Doing Business in Brazil

SOUTO CORREA ADVOGADOS

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About Souto Correa

Souto, Correa, Cesa, Lummertz & Amaral Advogados – "Souto Correa" – comprises experienced lawyers united by the same principles and core values. The firm is staffed with highly qualified professionals, many of whom hold PhDs and have been recommended in prominent national and international legal rankings such as Chambers and Partners, Who's Who Legal, Legal 500, IFLR1000, LACCA Approved List and "Análise Advocacia", all of which assess the competence and reliability of legal professionals.

Souto Correa assists clients in Brazil and abroad in all areas of Business Law. In order to do so, the firm has lawyers who are fluent in a number of languages and are able to meet the demands of several countries, especially through its German, Asian and Latin America Desks.

The mission
To build a cohesive and high-performance team that provides clients with the best outcome for their investment in legal services. This is the core of Souto Correa's existence. And in order to reach such a goal, the firm's lawyers, besides analyzing in depth every case they handle, also delve into a wide array of lines of business for their clients.

Values
- Ethics
- Focusing on the right people: They are both the means and the end
- Unity

Social Responsibility
Souto Correa is concerned not only about the quality of the legal work provided, but also about improving the society we live in. Through social responsibility initiatives, the firm endeavors to contribute to transforming our reality and to building a better future.

Among the practices that are part of the daily lives of the Souto Correa team are the rational consumption of resources (paper, water, energy etc.), the recycling of materials, as well as volunteer work such as toy, clothing and food donation campaigns for the low-income population. With actions like these, Souto Correa aims to stimulate the development of citizenship and environmental sustainability, revealing itself as a firm committed to building a new – and better – tomorrow.

Public Sector

Most common ways of contracting with the Government:

Public-Private Partnership – PPPs

Public-Private Partnership (PPP) is a public concession contract. There are two specific types of PPPs.

The first one is the sponsored type, in which there are public contracted complementary payments that will be added to even the costs if user's charges are lower than the amount of the investment. The second one is the administrative, in which the services are fully paid by public contractors, since the Public Administration is the direct or indirect recipient of the service.

The minimum value for a PPP contract is R$ 10 million (according to Law 13.529/2017, which promoted modifications in PPP regulation) and its duration can vary between 5 and 35 years. These contracts cannot have as its only object neither labor or equipment supply nor the execution of the public construction.

The payment to the private partner is only made after the service is available to the users according to the requirements stipulated on the contract. If those requirements are met, the payments will follow, if they are not, appropriate discounts in the owed amount will take place.

The contract must provide proportional penalties, for either the government or the private partner, according to a number of standards: the nature of the situation; the ways of remuneration and criteria to monetary update; the criteria to the performance evaluation of the service; the stipulation of execution guarantees required to the private partner according to the risks taken (up to five percent of the contracted amount; in construction, services and large scale supply, it can reach up to ten percent of the contracted amount).

Besides that, the contract must establish how the risk-sharing between the parties will take place, including the definition of who bears the risk of unforeseeable circumstances, force majeure and extraordinary economical loss. The contract must also contain provisions with regards to the share of the partner's effective economical gains due to credit risk reduction in the private partner financing.

The government can take part, up to the global limit of R$6 billion, in a public-private partnership guarantee fund, in order to guarantee the payment of monetary obligations assumed by the public partners due to the partnership.

This fund has a private nature, apart from the shareholders equity. Its capital is compounded by the contribution of the stakeholder's assets and rights and by the payment of quotas and incomes obtained by its administration.

The bid to a public-private partnership contract is executed in the competition bid modality, in which the preliminary phase of the bid consists of the invitation and following participation of anyone capable of proving the accomplishment of the set minimum requirements.

The difference between a public-private partnership and a regular concession is the fact that only in the concessions the concessionaire is paid exclusively by the fees charged to the users, while in public-private partnerships there are payments from the Public Administration along or not with the payment of tariffs from the consumers.

Concession

Concessions are usually granted to a legal entity or consortium of companies after a bidding process, through the competition bid modality, in which the concessionaire's payment comes from the service or construction exploration in a certain period of time.

