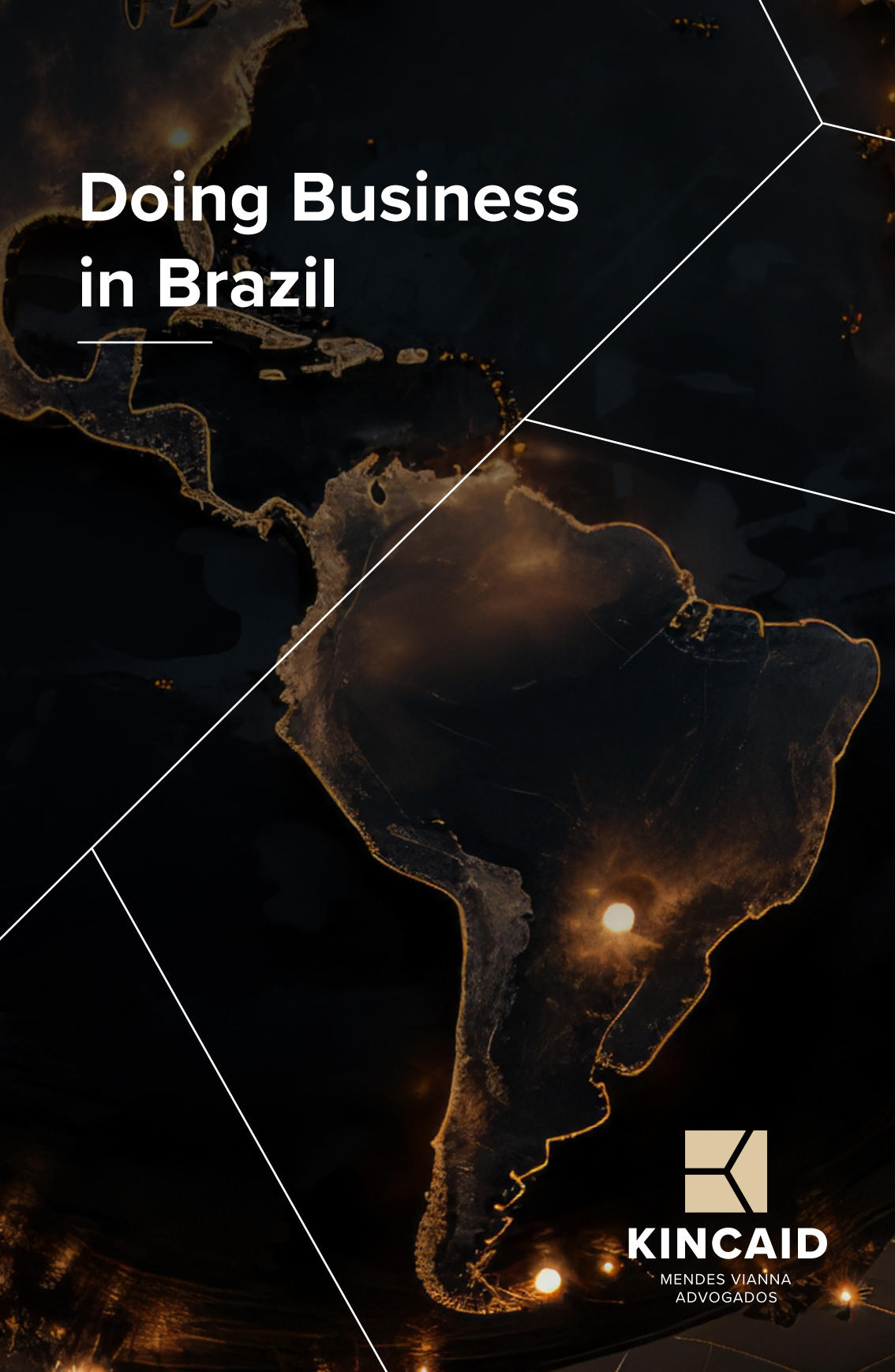
Doing Business in Brazil



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Doing Business in Brazil

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Country Overview

Brazil is a country of continental dimensions with more than 8.5 million square kilometers, which makes it the fifth largest in territorial extension of the planet. This dimension provides a huge diversity of landscapes, climate, topography, flora and fauna distributed in five regions. It also has a hydrographic network formed by large rivers and large volumes of water. Brazil brings together the largest river basins on the planet. Besides, its coastline runs for more than 7,000 kilometers along the Atlantic Ocean.

The country is home to the Amazon Rainforest, the largest rainforest in the world, famous for its biodiversity and for a large variety of urban forests distributed across the Brazilian territory. In addition to the natural wealth, Brazilian culture stands out for being diverse and unique. The population is mostly derived from indigenous societies, Africans and Europeans. Moreover, there has always been a constant flow of immigration, as the country received Italians, Japanese, Germans, Arabs, among other nationalities, who contributed to the cultural plurality of Brazil, today with more than 213 million habitants.

The sixth most populous country and the thirteenth economy in the world, Brazil is experiencing, after a period of recession, a moment of reforms implemented by the government that promise a positive outlook for the country's growth. Brazil occupies the 10th position in the global ranking of oil production according to the Statistical Yearbook 2021 of the National Agency of Petroleum, Natural Gas and Biofuels (ANP). The opportunities can also be seen, for example, in the agribusiness and infrastructure areas.

The purpose of this publication is to be a guide for potential investors in Brazil, with legal advice of Kincaid Mendes Vianna Advogados, a law firm that began its trajectory in Brazil 90 years ago and continues to see prosperity in the country.

1. Brazilian Economy

Recently, the World Bank announced that Brazil raised 33 places in the foreign trade ranking report. The country moved from the 139th to the 106th position, registering three consecutive years of evolution in the area.

The improvement reflects the government´s efforts to implement trade facilities measures, envisaging the recovery of the Brazilian economy. In addition, The IMF (International Monetary Fund) believes that Brazil will recover in the long term, reaching the 5th global position in 2050.

2. Brazilian Federal Structure

Brazil is divided into 27 federative units, being 26 states and one federal district, Brasília, the capital of the country.

These federative units are independent, with autonomous governing structures, legislative procedures and governmental authorities, as well as constitutions.

Such unit structure came with the constitution of 1988, which enacted a presidential system but with a decentralized political power.

Thus, the States have competence to all subjects that are not privative of the Union and the municipalities, since they are not contrary to the Federal Constitution.

3. The Brazilian Legal System

3.1 The adopted Legal System in Brazil

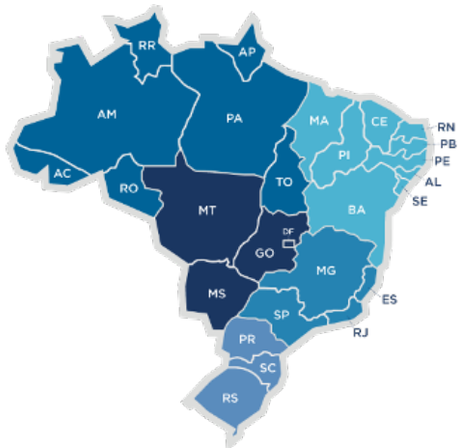
Brazil features a civil law system. Therefore, our court decisions are based on statutes, unlike the common law systems – where court decisions are one of the main sources of law.

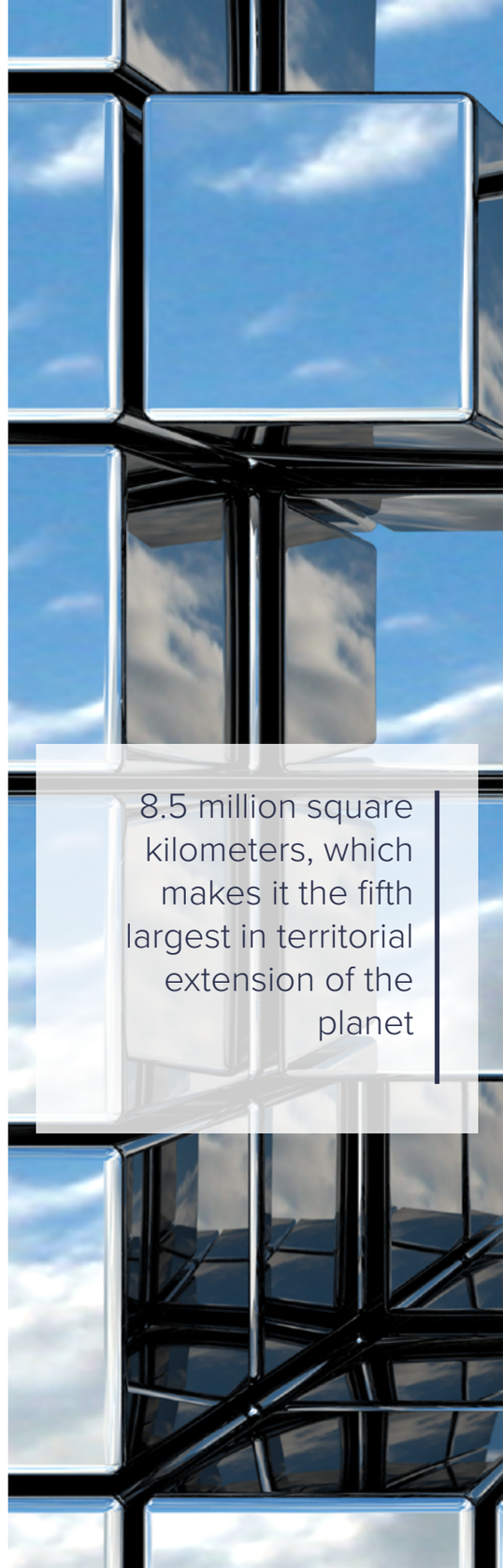
Consequently, apart from a small number of appellate decisions that have general applicability, court decisions in Brazil are not binding to other courts.

3.2 Brazilian Laws

As mentioned above, Brazil is formed by 26 states and a federal district. These states also have internal divisions, called municipalities. There are approximately 5570 of them, which also have its own legislative authority to a certain extent.

The states and municipalities may issue laws within the established limits of each legislative authority, as designated by the Federal Constitution.





8.5 million square kilometers, which makes it the fifth largest in territorial extension of the planet

3.3 Understanding the Brazilian type of government

The Brazilian Constitution is structured into three different types of branches – executive, judicial and legislative branches – in order to avoid abuses of power.

The Executive branch is formed by the direct Public Administration, such as the ministries, and the indirect Public Administration, such as public companies, with the president as the person in command. Voting is obligatory by law and the president must attain the majority of the votes of all citizens for a mandate of 4 years.

The Legislative branch is composed by the National Congress, which includes two chambers: the House of Representatives (Câmara dos Deputados) and the Senate. All members of the House of Representatives are elected by the people and the chosen representatives serve a 4-year mandate. For the Senate, each state and the Federal District elect three senators, with an eight-year term, renewed every four years, alternately, by one and two-thirds.

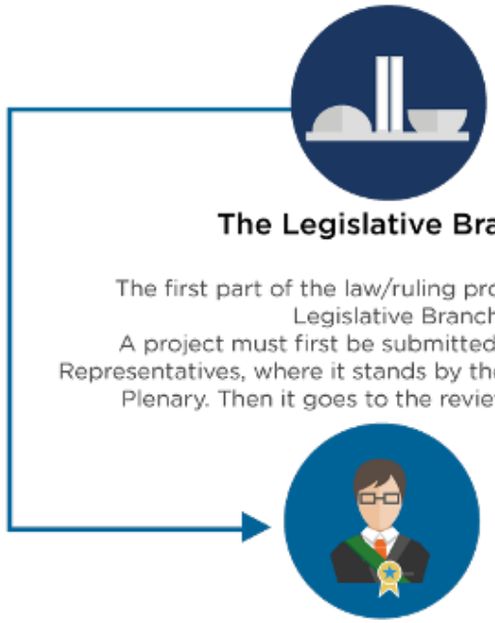
The Judicial branch is divided into 3 instances; first instance, where the claims are initiated; second instance, where the appeals are judged and the superior courts (Federal Supreme Court, Superior Court of Justice, Superior Court of Labor, electoral and military courts), which judge the appeals against the decisions of the second instance, based on specific grounds of violation of Federal laws or the Federal Constitution.

4. Brazilian Government Transparency

As a reflection of a new era and with the aim of government transparency, Brazil has a public transparency web portal (Portal da Transparência) (www.portaltransparencia.gov.br). The efficiency of the website was officially recognized by the United Nations in 2008, as it provides detailed and updated information on bids, signed contracts, budget spending and fund transfers made by federative units.

Another example of online public control offered to the society is the website www.comprasnet.gov.br, which allows direct consultation of bid notices, auctions held and electronic quotations, as well as management reports on the progress of purchases and savings obtained.

27 federative units, 26 states and one federal district, Brasília



The Legislative Branch

The first part of the law/ruling procedure is by the Legislative Branch.
A project must first be submitted to the House of Representatives, where it stands by the committees and the Plenary. Then it goes to the review of the Senate.

The Executive Branch

After the approval of both houses of National Congress, the project follows to presidential sanction. The president may decide on the sanction or veto, which may be in full or partially. If vetoed, the project returns to National Congress, which decides to uphold or reject the veto. If rejected, the project must be promulgated by the president.

Corporate

A foreign company that intends to do business in Brazil can create a branch office or incorporate a Brazilian company to develop its business.

The incorporation of a Brazilian company, even with 100% foreign capital, does not require governmental authorization and takes approximately 30-60 days

However, foreign companies that want to establish a branch, agency or establishment in Brazil must request authorization from the Federal Government for installation and operation of units, by means of an Ordinance published in the Official Gazette. Although the procedure to open a branch office of a foreign company in Brazil has been simplified over the last couple of years, taking today around 15-30 days to be completed, most foreign companies choose to incorporate a Brazilian company to start their business in the country.

As a general rule, Brazilian law does not prohibit or restrict the participation of foreign investment in business activities. Except for certain limitations, foreign investors are free to establish any business in Brazil without participation of a Brazilian entity as a partner.

The few areas in which foreign investment is either totally prohibited or limited to a certain minority interest include health and telecommunications services and media segments. In these restricted areas, foreign investors are required to enter into joint venture types of arrangements with Brazilian companies or individuals or organize a subsidiary company under Brazilian laws, depending on the specific case.

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Please find below a summarized overview of the procedures and requirements to set up a company in Brazil.

1. Incorporation of a Brazilian Company

Brazilian law provides that companies, in general, must have at least two partners, with no restriction as to the number of quotas held by those partners and their nationality, meaning that they can be foreign companies or individuals.

The capital stock may be paid in cash or assets. Should part of the capital be paid in assets, the value of these assets must be assessed by an evaluation report prepared by three independent experts or by an audit company, being duly submitted for the approval of the quota holders of the company.

Note that foreign investments in Brazil must be registered under the Brazilian Central Bank within 30 days as of the entry of the resources/investments in the country.

Important to note that Brazilian law provides several forms of corporate organization, with the most widely adopted being the Limited Liability Companies (Sociedades Limitadas) and the Anonymous Corporations (Sociedades Anônimas)

With the publication and validity of law 13.874/2019 (Lei da Liberdade Econômica), Brazilian law also adopted a slightly different type of Limited Liability Company, called “Unipessoal”, composed of only one quotaholder (Brazilian or foreigner) of Limited Liability Companies (Sociedades Limitadas). Below we will briefly describe the most common types of corporate organizations: Limited Liability Companies, Anonymous Corporations, and Unipessoal.

1.1 Limited Liability Companies (Sociedades Limitadas)

The Brazilian Civil Code governs Limited Liability Companies. The capital stock is divided into quotas with the same face value, where each quota representing the amount in money, credits, rights or assets contributed by a quota holder for the formation of the company. There is no minimum required capital stock for most activities in Brazil, it should only be compatible with the activities of the company.

The capital stock established in the Articles of Incorporation and subscribed by the partners may not be immediately paid. The terms of payment should be established in the Articles of Incorporation and are recommended not to exceed a 6-month payment period.

The liability of the quota holders is limited to their participation in the capital stock. However, the Brazilian Civil Code determines an exception that the quota

There is no minimum required capital stock for most activities in Brazil, it should only be compatible with the activities of the company

holders must be jointly liable for the fully pay-in of the capital stock.

Management should be taken up by a Brazilian or a foreign individual with a permanent visa. If the quota holders are foreign, they must appoint an attorney-in-fact who must be an individual resident in the country with powers to receive service of process on behalf of such foreign quota holders.

