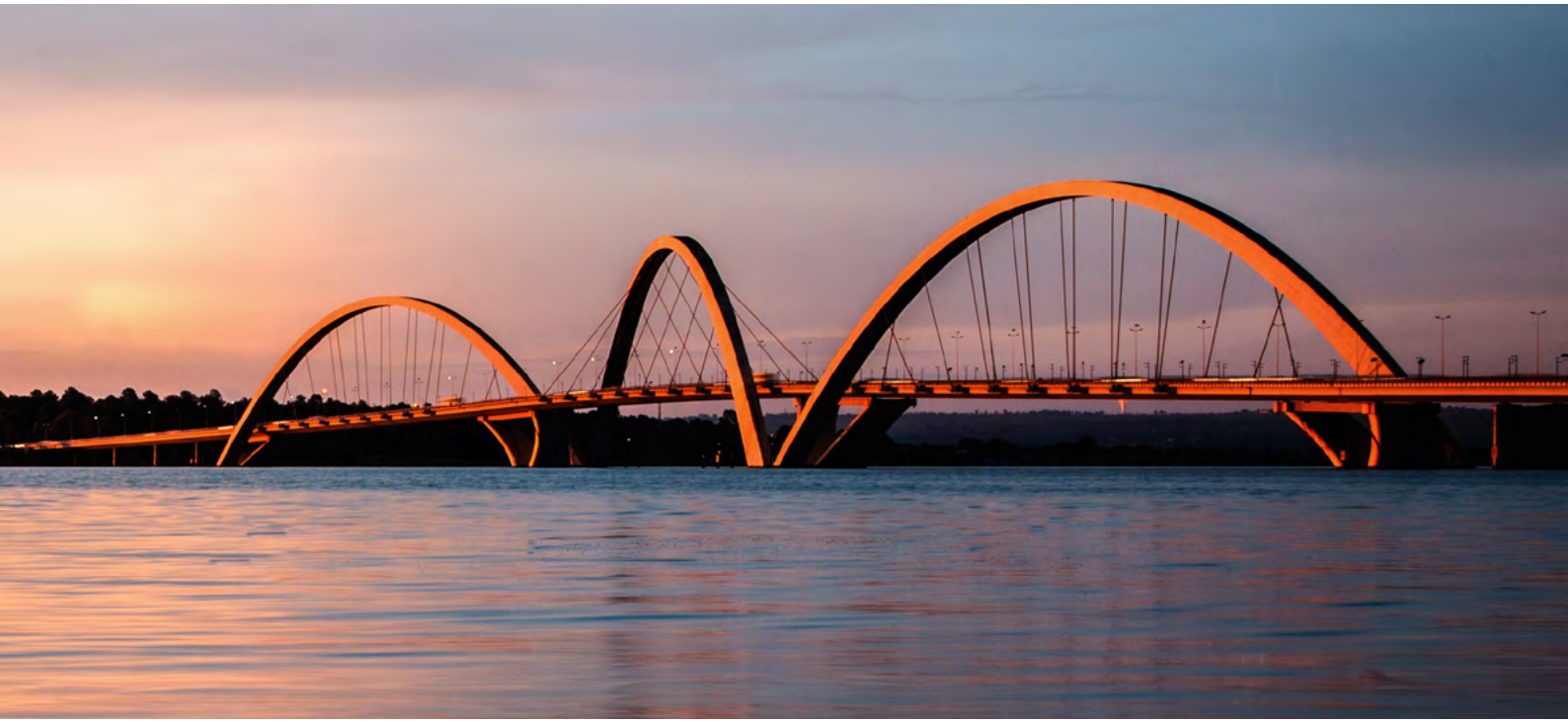
However, the investor can also send the RVC directly to the company, as per Article 27 of CVM Resolution No. 81.

DIGITAL MEETINGS

The former CVM Instruction No. 622, now CVM Resolution No. 81, was created to establish conditions to publicly held companies to hold shareholders' meetings exclusively or partially digitally. This Resolution was the result of a Provisional Measure issued in the context of the Covid-19 pandemic, which, among other matters, authorized CVM to make an exception to the general rule of holding meeting in the municipality of the head office and allow digital meetings. This new instruction also regulated the paragraph 2 of Article 124 of the Corporation Law.

The law establishes two possible ways of digital meetings, these being: (i) exclusively digital meeting, being those in which the shareholders can only participate and vote via a virtual conference system; and (ii) partially digital meeting, being those in which the shareholders can participate and vote both in person and via a virtual conference system.

For the partially digital meeting, on the other hand, must be held at the company's headquarters, according to the general rule set



forth in the Article 124, paragraph 2 of the Corporation Law. Exceptionally and upon justification presented in the call notice, the partially digital meeting may be held outside the company's headquarters, including in another municipality.

Lastly, it is important to point out that this provision granted options to the Companies, but there is no obligation for them to hold a virtual shareholders' meeting.

SHAREHOLDERS' MEETINGS THROUGH THE METAVERSE

After lengthy debates with Abrasca regarding the Metaverse and how it should be regulated, CVM decided to authorize publicly traded companies in Brazil to hold meetings in the Metaverse. Such decision resulted from a consultation held in June by Abrasca, where CVM understood, through the technical opinion 146, that companies can use the technology as long as they respect the legal requirements that apply to traditional meetings.

The interest in holding meetings through the Metaverse has taken on a greater proportion, especially after the experience of the Spanish company, Iberdrola, that held its General Shareholders' Meeting through the Metaverse.

Many people see the entrance of the Metaverse into the legal world as revolutionary and that it would contribute to a greater activism on the part of shareholders from all over the world who have an interest to invest in Brazilian companies and/or bring new business to Brazil, since, through this technology, it will be possible to access meetings from any location in the world and will establish greater proximity between participants since the interactions are more realistic and adaptable.

FOREIGN INVESTMENT IN BRAZIL: DEBT CAPITAL MARKETS AND SECURITIZATION

Several instruments are available for local companies to obtain funding in capital markets. These tools vary according to the term of the instrument, the destination of the fund, and the sector in which an issuer of securities conducts its business.

Corporations or limited liability companies may issue promissory or commercial notes, which will be subject to (i) public offerings (under the terms of Resolution No. 160 of the Brazilian Securities Commission ("**CVM**"), dated as of July 13, 2022 ("**Resolution No. 160**")) or (ii) the private placement of securities (not subject to the supervision of the CVM). In contrast, only corporations are allowed to issue debentures which are also subject to (i) public offerings (under the terms of Resolution No. 160 of the **CVM**), or (ii) the private placement of securities (not subject to supervision by the CVM).

The promissory notes are commonly used as short-term financing instruments due to applicable regulations, because the maturity date of promissory notes must be a maximum of 360 days from the date of issuance. Nevertheless, Resolution No. 163 of the Brazilian Securities Commission ("CVM"), dated as of July 13, 2022 ("Resolution No. 163") provides for the issuance of long-term promissory notes if the following requirements are met in a cumulative manner: (a)the issuance shall be conducted as a public offering exclusively targeting professional investors, according to the specific regulations of the CVM, and (b) an agent for noteholders, which are known in Brazil as *agente fiduciário*, must be engaged to represent and safeguard the rights of the noteholders.

Commercial notes fall under a distinct regulatory framework established by Law No. 14,195, dated August 21, 2021, diverging from the guidelines applied to promissory notes, as stipulated in Resolution No. 163. Within the spectrum of regulations governing these

financial instruments, it is noteworthy that promissory notes are restricted to issuance in cartulary form (physical), while commercial notes are uniquely executed in book-entry form, featuring electronic registration facilitated by institutions authorized by the CVM.

All things considered, both debentures and commercial notes serve as analogous instruments commonly employed for long-term debts to fund various corporate needs. While commercial notes are very similar to debentures, the most important difference is that they may be issued by limited liability companies apart from corporations. Furthermore, as an exception to the general rule, such commercial notes may be converted into the quotas of the issuer in a private placement of commercial notes issued by a limited liability company.

When these securities undergo a public offering, they must adhere to the criteria set forth in Resolution No. 160. This resolution establishes distinct requirements for the "*automatic registration request*", with the exemption of limited disclosure of documents, and the "ordinary distribution registration procedure" considering, among others, the type of company, target audience, registration status of the issuer with CVM, etc.

In addition, debentures and commercial notes are largely used in Brazil to finance infrastructure projects due to fiscal incentives through the issuance of the so-called incentivized debentures under the terms of Law No. 12,431, dated June 24, 2011, as amended ("**Law No. 12,431**"), which exempts withholding tax from individuals and foreign investors. To be classified as an incentivized debenture or commercial note, the following requirements must be met: (i) the use of proceeds of the issuance must be destined to implement investment in infrastructure projects or intensive economic production in research, development, and innovation, which is under the terms of Decree Nos. 8.874 and 10.387 dated October 11, 2015, and June 5, 2020, and (ii) such a project must be considered priority by the regulation of the competent federal ministry (usually by the issuance of an ordinance).

Law 14,801 enacted on January 9, 2024 introduces various provisions, including (i) the establishment of a new type of infrastructure debentures, (ii) regulations for the issuance of bonds on the international market, (iii) additional amendments to Law No. 12,431, and (iv) modifications to Law No. 11,478, dated May 29, 2007.

With the enactment of Law 14,801, both incentivized debentures and infrastructure debentures, dedicated exclusively to investment projects with significant environmental or social benefits, must adhere to a streamlined processing procedure. Projects that offer substantial environmental or social benefits will receive priority analysis compared to those that do not.

Furthermore, such projects must undergo a specific external evaluation for this type of issuance. They are required to implement a monitoring method for the project stages, relying on self-declared data by the project holder and periodic reports submitted to the relevant sectoral ministries.

These measures exemplify the government's commitment to sustainable development, aligning with growing global interest from impact investors and the expanding thematic bond markets. Moreover, they aim to provide heightened legal certainty and prevent the deceptive practice of "greenwashing" in these transactions.

In the realm of financial instruments, CRIs (*real estate-backed certificates*) and CRAs (*agribusiness-backed certificates*) stand as prominent tools, each tailored to distinct sectors. CRIs are issued by real estate securitization companies and supported by receivables related to such real estate transactions as leases, the development of real estate projects, and built-to-suit transactions. Beyond their intrinsic financial merit, CRIs offer a tax incentive for individuals exempt from income tax. Conversely, CRAs are issued by agribusiness securitization companies and backed by receivables related to agricultural production (from the preparation of land with fertilizers to the sale of agricultural products).

Additionally, FIDC (*receivables investments fund*) serve as versatile financial entities solely dedicated to acquiring receivables related to various sectors. Their formation and incorporation are dependent on prior approval by CVM. Notably, FIDCs are not subject to taxation over gains reported within funds, but the amortization and repayment of quotas are subject to income tax at a rate that varies according to the period of time that the quotas are held by investors. This intricate landscape of financial instruments showcases the nuanced tax incentives and sector-specific features that distinguish CRIs, CRAs, and FIDCs in the Brazilian financial market.

FOREIGN INVESTMENT IN BRAZIL: TENDER OFFER AND PUBLIC OFFERINGS

According to the Law 6,404, of December 15, 1976 (Brazilian Corporate Law), Law 6,385, of December 15, 1976, and Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* or CVM) rules, different types of tender offerings (or takeover bids) and public offerings can be carried out for different purposes or aimed at different types of investors depending on the intention of the offeror.

TENDER OFFERS

Tender offers are ruled by Brazilian Corporate Law and CVM Resolution 85, of March 31, 2022, and operationalized in accordance with the Brazilian stock exchange rules. Tender Offers can be classified as mandatory or voluntary depending on the triggering event. The main difference between both lies in the obligation of prior register of the offer with the CVM: mandatory tender offers require prior registration, while voluntary tender offers are not subject to this requirement.

Mandatory tender offers triggers when (i) the controlling shareholder of a publicly-held company or the company itself intends to delist its shares and to become closely-held company (*OPA de cancelamento de registro*); (ii) the controlling shareholders interest in determined class or type of shares reaches a percentage that, under CVM regulations, dry the market liquidity of the remaining shares (*OPA por aumento de participação*) and, in that case, the offer must be for all the shares of the affected class or type; (iii) when the controlling interest in a corporation is sold, the offer must be made by the purchaser who acquired control to all shareholders that have full and permanent voting rights (*OPA por alienação de controle*).

Voluntary tender offers are the ones aimed at

the acquisition of shares issued by a corporation, and should not be conducted according to the specific procedures defined for mandatory tender offers and are not subject to prior registration. Examples of voluntary tender offers are (1) competing tender offers (*OPA concorrente*); (2) tender offers for acquisition of control (*OPA para aquisição de controle*); (3) tender offers for the acquisition of a batch of shares without acquiring control of the target publicly-held company; and (4) tender offers for deslisting from stock exchange's higher governance segments.

It is important to note that, even if voluntary, tender offers in which the bidder offers payment in securities (*OPA de permuta*) must be previously registered with the CVM.

A competing tender offer is the one presented by a third party other than the offeror or a person related to him, which has as object the shares covered by a tender offer already submitted for registration before the CVM, or by a tender offer not subject to registration whose notice has already been published, provided that the competing tender offer will be subject to the rules applicable to the first tender offer and that the price offered will be at least 5% higher than the price initially offered by the first offeror.

The tender offer for acquisition of control is one in which an offeror, with the intention of acquiring control of a company with pulverized capital, makes an offer to acquire the shares of several shareholders, promoting a more transparent and equitable process for all shareholders. Such tender offer may be purely voluntary or it may be triggered by the acquisition of a pre-defined percentage of shares provided in the bylaws of a target publicly-held company (Brazilian poison pill).

Although, in the latter case, the tender offer is not subject to prior register with the CVM, such tender offers are enforceable from a contractual point of view, and those who fail to comply with this obligation may suffer civil and administrative penalties.

Lastly, CVM may authorize the conduction of a unified tender offer that intends to achieve more than a single purpose. For example, for the acquisition of a controlling interest in a publicly-held company followed by the delisting of its shares. This will be authorized by the Brazilian regulatory body only if the procedure of both tender offers can be matched and if it does not cause any damage to shareholders.

PUBLIC OFFERINGS

Public offerings consist on the sale of shares or other securities (such as debt securities) to the market in order to raise capital.

Currently, the public offerings may be divided in two (2) main groups, defined based on the extent of the placement efforts applied within the offering, that are: (i) the public offerings with restricted placement efforts, which means that it is addressed only to institutional, professional and qualified investors, pursuant to CVM Instruction 476, of January 16, 2009, as amended, or CVM Instruction 476; or (ii) public offerings with wide-ranging placement efforts, which means that it can be also addressed to retail investors besides institutional, professional and qualified investors, pursuant to CVM Instruction 400, of December 29, 2003, as amended, or CVM Instruction 400.

In general, public offerings with restricted placement efforts are less bureaucratic and more flexible with regard to regulatory requirements. There are three (3) relevant

differences between these two types of public offerings:

1. first, a registration of the offering with the CVM is required when it is held with wide-ranging placement efforts under the terms of CVM Instruction 400 while, on the other hand, the registration is not required when the offering is held with restricted placement efforts, under the terms of CVM Instruction 476;
2. second, in public offerings with restricted placement efforts, the securities can be offered to no more than 75 professional investors and can be subscribed by no more than 50; and
3. third, the securities in a restricted placement offering can only be traded among professional investors after a lock-up period of 90 days after each subscription or purchase by the investors, except for the cases defined in the CVM Instruction 476.

In addition, public offerings are also distinguished by whether they are primary or secondary.

In the primary offering would consist of a capital raise by means of an issuance of new securities by the company. As for the secondary offering, the offeror is usually a shareholder or, generically, a security holder of the issuer. Although unusual, it is possible for the company itself to be the offeror in a secondary offering, if the shares being offered are shares held in treasury.

Finally, it is worth mentioning that a primary and secondary offering can be carried out jointly, meaning that more than one offeror can participate in a single offering procedure.

To carry out a public offering, the offeror (or the offerors) must engage one or more financial institutions as underwriters/placement agents, who may place the securities with investors.

NEW REGULATORY FRAMEWORK FOR PUBLIC OFFERINGS

On July 13, 2022, CVM published a new regulatory framework for public offerings, which will come in force as of January 1, 2023, and consists of CVM Resolutions No. 160 and 161.

CVM Resolution 160 is the most relevant of these four new Resolutions considering that it concentrates the rules of the new regulatory framework. Some relevant changes introduced by CVM Resolution 160 are (i) the unification of the public offerings' regime, revocating and replacing CVM Instructions 400 and 476; (ii) simplification of the disclosures required in the offering documents and definition of more succinct and objective templates for documents; (ii) requirement of a standardized offering document containing the main information about the offering (*lâmina de oferta*); and (iii) regarding the public offerings addressed only to institutional and professional investors, exclusion of: (a) the limit of 75 investors that can be accessed and 50 investors that could subscribe the securities; (b) the restriction on trading in the period after the offering; and (c) the 4-month limit for implementing a new offering of the same security by the issuer.

The new rule has established that some factors must be taken into account when defining the procedure to be observed for carrying out an offering (matrix approach). These factors are (i) the nature of the security being offered (such as, among others, shares, debentures and commercial notes); (ii) the target investor

(whether retail investor or professional or qualified investors, as defined in CVM rules); (iii) the classification of the issuer, which may be a pre-operational company or be considered a frequent debt issuer (*Emissor Frequente de Renda Fixa* - EFRF) or equity issuer with high market exposure (*Emissor com Grande Exposição ao Mercado* – EGEM); and (iv) the disclosure requirements to which the issuer is subject (publicly-held companies, closely-held companies or limited companies).

Depending on these factors, the securities offered may be subject to different restriction on trading and the procedure for registering the offering with the CVM may be (i) ordinary, subject to prior analysis of some offerings documents by the CVM; (ii) automatic, subject to prior analysis of some offerings documents by a self-regulatory body (as authorized by CVM); or (iii) purely automatic, where registration will be automatically granted upon submission of certain offering documents without their prior analysis.

Lastly, the new regulatory framework exempts from register with the CVM, among others, offering of securities issued and listed in a foreign stock exchange (safe harbor).

CVM Resolutions 161 provides for the registration and its procedure that will then be required of underwriters/placement agents of public offerings, which does not exists in the current regulatory framework. This measure was justified by CVM because (i) it allows a more efficient supervision of the underwriters in the offering environment, compensating the flexibility of the new regime provided by CVM Resolution 160; and (ii) it facilitates the entry of new agents as underwriters besides financial institutions, making it possible to serve more specific niche markets, such as intermediate-sized issuers.

BRAZILIAN TAX SYSTEM

GENERAL ASPECTS

The Brazilian Constitution allocates taxing power among the Federal Union, the states and municipalities. As expressly specified in the Constitution, the imposition, levy and collection of taxes must at least comply with the following fundamental constitutional principles:

- Principle of legality (*princípio da legalidade*), which dictates that a tax may only be levied, or have its rate increased, by a law duly approved by the Brazilian National Congress;
- Principle of equality (*princípio da isonomia*), which dictates that taxpayers who are in an equivalent situation must be treated equally;
- Principle of non-retroactivity (*princípio da não-retroatividade*), which dictates that a tax cannot be levied or collected retroactively;
- Principle of predictability (*princípio da anterioridade*), which dictates that taxes cannot be collected in the same fiscal year in which the law that instituted them or increased their rates, was published or, in respect of contributions such as profit participation contributions (PIS) or social security financing contributions (COFINS), within 90 days of their publication; and
- Principle of non-confiscation (*princípio do não-confisco*), which dictates that taxes cannot be confiscatory, i.e., may not justify the appropriation of the taxpayer's property.

BRAZILIAN TAXES CURRENTLY IN FORCE

FEDERAL TAXES

- Corporate Income Tax (IRPJ)
- Individual Income Tax (IRPF)
- Social Contribution on Net Profits (CSLL)

- Excise Tax (IPI)
- Tax on Financial Transactions (IOF)
- Social Contributions on Gross Revenues (PIS and COFINS)
- Contribution upon Economic Activities (CIDE)
- Import Duty (II)
- Export Duty (IE)

STATE TAXES

- Value-added Tax (ICMS)
- Causa Mortis and Donation Tax (ITCMD)

MUNICIPAL TA XES

- Taxes on Services (ISS)
- Municipal Real Estate Propetty Tax (IPTU)
- Municipal Property Transfer Tax (ITBI)

FEDERAL TAXES

CORPORATE INCOME TAX (IRPJ)

IRPJ must be paid by Brazilian legal entities that are considered tax residents in Brazil, and this is charged on their worldwide income.

IRPJ is levied at a 15 percent rate on the taxable income assessed at the end of each tax period. A 10 percent surtax will apply to any portion of the annual taxable income above BRL 240,000.

Taxable income corresponds to the company's net income adjusted by the additions, exclusions and deductions established under tax laws.

Brazilian tax legislation establishes two main methods for the calculation of taxable income: the Actual Income Method and the Deemed Profit Method.

The Actual Income Method can be based on annual income or on quarterly taxable income, after which the choice is irreversible for the whole calendar year.

In contrast, the Deemed Profit Method is based on estimated taxable income, which is calculated from the income accrued in the period before the calculation of the IRPJ and CSLL and is adjusted by add-backs and deductions established in legislation. The Deemed Profit percentages are defined by law and vary according to the activity/business developed by the taxpayer.

In the following cases, companies are obliged to comply with the Actual Income Method:

- Companies that have accrued total revenues in an amount greater than BRL 78 million in the previous calendar year;
- Companies that have existed for less than a year that have accrued total revenues larger than BRL 6.5 million, times the number of months they have existed (applies only for periods less than 12 months);
- Financial institutions, insurance companies, and similar financial entities;
- Companies that have earned income, profits or capital gains abroad;
- Companies that benefit from tax incentives related to exemption or reduction of income tax;
- Companies that have made monthly payments of income tax during the calendar year;
- Companies engaged in factoring activities; and
- Companies engaged in activities of securitization of real estate, financial and agribusiness credits.

The income and other earnings paid by a Brazilian source to a foreign-based individual or legal entity are subject to Withholding Income Tax (IRRF or WHT) at a rate of 15 percent. The legislation provides for several exceptions such as these listed below:

- At a rate of 25 percent for income paid to employees or service providers;
- At a rate of 25 percent for income paid to an individual or legal entity domiciled at a place offering favorable tax laws to foreign individuals and foreign businesses (i.e.., when the country of domicile imposes a maximum tax rate below 17 percent or not taxing income); or
- At a specific rate determined in the double taxation treaties signed by Brazil.

Law No. 8,981/1995, as amended by Law 13,259/2016, sets forth the rules regarding income tax levied on capital gains from the sale of assets and rights located in Brazil to a Brazilian paying source. It stablishes progressive tax rates ranging from 15 to 22.5 percent on capital gains earned by individuals from the disposal of assets and rights of any nature, as detailed below:

- 15 percent on capital gains that do not exceed BRL 5 million;
- 17.5 percent on capital gains that exceed BRL 5 million and do not exceed BRL 10 million;
- 20 percent of the amount of capital gains that exceed BRL 10 million and do not exceed BRL 30 million; and
- 22.5 percent of the amount of capital gains that exceed BRL 30 million.

Capital gains earned by beneficiaries located in low tax jurisdictions are subject to the levy of the WHT at a flat 25% rate.

WITHHOLDING INCOME TAX (WHT)

Withholding income tax applies to certain domestic transactions, such as fee payments to certain service providers, salary payments and financial income resulting from investments. In most cases, this withholding tax is a prepayment of income tax liability reflected on the final tax return of an individual or an entity. However, in some cases it is considered a final taxation.

Also, WHT is due on payments of Brazilian source income to most nonresidents (e.g., payments of royalties, services fees, capital gains, interest and others). According to locals laws, withholding tax is due upon the payment, credit, delivery, utilization or remittance of the funds, whichever occurs first.

The rates depend upon the nature of the payment, the residence of the beneficiary and the existence of tax treaties between Brazil and the country where the beneficiary is located. Most common rates range from 15 to 25 percent. As a general rule, income paid to beneficiaries located in low tax jurisdictions is subject to a 25 percent withholding tax.

The borrower (for loans) or the importer (for royalties or technical services) can bear the burden for the WHT – in this case, the gross-up of the tax is required and the effective rate is equivalent to 17.65 percent or 33.33 percent if the beneficiary is domiciled in a tax heaven jurisdiction.

SOCIAL CONTRIBUTION ON NET PROFITS (CSLL)

CSLL is assessed at a rate of 9 percent on the taxable income of all legal entities except financial entities, which are subject to CSLL at a 21 percent rate or 16 percent rate depending on the entity´s nature (this rate may change in the following years).

Since September 1999, the worldwide income taxation principle applies to the CSLL calculation basis. As a result, the profits, income and capital gains earned abroad by Brazilian companies are also subject to CSLL. CSLL tax basis is determined according to the same rules applicable to the IRPJ, with only few exceptions. As a consequence, those taxes' basis composition are most often the same, which makes CSLL tax behave frequently as additional income tax charge.

As both IRPJ and CSLL are levied over the companies' profits under similar rules, it is usually referred that CIT charges in Brazil combine to a total 34% rate (except financial entities and others entities of the financial market).

EXCISE TAX (IPI)

The IPI is levied on the sale and on the import of manufactured goods. IPI is a value-added tax, and the amount due may be offset by the credits arising from the tax imposed on the purchase of raw materials, intermediary products and packaging materials. However, the IPI amount may not be offset by credits related to fixed assets.

Rates are assessed on the value of manufactured goods when they are imported or when they are sold from domestic plants and vary based on the nature of the goods.

IPI is levied at a progressive rate. Nonessential products, such as cigarettes, are subject to IPI at a higher rate, while IPI is not levied on exports.

TAX ON FINANCIAL TRANSACTIONS (IOF)

The IOF is levied on (i) intercompany loans and loans between companies and individuals; (ii) transactions between factoring companies; (iii) exchange transactions made by institutions authorized to deal in the foreign exchange market; (iv) insurance transactions made by insurance companies; and (v) securities or gold transactions when carried out by institutions authorized to operate on the securities market.

IOF is charged at variable rates based on the type of transaction involved. IOF rates and tax base may be changed at any time during the fiscal year without prior notice by means of a Decree issued by the Brazilian federal government.

IOF is not levied on foreign currency entering Brazil as loans (the tax rate is currently 0 percent).

In the past, there was a minimum term established by the tax legislation that is not in force on the entry date. At that time, if the minimum term was not observed or the loan is considered novated/extended or paid in advance, the IOF levied at a 6 percent rate.

The minimum term that needs to be observed depends on the legislation in force on the date that the currency exchange agreement was contracted for each tranche entry or novation/ extension of the loan. See the following table.

DATE OF EXECUTION OF THE EXCHANGE CURRENCY AGREEMENT	MINIMUM TERM	LEGAL BASIS
Up to March 28, 2011	90 days	Decree 6,306/2007
From March 29, 2011 to April 6, 2011	360 days	Decree 7,456/2011
From April 7, 2011 to February 29, 2012	720 days	Decree 7,457/2011
From March 1st, 2012 to March 11, 2012	3 years	Decree 7,683/2012
From March 12, 2012 to June 13, 2012	1800 days	Decree 7,698/2012
From June 14, 2012 to December 4, 2012	720 days	Decree 7,751/2012
From December 5, 2012 to June 3, 2014	360 days	Decree 7,853/2012
From June 4, 2014 until March 15, 2022.	180 days	Decree 8,263/2014 and Decree 8,325/2014
Since March 16, 2022 until now.	n/a	Decree 10,997/2022

CHANGES IN IOF LEGISLATION – PROPORTIONAL REDUCTION UNTIL 2029

On March 16, 2022, Decree 10,997 was published, establishing a staggered reduction of the Brazilian Tax on Financial Transactions (IOF) levied on currency exchange transactions.

This measure is part of the movement to adhere to the Codes of Liberalization of Capital Movement and Invisible Operations, which is essential to the Organization for Economic Co-operation and Development (OECD).

The decree establishes a tax rate of 0% for short-term and long-term foreign loans.

In addition, it reduces to 0% the tax rate for the acquisition of foreign currency in cash from 2028 onwards and sets the following decreases in tax rates for credit card transactions:

i. From 6.38% to 5.38% from January 2, 2023

ii. From 5.38% to 4.38% from January 2, 2024

iii. From 4.38% to 3.38% from January 2, 2025

iv. From 3.38% to 2.38% from January 2, 2026

v. From 2.38% to 1.38% from January 2, 2027

vi. From 1.38% to 0% from January 2, 2028

The applicable tax rate is determined by the date of the credit card transaction.

FEDERAL TAXES ON REVENUES (PIS AND COFINS)

The PIS and COFINS are social contributions levied on a legal entity´s revenues.

Law No. 10,637/2002 introduced the PIS noncumulative system and Law No. 10,833/2003 established the noncumulative system for COFINS, by which the PIS and COFINS are levied at 1.65 percent and 7.6 percent, respectively, on the gross revenues earned by a company. Under a non-cumulative system of calculation, the company is allowed to use credits related to the acquisition of goods and services necessary for the company's main activity.

Not all companies qualify for this noncumulative system: some are still fully or partially subject to the PIS and COFINS cumulative system, depending on the activity and type of revenue earned. The cumulative system follows the taxation rules set out in Law No. 9,718/1998, adopting a flat PIS and COFINS rate of 0.65 percent and 3 percent respectively. As of 2004, the levy of PIS and COFINS was extended to imports of foreign products and services, known as "PIS-Import" and "COFINS-Import." The taxes are levied on: (i) entry of foreign goods into the Brazilian territory or (ii) payment, credit, delivery, or remittance of funds to foreign-based persons in exchange for services rendered.

PIS-Import and COFINS-Import are paid by (i) the importer, meaning the individual or legal entity that brings the goods into Brazilian territory; (ii) the individual or legal entity retaining services from a foreign-based resident; and (iii) the service beneficiary, if the contractor is also resident or domiciled abroad.

Provisional Measure (PM) No. 668/15 (converted into Law No. 13,137/2015), published in the Official Gazette on January 30, 2015, increased the standard PIS and COFINS rates levied on the import of goods, from a combined rate of 9.25 percent (1.65 percent PIS and 7.6 percent COFINS) to 11.75 percent (2.1 percent PIS and 9.65 percent COFINS). According to PM No. 668/15, taxpayers are allowed to accrue PIS and COFINS input credits based on the increased rates (under the noncumulative regime).

Other sectors that were already subject to increased PIS and COFINS rates for imports under special regimes (such as cosmetics, machinery, pharmaceuticals and tires) are now subject to combined rates as high as 20 percent, depending on the product. PIS and COFINS rates on imported services remain unchanged (i.e., a combined rate of 9.25 percent).

As of July 1, 2015, financial revenues are subject to PIS and COFINS at a 4.65 percent combined rate due to the terms of Decree No. 8, 426/2015. Prior to that date, the tax rate was 0 percent.

Brazilian IRS Normative Ruling No. 2,121/2022 (NR No. 2,121/2022) compiled in one single regulation the rules applicable to PIS and COFINS, as well as to PIS-Import and COFINS-Import, including the differentiated tax treatments, such as the sales in the Manaus Free Trade Zone, REIDI, REINTEGRA, RECAP, Export Processing Zones, among others.

NR No. 2,121/2022 also defined the concept of "inputs" for the purpose of calculating PIS and COFINS credits, which took into consideration the criteria of "essentiality and relevance" adopted by the Superior Court of Judgment (STJ) in the judgment of Special Appeal No. 1,221,170.

Additionally, as to the exclusion of the ICMS from PIS and COFINS calculation basis, resulting from the decision issued in Extraordinary Appeal No. 574.706, the Supreme Court (STF) defined that "*ICMS shall not be included in the calculation basis of PIS and COFINS*".

CONTRIBUTIONS ON ECONOMIC ACTIVITIES (CIDE)

Currently, there are contributions on economic activities (CIDE) levied on remittance of royalties abroad (CIDE-Royalties) and on fuels (CIDE- Fuels).

CIDE-Royalties are levied on overseas remittances related to payment for the use of copyrights, royalties for patents and trademarks, technical and administrative assistance services, and technical services (including telecommunications activities). In these cases, CIDE-Royalties are to be paid by the Brazilian company at a rate of up to 10 percent of the sums remitted abroad.

The CIDE-Fuels are assessed on imports and sales of oil and by-products, natural gas and its derivatives, and ethanol.

IMPORT DUTY (II)

Import duty is due to the entrance of foreign goods in the country, paid by the importer. It is a federal tax, whose base price is the cost of the good plus freight and insurance ("CIF"). The rates are established at Tarifa Externa Comum – TEC.

TAX LOSSES CARRYFORWARD

Tax losses may be carried forward indefinitely. No carryback or inflation adjustments are permitted. Tax losses that are carried forward may be used to offset up to 30% of a company's taxable income in a tax period. Restrictions on the offsetting of carried forward tax losses may be imposed if there is a change of ownership control and a change of the business activity between the period when the losses were generated and the period when the losses will be effectively used.