The private partner must show its capacity to develop the work, at its own risk. In addition, the concession can be inspected by the granting power with the help of the users.

Every concession will be formalized by a contract. It will assume that the service will be suitable to the users in order to satisfy demands of regularity, continuity, efficiency, safety, currentness, generality, courtesy in its provision and modicity in the tariffs.

The rate value will be fixed by the bid winner offer and will be preserved by the legal rules.

In order to make the modicity of the fees feasible, the grantor can allow alternative revenue sources to the concessionaire. Those income streams can be complementary, by-catches, or may come from associated projects with or without exclusivity.

The concessionaire has the responsibility of executing the public service. It will be responsible for any damages to the grantor, to the users or a third party, and it will be under the supervision of the competent public entity. Inherent, ancillary or complementary activities and the implementation of connected projects can be executed by third parties, maintaining the concessionaire responsible. The sub concession is permitted, in the contracted terms, if expressly allowed by the grantor, and it must always be preceded by competition. The transference of the concessions or its corporate control without previous permission by the public power will lead to the termination of the concession contract.

In order to restructure the concession financially and assure the service' continuity, the granting power may allow the funders and guarantors to take control of the concessionaire, as contracted.

In financing contracts, the concessionaire may offer emerging concession rights as a guarantee up to a limit that will not affect the service's operability and continuity, and also must be done in a way that won't prejudice long term loan contracts destined to concession investments. In any of its modalities, the concessionaire can transfer part of its future operational credit to the lender.

Bidding process. Main modality: Competition
It is possible to use the competition model to biddings of any amount, but due to its high costs there is the legal definition of the minimum value of R$ 1,430,000.00 to purchases and services and R$ 3,300,000.00 to works and engineering services (according to Decree 9.412/2018, which promoted modifications in Brazilian Bidding Law).

The fact that anyone can participate is the main characteristic of competition modality. A foreign company that does not have activities in Brazil can be part in an international competition through a legal representative to act on its behalf.

If the foreign company has a consortium with a Brazilian company, this company can represent the consortium in the bidding. Another way of participating is that in a consortium between two foreign companies when one of them has a representative in Brazil. In any of these cases, the documentation must be validated by the related consulates and translated by a sworn interpreter. In international biddings, international agreements can be taken into consideration in the selection of proposals. According to the concession law, in equal conditions preference will be given to the Brazilian company's offer.

Bidding phases:
(1) Preparing; (2) Disclosure; (3) Bid and proposals presentation; (4) Judgment; (5) Bid and proposals effectiveness verification; (6) Negotiation, in which offers whose amount are higher than the Administration prefixed budget will not be successful; (7) Candidate habilitation, which nowadays have no previously set detailed rules, but only analysis parameters; (8) Appeals; (9) Object award; (10) Result approval or procedure revocation.

Judgment criteria to the bidding:
(1) Lower price; (2) Higher discount; (3) Better price and technique combination; (4) Better technique; (5) Better artistic content; (6) Better price offer; (7) Better economic return; (8) Better destination to the disposed assets.

The criteria definition can vary according to the nature of the bid object and to the Administration convenience taking into account the needs of the public policy being implemented.

Tax

Taxation of Legal Entities

Taxes on Profits

Taxes: Corporate Income Tax ("IRPJ") and Social Contribution Tax on Net Profits ("CSLL").

Calculation basis: defined according to the "real profit system" (lucro real) or the "presumed profit system" (lucro presumido).

Rates: IRPJ is due at the rate of 15% and a surplus rate of 10% for taxable profit exceeding R$20,000.00 per month. CSLL is charged at a rate of 9%, except for financial institutions, which are subject to a higher rate.

Taxes on Revenues

Taxes: The contribution to the Social Integration Program ("PIS") and the Social Security Financing Contribution ("COFINS").

Calculation basis: monthly revenues earned. The tax is calculated based upon the cumulative or the non-cumulative regime (which admits tax credits on some costs and expenses expressly determined by law).