Furthermore, the foreign quotaholders are required to have a taxpayer registration number in Brazil, as well have a Brazilian citizen or foreign individual with permanent visa in Brazil as a representative, supported by power of attorney. The power of attorney must be notarized and apostilled, or consularized if the country of origin of the quota holder is not a signatory of the Apostille Convention, and subsequently must be translated by an sworn translator in Brazil to be accepted.

The basic corporate document is the Articles of Incorporation, which must state the company's name, duration, purposes, headquarters' address, manager, each partner's name and identification, and the amount of the capital stock and how it is allocated among the partners, as well as the quorum of deliberations. Such Articles of Incorporation must be filed before the Board of Trade of the State where the company will be headquartered at with the supporting documents, meaning the power of attorney, as applicable, and the documents of the quota holders.

1.2 Unipessoal

The Limited Liability Companies may be composed of one or more quotaholders. When formed by a single quotaholder (Brazilian or foreigner), it will be called a Unipessoal.

Unipessoal was created in 2019 and is a type of limited liability company composed of only one quotaholder, being an individual or another company.

If Unipessoal, the provisions of the articles of association shall apply to the incorporation document of the sole quotaholder.

1.3 Corporations (Sociedades Anônimas)

The capital stock of the corporations is divided into shares, which represent fractions of the entity's share capital.

A corporation may be formed by public or private subscription. In either case, all the shares must be subscribed by at least 2 shareholders, and a minimum of 10% of the capital must be paid up in cash at the moment of the incorporation. The paid-up capital stock must be deposited with a commercial bank for the formation of the company and such deposit must be presented to the Board of Trade.

All documents relating to the formation of the company must also be filed in the Board of Trade, and subsequently published in the Official Gazette and in another widely circulated newspaper located where the company has its headquarters.

The company's bylaws state the amount of capital actually subscribed for by the shareholders. However, the transfer of the shares is provided under a Transference Registration of Shares Book or by the custodian agent elected by the shareholders, meaning that due to the characteristics of the corporation, each transference does not need to be presented to the Board of Trade.

In addition, the corporation may have authorized capital, which is a "cap" of capital outlined in the bylaws, up to which the capital actually subscribed for by the shareholders may be increased without the obligation of amending the bylaws. The authorized capital limit may also consist of a number of shares, rather than an amount expressed in currency.

A corporation's capital may be divided into 2 kinds of shares: common and preferred. The main difference between the common and preferred shares is the voting rights versus the preference on the distribution of dividends. They may be divided into different classes providing for different advantages, rights or restrictions.

Shares do not have a par value and may be paid up in cash or assets. Appraisal of the assets is mandatory, and the evaluation report must be approved by the shareholders in a general meeting.

Corporations must have at least two officers who must be Brazilian residents or foreigners with a permanent visa. Corporations can also have a board of directors, if formed with at least three directors, without the need that such officers be Brazilian residents.

1.4 Main Differences Between a Corporation and a Limited Liability Company

In general terms, a Limited Liability Company is a less complex company form than a corporation. By using the Limited form, investors can avoid corporation legal formalities, such as calling shareholders' meetings, maintaining books of minutes of meetings, share registry books and publishing on newspapers financial statements and minutes of shareholders' meetings.

On the other hand, for main decisions corporations have a minimum quorum of deliberations of 51% of the shares, while the limited liability companies need only more than half of the company's capital stock for the approval of resolutions.

2. Required Permits for Incorporating a Brazilian Company

2.1 Federal Taxpayer ID (CNPJ)

Along with the filing of the Articles of Incorporation and the supporting documentation at the Board of Trade, a corporate taxpayer registry number (CNPJ) for the company will be requested from the Brazilian Internal Revenue Service (IRS) Office. The issuance of this registration occurs jointly with the file, as the Board of Trade has a unified system with the Brazilian IRS.

2.2 Operation License, Local Permit and Fire Department Operation License

The first step for obtaining the operation license is requesting a consultation, by means of a presentation of documents of the intended place, before the filing of the Articles of Incorporation in the Board of Trade, informing the location and activities to be performed.

After the analysis of the consultation by the municipality authority and the filing of the corporate documents, the local permit (Alvará) will be available.

2.3 State Taxpayer ID (Inscrição Estadual) and/or Local Taxpayer ID (Inscrição Municipal)

If the Brazilian company to be incorporated will be involved in the sale of goods, importation, transportation and/or other transactions subject to State VAT (ICMS), it is also necessary to enroll with the competent State and obtain a State Taxpayer ID (Inscrição Estadual).

Conversely, if the Brazilian company will be engaged in service activities, the company will need to obtain the Local Taxpayer ID (Inscrição Municipal). The Local Taxpayer ID is typically obtained together with the Local Permit.

2.4 Brazilian Social Security (INSS) and Severance Fund (FGTS)

Brazilian companies must also be registered before the Brazilian Social Security Authorities (INSS) and the Severance Fund (FGTS) to allow the enrollment of company employees.

Note that depending on the nature of activities and business to be developed by the company, other licenses might be required.

3. Visa

Brazil adopts a policy of reciprocity regarding visas. This means that individuals of countries that require visas for Brazilian citizens will need a visa to travel to Brazil. In this sense, note that Brazil has signed visa exemption agreements with about 90 countries.

> The first step for obtaining the operation license is requesting a consultation

The Ministry of Foreign Affairs is the body of the Brazilian government responsible for granting visas, being understood that the Brazilian visa will never be granted in Brazilian territory. Therefore, it is not possible to obtain your visa in airports, ports of entry or any other point of the Brazilian border.

Also note that visas are classified according to the purpose of the trip to Brazil, and not according to the type of passport presented.

In general terms, there are 2 main types of visa, the visas for visiting the country and work / resident visas.

3.1 Tourist Visa

The tourist visa will be issued to foreigners traveling to Brazil for staying up to 90 days without purposes of immigration or the exercise of paid activity (daily allowances, artistic paychecks, compensation or other travel expenses are allowed).

Tourist visas can be granted for those traveling for tourism, business, transit, artistic or sports activities, study, volunteer work, or to attend to conferences, seminars or meetings, among other purposes. Brazil has adopted an electronic visas system that is currently available for nationals of Australia, Canada, United States and Japan. Nationals of these countries may apply for a Visit Visa and obtain it remotely, with no need to visit a consulate, since there is no physical label.

3.2 Work / Resident Visas

Foreigners willing to work/be resident in Brazil may obtain one of the following available visas: (i) Permanent Visa for Manager; (ii) Permanent Visa for Investor; (iii) Visa with Work Contract with a Brazilian Company; or a (iv) Visa for Technical Assistance.

After two years in Brazil, holders of a temporary residence visa can request residence for an indefinite period to the Federal Police.

3.3 Permanent Visa for Managers

In this case, the foreign national shall be administrator/director of a Brazilian company, appointed in the company's bylaws, and shall comply with the Normative Resolution CNI No. 11/2017.

In order to appoint a foreign administrator, the foreign investing company (quota holder) must make a minimum investment of R$ 600,000.00 per foreign administrator, in the Brazilian Company's capital.

Should the minimum investment be of R$ 150,000.00, there will still be a requirement for the creation of 10 new jobs for Brazilian nationals over a period of 2 years.

This visa is valid through the entire period in which the foreign national is administrator of the Brazilian Company, that is, indeterminately. The ID card granted to the foreign is valid for a 5-year period and should be renewed after that.

3.4 Permanent Visa for Investors

The Permanent Visa is granted to the foreign national that intends to take up residence in Brazil for purposes of investing own capital from abroad in productive activities, as per the Normative Resolution CNI No. 13/2017.

The granting of the visa is subject to proof of investment, in foreign currency, of an amount equal to or greater than R$ 500,000.00. The investment may be in a new company or in a pre-existing one.

After the granting of the Visa, the foreign national will be considered an investor and their ID will be granted for a 5-year period, counted as of the date of issuance thereof. The ID Card must be replaced after this period, upon proof of the continuation of the investment.

3.5 Visa with Work Contract with a Brazilian Company

The Ministry of Justice and Public Security may grant a residence permit for work purposes for a foreigner that will have an employment contract with a Brazilian company, as per the Normative Resolution CNI No. 2/2017.

To obtain this permit, the foreigner must have a work contract with a Brazilian company, valid for at least 2 years.

The Brazilian company must have for each foreigner employed at least 2 Brazilian nationals on the payroll. This proportion must also be observed in relation to the foreigner's salary in Brazil x Brazilian employees' payroll.

The foreigner must offer proof of schooling by means of a diploma (in the event of a university graduate) or a Technical Certificate/School Record (in the case of a technician) and must also prove a minimum professional experience.

As to the salary to be received in Brazil, this should be of at least the same value receiving abroad, and must be equal to or greater than the salary paid to Brazilians occupying the same position. This visa is valid for 2 years.

3.6 Visa for Technical Assistance

The Ministry may grant a residence permit for work purposes for foreigners who will perform technical roles for the Brazilian company without an employment contract therewith, that is to say, the foreigner remains an employee of the foreign company which is providing services to the Brazilian Company. Administrative, financial and management activities will not be considered technical, as per the Normative Resolution CNI No. 3/2017. This visa is valid only for up to 1 year.

Therefore, such permit may be granted in the case of technical cooperation between companies of the same group. The technical assistance agreement between the foreign and Brazilian company will have to be submitted to the Brazilian authorities. A Training Program for Brazilian employees must also be submitted, and the company must be prepared to offer proof of the results of such a Training Program for purposes of granting new Visas and/or extensions of the existing ones.

3.7 Visa for Technical Assistance

Foreigner whose work can be performed remotely can apply for a residence permit as per the Normative Resolution CNI No. 45/2021.

To obtain this permit, the foreigner must have a service contract signed by a foreigner employer and statement that work activities can be performed online. The foreigner must prove a minimum monthly income of US$ 1,500.00 or an available balance of at least US$ 18,000.00.

4. Foreign Exchange Control

The majority of the sectors of the Brazilian economy receive foreign investment without heavy legal constraint. However, all foreign exchanges are subject to control by the Brazilian Central Bank (BACEN), meaning that any transaction between a nonresident and a Brazilian resident/ company shall comply with foreign exchange registration regulations.

The main standard regulating foreign investment in the country is Law No. 4131/1962. According to this law, the CMN (The National Monetary Council), the CVM (Securities Exchange Commission) and the BACEN are the main organs governing specific types of foreign investment in Brazil.

Foreign investments are required by law to be registered in BACEN in order to enable remittance of dividends, interests and repatriation of principals, among other transactions. Following the registration of the company's incorporation documents before the Board of Trade, should the company have foreign quota holders, it must obtain a registration with the companies' registry of the Central Bank (CADEMP).

The Electronic Declaratory Registration (RDE) is a computerized system, structured in four modules: Foreign Direct Investment (IED), Financial Operations (ROF), Portfolio Investments (PORTFOLIO) and Brazilian Capitals Abroad (CBE). With regards to the nonresident investor or lender, the most widely used forms are the RDE-IED and the RDE-ROF.

4.1 Foreign Direct Investment

The registration of foreign direct investment in the corporate capital of a Brazilian company is carried out through BACEN's electronic system, known as SISBACEN. A permanent number will be issued, called RDE-IED, pairing the Brazilian company and the partner.

Pursuant to Resolution 3.844/2010, both the foreign investor and the Brazilian company are jointly responsible for the registration. The registration should be made both in foreign currency and in the corresponding amount in the local currency.

The participation of the quota holder in the corporate capital of the Brazilian company shall be registered as foreign direct investment. Any reorganization involving the Brazilian company receiving the investment, such as share splits, consolidations and mergers, must also be registered.

At its discretion, BACEN may suspend or cancel the equity investment registration and/or impose fines if the furnishing of information to the Bank is incorrect, incomplete or untimely, or for failing to furnish required information according to applicable rules.

It is importante to hightlight that the Foreign Exchange Law will change from 2023, as per the New Foreign Exchange Law was sanctioned and published (Law 14,286/2021).

4.2 Foreign Financial Operations

The registration of financial operations before BACEN is performed by the RDE-ROF. It is required for foreign loans, foreign financing and foreign financial leases. The borrower or leaseholder is responsible for carrying out the registration.

Registration of the liability transactions should be made in the currency agreed between the nonresident lender and the resident borrower and must be carried out by the resident borrower or its representative.

Any funds entering Brazil pursuant to a foreign loan, either those contracted directly or through the issuing of securities

on the international market, are subject to registration. After the resources have entered the country, any changes regarding the maturity date, financial conditions and debtors are generally permitted, but are also subject to registration.

Besides furnishing basic information concerning the borrower, lender(s) and guarantor(s), it is also necessary to furnish data relating to the financial conditions of the transaction and terms of payment for the principal, interest and other fees, as well as the document(s) in which the transaction conditions are set forth or the terms of credit and guarantee, when applicable. A payment scheme to the nonresident lender must also be included.

A foreign loan transaction registered with the RDE-ROF can also be converted into a foreign direct investment in the corporate capital of a Brazilian company, provided that the foreign investor complies Registration of the liability transactions should be made in the currency agreed between the nonresident lender and the resident borrower and must be carried out by the resident borrower or its representative.

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A foreign loan transaction registered with the RDE-ROF can also be converted into a foreign direct investment in the corporate capital of a Brazilian company, provided that the foreign investor complies.

On December 30th, 2021, the New Foreign Exchange Law was sanctioned and published (“Law 14,286/2021”). The Law 14,286/2021provides for the Brazilian foreign exchange market, Brazilian capital abroad, foreign capital in the country and the provision of information to the Central Bank of Brazil and amend others related laws.

The Law 14,286/20211 will enter into force only one (1) year after its publication that is, as of December 30, 2022. It is important to emphasize that the Brazilian Central Bank and the National Monetary Council will issue other infra-legal rules to discipline the topics covered in 14,286/2021.

The main changes established by Law 14,286/2021 are:

Increase the Circulation of Brazilian Currency (Reais) Abroad

The authorization to the authorized banks to operate in the foreign exchange market, in the form of a regulation to be issued by the Brazilian Central Bank, to comply with payment orders in reais received from abroad or sent abroad, with accounts in reais held in banks, held by institutions domiciled or headquartered abroad and which are subject to financial regulation and supervision in their country of origin.

Payment in Foreign Currency of Obligations Enforceable in Brazil

The article 13 provides the situations in which obligations enforceable in Brazil can be paid in foreign currency. It is important to mention the situation with contracts entered by exporters in which the counterparty is a concessionaire (concessionário), permissionaire (permissionário), authoritative or lessee in the infrastructure sectors.

Equal treatment of resident and non-resident accounts in Brazilian currency (reais) in Brazil

The accounts in Brazilian reais held by non-residents will have the same treatment as accounts in Brazilian reais held by residents, except for the requirements and procedures that the Brazilian Central Bank may establish.

Private Compensation between Residents and Non-Residents

The Law 14,286/2021 authorizes the private offsetting of credits or values between residents and non-residents, in the cases provided for in the Brazilian Central Bank regulation. Under current legislation, such compensation is prohibited.

Competence for Classification of Exchange Transaction

The Law 14,286/2021 transfers to the taxpayer the competence to classify his own foreign exchange transaction, as provided for in the regulation to be published by the Brazilian Central Bank. Until then, this duty was the responsibility of financial institutions, which could even be penalized in case of misclassification of the nature of the operation. However, the new law obliges financial institutions to provide assistance, when necessary, to their customers for the correct classification of said operations.

Documents Required by Institutions in Foreign Exchange Transactions

The Law 14,286/2021 prohibits institutions authorized to operate in the foreign exchange market from the possibility of demanding documents, data or certificates from their clients that are available in their databases or in public and private databases with wide access. However, the customer is entitled to present the aforementioned documents, data or certificates.

Investment of Funds Raised in Brazil in Operations Abroad

The Law 14,286/2021 extends to financial institutions and other institutions authorized by the Brazilian Central Bank (including payment institutions) the competence to allocate, invest and allocate for credit and financing operations, in the country and abroad, the funds raised in the country and abroad, subject to the requirements regulatory and prudential measures established by the National Monetary Council and the Brazilian Central Bank.