DIVIDENDS AND INTEREST ON NET EQUITY

Dividends paid from profits accrued as from 1 January 1996 are not subject to WHT in Brazil, regardless of whether the beneficiary is a resident or a non-resident shareholder.

No currency exchange restrictions are imposed on dividends distributed to shareholders domiciled abroad, since the foreign investment into Brazil is properly registered with the BACEN.

A Brazilian entity may calculate notional interest on the net equity value (adjusted by the deduction of certain accounts) payable to both resident and non-resident shareholders.

In addition to dividends, Brazilian companies may remunerate its shareholders through the payment of Interest on Equity (INE). INE is a hybrid instrument allowed as deductible interest expense for Brazilian corporate income tax purposes, while considered as investor's remuneration based on shareholder's net equity for corporate law purposes, likewise dividends.

INE payment is limited to 50% of whichever is higher between: the current fiscal year's profits, before interest on equity deduction, or the accumulated profits and profit reserves. Besides, the deduction ceiling for CIT purposes corresponds to the outcome on the application of annual Long Term Interest Rate (interest rate calculated quarterly by the National Monetary Council) over the paying entity's net equity pro rata die.

Moreover, remittances of INE are subject to a 15% WHT rate, but no exchange tax is imposed on its distribution abroad.

Is worth mentioning the Brazilian Government is heavily engaged in approving amendments to the legislation in order to start taxing dividends distribution. Anyhow, is it relevant to bear in mind that despite the current tax exemption on dividends, it expected that such distributions will became chargeable in further years.

STATE TAXES

VALUE-ADDED TAX (ICMS)

ICMS is a state tax levied on transactions involving goods (including imports), on interstate and inter-municipal transport, and on communications services.

In respect to the noncumulative principle, the ICMS paid on the purchase of raw materials, intermediary products and packaging materials can be offset against the ICMS levied on the subsequent transaction. Credits related to fixed assets are allowed with some restrictions. Intrastate rates normally vary from 7 to 25 percent. Under interstate operations, applicable rates are 4 percent (applicable to imported goods)1, 7 percent or 12 percent depending on the destination or import content.

ICMS is not levied on exports.

It is important to stress that the ICMS system has been modified by Constitutional Amendment No. 87/2015, which established a new tax treatment of interstate transactions involving end consumers who are not ICMS taxpayers.

On April 16, 2015, Constitutional Amendment No. 87 was enacted, thereby amending the ICMS taxation system for purchases made by non-taxpayers. The new rule gradually changed the taxation from an origin-based model to a destination-based model.

Pursuant to the Federal Constitution before the amendment, where the buyer was not an ICMS taxpayer, the relevant taxpayer had to pay value-added tax in full solely to the state in which the establishment of the seller was located. As a consequence, the state in which the buyer was located or the goods destination state did not receive any portion of the tax.

On February 24, 2021 the Supreme Court defined the unconstitutionality of the collection of the ICMS taxation system for purchases made by non-taxpayers introduced by the Constitutional Amendment No. 87/2015. According to the decision, the levy of ICMS must be regulated by a Supplementary Law. In this regard the Supplementary Law 190/2022 was published on January 05, 2022 in the Federal Official Gazette.

CAUSA MORTIS AND DONATION TAX (ITCMD)

The Causa Mortis and Donation Tax (ITCMD) is levied upon donations that occurred in the state or inheritance of goods and rights at a rate to be determined by each Brazilian state (limited to 8 percent, as determined by the Federal Senate).

In the state of São Paulo, for example, the ITCMD is levied at a tax rate of 4 percent, while in the state of Rio de Janeiro the tax rates vary from 4 to 7 percent if the value of the goods and rights is less than 400.000 UFIR-RJ (Tax Reference Units) – on 2023, it is equal to BRL 1,733,160-, and 8 percent if the values are greater than these amounts.

MUNICIPAL TAXES

TAX ON SERVICES (ISS)

The most significant municipal tax related to setting up and developing a business in Brazil is the tax upon services (ISS), which is levied on services rendered by a company or independent contractor, in accordance with a list of services attached to Complementary Law No. 116/2003. This tax is generally calculated at a rate varying from 2 percent to 5 percent of the service value.

The ISS is also levied on import of services

(meaning services fully rendered outside of Brazil for a person established in Brazil and services initiated abroad). The service importer is responsible for the ISS payment.

PROPERTY TRANSFER TAX (ITBI)

The property transfer tax (ITBI) is a municipal tax levied on the transfer of real estate titles and related rights, at a rate varying at each municipality - in the City of São Paulo and Rio de Janeiro it is established at 3 percent. The taxpayer is whoever purchased the real estate or related rights.

The ITBI is not levied on the transfer of real estate or rights such as investments in equity of a Brazilian entity or those resulting from mergers, consolidations, or the spin-off or winding-up of a legal entity, unless the buyer's core activity is the purchase and sale, lease or rental of real estate and related rights.

REAL ESTATE TAX (IPTU)

Real estate taxes are due upon ownership of urban real estate. IPTU must be paid annually, and it is calculated based on the value of the real estate, at a progressive rate to be determined by each Municipality, considering the value, use and location of the property.

STATUTE OF LIMITATION AND PENALTIES

Brazilian tax system provides for a five-year statute of limitations term, after which unpaid tax debts cannot be enforced by Tax Authorities, and also, undiscounted tax credits cannot be offset anymore. Unpaid federal taxes are subject to interest based on SELIC rate (standard remuneration rate for debt instruments issued by the Federal Government), which is currently 5% per year, in accordance with Brazilian Central Bank website.

Moreover, uncompliant federal taxpayers may be subject to a 20% penalty over the principal debt, in case the infraction is voluntarily disclosed; 75% in case of an tax inspection; or 150% whenever tax authorities understand the taxpayer has saved taxes by means of fraud or sham.

State and City taxes penalties and interest vary according to each State or City's legislation.

SUMMARY – MAIN BRAZILIAN TAXES

The following table summarizes the main Brazilian taxes, describing the basis of calculation and respective rates:

TAX	BASIS OF CALCULATION	RATE
Corporate Income Tax (IRPJ)	Actual profits, estimated profits or profits determined by tax authorities	15 percent plus a 10 percent surtax on those profits exceeding BRL 240,000.00
Withholding Income Tax (WHT)	Income (interest) and capital gains earned by nonresidents from sources in Brazil	15 percent or 25 percent, depending on the type of income and the domicile of the recipient
Excise Tax (IPI)	Sales price of the industrialized product	Dependent upon product classification

Tax on Financial Transactions (IOF)	Credit, foreign exchange, insurance and securities transactions	Dependent upon type of transaction—federal government may increase or decrease the IOF rate through the issuance of a Decree
Social Contribution on Net Profits (CSLL)	Adjusted net profit	9 percent for corporations (21 or 16 percent for financial entities)
Federal Tax on Revenues (PIS)	Gross revenues	1.65 percent under the noncumulative regime (0.65 percent for financial revenue) and 0.65 percent under the cumulative regime
Federal Tax on Revenues (COFINS)	Gross revenues	7.6 percent under the noncumulative regime (4 percent for financial revenue) and 3 percent under the cumulative regime
PIS-Import	Importation of goods, payment, credit, delivery, use or remittance of amounts related to the provision of services to residents overseas	2.1 percent, in the import of foreign goods 1.65 percent, in the import of services
COFINS-Import	Importation of goods or payment, credit, delivery, use or remittance of amounts related to the provision of services to residents overseas	9.65 percent, in the import of foreign goods 7.6 percent, in the import of services
Contribution on Economic Activities (CIDE)	Payment of royalties, fees on technology transfers and technical services by foreign persons	10 percent
Contribution Upon Economic Activities on Fuels (CIDE-Fuels)	Marketing and import of fuels	Depend upon type of fuel
Value-added Tax (ICMS)	Value of the transaction	7 percent to 25 percent
Tax Upon Services (ISS)	Service price	2 percent to 5 percent
Import Duty (ID)	Value of the imported product	Dependent upon the imported product

Causa Mortis and Donation Tax (ITCMD)	Value of assets or rights transferred by donation or legal succession	Up to 8 percent according to state legislation
Property Transfer Tax (ITBI)	Transfer of title to real properties and related rights	Up to 8 percent according to municipal legislation
Municipal Real Estate (IPTU)	Ownership of urban properties	Dependent upon each municipal legislation and characteristics of real estate property
Export Duty (IE)	Value of exported product	Dependent upon the exported product

RECENT CHANGES IN BRAZILIAN LEGISLATION

NEW RULES FOR OFFSHORE INVESTMENTS HELD BY BRAZILIAN INDIVIDUALS AND BRAZILIAN INVESTMENT FUNDS

The Chamber of Deputies and the Federal Senate approved Bill of Law No. 4,173/2023, which establishes new rules for taxing investments held by individuals abroad, including so-called offshore companies and trusts.

As the Bill of Law has already been approved by the Chamber of Deputies and the Federal Senate, after presidential sanction the approved text will have the force of law.

Investment Funds Incorporated in Brazil: this Bill of Law incorporated almost all of the provisions of Provisional Measure 1.184/2023, which introduces, among other things, the "*come-cotas*" regime for certain closed-end investment funds, given that current legislation only provides for the "*come-cotas*" regime for open-end investment funds.

As of January 01, 2024, income earned by closed-end investment funds will also be subject to the "*come-cotas*" periodic taxation regime, in May and November, at rates of 15 percent rate (*long-term funds*) or 20 percent rate (*short-term funds*).

However, "*come-cotas*" will not apply to:

- Non-Resident Investors who invest in the country under the terms of the regulations of the National Monetary Council (CMN), except if they are resident or domiciled in a tax havens jurisdiction;
- Funds that qualify as an investment entity (i.e., professional management with the power to make investment decisions on a discretionary basis with the purpose of obtaining a return through appreciation of the invested capital, income or both) and fulfil the additional requirements; and
- Funds that have at least 95 per cent of their net assets invested in (i) FIP, FIA, ETF (variable income) or FIDC, which are classified as investment entities or (ii) FII, FIAGRO, FIP-IE, FIP-PD&I.

As Per FII and FIAGRO, the WHT exemption to investors will only be granted in cases where FII and FIAGRO have at least 100 quota

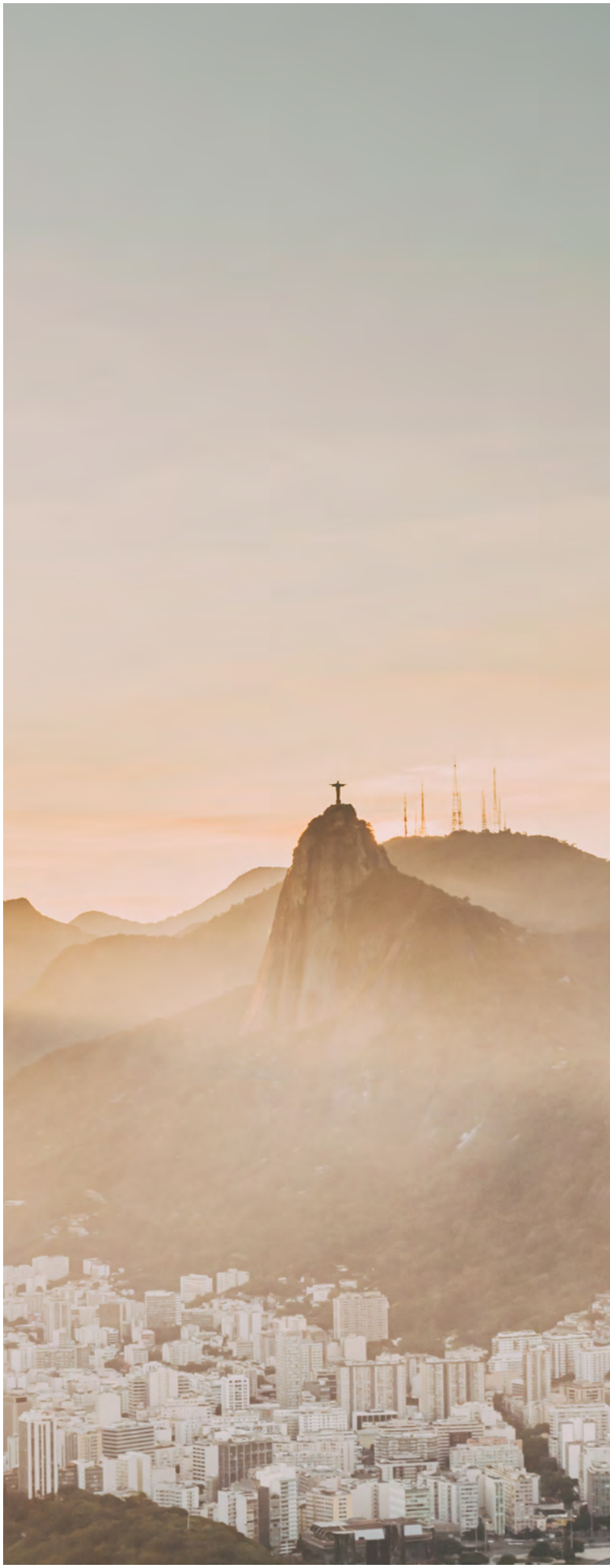
holders (the current rule is 50 quota holders). Quota holders who jointly own 30 per cent or more of the quotas or economic interests in the FII and FIAGRO' quotas will not be eligible for the exemption.

The Bill of Law also provides for the taxation of "stock" (i.e. income earned by investment funds up to 31 December 2023). The taxpayer has the following options:

- Taxation at the rate of 15% to be paid in a single instalment on 31.05.2024; or
- Taxation at the rate of 15%, paid in instalments over 24 months from 31.05.2024 (instalments adjusted by SELIC); or
- "Anticipation of payment" at a rate of 8%, whereby income calculated up to 30.11.2023 must be paid in 4 monthly instalments (29.12.2023, 31.01.2024, 26.02.2024 and 29.03.2024) and income calculated between 01.12.2023 and 31.12.2023 must be paid in cash in May 2024.

Changes to the Taxation of Investments Abroad (offshores and trusts): the main changes will be related to uniformization of the IRPF at 15 percent rate for any financial operations abroad; offset losses on financial investments abroad by individuals and exchange variation on the sale of foreign currency in kind:

- Uniformization of tax rates: (e.g. virtual assets, current accounts, investment fund shares, fixed and variable income securities, credit operations, etc.), without deductions or exemption bands.
- Offsetting losses by individuals: Individuals may (supported by proper documentation) against income earned on



operations of the same nature, also in subsequent calendar years.

- Exchange variation on the sale of foreign currency in kind: exemption up to an annual limit of USD 5,000. Above this limit, it will be subject to income tax (IRPF) at a 15 per cent tax rate.

As per the offshore companies, the annual taxation will be IRPF at a rate of 15 percent rate in Brazil in case the offshore companies (i) are domiciled in tax haven jurisdictions or (ii) whose "own active income" exceeds 60 per cent of their total income.

In relation to the taxation of the trust, the assets and rights will remain the property of the trust settlor until distribution by the trust to the beneficiary or death of the trust settlor, whichever occurs first. At this point, income tax will be levied on the income and capital gains relating to the assets and rights covered by the trust.

ICMS AGREEMENT NO. 42/2016: STATE FUND OF FISCAL BALANCE (FEEF)

On May 3, 2016, ICMS Agreement No. 42/2016 was published, thereby establishing the State Fund of Fiscal Balance (FEEF), with the purpose of maintaining the balance of public and social security finances of the states. Each state should implement the contribution to the FEEF through a State Law, respecting the aspects determined by the ICMS Convention.

The aforementioned Agreement states that the use of tax benefits or incentives already granted or that may be granted, are subject to a deposit of the amount equivalent to 10 percent of the difference between the value of the tax calculated with and without the use of the benefit or the tax incentive granted to ICMS taxpayers.

Rio de Janeiro State has enacted Law No. 7,428/2016, implementing ICMS Agreement No. 42/2016 and establishing the FEEF for two years, with the purpose of maintaining the balance of public and social security finances in Rio de Janeiro State. However, Law No. 7,428/2016 was revoked and FEEF is no longer valid, being substituted by the Temporary Budgetary Fund – FOT, which was declared constitutional by the Supreme Court of Justice (ADI 5635).

TEMPORARY BUDGETARY FUND (FOT)

On December 12, 2019, Law No. 8,645/2019 was published by the State of Rio de Janeiro creating the Temporary Budgetary Fund (FOT), pursuant to ICMS Agreement No. 42/2016 and Federal Law No. 4,320/1964. Therefore, it is revoked the State Fund of Fiscal Balance (FEEF), which was created by Law No. 7,428/2016.

The Temporary Budgetary Fund is a new version of FEEF and whose main aspects are the following:

- All taxpayers using tax incentives or benefits in the State of Rio de Janeiro must make a deposit in the percentage of 10 percent rate applied on the difference of the ICMS value calculated without and with the use of tax benefits or incentives granted, considering in this percentage the calculation basis for the transfer of the tax to the municipalities;
- Non-compliance with the deposit by the taxpayer for 3 (three) months, consecutive or not, will result in the definitive loss of the respective incentive or benefit;
- It is important to note that certain taxpayers who were not subject to filing with the FEEF are required to deposit to the Budget Fund, such as, for example, the beneficiaries of the Special Tax Treatment

foreseen by Law 6,979/2015 and taxpayers subject to the benefits provided for in Decree No. 36,453/2004 (Riolog).

It should be noted that FOT has numerous irregularities, and its legality has been challenged by taxpayers. However, a final decision on this subject is yet to be issued at the judicial level by STF. On December 23, 2016 the National Confederation of Industry (CNI) filed the Direct Unconstitutionality Action No. 5.635/RJ in order to declare the unconstitutionality of Law No. 7,428/2016 before STF.

It is worth noting that Law No. 7,426/16 was revoked by Law No. 8,645/2019, which created the FOT in Rio de Janeiro State. Therefore, the ADI was amended by CNI in order to include the FOT levy.

On October 10, 2023 STF finished the virtual trial of the ADI 5635 and stated the constitutionality of Laws No. 7,426/16 and No. 8,645/2019, which charges the 10% deposit as a condition for maintaining ICMS tax benefits.

The decision was not published yet and the taxpayers may question the initial date of the charge of the 10% deposit.

LAW 14,148/2021 (PERSE)

In March 2021, Brazilian government enacted Law N. 14,148/2021 which established the Emergency Program for the Resumption of the Events Sector (PERSE). Certain provisions were vetoed by the President, but recently the National Congress overcame the vetoes.

In relation to the tax provisions, players of the events sector, which ranges from the hospitality sector to the production of shows and advertising may benefit from the 0 percent rate applicable to IRPJ, CSLL, PIS and COFINS, but the exemption only applies to the revenues/income listed in Annex I and II of Ordinance No. 11,266/2022.

However, due to a change provided by Law 14,592/2023, the 0 tax rate benefit may expire on December 31, 2022 or February, 2027 (depending of the nature of the revenue).

BRAZILIAN TAX REFORM

Different Constitutional Amendment Bills are being discussed in the Brazilian Congress but they all have the same purpose: the aim of simplification and combination of all current taxes imposed on consumption into one single tax.

Constitutional Amendment Bill No. 45/2019 (PEC 45/2019), may extinguish the PIS, COFINS, ICMS, IPI and ISS replacing the consumption taxes into two taxes on consumption of goods and services, creating the so-called "IBS" and changing Brazilian Constitution in order to allow the creation of the Social Contribution on Goods and Services "CBS", which bill of law was proposed by the Executive Branch; all influenced by the international standards of VAT tax.

According to PEC No. 45/2019, the CBS and IBS will levy upon the gross amount of the goods or services and not upon the transaction's value. However, PEC No. 45/2019 is still pending analysis by the Brazilian Senate.

The Bill of Law N. 2,337/2021 contains broad and important changes in income taxation. Among these changes is the reinstatement of the WHT on dividends paid by Brazilian companies to local or non-resident shareholders at a rate of 15 percent rate.

However, It is not possible to foresee if and when this tax reform would be enacted in Brazil.

SUMMARY – BRAZILIAN TAX RETURNS

FEDERAL TAX RETURN

TAX	DESCRIPTION	PERODICITY
ECF	Demonstrates the calculation basis of IRPJ and CSLL	Annual Deadline: last business day of June
SPED (ECD)	Digital file with the entire company's tax accounting ledger book, monthly balances	Annual deadline: last business day of May
EFD-Contribuições	Demonstrates the calculation basis of PIS and COFINS	Monthly, before the 15th day of the subsequent month
DECLAN	Tax return providing inventory control, tax books, stock movement	Monthly. Deadline: last business day of the second month subsequent to the occurrence of taxable event
DIRF	Withheld tax information – contain all taxes withheld when paying individuals or other legal entities	Monthly. Deadline: for calendar year 2021 DIRF must be filed by February 28, 2022
DCTF	Information about federal taxes due and information regarding the method of payment of such debts	Monthly. Deadline: 15th business day of the second month subsequent to the occurrence of taxable events
DCTF-Web	Information about the social security contributions and the FGTS	Monthly. Deadline: 15th business day of the second month subsequent to the occurrence of taxable
EFD-Reinf	Bookkeeping of remunerations paid and withholdings of Income Tax, Social Contribution of the taxpayer, except those work-related and information on the gross revenue for the calculation of CPRB	Monthly. Deadline: 10th business day of the second month subsequent to the occurrence of taxable event
PER/DCOMP	Electronic request for offset and refund used by companies that have tax credits to claim before the Brazilian IRS	Upon occurrence of offsetting

PER/DCOMP- Web	Electronic request for offset and refund used by companies that have tax credits to claim before the Brazilian IRS	Upon occurrence of offsetting
E-SOCIAL (there is a provision to be terminated, need regulation)	Digital file with tax, labor and social security obligations	Monthly

BRAZILIAN TRANSFER PRICING RULES

IRPJ and CSLL are payable on net taxable income, which is a result of the add-backs, exclusions and offsetting prescribed by tax laws over the gross income.

Brazilian Transfer Pricing Rules (TP Rules) is one of these adjustments. Brazilian TP Rules is aim at determining the maximum amounts of deductible expenses, as well as the minimum amount of taxable income, for Brazilian entities engaged in cross-border transactions with related parties.

Such rules also apply to international transactions carried out with a person, or legal entity, located in the so-called low tax jurisdictions or benefiting from privileged tax regimes, whether related or not. The restrictive list of low tax jurisdictions and privileged tax regimes is found in the Normative Instruction No. 1,037/2010. US LLCs, owned by non-residents in the US, which is not subject to tax in the US, are considered as benefiting from privileged tax regimes, among others.

TP Rules will change as from 2024 to align with OCDE guidelines.

The new rules establish the "best method approach" by requiring the adoption of the most adequate mechanism for providing greater reliability in determining the terms and conditions that would be entered into between unrelated parties in a comparable transaction.

- International traditional transaction methods (PIC, PRL and MCL);
- International transactional profit methods (MLT and MDL); and
- Allow for the use of "other methods" in certain cases.

The new rules are aligned with the international "arm's length" principle and includes comparability analysis, functional analysis and benchmarking, replacing fixed margins method.

Interest paid or credited to related parties abroad, associated with loan agreements not registered with the BACEN, is also subject to Brazilian transfer pricing rules.

On September 29, 2023 the Normative Instruction No. 2,161 was published by the Brazilian Federal Revenue Office, establishing the regulation of the taxpayer's election to apply the New Transfer Pricing Rules provided for in Provisional Measure (PM) No. 1,152/2022 (converted into Law No. 14,596/2023) to the controlled transactions in 2023.

BRAZILIAN THIN CAPITALIZATION RULES

Brazilian Thin Capitalization Rules were enacted at the end of 2009 to limit the deductibility of interest paid to foreign companies by a related Brazilian company.

Pursuant to Brazilian Thin Capitalization Rules, interest paid from a source in Brazil to a related entity domiciled in a jurisdiction that is neither a tax haven nor a privileged tax regime shall only be deductible in Brazil if the amount of the indebtedness is not higher than twice the amount of the net equity of the legal entity resident in Brazil.

If the recipient of the interest is domiciled in a tax haven jurisdiction or a privileged tax regime, the interest shall be deductible in Brazil only if the amount of the indebted-ness is not higher than 30 percent of the amount of the net equity of the legal entity resident in Brazil.

If the indebtedness exceeds the ratios mentioned above, the interest arising from the excess will not be considered deductible for IRPJ and CSLL purposes.

The Brazilian Thins Capitalization Rules also apply to transactions in which the Brazilian company is surety, guarantor, attorney or anyone who negotiates on behalf of a related company.

ULTIMATE BENEFICIARY OWNER

Normative Instruction 2,119/2022 requires that legal entities enrolled with the CNPJ in Brazil make the disclosure of the ultimate beneficiary owner (UBO), including the ownership chain up to the UBO. The UBO is defined as the individual that (i) directly or indirectly holds, controls or significantly influences the company or entity; or (ii) on behalf of whom a transaction is carried out. Significant influence is deemed to exist if the individual: (i) holds, directly or indirectly, more than 25% of the company or entity; or (ii) directly or indirectly, holds or exercises the preponderance in the decision-making process of the company or entity and has the power to elect the majority of its member of the board of the directors, without controlling the company or entity.

The disclosure obligation extends solely until the corporate chain reaches any of the following entities: (i) a Brazilian and/or a non-Brazilian listed company located in non-tax haven countries that require the public disclosure of the company's shareholders; (ii) non-profitable organizations located in non-tax haven countries that do not act as fiduciary owners of property, as long as such company is regulated and supervised by the public authority; (iii) multilateral organizations, central banks, sovereign funds or any State-owned entity; (iv) pension funds and similar institutions, as long as such companies are regulated and supervised by the public authority; (v) Brazilian investment funds meeting certain tax-related reporting obligations; and (vi) foreign investment vehicles with a minimum of 100 quota holders (among other requirements to be complied with).

In practice, both Brazilian and foreign legal entities that are enrolled with the CNPJ, must disclose the existence of an UBO, based on the procedure set forth in Normative Instruction 2,119/2022and in the Act COCAD 9/2017. Note that, based on the provisions set forth in the Act COCAD 9/2017, for foreign legal entities enrolled with the CNPJ, the disclosure of the inexistence of the UBO is required to avoid the CNPJ suspension.

LOW TAX JURISDICTIONS AND PRIVILEGED TAX REGIMES

A low tax jurisdiction is a country or location that (i) does not impose taxation on income; (ii)

or imposes income tax at a maximum rate lower than 20%; or (iii) imposes restrictions on the disclosure of shareholding composition or the ownership of the investment or the ultimate beneficiary of earnings attributed to non-residents. A regulation issued by the Brazilian Ministry of Treasury on November 28, 2014 (Ordinance 488, of 2014) decreased this minimum threshold from 20% to 17% in certain specific cases. The reduced 17% threshold applies only to countries and regimes aligned with international standards of fiscal transparency in accordance with rules to be established by the Brazilian tax authorities. Law No. 11,727/08 created the concept of privileged tax regimes, which encompasses the countries and jurisdictions that:

- Do not tax income or tax it at a maximum rate lower than 20%;
- Grant tax advantages to a non-resident entity or individual;
  - Without the need to carry out a substantial economic activity in the country or a said territory; or
  - Conditioned to the non-exercise of a substantial economic activity in the country or a said territory;
- Do not tax or tax proceeds generated abroad at a maximum rate lower than 20%, or 17%, as applicable; or
- Restrict the ownership disclosure of assets and ownership rights or restrict disclosure about economic transactions carried out.

On June 4, 2010, Brazilian tax authorities enacted Normative Ruling 1,037 that provides a list of both low tax jurisdictions and privileged tax regimes. According to the Brazilian tax authorities' view, the list should be interpreted as an exhaustive list, so that only the countries and locations listed should be viewed as low tax jurisdictions and privileged tax regimes, according to their specific qualification.

Note that both concepts are very similar and lead to also very similar effects. Should the Brazilian entity perform commercial transactions with a person or entity, located in a low tax jurisdiction or subject to a privileged tax regime, detrimental tax effects and stricter deductibility requirements shall apply. As will be further detailed, these transactions must comply with transfer pricing rules, thin capitalization rules and special requirements for expense deduction under the "beneficial owner" restrictions. Besides, as a rule any remittance to entities based in low tax jurisdictions are assessed by a 25% WHT rate, as mentioned above.

DOUBLE TAXATION TREATIES

Brazil has signed and ratified double taxation treaties with the following jurisdictions: Arab Emirates, Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic and Slovakia, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Norway, Peru, Philippines, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Ukraine, Uruguai and Venezuela.

The tax treaties call for maximum rates applicable on income earned by a resident of a country in another country. Therefore, the domestic legislation of the countries that entered into the treaties must observe the limits determined by those treaties.

The following table summarizes the applicable maximum rates according to double taxation treaties signed by Brazil:

COUNTRY	DIVIDENDS (%)	INTEREST (%)	ROYALTIES(%)
Arab Emirates	5 or 15	10 or 15	15
Argentina	10 or 15	15	10 or 15
Austria	15	15	10 or 15 or 25
Belgium	10 or 15	10 or 15	10 or 15 or 20
Canada	15	10 or 15	15 or 25
Chile	10 or 15	15	15
China	15	15	15 or 25
Czech Republic and Slovakei	15	10 or 15	15 or 25
Denmark	25	15	15 or 25
Ecuador	15	15	15 or 25
Finland	10	15	10 or 15 or 25
France	15	10 or 15	10 or 15 or 25
Hungary	15	10 or 15	15 or 25
India	15	15	15 or 25
Israel	10 or 15	15	10 or 15
Italy	15	15	15 or 25
Japan	12.5	12.5	12.5 or 15 or 25
Korea	15	10 or 15	15 or 25
Luxembourg	15 or 25	10 or 15	15 or 25
Mexico	10 or 15	15	10 or 15

Netherlands	15	10 or 15	15 or 25
Norway	15	15	15 or 25
Peru	10 or 15	15	15
Philippines	15 or 25	10 or 15	15 or 25
Portugal	10 or 15	15	15
Russia	10 or 15	15	15
Singapore	10 or 15	10 or 15	10 or 15
South Africa	10 or 15	15	10 or 15
Spain	15	10 or 15	10 or 15
Sweden	15 or 25	15 or 25	15 or 25
Switzerland	10 or 15	10 or 15	10 or 15
Trinidad and Tobago	10 or 15	15	15
Turkey	10 or 15	15	10 or 15
Ukraine	10 or 15	15	15
Uruguay	10 or 15	15	10 or 15
Venezuela	10 or 15	15	15

FEDERAL DECREE NO. 8506/2015 – TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT "FATCA"

On August 25, 2015, Federal Decree No. 8506/2015 was published in the Official Gazette. This decree enacts the treaty entered into by Brazil and the United States to improve international tax compliance and to implement the Foreign Account Tax Compliance Act (FATCA), and was signed in Brasilia on September 23, 2014.

The aforementioned Decree enacted an agreement of cooperation between Brazil and

the United States to provide financial information of the citizens or companies of these countries. The sole purpose of the agreement is to identify and combat tax evasion, especially of US citizens and companies. In order to achieve this purpose, it will become mandatory for financial institutions to submit an annual tax return.

FATCA gives non-US financial institutions the obligation to report financial information related to US citizens and companies, and information related to citizens and companies that appear to be from the United States, to the IRS. As stated above, the tax return must be submitted annually and must contain information such as the account number, account balance, as well as every other piece of data established by the decree.

In the event of noncompliance with the agreement, the financial institution will be given a penalty, which imposes the withholding of 30 percent of any payment of US origin to any non-participating financial institution subjected to the withholding of taxes.