Rates: PIS is levied at the rate of 0.65% (cumulative regime) or 1.65% (non-cumulative regime). COFINS is levied at the rates of 3% or 4% (for financial institutions) under the cumulative regime, 7.6% under the non-cumulative regime or Financial income is subject to a combined rate of 4,65%

Taxes on Manufacturing and Sale of Goods

Taxes: Tax on Manufactured Products – "IPI" (Excise Tax) and Tax on Distribution of Goods and Services – "ICMS" (Value Added Tax).

Calculation basis: IPI is levied on the value of the finished goods and ICMS is imposed on (i) sales price of goods, (ii) inter-municipal and inter-state transportation services price, and (iii) communication services price. Both taxes are calculated based on a non-cumulative regime. By this regime, the tax due upon the acquisition of goods (which is included in the price, and displayed in the invoice) shall be a tax credit to be offset against the tax due upon a subsequent transaction with these goods or with the product resulting from their acquisition subject to taxation (as a general rule, if the subsequent transaction is exempted or not taxed, the tax charged in their acquisition shall not be credited).

Besides the regular taxation regime of the ICMS (in which there is ICMS taxation on each one of the steps of the circulation of goods), there is an ICMS tax regime in which an unique taxation over the whole chain of circulation of goods will be levied. It is a "forward" tax substitution system, so called ICMS tax substitution regime ("ICMS-ST"). This regime allocates responsibility to the taxpayer for the payment of the ICMS levied on the tax triggering event that shall occur subsequently (in general, the manufacturer/ importer collects the tax for the rest of the chain).

Rates: IPI rates may vary according to the classification code of the product. ICMS rates and the application of the ICMS-ST regime may vary depending upon the goods or the services transacted, as well as on the specific regulations of each state.

Taxes on Importation of Goods
Taxes: ICMS, PIS and COFINS on Imported Goods, Excise Tax ("IPI") and Import Tax ("II").

Calculation basis: generally, the basis for calculation is the product's customs value and customs expenses. The payments of such taxes may generate credits in line with the non-cumulative system.

Rates: ICMS, PIS and COFINS, IPI and II rates vary according to the goods imported. Specifically in relation to ICMS the applicable rates may vary depending on the State where the importation is carried out.

Transfer pricing rules are applicable to import and export transactions that are carried out between a Brazilian resident company and a related party domiciled abroad, or with a third party domiciled in a Favorable Tax Jurisdiction, or benefiting from a Privileged Tax Regime.

Taxes on Services
Taxes: Service Tax ("ISS").

Calculation basis: service fee.

Rates: may vary from to 2% to 5% according to the local (municipal) legislation in which the provider is domiciled or the service is rendered.

Taxes on Importation of Services
Taxes: ISS, Contribution for Intervention in the Economic Domain ("CIDE") – specifically in relation to any amount paid, credited, delivered, employed, or remitted abroad as royalties or technical services, or in connection with technical or administrative assistance services agreements, PIS and COFINS on Import of Services and may be subject to Withholding Income Tax.

Calculation basis: service fee.

Rates: CIDE is levied at a rate of 10%. ISS rate may vary from to 2% to 5% according to the local (municipal) legislation. PIS and COFINS are due at the combined rate of 9.25%. In certain cases, PIS-Import and COFINS-Import may generate credits in line with the non-cumulative system. Withholding Income Tax rates may vary from 15% to 25% depending upon the nature of the service and whether the beneficiary of the services is domiciled in a Low Tax Jurisdiction, as defined by Brazilian Tax Authorities.

Transfer pricing rules are also applicable to import and export of services that are carried out between a Brazilian resident company and a related party domiciled abroad, or with a third party domiciled in a Low Tax Jurisdiction, as defined by Brazilian Tax Authorities, or benefiting from a Privileged Tax Regime.

Taxes on Financial Transactions
Taxes: currency exchanges, loans, securities, and insurance transactions are subject to Tax on Financial Transactions ("IOF").

Calculation basis: vary depending on the transaction carried out.

Rates: vary depending on the transaction carried out.

Taxes on Payroll
Taxes: The National Institute of Social Security Tax ("INSS").