Centralization of Regulatory Capacity in the Brazilian Central Bank

The Law 14,286/2021 determines the centralization of the regulatory capacity of the Brazilian exchange market in the figure of the Brazilian Central Bank in several articles. The article 18 grants the Brazilian Central Bank the ability to establish special requirements and procedures for operations in the exchange market in a more efficient manner.

Declaration of amounts greater than US$10,000.00 in foreign currency in cash, upon entry and exit from Brazil

The Law 14,286/21 raises the amount that must be declared in foreign currency in cash, upon entering or leaving the country, from R$10,000.00 to USD$10,000.00.

Additionally, Brazilian Central Bank will regulate which types of institutions authorized to operate in the foreign exchange market that will not be able to enter the country and leave the country in national or foreign currency, considering the size, nature and business model of the institutions, in line with the principle of regulatory proportionality.

Public Procurement

In Brazil, the applicable rules for contracts between private individuals or corporations are quite different from the ones applicable for contracting with the Brazilian Public Administration, State-Owned Companies and Mixed-Economy Companies. Public held companies must abide to strict laws and regulations that as a rule require a public bid to be held for all contracts and sales, with a few exceptions.

The general rules on public bids and administrative contracts related to works and services within the scope of the Union, States, Federal District, and the Municipalities are set forth by Law 8,666/1993 (Procurement Law) and Law 14,133/2021 (New Procurement and Administrative Contracts Law).

Law 13,303/2016 (State Owned Company Act) directed to the corporate governance of publicly held companies (state-owned companies and mixed-economy companies), made significant changes in the hiring and bidding procedures applicable to such companies. Specific regulations applied to those companies are designed to be a middle term between the regulations applicable to public companies and those applicable to private companies in general.

Petrobras, a mixed-economy company, started issuing bids abiding by the State Owned Company Act on June 2018, and by March 2019 had already contracted over R$ 1 billion based on the new regulations. Following are highlights of Petrobras' contracting procedures.

1. Qualification

Companies may be enlisted in a pre-qualified list of companies able to provide services or goods to Petrobras. Non-pre-qualified companies are allowed to participate in tenders, provided that they comply with the qualification requirements of the specific tender. Qualification is verified after the judgment, classification and negotiation of the proposals.

2. Publicity

Opportunities are published at Petrobras' online system (Petronect) and notices containing the summaries of the bidding documents and contracts must be previously published in the Official Gazette, in addition to the internet.

Public companies are required to provide to any person full copies of all contracts and disclose information on the specific bidding procedure.

Petrobras Corruption Prevention Program and Integrity Risk Degree:

PETROBRAS may refuse to contract with entities that are classified as high integrity risk, as defined by Petrobras by criteria publicized at Petrobras' website.

3. Bidding Procedures

There are 4 types of bidding procedures:

Open: public and successive bids, ascending or descending;

Closed: proposals are delivered closed and are then opened at the same time. The proposal with the lower amount wins;

There are 4 types of bidding procedures:
i. Open;
ii. Closed;
iii. Mixed;
iv. Auction.

Mixed: when the object of the tender can be split into different types of bidding procedures (open or closed);

Auction: similar to the open bidding procedure, but designed to goods and services where a simple description of standard products is sufficient to identify the goods or services to be purchased.

4. Judgment Criteria

The bidding procedure may set the following criteria for a decision: lower price, highest discount; best technique; artistic content; technique and price; greater price offer; greater economic return; better allocation of goods/assets.

5. Contractual Term

Contracts can only have a maximum term of 5 years, including any possible extensions, except in certain specific cases.

6. Compliance

Good corporate governance and compliance practices are a pillar of support for business with Petrobras. Contracts may include clauses related to compliance obligations, which aim to establish a business relationship with suppliers based on ethics, integrity and transparency.

Employment Relations

The employment relations in Brazil are mostly governed by the Brazilian Consolidation of Labor Laws (CLT), the Brazilian Federal Constitution and the Collective Bargaining Agreement and Conventions, which also have an important role in the labor relationships.

According to the Labor Legislation an employee is a person who provides services with all characteristic elements of the employment relationship, which are: personal service, subordination, remuneration, and no casualness.

1. Basic Rights of the Employees

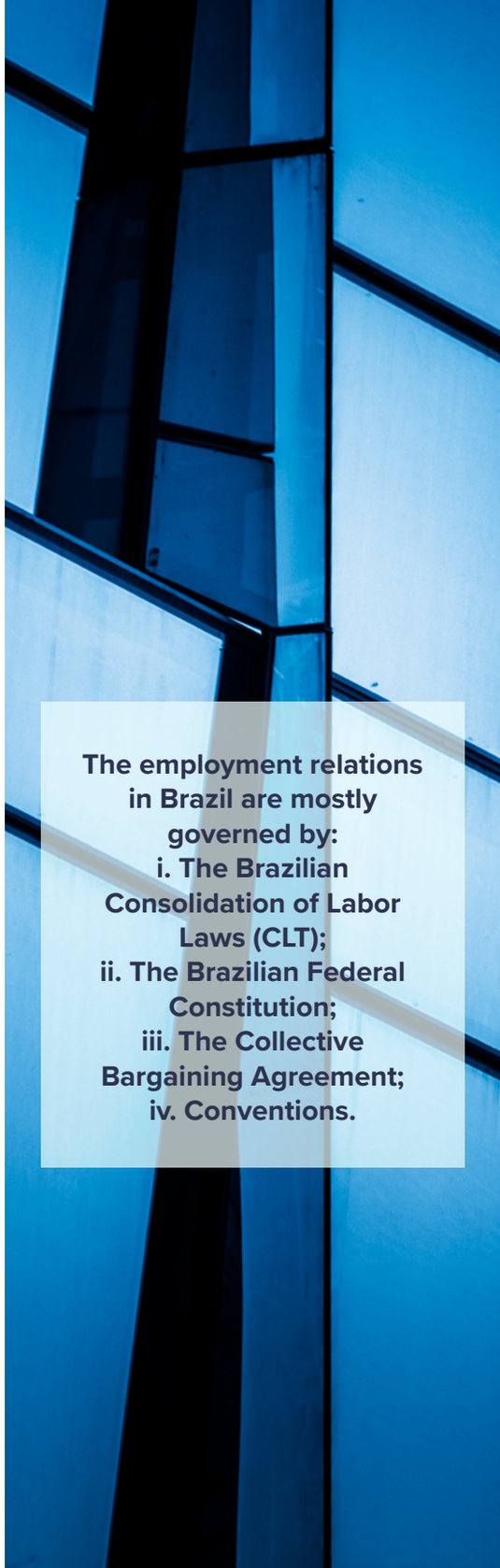
1.1 Salary

Article 3 of the CLT defines the compensation for the services rendered to the employer as a requisite of the employment relationship. This compensation cannot be less than the minimum salary established by the government, which is approximately R$ 1,212.00 (for 2022 calendar year; note that each year, on January 1st the minimum wage is adjusted due to the inflation). The minimum salary can also be set by a state law.

Moreover, it is important to highlight that Collective Bargaining Agreements or Conventions can provide for a higher minimum wage to be paid to a certain category of employees.

1.2 Paid vacation time

Article 134 of the CLT provides that vacation time shall be granted to the employee whenever the employer considers convenient after 12 months of employment.



The employment relations in Brazil are mostly governed by:
i. The Brazilian Consolidation of Labor Laws (CLT);
ii. The Brazilian Federal Constitution;
iii. The Collective Bargaining Agreement;
iv. Conventions.

This vacation time must be enjoyed within the 12-month subsequent period to the date on which the employee has earned the right to vacation. The annual vacations shall be paid, with an additional minimum of one third of the employees' normal salary, as provided for by article 7, XVII of the Brazilian Federal Constitution.

Vacations must be granted in a single period and the employee shall be advised with at least 30 days in advance. Furthermore, in case the employee agrees, the vacation can be taken in up to three periods, one of which cannot be less than 14 consecutive days and the others cannot be less than 5 consecutive days, each.

In the event of termination of the employment contract by the employer before the end of 12 months of employment, the employee will have the right to receive the proportional amount corresponding to the worked period, plus an additional month of prior notice, with an additional minimum of one third of the employee's normal salary.

1.3 13th Salary (Christmas Bonus)

The employee has the right to a 13th salary equivalent to his normal monthly compensation. The 13th salary is owed in two installments: the first one shall be paid until November 30th and the second until December 20th and corresponds to 1/12 of the total salary owed per month of employment in the corresponding year.

In the event of termination of the employment contract by the employer before the end of 12 months of employment, the employee will have the right to receive the proportional amount corresponding to the worked period, plus an additional month of prior notice.

1.4 Additional for Dangerous activities and Unhealthy Conditions at the Workplace:

If the employee is subject to work in dangerous activities or in unhealthy conditions, as defined by articles 189 to 197 of the CLT, and he/she shall be entitled to receive an additional of up to 30% of the salary, relative to dangerous activities or an additional that can be of 10%, 20% or 40% of the minimum wage depending on the unsanitary levels that the work environment offers.

1.5 Work Journey and Overtime

The daily working hours is 8 hours and cannot exceed 44 hours a week, with 1 hour for lunch/rest per day of work. The employee may, however, add 2 hours to his daily working hours, subject to prior agreement with the employer.

In such cases, compensation for each additional hour will be at least 50% higher than the normal hour salary. This additional payment may be increased by Collective Bargaining Conventions or Agreements.

Also, employees are entitled to a paid weekly rest, preferably on Sundays. In case the employee works on Sundays or holidays he will be entitled to receive the overtime increase by 100% higher than the normal hour salary.

It shall be mentioned that the Collective Bargaining Conventions or Agreements can provide for different working hours, such as the 12 hours followed by 36 hours rest.

Moreover, article 62 of the CLT provides for certain positions that are not subject to the overtime regimen, such as the external worker, the employees in position of trust and teleworking employees. In such cases, the requirements of the article 62 and the jurisprudence shall be observed.

2. Termination

2.1 Prior Notice of Dismissal

In case of dismissal of an employee without cause, the employer must give prior notice from 30 to 90 days to the employee, which will depend on the period of time that the employee worked in the company, being added to the 30 days base prior notice 3 days for each complete year worked.

In case the employer does not want to keep the employee during the prior notice period, it must indemnify the employee for this period as if the employee has worked for such period. The payment must occur up to 10 days upon termination of the employment agreement, alongside the other severance funds.

The severance funds due to the employee in case of dismissal without grounds will be the salary from the last month of work; proportional 13th salary, accrued and proportional vacations plus 1/3 and the fine of 40% of the total amount deposited in the FGTS account during the employment agreement (severance fund).

2.2 Severance Fund (FGTS)

The FGTS is a labor credit resulting from forced savings on the part of the employee, conceived to assist him/her in exceptional situations during the term of the employment contract or after the termination thereof. The employer is obliged to collect 8% of the worker's compensation and deposit that amount in a specific account in the name of the employee up to the 7th day of the subsequent month.

2.3 Brazilian Social Security Contribution (INSS)

According to Article 195 of the Federal Constitution, the Social Security will be financed by funds coming from the government budgets and by Social Contributions paid by (i) employers, over the payroll and other income related to workforce paid or credited to individuals who render services at any kind to such company even without employment ties; and (ii) individuals, over the amounts received subject to a threshold cap.

The payment to Social Security due by the company and the individuals is the payment that is due by the employer, who must also withhold and deduct from the employees' salary the portion that the employee must contribute.

2.4 Union and Collective Bargaining Agreements and Conventions

The Brazilian Constitution adopted the principle of Union unity, prohibiting the creation of more than one Union, on any level, representing a professional or economic class, in the same territory, which will be defined by the interested workers or employers, covering an area not smaller than a municipality.

In Brazil there are Unions representing the employees and Unions representing the employers.

The Union is responsible for defending the collective or individual rights and interests of the class/companies, including in legal or administrative issues, being responsible for the negotiation of the terms of the Collective Agreements and Conventions. The conventions are signed between the union of the employees and the union of the employers and the agreements are signed between the union of the employees and the company.

In this sense, compliance with the Labor Collective Bargaining Agreements or Conventions is mandatory, considering that it is an instrument of a juridical rule nature, endowed with essential power that makes it applicable to individual labor relations of all those who are a part of the appropriate Union classes, whether unionized or not, as long as they are located in their base territory.

Tax

Brazil is a civil law jurisdiction, meaning that taxes and contributions are provided under statutory rules.

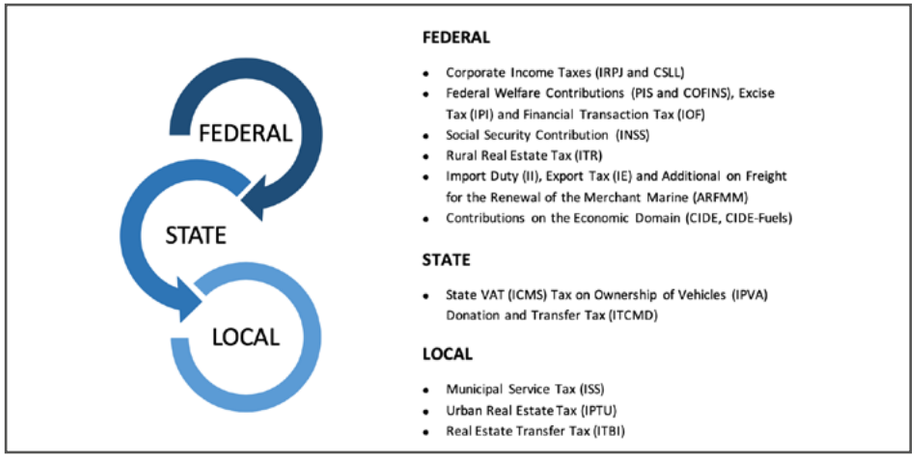
Brazilian tax framework is provided under the Brazilian Constitution, under which taxes and contributions are levied at Federal, State and Municipal levels.

The corporate taxations are mainly levied at the Federal level. For the indirect taxes, Brazilian Federal Constitution has segregated the taxation over manufacturing, sale of goods and services among Federal, State and Municipality levels.

In addition, there are taxes levied over financial transactions, ownership and transference of properties, social welfare contributions, social contributions on economical domains, among others.

Brazilian tax legislation also requires the compliance with different tax basis, withholding obligations and tax compliance.

Let us highlight that on December 20, 2023, the Brazilian Congress enacted the Constitutional Amendment 132 changing the taxes over consumption as of 2026.



Among the changes, the PIS and COFINS will be gradually replaced by the CBS (Contribution on Goods and Services) and the ICMS and ISS will be replaced by the IBS (Tax on Good and Services). An excise tax (IS) will be created over goods and services which are detrimental to human health and the environment. These changes still requires additional law to be implemented.

i. The proposed reform on the taxes over the consumption (PECs 45/2019 and 110/2019);

ii. The replacement of the Federal Welfare Contributions (PIS and COFINS) to the so-called CBS (PL 3887/2020) – first phase of the tax reform filed by Brazilian Government;

iii. The tax reform on the income (PL 2887/2021 and the Substitutive Bill of Law 735/2020), which, among other changes, reduces the corporate income taxes and imposes taxation on dividends.

This may be a hot topic discussion for the upcoming year.

1. Corporate Taxation

1.1. Corporate Income Taxes (IRPJ and CSLL)

The Corporate Income Tax (IRPJ) and the Social Contribution on Net Profits (CSLL) are due by all companies in Brazil. There are two main methodologies for corporate income taxes accrual: the real profit basis or the presumed profit basis.

Real Profit: Under this methodology, the IRPJ is levied over the company's net profits, assessed by the difference between company's revenues and its costs and expenses, as adjusted by the Brazilian statutory rules. The company may opt to calculate the IRPJ on a quarter or annual basis. IRPJ is computed at 15% rate on the adjusted net income added by a 10% surtax on net income exceeding R$ 60,000.00 per quarter or R$ 240,000.00 per year.

Presumed Profit: Available for companies with revenues lower than R$ 78 million in the previous fiscal year, except for certain activities (e.g. financial institutions) or conditions (e.g. companies which have profits, capital gains or other earnings originated abroad). Under this methodology, the tax basis corresponds to a different percentage of the gross revenue. For most industry and commerce activities, the tax basis corresponds to 8% of gross revenues, but for services companies, the tax basis is 32% of the gross revenue. The IRPJ is calculated on a quarterly basis, levied at a 15% rate, added by a 10% surtax levied on the income exceeding R$ 60,000.00 per quarter.