FUNDING ALTERNATIVES

	EQUITY	DEBT
Remuneration	Dividends and interest on net equity	Interest
IOF on the exchange transaction related to the inflow of funds	0.38%	0%
IOF on the exchange transaction related to the outbound payment	Dividends 0% Interest on net equity 0%	Interest 0%
Withholding Income Tax	Dividends – exempt Interest on net equity – 15% (or 25% if the foreign investor is resident in a black listed country)	Interest 15% (or 25% if the foreign investor is resident in a black listed country)
Deductible at the level of the Brazilian entity	Dividends – NO Interest on net income – YES (the deductible amount is obtained through a specific formula)	YES (subject to thin cap rules and transfer pricing)
Registration with the Brazil Central Bank	YES	YES

Timing issue	Dividends and Interest on net Income can only be paid when (and if) the company is profitable. They are paid out of the earnings and profits after the payment of the corporate income tax.	Interest is an obligation of the company, and therefore it may be paid to the foreign lender even if the company is not profitable. Regulations allow the conversion of debt in equity
Reduction of equity	Return of equity – tax-free (if at the same amount invested)	N/A
Transfer Pricing	NO	YES

GOVERNMENTAL INCENTIVES

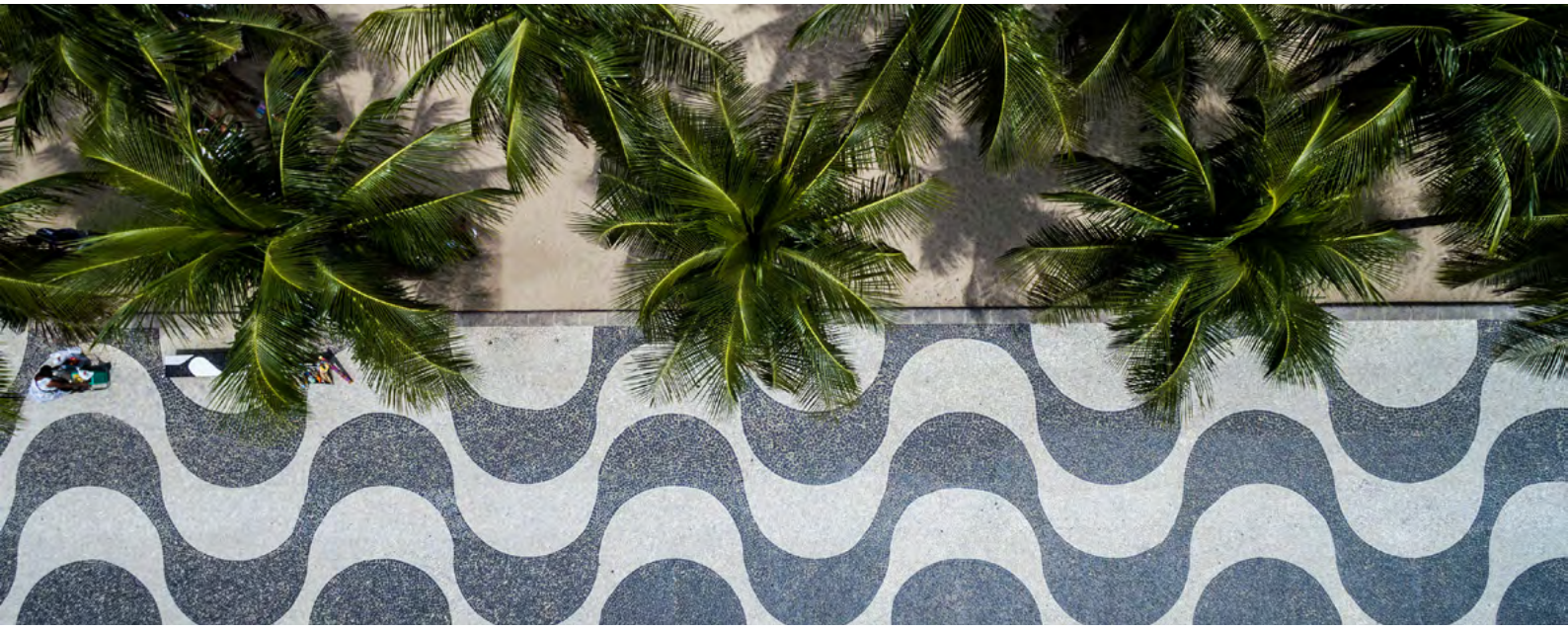
The Brazilian government has established several benefits intended to stimulate growth in developing sectors of the economy, including financing, tax credits and exemptions. Below are some examples.

INCENTIVES IN THE MANAUS FREE TRADE ZONE

The Manaus Free Trade Zone (ZFM) was created, and is regulated, by Law No. 3.173 of June 6, 1957, and Decree-law No. 288 of Feb. 28, 1967. The zone was promulgated to maintain an industrial, trade and agribusiness center in the Amazonian region. It sought to do this by creating economic conditions intended to stimulate development by overcoming certain local difficulties and the great distance between the production site and consumers. Special ZFM tax incentives have been allocated under the Constitution until 2023.

The companies established in the ZFM may be eligible for exemption from, or a reduction in, the following taxes:

- Import Duty (II) on products intended for ZFM-consumption (a reduction in import duty rates for materials incorporated into products manufactured in the ZFM when they are shipped to other points in Brazil).
- Export Duty (IE) on products manufactured in the ZFM for export.
- Excise Tax (IPI) on foreign products intended for consumption or manufactured in the ZFM, and on goods produced in the ZFM for consumption anywhere in Brazil. This has been a hot topic in Brazil as the Supreme Court held that the government cannot cut the IPI tax rates of products manufactured outside ZFM if they are also manufactured in ZFM, otherwise this would reduce the attractiveness of the ZFM on a comparative basis. This decision, however, was issued by only one Minister and will need to be analyzed by the Supreme Court plenary (comprising eleven ministers).
- Income Tax (IR) for operations and projects approved by the Amazon Development Authority.
- Value-added Tax (ICMS) for products from other states that are intended for consumption or manufacture in the ZFM.



Additionally, companies will have an ICMS credit in relation to products from other Brazilian states, and refund of a variable ICMS payment for industrial undertakings approved by the Amazonas Finance Office.

- Tax on Services (ISS) for companies providing services under projects approved by the Manaus City Hall.

INCENTIVES IN THE ADA AND ADENE AREAS

The companies established by the Amazon Development Superintendence (SUDAM) and the Northeast Development Superintendence (SUDENE) may be granted a reduction of up to 75 percent of IRPJ when undertaking an investment project approved by these agencies.

The deadline for requesting the tax benefit is currently December 31,2023. However, the Brazilian Senate is voting the Bill of Law 4,416/2021, which proposes the extension, until 2028, of the deadline for approving project authorized to grant from the tax benefits.

INCENTIVES IN THE EXPORT PROCESSING ZONES

In Brazil, Export Processing Zones (ZPEs) are regulated by Law No. 8.392/1991. The intention of the federal government is to grant tax incentives to companies that are established in the ZPEs and export their products. Companies established in ZPEs may import "permanent assets" exempt from II, IPI, PIS-Import and COFINS-Import. Moreover, companies established in ZPEs may be granted a reduction in ICMS levied on imports and acquisition of assets in Brazil's domestic market.

STATE TAX INCENTIVES—REDUCTIONS OF ICMS

In order to attract investments, some Brazilian states grant reductions in the ICMS rate for companies established within the state.

SPECIAL REGIME FOR INFRASTRUCTURE DEVELOPMENT INCENTIVES

In 2007, Brazil's federal government created the Special Regime for Infrastructure Development Incentives (REIDI), which gives tax incentive benefits to companies that have an approved infrastructure project related to

the development of transportation, ports, energy and basic sanitation.

Companies that qualify for REIDI also benefit from a suspension of PIS and COFINS on domestic sales, imports of new machinery and equipment, and construction materials.

These suspensions are converted into zero rate taxation after the use of the materials or goods in the infrastructure work is established. If the use is not established, the tax must be paid.

SPECIAL TAX REGIME FOR INFORMATION TECHNOLOGY EXPORT COMPANIES

In 2005, the Brazilian government created the Special Tax Regime for Information Technology Export Companies (REPES), which is designed to benefit legal entities that perform activities related to software development or information technology services and obtain at least 80 percent of their annual gross product and service revenues from exports. The tax benefits created by REPES are: (i) exemption from PIS and COFINS on gross revenues from the sale of new goods or services intended for the development of software and information technology in Brazil to another REPES beneficiary entity and (ii) exemption from PIS-Imports and COFINS-Imports on the acquisition of new goods or services intended for the development of software and information technology in Brazil.

SPECIAL REGIME FOR ACQUISITION OF CAPITAL GOODS BY EXPORT COMPANIES

In 2005, the Brazilian government created the Special Regime for Acquisition of Capital Goods by Export Companies (RECAP), which is designed to benefit companies whose gross export revenue has reached at least 80 percent of their total gross revenue for at least two calendar years. The tax benefits related to RECAP are:

- Exemption from PIS and COFINS on the gross revenues from the sale of new machines, appliances, instruments and equipment to another RECAP beneficiary entity; and
- Exemption from PIS-Imports and COFINS-Imports on acquisition of new machines and equipment.

SPECIAL REGIME FOR PRODUCTION OF SEMICONDUCTORS (PADIS) AND DIGITAL TELEVISION EQUIPMENT (PATVD)

In accordance with Law No. 11,484/2007, the manufacturing of, and R&D performance in,

the production of semiconductors and digital television equipment grant the following benefits: (i) zero percent rate of PIS, COFINS and IPI on the acquisition (imports and domestic) of machinery, devices and equipment, and on the sale of said products; (ii) corporate income tax rate reduction on the exploration profit (it must be registered as a capital reserve); and (iii) for PADIS only, a zero percent Import Tax (II) and CIDE on remittances abroad in relation to royalties is applicable.

SPECIAL CUSTOMS REGIME FOR THE OIL & GAS INDUSTRY - REPETRO-SPED

The purpose of the REPETRO-SPED is to stimulate the investment in upstream activities and improve the domestic energy industry. The REPETRO-SPED reduces the operating costs of oil and gas E&P during the initial exploration phase by suspending, with actual effects of exemption, federal taxes (II, IPI, PIS and COFINS) levied on importation, whether temporary or permanent, of certain goods and equipment destined for the oil and gas industry. REPETRO-SPED is currently set to expire in December, 2040.

The qualification for the benefits under REPETRO-SPED regime is regulated by Normative Instruction RFB No. 1,781/2017, Normative Instruction RFB No. 1,901/2019 and Decree No. 9.537/2018.

The REPETRO-SPED allows the use of the following customs regimes, as long as the asset and/or equipment is used in the exploration and production of oil and gas in Brazil:

1. Export of assets and equipment manufactured in Brazil and sold to foreign entities, without the need of the item to physically leave the Brazilian territory, and subsequent import on temporary or definitive basis, with suspension of federal taxes (the so-called fictitious export);
2. Export of spare parts, without the need of the exported item to physically leave the Brazilian territory, and destined to assets and equipment already imported on temporary or definitive basis, with suspension of federal taxes;

3. Permanent import of assets and equipment listed in Annexes I and II (only the main assets for Annex II) of the Normative Instruction RFB No. 1,781/2017, with suspension of federal taxes;
4. Temporary import for economic use of assets and equipment listed in the Annex II of the Normative Instruction RFB No. 1,781/2017, without the payment of federal taxes;
5. Temporary import with the payment of federal taxes proportionally to the time that the asset will stay in the country; and
6. Import and domestic purchase of raw material, inputs or packing material to be fully used in the manufacturing of assets and equipment to oil and gas exploration and production in Brazil, the so-called Repetro-Industrialization ("Repetro-Industrialização").

REPETRO-SPED legislation contains several requirements and restrictions which should be analyzed case by case.

ENDNOTES

[1] According to Senate Resolution No. 13/2012 and ICMS Convention No. 38/2013, interstate transactions with goods previously imported are subject to 4 percent ICMS rate. However, if the imported good is submitted in Brazil to a manufacturing process, the 4 percent ICMS tax rate is solely applied in cases of "import content" higher than 40 percent. The import content is provided through the percentage correspondent to the quotient between the amount related to the part imported and the total value of subsequent interstate transaction. The tax effect is basically a decrease in the tax burden of the interstate transaction, since the regular tax rates applicable are 7 percent or 12 percent.

[2] Even though, OECD rules on arm's length transactions are incorporated in all Tax Treaties to avoid Double Taxation currently in force in Brazil.

[3] We have included the tax returns required by Rio de Janeiro State, as an example.

[4] These tax rates of Causa Mortis and Donation Tax in Rio de Janeiro have been changed by Law No. 7,174/2015 and came into effect on March 28, 2016. For clarification purposes, 1 UFIR-RJ corresponds to BRL 4,0915.

EMPLOYMENT AND BENEFITS

LEGISLATION

Brazilian employment conditions are regulated and governed by rules established by (i) the Brazilian Federal Constitution, (ii) the Brazilian Labor Code (*Consolidação das Leis do Trabalho* [CLT]), (iii) decisions rendered by the Brazilian labor courts, and (iv) Collective Bargaining Agreements entered into between the employees' and employers' unions or Special Collective Bargaining Agreements entered between the employees' union and a certain company or group of companies (*collective negotiations*).

The main principles of the CLT and the Federal Constitution are the work at will, impossibility of reduction of salary and benefits (if granted on a regular basis), possibility of termination of employees with or without cause, and non-discrimination in the workplace.

In Brazil, all employees must be submitted to equal opportunities and work conditions regardless of race, color, gender, ethnic group, marital status, social conditions, or religion.

EMPLOYEE RECORDS

EMPLOYMENT BOOKLET

The Ministry of Labor issues an employment card (*Carteira de Trabalho e Previdência Social* [CTPS]), which contains information about the position, hiring date, vacation, and compensation, among others, of employees.

Pursuant to Law No. 13,874, which was in force since September 20, 2019, the CTPS will be preferably issued electronically, and the employer has 5 days from the hiring date of the employee to proceed with the proper registration in the CTPS. This registration must also be executed in the event of termination of the employment contract.

The failure of the employee to comply with the proper registration in the CTPS may result in the application of penalties by the labor authorities.

EMPLOYMENT RELATIONSHIP

GENERAL ISSUES

In accordance with the CLT, an employee is defined as a "person who provides services on a regular basis to an employer, at the employer's direction and upon payment of salaries."

EMPLOYMENT CONTRACTS

A formal written contract is not required under the Brazilian law for the purpose of characterizing the employment relationship. However, entering into employment contracts and negotiating amendments in the case of modification of any employment conditions is advisable for companies.

As a general rule set forth by the Brazilian Labor Law, the employment contracts are executed for indefinite terms except for special cases: (i) services whose transitory nature justifies the predetermination of a contractual term, (ii) temporary business activities, or (iii) a probationary contract.

The term of a probationary contract cannot exceed 90 days, and the term of other permissible definite term contracts shall not exceed two years. If a definite term contract is executed for a short term (i.e., less than 90 days or two years, as the case may be), the Brazilian Labor Law allows one extension limited to the maximum term established by the law. Otherwise, this employment contract will be executed for an indefinite term.

The conditions set forth in the employment contract cannot be modified or amended without the consent of the employee. In this context, any modifications or amendments that conflict with the legal rights of employees, even if made with the consent of the employees, are deemed legally null and void before Brazilian labor courts.

In addition, Brazilian labor laws forbid detrimental changes in employment contracts with regard to the work conditions of employees.

OUTSOURCING AND TEMPORARY CONTRACTS

OUTSOURCING

Law No. 13,429/2017 regulates the contracting and rendering of outsourcing and provides for the rules applicable to temporary employment.

Law No. 13,429/2017 innovated by allowing the outsourcing of the core activities of any company but establishes that the contracting party is not completely exempt from liabilities derived from the providers of outsourced services. In fact, it establishes that the contract¬ing company may be held secondarily liable for any breach of the Brazilian labor laws caused by the original employer of the outsourced service provider.

With the objective of avoiding labor risks, it is advisable to include a provision in the services agreement that requires the outsourcing company to present a copy of the receipts of payment of the labor rights and contributions of the employees on a monthly basis, subject to the retention of its fee.

This provision is recommendable due to the fact that the company may also be liable for the payment of all labor rights and social security contributions (e.g., Severance Indemnity Payment Fund [FGTS], INSS, and income tax).

TEMPORARY CONTRACTS

Pursuant to Law No. 13,429/2017, temporary work is characterized when an individual is employed by a temporary employment

company, who acts as an intermediator and makes its employees available to another company on a short-term basis to replace its regular permanent staff (e.g., vacation and maternity leave) or as a result of an extraordinary increase in its business.

Notwithstanding, temporary employees have the same rights and benefits as other Brazilian employees, such as vacations + 1/3, Christmas bonus (13th salary), FGTS deposits, and overtime. However, the payment of the monthly salary of employees, as well as benefits, must be performed by the employer, which is the temporary employment company.

The temporary agreement may not exceed a period of 180 days. However, this term may be extended for up to 90 days, if the condition that caused the temporary hiring persists.

BASIC RIGHTS OF EMPLOYEES

MINIMUM SALARY

The minimum salary is the lowest value that the employer shall pay to the employee provided by law. It was established by Law No. 8,222, of 1991, and the Federal Government is responsible for conducting an annual readjustment of the amount, which is BRL 1,302.00 or (around USD 264) in 2023.

Notably, the specific minimum salary for a professional category may be established by collective negotiations with unions.

In addition, states may also stipulate specific regional minimum salaries.

SEVERANCE INDEMNITY PAYMENT FUND (FGTS)

The FGTS (*Fundo de Garantia do Tempo de Serviço*) is a mandatory benefit and applies to all employees under the Brazilian Labor Law.

It is a fund created by the Federal Government to protect employees who are dismissed without just cause. Companies must perform deposits of the FGTS in the amount of 8% every month on behalf of employees at the *Caixa Econômica Federal* (CEF).

If a company terminates an employment contract without just cause, then it is obliged to pay a fine of 40% of FGTS calculated over the total amount of the deposits of the FGTS paid by the company. Additionally, the company must pay a 10% fine to the Federal Government.

VACATION

After completing 1 year of service in the same company (acquisition period), each employee is entitled to 30 vacation days to use throughout the next year, provided that the employee has not been absent

from work for more than 5 times during this period without justification. The vacation should be granted to employees within 12 months of completing the initial year of service.

If the employee agrees, vacations may be split in three periods: one of the periods must provide at least 14 consecutive days and the other two at least five consecutive days each.

VACATION BONUS

At the time employees take their annual vacation leave, they also have the right to receive an additional bonus equal to 1/3 of their monthly salary.

13TH SALARY (CHRISTMAS BONUS)

The employer shall pay to the employee a 13th-month salary, which is known as the Christmas bonus, which corresponds to a payment equal to the average salary paid to the employees throughout the 12 months of the year.

TRANSPORTATION VOUCHER

Transportation vouchers are requirements that must be granted by employers pursuant to Law No. 7,418 dated as of December 16, 1985. Under the Brazilian Labor Law, transportation should be afforded by the employee in a maximum of 6% of their base salary. The amount in excess must be afforded by the company.

OBLIGATIONS OF THE EMPLOYER

GOVERNMENT CONTRIBUTION

In addition to the basic rights of employees, which were previously addressed, the company must also pay government contributions based on the monthly salary earned by the employee as set forth below:

- FGTS — 8%;
- INSS — 20%;
- Vacation — 11.11%;
- 13th-Month Salary (Christmas bonus) — 8.33%;
- 3.3% to several public and private institutions (INCRA — 0.20%; SENAI/SENAC — 1%; SESI/SESC — 1.50%; and SEBRAE — 0.60%);
- 2.5% as educational salary; and
- Compulsory insurance for labor accident risk according to the risk level of the company's activities — 1%–3%

Depending on the type of activity developed by the employer, the abovementioned contributions may be subject to specific charges and destinations.

WITHHOLDING OBLIGATIONS OF THE EMPLOYER

The employer is responsible for withholding on payroll the following taxes and contributions:

- Between 8 and 11% of the monthly salary of the EMPLOYEE to the INSS — limited to BRL 713.19 (USD 139.26) in 2022; and
- Personal income tax ranging from 15 to 27.5% dependent on the amount of the monthly salary of the employee.

WORKDAY OF EMPLOYEES

WORKDAY

The maximum workday for onshore employees is 8 hours and the maximum workweek is 44 hours. Employees are entitled to at least one rest period during the workday (a minimum of 30 min – if negotiated with the union – and up to 2 h for lunch and rest). In addition, they are entitled to a rest period between workdays (at least 11 uninterrupted hours of rest).

Offshore employees are subject to different rotation shifts provided by Law 5,811/72 of 14 days of work per 14 days of rest.

For certain specific professional categories, collective negotiations can also establish different regulations regarding workday and rotation shifts.

Any overtime from Monday to Saturday must be paid an amount equal to or higher than 50% of the regular hourly rate of the employees.

WEEKLY REMUNERATED REST PERIOD

All employees have the right to one paid rest day, which should preferably fall on a Sunday. Any overtime work executed on Sundays or holidays must be paid in an amount equal to or higher than 100% of the regular hourly rate of the employee.

NIGHT WORK

Employees who work from 10 p.m. to 5 a.m. are entitled to a night additional allowance of approximately 20% over the hourly rate.

WORK CONDITIONS

HEALTH AND SAFETY OBLIGATIONS

The Law and the Normative Rules issued by labor authorities establish several health and safety obligations. Companies are obliged to grant safety equipment to its employees and submit them to medical examination.

In addition, companies are required to hire specific employees and prepare health and safety programs for establishing standards for medical examination, preventive action, and evaluation of risks inherent to the activities of employers.

Health and safety obligation varies according to the number of employees and risk level of the activities performed by the company.

HEALTH HAZARD ALLOWANCE

When employment includes activities considered hazardous by law, the employer must pay an additional monthly allowance. Such allowance should be equivalent to 10%, 20%, or 40% of the minimum wage depending on the degree of hazard involved.

RISK PREMIUM

When employment includes dangerous activities, such as those involving contact with explosives or flammable materials, the employer must pay an additional payment in compensation for the risk involved on 30% of the salary of the employee.

LEGAL QUOTAS

APPRENTICES

An apprentice is defined as a student from a technical school, aged between 14 and 24 years, and subject to professional training for the job.

Under the Brazilian Labor Law, a company hiring more than 7 employees is required to fill in a minimum of 5% and up to 15% of its work positions with apprentices (employees holding a position of trust or with specific expertise are excluded from in this quota).

The validity of an apprenticeship agreement is conditional on its proper registration in the CTPS. An apprentice is also entitled to minimum wage. The term of an apprenticeship agreement shall not exceed 2 years, although the agreement may be terminated for cause or at the request of the apprentice before the expiry of such a term.

DISABLED EMPLOYEES

Brazilian Law No. 8,213/91 stipulates that a company hiring 100 employees or more is required to fill in 2% to 5% of its work positions with employees with special needs or that were rehabilitated by the INSS.

DEI

BRAZILIAN EQUAL PAY LAW

Recent Law No. 14,611 of July 2023 introduced changes to the Brazilian Labor Code with respect to the remuneration criteria and wage equality between men and women.

Based on the provisions of Law No. 14,611/2023, companies with 100 or more employees must publish salary transparency and remuneration criteria reports on a semi-annual basis, in March and September.

These reports include anonymized data that allows objective comparisons with respect to salaries, remuneration, and the proportion of women and men in executive, managerial, and supervisory positions. They are also accompanied by statistical data on other potential forms of inequality regarding race, ethnicity, nationality, and age.

In case any kind of inequality is identified, the companies will be required to prepare and implement an action plan to mitigate inequality in the workplace under the risk of fines and procedures carried by the labor authorities.

TERMINATION OF EMPLOYMENT CONTRACT

GENERAL ISSUES

Both parties can terminate employment contracts. The employer may dismiss an employee with or without just cause given that severance is regularly paid to employees.

Termination with just cause may result from a violation of the legal, contractual, or behavioral duties of the employee, which gives the employer the right to terminate the employment contract. The law determines "just cause" events and include grounds such

as negligence, misdemeanor, insubordination, abandonment of the job, and disclosure of company secrets.

An employment relationship may also be terminated by mutual agreement upon resignation of the employee, defaulting by the employer, and other factors that trigger the rights to possible indemnification.

PRIOR NOTICE OF TERMINATION

Law No. 12,506/2011 establishes that the calculation of prior notice corresponds to the period of work of the employee for the employer. Thus, until 1 year of service, the employee is entitled to 30 days of prior notice; after 1 year, the employee is entitled to additional notice, which is equivalent to 3 days per year of service up to 90 days.

If an employer wishes to terminate an employment contract without cause, the employer must give the employee corresponding days of prior notice or indemnify the employee for such a period. During the notice period, the workday of the employee should be reduced by 2h per day or by seven consecutive days without prejudice to the payment of the entire salary of the employee.

EMPLOYEE TENURE

Employees who are pregnant, members of a union or part of the Internal Commission for the Prevention of Accidents and Harassment (*Comissão Interna de prevenção de Acidentes*), or on sick leave due to labor accidents or occupational diseases are entitled to a scope of certain employment tenure protection. In other words, they may not be terminated during certain periods.

UNION NEGOTIATIONS

UNION CLASSIFICATION

To better understand the collective negotiation, an aspect worth explaining is that the Brazilian Labor Law states that employers and employees may constitute unions on the basis of similarity of business activities and occupations, respectively. These unions are organized on a territorial basis, and the law establishes that only one union may exist for the category of the same employee in the same territory.

Thus, under the system currently in force, a respective union represents each professional category in a given territory. The union is responsible for negotiating salary readjustments, labor conditions, and benefits that apply to all employees it represents.

LABOR ASPECTS IN TRANSACTIONS

CONCEPT OF AN ECONOMIC GROUP

Under the Brazilian Labor Law, two or more companies are part of the same economic group if these companies are under the same direction, control, or administration, regardless of whether or not they continue with their autonomy, as established by Article 2 of the CLT.

If the economic group is characterized between companies, then there is a risk for these companies be deemed jointly liable for all labor debts due to employees in Brazil.

After the Labor Reform (ruled by Law No. 13,467/2017, which has been in force since November, 2017), if companies only have the same shareholders, then it is insufficient for the characterization of an economic group. The Brazilian legislation is currently requiring

evidence of integrated interests, effective common interests, and the joint action of the companies to enable the characterization of an economic group.

M&A AND SUCCESSION OF EMPLOYERS

When a company acquires another company, it inherits the employment contracts in force (i.e., employees are automatically transferred to the buyer) and liability for employment obligations. This arrangement is designed to protect employees in the event of a succession of employers. In this case, the employment contracts continue in force given that the employees continue performing the same activity.

PURCHASE OF ASSETS AND POSSIBILITY OF THE TRANSFER EMPLOYEES

The transfer of employees is also possible in the cases of purchase and sale of assets. However, in such cases, the transfer of employees is not automatic. The reason is that the procedural aspects of demonstrating the succession of employers before labor authorities are unclear. Therefore, automatically transferring employees under these circumstances may not be possible.

PROBLEMS IN THE PROCEDURAL ASPECTS OF TRANSFER OF EMPLOYEES (FGTS AND INSS AUTHORITIES)

To transfer employees from one entity to another without the need to terminate employees and hire them again (which, in Brazil, could incur a high cost due to the fine imposed by the FGTS), demonstrating before the FGTS and INSS authorities that an operation through which a succession of employers has occurred is necessary. A voluntary transfer of employees between two unrelated companies is impossible, because it may result in the possibility of violating mandatory employment termination rights. Employees are entitled to termination rights, which are mandatory according to the Brazilian employment legislation.

IMMIGRATION

EXPATRIATES

A notable aspect is that the new Brazilian Immigration Law (Law No. 13,455/2017) has been enforceable since November, 2017, and the Resolutions issued by the National Immigration Council in Brazil have changed in which new rules have been in force since January, 2018.

Based on the new legislation and independent of the type of work permit used, an individual assigned to work in Brazil needs (i) a residency authorization, (ii) a visa, (iii) enrollment with the registry for individual taxpayers (CPF); and (iv) registration at the national immigration registry upon arrival in Brazil (*Registro Nacional Migratório*).

The applicable residency authorization and visa for each expatriate assigned to work in Brazil are directly related to the activity or type of work to be performed and the period in which the individual will stay in Brazil. Thus, firstly identifying the applicable residency authorization and visa of each expatriate is advisable followed by determining the applicable hiring process and analyzing all labor and tax aspects involved.

The rules, documents, and timing for requesting residency authorization and visa may vary according to the type of work that the foreigner will perform in Brazil. The subsequent sections highlight the most common residency authorization and visa in Brazil.

EMPLOYEES

The expatriate is hired as a regular employee of a Brazilian company under a local labor contract and is entitled to all labor benefits provided in the Brazilian Labor Legislation.

In other words, all payroll levies will apply to the compensation of the individual (e.g., FGTS and INSS).

The rules for residency authorization are set forth in Normative Resolution No. 02/2017 of the Brazilian Immigration Council and are granted for two years.

As far as the company hires such an individual, it must observe the "2/3 Rule," that is, 2/3 of its employees must be Brazilian nationals, and 2/3 of the total Brazilian payroll must be related to Brazilian employees.

OFFICERS

It is required for expatriates who function as administrators (legal representatives) of a Brazilian company (one of the individuals required to sign documents and checks and close business deals, among others, on behalf of a Brazilian legal entity) as well as those indicated in the by-laws of the company as directors, board members, or managers.

The rules for residency authorization are set forth in Normative Resolution No. 11/2017 of the Brazilian Immigration Council. Note that the fact that the residency authorization is granted by the Ministry of Justice does not imply the mandatory grant of temporary visa.

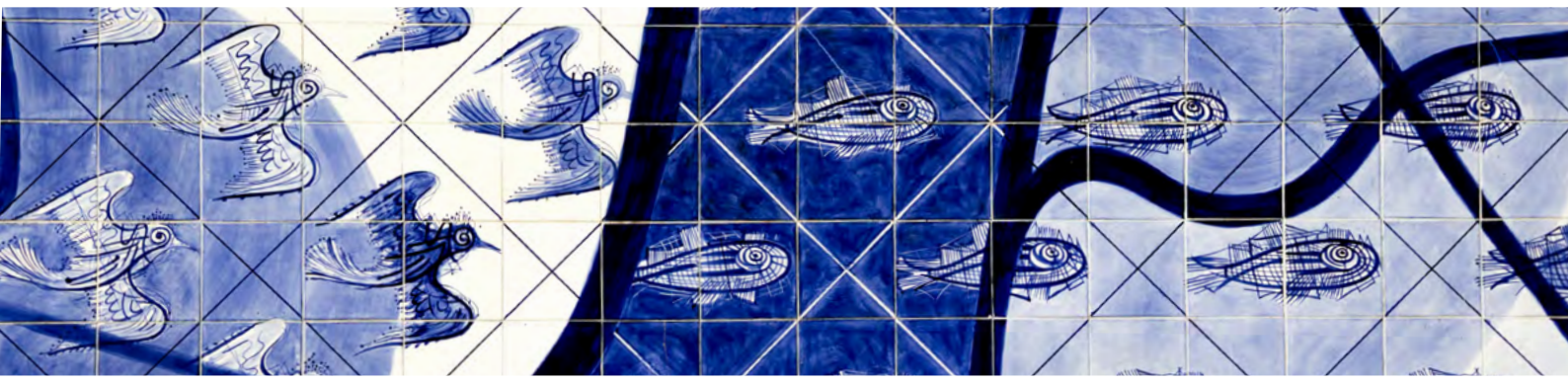
To request for residency authorization, the Brazilian entity must prove an investment by a foreign entity (shareholder): (i) in the amount of BRL 600,000.00 (USD 117,013.81) per expatriate (per visa to be issued) without the requirement to generate new jobs or (ii) in the amount of BRL 150,000.00 (USD 29,253.00) per expatriate (per visa to be issued), and the Brazilian company must generate 10 new jobs in the next two years, which will be counted from the date of the arrival of the expatriate.

TECHNICAL SERVICES

The expatriate enters Brazil under a service contract, a cooperation agreement, or a transfer of technology agreement between a foreign and a local company. The individual is not employed by a Brazilian company; thus, the employer abroad pays 100% of the compensation of the employee. Brazilian payroll levies do not apply. Residency authorization is valid for one year.

The rules for residency authorization are set forth in Normative Resolution No. 03/2017 of the Brazilian Immigration Council. Note that the fact that the residency authorization granted by the Labor Ministry does not imply the mandatory grant of the temporary visa.

Positions related to administrative, managerial, and finance activities are excluded from the concept of technical assistance and, therefore, of this type of residency authorization.



INTELLECTUAL PROPERTY

Federal laws and international treaties and Conventions, such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Paris and Berne Conventions regulate the protection of intellectual property. Specifically, the Paris Convention, which was adopted in 1883, applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models, trade names, geographical indications, and the repression of unfair competition. This international agreement was the first major step taken to help creators/owners ensure that their intellectual works were protected in other countries.

INDUSTRIAL PROPERTY

Industrial property in Brazil is mainly regulated by the Brazilian Industrial Property Law (No. 9.276/96 – "IP Law") and enforced and protected by the Brazilian Industrial Property Institute (BPTO).

The IP Law guarantees protection of trademarks, patents, utility models, and industrial designs and ensures that false geographical indications and acts of unfair competition are prohibited. Trade names and trade dress are regulated by IP Law and specific rules as well.

TRADEMARKS

Registration. Under the IP Law, a trademark is any visual, distinctive sign that identifies and distinguishes companies, products, and services. To be protected, the rule is that trademarks need to be filed before the BPTO, especially because Brazil adopts an attributive system. In other words, as a general rule, trademark registrations are granted at a first come, first serve basis, regardless of whether

or not the first party to file an application was also the first to use it. Exceptions to this are those trademarks previously used in good faith for at least six (6) months, which have not been filed at the BPTO. Such good-faith user is entitled to oppose any third party's similar trademark filed at the BPTO, as long as the good-faith user files a trademark application before the BPTO to uphold its prior rights, evidencing prior use of a similar trademark to identify identical or akin goods and/or services for at least six (6) months.