Calculation basis: payroll and remuneration.

Rates: depends upon the company's activities.
Companies from select economic sectors are entitled to collect the INSS on gross revenues at rates varying depending upon the company's activity as a substitution for the INSS on payroll.

Tax on Property Holding
Taxes: Tax on Urban Property ("IPTU") and Tax on Rural Property ("ITR").

Calculation basis: For IPTU it is the market value of such real estate. For ITR it varies according to the value, size, and location of the real estate.

Rates: IPTU rates vary according to the city and the type of real estate involved. ITR rates vary depending upon the value and level of utilization of the land.

Tax on Property Transfer
Taxes: Tax on Transfer of Property by Death or Gift ("ITCMD") and Real Estate Transfer Tax ("ITBI").

Calculation basis: For ITCMD it is the value of the gift or inheritance transferred. ITBI is levied on the market value of the property.

Rates: Each state determines the ITCMD rate applied, up to the maximum percentage established by the Federal Senate, which is currently 8%. ITBI rate is determined by the municipality in which the real estate or right is located.

Taxation of Income and Gains of Non-Brazilian Residents

Dividends

Dividends paid by a Brazilian company to any shareholder are not subject to withholding income tax.

Brazilian companies can also pay interest on net equity. It is calculated based on the long-term interest rate ("TJLP") determined by BACEN applied on net equity and subject to certain legal requirements. Expenses for such interest are deductible for purposes of IRPJ and CSLL calculation. The payment of such interest is subject to withholding income tax of 15% or 25%, if the beneficiary is domiciled in a "Low Tax Jurisdiction, as defined by Brazilian Tax Authorities" as defined by the Brazilian legislation.

Capital Gains

As a general rule, any capital gains earned by non-Brazilian residents in transactions involving the disposal of Brazilian assets are subject to tax in Brazil (i) at progressive rates from 15% to 22,5% or (ii) at rate of 25% if the beneficiary is domiciled in a Low Tax Jurisdiction, as defined by Brazilian Tax Authorities. Capital gains arising from transactions carried out within the Brazilian stock, futures and commodities exchange, including the organized over-the-counter market are exempt.

Interest

Payments of interest by a Brazilian party to a non-Brazilian resident are subject to withholding income tax of 15% (or 25%, if the beneficiary is domiciled in a Favorable Tax Jurisdiction). In addition to compliance with transfer pricing rules, deductibility of interest expenses incurred in debt transactions entered into with related parties (or parties domiciled in a Favorable Tax Jurisdiction or benefiting from a Privileged Tax Regime) is also contingent upon compliance with thin capitalization rules.

Royalties

The payment of royalties is subject to (i) withholding income tax at a 15% (or 25% if the beneficiary is domiciled in a Favorable Tax Jurisdiction) (ii) CIDE at a rate of 10%.

Finally it is worth mentioning that Brazil entered into treaties with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, the Netherlands, Hungary, India, Italy, Israel, Japan, Korea, Luxembourg, Mexico, Norway, Peru, the Philippines, Portugal, Slovak Republic, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

Environmental

In Brazil, both the Federal and the State Government, as well as the Federal District, can concurrently legislate on environmental matters. The Federal Government establishes the general rules and States and the Federal District edit the special norms. Municipalities can also legislate to supplement Federal and State laws, as well as legislate on environmental matters of local interest. In addition to that, the National and the State Environmental Councils, as well as the Federal and the State Environmental Public Agencies ("EPAs") also issue environmental regulations under the Executive Branch.

Environmental liabilities

The Brazilian Constitution provides that individuals and legal entities can be held liable for environmental damages and irregularities in three different and separated fields: civil, administrative and criminal liability.

Civil liability

Repairing environmental damages may be required under civil liability, which, in terms of environmental matters, exists irrespectively of fault and can be sought from anyone who has contributed directly or indirectly to the damage, by act or omission.

According to a recent decision from the Supreme Court, the duty to compensate and or indemnify for environmental damages can be sought at any time, having no statute of limitation. Such decision has reinforced the thesis that has been defended over the years by many scholars under the environmental civil liability.