In addition to the IRPJ, the Brazilian companies must also pay the Social Contribution on Net Profit (CSLL). The CSLL is, in fact, a corporate income tax surcharge, applying at the rate of 9% for most companies. Similar to IRPJ, CSLL tax basis is the net income and taxpayers may opt to calculate CSSL on a quarterly or annual basis.

Thus, Brazilian companies should consider the total corporate income taxes rate as 34% (15% IRPJ + 10% additional rate and 9% for CSLL).

The Corporate Income Tax (IRPJ) and the Social Contribution on Net Profits (CSLL) are due by all companies in Brazil

2. Transactional Taxes

As outlined above, the Constitutional Amendment 132/2023 provides for a tax reform on the taxes over consumption as of 2026. These changes still need to be regulated by several laws to be enacted by the Brazilian Congress.

Please find below the explanation of the taxes currently applied in Brazil:

2.1. Federal Welfare Contributions (PIS and COFINS)

Federal Welfare Contributions (PIS and COFINS) are levied on the company's gross revenues. Also for PIS and COFINS there are two main methodologies: the non-cumulative and the cumulative regimes.

The non-cumulative regime applies to most companies in Brazil, except for certain companies or activities provided by law. The overall rate is 9.25% (1.65% for PIS and 7.6% for COFINS) and companies are able to take credit at the same percentage over listed input transactions, such as goods and services purchased and used in the manufacturing of other goods or rendering of services, lease of real estate, machinery and equipment, purchase of machinery, equipment and other goods qualified as fixed asset, constructions and repairs to leased real estate property, and electricity.

The cumulative regime applies to listed situations (e.g. companies that accrue for IRPJ and CSLL under the presumed profit method). Under the cumulative regime, PIS and COFINS is levied at a combined rate of 3.65% (0.65% for PIS and 3% for COFINS) and the taxpayer is not allowed to accrue for relevant credits over input transactions.

As of 2026, PIS and COFINS will be gradually replaced by the CBS.

2.2. Excise Tax (IPI)

Excise Tax (IPI) is a federal value-added tax levied on manufactured products as they leave the manufacturing plant or other listed establishments. The IPI is also due on imported industrialized products, upon importation and resale by the importer.

IPI rates vary depending on the classification (NCM Code) of the product.

The IPI may be repealed as of 2027 in view of the tax reform, subject to further regulation.

2.3. State VAT (ICMS)

State VAT (ICMS) is a State Value Added tax levied on sales and imports of goods and intrastate and interstate transportation and communication services.

For imports and sale transactions carried out within the same State, ICMS applies at rates varying from 14% to 18% depending on the local legislation in which the transaction is carried out and the specific product or service.

Note that certain States demand the payment of an additional of 1-2% destined to the Fund to Struggle against Poverty (Fundo Estadual de Combate à Pobreza – FECP).

Interstate transactions, however, are subject to 4%, 7% or 12% depending on the State for destination of the goods. Note that, if the goods are sold to a non-ICMS taxpayer, or to be used or consumed by an ICMS taxpayer, there may be additional ICMS rate (the so-called "Difal") to be paid to the State of destination.

Under the ICMS VAT system, the company can accrue credit for the ICMS paid by vendors in the input transactions to offset with the ICMS due on the sale of goods and/or transportation and telecommunication services.

The ICMS will be gradually replaced by the CBS in view of the tax reform. These changes require further regulation.

2.4. Municipal Service Tax (ISS)

Municipal Service Tax (ISS) is a Municipal tax levied over taxable services, which rate varies from 2% to 5% over the price of the services, depending on the nature of the service and the particular municipality in which the party renders the services, or the customer is located.

The ISS will be gradually replaced by the CBS in view of the tax reform. These changes require further regulation.

2.5. Financial Transaction Tax (IOF)

Financial Transaction Tax (IOF) is levied over credit, foreign exchange, insurance and security transactions. The IOF rates can apply varying from zero to 25% depending on the nature of the transaction.

3. Payroll Taxes

3.1. Social Security Contribution (INSS)

Brazilian companies are required to pay the Social Security Contributions (INSS) at 20% on the total compensation paid to their employees and/or individual service providers. Except for certain cases provided by legislation and case law, social contributions also apply to fringe benefits.

In addition, other social charges (SAT, Contributions to SESI/SESC, SENAC/SENAI, INCRA, SEBRAE, Educational-Salary), varying from 6% to 12%, can be applied over the employees' wage with variable rates depending on the economic category of company's activities.

For certain industry sectors (e.g. IT, civil construction and certain infrastructure services), the companies may opt to pay the Social Security Contribution on Gross Revenues (CPRB) at statutory rates varying from 1.5% to 4.5% over the company´s gross revenue, instead of the INSS contribution over the payroll. The option should be made on an annual basis.

4. Property and Transfer Taxes

Brazilian tax system also provides for certain taxes and contributions levied on the ownership and transfer of real estate, vehicles and other assets:

4.1. Rural Real Estate Tax (ITR)

Rural Real Estate Tax (ITR) is a federal tax, imposed on an annual basis, over the ownership or control of real estate property in rural areas. The ITR rate may vary between 0.03% and 20%, based on the location, size of the property and other factors such as the level of use.

4.2. Urban Real Estate Tax (IPTU)

Urban Real Estate Tax (IPTU) is a Municipal tax levied annually over the ownership or control of real estate property in urban areas. The rates may vary usually between 1% and 1.5% for constructed urban areas and 2% and 3% for unconstructed urban areas.

4.3. Tax on Ownership of Vehicles (IPVA)

Tax on Ownership of Vehicles (IPVA) is a State tax, levied annually, over the ownership of ground vehicles such as cars, motorcycles, buses and others. The rates may vary usually between 2% and 4% of the commercial value of the vehicle.

4.4. Real Estate Transfer Tax (ITBI)

Real Estate Transfer Tax (ITBI) is a Municipal tax levied upon the transfer of real estate property over the value of the transaction. The relevant rates are set by the Municipalities and typically vary between 2% to 3%.

4.5. Donation and Transfer Tax (ITCMD)

Donation and Causa Mortis Transfer Tax (ITCMD) is a State tax, levied over donations and transfers of assets resulting from death. The ITCMD rate is set by the competent State and typically varies between 4% and 8% over the donation or heritage.

5. Other Taxes and Contributions

5.1. Import Duty (II)

Import Duty (II) is a Federal tax levied upon importation of assets, triggered upon custom clearance, over the customs value of the imported product including insurance and international freight (CIF value), added by port and other charges. II rates vary according to the Tariff Classification of the goods.

5.2. Export Tax (IE)

An Export Tax (IE) is due at the time of export. The tax applies on an ad valorem basis to a limited list of products. The tax rate varies, depending on the type of product exported; however, currently the IE is generally benefited with a zero reduced rate.

5.3. PIS/COFINS – Import

Federal Welfare Contributions (PIS and COFINS) are also levied on importation of goods and services.

For goods imported, PIS is levied at 2.1% and COFINS at 9.65% over the CIF value upon custom clearance. Additional 1% COFINS rate may apply over listed assets.

For importation of services, PIS applies at 1.65% and COFINS at 7.6% over adjusted tax basis, and paid upon the payment, credit or remittance of the service fees abroad.

5.4. Additional on Freight for the Renewal of the Merchant Marine (AFRMM)

Additional on Freight for the Renewal of the Merchant Marine (AFRMM) is a Federal contribution to the economical domain aiming at enhancing the maritime and naval construction activities in Brazil.

The AFRMM is due over the freight charged on import voyages (8%), cabotage (8%) and certain inland navigation (40%) upon the discharge of the goods on Brazilian ports.

Up to January 8, 2027, the AFRMM will not levy over cabotage and inland navigation (except from liquid bulk) destined to the North and Northeast Regions.

5.5. Technological Contribution (CIDE)

CIDE is due on the payment, credit or remittance to non-residents of fees corresponding to royalties, trademark and patent licenses and assignments, agreements involving transfer of know-how and/or technology, as well as of fees for technical services, administrative assistance and other similar services that do not involve the transfer of technology.

The CIDE is levied at 10% over the total amounts paid, credited, delivered, used or remitted abroad.

5.6. Contribution on Fuels (CIDE-Fuels)

CIDE-Fuels is a Federal Contribution on Economic Domain, levied on the importation and commercialization of certain types of fuel at fixed amounts in Brazilian Reais. Currently CIDE is levied on gasoline (and its chains)at R$ 0,10/liter; on diesel at R$ 0,05/liter; other listed products benefit from a zero-rate reduction.

6. Withholding Obligations

6.1. Payment to Employees and Individuals

Brazilian companies are required to withhold the personnel income tax due by employees and individuals upon payment of the income of any kind.

Personnel income tax levies at progressive rates varying from zero to 27.5% according to the individual's monthly income, adjusted by a standard statutory deduction.

The Brazilian legislation may update, from time to time, the standard value to be deducted.

In addition, the Brazilian companies are required to withholding the social security due by the employees and individuals themselves, at rates varying from 7,5% to 14% of his income, limited to a certain threshold amount defined by the Brazilian Government.

6.2. Payment to Local Companies in Brazil

Brazilian tax legislation imposes withholding obligation on the provision of goods and/or certain services to other legal entities in Brazil. The rules are different if the customer qualifies as a private or a public company.

Customers qualifying as private entities: The payment or credit of specific services fees, such as the ones related to professional services (e.g. technical analysis, consulting engineering, geology, planning, legal services among others) will be subject to the following withholding obligations: IRRF (1.5%), CSLL (1%), PIS (0.65%) and COFINS (3%).

Customers qualifying as public entities or mixed-capital companies: The payment or credit for provision of goods and services will be subject to the following withholding obligations: IRRF (1.2% or 4.8%), CSSL (1%) rate, PIS (0.65%) and COFINS (3%).

In addition to the withholding obligations mentioned above, the customers will also withhold the Social Security Contribution (INSS) at 11% on secondment services (cessão de mão de obra) or contract work (empreitada), or at 3,5% if the company is subject to the Social Security Contribution on Gross Revenues (CPRB).

The abovementioned withholding obligations are deemed as anticipation of the taxes to be paid by the Brazilian company.

7. Brazilian Tax on Foreign Companies

7.1. Foreign Branch

According to Brazilian corporate rules, the branch and the foreign entity are deemed as a single legal entity. From a tax perspective, however, the relevant branch is deemed as a separate entity and is taxed under the same rules applied to Brazilian companies. Note, as there is no tax consolidation in Brazil, there is no specific benefit in creating a branch rather than a subsidiary.

7.2. Payment, Credit or Remittance of Service Income and Royalties

As a general rule, Brazilian tax law may tax foreign companies with respect to (i) income or capital gains taxes paid, credited or remitted by a Brazilian source of payment, as well as (ii) capital gains taxes triggered in transactions between non-resident companies with respect to the sale or disposition of assets located in Brazil.

Except for listed situations, the general WHT rate applied to payment, credit or remittance of income to foreign entities located in regular jurisdiction, is 15%, while in transaction entered with parties located in "low tax jurisdiction" (or "tax heaven") are subject to a higher 25% rate.

The Brazilian IRS lists the low tax jurisdiction, which are: American Samoa, American Virgin Islands, Andorra, Anguilla, Antigua, Aruba, Ascension Islands, Bahamas, Bahrain, Barbados, Barbuda, Belize, Bermuda Islands, Brunei, British Virgin Islands, Campione D'Italia, Cayman Islands, Channel Islands (Alderney, Guernsey, Jersey, and Sark), Dominica, Cook Islands, Curaçao, Cyprus, Djibouti, Federation of Saint Kitts & Nevis, French Polynesia, Gibraltar, Grenada, Hong Kong, Ireland, Isle of Man, Kiribati, Labuan, Lebanon, Liberia, Liechtenstein, Macao, Maldives, Mauritius Islands, Marshall Islands, Monaco, Monserrat Islands, Nauru, Niue Island, Norfolk Island, Occidental Samoa, Oman, Panama, Pitcairn Islands, Qeshm Island, Santa Lucia, Saint Vincent & Grenadines, Saint Helena Island, Saint Martin, Saint Pierre and Miquelon, Seychelles, Solomon Islands, Swaziland, Tonga, Tristan da Cunha, Turks & Caicos Islands, United Arab Emirates and Vanuatu.

7.3. Capital Gains

Capital gains may be triggered at the foreign company´s level in case of sale of assets located in Brazil. WHT will apply with progressive rates varying from 15% to 22.5% depending on the value of the gains.

7.4. Dividends

In Brazil, dividend distributions are exempted from corporate income tax, both when they are distributed to Brazilian residents and to foreign shareholders.

Profits arisen from investments in a company headquartered in Brazil can also be distributed as interest on equity (*juros sobre capital próprio*). Differently from the dividends, interests on equity are deductible from corporate income tax basis, qualifying as a mechanism of tax planning, provided that certain conditions are met. However, the relevant payment, credit or remittance is subject to 15% WHT or to 25% WHT when they are distributed to the shareholders located in low tax jurisdictions.

7.5. Double Tax Treaties

Brazil is a party of many treaties aimed at preventing double taxation in international transactions, which follows the OECD (Organization for Economic Co-operation and Development) model convention.

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

7.6. Brazilian Cross-Border Tax Anti-Avoidance Rules

Brazilian tax law also provides transfer pricing, thin capitalization, substance requirements and Controlled Foreign Companies ("CFC") rules, under which there are certain minimum revenues and additional deductibility requirements for Brazilian companies engaged in transactions with foreign related parties and with companies located in low tax jurisdiction, or subject to "privileged tax regimes".

The Brazilian IRS also lists the "privileged tax regimes", which are:

i. With respect to the legislation of Uruguay, the regime applicable to the "Inversion Financial Entities" (Safis) incorporated until December 31, 2010;

ii. With respect to the legislation of Denmark; the regime applicable to holding companies which does not have substantive economic activity;

iii. With respect to the legislation of the Netherlands, the regime applicable to holding companies which does not have substantive economic activity;

iv. With respect to the legislation of Iceland; the regime applicable to legal entities incorporated as International Trading Companies (ITC);

v. With respect to the legislation of the United States of America, the regime applicable to the state Limited Liability Companies (LLC), whose corporate ownership is composed by non-residents, not subject to the federal income tax;

vi. With respect to the legislation of Spain, the regime applicable to the "Entidad de Tenencia de Valores Extranjeros" (ETVEs.);

vii. With respect to the legislation of Malta, the regime applicable to the International Trading Company (ITC) and International Holding Company (IHC);

viii. With respect to Switzerland, the regimes applicable to legal entities incorporated as holding company,

domiciliary company, auxiliary company, mixed company and administrative Company, which tax treatment results in the Corporate income tax, in combined way, lower than 20% following federal, cantonal and local laws, as well as regime applicable to other legal forms of incorporation of legal entities, through rulings issued by tax authorities, which results in the corporate income tax levy, in combined way, inferior to 20% according to federal, cantonal and local laws;

ix. With respect to the legislation of Austria, the regime applicable to legal entities incorporated as holding which does not have substantive economic activity;

x. With respect to the legislation of Costa Rica, the Free Trade Zone Regime (Regime de Zonas Francas (RZF);

xi. With reference to the legislation of Portugal, the regime of the Madeira International Center of Business (CINM); and

xii. With respect to the legislation of the Singapore, the following regime with differentiated rate for:

a. special rate of tax for non-resident shipowner or charterer or air transport undertaking;

b. exemption and concessionary rate of tax for insurance and reinsurance business;

c. concessionary rate of tax for Finance and Treasury Centre;

d. concessionary rate of tax for trustee company;

e. concessionary rate of tax for income derived from debt securities;

f. concessionary rate of tax for global trading company and qualifying company;

g. concessionary rate of tax for financial sector incentive Company;

h. concessionary rate of tax for provision of processing services for financial institutions;

i. concessionary rate of tax for shipping investment manager;

j. concessionary rate of tax for trust income to which beneficiary is entitled;

k. concessionary rate of tax for leasing of aircraft and aircraft engines;

l. concessionary rate of tax for aircraft investment manager;

m. concessionary rate of tax for container investment enterprise;

n. concessionary rate of tax for container investment manager;

o. concessionary rate of tax for approved insurance brokers;

p. concessionary rate of tax for income derived from managing qualifying registered business trust or company;

q. concessionary rate of tax for ship broking and forward freight agreement trading;

r. concessionary rate of tax for shipping-related support services;

s. concessionary rate of tax for income derived from managing approved venture company;

t. concessionary rate of tax for international growth Company.