Well-known trademarks. Nevertheless, another important aspect to note is that well-known trademarks in the relevant market segment may be protected in Brazil regardless of registration. This is pursuant to the Paris Convention and the Industrial Property Law, which constitute an exception to the obligation to register trademarks in Brazil.

Highly Renowned/Famous trademarks. Highly renowned trademarks are an exception to the speciality principle. Thus, highly renowned/famous trademarks constitute exceptions to the Classification System, because they can receive protection in all classes such as all market segments. The BPTO needs to grant recognition of famous status, which demands numerous evidence of the fame of the trademark in Brazil such as a market research that indicates the number of people/target consumer who are familiar with the trademark and proof of investment in marketing, among other requirements.

Trademark searches. Before applying for a trademark in Brazil, it is highly recommended to perform a search before the BPTO to ensure that the mark in question does not violate a third party's right or even IP Law provisions. The BPTO adopts the Nice International Classification System to classify trademarks.

Paris Convention. Foreign trademarks are registered under the terms of the Paris Convention and, consequently, are granted a priority term of six months, which is counted from the date of the trademark application in the country of origin for their owners to apply for the same trademark in Brazil. The priority date is the main reason for filings under the Paris Convention.

Madrid Protocol. Brazil is part of the Madrid Protocol, enabling the registration of international trademarks in multiclass , and enabling joint-ownership and divisional applications due to adherence to the Madrid Protocol.

Use. Once a trademark is registered, the owner is given five years to use it in Brazil, which is counted from the granting date, under the penalty of being vulnerable to non-use cancellation actions.

Validity. Trademarks are valid for the period of 10 years from the granting date, which can be indefinitely renewed for successive 10-year periods.

PATENTS, UTILITY MODELS, AND INDUSTRIAL DESIGNS

Patents. A patent is a temporary title deed over an invention or utility model granted by the BPTO to inventors or legal entities holding rights in creation. Invention patents are granted for completely new inventions, which are a technical solution to a technical problem. Conversely, utility models are improvements over the existing invention patents.

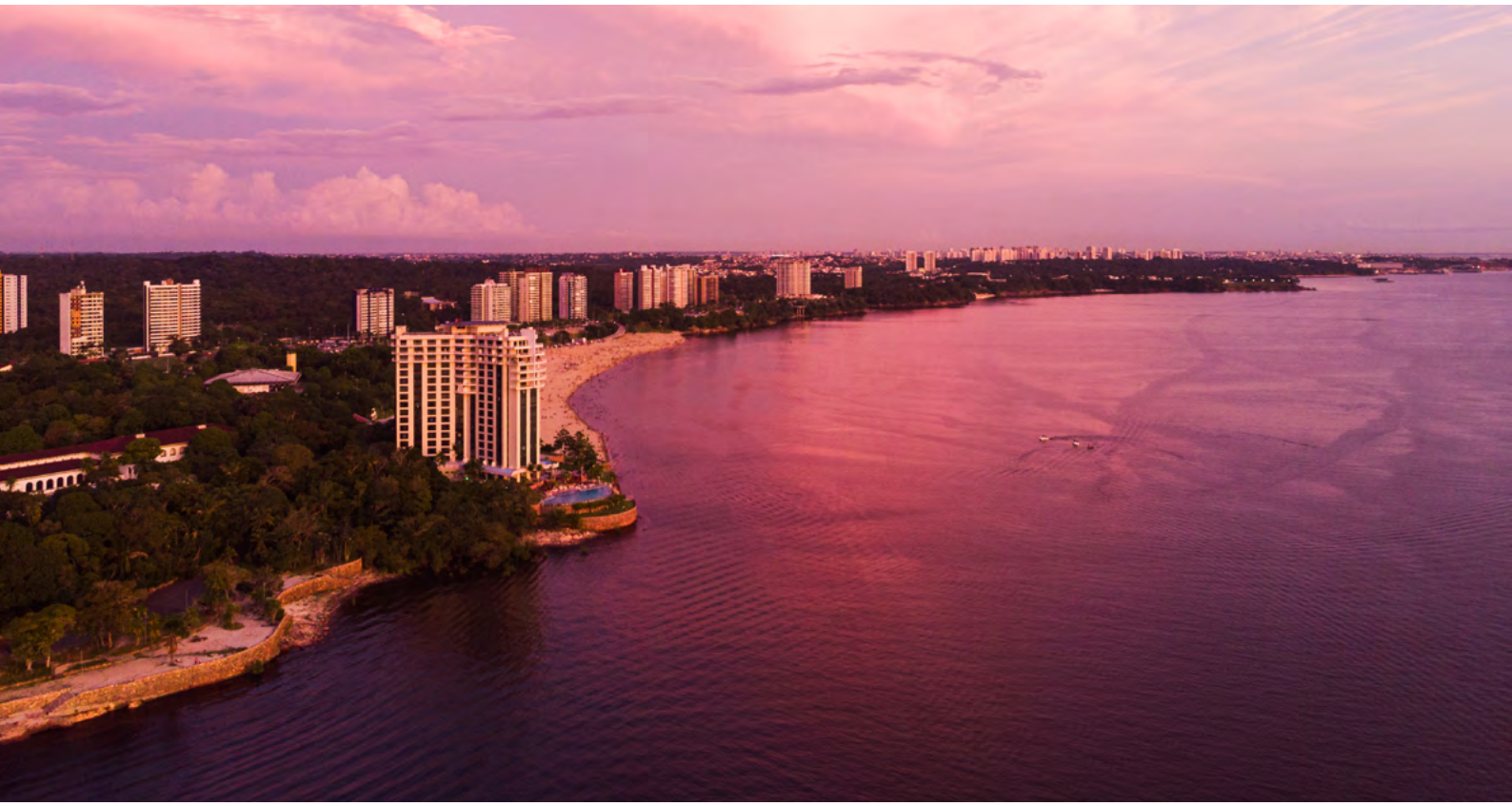
Patentability requirements. The original patentability requirements are that an invention needs (i) to be novel; (ii) to have an inventive step; and (iii) to have industrial

application. Simply put, novelty implies that inventions must be entire new within the state of the art without having been previously divulged, except if by the inventor 12 months prior from filing (grace period). The inventive step is achieved when the invention is unclear to a person skilled in the art. In addition, industrial patent application denotes that the invention needs to exhibit a degree of industrial applicability. However, apart from these three requirements, the BPTO also demands that inventions obey the principle of unity; in other words, a letter patent cannot be granted in the cases in which more than one inventive concept exists.

Validity term. Invention patents can be granted (i) 20 years from the filing date or (ii) 10 years from the granting date if the BPTO takes longer than 10 years to grant the application. Utility models can be granted (i) 15 years from the filing date or (ii) seven years from the granting date if the BPTO takes longer than eight years to grant the application.

Prosecution. Patent applications filed before the BPTO must contain the specifications, claims, drawings (if appropriate), and evidence of compliance with all legal requirements. The BPTO will then proceed with a preliminary formal review and issue a filing certificate. The application may be kept confidential for 18 months, after which it will be officially published, or the publication can be earlier if the applicant does not request confidentiality. The applicant is given 36 months to request a technical examination of the patent application and, if such request is not made, the application will be dismissed. The letter patent will be issued after the granting of the application and may be annulled by a court order in patent nullity lawsuits at any time during its validity date.

Patent prosecution highway (PPH). The BPTO has partnerships with the USPTO, JPO, PROSUL (patent offices from Argentina, Brazil, Chile, Colombia, Costa Rica, Equator, Paraguay, Peru, and Uruguay), EPO, SIPO, and



UKIPO. PPHs provides fast-track prosecution for patents that were examined by partner offices.

Fast track prosecution. The BPTO is also offering fast track prosecution for green patents, filed by startups, and patents for treatment of serious diseases, for instance (Ordinance No. 19 of December 2022).

Backlog. Although the backlog of the BPTO has become notorious over the years (overpassing 200 thousand unexamined applications at one point), the BPTO recently devises a backlog combat program, which promises to extinguish the backlog over the next years.

Enforcement of industrial property rights. To enforce IP rights in Brazil, filing an infringement lawsuit before the State Court can be needed. In Brazil, the advantage exists in which courts are inclined to grant preliminary injunctions to order an infringing party to cease the use of the IP asset, as well as commercialization/ promotion of infringing products/services when (i) the likelihood of the right and (ii) urgency of the request are proven. To prove urgency, exhibiting a considerable chance of damages or imminent damages in the continued infringement is necessary. A likelihood of the right is relatively more complicated to prove in patent cases due to the technical issue involved. One effective means for proving likelihood of the right that has been positively received by courts is by presenting technical opinions by renowned experts in the field.

Pharmaceutical patents. In May, 2021, the plenary session of the Federal Supreme Court (STF) overturned patents on pharmaceuticals and healthcare equipment that were previously extended and enforced for more than 20 years. Approximately 65 medications in this situation were reached with the understanding of the STF, including formulas for the treatment of neoplasms, human immunodeficiency virus, diabetes, viral hepatitis, and a formula manufactured by a Japanese laboratory (favipiravir) that could fight against COVID-19.

Industrial Designs. According to the Brazilian IP Law, industrial design is the ornamental plastic form of an object or the ornamental set of lines and colors that can be applied to a product, providing a new and original visual result in its external configuration that can serve as a type of industrial manufacture. Industrial designs are protected for ten (10) years, which may be extended for three consecutive periods of five (5) years, leading to a potential protection term of twenty-five (25) years. Owners who have filed an application abroad have a six-month term to file the corresponding application in Brazil in order to claim priority – noteworthy that, once adheres to the Haia Convention, companies are allowed to file one single application and request a protection in several countries. Industrial designs can be registered at the BPTO without any merit examination, which does not analyze the novelty and originality of the industrial design, weakening the enforcement. On the other hand, merit examination will deepen on novelty and originality requirements for a strong enforceable industrial design – injunctions are more feasible if a merit examination has been rendered by the BPTO. Following Brazil's adherence to the Haia Convention in August 2023, the BPTO has updated its manual for industrial design applications. This update allowed new categories of industrial design to seek a registration before the BPTO, such as industrial design including trademarks and logos, and industrial design including textual elements.

UNFAIR COMPETITION

Apart from the abovementioned institutions, the IP Law also criminalizes acts of unfair competition, which are punishable by imprisonment or fine. Unfair competition is characterized by the intention of a party to discredit another business or to create confusion in the market place and entitles the aggrieved party to seek reparations in the civil sphere. Unfair competition can be characterized by the following cases (non-exhaustive list):

- Discloses false information
- Uses illegal means to attract the clientele of another;
- Misleads consumers into confusing products;
- Places false packages;
- Commercializes counterfeit products;
- Bribes the employees of a of competition for trade secrets or industrial sabotage; and
- Discloses confidential information belonging to a competitor, among others.

INTELLECTUAL PROPERTY CONTRACTS

The BPTO records technology transfer, know-how license, patent, trademark, and franchise license agreements with the objective of enabling the sending of royalties abroad and becoming enforceable to third parties after the approval of the BPTO. Recordal of software licensing agreements is not required, but can still be done for enforcement purposes. Several types of contracts can be recorded at the BPTO:

1. Trademark, patent, software, industrial design, know-how, and integrated circuit licensing agreements;
2. Patent and integrated circuit compulsory licensing agreement;
3. Technology supplies contract;
4. Provision of technical and scientific assistance contracts; and
5. Franchising contracts.

Each of these contracts have different formal requirements within the BPTO, which makes it necessary for parties to carefully observe each formal rule, to avoid unnecessary expense and time on the BPTO to obtain the recordal of these agreements.

Nevertheless, a few general rules can also be noted. For example, technology transfer agreements must specify their object and clearly describe the method to be adopted for the actual transfer of technology. In addition, the BPTO holds the authority to reject certain recordals in the case of public interest.

Ordinances Nos. 26 and 27 of 2023 issued by the BPTO have eased recordal of agreements, removing old requirements such as notarization and apostille of contracts executed abroad, submission of articles of association of the underlying parties, digital signatures other than Brazilian ICP are now allowed, along with the allowance to establish a compensation for trademark application licensing – however, it should be noted that licensing of patent or industrial design applications have yet to allow compensations.

Alternatively, Law No. 13,966/2019 and the Brazilian Association of Franchising Auto Regulation Code regulate franchising in Brazil. The Law defines the franchising system and governs the relationship between franchiser and franchisee in the execution from preliminary negotiation to a franchising agreement. A key aspect of the Law is that it makes presenting a document (Offering

Circular) mandatory for the franchiser to the future franchisee with a very clear scenario of the business, including: (i) financial information, (ii) historical summary, (iii) detailed description of the franchise, (iv) detailed description of the necessary initial investment, and (v) a model agreement.

The Offering Circular needs to be given to the potential franchisee 10 days before the signing of the franchising agreement or pre-agreement or before payment of any kind of tax by the franchisee.

COPYRIGHT

Copyright in Brazil is regulated by Law No. 9.610/1998, pursuant to which all original creative works, however expressed, are protected as intellectual property. No obligation exist to register copyright works, but seeking a certain form of registration for securing the creation date is advisable. Copyright is divided into two main branches, namely, moral and property rights.

Moral rights. They ensure that the work is bound to its author and are non-transferable rights, which include (i) the right to claim authorship of the work at any time, (ii) the right to have the author's name stated on the work, and (iii) the right to object to any modification of the work, which would be prejudicial to the reputation or honor of the author.

Property rights. They are related to the use, enjoyment, and disposal of an intellectual work and are transferable rights.

The author of the work, the person who purports to be the author (in the absence of proof to the contrary), or the person whose name is included in the work is deemed as the copyright owner under Brazilian law.

Any person (physical or entity, when authorized or assigned by the author) who adapts, translates, compiles, or edits a work that is in the public domain may claim copyright to such adaptation, translation, compilation, or edited work. However, this same person cannot prevent the publication of another adaptation, translation, compilation, or edition of the original work.

Civil and criminal actions may be brought against anyone infringing on the copyrights of another. The civil courts prohibit the publication of any work that infringes copyright and may also award damages to the copyright owner. Copyright infringement is also punishable as a criminal offense.

ENTERTAINMENT

Entertainment is a multifaceted area of law that involves a wide range of segments, such as culture, audiovisual production, music and movie industries, live concerts, as well as several other areas. It is one of the most important tools nowadays, especially given its capacity to stimulate many sectors of the economy.

No specific law that embraces all of its areas regulates entertainment. Thus, only separated legislations that cover specific subjects, such as the Audiovisual Law, Copyright Law, and Rouanet Law, which restore the principles of Law No. 7,505 of July 2, 1986, establish the National Culture Support Program and makes other arrangements.

Regarding audiovisual productions, the main entity is the National Film Agency, an official agency of the federal government, whose objective is to foster, regulate, and supervise the national film and video industry. In this sense, being always updated with its normative ruling and ordinance is mandatory.

Therefore, regarding the music industry, the ECAD is responsible for the collective management of the copyright of every song publicly performed or executed in Brazil whether national or foreign. Thus, if a person intends to produce a concert or to play a song in public, it must be careful to do so in accordance with its legislation and pay duty fees. ECAD collects copyrights in the radio, TV shows and concerts, bars, gyms, and even wedding parties or birthdays.

Furthermore, entertainment also encompasses the drafting and reviewing of contracts, such as name and likeness, lease, and production, which are essential for executing any work in the visual area.

DATA PROTECTION

The Brazilian Data Protection Law (LGPD; Law No. 13,709 of 2018) is a key regulation in Brazil, which covers personal data that identifies or can identify any individuals whether they are clients, customers, employees, and Internet users or consumers, among others. Companies doing business in Brazil face significant challenges to comply with the LGPD, which sets forth duties akin to the GDPR. Therefore, they are required to update their policies, procedures, and controls, which will require an extensive review of current practices apart from the legal interpretation of the law by an expert.

In a scenario of mass collection and processing of all forms of data, the LGPD is a mechanism for ensuring that companies are serious about addressing personal information in addition to rendering transparency to the objective for its collection, storage, and processing. Given privacy as key for ESG, compliance with the LGPD is also a business opportunity.

The LGPD applies to foreign companies as well despite the lack of physical presence within the Brazilian territory, given that data collected in Brazil are processed, or services and/or goods are offered to individuals located in Brazil.

The LGPD also establishes that companies can process personal data under a controller or a processor capacity, which will determine their accountability and liability before authorities and data subjects.

The LGPD requires companies to duly observe several principles while conducting processing activities that fall under its scope of application, such as purpose limitation, data minimization, data quality, transparency, security, non-discrimination, and accountability.

Brazil has a Data Protection Oversight Authority (ANPD) as well, which is in charge of regulating and enforcing the LGPD. Data Protection Officers are also required under the LGPD, except for small processing agents as defined in Resolution No. 1 of 2022 by the ANPD.

Companies must secure the lawfulness of any processing activity by assessing the legitimate lawful basis, such as consent, legitimate interest, compliance with a legal duty, or necessity to perform a contract with the data subject.

LGPD is based on a risk approach such as the GDPR. Therefore, companies are required to assess certain risk levels related to specific processing operations and conduct privacy assessments as needed such as a data protection impact assessment.

The Brazilian privacy framework also envisages specific requirements for international data transfers. Companies should meet at least any of the allowance hypothesis to make cross-border transfers, such as transference to a jurisdiction considered by the ANPD as having an adequate level of protection, which relies on a standard contractual clause, a binding corporate rule, or even consent from the data subject, which must be freely given, informed, specific, and unambiguous.

The adoption of security measures is paramount for compliance with the LGPD ANPD. Among the required measures for ensuring information security in companies and other institutions, implementing an information security policy, accessing controls, and contracting management and awareness activities are necessary steps.

In addition, data controllers are required to report any information security incidents, such as unauthorized access, destruction, loss, modification, leakage, or any illegal data processing activity, insofar that the said events (i) are likely to place data subjects at risk (mainly regarding their rights and/or freedom) and/or (ii) cause any relevant damage to data subjects.

The LGPD has established a number of potential administrative penalties that are enforceable as of August 1, 2021. The ANPD is entitled to require controllers and/or processors to publish the incident, omit specific personal data, prevent further processing of a specific database or even any form of personal data, as well as to impose fines of up to BRL 50,000,000.00 (fifty million reais).

ENVIROMENTAL LAWS

OVERVIEW

The environmental legal system in Brazil has become significantly more protectionist since the adoption of a legal framework in 1981. Under the previous system, the concept of pollution was limited to industrial emissions that did not conform to legal and technical standards and guidelines. This idea was founded on the understanding that industrial activities would exert an impact on the environment; thus, margins of tolerance were established within which pollutant emissions could be allowed.

In 1981, Federal Law No. 6,938 established the Brazilian National Environmental Policy Act (*Política Nacional do Meio Ambiente* [PNMA]), which encompassed a comprehensive and significantly different approach that ended tolerance for pollutant emissions and imposed strict rules for repairing environmental damage.

The framework is one of strict, joint, and several liability for environmental degradation. Pollution tolerated under established standards may cause environmental damage; in such an event, the polluter (i.e., any party directly or indirectly responsible for the degradation) is required to repair or provide compensation for the damage regardless of guilt or the legality of the act. In this sense, the industry alone bears the risks inherent to its activities. Therefore, only causation must be proved for the polluter to be held liable. Any person who has directly or indirectly contributed to the damage may be held liable for its entirety regardless of their degree of participation due to the joint nature of liability.

The Brazilian National Environmental Policy Act also granted the Office of the Federal and State Public Prosecutor the power to pursue civil and criminal actions against persons responsible for environmental degradation.

Federal Law No. 7,347/1985 subsequently extended this power, which introduced the class action suit (*ação civil pública*) to the Brazilian legal system. In addition to the Office of the Public Prosecutor, Federal Law No. 7,347/1985 established that other entities, such as the Office of the Public Defender, the federal government, states, municipalities, state-owned companies, and associations focused on environmental matters, may also bring a class action for environmental damages.

CONSTITUTIONAL LAW

Article 225 of the Brazilian Constitution also emphasizes the need for environmental protection and states that every person has the right to an ecologically balanced environment. Under the Constitution, environmental preservation and protection are the responsibility of the government and the community.

The Constitution establishes a series of duties to be imposed on public authorities, including: (i) preservation and recovery of species and ecosystems, (ii) preservation of the variety and integrity of genetic heritage and the supervision of entities engaged in genetic research and manipulation; (iii) environmental education at all levels of education and the development of public awareness about the preservation of the environment; (iv) definition of specially protected areas; and (v) requirement of an Environmental Impact Assessment (EIA) for the installation of activities that may lead to significant environmental degradation.

Article 24 of the Constitution establishes the power to legislate on the environment in Brazil. This provision establishes the concurrent legislative jurisdiction of the federal government, states, and the federal district.

If no federal law exists to regulate a specific matter, states exercise full legislative competence for regulating the said matter. The existence of a general federal law suspends the effect of the state law in the case of discrepancy. However, states are still allowed to introduce new forms of environmental

protection, and they can also create more severe laws than those established at the federal level. Additionally, the Brazilian Supreme Court (STF) holds that the Constitution, as per Article 30, also entitles municipalities to legislate on environmental protection, given that it relates to local issues and is aligned with legislation at the state and federal levels.

Article 23 of the Constitution establishes that all three administrative levels (i.e., federal, state, and municipal) are responsible for the protection of the environment. In this sense, federal, state, and municipal environmental agencies are responsible for enforcing environmental laws and regulations and applying administrative penalties in the case of noncompliance within their jurisdiction.

Complementary Law No. 140/2011 regulates the abovementioned Article 23 by establishing guidelines for cooperation between the administrative levels, including rules regarding the responsibility to conduct environmental licensing proceedings, which will be further explained below.

BRAZILIAN NATIONAL ENVIRONMENTAL POLICY

Federal Law No. 6,938/1981, which established the Brazilian National Environmental Policy, is a framework that lays out the broad foundation on which rests the Brazilian environmental legislation.

To achieve its objectives, the PNMA established the National System for the Environment (*Sistema Nacional do Meio Ambiente* [SISNAMA]), which includes all environmental agencies at the federal, state, and municipal levels responsible for the protection and improvement of environmental quality. The SISNAMA is structured as follows:

- Superior Body: the Government Council is responsible for assisting the President in the preparation of national policies and guidelines related to environmental protection;
- Consultative and Deliberative Body: the National Council for the Environment (*Conselho Nacional do Meio Ambiente* [CONAMA]) is the federal normative body. CONAMA conducts studies and proposes environmental standards, guidelines, and regulations;
- Central Body: the Ministry of the Environment (*Ministério do Meio Ambiente* [MMA]) is the executive branch agency responsible for planning, coordinating, and monitoring activities related to PNMA and other policies and guidelines on the environment;
- Executive Agencies: the Federal Environmental Protection Agency (*Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis*) and the Federal Biodiversity Conservation Agency (*Instituto Chico Mendes de Conservação da Biodiversidade*) are responsible for the execution and enforcement of environmental laws at the federal level; and
- State and Municipal Agencies: these entities regulate the use of land and other environmental resources, conduct inspections, and grant licenses within their respective jurisdictions.

ENVIRONMENTAL LIABILITIES

Article 225(3) of the Brazilian Constitution states that "acts and activities considered as harmful to the environment shall subject the wrongdoers, be they individuals or legal

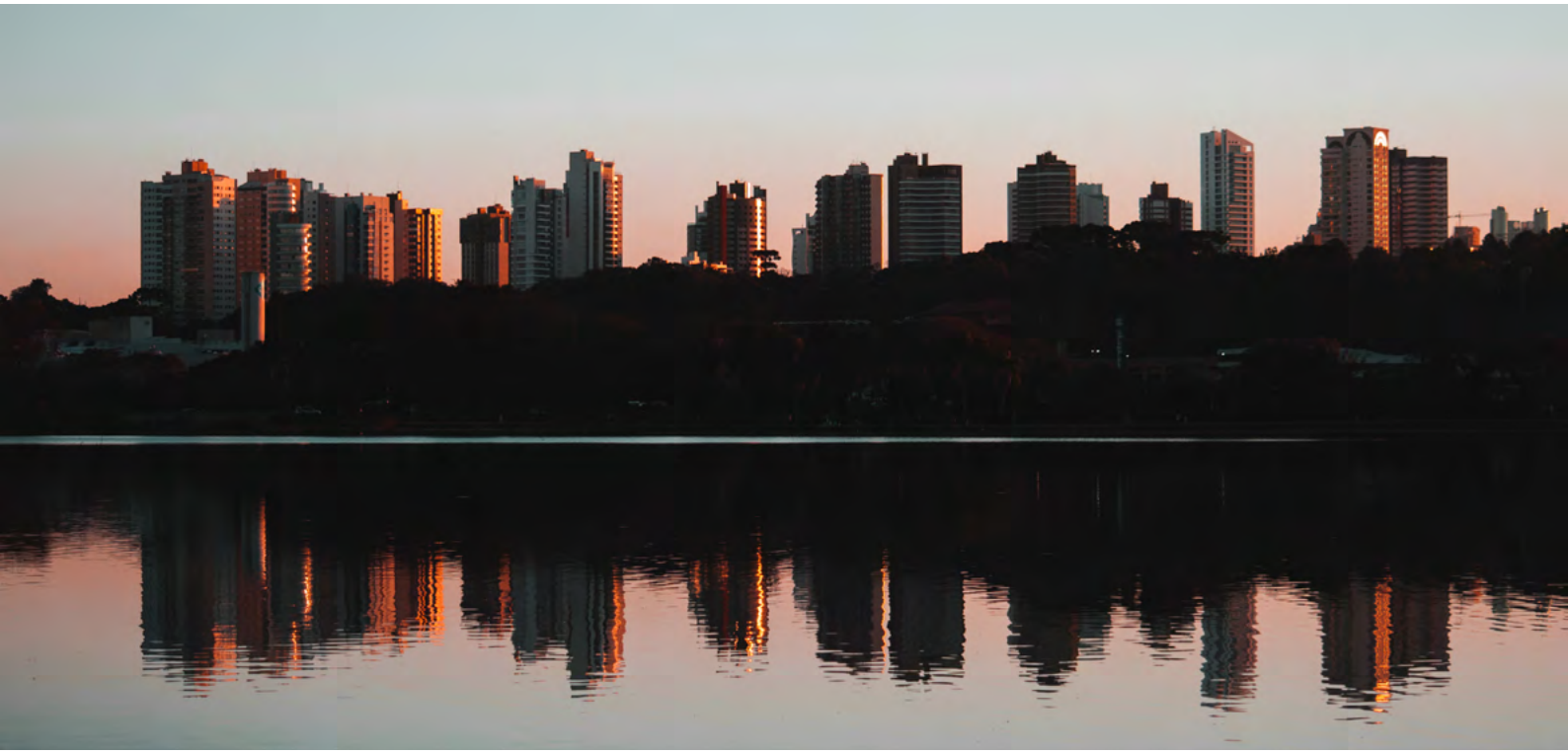
entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused." Essentially, the Constitution outlines environmental liability in three distinct fields, namely, civil, administrative, and penal.

Environmental Civil Liability, which is mainly related to the concepts of *pollution* and *polluter*, is strict, joint, and several, not subject to statutes of *limitations*, and *unlimited* (i.e., no cap exists for compensation and/ or repair amount sought in connection with environmental damages). Regarding its strict nature, according to Article 14(1) of the National Environmental Policy Act, the culpability of the polluter need not be proven to trigger an obligation to repair or pay compensation for environmental damages. Any indication of a causal relationship between the activity being conducted and the damage is considered sufficient evidence. Joint and several liability denotes that any party, may be independently held liable for the full amount of the environmental damage regardless of their respective degree of participation. The parties that incur repair/compensation costs are granted the right to demand contribution from other polluters/contributing parties to recover the said costs.

Article 3(3) of the PNMA defines pollution as environmental degradation as a result of activities that directly or indirectly (i) harm a population's health, safety, and welfare; (ii) create adverse conditions to social and economic activities, (iii) unfavorably influence the biota; (iv) affect the aesthetic and sanitary conditions of the environment; or (v) discharge materials or energy not complying with the existing environmental standards. In terms of the concept of the polluter, Article 3(4) of the PNMA establishes that any public or private individual or company who is directly or indirectly responsible for any environmental degradation is considered a polluter.

Environmental administrative liability subjects violators to administrative sanctions, including warnings, fines, suspension of activities, and restriction of rights, as described in Federal Law No. 9,605/1998 and Federal Decree No. 6,514/2008. It is enforced by administrative entities only through the application of the aforementioned self-enforceable legal sanctions. While administrative fines may reach BRL 50 million, the restriction of rights may result in penalties such as the suspension or cancellation of a registration, permit, or authorization; restriction or suspension of tax benefits and incentives or credit from official institutions; and prohibition to enter into contracts with public authorities. In opposition to civil liability, environmental administrative liability may occur whether or not pollution is generated (e.g., one may be fined for operating a certain activity without an environmental permit, even if this irregular operation, per se, does not cause any pollution).

Lastly, Federal Law No. 9,605/1998 provides for environmental criminal liability, which establishes criminal penalties applicable to activities harmful to the environment. The core element of accountability is the existence of fault on the part of the agent that committed the crime (e.g., negligence, recklessness, malpractice, or willful misconduct), which is in contrast to environmental civil liability. Liable parties may be sanctioned with fines, rendering of community services, restriction of rights, and, in worst-case scenarios, imprisonment. Executive officers, directors, administrators, managers, and others may face criminal liability, along with companies, given that the environmental crime is practiced aiming at the benefit or advantage of the company.



ENVIRONMENTAL LICENSING

Pursuant to Article 10 of the PNMA, the construction, installation, operation, and expansion of projects and activities that use environmental resources or that are potentially polluting are subject to environmental licensing. This enables environmental agencies, which are responsible for conducting licensing proceedings, to better understand and minimize the potential for environmental degradation. The legal demand for environmental licenses seeks to ensure that preventive and control measures are adopted, which makes projects and activities compatible with sustainable development. The licensing proceeding will typically establish the conditions that enable a project to be implemented with the project owner being bound to comply or face penalties such as the cancellation or suspension of licenses. When considering whether or not to issue an environmental license, the environmental agency assesses the impact of the project, including its potential to cause environmental damage, and proposes mitigation, repair, or compensation measures.

Together with the PNMA and the aforementioned Complementary Law No. 140/2011, CONAMA Resolution No. 237/1997 regulates the environmental licensing system at the federal level, which also establishes guidelines to be observed at the state and municipal levels.

Environmental licensing can be conducted at any of the administrative levels in which jurisdiction is defined according to several criteria such as the location of the project, its actual or potential impacts, and inclusion in a typology set forth in Federal Decree No. 8,437/2015.

A possibility exists that non-environmental agencies will examine a certain activity, dependent on its characteristics, location, and assets and interests within its area or influence, before a license is issued. For example, the National Foundation for Indigenous Peoples (FUNAI) or the National Institute for Colonization and Agrarian Reform (INCRA) will be involved in the environmental licensing proceeding whenever the project may

influence indigenous people or maroon communities, respectively. On its turn, the National Historic and Artistic Heritage Institute (IPHAN) will be consulted in the case of impacts on historic or cultural heritage.

As a general rule, the following types of environmental licenses are granted to a given project or activity:

- Preliminary license (LP) is granted during the planning stage of the project or activity by approving its location and design, certifying the environmental feasibility, and establishing the basic requirements and conditions to be met in the coming phases;
- Installation license (LI) authorizes the installation of the project or activity in accordance with the specifications contained in the approved plans, programs, and projects, including environmental control measures and other restrictions;
- Operating license (LO) authorizes the operation of the activity or venture after verification of compliance with previous licenses and environmental control measures and conditions required for the operation.

Environmental licenses may be issued separately or in sequence (LP, LI, and LO) depending on the nature, characteristic, and phase of the project or venture (CONAMA Resolution No. 237/1997).

ENVIRONMENTAL OFFSETTING

Pursuant to Article 36 of Federal Law No. 9,985/2000, a project owner must comply with an environmental offset obligation to obtain an environmental license for an activity that represents significant harm to the environment (as defined by the environmental agency based on an Environmental Impact Assessment). This can be done by adopting compensation measures, after approval of the environmental agency issuing the license, or by paying an amount to be determined by the said agency and invested in conservation units (e.g., national parks and biological reserves). The environmental agency issuing the license establishes the value of the environmental offset according to the ecosystem impact level of the proposed activity pursuant to Article 31-A of Federal Decree No. 6,848/09. The said value must be no greater than 0.5% of the total cost of the project.