The Public Prosecutor's Office and some other legitimate entities - which have the environmental protection among its purposes - can seek to impose civil liability through a public civil action.

Administrative liability

Within the administrative sphere, penalties ranging from warnings and fines to the shutting down of a plant may be applied to individuals and legal entities. The value of the fine varies according to the severity of the facts, the economic situation of the offender and the background related to the noncompliance of environmental legislation.

There are currently divergences as to whether it is essential to demonstrate proof of fault. There are many court decisions that apply the strict liability, regardless of fault. However, a recent decision from the Superior Court of Justice stated that it is essential to prove the fault, given that the Federal legislation does not establish the strict liability to administrative infractions. Federal, state or local EPAs can impose administrative penalties through a proper administrative proceeding.

Criminal liability

Individuals or legal entities may be held liable for environmental crimes. Legal entities may be held liable when the entity's conduct that resulted in a crime was undertaken at the direction of the entity's representatives (for instance, a board of directors), in the interest or for the benefit of the entity. The penalties imposed to legal entities may include fines, constraint orders and rendering of services to the community.

The criminal liability of legal entities does not exclude such liability with regards to the individuals who are authors, co-authors or participants of the fact, but proof of fault is required.

The imprisonment penalty to legal representatives and officers has been imposed in a few cases, related to specific crimes that caused major environmental damages.

Most environmental crimes are considered to have minor offensive potential, enabling the defendant to plea bargaining conditional suspension of the penalty or conditional suspension of the proceeding. In such cases, the defendant have to prove that the environmental damage is recovered. The Public Prosecutor's Office is the competent authority to file a criminal lawsuit seeking to impose criminal liability.

Environmental licensing

Every effectively and potentially pollutant activities as well as activities that make use of environmental resources are subject to previous environmental licensing.

Environmental licensing in Brazil is an administrative procedure that usually encompasses three distinct and successive phases in which the following licenses are granted: (i) preliminary license; (ii) installation license and (iii) operation license.

The Preliminary License is granted in the initial planning phase of the business or activity and consists of the approval of its concept and location. In addition, the licensing of ventures whose activities entail a significant environmental impact requires the presentation of an Environmental Impact Study to be performed by a specialized technical team hired by the entrepreneur. These Studies are then used by the environmental agency in order to decide on whether to issue the Preliminary License or not and the conditions to be established therein.

The Installation License, on the other hand, authorizes the actual implementation of the business or activity. Finally, the Operation License authorizes the operation of the activity and sets forth conditions thereto involving preventive, mitigating and compensatory measures.

The licensing procedures are conducted by federal, state or local EPAs, depending on the activity, its impact extension and its size.

The environmental licenses usually determine requirements and conditions to be performed within the development of the licensed activity, including environmental control measures and the execution of plans and programs. Due to the difficulties faced during the COVID-19 pandemic to comply with some of said requirements, most of the EPAs established specific regulations ruling the procedures during a given period of the pandemic.

Restrictions related to specially protected areas: Conservation Units, Permanent Preservation Areas and Legal Reserves

Conservation Units are specially protected areas with defined limits established by the Government and which have conservation purposes. Performing any activity that may affect the ecosystem of a Conservation Unit requires the authorization from the authority responsible for administrating that given Unit. Moreover, the environmental licenses may impose restrictions on the activities or extra requirements due to the proximity with Conservation Units.

Permanent Preservation Areas ("APP") are protected areas, which may be located, e.g., by a riverside or on hilltops that have special environmental purposes, as defined by the Federal Forestry Code. Usage and exploration of such areas is only permitted in special cases through environmental licensing and may entail some form of compensation.

A "Legal Reserve", as a general definition, is a percentage from 20% to 80% of every rural property that must ensure the sustainable use of the land, as set by the Federal Forestry Code.

Therefore, the use of these areas is restricted. If a given rural property does not contain such a legal reserve, nor does it hold an exceptional waiver, the legal reserve must be duly created.