The chart below resumes the application of the relevant rules:

8. Tax Disputes

Brazilian law provides for a specific dispute proceeding regarding tax matters, in those cases, the disputes are usually developed through an administrative phase followed by a judicial phase. This model of dispute takes place when the taxpayer faces tax and/or fine charging.

The tax dispute framework is applicable to all administrative levels, i.e., Federal, States and Municipalities.

8.1. Administrative Proceeding

By receiving a tax and/or fine charging, the taxpayer can present a defense against the charging to be judged by the Brazilian Internal Revenue Service

This administrative proceeding usually has 2 levels: first, the taxpayer's defense is judged by the Brazilian Internal Revenue Services (IRS) Officers. The administrative appeal against this first decision, presented by either the taxpayer or the tax entity, will be judged by a panel formed by representatives of the Internal Revenue Service and representatives of the taxpayers. In case of a tie, the decisive vote is made by an Internal Revenue Service representative.

In specific cases, there can be a third level of administrative dispute.

After the administrative proceeding, the taxpayer can still spontaneously dispute the charging in court or wait until the tax entity files a tax foreclosure to present a defense (the foreclosure cannot be filed until the end of the administrative proceeding).

This administrative phase is not mandatory for the taxpayer, who can instead directly file a judicial measure against the charging, waiving the administrative dispute.

The taxpayers usually wait for the end of the administrative phase, because during such the levying of the tax is suspended as provided by Law no. 5,172/1966, and the Tax Authority cannot start a foreclosure proceeding, neither deny the issuance of a clearance certificate.

TAX RULES	TAX HAVEN	PRIVILEGED TAX REGIME
Higher WHT Rate on payment, credit or remittance of income and capital gains abroad.	√	It does not generally apply. Exception to WHT levied on charter hire payment, credit or remittances in the so-called "split contract structure" applied to oil and gas E&P and regasification activities.
Transfer Pricing Provides for Minimum revenue and/or maximum deductibility for import and export transactions for goods, sales and rights between related parties, parties located in low tax jurisdiction or subject to privileged tax regimes. As of 2023 (optional) and 2024 (mandatory), the Brazilian transfer pricing rules were amended to align with OECD parameters.	√	√
Thin Capitalization Provides for maximum debt/equity ratio for loan interest deductibility for transactions between related parties, parties located in low tax jurisdiction or subject to privileged tax regimes.	√	√
Substance Requirements Provides for deductibility requirements for payment, credit or remittances to entities, directly or indirectly, located in low tax jurisdiction or privileged tax regimes: identification of the beneficial ownership, evidence of the operational capacity and documental evidence of the receipt of goods and rights and utilization of the services.	√	√
Controlled Foreign Companies ("CFC") Rules Brazilian CFC rules require the profits or losses recognition at the year-end, regardless of its effective distribution, for controlled and related companies abroad. For companies located in low tax jurisdictions or subject to privileged tax regimes, such profits and losses cannot be recognized consolidated with other group companies.	√	√

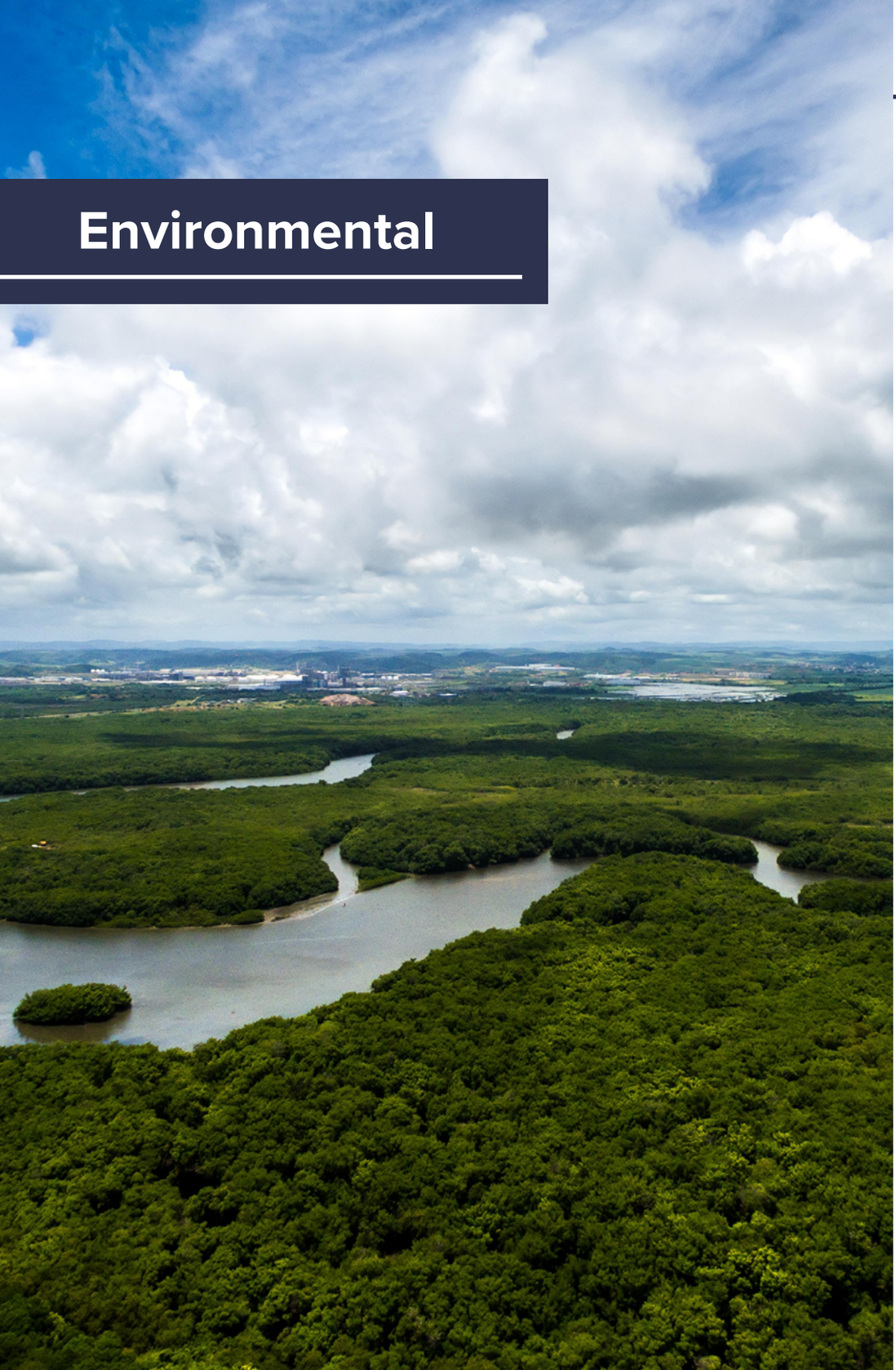
8.2. Judicial Proceeding

As previously mentioned, the tax foreclosure is the judicial proceeding that may be presented by the Tax Authorities after the end of the administrative phase and if the taxpayer fails to present a judicial proceeding to discuss the tax in advance.

During this judicial proceeding, the taxpayer may only present a defense if it is accompanied by a guarantee.

Since it begins in the execution phase, the tax foreclosure is a faster proceeding, with two specific goals: verify that the credit is really due and, consequently, promote its payment.

The tax dispute framework is applicable to all administrative levels, i.e., Federal, States and Municipalities



Environmental

In 1981, Federal Law No. 6,938 provided the Environmental National Policy, which aimed at the preservation, improvement and recovery of the environmental quality at federal, state and municipal levels.

Briefly after that, in 1988, the Federal Constitution was enacted and dedicated a whole chapter to environmental protection. It was possible to oversee Brazil's desire to protect life itself, once it set forth the obligation to preserve the environment and the government established a series of criminal and administrative sanctions, as well as enforced reparation duty if damaging activities were found.

Therefore, it is safe to say that Brazilian environmental law is enforced by all three levels of the Public Administration, and by the competent licensing authority, in a way that business endeavors in Brazil with a risk of environmental damage may have to comply with the Federal, State and Municipal rulings and regulations.

As provided by Law 6,938/1981, at the Federal level, the Brazilian Institute of the Environment and Natural Renewable Resources (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis – IBAMA) is the Federal Environmental Protection Agency responsible for implementing the National Environmental Policy. IBAMA is also responsible for the implementation of rules and regulations enacted by the National Environmental Council (Conselho Nacional do Meio Ambiente – CONAMA), inspections of environmental activities and the conduction of environmental licensing proceedings, depending on the locality and the characteristics of the enterprise.

States and Municipalities, in turn, have their own environmental protection agencies

States and Municipalities, in turn, have their own environmental protection agencies, which are competent to enact rules and regulation in order to cover activities under their territories. While municipal environmental agencies may license activities and enterprises with local impact, state environmental agencies are responsible for conducting licensing proceedings of enterprises and activities that are not covered by federal or municipal agencies.

1. Most Relevant Laws

The Brazilian legal system is composed of a great number of laws and regulatory authorities, as Brazil is one of the leading actors in international discussions on the environment. The Federal, State and Municipal administration in Brazil all have their own set of public bodies and regulations, which they enforce within their own jurisdictions.

Below we list the main legislation applied at the Federal level:

- **Law 6,938/1981 – National Environmental Policy**

Federal Law No. 6,938/1981 created the National Environmental Policy, which represented a significant effort towards

the protection and improvement of environmental quality, once it established the general organization of the National Environmental System (Sistema Nacional do Meio Ambiente – SISNAMA) at federal, state and municipal levels.

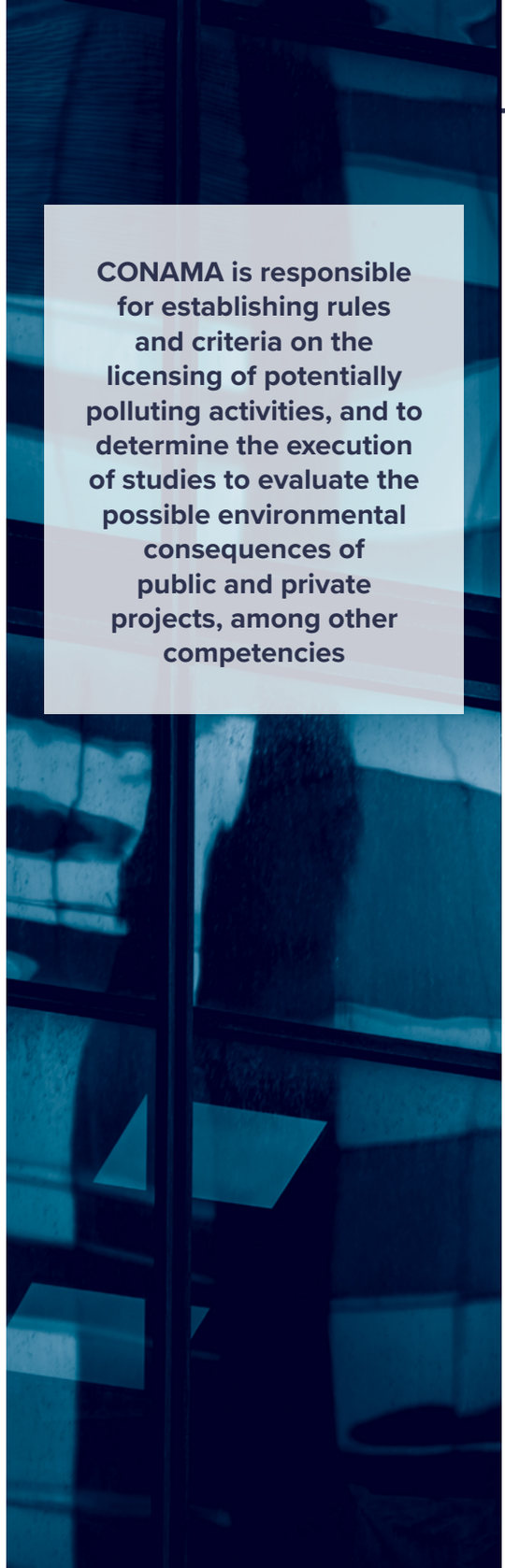
The National Environmental Policy also set forth the National Environmental Council (Conselho Nacional do Meio Ambiente – CONAMA) as a part of its structure, which represents the advisory and consultive body of SISNAMA. CONAMA is responsible for establishing rules and criteria on the licensing of potentially polluting activities, and to determine the execution of studies to evaluate the possible environmental consequences of public and private projects, among other competencies.

In its Attachments, Law 6,938 categorizes a series of activities accordingly to their potential to cause pollution. The activities are categorized by small, medium or high polluting potential.

Furthermore, all potentially polluting activities must obtain the Federal Technical Registration of Potentially Polluting Activities (CTF). Thus, the companies which perform such activities must also pay the Environmental Control and Inspection Tax (TCFA).

- **Law 7,735/89 – The establishment of IBAMA**

The law 7.735/89 created IBAMA, incorporating the Special Secretariat of the Environment and the federal agencies in the areas of fishing, forest development, and rubber.



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The primary mission of IBAMA is to protect the environment, ensure environmental quality, and ensure sustainability in the use of natural resources by carrying out actions under federal jurisdiction.

- **Law 6,902/81 - Environmental Protection Area**

It establishes the guidelines for the creation of Ecological Stations and Environmental Protection Areas (EPAs). Ecological Stations are areas representative of different ecosystems in Brazil, which must have 90% of their territory unaltered, with only 10% allowed for academic purposes. On the other hand, EPAs comprise private properties that can be regulated by the competent public authority regarding economic activities to protect the environment.

- **Law 9,433/97 – National Water Resources Policy**

Establishes the policy and national system of water resources. It defines water as a limited natural resource with economic value that can have various uses, such as human consumption, energy production, transportation, sewage disposal, and others. This law also provides for the creation of the National System for the collection, treatment, storage, and retrieval of information about water resources and factors that interfere with their functioning.

- **Law 12,651/2012 – The Forest Code**

The most recent Brazilian Forest Code was enacted in 2012, replacing the previous code, dated of 1965, and provides more accurate and updated rulings regarding the sustainable development and environmental protection.

Thus, the Forest Code established general rules regarding the protection of vegetation, the Permanent Preservation Areas (APP's) and the Legal Reserve Areas (ARL's); the forest exploration; the supply of forest raw materials; the control of the forest products' origin; and the control and prevention of forest fires. Law 12.651/2012 also established financial and economic instruments in order to achieve the referred goals.

Moreover, the Forest Code institutes the Rural Environmental Registry (Cadastro Ambiental Rural – CAR), defined as a public electronic registry, mandatory for all Brazilian rural properties, with the purpose of integrating all environmental information regarding rural properties and possessions. The CAR aims to the creation of a database for the controlling and monitoring of environmental and economic planning, as well for the fight against deforestation.

- **Law 9,605/1998 – Environmental Sanctions Act**

Law 9,605/1998 approaches the administrative and criminal sanctions derived from damaging conducts and activities to the environment. This law sets forth that every person, whether an individual or a legal entity, which in any way commits offenses considered as crimes shall be punished accordingly.

The director, administrator, board or technical body member, manager, agent or grantee of a legal person, who knew about a third party's criminal conduct and did

not restrain it shall also be punished, if the person could have been able to prevent or stop the criminal conduct.

The law also dictates that the legal persons shall be held civilly, administratively and criminally liable, when the environmental infraction has been caused by a decision of its legal or contractual representative, or of its board of directors and administrators, on behalf of the legal person's interests or benefit.

Law No. 9,605/1998 shall be further approached on topic 2 (Environmental Liabilities).

2. Environmental liabilities

In Brazilian law, environmental liability is divided into three categories: civil, administrative and criminal liability, and environmental damage may trigger legal sanctions in of the three spheres.

Under Brazilian law, the environmental civil liability is strict, which shows that the subjective conduct of the author, in other words the element of fault, is not analyzed, but the occurrence of the damage, meaning if there is damage caused to the environment, the author will be responsible for it. In addition, the statute of limitation is not applicable to the civil liability for environmental damage, provided that the Brazilian Supreme Court (STF) established a definite understanding in Brazil in the sense that time cannot dismiss the liability for environmental damage. Also, environmental civil liability consists of joint liability, meaning that all parties involved in the activity will be held responsible for the damages caused.

As for the administrative and criminal environmental responsibilities, it is required that the State proves the polluter's fault in order to hold it accountable for the damage.