NATURAL RESOURCES

PROTECTED AREAS

PERMANENT PRESERVATION AREAS

Permanent preservation areas (APPs) are rural or urban areas that provide environmental services as described in Federal Law No. 12,651/2012 (Forestry Code). Examples of APPs are river banks, mountain tops, and mangrove forests. An important feature of these areas is that they must remain untouched, except in specific cases of public utility, social interest, and low environmental impact, which are also outlined in the Forestry Code and in CONAMA Resolution No. 369/2006.

FORESTRY

Legal forest reserves (RFLs) are protected areas located within rural properties. They are intended to promote the sustainable use of natural resources and the conservation and rehabilitation of ecological services and biodiversity. The Forestry Code (Article 12) requires that rural landowners or possessors maintain a fixed minimum percentage of natural vegetation cover on their property, which ranges from 20% to 80%, depending on the region in which the property is located

(Legal Amazon [Article 3(i)]: (i) Amazon Rainforest = 80%; (ii) Cerrado [Brazilian savanna] = 35%; (iii) general fields = 20%; and (iv) all other areas of the country = 20%]. In an RFL, vegetation clearance is prohibited; the only authorized use of land is through a sustainable forestry regime (Article 17(1) of the Forestry Code).

The state environmental agency must approve the location of RFLs by considering the social function of the property, its proximity to other RFLs, APPs, conservation units, or other specially protected areas and any existing environmental spatial planning instrument (Article 14). The Forestry Code also requires that RFLs be registered in the Rural Environmental Registry (*Cadastro Ambiental Rural*; Article 18).

Nevertheless, according to the Forestry Code (Article 66), landowners that did not meet the RFL minimum percentage of vegetation cover by July 22, 2008, are required to separately or jointly adopt the following measures: (i) replanting vegetation to comply with the RFL obligation; (ii) allowing the natural regeneration of vegetation; and/or (iii) offsetting the RFL by replanting vegetation in another property located in the same biome or buying Environmental Reserve Quotas, among other options (*Cotas de Reserva Ambiental* [CRAs]). Federal Decree No. 9,640/2018 regulates the issuance, registration, transfer, usage, and cancellation of CRAs, but the market for them has not been fully established.

CONSERVATION UNITS

Conservation units are specially protected areas divided into two broad groupings, namely, (i) integral protection units and (ii) sustainable use units. These groupings are divided into 12 subcategories (e.g., National Forest, National Park, Biological Reserve, and Sustainable Development Reserve) that range from areas in which no form of economic activity is allowed in areas where economic activities are permitted but restricted in varying degrees.

The National System of Conservation Units Act (Federal Law No. 9,985/2000) created this network of conservation units (*Sistema Nacional de Unidades de Conservação*) in 2000, which was further regulated in 2002 by Federal Decree No. 4,340/2002.

The integral protection grouping is composed of five subcategories of units in which no economic activity is allowed (only public visitation and scientific research activities are allowed), while the sustainable use grouping is composed of seven subcategories, which are generally privately owned and adopt a sustainable development approach. The conservation units are created through specific laws or decrees.

In view of the abovementioned environmental liability regime, any unauthorized interference in specially protected areas or noncompliance with the authorization obtained may separate or cumulatively subject the transgressor to civil liability (if an environmental damage occurs), administrative sanction, and criminal liability depending on circumstances.

WATER RESOURCES

The extraction of groundwater and discharge of effluents into a water body are examples of the uses of water resources, which are subject to authorization from official agencies, such as the National Water Agency (*Agência Nacional de Águas*) for federal waters, and state agencies for state waters, as outlined in Federal Law No. 9,433/1997, Federal Decree No. 24,643/1934, and relevant state laws. The

unauthorized use of a water resource may subject the transgressor to penalties provided for in the applicable environmental legislation.

CONAMA Resolution Nos. 357/2005 and 430/2011 provide for specific regulations in relation to water quality standards.

OIL & GAS

Pursuant to CONAMA Resolution Nos. 23/1994 and 350/2004 and MMA Ordinance No. 422/2011, among others, the specific licenses required for the regular installation and operation of oil and gas upstream activities in Brazil are as follows:

- Seismic Survey License authorizes the execution of seismic data acquisition. Depending on the depth in which the survey will be performed, a Seismic Environmental Assessment may be required;
- Preliminary and Operating Licenses for Drilling authorize exploratory drilling activities. The entrepreneur is required to provide an Environmental Control Report (Relatório de Controle Ambiental), where they must specify the activities and areas of intended operation. Depending on the location in which the drilling will be performed, a Drilling Environmental Assessment may also be required;
- Preliminary Production License for Research authorizes the research on the economic viability of the field by the execution of production pilot projects. The entrepreneur is required to provide an environmental feasibility study (Estudo de Viabilidade Ambiental) for this license to be issued;
- Preliminary, Installation, and Operating Licenses for Extended Well Testing authorize well testing for data collection. An Environmental Assessment for Extended Well Testing (Estudo Ambiental de Teste de Longa Duração) may be required;
- Preliminary, Installation, and Operating Licenses for Production and Outflow authorize the installation and operation of necessary equipment and facilities.

To issue the abovementioned licenses, the environmental agency may also demand the EIA and other environmental studies.

MINING

The National Mining Agency (*Agência Nacional de Mineração* [ANM]) is a federal agency created by Law No. 13,575/2017 under the Ministry of Mines and Energy. It replaced the National Department of Mineral Production, which had been created in 1934 by means of Federal Decree No. 23,979/1934. The ANM is responsible for the planning and development of the exploration of mineral resources and the

control and monitoring of the performance of mining activities throughout the Brazilian territory.

Given environmental aspects, the Brazilian Constitution (Article 225(2)) establishes that persons conducting an exploration of mineral resources must restore the degraded environment. Along these lines, Federal Decree No. 97,632/1989 provides that, for the development of the said activity, an EIA and a Degraded Area Recovery Plan must be submitted to the environmental agency. In addition, Federal Law No. 12,334/2010 and other regulations establish the framework for dam safety.

INDIGENOUS PEOPLE AND MAROON COMMUNITIES

In relation to indigenous people, Article 231 of the Brazilian Constitution establishes that, "indigenous people shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their assets." Additionally, according to Paragraph 3, "Hydric resources, including energetic potentials, may only be exploited, and mineral riches in indigenous land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law (...)."

FUNAI, which was created by Law No. 5,371/1967, is the governmental body responsible for the protection of the rights of indigenous peoples. As previously mentioned, the Brazilian environmental legislation, particularly Inter-ministerial Ordinance No. 60/2015 and FUNAI Ordinance No. 02/2015, establishes the participation of FUNAI in licensing proceedings whenever indigenous lands or interests are affected.

In relation to maroon communities (*quilombolas*), Article 68 of the Transitory Constitutional Provisions states that, "definitive ownership shall be recognized for the remaining members of maroon communities who are occupying their lands and the State shall grant them the respective title deeds." Federal Law No. 7,668/1988 created the Palmares Cultural Foundation (*Fundação Cultural Palmares* [FCP]), which is the first public institution dedicated to the promotion and preservation of Afro-Brazilian art, culture, and socioeconomic values. However, Federal Decree No. 10,252/2020 transferred the duties of the FCP related to environmental licensing to the INCRA, which is now responsible for intervening in environmental licensing proceedings of projects that may impact maroon communities.

Moreover, Brazil is a signatory to Convention No. 169 of the International Labor Organization (adopted through Federal Decree No. 5051/2004), which recognizes several rights of indigenous and tribal peoples, including the need to consult these peoples "whenever consideration is being given to legislative or administrative measures which may affect them directly" (Article 6(1)(a)).

WASTE MANAGEMENT

Federal Law No. 12,305/2010 establishes the National Policy on Solid Waste, which sets the principles, objectives, instruments, and guidelines related to the integrated management of hazardous and non-hazardous solid waste.

The National Policy on Solid Waste introduced the concept of shared responsibility and take-back systems, which, thereby, makes all persons involved in the production chain responsible, to a greater or lesser extent, for the reduction and proper management of waste generated.

In January 2022, the Federal Government published Decree No. 10,936/2022, which regulates Federal Law No. 12,305/2010 and creates the Reverse Logistics National Program and the Solid Waste National Plan.

According to Federal Decree No. 6,514/2008, a person who causes pollution due to improper waste management may be subject to a fine of up to BRL 50 million. Causing pollution is also considered an environmental crime, which is subject to imprisonment of one to four years. These administrative and criminal penalties may be applied regardless of the obligation to repair any environmental damage. In addition, under the civil liability regime, a given company that outsources the management of its waste is not exempted from being held liable for damage caused by the hired third party.

CONTAMINATED AREAS

CONAMA Resolution No. 420/2009 establishes the criteria and standard values of soil quality regarding the existence of chemical substances. In addition, it provides guidelines for the environmental management of areas contaminated by these substances as a result of human activities. State laws regulate specific rules regarding contaminated areas.

As previously explained in relation to environmental civil liability, the obligation to repair or compensate for any environmental harm may be entirely charged to anyone who directly or indirectly contributes to its occurrence regardless of their degree of participation in the pollution. Depending on the circumstances in which pollution occurred, administrative and criminal penalties may also be applicable.

Finally, environmental liability for contaminated lands is a propter rem obligation; in other words, the owner or possessor of the area may be required to undertake remediation actions even if the contamination was prior to property transfer.

CLIMATE CHANGE AND CARBON MARKETS

Brazil is a party to the United Nations Framework Convention on Climate Change and a signatory to the Paris Agreement.

The major climate regulations in Brazil include Federal Law No. 12,187/2009, which introduced the National Policy on Climate Change, and Federal Law No. 13,576/2017, which created the National Biofuels Policy (or RenovaBio). The latter encompasses mandatory goals for the reduction of greenhouse gas emissions in the fuel sector and a market for decarbonization credits (Créditos de Descarbonização).

Although there are bills being discussed in the National Congress (Congresso Nacional) related to the regulation of carbon markets, and despite the fact that Brazil is a significant player when it comes to nature-based solutions, Brazil has yet to implement its emissions trading system.

COMPETITION LEGISLATION

OVERVIEW

Brazil has been consistently developing an antitrust policy since the early 1990s at a time when statutory reforms introduced a merger control system and enhanced the enforcement capabilities of the country against anticompetitive practices. These efforts were reinforced in 2012, when Law No. 12,529/11 (the current Brazilian Competition Act [BCA]) was entered into force, which revamped the institutional structure of the Brazilian Antitrust System and instituted a pre-merger notification regime.

The Brazilian Administrative Council for Economic Defense (*Conselho Administrativo de Defesa Econômica* [CADE]) is the agency in charge of reviewing mergers and conducting administrative investigation of anticompetitive conduct. It is composed of four main bodies as follows:

- The Superintendence-General (SG), which is in charge of the investigation of anticompetitive practices and the review of merger cases. Superintendent General leads the office and holds the power (i) to conduct investigation on anticompetitive behavior and issue recommendations to the Administrative Tribunal (CADE Tribunal) on the merits of these cases and (ii) to directly approve or challenge mergers submitted to CADE for review for a final decision by the Administrative Tribunal;
- The CADE Tribunal, which is composed of one president and six commissioners, is responsible for issuing final decisions on (i) antitrust investigation and (ii) merger cases that have been challenged by the SG or have been cleared by the SG but have been challenged by a Tribunal member or an intervening party. The majority vote determine these decisions and are final at the administrative level;
- The Department of Economic Studies (DEE) supports the CADE Tribunal and the SG in complex economic matters; and

- The Office of the Attorney General (ProCADE), which provides legal advice for the activities of the agency, monitors compliance with the decisions of CADE and represents CADE before the Brazilian courts.

In addition to the administrative enforcement by CADE, anticompetitive practices are subject to criminal and private enforcement. The Office of the Federal Public Prosecutors is in charge of the criminal prosecution of individuals, while harmed private parties and federal or state prosecutors can seek reparation for damages due to anticompetitive conduct.

MERGER CONTROL

The Brazilian pre-merger review regime was instated in 2012. Under this system, CADE must report and clear any transaction that meets the notification thresholds prior to its implementation. Failure to comply with this requirement may subject parties to penalties ranging from BRL 60 thousand to 60 million, and any act conducted after the undue consummation of the deal may be rendered null and void.

Three major thresholds are used to determine if a deal is reportable in Brazil. The first is concerned with *jurisdictional reach*: only transactions that occurred in the country or abroad but exert effects in Brazil can trigger a filing here. The second relates to the *size of the parties*: economic groups (as defined by CADE's regulation) of at least two parties must have registered gross revenues in Brazil in excess of BRL 750 million and 75 million, respectively, in the fiscal year preceding the transaction. Finally, the third one comprises the *type of transaction*: apart from meeting the first two thresholds, a deal must be reported in Brazil if it concerns (i) a merger; (ii) an acquisition of control or of part of a company (with certain de minimis exemptions); (iii) an asset acquisition; or (iv) a joint-venture, consortium (except when formed for the specific purpose of participating in public procurement procedures), or an associative agreement (as defined by the regulation).

With respect to the substantive competitive assessment of transactions, CADE typically follows similar criteria and methods employed by its counterparts in other countries, as detailed in its Horizontal Merger Guidelines, which was issued in 2016. At the end of its analysis, CADE can unconditionally clear the deal, approve it subject to the implementation of remedies, or block its consummation.

Essentially, transactions may be submitted to review by CADE under two types of procedure: fast-track and nonfast-track (or ordinary). The applicable track is dependent on the complexity of the transaction from the competition perspective and determines the amount of information required from the parties and the duration of the review. Reportable deals that do not raise competitive concerns pursuant to CADE's regulation (e.g., those involving overlaps below 20% in a relevant market) are eligible for fast-track filing, which requires less data and should be reviewed within 30 calendar days. Conversely, reportable transactions that do not qualify for fast-track filing require a comprehensive amount of information and can be cleared within up to 330 calendar days (on average, however, this analysis takes 114 calendar days in these cases).

In extremely exceptional circumstances, CADE may authorize the interim implementation of a transaction pending antitrust clearance.

However, this decision is only preliminary, and CADE can impose conditions for this authorization (e.g., hold separate agreements and other behavioral obligations).

On a final note, parties that negotiate deals reportable in Brazil must consider that certain pre-closing interactions between them, such as the exchange of commercially sensitive information or significant interference in each other's business activities, could be construed as gun jumping and, therefore, expose them to the abovementioned sanctions given the country's pre-merger review regime. As a result, they should take precautionary measures as set forth by CADE's gun jumping guidelines and precedents, which are akin to those adopted in other jurisdictions (e.g., the United States or the European Union).

CARTEL ENFORCEMENT AND PERSECUTION OF OTHER ANTICOMPETITIVE CONDUCTS

The BCA defines antitrust violations as any conduct whose purpose or at least potential effects are: (i) to limit, misrepresent, or, in any way, harm free competition; (ii) to dominate a relevant market for goods or services; (iii) to arbitrarily increase profits; or (iv) to abusively exercise market power. Market power is presumed whenever a company holds a share of approximately 20% in a relevant market.

The case law by CADE determines which practices will be regarded as anticompetitive on the basis only on their anticompetitive purpose and that require proof of at least potential anticompetitive effects to support a conviction. Thus far, only cartels (e.g., price-fixing or market allocation agreements between competitors) and minimum resale price maintenance policies have been regarded to exhibit an unlawful purpose, thus, dispensing with proof of anticompetitive effects. Therefore, any other conduct that could at least potentially result in one of the effects proscribed by the BCA may still be found anticompetitive if implemented by an agent with a dominant position , such as loyalty rebate, refusal to deal, and tying.

Individuals, public, or private legal entities, as well as any associations of entities or individuals, may be held administratively liable for these practices. Moreover, companies or entities part of the same economic group are jointly and severely liable if at least one of them was involved in such violations.

Companies involved in antitrust violations can face administrative fines ranging from 0.1% to 20% of the gross revenue of their economic group in the industry sector in which the anticompetitive conduct occurred, in the year preceding the opening of the investigation. For officers and executives, the penalty can range from

1% to 20% of the fine applied to the company. Non-officers and unincorporated entities (e.g., associations) may be subject to fines ranging from BRL 50 thousand to BRL 2 billion. The amount of the fine is dependent on the severity of the conduct, and it shall never be lower than the economic gains obtained by the wrongdoer with the practice whenever estimating them is possible.

In addition to fines, CADE may also impose ancillary sanctions, such as debarment from public procurement and from any form of state aid for up to five years; issuance of a recommendation to tax authorities to deny tax benefits or financing to convicted entities; corporate spin-offs; issuance of a recommendation to the patent registry authority to compulsorily waive any intellectual property rights used to perpetrate the infraction; as well as any other acts necessary to eliminate the harmful effects of competition stemming from the anticompetitive conduct.

The CADE Tribunal can only apply these sanctions in the context of a formal administrative investigation conducted by the SG. Once the SG concludes the fact-finding stage, it will issue a recommendation to the CADE Tribunal on whether or not the facts investigated amounted to an antitrust violation. The CADE Tribunal will then decide on the merits of a case by a majority vote in a public panel session. These decisions can be reviewed in Court, but the scope of this review is limited to matters of law.

Brazil implements a leniency program for cartel cases since 2000. Under the current rules, a leniency applicant may qualify for full or partial administrative immunity (dependent on the timing of the application) and to full criminal immunity (available to individuals irrespective of the timing of the application). This scenario applies given that the applicant is the first to apply for leniency, the authorities currently lack sufficient evidence to support a conviction against the applicant, it ceases participation in the conduct, and it cooperates with CADE and prosecutors throughout the investigation.

Furthermore, defendants that do not qualify for leniency in cartel cases or are under investigation for involvement in other types of anticompetitive conduct could continue to enter into a settlement agreement with CADE. Settling parties may obtain a fine reduction of up to 50% in exchange for the cessation of unlawful practice and cooperation with authorities (specifically in cartel cases).

As previously noted, other enforcement fronts can be used in addition to CADE's activities in the administrative sphere. In this sense, antitrust violations can also result in civil liability in the context of private damage claims filed by victims of the wrongdoing (e.g., consumers or competitors) or of public damage claims filed by the Federal or State Public Prosecutors' Office.

Moreover, anticompetitive agreements with competitors may also constitute a criminal offense, but only individuals, instead of companies, involved in cartel behavior can be held criminally liable in Brazil. The Office of the Federal Public Prosecutor conducts criminal enforcement and investigates and brings charges before federal courts. If convicted, individuals may face 2 to 5 years of imprisonment, and the payment of a fine.

DISPUTE RESOLUTION METHODS

INTRODUCTION

The legal system in Brazil entered into a new era of dispute resolution as of 2015 due to the enactment of a new Code of Civil Procedure (hereafter, Code). The new Code pursues the enhancement of the efficiency of the civil procedure in view of the historic problem of excessive repetition of cases filed and in progress before Brazilian courts. In this regard, for example, the new Code limits the right to file interlocutory appeals, encourages parties to settle at the outset, and underscores arbitration, mediation, and conciliation as relevant alternatives for resolving disputes submitted to judicial courts.

LITIGATION

The Brazilian judicial system consists of federal and state courts, which are divided into common and specialized sections. The jurisdiction of the federal courts is based on the subject matter under dispute (*ratione materiae*) and the legal nature of the parties (*ratione personae*). The vast majority of lawsuits submitted to the federal courts involve the federal government and its branches and entities, while state courts rule on the majority of lawsuits involving private parties.

With a few exceptions, court proceedings in civil and commercial cases are not confidential. However, the new Code entitles any party to request to seal a lawsuit that addresses arbitration issues provided that evidence exists of a specific confidentiality agreement between the parties.

JURISDICTION IN CIVIL AND COMMERCIAL CASES

The Code is a federal act that establishes procedural rules. The organization of state courts and specific rules regarding venue are outlined in the Judicial Organization Code of each state.

Claims are commonly ruled by the judge of an individual lower court, who ordinarily holds

jurisdiction to hear cases at first instance (no trial by jury exists in commercial and civil cases in Brazil). The judge of the Appellate Court may also exercise initial jurisdiction depending on the persons involved and the subject matter of the dispute. An Appellate Panel, which is generally composed of three judges, can review the decision rendered by the lower courts. Under certain circumstances defined in the Brazilian Federal Constitution, superior (high instance) courts (e.g., the Superior Court of Justice [Superior Tribunal de Justiça; STJ] and the Superior Labor Court) and the Federal Supreme Court may revise the rulings of the Appellate Court. The main scope of superior courts is to protect and ensure the uniform application of infra-constitutional laws. The primary responsibility of the Federal Supreme Court is to protect the Brazilian Constitution and guarantee its uniform application. The superior courts and the Federal Supreme Court are prevented from reassessing matters of fact and evidence, because their activity is restricted to safeguarding infra-constitutional laws (i.e., superior courts) and the Constitution (i.e., Federal Supreme Court).

In general, the place of residence or business of a defendant is used to establish the location of the competent court. When the jurisdiction is entirely based on territorial criteria and no mandatory legal provision exists on the selection of the venue, parties are allowed to elect a different state court or jurisdiction to resolve disputes. Similar to international contracts, the new Code allows parties to agree on a foreign forum clause. However, this rule does not apply to cases in which Brazilian courts hold exclusive jurisdiction (e.g., cases in which the dispute involves a real estate located in Brazil).

Notably and lastly, a lawsuit filed before a foreign court neither constitutes lis pendens nor prevents Brazilian courts from ruling the same case. The reason is that lis pendens and res judicata may only be accepted upon the recognition of the foreign decision by the STJ.

INITIATING A PROCEEDING

The filing of a complaint, which typically has three parts (i.e., statement of facts, consideration of law, and prayer for relief) initiates an ordinary proceeding. Moreover, the complaint must attach all documents supporting the alleged facts.

Upon receiving the complaint, the judge reviews initial formal aspects and, if all is in order, determines the summoning of the defendant. Such summoning may occur electronically since the enactment of Law No. 14.195/2021, which provides that the defendant will be summoned via email through the email addresses previously registered at the judiciary database.

If summoning via email fails, the defendant shall be summoned via letter or in person, triggering the 15-day deadline to file its defense and counterclaim (if any). According to the new Code, if the proceeding allows an agreement to be entered into by the parties, then a conciliation or mediation hearing is scheduled in an attempt to settle the case. Should the parties fail to reach an agreement, the defendant must present its defense and, if necessary, a counterclaim.

Similar to the complaint, the response includes not only factual allegations but also the legal provisions on which the defendant relies. It must also include all documents that support the position of the defendant.

After the filing of the response by the plaintiff, parties are typically invited to indicate the evidence to be produced. If no disputed issues of fact occur or factual issues can be resolved

without further evidence, then the judge can render a summary judgment. In the case that evidence is produced, then the judge will determine which evidence will be received.

EVIDENCE

As a general rule, the burden of proof lies with the party that has asserted the facts that support the claim. However, exceptional cases occur in which the law assigns the burden of proof to the other party such as in consumer claims. In addition, a judge may shift the burden of proof to the defendant if the evidence to be produced by the plaintiff is excessively burdensome or impossible to be presented.

In Brazil, the judge holds broad power on ruling the evidence to be produced. Presenting evidence can be conducted using three methods, namely, documents, hearing, and expert evidence. Documentary evidence is typically presented to the court as an attachment to the complaint and to the responses. Nevertheless, as the case develops, and new facts are pleaded, the judge may also admit documentary evidence at a later stage to support unforeseen facts or to challenge evidence presented by the opposing party. No provision under the Brazilian Law is similar to the common law discovery proceeding, but parties may submit requests to produce documents with a very limited scope.

In terms of oral testimony, parties and witnesses ordinarily testify at the hearing. Witnesses testify under oath, that is, they have an obligation to always tell the truth. If the testimony is deemed to be false, then the witness may be prosecuted for the crime of false testimony. Good cause, such as the privilege against self-incrimination or privileged communications, will excuse a party or a witness from the need to testify or to answer a certain question.

If expert evidence is required, the judge will appoint its expert, and each party frequently designates their own expert and raises questions to be answered by the court-appointed expert. Once the expert concludes the findings, it then presents a report, which will be subject to comments by the parties and their own experts. Afterward, the judge ordinarily invites the parties to present post-hearing briefs.

JUDGMENT

Judgment must contain (a) the names of the parties and the identification of the lawsuit, a summary of the relief requested, and the answer as well as a description of the main events of the lawsuit; (b) an analysis of the issues of fact and law; and (c) the ruling (which typically includes the fees to be paid by the losing party to the attorneys of the winning party). If no appeal is presented, then the judgment becomes final and binding (*res judicata*).

APPEALS

An appeal is the most important form of review. The new Code restricts the possibility of filing appeals against interlocutory decisions to expedite the civil procedure. Therefore, challenges against interlocutory decisions, except those allowed by law, may only be included in the appeal against the final judgment, which basically constitutes a de novo review in the Appellate Court.

A panel of three upper-court judges typically rules appeals, and those against judgments frequently lead to two effects. The first is the stay of the effects of the challenged judgment, and the second is the submission of the case

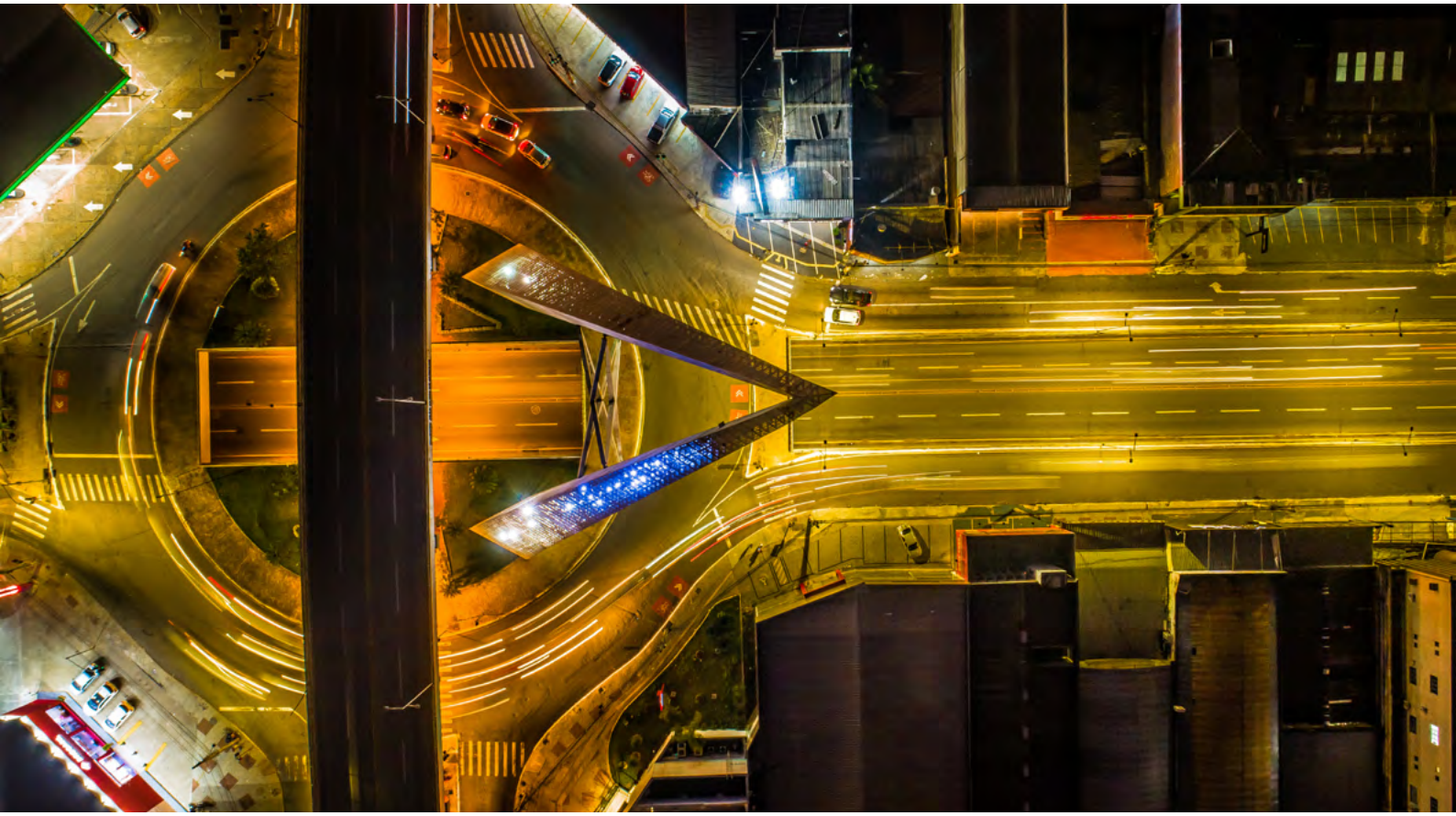
to the Appellate Court. After an appeal is decided, the parties are allowed to file appeals to superior courts and to the Federal Supreme Court. Customarily, appeals to the highest courts do not stay the effects of the challenged decision. Hence, a possibility exists, for instance, to initiate a provisory enforcement of the judgment, while the final decision on the appeals to the highest courts are pending.

Brazil has established precedents in its judicial system to become closer to stare decisis. In 2004, the Constitution was amended to set forth *sumulas vinculantes* (binding precedents), which enables the Federal Supreme Court to issue binding precedents on all courts. By the same token, the new Code determines that a few higher-court decisions, such as those rendered to solve repetitive cases, must be considered binding. A breach of a binding precedent enables the filing of a remedy known as *reclamação*.

ENFORCEMENT

Once the judgment becomes *res judicata*, the winning party is entitled to initiate an enforcement procedure to compel the debtor to pay or fulfill an obligation determined by the judgment. In these cases, the debtor may present a motion against the enforcement, which has a limited range of formal arguments (e.g., excessive calculation of the debt).

If the debtor does not present a motion, or if the judge dismisses the motion filed by the debtor, then the creditor is entitled to identify the assets of the debtor that may cover the amount due pursuant to the judgment. Three efficient methods can be used for locating the assets of the defaulting party: BacenJud, InfoJud, and RenaJud. The first one enables the judge to access data from the Brazilian Central Bank and order the freezing of the bank accounts of the debtor. As per the InfoJud system, the judge may request that the



Internal Revenue Service discloses the income tax files of the debtor. The RenaJud system enables the judge to identify vehicles owned by the debtor. Moreover, the assets found by the creditor may be subject to evaluation and public auction.

Afterward, the amounts raised through an auction will be used to pay the debts set out by the judgment.

In April 2021, a new system called SISBAJUD was developed, allowing the court to determine the search and seizure of assets at the defendant's bank account for a period of 30 consecutive days. Therefore, if any amount is transferred to any bank account held by the defendant during 30 consecutive days, the court will be able to seize it.

Finally, the Brazilian law addresses certain kinds of debt as the equivalent of a judgment. These debts are known as extrajudicial executory titles (*títulos executivos extrajudiciais*), which include, among others, (a) negotiable instruments (e.g., bills of exchange, promissory notes, and checks) and (b) obligation to pay a certain sum or to deliver goods, as evidenced by a public document or by a writing signed by the debtor and two witnesses. The debtor of an extrajudicial executory title may not only present formal arguments but also any defense that would have been deemed at the prejudgment phase of an ordinary lawsuit.

On 14 July 2023, Law No. 14.620/2023 came into force and altered article 784 of the Code to address electronic signatures for contracts that are considered enforcement titles. As per the new Law, (i) any type of electronic signature admitted by law is authorized in enforcement titles and (ii) witnesses are not required to sign such titles if the electronic signature used involves an approved signature services provider (e.g., DocuSign).

ARBITRATION

GENERAL FEATURES OF ARBITRATION IN BRAZIL

In arbitration, parties mutually consent to submit disputes to a neutral decision-maker (an arbitral tribunal or a sole arbitrator) instead of subjecting their claims to State Courts. This alternative method of dispute resolution can be summarized as a consensual, neutral, expedited, and effective method for solving complex conflicts.

Since the enactment of Federal Law No. 9,307 in 1996 (BAA), arbitration has become an increasingly used form of alternative dispute resolution, which is employed to adjudicate issues between disputing parties outside of the traditional courtroom setting. The latest ICC statistical report for the year 2020 demonstrates that Brazil, which is the most represented nationality among parties from Latin America (38% of all Latin American parties), has now reached second place following the United States in the overall nationality ranking out of 150 parties (232 parties).[1]

In Brazil, only disputes involving freely disposable economic rights are arbitrable. The BAA is partially based on the UNCITRAL Model Law and on the Spanish Arbitration Law of 1988 (Ley 36/1988) and governs arbitrations seated in Brazil. The BAA makes no distinction between domestic and international arbitral proceedings (differently from the UNCITRAL Model Law), but only between domestic and foreign arbitral awards based on the territorial criterion (i.e., the place where the award was issued determines whether it shall be treated as a domestic or foreign arbitral award).

A valid and final arbitral award exerts the same effect under the principles of *res judicata* (claim preclusion) and collateral estoppel (issue preclusion) as the judgment of a court.