Furthermore, it is important to note that local and traditional communities' areas, such as indigenous reserves, are also protected by Brazilian legislation and the development of any enterprise inside or nearby these areas may suffer restrictions or prohibitions.

Environmental Compensation

The payment of an Environmental Compensation is imposed to those enterprises whose activities entail a significant environmental impact. The value of the Environmental Compensation, which must be invested in a Conservation Unit, is calculated by multiplying the amount of investments required for the implementation of the venture itself by a percentage up to 0.5% corresponding to the level of impact determined by the environmental agency based on the studies presented by the entrepreneur.

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Relevant authorities
In Brazil, the Federal and the State Public Prosecutor´s Offices play a leading role in the defense of the environment and enforcing compliance by public authorities, private entities and individuals. They conduct civil or criminal investigations and file lawsuits seeking for environmental remediation or compensation. The Environmental Secretariats are usually concerned about and typically respects Public Prosecutors' opinions.

The Federal and the State Prosecutors' Offices operate completely independently of each other. The Federal Prosecutor´s Office has the authority to file civil lawsuits that are related to the enforcement or protection of environmental or public interests.

Besides that, other relevant authorities regarding environmental matters are the Federal EPA ("IBAMA") and the State EPAs, which enforce laws and regulations, promote the licensing proceedings, impose administrative penalties, among other.

Moreover, the Environmental Police Precincts investigates environmental crimes along and in cooperation with the Public Prosecutors' Office.

Criminal Law & Compliance

Lawyers in Souto Correa's Criminal Law and Compliance Practice Area have extensive experience in counseling and defending companies and individuals in matters involving investigations and criminal litigation.

The area was established due to specific demands related to the diverse range of activities performed by the firm's clients, which may result in situations that lead to criminal issues. In order to avoid it, our team has focused on reducing future risk by keeping companies ahead of the enforcement curve.

In that matter, Souto Correa's team has specialized not only in defenses in investigations and criminal actions of high complexity, involving a large number of parties, but also in preventive and advisory work, such as the preparation of legal opinions, with the involvement of lawyers from other areas of practice; risk assessments in criminal matters and training of clients' employees.

Besides that, the area also provides private prosecution and assistance to the Public Prosecution Office - representing clients who are victims of crimes, especially in asset-related crimes and crimes against intellectual property. This type of work demands high-level understanding of the specific products that are object of the violation.

This practice area has provided legal assistance in consulting and litigation matters on the sectors below: Civil Construction, Energy, Oil & Gas, Financial Institutions, Hospitality and Leisure, Transport & Logistics, Information Technology, Armaments, Metallurgical Industry, Pharmaceutical Industry, and Tobacco.

In Brazil, corporate crimes are established both under the Brazilian Criminal Code and complementary legislation[1].

Brazilian System of Evidence

Brazil holds a system of evidence based by principles established in the Brazilian Federal Constitution. It is established, in its Article 5, that no individual will be deprived of their own freedom or assets without the due process of law, securing the right to an adversary proceeding and legal defense.

[1] Crimes against the financial system; Crimes against the economic order; Bidding crimes; Crimes in consumer relations; Antitrust crimes; Cartels and other anti-competitive practices; Bankruptcy crimes; Tax Evasion and other tax-related crimes; Money Laundering; Industrial and intellectual property crimes; Environmental crimes, amongst others.

The due process of law, therefore, presupposes equal procedural opportunities for defense – the adversary proceeding, technical defense and self-defense – and the guarantee of full defense, including access to the higher courts (Article 5, LV, and Article 93, III).

It is also important to note that the Federal Constitution assures that evidence obtained by illicit means is inadmissible: evidence must always be provided by legal means (Federal Constitution, Article 5, LVI).

In the Brazilian Criminal Procedural System, the party who makes the allegations has the burden of proof (Criminal Procedure Code, Article 156). During the course of the criminal action, the prosecution is in charge of proving all the allegations contained in the accusation complaint.

Brazilian criminal procedure is based on the constitutional guarantee against self-incrimination (Federal Constitution, Article 5, LXIII). That includes the right to remain silent and that the defendant cannot be prosecuted for perjury, in case of lying or omitting facts in their defense.