Naturally, administrative sanctions are applied by the Public Administration bodies, while criminal sanctions can only be imposed by the Judiciary. In both the administrative and the judicial/criminal spheres, the respondent has the right to a due process of law, which must make it able to defend itself from the allegations it faces.

Nevertheless, it is important to state that the subjective nature of the environmental administrative liability is a result of a change in the panorama, considering recent decisions issued by the Brazilian Superior Court of Justice about the subject. The transformation of the scenario, of controversial nature, should gradually influence the lower court decisions, as well as the administrative bodies, considering the new understanding that the proof of intent or guilt is necessary for the application of administrative penalties.

Foreign Trade

Brazil is one of the largest export economies in the world. Foreign trade represents about a quarter of its GDP. The Country has been a member of the World Trade Organization (WTO) since 1995 as well as the Latin American Integration Association (ALADI) since 1980.

Brazil is also a member of the Mercosur (the Southern Common Market), a regional integration process, initially established in 1991 by Argentina, Brazil, Paraguay and Uruguay, and subsequently joined by Venezuela and Bolivia (the latter still complying with the accession procedure).

1. Main Partner Countries and Products

Brazil is one of the leading developing countries and one of the five major emerging national economies (which are associated in the acronym BRICS – Brazil, Russia, India, China and South Africa). Since 2010, China has played an important role as Brazil's main commercial partner, followed by the United States.

According to OEA, apart from China and the United States, Brazil´s main partners are Argentina, Germany, the Netherlands and South-Korea.

Despite exporting a diversified range of products, commodity-based items have historically played an important role in Brazil's foreign sales. In effect, Brazil exports mainly soybeans, crude oil, iron ore and cellulose. On the contrary, the country´s main imports include medication for human or veterinarian use, transmission or reception devices and components, as well as parts and pieces for automotive vehicles and tractors.

Brazil is one of the largest export economies in the world. Foreign trade represents about a quarter of its GDP

Brazil is one of the leading developing countries and one of the five major emerging national economies (which are associated in the acronym BRICS – Brazil, Russia, India, China and South Africa)

2. Foreign Trade Controls in Brazil

The Chamber of Foreign Trade (CAMEX), under the Ministry of Economy, is responsible for the foreign trade policies and activities to promote foreign trade, investments and international competitiveness, except for regulation of the capital and foreign exchange markets which are under the responsibility of the National Monetary Council (CMN) and of the Brazilian Central Bank (BACEN), respectively.

Brazil exports mainly soybeans, crude oil, iron ore and cellulose

Importers and exporters are required to register with the Secretary of Foreign Commerce (SECEX), which is responsible for controlling the foreign trade inbound and outbound. Also, they are required to contract foreign exchange transactions for the exchange of Brazilian and foreign currency and register certain transactions with the BACEN.

In practice, all the imports and export transactions are registered at the Integrated Foreign Trade System (SISCOMEX), which collects data from custom and foreign exchange registries and optimizes Brazilian international trade.

In addition, importers and exporters must be duly licensed under the RADAR before the Brazilian IRS (Secretaria da Receita Federal do Brasil). The RADAR is a system for registration and tracking performance (behavior and risks) of companies on foreign trade activities.

The Brazilian Federal Government is currently reviewing its foreign trade regulation, through the "2018-2019 Foreign Trade Regulatory Agenda", aiming at promoting a more coherent and transparent regulatory system. There are eight thematic areas under review (customs, foreign trade procedures and trade facilitation; technical and health regulations, industrial defense products, sensitive goods and chemical control; financing and export guarantees, trade defense and rules of origin, Export Processing Zones, transport and logistics, services and public procurement).

3. Exports

Export transactions are generally benefited with tax incentives or reductions. Brazilian law provides a general exemption for exports, which encompass Federal Welfare Contributions (PIS and COFINS), State VAT (ICMS) and Excise Tax (IPI).

An export tax (IE) is due at the time of export. The tax applies on an ad valorem basis to a limited list of products. The tax rate varies, depending on the type of product exported; however, currently, the IE is generally benefited with a zero rate.

4. Imports

Import of goods is subject to the following taxes and contributions:

4.1 Import Duty (II)

Import Duty (II) is a Federal tax levied upon the importation of assets, triggered upon custom clearance, over the customs value of the imported product including insurance and international freight (CIF value), added by the port and other charges. II rates vary according to the Tariff Classification of the goods.

4.2 Excise Tax (IPI)

Excise Tax (IPI) is a federal value-added tax levied on manufactured products and the importation of industrialized products. IPI rates vary depending on the classification (NCM Code) of the product.

4.3 PIS and COFINS – Import

Federal Welfare Contributions (PIS and COFINS) are also levied on the importation of goods and services. PIS is levied at 2.1%, while COFINS will apply at 9.65% over the CIF value upon custom clearance. Additional 1% COFINS rate may apply over listed assets.

4.4 State VAT (ICMS)

State VAT (ICMS) is a state value-added tax levied on sales and imports of goods and intrastate and interstate transportation and communication services.

For imports, the ICMS will apply at rates varying from 14% to 18% depending on the State legislation in which the assets will be destined. Note that certain States demands the payment of an additional of 1-2% destined to the Fund against Poverty (Fundo Estadual de Combate à Pobreza – FECP).

4.5 Additional on Freight for the Renewal of the Merchant Marine (AFRMM)

Additional on Freight for the Renewal of the Merchant Marine (AFRMM) is a Federal contribution of intervention in the economic domain aiming at enhancing the maritime and naval construction activities in Brazil. The AFRMM is due over the freight charged on import voyages (8%).

4.6 Custom Valuation

Brazilian custom valuation rules follow the methods laid down under the 1994 General Agreement on Trade and Tariff (AVA/GATT). Accordingly, the customs value should be based on the fair market value of the transaction (Method 1).

If the transaction value is not available, importers should rely on the substitutive methods for custom valuation provided by AVA/GATT, until reaching a suitable one. These methods can be based on comparables for identical or similar goods (Methods 2 and 3, respectively), on resale transactions (Method 4), on cost methodologies (Method 5) or on fall back/ arbitration rules (Method 6).

4.7 Tax Benefits and/or Special Custom Regimes

Brazilian tax law provides for several tax benefits and/or special custom regimes, which allow the definitive or temporary imports and exports, as the case may be, with a reduced tax burden, specially destined to start-up activities or certain industry sectors in Brazil.

Thus, the election of the best regime should be made based on the specific facts-patterns of the project vis-à-vis the statutory conditions and requirements applicable to the relevant special custom regime.

Below we briefly describe few of the tax benefits and/or special custom regimes provided in Brazilian law, but note that there may be other alternatives for tax optimization available.

4.8 REPETRO-SPED

REPETRO-SPED is a special customs regime which allows the temporary or definitive importation of listed equipment and assets that will be used in oil and gas exploration and production activities in Brazil up to December 31st, 2040. Under the relevant regime, the Federal Taxes due on imports are suspended, and the State VAT (ICMS) exempted or reduced.

4.9 Temporary Admission Regime for Economic Use

Temporary Importation for Economic Temporary Importation for Economic Use regime allows the Federal Taxes (II, IPI, PIS and COFINS) to be paid proportionally, at 1% per month of the taxes due upon importation, according to the length in which the asset will remain in the country. Also, there are good grounds to sustain that State VAT (ICMS) is not levied on temporary importation based on the Brazilian Supreme Court (Supremo Tribunal Federal - STF) case law.

4.10 Infrastructure Projects Special Tax Regime (REIDI)

REIDI is a special tax regime that can be applied by companies developing the infrastructure of projects in the areas of transportation, ports, energy, sanitation, and irrigation. The regime grants PIS and COFINS suspension on imports, acquisitions and rental of machines, tools, equipment, and civil construction materials to be used or incorporated in infra-structure work destined to the fixed assets of REIDI beneficiaries. It also grants PIS and COFINS exemption on the importation and/or acquisitions of services destined to the same activities.

4.11 Drawback Regime

There are different types of drawback regimes in Brazilian statutory rules, but the main category provides for the suspension of federal taxes levied upon the acquisition of inputs. Accordingly, the Brazilian beneficiary shall be able to import raw materials with suspension of the federal customs duties (II, IPI, PIS and COFINS), as well to acquire inputs from local suppliers with suspension of IPI, PIS and COFINS, provided that such goods are used in the manufacturing (i.e., transformation, improvement, assembly, renovation or reconditioning, packaging or repackaging) of a final product to be exported. Depending on the specific state legislation, the drawback transactions may also be exempted from the State VAT (ICMS).

4.12 Bonded Warehouse Regime (Entreposto Aduaneiro)

The Bonded Warehouse Regime allows the importer to storage the imported goods or assets in a certified bonded area, thus deferring the payment of the taxes and contributions levied upon the importation.

4.13 Certified Bonded Warehouse (DAC)

This Certified Bonded Warehouse allows that exported assets remain physically in a bonded warehouse in Brazil. The regime works well for Federal taxes, but depending on the State involved, the regime may not work for the State VAT (ICMS) purposes.

4.14 Temporary Export

Temporary Export regime allows Brazilian or nationalized products to be exported on a temporary basis and further re-imported with exemption of the taxes levied upon importation. This means that import taxes and contributions will be due only if there has been any value aggregated to the assets while it has been abroad.

Antitrust

Since 1994, Brazil adopted a strong and consistent antitrust policy, setting up a solid merger control system and actively reshaping the country's stand against anticompetitive practices.

Law 12,529/2011 (the "Brazilian Antitrust Law") superseded Law 8,884/94, effectively modernizing and updating the antitrust law and the Brazilian Antitrust System, now comprised by the Administrative Council for Economic Defense (Conselho Administrativo de Defesa Econômica – "CADE") and the Secretariat for Economic Monitoring (Secretaria de Acompanhamento Econômico – "SEAE").

The main change introduced by the Brazilian Antitrust Law is the requirement of prior submission to CADE of mergers and acquisitions of companies that may have anti-competitive effects. Under the previous legislation (Law 8,884/94), these operations could be communicated to CADE after they were completed, which made Brazil one of the only countries in the world to adopt a posteriori control of structure.

CADE:
ATTRIBUTIONS / PURPOSE

- Guide
- Prevent
- Supervise
- Investigate

↓

Abuse of Economic Power

CADE is an independent agency, linked to the Ministry of Justice, which encompasses the Administrative Tribunal, the General Superintendence and the Department of Economic Studies.

The Administrative Tribunal, composed by one president and six members, is competent to issue final decisions on administrative proceedings related to anticompetitive practices and merger operations. Decisions are made by a majority vote. Ties are resolved by the president of the Administrative Tribunal. Decisions are final and may only be challenged at court.

The General Superintendence is mainly responsible for monitoring market activities, open investigations, administrative procedures on anticompetitive practices and process acts on the review of concentration acts.

The Department of Economic Studies main roles are to carry out studies and reports related to the competition environment, and they also have a say in promoting competition on legislative and regulation initiatives, and the give technical economic support to CADE as well.

All individuals and legal entities, including public ones, are subject to the Brazilian Antitrust Law.

1. Violations to the Economic Order

The Brazilian Antitrust Law prohibits any act that violates the economic order, regardless of intention, including acts that limit or hinder free competition and free enterprise, lead to the domination of a relevant market, arbitrarily increase profits or characterize abuse of a dominant position.

The following are some of the acts of violation listed in the Brazilian Antitrust Law: price-fixing with a competitor, allocating parts of the market with a competitor, cartel practices, limiting access of new players to the market, price discriminating, bid-rigging, refusing to sell goods or services, dumping practices.

Corporate fines for antitrust violations range from 0.1% to 20% of the gross revenue of the company or economic group in the sector of activities in which the violation occurred, in the fiscal year prior to the opening of the administrative proceeding.

Fines to directors of the company range from 1% to 20% of the fine imposed to the company. Fines to other individuals range from R$ 50,000 to R$ 2,000,000,000.

The Brazilian Antitrust Law prohibits any act that violates the economic order, regardless of intention

Other penalties and remedies may be applied by CADE to prevent or reduce harm to competition, such as compulsory license of patent rights, mandatory transfer of corporate control and termination of tax incentives or public subsidies.

2. Merger Control

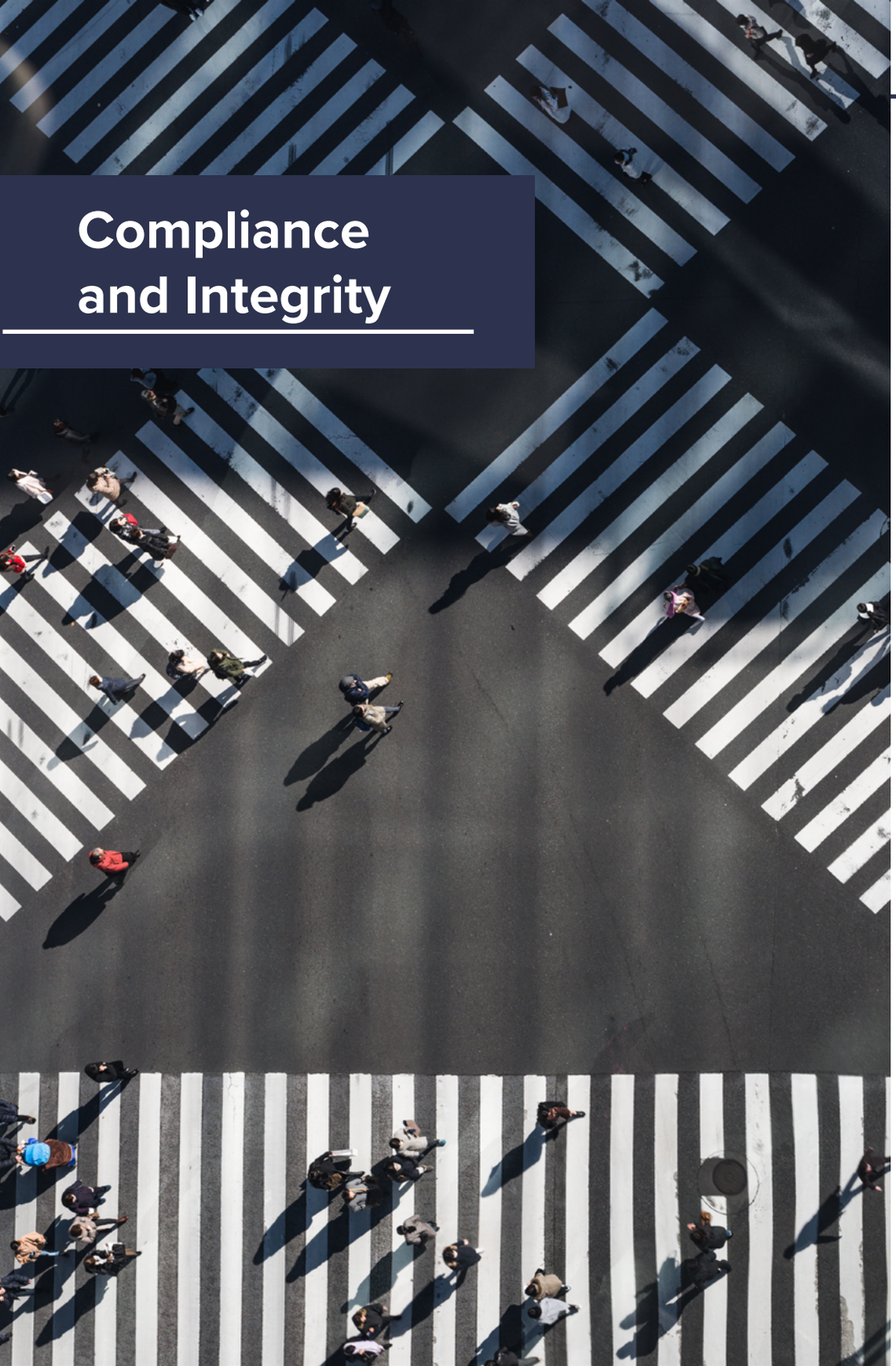
Acts of concentration, such as merger and acquisitions, joint ventures and association agreements, that meet the thresholds set forth by the Brazilian Antitrust Law, are subject to prior review by CADE. The closing of the transaction cannot be implemented until approvement by CADE.