ENFORCEMENT OF ARBITRATION AGREEMENTS

Unless the parties jointly agree otherwise, if the disputing issue between the parties falls within the arbitration agreement, then State Courts should dismiss the lawsuit in principle and direct the parties to submit their claims to arbitration, pursuant to the contractual agreement of the parties. In the cases in which one of the parties resists the submission of the dispute to arbitration, a party may file an action with the courts to enforce the arbitration agreement and compel the resisting party to arbitration.

Notably, in cases in which respondents fail to participate in an arbitration, the BAA gives the tribunal the power to continue the proceedings regardless and to issue an award on the evidence before it.

2015 AMENDMENTS TO THE BRAZILIAN ARBITRATION LAW

In 2015, significant amendments to the BAA were enacted. The amendments contained in Federal Law 13,129 entered into force on July 27, 2015. The amendments introduced several statutory provisions that, in their majority, consolidated well-established arbitral practices that were not expressly provided in the BAA, such as (i) an express authorization for State entities (i.e., the Federal Union, states, municipalities, government agencies, government foundations, and state-owned and state-controlled companies) to resolve certain disputes through arbitration, although not all entities are subject to the same statutory provisions); (ii) the institution of the *carta arbitral*, a formal means for arbitrators and courts to communicate to ensure mutual cooperation; (iii) provisions that allow parties to request the court to supplement the arbitral award whenever it is silent on relief sought in the arbitration; (iv) clarification that all shareholders are bound by any arbitration clause found in the bylaws of a company (although it permits any shareholders who do not consent to the arbitration provisions to leave the company); (v) an express provision that authorizes arbitrators to issue partial awards; and (iv) the possibility of selecting arbitrators that are not listed on specific rosters in institutional arbitration under certain circumstances.

ARBITRATION WITH STATE ENTITIES

The Federal Union, states, municipalities, government agencies, government foundations, state-owned, and state-controlled companies can arbitrate disputes involving freely disposable economic rights. However, the arbitration must be resolved under Brazilian law, and the proceedings are not subject to confidentiality.

To render an arbitration agreement included in a concession contract or in a public partnership contract valid, the parties must agree that the language of the proceedings will be Portuguese, the seat of arbitration will be in Brazil, and Brazilian law will apply to the merits of the dispute.

ENFORCEMENT AND SETTING ASIDE OF ARBITRAL AWARDS ISSUED IN BRAZIL

Brazil has a well-established policy in favor of arbitration, but an arbitration award is not self-executing and cannot be enforced in the lack of a specific legal action filed with the federal or state court as applicable. Under Brazilian law, the body of law governing the enforcement of a particular arbitral award is dependent on whether the award is domestic or foreign.

The BAA exclusively governs awards issued in the Brazilian territory as amended Federal Law

13,129/2015. The Brazilian STJ, which is the highest Appellate Court in Brazil for non-constitutional questions of federal law, must recognize the awards issued in a foreign country before it can be enforced. Notably, the recognition proceedings in Brazil are adversarial.

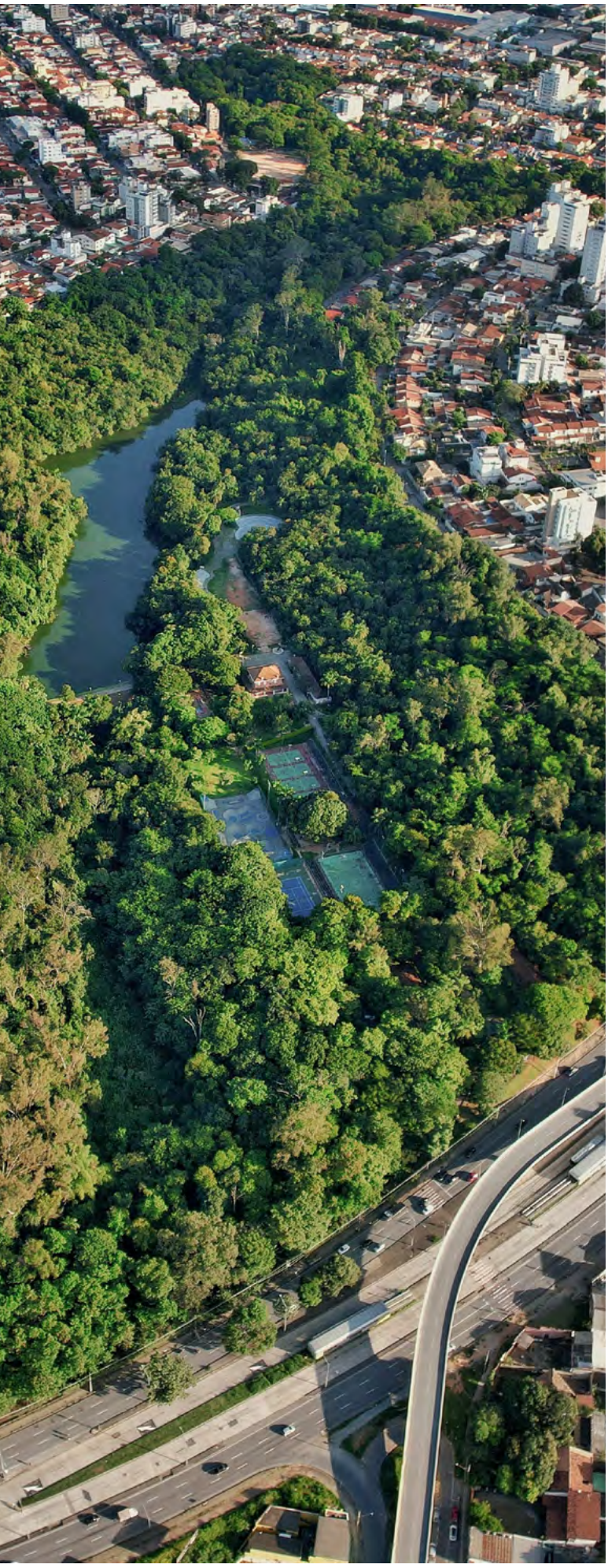
Brazil is a signatory party to several multilateral treaties on international commercial arbitration at the regional and international levels, such as (i) the Geneva Protocol on Arbitration Clauses of 1923, (ii) the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979 (the Montevideo Convention), (iii) the Inter-American Convention on International Commercial Arbitration of 1975 (the Panama Convention), (iv) the Protocol of Las Leñas of 1992, (v) the MERCOSUR Protocol on International Jurisdiction regarding Contractual Matters; (vi) 1998 MERCOSUR Agreement on International Commercial Arbitration; and (vii) the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

Arbitral awards can be set aside before Brazilian courts should the losing party challenge them within 90 days after receiving the award, which may be partial or final. The BAA states that seven limited grounds can be used to seek annulment. These grounds are related to formal requirements, validity of the arbitration agreement, due process, impartiality of the arbitrator, excess of power, arbitrability, and public policy. In Brazil, courts are not allowed to control the merits of arbitral awards.

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

The recognition of an arbitral award is sought by filing a petition to confirm or recognize the arbitral award before the Brazilian STJ. The New York Convention and the BAA require a party who seeks confirmation or recognition of an award to submit to the court a copy of the award and the arbitration agreement of the parties. In addition to these required filings, parties who seek recognition of an arbitral award will routinely submit a memorandum of law in support of their petition with factual and legal support.

All foreign language documents should include a certified translation into Portuguese. When presenting its request for recognition, an interested party should



supply (a) the arbitral award (in its original version or a certified copy thereof); (b) the arbitral agreement/clause (in its original version or a certified copy thereof); and (c) if necessary, certified translations of the said documents into the official language of the jurisdiction in which the award is to be recognized/enforced.

According to the New York Convention, the requirements for the recognition of foreign awards are as follows: (a) the award must be in compliance with Brazilian public policy, sovereignty, and good moral principles; (b) the award must have been rendered by an authority that holds jurisdiction; (c) the award must have been rendered in a proceeding in which the parties were given the opportunity to be heard and to fully present their cases; (d) the award must be final and binding; and (e) the Brazilian consulate with jurisdiction over the country in which it was rendered must certify the award together with a sworn translation of the award in Portuguese.

The STJ cannot review the merits of the award; it will only analyze its formal aspects. The acknowledgment that no re-examination of the merits can be conducted at enforcement proceedings has appeared within several decisions to the point of becoming commonplace.

Once the petition of a party to confirm an arbitral award is granted, the STJ will refer the case to the Federal Court with subject-matter jurisdiction over the dispute and personal jurisdiction over the defendant. The Code governs the procedure for the enforcement of a judgment in the Federal Court.

THE BRAZILIAN BANKRUPTCY SYSTEM AND CREDIT RECOVERY

THE BRAZILIAN BANKRUPTCY LAW

Federal Law No. 11,101/2005, which is in force since June 9, 2005 (Bankruptcy Law), is applicable only for companies and individual entrepreneurs (Debtor(s)) and is not applicable to individual consumers, financial institutions, insurance companies, cooperatives, public companies, and non-profit entities in general.

The Bankruptcy Law had a major reform by Law No. 14.112/2020, which came into force in January 2021, and introduced important issues such as the adoption of the UNCITRAL Model Law on Cross-Border Insolvency.

The Bankruptcy Law provides for the following insolvency mechanisms: judicial reorganization (*recuperação judicial*), extrajudicial reorganization (*recuperação extrajudicial*), and bankruptcy (*falência*).

JUDICIAL REORGANIZATION

Judicial reorganization is a Brazilian proceeding that corresponds to Chapter 11 of the US Bankruptcy Code.

JUDICIAL REORGANIZATION PROCEEDING

The main objective of the judicial reorganization proceeding is to enable a viable company to overcome its financial and economic crises. Only the Debtor may file the request for judicial reorganization with the Court of the main establishment of the Debtor or its economic group.

Provide that the documentation meets the legal requirements, the Court will accept the case and issue a decision granting the processing of the judicial reorganization. Among other matters, the Court will (i) appoint

a Judicial Administrator to supervise the judicial reorganization proceeding; (ii) establish a stay of enforcement proceedings filed against the debtor for a 180-day period, (Stay Period); and (iii) order the issuance of a public notice that contains a summary of the decision and a list of creditors from the request of the Debtor for judicial reorganization.

The decision accepting judicial reorganization triggers three events, namely, (i) the Stay Period, which may only be extended by the Court once for another 180 days, if the Debtor is not responsible for causing delays to the judicial reorganization proceeding; (ii) a 60-day legal term for the presentation of a reorganization plan under penalty of bankruptcy decree; and (iii) a 15-day legal term for creditors to submit proof of claims and/or challenges to the list of creditors the Judicial Administrator.

I. THE STAY PERIOD

All enforcement proceedings filed against the Debtor are stayed except for:

1. Processes involving disputed, contingent, or unliquidated claims of any nature;
2. Tax claims not subject to judicial reorganization in any of its stages;
3. Enforcement proceedings of advance on foreign exchange contracts (ACC);
4. Claims or enforcements related to fiduciary lien, leasing, and owner or committed seller of real estate whose respective agreements include an irrevocability or irreversibility clause, including under real estate developments or an owner under a sale agreement with title retention clause; and
5. Claims with a triggering event after the filing of the judicial reorganization proceeding.

Although creditors are allowed to procced with enforcement proceedings, acts involving the sale or removal of any capital assets essential to Debtor's business cannot occur during the Stay Period.

If the Debtor fails to obtain the approval of the plan during the Stay Period, then creditors may submit an Alternative Plan given the existence of support of (i) 25% of all credits subject to judicial reorganization or (ii) 35% of claims of creditors that attended the General Meeting of Creditors.

II. PRESENTING AND VOTING ON THE REORGANIZATION PLAN

The plan must set forth in detail as follows: (i) claims payment conditions, including haircut, grace periods and extensions of terms (ii) the reorganization measures to be undertaken, such as the provision of the restructuring of the debt, change of control, replacement of management, increase in capital, merger, spin-off and incorporation, new financing (DIP finance), and partial sale of assets, among others; (iii) evidence of the economic viability of the plan; and (iv) economic–financial and appraisal reports of the assets of the Debtor, which are prepared by a qualified professional or by a specialized company.

Creditors may, in 30 days, present objections to the reorganization plan, which obliges the Court to call a General Meeting of Creditors. If no objection is raised, then the plan will be automatically approved, which is unlikely in practice.

Claims subjected to the judicial reorganization

proceedings are grouped into four classes: (i) class I — labour claims; (ii) class II — secured claims; (ii) class III — unsecured claims; and (iv) class IV — micro and small businesses claims.

Also, the four classes of creditors must approve the plan by the majority of the votes of creditors attending the General Meeting of Creditors. The majority of labour and microenterprises or small businesses must approve the plan on a headcount basis, while secured and unsecured creditors must approve it on the basis of a headcount and the amount-of-claims basis, at the same time.

In order for the General Meeting of Creditors to be held on the first call, a majority of the creditors must attend it, calculated on the basis of the value of the claims, and on the second call with any number of creditors.

The General Meeting of Creditors may be dismissed if the Debtor submits a document proving the support for the reorganization plan of creditors in accordance with the quorum provided by the Bankruptcy Law.

Alternatively, provided that the reorganization plan does not entail different treatments among the creditors of the class that may have rejected it, the reorganization plan can pass with (i) the approval of creditors that represent more than 50% of the amount of claims present at the General Meeting of Creditors irrespective of class; (ii) approval by two classes (or one in the case of only two classes); and (iii) the favorable vote of more than one-third of the dissenting class (also known as *cram down*).

In the case of rejection of the plan by the General Meeting of Creditors, creditors also may submit the Alternative Plan given that the support of (i) 25% of all credits subject to judicial reorganization or (ii) 35% of credits of creditors that attended the General Meeting of Creditors.

The Alternative Plan (i) cannot set forth new obligations to the shareholders of the Debtor; (ii) must contain a waiver of the personal guarantors of the Debtor by the creditors supporting the Alternative Plan; (iii) cannot impose a sacrifice more significant than that of the Debtor in a liquidation scenario; and (iv) may provide for the possibility of the conversion of credits into equity and change of control of the Debtor.

Also, for the plan to be homologate by the Court, as a rule, the Debtor must prove that they have settled their tax claims.

Once the plan is approved and provided that there are no illegal provisions, the Court will ratify the plan. Such decision is an enforceable judicial title. The homologation of the plan implies novation of all claims subject to judicial reorganization.

The same decision ratifying the plan will establish a court-supervised period for up to two years (Supervision Period). The Court defines this period, during which the Court and the Judicial Administrator will supervise the fulfillment of the reorganization plan. As a general rule, any failure to comply with an obligation provided by the reorganization plan within that period results in the bankruptcy decree of the Debtors.

After the Supervision Period, judicial reorganization will be terminated. If the Debtor fails to comply with the reorganization plan after the termination of the proceeding, Creditors may file an enforcement proceeding or file and unvoluntary bankruptcy request.

If no Alternative Plan exists or in the case of rejection of the Alternative Plan, the Court will decree the bankruptcy of the Debtor.

III. FILING OF PROOFS OF CLAIMS

When filing for judicial reorganization, the debtor must submit a list of claims subject to the procedure.

After the processing of the reorganization has been granted, the decision that accepted the judicial reorganization will be published in the Official Gazette, witch initiates a 15-day period for creditors subject to judicial reorganization must file proofs of claims or challenge the list of creditors, if they do not agree with the values or class listed.

The proof of claim and challenges are presented out of court directly to the Judicial Administrator, who is responsible for analyzing the claims of the creditor and preparing a second list of creditors, that also will be published in the Official Gazette. To challenge the second list, Creditors can file a judicial proof of claim within 10 days after its publication in the Official Gazette. The parties may file an interlocutory appeal against the final decision of the proof of claims filed by the Court.

IV. CREDITORS NOT SUBJECT TO THE PROCEEDINGS

Judicial reorganization encompasses all creditors except for (i) creditors holding fiduciary lien; (ii) a lessor under a commercial leasing agreement; (iii) an owner or committed seller of real estate whose respective agreements include an irrevocability or irreversibility clause; (iv) an owner under a sale agreement with retention title; (v) a creditor of an ACC and (vi) claims with a triggering event after the filing of the judicial reorganization proceeding.

EXTRAJUDICIAL REORGANIZATION

In the extrajudicial reorganization proceeding, the Debtor negotiates the plan with its creditors out-of-court (pre-packaged restructuring) and may request the Court to ratify the plan.

The extrajudicial reorganization plan may include all classes of creditors (if labor claims are included, the authorization of the respective Syndicate is required) or only certain groups of creditors such as only financial institutions or only suppliers, at the Debtor's discretion.

The Debtor must obtain the approval of creditors that represent more than 50% of each class of creditor included in the extrajudicial reorganization to obtain the ratification of the plan by the Court and bind dissenting creditors.

The Debtor may also file the request for extrajudicial reorganization proving the support of one-third of the creditors included in the extrajudicial reorganization and prove the support of more than 50% of the creditors included within 90 days.

Provided that the quorum is met, the Stay Period will be applied only to creditors included in extrajudicial reorganization.

In extrajudicial reorganization, no judicial administrator is appointed[1].

If the Court does not ratify the plan, the original conditions of the credits will be resumed in this case, and the debtor may negotiate a new plan or file a request for judicial reorganization, i.e. the Court will not issue a bankruptcy decree.

Objections to the plan are limited, and creditors must prove the lack of legal quorum to obtain the homologation of the plan and prove that the Debtor committed bankruptcy acts such as payments by fraudulent means and fraud against creditors and any other illegal provisions.

If the Court ratifies the plan, then the respective decision will be an enforceable judicial title, and creditors may enforce it if the Debtor fails to comply with the plan. However, the Court cannot decree the bankruptcy (liquidation) of the Debtor.

BANKRUPTCY

Pursuant to the Bankruptcy Law, Bankruptcy is a remedy for Debtors who are not economically or financially viable. Their assets and productive resources are preserved and sold to optimize their efficient use by the purchaser of the asset.

The liquidation proceeding may be voluntary (filed by the company) or involuntary (filed by its creditors). Moreover, creditors may request the liquidation of a company when (i) the Debtor failed to pay a due debt that exceeds BRL 40 minimum wages; (ii) during the legal period, the debtor failed to pay the debt or to appoint assets for seizure in a foreclosure proceeding; (iii) the debtor practiced, (iv) practice of Acts such as fraud against creditors, fraudulent payment, or failure to comply with its obligations pursuant to its reorganization plan.

As a response to the request filed by the creditor, the Debtor may: (i) pay the debt, which terminates the process; and (ii) file a defence and post a bond with the Bankruptcy Court to avoid the liquidation decree. In the case of the rejection of the defence, the bond will be released to the creditor; (iii) only file a defence; or (iv) request its judicial reorganization.

In contrast to the judicial reorganization

[1] In certain cases, the court appointed a judicial administrator such as in the Liq S.A. extrajudicial reorganization case.

proceeding, all managers and directors will be removed in the liquidation proceeding. Moreover, the court-appointed judicial administrator will manage the bankruptcy estate and represent it in courts and contracts.

The judicial administrator must collect, appraise, and sell all assets of the company through competitive public proceedings.

The judicial administrator will use the proceeds to pay the creditors in accordance with a preference set forth by the Bankruptcy Law. First, the following priority creditors will receive the payments:

i. Urgent expenses and payment for strictly salary-related claims due three months prior to the liquidation decree, to a limit of five minimum monthly wages per worker;

ii. DIP Finance Lender;

iii. ACC Creditor;

iv. Fees of the judicial administrator; and

v. Post-bankruptcy decree claims.

After top priority creditors, the following creditors will receive the payments:

i. Labor-related claims (limited to 150 minimum monthly wages per creditor; five minimum wages already paid) and occupational accident claims;

ii. Secured claims up to the amount obtained with the sale of the respective asset;

iii. Tax claims;

iv. Unsecured claims;

v. Tax, criminal, and administrative fines;

vi. Shareholders, if the contract provided for rates higher than the ones adopted by the market;

vii. Interest accrued after the bankruptcy decree.

Thus, the Bankruptcy Law provides companies in financial distress with a legal framework for reorganization. Enabling the Debtor to present a reorganization plan based on its financial capabilities, which is apart from applying for a deferral and/or a reduction of payment of unsecured debts, which could help reduce creditor risks and tighten interest rate spreads to the extent that they relate to the probability of the satisfaction of the claim.

RELEVANT CHANGES IN THE REFORM OF THE BANKRUPTCY LAW NO. 14.112/2020

GENERAL PROVISIONS

- Application of the UNCITRAL Cross-Border Insolvency Model Law: foreign proceedings may be recognized in Brazil, and a coordination of multiple-jurisdiction insolvency proceeding is allowed. The application of foreign proceedings in Brazil is limited to the provisions of the Bankruptcy Law, i.e. claims not subject to Brazilian procedures will not be included.
- The reform provides that conciliation and mediation should be prioritized.

JUDICIAL REORGANIZATION

- DIP Finance: The Bankruptcy Law provides for the super priority of the Lender who finances a company under reorganization in the case of bankruptcy. Once the transfer of funds is concluded, the court cannot suppress the rights and guarantees granted to the creditor. The court may authorize the DIP finance in which consent from the creditor is not required. Creditors and shareholders may grant DIP Finance.
- Injunction proceeding: The Debtors may initiate a mediation proceeding to reach a

settlement with its creditors before filing a formal judicial or extrajudicial reorganization proceeding. While negotiations are in progress, the debtor can apply for an injunction, which will grant the Stay Period protection for 60 days. If the negotiations are successful, the proceeding will be terminated. If no agreements are reached after the deadline of 60 days, the company may file for judicial reorganization extrajudicial reorganization.

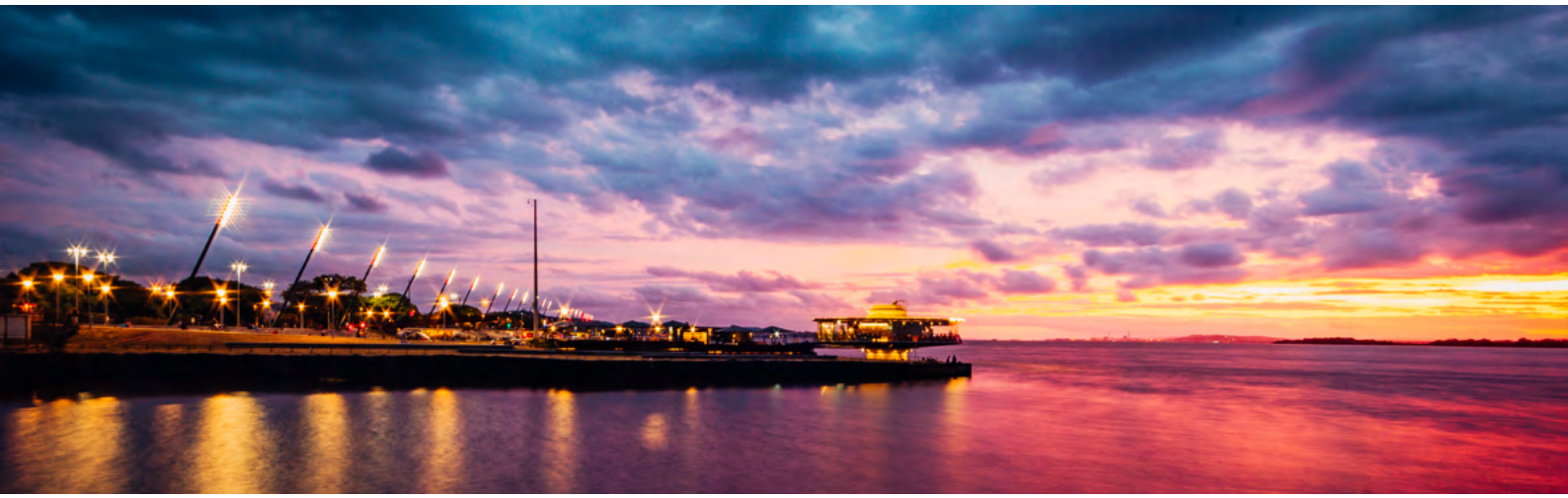
- Sale of Assets: Bankruptcy Law provides that the sale of an Isolated Productive Unity is free and clear of liabilities of criminal, labor, compliance, administrative, civil, tax and environmental natures. The competitive proceedings became more flexible and it is possible to carry on a sale by a specialized agent or by a detail manner as long as it is detailed in the plan, in addition to the auction (on line or in person).
- Alternative Plan: creditors may submit an Alternative Plan if the Debtor fails to approve the plan with the Stay Period or if the Debtors' plan is rejected.
- Substantive Consolidation: the judicial reorganization may be processed jointly for more than one Debtor if two of the following provisions are met: (i) common shareholders/directors; (ii) joint activities of the groups in the market; (iii) relation of control of dependency; and (iv) cross guarantees between the companies of the economic group.

EXTRAJUDICIAL REORGANIZATION

- Inclusion of a provision stating that the Debtor may file the extrajudicial reorganization with the support of one-third of the creditors subject to the proceeding and later prove the support of the remaining creditors necessary for the approval or the reorganization plan.
- Reduced quorum to approve the plan: quorum reduced from ⅗ to more than ½.
- The Stay Period is expressly applied to claims under extrajudicial reorganization.
- Labor claims may be included if the unions approves it.

BANKRUPTCY

- Fresh start: upon termination of the bankruptcy proceedings, the obligations toward the bankrupted company are extinguished.
- The reform reduced the deadline for the judicial administrator to sell the assets to 180 days after a report of the assets is filed.



COMPLIANCE & WHITE-COLLAR CRIME

LEGISLATION

Brazil underwent major changes with regard to government enforcement, each of which was driven by the adoption of its Clean Company Act and amendments to relevant laws, as well as new prosecutorial tools in the past years. While *Operação Lava Jato* (Operation Car Wash) was a hallmark of the intensified anti-corruption posture in Brazil, it was only one of several criminal and administrative investigation focused on white-collar issues launched in recent years.

The Clean Company Act came into force in early 2014 and became fully regulated in the beginning of 2015 – but it ended up being replaced by a new decree in 2022. It is very similar in substance to the FCPA and the UK Bribery Act; however, its enforcement is administrative and civil instead of criminal.

Under the criminal enforcement umbrella, the Organized Crime Act was a noteworthy development. It allowed for extensive plea bargaining in the context of Operation Car Wash and in obtaining information to provide in-depth investigation that would otherwise be unavailable to authorities.

Moreover, major amendments to the Administrative Improbity Law are noteworthy. As two of the many changes to the law, cases of administrative improbity may be settled, and violations are dependent on the evidence of the willful misconduct of individuals and legal entities.

This framework for enforcement has created the need for enhanced internal controls in the form of ethics dissemination within companies, compliance programs, whistleblowing, and internal investigation policies, as well as crisis management-related protocols.

THE CLEAN COMPANY ACT

GENERAL ISSUES

The Clean Company Act (Law No. 12,846/2013), which is also known as the Brazilian Anti-Corruption Law, stipulates the manner and extent to which legal entities may be placed under administrative and/or civil responsibility for corruption or other acts considered detrimental to a national or foreign public administration. Specifically, the Anti-Corruption Law prohibits foreign and domestic legal entities from directly or indirectly promising, offering, or giving any undue advantage to a public official or a related third party (Article 5, I), among other prohibited conducts.

Although the liability standard is broad, the law also provides for mitigation strategies in the form of cooperation and compliance mechanisms, which will be addressed below.

OFFENSES

The Clean Company Act creates a comprehensive list of offenses, including the (i) direct and indirect acts of bribery of Brazilian and foreign public officials, (ii) bid rigging, (iii) defrauding public bids, (iv) financing or providing material support to one of the aforementioned offenses, and (v) obstructing investigations.

LIABILITY STANDARD

The Clean Company Act is based on a strict liability regime. In other words, legal entities will be held liable for illegal acts committed by any of its employees or by third parties without the need to provide evidence of intent or that the management of a company obtained actual knowledge or approved specific improper acts. Authorities only need evidence that the illegal acts were committed in the benefit or interest of the legal entity.

To ensure the full payment of applicable fines and compensation for damages imposed to the company to the maximum extent possible, the Clean Company Act also sets forth that the parent, controlled, or affiliated companies shall be held jointly and severally liable for acts considered detrimental to the public administration. Such a liability is restricted to the payment of applicable fines and to the compensation for damages and will not encompass other sanctions (detailed below).

PENALTIES

Administratively, entities can be subject to (a) fine, which may range from 0.1% to 20% of the gross revenue in the latest fiscal year of the legal entity (it will never be lower than the advantage obtained through the unlawful act but limited to 20%) and (b) extraordinary publication of the administrative ruling. At the federal level, the Office of the Brazilian Comptroller General (CGU) has previously set the regulation for the calculation of fines, including for the evaluation of mitigating factors.

With regard to civil liability, the judicially enforceable penalties established by the Clean Company Act encompass (a) asset forfeiture, which is subject to the right of the injured party or of bona fide third parties; (b) suspension or partial interdiction of activities; (c) compulsory dissolution of the legal entity; and (d) prohibition from receiving incentives, subsidies, grants, donations, or loans from public agencies or entities and from public financial institutions or institutions controlled by the government from one to five years.

Sanctioned legal entities will also be listed in the *Cadastro Nacional de Empresas Punidas* (National Registry of Punished Enterprises).

Finally, as part of the legal decision in the administrative and judicial spheres (although not as a sanction), the company must reimburse the public administration for damages as a result of the offense.

ENFORCEMENT AGENCIES

In the event of an alleged breach of the Clean Company Act, the highest authority of each agency or entity of the Executive, Legislative, and Judiciary branches will initiate an administrative proceeding (PAR). The statute enables the delegation of the authority to open and render judgment in a PAR within the public entity or body with powers.

At the Federal Executive level, the CGU will also hold concurrent powers to commence an administrative proceeding and to take over any administrative proceedings that were previously opened by other federal agencies or entities to review regularity and to correct progress thereof.

MITIGATING FACTORS

The Clean Company Act establishes mitigating factors, such as (a) evidencing the pre-existence of an effective compliance program, that is, the company must demonstrate that an effective compliance program was in place when the illegal act was committed and (b) the possibility of entering into leniency agreements.

More recently, CGU also regulated the possibility of entering Fast-Track Settlements (*Julgamento Antecipado*) in the context of PARs. Fast-Track Settlements (i) expressly exempt legal entities from the forced disclosure of an administrative ruling; (ii) allow reduction of the applicable fines if specific criteria are met; and (iii) authorize the mitigation of a debarment or suspension penalty, if applicable.

In contrast to other known jurisdictions, however, although these issues may significantly reduce the exposure of a potential offender to the sanctions set forth in the Clean Company Act, they will not exempt a violating entity from administrative liability.

COMPLIANCE PROGRAMS

As previously mentioned, the Clean Company Act recognizes the pre-existence of effective compliance programs and internal controls as mitigating factors in the calculation of sanctions. Among the parameters provided by the law, which will be considered to evaluate the effectiveness of compliance programs, the following aspects are worth mentioning:

- The senior management of the company explicitly supports the compliance program;
- The Code of Conduct and integrity policies of the company are applicable to all employees and representatives within the company, regardless of position and roles, as well as third parties that act on its behalf;
- Employees and representatives are periodically trained on the directives of the compliance program;
- Periodic assessments of risks related to the activities of the company and relations with public power are conducted;
- Accounting records that fully and accurately reflect the transactions of the legal entity are implemented;
- The existence of internal whistleblowing channels and investigative procedures that could lead to the enforcement of disciplinary action are ensured;
- Actions to prevent and/or immediately cease unlawful conduct within the company's activities are taken;

- Evaluation of the commitment of potential partners to ethics and integrity are conducted; and
- Ensuring appropriate risk-based due diligence for hiring and supervising third parties, hiring and supervising Politically Exposed Persons (PEP), and conducting and supervising sponsorships and donations prior to conducting mergers and acquisitions operations.

Different from other jurisdictions, no proper obligation exists under the Brazilian anti-corruption federal legislation for a legal entity to implement an internal compliance program. However, the legal and reputational benefits of doing so render it highly advisable. Nevertheless, citing that certain Brazilian states (*e.g.*, the Federal District and the States of Rio de Janeiro, Rio Grande do Sul, and Amazonas) have enacted state laws that rendered mandatory the existence of compliance programs in companies that enter into contracts with the respective State Administration is important.

LENIENCY AGREEMENTS

A company that acknowledges misconduct and willingly cooperates with investigators can be qualified to receive the benefits of a leniency agreement. Fines can be reduced by up to two-thirds of the total, and the company may also be exempted from other sanctions.

The Clean Company Act allows authorities to enter into leniency agreements with legal entities given that they effectively collaborate with the investigation and administrative proceeding and that collaboration results in the identification of the persons involved in the violation, as applicable. In addition, the company must quickly disclose any documents and information that may substantiate the occurrence of offenses.