Currently, thresholds are the following: (i) at least one of the economic groups involved in the transaction had gross revenues in Brazil in the preceding fiscal year exceeding R$ 750,000,000 and (ii) at least one of the other economic groups involved in the transaction had gross revenues in Brazil in the preceding fiscal year exceeding R$ 75,000,000. CADE has a maximum term of 330 days to reach a decision on the matter, but less complex transactions (the ones that raise no competitive issues) are expected to be decided much faster.

Failure to submit the act to CADE before its implementation ("gun jumping") may result in fines ranging from R$ 60,000 to R$ 60,000,000, and nullification of the transaction.

3. Cease and Desist Agreement and Leniency Agreement

Companies and individuals under investigation by CADE may sign with the authorities Cease and Desist Agreement and Leniency Agreement to detain or avoid further penalties for antitrust violations. In Cease and Desist Agreements, the company or individual agrees to comply with specific obligations and conducts, while the Leniency Agreement grants immunity to companies and individuals who take part in anticompetitive conducts, in exchange of a confession, termination of a practice, and disclosing information to the authorities.



Compliance and Integrity

Demand for implementation and improvement of compliance and integrity program in corporate life is intimately related to the increase of persecution and punishment, by the authorities and the courts, of illegal acts conducted by companies' officers involving fraud, corruption, antitrust violations, and harassment.

All over the world, companies are implementing such programs in corporate governance structures. The main purposes of them are preventing, detecting and providing the proper answer to illegal acts performed by any employee, partner or supplier.

In Brazil, either due to a more recent and up-to-date federal legislation or as a response to certain foreign legislation, like the Anti-Bribery Act, from UK, and the Foreign Corrupt Practices Act of the United States and the international commitment to fight money laundering and corruption, compliance programs surged both in the private and public sectors.

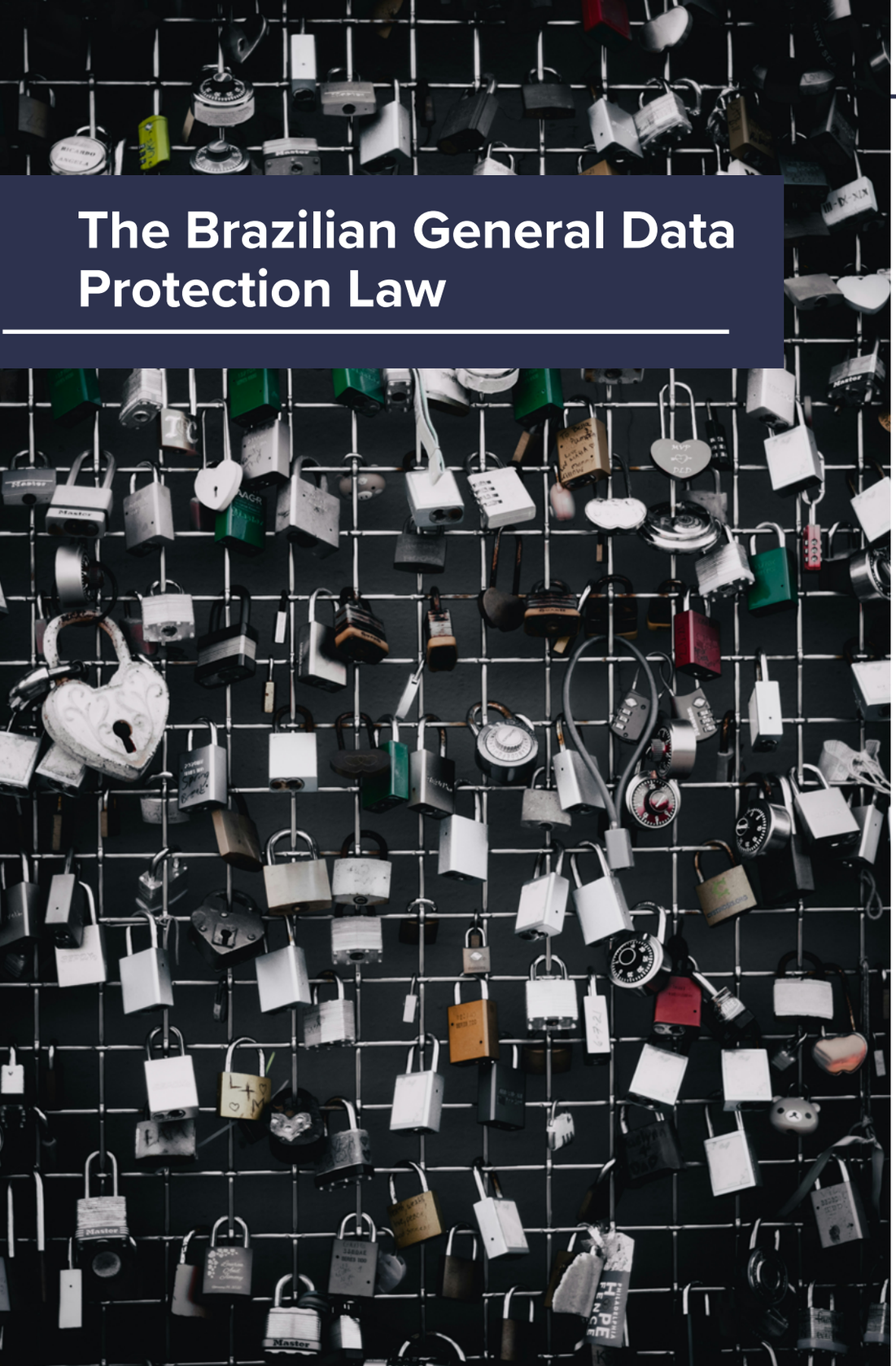
The main purposes of compliance programs are preventing, detecting and providing the proper answer to illegal acts performed by any employee, partner or supplier

The Law 12,846/2013, also known as the Anticorruption Law, is one of the most prominent Brazilian legislation that encourages companies to seek the creation of compliance and integrity programs, to avoid harsh penalties for misconducts. Regulation of the Anticorruption Law by Decree 8,420/2015 sets forth the main and mandatory aspects of compliance programs that may reduce penalties in case of violation of the Anticorruption Law.

The prevention of illicit acts is generally based on the analysis of the corporate governance structure, which includes, among others, personnel, suppliers, and activities carried out by the company, and on a risk assessment to identify the focal points to guarantee the effectiveness of the compliance program. This procedure aims at enabling compliance programs to be organized in accordance with the needs and peculiarities of each company.

Despite the costs involving in the implementation of a compliance and integrity program, identification of the most sensible and risky areas of the company may inhibit excessive and unnecessary expenses not only with the application of the program, but also with the consequences of the illicit acts. The existence of a mechanism to improve the due compliance with laws and internal rules is of extreme importance for the execution of the activities of the company, as it might prevent, for example, human, procedural and technical failures that may damage the company.

A compliance and integrity program will always be more effective with the support of the top management of corporations. Although there is a significant relationship between compliance with legal instruments, it is even more related to people's behavior. Thereby, the more partners, employees, suppliers and any other person or entity that dialogues with the company understand the importance of compliance, the more successful the compliance and integrity program will be.



The Brazilian General Data Protection Law

The Brazilian General Data Protection Law No. 13709/2018 is a statutory law on data protection and privacy in the Federative Republic of Brazil ("LGPD"). The law's primary aim is to unify 40 different Brazilian laws that regulate the processing of personal data.

The process of combining separate data protection laws in to one, was inspired by the EU's General Data Protection Regulation, which was adopted on April 14, 2016. The LGPD and the GDPR have similar definitions of personal data and essentially the same data subject rights. The regulations differ on the legal basis for processing data, where the LGPD additionally includes carrying out research studies and protecting credit ratings. Additionally, the LGPD does not specify a time period in which data breaches must be reported and the penalties for breaching the LGPD are lower than that for GDPR.

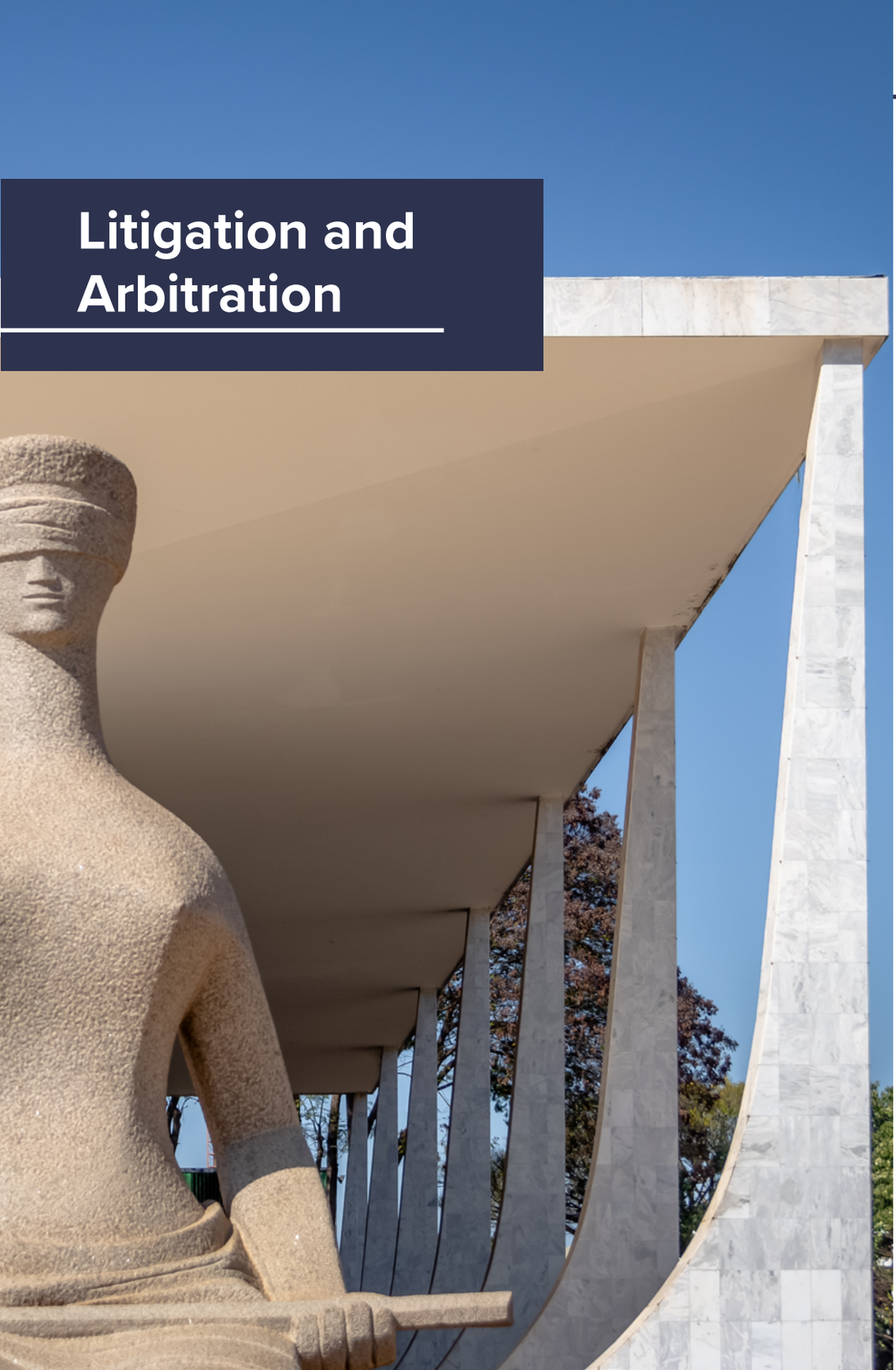
The LGPD contains provisions and requirements related to the processing of personal data of individuals, where the data is of individuals located in Brazil, where the data is collected or processed in Brazil, or where the data is used to offer goods or services to individuals in Brazil.

The LGPD and the GDPR have similar definitions of personal data and essentially the same data subject rights

The LGPD became a law on September 18, 2020, however its enforceability was backdated August 16, 2020. The sanctions under the regulation started to be applied from August 1, 2021.

The national data protection authority responsible for enforcement of the LGPD is the Autoridade Nacional de Proteção de Dados, or ANPD.

Litigation and Arbitration



1. Brazilian Legal System

Brazil follows the civil law system, which means that it has its bases in written and codified legislations. In this sense, several statutes rule the main areas of law, such as the Civil Code, the Civil Procedure Code and the Commercial Code.

While Brazil does not adhere to the common law system, judicial precedents are also considered in civil cases, though they are not regularly binding. Alongside applicable laws, judges and courts may take into account previous decisions in similar cases, especially when considering appeals.

2. Jurisdiction

The Brazilian legal system is divided basically into two branches of jurisdiction: State Courts and Federal Courts. Jurisdiction is ascertained considering the matter under dispute as well as the parties involved in the proceedings. For instance, the jurisdiction of the Federal Court is attracted when a Federal Government entity is involved in the case or when the matter is related to an international treaty, human rights and others.

Each State has its own State Court and the general rule is that the lawsuit shall be filed at the defendant's domicile.

In most cases, parties are allowed to contractually elect a venue jurisdiction in which the dispute shall be brought, as well as the applicable law.

Parties are also allowed to mutually select arbitration, mediation or other alternative dispute resolution methods to settle their disputes. Law n. 9,307/1996 regulates arbitration procedures in Brazil, while mediation is regulated by Law 13,140/2015. Over the past 25 years, Brazil has increasingly embraced arbitration as an important method to resolve disputes, with a strong position of Brazilian Courts and Authorities in recognizing the enforceability of arbitration clauses and arbitrator's decisions.

Over the past 25 years, Brazil has increasingly embraced arbitration as an important method to resolve disputes

There are a large number of arbitral institutions with international reputation established in Brazil, such as the Brazilian Centre for Mediation and Arbitration (CBMA); The Chamber of Conciliation, Mediation and Arbitration Ciesp/Fiesp; ICC (International Court of Commerce), Centro de Arbitragem e Mediação da Câmara de Comércio Brasil - Canadá (CAM-CCBC); Câmara FGV de Mediação e Arbitragem (FGV) and others. Ad hoc Arbitrations may also be used in Brazil.

3. Court Proceedings

The main steps of a judicial procedure before the Brazilian Courts are the following:

3.1 Injunctions

Under the Brazilian Civil Procedure Code, the parties are allowed to request injunctions during the proceeding or prior

to its commencement, provided some procedural requirements are present, such as the *"fumus boni iuris"* (prima facie claim) and the *"periculum in mora"* (risk of irreparable harm)

If one party seeks an injunction, the judge may summon the other party to challenge the injunction request or may directly issue an 'ex parte' decision either granting or denying the injunction order. This decision can be contested through an Interlocutory Appeal within 15 business days.

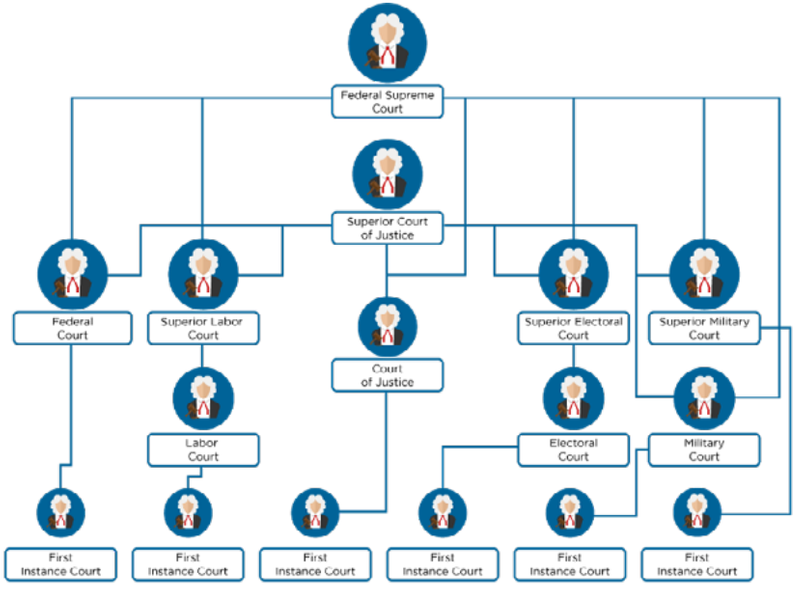
3.2 Pleadings

The judicial proceedings commence with the filing of initial points of the claim, outlining the facts and legal grounds of the case. Upon receiving the claim, the judge will summon the defendant and may schedule a mediation hearing.