The regulation sets forth that leniency agreements can be signed at any time until the authorities prepare a final decision on the administrative proceeding. Moreover, the company can exit leniency agreement negotiations at any time, in which case the authorities must return the evidence previously provided.

The regulation also sets forth that leniency agreements, among other obligations, must present provisions related to the adoption, application, and enhancement of the compliance program of the legal entity.

SUCCESSOR LIABILITY

The Clean Company Act provides successor liability in the event of amendments to the articles of incorporation, mergers, acquisitions, or spin-offs. In such cases, the liability of the successor will be restricted to the payment of financial penalty and compensation for damages but are limited to the amount of the assets transferred. Other sanctions set forth in the statute in response to acts occurred prior to such corporate restructuring shall not be applicable, except in the case of proven simulation or fraudulent intent.

ADMINISTRATIVE IMPROBITY ACT

GENERAL ISSUES

The Administrative Improbity Act (Law No. 8,429/1992) was amended in 2021 and introduced significant changes to the anti-corruption framework in Brazil.

On October 25, 2021, Law No. 14,230/2021 was sanctioned and entered into force. The law implemented several changes to a number of the provisions in the Administrative Improbity Law, which regulates and sanctions the conduct of public officials who (i) violate public administration principles; (ii) cause damages to the public treasury; and (iii) unlawfully increase their wealth by taking advantage of benefits from the position they hold, based on the practice of acts of administrative improbity, according to Paragraph 4 of Article 37 of the Brazilian Federal Constitution.

IMPLEMENTED CHANGES

Among the major amendments to the Administrative Improbity Law, we highlight the following:

- Only willful conducts will be classified and sanctioned as acts of administrative improbity. Therefore, culpable modality was suppressed.
- The requirement of specific intention in the improbity acts emerging from the failure to comply with the law for access to information has been excluded.
- The sanctions of the Administrative Improbity Law will not be applicable to the legal entity if the act of administrative improbity is also sanctioned as an act against the public administration under the Clean Company Act.
- The awarding of defeat fees in the event that the lawsuit is dismissed has been reserved only for cases of proven bad faith.
- The amended text no longer exemplifies conducts considered a violation of the administration principles (Article 11) but defines in a restricted list the aspects that can, in fact, be considered an improbity act.
- For acts of administrative improbity that violate the principles of public administration, significant damages must be incurred for them to be subject to sanction.
- Lastly, the law recognizes that the sanctions for administrative improbity acts are of an administrative nature and that they must be compensated with other sanctions that may have been applied to other spheres.

It is important to note that several provisions of Law No. 14,230/2021 have been subject to judicial discussions since its enactment, especially before the Brazilian Federal Supreme Court (STF).

In August 2022, the STF declared the unconstitutionality of the provision that granted the Public Prosecutor's Office exclusive legitimacy to file administrative improbity lawsuits and enter into civil non-prosecution agreements (*acordos de não persecução cível* [ANPC]), so other public entities harmed by the misconduct can still file improbity laws[1].

Also in August 2022, the STF ruled that: (i) proof of deliberate intent (*dolo*) is necessary for the characterization of administrative improbity acts; (ii) the revocation of the culpable modality of the administrative improbity act is non-retroactive and does not affect the effectiveness of final and unappealable decisions, including lawsuits that are in the enforcement phase of the penalties imposed and their respective outcomes; (iii) Law No. 14,230/21 applies to culpable administrative improbity acts committed during the effectiveness of the previous law and whose lawsuits still do not have a final and unappealable decision due to the suppression of such modality by the new law. In this case, the competent court must analyze whether the investigated individuals intentionally committed any administrative improbity acts; and (iv) the new statute of limitations set forth by Law 14,230/21 is non-retroactive, and therefore, the new terms must be applied as of the date that the law went into effect[2].

More recently, in June 2023, the STF ruled for the possibility of plea bargain agreements in improbity lawsuits filed by the Public Prosecutor's Office. The plea bargain agreement can be used within the scope of improbity lawsuits by the defendants and, if accompanied by other evidence, the STF ruled that the agreement may also originate an improbity lawsuit[3].

In October 2023, the STF also ruled that Law No. 14,230/2021 applies retroactively to willful acts, in view of extinction of the generic offense provided by the original wording of Law No. 8,429/1994[4].

OFFENSES

The Administrative Improbity Law sets forth four categories of unlawful acts:

- Illicit enrichment;
- Damage to the public treasury;
- Breach of the principles of public administration; and
- Granting, applying, or sustaining financial or tax incentives in non-compliance with the applicable law.

Illicit enrichment category regards the undue receipt of any advantages that do not correspond to the compensation of a public agent. A necessary cause–effect relationship exists between misconduct and the improper patrimonial increase of public agents regardless of effective damage to the public treasury.

The damage to public treasury category refers to unlawful conduct that necessarily must have resulted in an effective economic–financial damage to the State and to the benefit of a private third party (an individual or legal entity). Therefore, to constitute an act of administrative improbity, whether or not a public agent obtained an individual economic profit is irrelevant.

PENALTIES

In summary, the Administrative Improbity Law sets forth a common group of possible penalties for the three categories of administrative improbity: (a) compensation for damages (if applicable); (b) asset forfeiture (if applicable); (c) removal from public office (only

[1] ADIs No. 7.042 and 7.043

[2] Theme No. 1.199

[3] ARE No. 1.175.650

[4] ARE No. 1.346.594

applicable to public officials); (d) suspension of political rights (only applicable to individuals); (e) fines; (f) debarment; and (g) exclusion from subsidies and tax incentives.

The specificities of the applicable penalties will vary depending on the category of an alleged act of administrative improbity.

Moreover, the Administrative Improbity Law requires full compensation for damages due to the administrative improbity act.

In this sense, the STF also rendered a binding decision in 2016 according to which no statute of limitations exists for restitution to the treasury of the damages as a result of administrative improbity acts[5].

LIABILITY STANDARD

According to the amendments of Law No. 14,230/2021, the liability of shareholders, directors, and officers is limited to their participation in the misconduct. Demonstrating their effective participation in the practice of the unlawful act and in the benefits gained therefrom is now necessary to subject them to sanction.

The changes also established that successor liability for acts of improbity is limited to the restitution of damages up to the total amount of the assets transferred. The other sanctions are not extended.

ALTERNATIVES FOR SETTLEMENT

According to the former wording of the Administrative Improbity Law, settling cases of administrative improbity was prohibited. However, this prohibition was revoked, and cases of administrative improbity may now be settled through an ANPC.

With respect to the ANPC, the law detailed a few requirements for the execution of the agreement, particularly, (i) the hearing of the injured federative entity; (ii) the approval of the ANPC by a body of the Office of the Public Prosecution that is competent in assessing the filing and dismissal of civil inquiries if the ANPC was concluded prior to the filing of the lawsuit; and (iii) judicial homologation regardless of whether or not the ANPC is concluded before or after the filing of the administrative improbity lawsuit.

Notwithstanding the previous prohibition, several cases have occurred of agreements entered into by legal entities and individuals,

[5] Theme 897

which expressly address the liabilities pertaining to administrative improbity prior to the recent amendment to the Administrative Improbity Law.

Moreover, many enforcement agencies have even enacted internal regulations that expressly allow their members to negotiate and enter into leniency agreements in cases that involve administrative improbity notwithstanding the former legal impediment.

WHITE-COLLAR CRIMINAL ENFORCEMENT

Several statutes cover white-collar crime enforcement in Brazil. Primarily, the Brazilian Criminal Code sets penalties for corruption, embezzlement, influence peddling, and fraud, among others. Law No. 7,492/1986 regulates crimes against financial markets, while Law No. 8,666/1993 establishes bid rigging and related offenses. Laws No. 8,137/1990 and 9,613/1998 (Anti-Money Laundering Law) set forth penalties for tax evasion and money laundering, respectively.

Although the Brazilian law covers the majority of acts commonly referred to as white-collar crime, statutes that were recently enacted also change many traits of investigation related to these offenses. They also provide for new investigative tools and procedures, such as plea bargaining, against sophisticated criminal organizations and schemes. In this context, Law No. 12,850/2013 (Organized Crime Act) plays an important role.

CRIMINAL LIABILITY

As a rule, no corporate criminal liability exists in Brazil (except for environmental crimes, as per Law No. 9,605/1998). However, individuals acting on behalf of a legal entity will be subject to criminal enforcement as a result of acts performed in the context of a corporate organization.

ORGANIZED CRIME ACT

The Organized Crime Act defines the characteristics that constitute criminal organizations and provides a new procedural framework for law enforcement authorities. It is similar in spirit to the Racketeer Influenced and Corrupt Organizations Act of the United States. By law, a criminal organization is deemed as an association of four or more persons structurally organized and characterized by the formal or informal division of labor with the objective of directly or indirectly obtaining advantages of any kind by committing criminal offenses.

PLEA BARGAINING

Although its existence precedes the enactment of the Organized Crime Act, plea bargaining was uncommon in criminal proceedings until recently. Former laws stated that persons who voluntarily collaborate with authorities would be rewarded with a reduction or even dismissal of eventual penalties, but procedural guidelines lacked clarity.

The Organized Crime Act clearly regulates plea bargaining and is becoming the most heavily utilized investigative instrument for law enforcement in Brazil. These provisions of the Organized Crime Act allow the collection of evidence and the prosecution of persons in an unprecedented manner in which its hallmark is Operation Car Wash.

Plea bargaining agreements can be entered into with the Office of the Public Prosecutor or the competent Police authority, but the STF restricts the range of benefits that the Police authority can negotiate.

Although judges exercise a certain level of autonomy in rejecting a plea agreement, they typically concur in practice.

MONEY LAUNDERING

The Anti-Money Laundering Law was enacted in 1998. This statute was significantly updated in 2012 to expand the breadth of conducts that would fall under the definition of money laundering. Previously, only a few crimes were listed as preceding crimes, in the sense that only such offenses could create a criminal product that could be the object of money laundering. After 2012, any crime that could potentially result in a criminal product can lead to money laundering and subject its perpetrator to penalties set forth therein.

In addition to its criminal provisions, the Anti-Money Laundering Law sets forth that several business enterprises are required to adopt anti-money laundering procedures toward the identification and prevention of money laundering. Such enterprises include financial institutions, asset managers, investment funds, and jewelry and art sellers, among others.

These obligations typically include record-keeping and reporting requirements, which are described in detail in normative provisions enacted by the regulatory agency with powers (which vary according to the nature of each business activity).

Failure to comply with any obligations set forth by the Anti-Money Laundering Law or in such normative provisions may subject the accountable legal entities and individuals to administrative penalties that range from warning to monetary fine and temporary or permanent restriction to operate in each business segment.

REAL ESTATE

OVERVIEW

The rules related to real estate rights in Brazil are set forth mainly by the Brazilian Civil Code, in addition to other federal laws. As per Brazilian Federal Constitution, Brazilian states and municipalities also have authority to establish specific rules regarding the use and occupancy of real estate, and thus the rules and procedures for occupation and licensing may vary depending on a property's location.

Each property in Brazil is represented by a real estate record file (RERF), which contains relevant information of it– such as limits and boundaries, ownership, liens, encumbrances, built-up area, etc. – and is registered under the competent jurisdiction Real Estate Registry Office (RERO). Therefore, any transaction involving modification, extinction, transmission or creation of real estate rights must be subject to certain formalities (*e.g.*, subject to execution by a Notary Office) and registered before the RERO to be enforceable against third parties.

For instance, under the Brazilian law, a transfer of property title is only deemed effective once the title have been registered with the RERO.

In order to reinforce this, Federal Law 13,097 of 19 January 2015 reinforced the principle of "concentration of acts in the real estate records file", according to which any information necessary for the evaluation of the risk assessment in the acquisition of real estate shall be registered by the interested parties exclusively in the real estate registry – in practice, this makes real estate acquisitions more predictable by securing the effectiveness of all legal acts intended to form, transfer or change *in rem* rights over real estate in relation to previous acts that were not registered or annotated in the record file of the property. Thus, such previous acts not registered or annotated in the record file of the property should not be opposed against third-party purchasers in good faith.

WHAT DOES THE REAL ESTATE INVESTMENT MARKET IN BRAZIL LOOK LIKE TODAY?

The Brazilian economic boom that began in the mid-2000s greatly eased access to credit and sharply increased consumer buying power in the country. These factors, combined with a reliable legal framework that offers simple, straightforward rules for real estate funding (as well as sophisticated financial products that use real estate properties as underlying assets) have produced a vibrant real estate market.

Today, commercial, residential and rural land real estate transactions are all popular investment options in Brazil. The market has attracted many investors seeking tailored transactions (e.g., built-to-suit lease and sale and lease¬back on offices, logistic centers, warehouses and industrial facilities) on behalf of large multinational clients. Other investors have turned to Brazil seeking new real estate frontiers (e.g., investments in farms or suburban residential areas) in a country that covers a vast territory.

Hence, during the past decade, investors and Brazilian developers have testified the formation and consolidation of a market with a unique profile.

Longstanding challenges, such as underdeveloped mass transportation infrastructure in Brazil's largest metropolitan areas, have made the exploitation of suburban areas more challenging. Notwithstanding these weaknesses, real estate in the core urban areas has not declined in value. On the contrary, the challenges confronting Brazil's cities have brought a wave of renovations of old commercial facilities and the retrofitting of many residential buildings, as well as the emergence of new real estate products in Brazil. Moreover, new commercial areas in the inner parts of Brazil's largest cities, such as Av. Faria Lima in São Paulo and Porto Maravilha in Rio de Janeiro, have attracted investments for the construction of AAA commercial buildings.

Brazil's real estate market has also benefited from efficient funding mechanisms, such as Fundo de Investimento Imobiliário (FII) real estate funds and Certificados de Recebiveis Imobiliários (CRIs), which are securities backed by real estate receivables and Letra Imobiliária Garantida (LIG), known abroad as "Covered Bond" and since a long time widely used in Europe. Such funding mechanisms are regulated and overseen by the Brazilian Securities and Exchange Commission. Brazil's legal framework secures investors with sound collateral, such as the fiduciary lien ("*alienação fiduciária*"), which permits the seizure of a property in the event of default.

ACQUISITION OF REAL ESTATE

In general terms, Real property in Brazil shall be acquired by filing a Public Deed of Purchase and Sale of Property ("*Escritura Pública de Compra e Venda de Imóveis*") at the relevant Real Estate Registry Office (RERO). The Public Deed must be executed in the presence of a public notary that can be freely chosen by the parties. The seller must present certain tax clearance certificates, and the local municipal laws provide that the buyer must pay a real estate transfer tax known as Imposto sobre Transmissão de Bens Imóveis (ITBI). The ITBI tax is provided by each municipality in Brazil and is usually levied on the acquisition price (although certain municipalities may impose different tax basis).

Alternatively, before executing the Public Deed of Purchase and Sale of Property, the parties

may execute a purchase and sale commitment agreement, which is usually irrevocable and may be registered with property's RERF. This agreement may set fort the payment of the acquisition price and some conditions precedents to be fulfilled before the execution of the final public deed or purchase and sale. Note that it is common structure in a purchase and sale commitment agreement to establish certain conditions precedents to be fulfilled before the execution of the final public deed, such as the performance of legal, technical and environmental due diligence before the parties execute the definitive public deed or purchase and sale.

Despite of Federal Law 13,097 of 19 January 2015, it is advisable and usual that real estate transactions should be preceded by due diligence of the property, the sellers, its and previous owners within the statute of limitations provided by laws, since as per our law, a property may be judicially seized to secure certain obligations of the seller, reason why it is imperative to investigate whether the seller is creditworthy and in good legal standing. In case the seller is a company, it is also advisable to proceed with the due diligence of its partners as well. In accordance with the Court's most common case law, in order to be challenged by a seller's creditor, it must be evidenced that the sale of the property will cause seller's insolvency and that (i) a lawsuit against the seller is registered in the property's records, (ii) or bad-faith of the purchaser. The good-faith of the purchaser is evidenced upon the due diligence of the seller and the property.

Whenever buying a property in Brazil, please consider that (i) certain debts of the property are propter rem's obligation which, therefore, will be always linked to the property itself and will be imposed to property title (i.e.: property tax - Imposto Predial e Territorial Urbano (IPTU) or Imposto sobre a Propriedade Territorial Rural (ITR)—, environmental liabilities and condominium fees) and (ii) certain liabilities of the seller may bring a risk of the transfer of the property being challenged by seller's creditors. Note that the specifics characteristics of the property (e.g., commercial, residential, urban or rural) dictates the extent of the due diligence.

It is also important to verify whether ownership title or "fee farm title" of a real estate property is being acquired. Some real estate in Brazil is regarded as ultimately owned by the federal government, which entitles individuals to hold a "fee farm" title for that real estate. In such cases, in addition to the ITBI, the purchaser must pay the fee farm fee, which usually corresponds to 5% of the value of the transaction.

The Public Deed of Purchase and Sale of Property can only be registered with the Real Estate Registry if the record file of the targeted property is duly regular, which is one of the main focuses of the due diligence.

A property may also be purchased indirectly through the purchase of stock in a legal entity that holds title to the property. The use of this structure is most common in purchases of commercial properties (e.g., warehouses, office buildings).

In such scenario, the due diligence over the legal entity that holds the real estate will be more detailed and complex, in order to verify all contingences, which will be assumed by the purchaser due to the acquisition of the legal entity.

It is important to point out that, differently from USA and other countries with common-law jurisdiction, there is no title insurance in

Brazil. In order to secure its acquisition, the purchaser must carry out a legal due diligence of the seller and the property.

Prospective buyers should also seek assistance from a real estate consulting firm to evaluate technical aspects of the property, such as the potential for construction and the required city permits, as well as other licensing requirements.

Note that, under Brazilian Competition Law, a transaction must be submitted for antitrust review if the parties meet the following turnover thresholds: (i) gross turnover in the last financial year in Brazil of at least BRL 750 million by one of the economic groups involved; and (ii) gross turnover in the last financial year in Brazil of at least BRL 75 million by another economic group involved.

RESTRICTIONS ON THE ACQUISITION OF RURAL REAL ESTATE BY FOREIGNERS

Foreigners are free to acquire real estate in Brazil, with the exception of rural properties and land near Brazil's national borders or lands considered as navy lands (terrenos de marinha,) wherein the ownership title is held by the federal government and acquisition by foreigners is permitted only in certain events.

Federal Law No. 5,709 of 1971 imposed certain limitations on the acquisition of rural properties by foreigners, which, according to that law, were also applicable to Brazilian companies whose partners, individuals or legal entities, residing or established abroad, hold the majority of the capital stock.

Although the distinction among foreign entities and Brazilian legal entity controlled by foreigners entities or individuals was originally accepted by the federal Constitution of 1988, the 6th

Amendment to the Constitution eliminated the distinctions between foreign entities and Brazilian legal entity controlled by foreigners entities or individuals. Therefore, a company organized in Brazil with its head office and principal place of business in Brazil is deemed as a Brazilian company, regardless of the nationality of its partners.

Opinion AGU/LA-04/94 issued by Brazil's attorney general supported the understanding that the Constitution had revoked the distinction made by Law No. 5,709 between Brazilian companies with domestic or foreign capital, and that, therefore, no limitations should be imposed due to the terms set forth in the above-mentioned law.

Several years later, the attorney general issued another opinion (Opinion AGU GQ-181/1997) confirming that the above-mentioned restriction on foreign companies was not incorporated by the Constitution.

Then, on August 23, 2010, the attorney general issued Opinion LA-01, changing the prior opinion and setting forth that Law No. 5,709 should apply to Brazilian companies controlled by foreigners. In addition, the new opinion stated that the concept of a "majority of capital stock" must be interpreted according to the broader concept of "corporate control" set forth in the Brazilian Corporation Law.

The concept of control is defined in Article 116 of the Corporation Law as "an individual or a legal entity, or a group of individuals or legal entities bound by a voting agreement or under common control, which: (a) possesses rights which permanently assure it a majority of votes in resolutions of general meetings and the power to elect a majority of the corporation officers; and (b) in practice uses its power to direct the corporate activities and to guide the operations of the departments of the corporation."

In summary, the general attorney's most recent opinion maintains that the restrictions for acquisition of rural lands by Brazilian companies controlled by foreign entities, set forth by Law No. 5,709 and its regulation (Decree No. 74,965/1974), are still valid.

Later, the State of São Paulo Justice Inspector's Office issued Report N. 461/12-E, which released Notary Offices and Real Estate Registry Offices of the State of São Paulo from observing the restrictions imposed by Law No. 5,709 to the acquisition of rural land by Brazilian companies which majority of equity capital is held by foreign individuals or entities residing or with headquarters outside Brazil. The Report N. 461/12-E was issued after a decision from the State Court of São Paulo ruled that the distinction set forth in Law No. 5,709 and its regulation (Decree No. 74,965/1974) should be considered revoked due to the 6th Amendment to the Constitution.

Nevertheless, a claim filed by the Federal Government and the Brazilian Agrarian Settlement Institute (INCRA) before the country's Supreme Federal Court has questioned Report N. 461/12-E based on the above-mentioned Opinion LA-01, and on September 1st, 2016 the Brazilian Supreme Federal Court has granted an injunction suspending the effects of Report N. 461/12-E. As grounds for its decision to grant the injunction, the Court sustained that while a legal provision is not declared unconstitutional by the Supreme Court, laws regularly approved by the Legislative Power are presumed as constitutional.

As long as the controversy over the validity of the distinction set forth in Law No. 5,709 and its regulation (Decree No. 74,965/1974) remains unresolved, it may be said, on the basis of the most recent opinion issued by the general

attorney, that Brazilian companies controlled by foreign entities are subject to the following restrictions:

- Acquisition of rural properties by foreign legal entities or by Brazilian legal entities controlled by foreign legal entities in excess of a certain area, which varies according to the region, in continuous or discontinuous areas, is subject to prior authorization by Brazil's Congress.
- Regardless of the size of each individual property, the sum of the rural areas owned by foreign individuals, foreign legal entities or Brazilian legal entities controlled by foreign legal entities cannot exceed 25 percent of the total surface of the municipality in which such areas are located.
- The sum of the rural areas owned by foreign individuals, foreign legal entities or Brazilian legal entities controlled by foreign legal entities of the same nationality cannot exceed 10 percent of the total surface area of the municipality in which such areas are located.
- Foreign legal entities or Brazilian legal entities controlled by foreign legal entities may only acquire rural properties destined for the development of agriculture, cattle raising, forestry, industry, tourism or rural settlement, in accordance with their corporate purposes, upon approval of the relevant project by the Ministry of Agrarian Development.

Bill N. 4,059/2012, currently before Brazil's National Congress and under an urgent request for approval, seeks to better regulate the acquisition of rural land by foreign individuals and foreign legal entities. Under that bill, a Brazilian legal entity with a majority of foreign capital would still be considered a Brazilian legal entity. Prohibiting the lease for an indefinite period (article 4), the Bill reiterates the provisions of Law No. 5,709 / 71, establishing that the sum of rural areas owned and leased to foreign persons may not exceed 1/4 of the surface of the Municipalities where they are located, and similarly, it seeks to restrict the appropriation or lease of more than 40% of a given Municipality by persons of the same nationality.

Also, in the year 2019, a new bill (Bill No. 2,963/2019) came up on the subject, addressing several problems that the market faces with the current legislation, which requires an extremely bureaucratic, uneven procedure and without operational resources for its implementation. All of this makes the acquisition process time consuming and affects the legal security of investment projects. The main change proposed is the treatment of Brazilian companies owned by foreigners.

Bill 2,963/2019 also provides that all acquisitions and leases of rural real estate by foreigners made in disagreement with current legislation will be validated, which would regularize situations considered void under current rules.

Currently, a Brazilian company controlled directly or indirectly by foreign individuals or legal entities is subject to the authorization procedure for land acquisition provided for by law, as it is equivalent, for this purpose, to foreign companies.

The Federal government has indicated that it is interested on changing the legislation to enable foreign investment into rural properties, but no further action have been taken so far apart from the current bills detailed above, which are under analysis by the Congress.

It is important to point out that there are some

structures that can be adopted by a foreign investor in order to avoid the restrictions and enable the investment in rural properties in Brazil, as real estate JV's with a local partner, constitution of surface rights or right of use (usufruto) over the rural property (which are not subjected to the restrictions), among other corporate structures that can also be considered on a case by case basis.

"MP DO AGRO": NEW POSSIBILITIES FOR FINANCING OF AGRIBUSINESS

On April 7, 2020 the Federal Law No. 13,986/20 entered into force and established the conversion of the Provisional Measure no. 897/19 (known as the provisional measure for the agribusiness) into law.

This implicates in the creation of new guarantees such as the Solidarity Guarantee Fund (FGS), rural segregate estate and the Rural Real Estate Certificate (CIR), and the extension of guarantees once only accessible to Brazilian investors to foreigners. The measures enable creditors to have greater safety when financing of agribusiness and stimulate easier, less costly credit to the agribusiness activity.

The Solidarity Guarantee Fund (FGS) is the communion of assets and resources from rural producers, creditors and/or credit guarantors, to back new debts assumed by rural producers and to guarantee the renegotiation of overdue debts. In this sense, the purpose behind the creation of this fund is to facilitate and speed up access of credit by creating new guarantees.

In this sense, the creation of the Rural Segregate Estate enables the owner of rural property to segregate its property into fractions/percentages to guarantee different obligations. It should be noted that this is not extended to all assets and the segregation of some species of assets, among them crops and other movable or immovable assets, are not possible.

As per the Rural Real Estate Certificate, it consists of a type of credit instrument that represents (i) a promise to pay in cash, deriving from a credit operation of any nature; (ii) the obligation to deliver rural property, or a fraction of the property segregated as Rural Segregate Estate, in favor of the creditor. It aims to facilitate the securitization of the Agribusiness Credit Receivable Certificates ("CRA") - titles of fixed income backed by receivables originated from agribusiness activities, including loans to fund such activities - as well as to offer alternatives to the issuance of other credit instruments within the scope of agribusiness.

Notwithstanding, Federal Law No. 13,986/20 enlarged the concept of the rural producer, as well as of rural products, expanding the list of guarantees accepted in credit operations in the agribusiness segment.

Furthermore, Federal Law No. 13,986/20 acknowledged the possibility of constitution of fiduciary property in favor of foreigners, by means of fiduciary lien instruments.

The fiduciary lien (also known as fiduciary lien) is a type of collateral which implicates in the transferring of ownership of the asset to the creditor and direct possession of the asset continues with debtor (or third-party guarantor). Once debt is paid in full, the ownership of the asset reverts back to primary owner; if the debt is defaulted, the ownership is consolidated in favor of creditor, who shall promote auctions for its sale. The foreclosure procedure is fully administratively, which results in greater speed.

This change tends to make the agricultural financing market more competitive, attracting and allowing foreign investors, previously limited to mortgage guarantees, to have access to fiduciary liens, until then available only to Brazilian creditors.

It is worth remembering that the fiduciary lien of rural properties located specifically in the borders of Brazil had already been expressly authorized in 2015. However, the previous legal provision was limited to guarantees constituted in favor of financial institutions, which are obliged to sell properties eventually received in foreclosure proceedings of guarantees given in the context of financing, in accordance with conditions established by Brazilian Central Bank.

In addition to providing for the possibility of constitution of fiduciary guarantee on any rural property, including those located on the border of country, it is now also allowed that foreigners become owners of rural properties in the settlement of transactions, by means of foreclosure of guarantees, consolidation of property, adjudication, payment in kind or any other form of debt settlement, which also does not oblige foreign creditors to sell rural properties eventually received in liquidation proceedings, which makes this rule an exception to the restrictions on foreigners owning rural real estate in Brazil, as per provided in the topic above.

REAL ESTATE INVESTMENT FUNDS IN BRAZIL

According to the Brazilian stock exchange, B3, Real Estate Investment Funds ("FII") are "a pool of resources intended for investment in assets related to the real estate market". Its constitution and the management of its assets

are done by an administrator and capital is raised through the sale of shares.

The capital may be used for the purpose of acquisition of various real estate assets, such as rural and urban properties, as well as for the acquisition of securities linked to the real estate market, such as shares of other FIIs, Real Estate Letter of Credit (LCI), Real Estate Receivables Certificate (CRI), shares of real estate companies, among others. From the acquisition of such assets, the FII will obtain income from sale, lease and capital gain, primarily. The income earned by the FII is periodically distributed to its quotaholders.

From a legal perspective, FIIs are constituted in the form of closed condominiums, ruled by Federal Law No. 8,668/93, duly amended, and by Instruction No. 472 of the Brazilian Securities and Exchange Commission ("CVM"). FIIs also have specific regulation, which among other provisions, determines its investment policy. In addition, FIIs may have definitive term (with a set date for liquidation) or indefinite term - in which case, if the investor decides to withdraw from the investment, it may sell its quotas on the secondary market.

FIIs represent the opportunity to invest in several products of real estate market, with a varied portfolio and under professional management of assets. It enables greater liquidity and diversification of investments and serves as means of access by foreign investors to rural real estate assets in Brazil.

Furthermore, investing through Investment Funds in Brazil have tax advantages. The gains of corporate investors are subject to income tax at a 20% rate (individuals may be exempt, depending on the situation), applicable in case of sale of shares at profit. As per the dividends, corporate shareholder are taxed at income tax at 20% and the individual shareholder may be exempt from income tax on these dividends distributed by the fund, in case the Fund has at least 50 quotaholders and the individuals hold less than 10% (ten percent) of fund quotas whose quotas are traded on the stock exchange or stock market, as per Law No. 11,033/04).

INVESTMENT FUND IN AGROINDUSTRIAL PRODUCTION CHAINS - FIAGRO

In 2021, Federal Law No. 14,130/21 amended Federal Law No. 8,668/93 to create a new type of Investment Fund in Brazil: the Investment Funds in Agroindustrial Productive Chains (FIAGRO). According to B3, FIAGRO is defined as "a combination of resources from several investors for investment in agribusiness investment assets, whether of a rural real estate nature or activities related to the sector's production". In such cases, the fund manager is responsible for raising funds with investors through the sale of shares and management of the rural assets and activities.

FIAGRO, as any other Brazilian Investment Fund, is constituted in the form of a condominium of a special nature, which is intended for the investment, individually or jointly, of resources in certain securities of a certain segment of market.

In addition, taxation of FIAGRO is intended to encourage and contribute to the strengthening of Brazilian agribusiness. Thus, for the fund's portfolio, the rule of exemption from Income Tax (IR) and Tax on Financial Operations (IOF) of income from alternatives linked to agriculture is applied.

Since FIAGRO is an investment fund open to investors in the primary market, its implementation represents the opening of the

opportunity for contributions and investments in agribusiness by any investor with resources and business experience, including foreign investors.

FIAGRO is divided into three categories, (i) Credit Rights (FIAGRO-FIDC), which aims the agroindustry that invest in credit rights; (ii) Real Estate (FIAGRO-FII), which aims rural real estate assets; and (iii) Shares (FIAGRO-FIP), which aims at shares of companies that develop agroindustrial business. Therefore, such Investment Funds may be composed by the following assets:

1. Rural properties;
2. Shares in companies that explore activities that are part of the Agroindustrial Productive Chain;
3. Financial assets, bonds or securities issued by individuals and legal entities that are part of the Agroindustrial Productive Chain;
4. Agribusiness credit rights and securitization bonds issued backed by agribusiness credit rights, including agribusiness receivables certificates (CRA);
5. Quotas of credit rights investment funds (FIDC) and non-standardized credit rights investment funds (FIDC-NP) that invest more than 50% of their equity in the credit rights listed in item 4; and
6. Shares of investment funds that invest in the assets listed in the items above

MANAGEMENT OF PUBLIC ASSETS: PRIVATIZATION, EXPLOITATION AND ASSIGNMENT TO PRIVATE INDIVIDUALS OR OTHER ENTITIES

Brazil is now facing a trend towards privatization and assignment of properties held by the Brazilian government. This stems from the notorious tendency of the current Brazilian government to reduce costs and obtain revenues, from the privatization of unused public assets. In this sense, new rules for the disposal of real estate by the Federal Government, implementing measures to facilitate the procedure for the disposal of public assets are inforce since 2020.

For instance, properties hold by the Federal Assets Office ("SPU") that are unused, or in a situation of difficult management and access by government can now be subject to the constitution of real rights in favor of private individuals. This measure aim at the strategic exploitation of certain territories and properties, in particular, through the leasing or assignment of surface rights and rights of use – the latter, especially in the context of the renewable energy market in the Northeast region.

Among the main recent changes, it is the possibility of direct sale of the property to private individuals, having, as an incentive to the cases of bidding or mortgage, relevant discounts on the appraisal value of the asset. In this case, SPU is allowed to promote the auction completely online. Also in the case of auction, the Law also allows SPU to grant successive discounts on the asset, respecting the limit of 25% discount on the appraisal value.