If an agreement is not reached during the mediation hearing, the defendant has 15 business days to present its defense. Additionally, the defendant can file a counterclaim against the plaintiff as part of its defense. Subsequently, the judge will order the plaintiff to present a reply against the defense, within 15 business days.

3.3 Evidentiary Stage

After the submission of the reply by the plaintiff, the evidentiary stage of the proceeding is initiated, and the judge will order the parties to inform further evidence they intend to produce. If the judge understands that the grounds and evidence on the case are clearly established in the points of claim and the defense, and that the case can be decided purely on a matter of law, the judge can render an early decision without further evidence production.



On the other hand, if further evidence is needed and requested by the parties, the judge then reviews the evidence request and may either admit or deny its production.

In the event oral evidence is requested, a hearing shall be scheduled. If any expert evidence is requested, the judge will appoint an expert and parties may appoint technical assistants and prepare queries and technical reports. If documentary evidence is produced by one party, the opposing party will be given an opportunity to comment on them. Once all evidence is produced, the parties may have the opportunity to present closing arguments, before a decision is rendered on the merits.

3.4 Judgement

After considering all the arguments and evidence presented in the case, the judge shall render a decision. Brazilian law does not provide for a trial by jury in Commercial and Civil lawsuits.

Once the decision is published, the parties have the option to file a Motion for Clarification within 5 business days and/or appeal to the State Court of Appeals within 15 working days. In both cases, the opposing party will then have the same period to present its counterarguments.

If no appeal is submitted, the decision becomes final, and the enforcement stage may be initiated, summoning the losing party to comply with the decision.

3.5 Appeal

Upon the filing of an appeal and presentation of counterarguments by the opposing party, the records of the proceedings are sent to the State Court of Appeals, where they will be distributed to a Chamber and a Reporting Judge will be appointed. The Reporting Judge will analyze the records and set a date for trial.

Before the trial it is common that the parties may prepare briefs and present them to the judges that will participate in the judgment session, presenting a summary of the main arguments of the case.

On the day of the trial, both parties will have the opportunity to present their oral arguments, and a group of three judges will render a decision. In case the three judges do not reach an unanimous decision, two more judges will join them to judge the Appeal and the decision will be rendered regardless of unanimity.

After a decision is rendered by the Court of Appeals, parties will have 5 business days to file a Motion for Clarification and/or file a subsequent Special or Extraordinary Appeal to take the case to the Superior Courts.

Once the Court of Appeals grants a decision, the winning party has the right to commence a provisional enforcement of the decision against the debtor, even if the case is still pending judgment of an appeal before the Superior Courts.

3.6 Supreme Court and Superior Court

In the event there is a violation of a Federal Law or the Federal Constitution in the decisions rendered by the Court of Appeals, the parties will have 15 business days to present a Special Appeal to the Superior Court of Justice or an Extraordinary Appeal to the Federal Supreme Court, respectively. The counter party will have the same time to present counterarguments.

The Special and Extraordinary appeals will be subject to some admissibility requirements, before they can be remitted to the Superior Courts for judgment.

After a final an unappealable decision by the Superior Courts, the proceedings return to the first instance court, for the enforcement of the decision.

4. Court Fees and Expenses

Court fees in Brazil vary in each state, with initial fees typically being a small percentage of the total amount in dispute, capped at a certain amount.

Apart from the court fees for filing the lawsuit, parties may incur other expenses throughout the lawsuit, such as expert fees and costs for appeals.

According to Brazilian legislation, the party that loses the claim is obliged to reimburse the court fees and court costs incurred by the winning party. Additionally, they are required to pay 'sucumbential fees' to the attorneys of the winning party, within a range of 10% to 20% of the value of the claim.

If an appeal is filed, the Court of Appeals may increase the sucumbential fees, observing a limit of 20% of the condemnation amount.

5. Alternative Dispute Resolution Methods

According to Brazilian law, parties are free to establish alternative dispute resolution methods and pre-litigation measures to resolve controversies without resorting to judicial courts. Preventive settlements, mediation and arbitration are widely utilized.

Through either a contractual clause or an arbitration commitment, parties may choose to resolve disputes through arbitration rather than the judicial courts. Arbitration clauses must be expressly agreed upon and signed by the parties, adhering to principles such as the adversarial system, procedural equality, arbitrator impartiality and free convincing.

Parties typically select arbitrators who, once chosen, may face objections from the opponents. If no objection is submitted or if objections are denied, the Arbitral Tribunal is finally formed. The arbitrators guide the proceedings and evidence production based on the parties' intentions. They may schedule hearings for fact and expert witnesses as needed. After the evidentiary phase, parties are notified to present their final arguments.

At the conclusion of the proceedings, the Arbitral Tribunal issues a decision. According to the Arbitration Law n. 9,307/1996, unless otherwise agreed by the parties, arbitral awards are generally not appealable. However, they can be annulled by judicial courts in exceptional circumstances, such as when the decision results from fraud. Similarly, if parties do not voluntarily comply with arbitral awards, the law provides for cooperation with judicial courts to enforce them.

5.1 Arbitral proceedings involving governmental entities

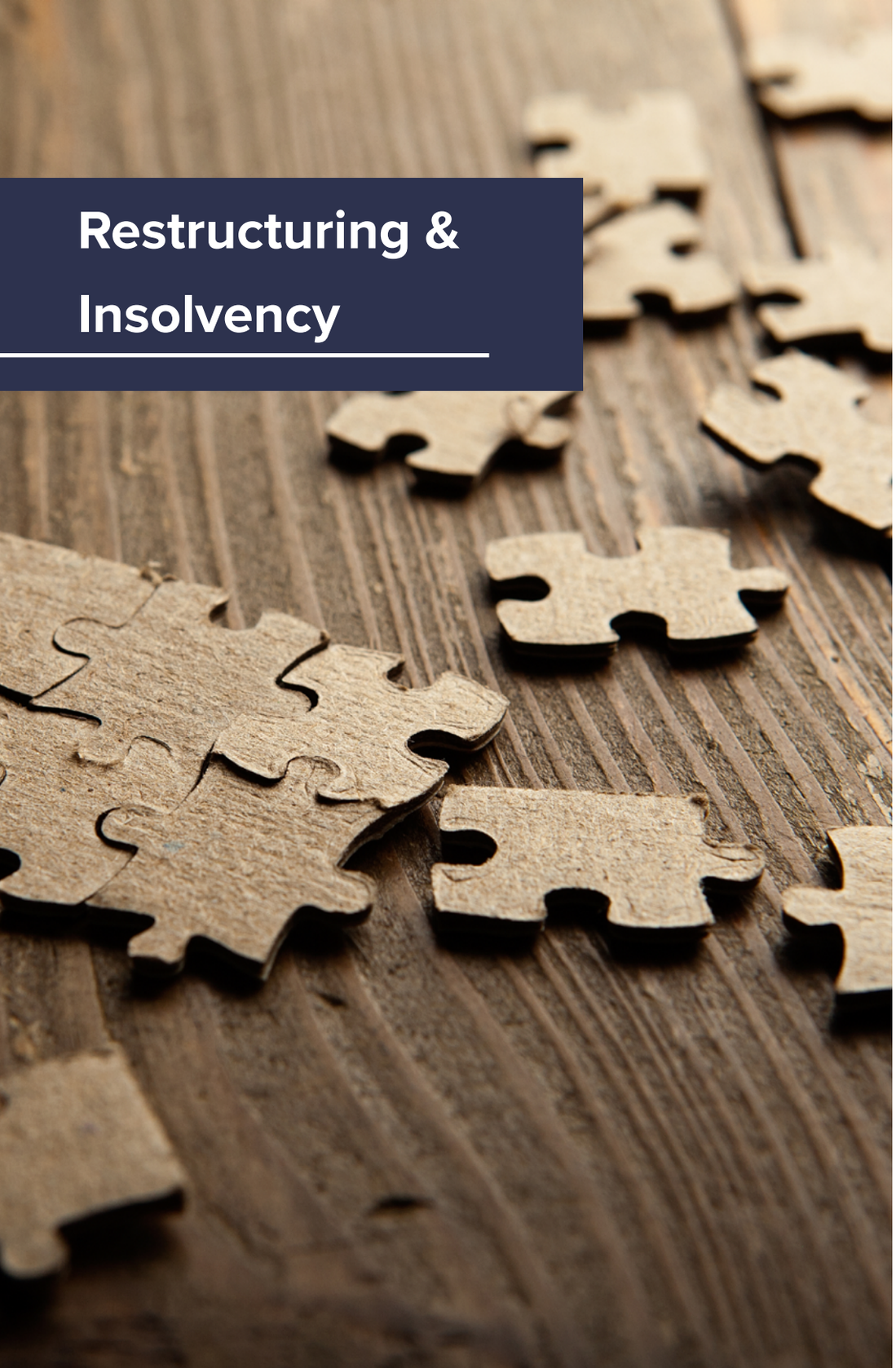
Law n. 13,129/2015 expressly authorized the use of arbitration by the Public Administration. Consequently, since 2015, governmental entities have been increasingly choosing arbitration as a method for resolving disputes instead of resorting to judicial courts.

5.2 Provisional measures in Brazilian Arbitrations

In accordance with judicial precedents, the legislator has expressly empowered arbitrators to decide on provisional measures requested by the parties during the proceedings. If a provisional measure is deemed necessary before the constitution of the Arbitral Tribunal, Brazilian law allows parties to file an injunction request before the judicial courts. Nevertheless, the claimant will then have a deadline to initiate the arbitration. After the formation of the Arbitral Tribunal, the arbitrators will be empowered to review such decisions.

5.3 Recognition of foreign arbitral awards

As a signatory country to the New York Convention, Brazil is open to recognizing foreign arbitral awards, providing validity and enabling enforcement within the country. The recognition process is carried out by the Superior Court of Justice, following specific requirements and formalities. When granting exequatur, the Superior Court focuses solely on examining formal aspects of the foreign decision and does not delve into the merits of the case.



Restructuring & Insolvency

The Brazilian Bankruptcy Law (Law No. 11,101 of 2005), outlines procedures for bankruptcy, judicial reorganization, and extrajudicial reorganization for debtors, including entrepreneurs and companies. Both reorganization processes require the debtor's consent and cooperation, aiming to overcome economic crises while sustaining business operations and preserving jobs.

1. Extrajudicial Reorganization

An extrajudicial reorganization proceeding is an out-of-court process, similar to pre-packaged arrangements found in Chapter 11 of the US Bankruptcy Code. In this approach, the debtor engages in out-of-court negotiations with its creditors to develop a reorganization plan. Upon obtaining the necessary approval from the majority of creditors, the debtor then submits the plan to the court for confirmation. This allows the extension of the agreement to all creditors within the same class who are subject to the restructuring process.

Extrajudicial Restructuring presents benefits such as a more streamlined and expeditious process, coupled with reduced costs when compared to Judicial Restructuring. However, despite these advantages, Judicial Restructuring continues to be the more frequently used in Brazil.

2. Judicial Restructuring

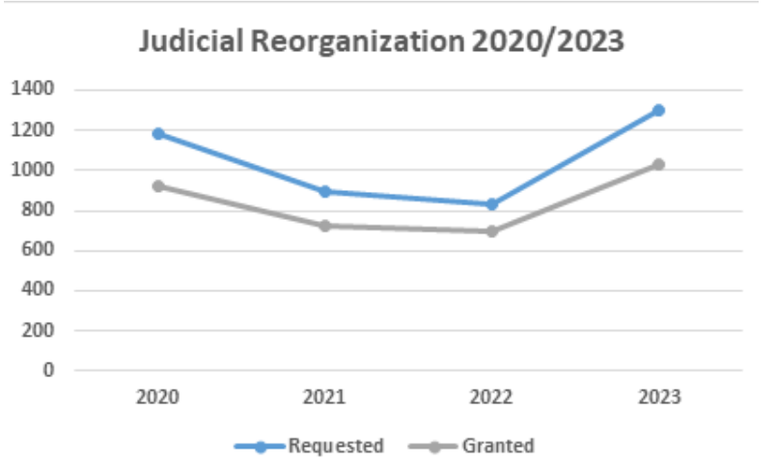
A judicial reorganization is the prevailing procedure for restructuring companies in Brazil, closely resembling the reorganization process outlined in Chapter 11 of the US Bankruptcy Code. In this approach, the debtor retains control of its assets and continues business operations throughout the proceedings, subject to

According to the Brazilian Bankruptcy Law, both reorganization proceedings require the debtor's consent and collaboration

certain constraints. Notably, the debtor is restricted from selling fixed assets without court authorization, unless expressly outlined in the reorganization plan.

The initiation of the process triggers a stay period of 180 days, extendable for an equivalent period. During this time, all legal actions and foreclosure measures against the debtor are halted, allowing the debtor to negotiate a reorganization plan with its creditors. Following the 2020 reform of the Brazilian Bankruptcy Law, if the debtor fails to secure approval of a plan within the stay period or if the plan is rejected in the general assembly of creditors, creditors now have the option to propose an alternative reorganization plan.

Upon approval of the reorganization plan at the general assembly of creditors and confirmation by the bankruptcy court, both the debtor and creditors become bound by its provisions. Additionally, the bankruptcy court may determine the debtor to remain under judicial reorganization until all obligations stipulated in the plan are fulfilled within a two-year period.



3. Bankruptcy as a consequence of a failed Judicial Reorganization

The declaration of the debtor's bankruptcy within the Judicial Restructuring proceedings can occur under the following circumstances:

i. The creditor's general assembly decides in favor of the debtor's bankruptcy;

ii. The debtor neglects to submit the restructuring plan;

iii. If the debtor's reorganization plan is rejected by the creditors and the creditors do not present an alternate reorganization plan within 30 days, or if creditors' alternate plan is not accepted;

iv. The debtor fails to comply with the restructuring plan provisions;

v. Non-compliance with the payment of tax credits;

vi. Identification of asset depletion by the debtor.

4. Bankruptcy

Bankruptcy liquidation, similar to the liquidation process under Chapter 7 of the US Bankruptcy Code, involves the dissolution of a company. When declared by the bankruptcy court, shareholders and managers are removed from the debtor's management. The court appoints a judicial administrator responsible for overseeing the liquidation of the bankrupt estate. This includes selling assets, handling ongoing lawsuits, and making crucial decisions tied to the bankruptcy liquidation.

Historically, bankruptcy liquidations in Brazil have been notably inefficient, often stretching over a decade with a minimal recovery rate for creditors. The 2020 reform sought to address these challenges by introducing mechanisms to expedite and enhance the efficiency of bankruptcy liquidations. Notably, the reform imposes a maximum period of 180 days for the judicial administrator to complete the sale of all assets in the bankrupt estate. The 'fresh start' principle was also introduced in the Brazilian Bankruptcy Law, allowing business owners and entrepreneurs to be absolved from their obligations and re-enter business activities within a shorter timeframe (three years from the bankruptcy decree).

5. The court-appointed administrator

The role of the Court Administrator is pivotal in both Bankruptcy and Judicial Restructuring proceedings. Their primary objective is to sustain the debtor's business activities, preserving the debtor and their assets while mitigating the adverse impacts that the termination of business operations may entail.

In Judicial Restructuring proceedings, the Administrator is tasked with overseeing the debtor's activities through the issuance of monthly reports and ensuring compliance with the restructuring plan. If there is a significant failure to meet the obligations outlined in the plan, the administrator must promptly notify both creditors and the judge, recommending bankruptcy.

6. Competent Jurisdiction

Pursuant to Article 3 of the Brazilian Bankruptcy Law, the State court with jurisdiction over the location of the debtor's principal establishment holds authority to ratify the extrajudicial reorganization plan, grant the judicial reorganization, or declare bankruptcy of the debtor.

About Us

Kincaid | Mendes Vianna Advogados

Established in 1932, we are one of the most traditional and longstanding law firms in Brazil with core values based on integrity, efficiency, transparency, ethics, and respect.

We provide legal services adding value services to our clients' businesses, with a view to meet our clients' specific needs, with unique solutions, based on solid legal expertise.

Our multidisciplinary practice was born out of our experience in international trade, which has expanded to various sectors and areas such as Restructuring & Insolvency, Maritime, Tax and Customs, Corporate, Litigation and Arbitration, Insurance and Reinsurance, Ports and Infrastructure, Energy, Oil and Gas, Environment, Employment, Aviation, Compliance, Railway and Public Sector.

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