The sale of SPU properties envisions the reduction of public costs, as well as the strategic exploitation of properties (previously restricted to the state bureaucracy), especially for commercial activities. This is not only beneficial to the Public Administration, but also to the individuals who have the opportunity to acquire properties which were previously out of market.

In the same sense, it appears that the

management of public goods is undergoing modernization. Since April, 2019, a new market trend has started for Real Estate Investment Funds in Brazil: the creation of asset portfolios by privatized properties, that is, properties that previously belonged to States and Municipalities.

The milestone in question was the constitution of the Real Estate Investment Fund of the State of São Paulo, which main purpose is the acquisition of properties belonging to the State of São Paulo ("FII State of São Paulo").

Finally, it is possible to verify that this structure emerged to allow Public Administration entities to reduce property maintenance expenses. Notwithstanding, it implies the transfer of ownership or real rights over properties, often not economically exploited, to a market entity with powers to participate in transactions and businesses, often restricted to the State.

COSTS OF A REAL ESTATE TRANSACTION

Financial expenditures include due diligence costs, notary and registration fees, transfer taxes and brokerage fees.

The extent of the due diligence carried out on the real estate will influence the transaction costs associated with the purchase. A large part of the background investigation is accomplished through various clearance certificates. Some of these can be obtained online, but most must be requested directly from the appropriate notary office (e.g., tax, labor, real estate). However, in general, costs for obtaining the certificates are not excessive, and the largest portion of the expenses is related to the investigation of hidden liabilities, such as environmental and urban liabilities, which are not registered in the certificates.

Notary registration fees vary from state to state and are generally calculated based on the value of the real estate property attributed by the municipality or the value of the transaction, whichever is higher. An equivalent fee is due on the registration of the deed of purchase and sale on its respective RERO. In states such as São Paulo and Rio de Janeiro, these fees can reach hundreds of thousands of Brazilian reais, depending on the value of the real estate property.

Real estate transfer taxes (ITBI) also vary depending on the location of the property. The taxes generally range from two to five percent of the total value of the property or the value of the transaction, whichever is higher.

Brokerage fees are negotiated among the parties, but are usually between three and six percent of the sale price, depending on the value and characteristics of the property.

It is common practice for the buyer to pay all of the above mentioned fees.

Other potential expenses in completing a real estate transaction in Brazil depend on the type of property and its intended use. In the case of a farm or allotment, for example, geo-referencing expenses and notary registration expenses will be incurred. It is also important to verify whether ownership title or "fee farm title" of a real estate property is being acquired. Also, Some real estate in Brazil are ultimately owned by the federal government, which entitles individuals to hold a "fee farm" title for that real estate. In such cases, in addition to the ITBI, the purchaser must pay the fee farm fee, which usually corresponds to 5%.

According to Brazilian tax legislation, there is no VAT (or equivalent) due on the sale or

purchase of corporate real estate.

Gains from the sale of real estate property are taxed under capital gains tax, with no exemption. The applicable rate for foreign investors is established at fifteen percent (if the country is considered a tax haven, the applicable rate is set at twenty five percent).

In real estate development, there is a special taxation regime, which has smaller tax rates. Such special taxation regime may be requested by the real estate developer in case some requirements are meet.

Also, note that there are some corporate structures for foreign investment that are exempted of capital gains tax, but some requirements shall be fulfilled.

LEASEHOLD

There is no restriction on the leasing of real estate by foreigners in Brazil, except for the leasing of rural property, where the same restrictions provided by Law No. 5,709 / 71 apply regarding ownership title.

Brazilian lease law is very protective for tenants, and landlords are not allowed to terminate a lease agreement early during its fixed term, except in the case of a tenant's breach of the contract. The tenant, on the other hand, may terminate the lease early upon payment of the penalty established in the agreement, which, in the case of a typical lease, must be proportional to the remaining term of the lease.

Other rights are secured by Brazilian lease law in a typical lease, such as both parties' right to request the review of the rent based on market prices after three years of the last rent amount definition. Construction or improvements made by the tenant on the landlord's real estate (other than movable improvements) are considered attached to the landlord's real estate and are usually not reimbursed by the landlord. Most tenants are generally able to negotiate a grace period to start paying rent. It is also important to note that the rent of lease agreements is subject to adjustment for inflation (annually, under current law).

Brazilian law also acknowledges the existence of atypical lease relationships (built-to-suit, sale and leaseback, malls' leases, among others) in which the parties are free to negotiate the terms and conditions of the lease, with due

regard to general principles of law and compliance with the procedural provisions of Brazilian lease law.

As an example, in built-to-suit leases in which a tenant leases real estate that is tailor-made for its business, the real estate acquisition costs and construction are borne by the landlord and the tenant commits to lease the real estate for a certain term. In such a lease, the tenant may not terminate the agreement early unless it indemnifies the landlord for the totality of the remaining rents. Both parties also typically waive their right to review the rent amount based on market standards, as provided in Brazilian lease law.

With regard to the lease of real estate property located at shopping malls, the Brazilian lease law set forth that the conditions agreed by the parties shall prevail over some provisions of the Brazilian lease law.

The Brazilian lease law also set forth some legal protections for real estate properties lease by hospitals, schools and religious entities by providing special eviction procedures and restrictions for landlord evicting such tenants.

Regarding rental income, income tax is levied over these earnings and should be collected by the real estate property owner. However, in the case of a foreign investor directly owning the real estate property, the tenant will be responsible for collecting such amount. Applicable rates are normally levied at 15% but it depends on where the property owner is domiciled.

If, however, the operation is carried out by a Brazilian company, the taxation for rental revenues up to BRL 78 million can be levied by rates that range from 11.33% to 14.53%. In these cases, the foreign controlling partner can receive tax-free dividends.

FINANCING OF REAL ESTATE

Several banks offer financing to both performing and non¬performing real estate development projects. The structure usually adopted is the use of the property as collateral — through either mortgage or, more commonly, "fiduciary lien" — with a repayment term of more than 10 years.

Entrepreneurs seeking funds for commercial projects (e.g., office buildings or logistics centers) can turn to capital markets with a special interest in real estate projects. Real estate investment funds, referred to in the industry as Fundo de Investimento Imobiliário (FII), or even private equity funds (Fundos de Investimento em Participações – FIP), are commonly set up with the purpose of raising funds in the capital markets, with accredited investors aiming to apply those funds to specific projects. Such real estate funds may be entitled to some tax benefits.

Another instrument used to raise funds in the capital markets from investors looking for alternative fixed-income results are real estate credit certificates (CRIs), which are securities backed by real estate receivables such as receivables of a purchase and sale, build-to-suit lease, typical lease or real estate financing agreements.

Also, a new kind of credit instrument with real estate collateral is the Real Estate Guaranteed Letter (LIGs), introduced by Law No. 13,097/2015. The LIGs advantage is mainly the fact that it has a "double insurance", since the issuing entity of the title is liable for the due performance of all obligations under the LIG, regardless whether the asset portfolio on which trust regime has been established is or not enough for that purpose. There is also a more favorable taxation regimen, as a result of income tax exemption in some events, the

possibility of providing for an exchange rate variation clause, among others.

SEGREGATE ESTATE

The segregate estate consists of the segregation of the developer's assets from the real estate development's specific assets in order to ensure the specific activity of construction and delivery of future independent units to the respective acquirers. As a result, the assets, rights and obligations of the segregate estate are not communicable with the general property of the developer, so that the real estate development is only liable for debts and obligations related to it, pursuant to article 31-A of Brazilian Lease Law, No. 4591/64.

It is as if the developer had two assets: his private assets and the segregate estate (which relates to an specific real estate development), thus being two different assets of the same owner. This separation is the result of the so-called asset shielding phenomena, in which third parties, unrelated to the segregate estate, cannot execute the assets that comprise it to satisfy their own claims in cases of bankruptcy, insolvency, liquidation and judicial reorganization of the developer. In this way, the sponsors of the project remain protected, reducing the risks. Thus, the assets and rights included in the segregate estate may only be subject to in rem guarantee in a credit transaction in which the product is fully intended for the completion of the corresponding development and for the delivery of the independent units to the respective acquirers.

It is important to emphasize that, according to the abovementioned law, the developer is the one liable for the jeopardize caused to de segregate estate.

Note that real estate developments that are classified as segregate assets has some tax benefits.

MULTI-OWNERSHIP CONDOMINIUM

As per Federal Law No. 13,777/2018, multi-ownership allows the co-owners of a property to each of them to use it for a pre-determined period of time as its single owner. Each "time fraction" is indivisible and bound to the right of use of the property for periods not less than to 7 days, which can be fixed and determined or change from year to year.

The institution of the multi-ownership must be registered in the property's certificate at the real estate registry office with the indication of all time fractions established to each multi-owner and the correspondent occupation periods. Individual certificates and taxpayers' numbers will also be created and assigned to each time fraction of the property. Furthermore, a multi-ownership condominium must have condominium bylaws, which will rule the use of the property by each multi-owner and their proportional contribution to the costs of maintaining and managing the property.

Each multi-owner may freely assign and lease their time fraction as well as sell or encumber it. If selling or encumbering, they must inform the condominium administrator. The other multi-owners are not entitled to the right of first refusal in the sale, except if that is provided in the multi-ownership condominium by laws.

GENERAL TAX RULES APPLICABLE FOR REAL ESTATE

Tax rules applied to real estate transactions in Brazil comprise a universe of their own with many particularities, especially because of different positions taken by taxpayers and tax authorities. For this reason, it is imperative to obtain a specialist's opinion when considering a real estate transaction.

To illustrate this point, bear in mind that taxes levied on real estate transactions can vary greatly depending on whether there is (i.a) a legal entity, (i.b) an individual or a (i.c) foreing investor involved, the (ii) place of residency of such persons, the (iii) tax regimes elected by the legal entity (i.e., real profit - lucro real, presumed profit - lucro presumido, or other), the (iv) corporate purpose of the legal entity (i.e., real estate development), the (v) tax regime of the investment fund, among others. Hence, the myriad tax implications of a real estate transaction in Brazil must be considered on a case-by-case basis.

Nevertheless, there are some general aspects of real estate tax law that a practitioner must be aware of to better navigate the business environment in Brazil.

As mentioned above, real estate transfer taxes, the so-called "ITBI" (see Section 7), vary depending on the municipality in which a property is located but are usually charged at a 2% to and 4% (it cannot exceed 8%) on the transaction value.

Brazil laws allow the direct acquisition of real property by individuals and corporate entities, irrespective of nationality or residency in Brazil (except for rural land). Profits from such investments may come from income (lease of the property) or capital gains (sale of property).

Capital gains received by legal entities (with the exception of real estate development companies) are considered "income" or "non-operational income" and are added to the basis used to calculate Brazilian corporate income tax, known as Imposto de Renda Pessoa Jurídica (IRPJ), and Brazilian social contribution on net profit, or Contribuição Social sobre Lucro Líquido (CSLL). If taxes are assessed by the taxable income method, capital gains may be offset by operational or non-operational losses incurred during the tax year or with "accumulated non-operational losses" from previous periods (up to 30 percent). The combined rate of taxation is 34% (25% IRPJ + 9% CSLL).

Rents revenues are subject to the IRPJ and CSLL at a 34% rate (being possible to offset operational or non¬operational losses against them) and the social contributions on gross revenues (PIS/COFINS) that may levy at a 3.65 % (cumulative regime, not possible to discount credits) or at a 9.65% (non-cumulative regime, possible to discount credits).

For individuals resident in Brazil, rents are calculated using the Progressive Chart of the Brazilian Individual Income Tax (Tabela Progressiva de Imposto de Renda de Pessoa Física - IRPF). If the rent is paid by a corporate entity, Brazilian income tax must be withheld. If rent is paid by an individual, income tax must be paid by way of an IRPF booklet (Carnê-Leão). In either event, the maximum tax rate is 27.5% (co-proprietors may divide their respective income bases pro rata).

Individuals resident in Brazil are exempt from capital gains should (i) the property sold be the only real estate property of that person; or (ii) the proceeds from the sale be used to purchase another property within 180 days after the sale took place.

For legal entities not resident in Brazil, capital gains and rents are assessed at progressive tax rate of 15% (gains up to BRL 5 million) to 22.5%

(gains higher than to BRL 30 million). A 25% flat rate is applicable to entities resident in designated "tax haven" countries adjudged to have favorable taxation rates, which comprise less than 20 percent of the total.

Investing in the equity of a so-called real estate development company (i.e., a company whose purpose is to develop commercial real estate projects) may be more tax efficient. Natural persons and legal entities resident in Brazil investing in a real estate development company are exempt from taxation on dividends and are taxed at progressive tax rate of 15% (gains up to BRL 5 million) to 22.5% (gains higher than to BRL 30 million) percent on capital gains on the sale of stock (outside of the stock exchange market).

FIIs also provide a favorable tax regime for investors. FII real estate trades are exempt from IRPJ, CSLL and PIS/ COFINS. Any income derived from an FII investment is exempt from taxation if the investor holds less than a 10 percent interest in the FII, the income from the investment corresponds to less than 10 percent of the total income distributed by the fund and the fund has more than 50 participating investors. Otherwise, a 20% income tax shall apply to domestic investors and a 15% income shall apply to foreign investors not located in a tax heaven.

STJ CONFIRMS POSITION REGARDING THE ITBI CALCULATION BASIS

On February 24, 2022, the special appeal No. 1937821/SP was judged by the First Session of Superior Court of Justice (STJ), under report of Minister Gurgel de Faria.

The case discussed the calculation basis for the Real Estate Transfer Tax (Imposto Sobre a Transmissão de Bens Imóveis - "ITBI"), applicable for the majority of real estate transactions that involve transferring of ownership by living parties and charged by the municipality.

In these transactions, the municipalities normally charge ITBI based in the higher value

between the value of the transaction and the value of reference of the property attributed by the competent municipality, which is generally lower than the market and transaction values. The mechanism of calculation of ITBI was subject of the aforementioned appeal.

According to STJ, (a) the calculation basis of ITBI is the value attributed to the property at the time of transaction, and the taxpayer is not bound to the IPTU calculation basis (which shall not be used as a basis for taxation); (b) the declared value of the transaction shall be presumed right and interpreted in good faith if consistent with the market value, and questioning by the tax authorities depend on specific administrative process (article 148 of the National Tax Code); and (c) it is not possible to apply the market value as a calculation basis, as the municipality cannot unilaterally arbitrate the ITBI calculation basis.

IMPROVEMENT ON BRAZILIAN NOTARY AND PUBLIC RECORDS SYSTEM - PROVISIONAL MEASURE NO. 1.085/21

The Notary and Public Records System is Brazil is ruled by Federal Law No. 6,015/73, which regulates the registration of titles, documents, businesses and legal acts.

Such system is especially relevant for real estate transactions, considering that all real estate properties in Brazil shall be enrolled with its own Real Estate Registry File (RERF) before the respective Real Estate Registry Office (RERO), and all real estate transactions related to such properties shall be registered therein. In this sense, each RERF contains the complete historic of the properties, including is main characteristics – such as limits and boundaries, area, location and built-up areas, the registered owners and liens and encumbrances.

Considering its relevance for the economy, Brazilian laws are constantly improving such Notary and Public Records System. For instance, the House of Representatives has recently approved Provisional Measure 1,085/21 (known as Provisional Measure of Registry Offices), through which the regulation of the Electronic System of Public Records ("SERP") was established, which shall be in operation until January 31, 2023.

SERP is an attempt to adapt the legal diplomas related to the registration of documents to the innovation brought by digitization. It will be implemented by the National Council of Justice, at which time the various Public Registry Offices will interconnect their databases, sharing information with each other.

The proposal is that the acts of registration, annotation or protocol of titles in the Public Registries will be carried out electronically and will be available for consultation in the SERP. The request and issuance of certificates and documents will also take place on the SERP, observing the established terms and deadlines.

The measure promises to improve and standardize the Notary and Public Records System, creating a national database and enabling more agility, uniformity and reliance on the registration of real estate transactions and on the analysis of information regarding each property.

INFRASTRUCTURE AND REGULATORY LAW

OVERVIEW: INVESTMENTS IN BRAZILIAN INFRASTRUCTURE PROJECTS

The Brazilian infrastructure sector is a market in expansion, and many opportunities are available for new investors. This trend is based on three main factors:

i. **High demand**: A significant share of the Brazilian population is not served by adequate-qualified public services, such as sanitation and public transportation. As a result, large investments are needed to raise Brazil's public services to a reasonable level and a number of institutional efforts are being made to create the environment for the investments by private parties in infrastructure segments. To name but a few, bill of laws for the modernization of the legal framework on public procurement, on ordinary concessions and public-private partnerships, on the railway sector and on the sanitation sector are currently discussed by the Brazilian Congress.

ii. **Reduced number of players**: Due to the Brazilian economic/political crisis in 2016, many Brazilian infrastructure players (most of them related to construction companies) have reduced their participation in new projects and/or have been selling their assets to new investors, creating an opportunity for newcomers, especially for foreign entities. Since the creation of the PPI - Investments Partnerships Program (in Portuguese, *Programa de Parcerias de Investimentos*), some efforts have been made in order to assure the participation of foreign bidders in tender proceedings for the grant of infrastructure segments at federal level. PPI is a federal agency created by Law No. 13,334 of 2016 that concentrates the structuring of infrastructure projects such as concessions and privatizations. One simple but important measure that helps the analyses made by foreign companies on federal projects is the release of English versions of all the tender documents.

iii. **Economic importance of new concessions**: New concessions and infrastructure projects are considered one of the key mechanisms for restoring economic growth. For this reason, the Brazilian government has announced new programs and economic measures to promote the development of new infrastructure projects and privatizations.

INVESTMENT PARTNERSHIP PROGRAM (PPI)

The PPI, for instance, is designed to stimulate investments in the infrastructure sector by strengthening the interaction between the state and the private sector. PPI's main objectives are to: (i) ensure the enhancement and the expansion of public services and infrastructure projects; (ii) ensure stability and legal certainty of agreements, with minimal government intervention in businesses and investments; (iii) strengthen the state's regulatory role, as well as the autonomy of the regulatory agencies.

Through concessions, public-private partnerships (PPP) and privatizations, private companies will develop and run infrastructure facilities (and render public services). For this reason, many infrastructure projects have been launched since November 2016. In the next years, relevant new concessions are expected to be made, such as for the grant of the Airports of Santos Dumont, in Rio de Janeiro, and Congonhas, in São Paulo, for the exploitation by private entities. In addition, we also anticipate the privatizations of several governmental companies, as well as new concessions related to ports, highways, railways and energy.

ADMINISTRATIVE CONTRACTS: OVERVIEW

The contracts entered by the Government for the contracting of services, works, purchases, sales and rentals are known in Brazil as "administrative contracts." These agreements are, in general, preceded by a bidding process designed to result in the selection of the best proposal from interested companies (bidders), according to the objectives/interests of the administration. In some circumstances, the law waivers the Government of conducting a bidding process to select a private partner to execute a specific contract.

Under the Brazilian Law, administrative contracts are governed by the public law system, comprising principles and rules that guarantee supra-individual interests related to fundamental rights. To guarantee the necessary enforcement of these major interests, the Public Administration owns certain powers and duties. Regarding administrative contracts, these powers give extraordinary prerogatives to the Public Administration, including the power to supervise and sanction the contracted private party and, in some cases, issue unilateral modifications to a contract.

On the other hand, private parties are granted the right to maintain an economic-financial balance, which can be described as the proportion between the obligations imposed to the private party and benefits/earnings received by the company. This means that any action by the state that leads to instability between contractual obligations and benefits must lead to a corresponding intervention in order to restore the original balance.

The rules that govern these contracts are found mainly in Federal Law No. 8,666/1993 (or "Administrative Contracts Law"), which

contains general and specific rules for different instances of contracting. However, for specific contracts, such as concessions and public-private partnerships, other laws are also applicable, such as Law No. 8,987/1995 and Law No. 11,079/2004. In 2021, a new public procurement law was enacted – Law No. 14,133/2021. Although already in force, Law 14,133/2021 provided that the Administrative Contracts Law shall remain in force until April 1, 2023. In the meantime, government entities are required to choose one of the legal regimes to govern each of its procurement procedures.

Law 14,133/2021 consolidates in one piece of legislation the main bidding regimes governed by sparse acts, such as the reverse auction ("Pregão") and the RDC regime. It also innovates by focusing on the planning stage of public procurement and by creating new bidding modalities, such as the competitive dialogue.

CONTRACTS GOVERNED BY LAW NO. 8,666/93

Contracts solely governed by Law No. 8,666/1993 are entered by government entities for the purpose of procuring services, public works, as well as for purchases, sales and rentals. These contracts last 12 (twelve) months and may be renewed for up to 60 (sixty) months. The payment amount, settled in the bidding process, is determined through measurements realized by the public entity responsible for the contract. In addition, regarding public works, the private party is responsible only for developing the project's executive design. The project's basic design is provided by the Public Administration.

CONTRACTS GOVERNED BY LAW NO. 14,133/2021

Law No. 14,133/2021 also provides for the bidding regimes accepted in the Brazilian jurisdiction and regulates public procurement for regular services, works, purchases, sales and rentals.

Its innovations include making electronic biddings the default alternative for government entities; allowing government entities to require performance bonds of up to 30% of contract value (as opposed to the 10% limit of the Administrative Contracts Law); and allowing step-in rights to be granted for the insurance company.

Bidding modalities now comprise reverse auction, competitive bidding, contest, auction and competitive dialogue. The reverse auction is a mandatory bidding method for the acquisition of common goods and services based on the lowest price offer or the highest discount. The (traditional) auction applies to the sale of real estate or other goods upon the highest bid. Competitive bidding is the method of bidding for the contracting of goods and special services and of common and special engineering works and services, whose judging criteria may be: (i) lowest price; (ii) best technique or artistic content; (iii) technique and price; (iv) greatest economic return; and (v) greatest discount. Contest applies to the choice of a technical, scientific or artistic work to award a prize or remuneration to the winner.

Lastly, as a symbol of modernization in public procurement practices in Brazil, there is the competitive dialogue bidding, aimed at contracting works, services and purchases in which the government entity holds dialogues with bidders in order to develop solutions capable of meeting a specific and complex

public need, to which ordinary market solutions do not apply. Bidders are required to submit a final proposal after the dialogue phase. The government entity's choice of procurement is the one that better fits the specific and complex needs, as opposed to the traditional price-oriented criteria.

Another important change brought by Law No. 14,133/2021 is the renewal of service contracts for up to 10 years—as opposed to the previous 5-year limit. Moreover, if the contract involves investing in goods that will be transferred to the government, it may last for up to 35 years.

Finally, the intangibility of the economic and financial balance of government contracts remains assured in Law 14,133/2021, and arbitration is now expressly listed as a means of dispute resolution for matters such as economic and financial rebalance, default of contractual obligations and calculating indemnifications.

ORDINARY CONCESSIONS

Pursuant to Article 175 of Brazil's Constitution, the rendering of public services can be transferred to private companies through concessions (or permissions). Law No. 8,987/1895 ("Concession Law") regulates the general provisions of concession contracts, also known as "ordinary concession".

The States and the Municipalities can promote adaptations to the provisions of the Concession Law to tend to the particularities of the various forms of their services. However, it is undisputed that the provisions set forth by the States and Municipalities must not go against the federal law.

The Concession Law sets forth that every concession presupposes the rendering of services that are adequate to fully serve the users (adequate service is that which satisfy the conditions of regularity, continuity, efficiency,

security, modernity, generality and courtesy in its rendering and affordable tariffs). Because of that, the concession agreement usually has provisions imposing such obligations to the concessionaire.

Once the regularity and continuity of rendering public services is enforceable, the concessionaire must not stop rendering its services even when the grantor does not comply with its obligations. In general, a judicial decision must be granted in order to allow the concessionaire to stop the provision of public services in case of the grantor's default.

The law also defines the essential clauses that must be adopted in a concession agreement, such as the following: (i) the object, the area and the period of the concession; (ii) the manner, form and conditions for rendering the service; (iii) the criteria, indexes, formulas and parameters that define the quality of the services; (iv) the cost of the service and the criteria, and procedures for the readjustment and revision of the tariff; (v) the rights, guarantees and obligations of the granting authority and the concessionaire; (vi) the rights and duties of the users for acquisition and use of the service; (vii) the contractual and administrative penalties; and (viii) the conditions for the renewal of the contract term.

In ordinary concessions, the main source of income is the tariff paid by the costumer after "using" the service. The tariff is set in the amount offered in the winning bid and is expected to compensate the concessionaire from the investments made through the concession period and the profit percentage established in the invitation for bid. The concessionaire might also receive additional, ancillary or associated projects.

The assets involved in the provisions of the public services are subject to special regulation and are expected to become public property at the end of the concession term, once its assets are essential to the maintenance of the public service.

Article 23-A of the Concession Law expressly provides for arbitration as a means of dispute resolution between the concessionaire and the granting authority. The arbitration must take place in Brazil and be conducted in Portuguese but may be administered by either a Brazilian arbitrator center or an international one.

PUBLIC-PRIVATE PARTNERSHIPS

Federal Law No. 11,079/2004 ("PPP Law") regulates the public-private partnerships in Brazil. The PPP Law introduced into Brazilian law two new modalities of concession contracts: sponsored concessions and administrative concessions.

"Sponsored concessions" involve the granting of a public service (including or not public works) and tend to bypass the natural low attractiveness of the project, due to the impossibility to develop the concession only by receiving tariff revenue. For this reason, in addition to the tariff collected from the customers, the concessionaire is also paid by the granting authority with a pecuniary consideration. The concessionaire might also receive "ancillary revenue", arising from additional, ancillary or associated projects.

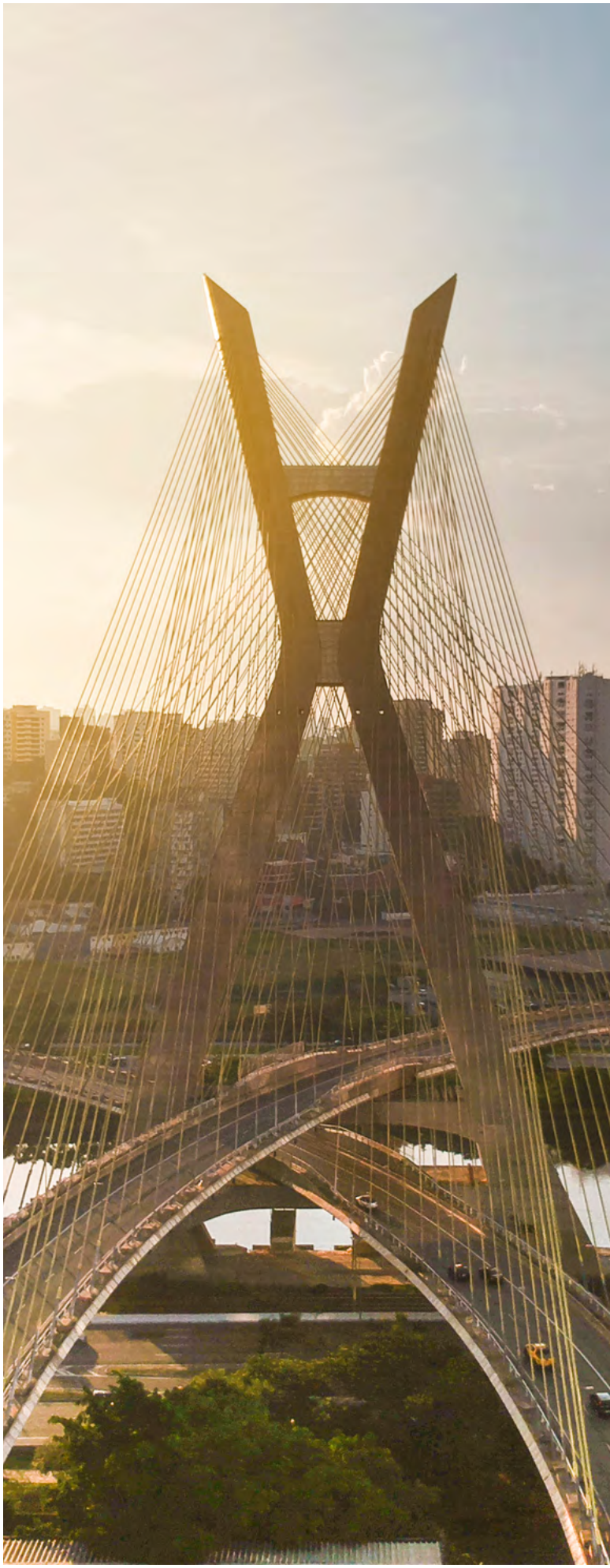
"Administrative concessions" are characterized by three elements: (i) the execution of a contract to provide services; (ii) the government as a direct or indirect user; and (iii) the inadmissibility of work execution or supply and installation of goods as the single object of the contracts. As the concessionaire provides services directly to the government or public entities, it receives only the public consideration, but can also exploit other

activities that generate ancillary revenues.

In addition, for the sponsored and administrative concessions, Brazilian PPP Law regulates the advanced payments (in Portuguese, aporte de recursos), which is the payment of resources to the private partner for investments up front, that is, prior to the delivery of services by the concessionaire and prior to the collection of tariffs. These resources must be put to use on construction works and the acquisition of revertible assets. Because of that, in the beginning of a concession, when CAPEX investments are concentrated and the long-term financial contract is typically under negotiation, the advanced payment helps the concessionaire achieve reasonable cash flow during this period of the concession. It is also important to reduce the amount of value subjected to risk of non-payment of future obligations.

For the purpose of preserving the usefulness of the regular concessions and other non-specific administrative contracts, the PPP law restricts the use of sponsored and administrative concessions for relevant projects. As a consequence, the PPP Law forbids the conclusion of PPP contracts: (i) with a contract value lower than BRL 10 million; (ii) with a period of services rendered of less than 5 (five) years; or (iii) that have, as their exclusive object, the supply of manpower, the supply and installation of equipment or the execution of a public work.

PPPs have distinctive features designed to provide stability for the mode and time of execution of contracts. In PPP projects (sponsored and administrative concessions), the granting power provides concessionaires with a public guarantee in the event of a default by the Public Administration. In addition, the PPP Law expressly admits the repartition of risks between the parties.



REGULAR CONCESSION	SPONSORED CONCESSION	ADMINISTRATIVE CONCESSION
MOTIVATION		
Concession of a public service to the final user (citizen), preceded or not by a public work (supply of workforce, supply and installation of equipment or execution of a public work are prohibited under this modality)	Concession of a public service to be rendered to the final user (citizen), preceded or not by a public work	Concession of a public service in which the Public Administration is the user (directly or indirectly)
PAYMENT		
Tariffs + ancillary revenues	Tariffs + Consideration + ancillary revenues	Consideration + ancillary revenues
GOVERNMENT SUBSIDY		
No, but the Government can, at the bidding stage, create subsidies for the provision of services to be granted.	Yes	Yes
TERM		
Unlimited	5 to 35 years	5 to 35 years
CONTRACT VALUE		
Unlimited	Minimum of R$10 million	Minimum of R$10 million
PUBLIC GUARANTEES		
Not Allowed	Allowed	Allowed

The main challenges to PPP projects are not directly related to defects in the PPP Law. As with concessions solely under the Concession Law (common concessions), the main difficulties for PPP projects are related to issues such as the economic feasibility of the project, lack of reliable guarantee structure, the definition of a proper risk matrix and the correct definition of the purpose of the contract and obligations of each party.

UNSOLICITED PROPOSALS: THE PROCEDURE TO EXPRESS INTEREST (PMI)

Public entities in Brazil are permitted to authorize private companies to undertake studies and research to model a PPP or concession project, known as the Procedure to Express Interest, or PMI (Procedimento de Manifestação de Interesse), which, at the federal level, is governed by Federal Decree No. 8,428/2015 ("PMI Decree"). States and municipalities either launch their own PMI regulations or apply the federal PMI Decree.

For private companies interested in developing infrastructure projects, participation in a PMI makes it possible to model the project in such a way that its risks are reduced and a deeper knowledge can be gained about the subject involved.

A PMI begins with the publication of a call notice by the government entity, pointing out the rules and guidelines for the preparation of the studies. The initiative may come from a private entity, and if accepted, the government entity must issue a call notice informing other interested parties about the PMI.

Interested parties can request authorization to undertake studies. Once authorized, they have a defined deadline to deliver the studies. The government entity may accept the studies totally or partially, although it is not mandatory for it to use such studies in future concession projects or PPP. If the studies are indeed used, the winners of the public procurement must reimburse those responsible for its preparation.

ENDNOTE

1. The term "privatization" is frequently used in Brazil in a broad manner. In a narrow sense, privatization refers to the process of transferring the ownership of a business, enterprise, assets and properties from the public sector to the private sector. However, the term also applies to public concessions and public-private partnerships, which are long-term contracts that transfer the provision of public services to the private sector.

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