There is also the constitutional guarantee of *in dubio pro reo*, so that in case of reasonable doubt the defendant must always be acquitted.

Summary of the Legal Procedures

The following is a summary of criminal law procedures according to Brazilian law. The Criminal Prosecutor can denounce the offender when there are enough elements indicating that one or more crimes have been committed and such actions may be related, in principle, to the offender's conduct. Usually, the Criminal Prosecutor bases the formal accusation on the outcome of the investigations conducted during the police inquiry.

A police inquiry may be launched at the request of the Prosecutor or judge, as well as any person upon the filing of a report.

Once the police inquiry starts, the Chief of Police in charge will determine what kind of investigation should be conducted and will make other provisions, such as the conduct of hearings. The police inquiry is prepared in writing and usually includes depositions.

In fact, the Chief of Police is supposed to gather all evidence in the final report that will enable the Criminal Prosecutor to choose one of the following alternatives:

- File a formal accusation if there is evidence of the commission of a crime, in which case the Criminal Prosecutor will ask the judge to initiate a criminal lawsuit against the individuals responsible for the crime;

- Close the investigation if the commission of a crime has not been verified, if there is lack of evidence, or if it is not possible to ascertain the author of the crime, in which case the Criminal Prosecutor asks the judge to dismiss the case; or

- Require further investigations to be carried out by the Chief of Police.

During the police investigation, when the Chief of Police decides that there are sufficient elements to identify a suspect, the latter may be indicted (indictment).

Moreover, the Chief of Police can request a criminal expert report if there is any sign that a crime has been committed and has left physical evidence.

A criminal lawsuit starts only when the Criminal judge receives a formal accusation or "denunciation" (technical term). This document shall be presented by the Criminal Prosecutor containing detailed information about the investigated facts and listing the witnesses that the Criminal Prosecutor wants to present before the judge in court.

After receiving this formal accusation, the judge will certify that there are enough elements that evidence that one or more crimes were committed and that there are sufficient elements to identify who committed the crime.

Subsequently, the defendant will present a preliminary defense, and if the judge decides to proceed with the case, he will set a date for the hearing in order to obtain depositions of accusation and defense witnesses and interrogation of the defendant.

Lastly, the accusation and then the defense will present their final arguments and the judge will sentence the case.

Depending on the penalty established by the Law for the crime (under 2 years of imprisonment), by the beginning of the criminal lawsuit, a deal (similar to the plea bargaining) may be proposed to the offender (fulfillment of certain requirements). If accepted, a penalty other than prison will apply, and the lawsuit will be closed without assumption of guilt. The imprisonment penalty could still be substituted for alternative sanctions, such as restriction of rights or rendering of community services.

Criminal liability:

Individuals

Both the agent and the abettor are subject to the same penalties in Brazil, since our Criminal Code sets forth that "whoever contributes to a crime, is subject to its sanctions". Thus, every individual that engaged in the acts which led to the crime are criminally liable, provided (i) they acted willfully; and (ii) they knew (or could have known, considering their role in the company) they were engaging in a forbidden activity.

This way, the officers, managers or legal representatives of a company can only be held criminally liable if they directly or indirectly influenced the criminal harm or having the duty to stop it, did not take the appropriate measures.

Legal entities and companies

Legal entities, such as companies, may face criminal sanctions only when involved in environmental crimes. However, to be subject to criminal sanctions, some conditions are to be met, according to the section 3rd of Law No. 9.605/98: (i) when the crime was committed according to a decision of its legal representatives or board of directors; or (ii) when the crime was committed to its benefice.

Main crimes related to corporate criminal law:

Tax crimes: the manager or legal representative of a company could be held criminally liable for tax evasion provided in Law No. 8.137/90, if he deceives tax authorities, neglects to provide information or provides false information to tax authorities, issues fake invoices, provides incorrect or untrue data, or neglects operations of any kind in a document or book required under tax laws.

Money laundering: the Brazilian Anti Money Laundering and Financing Terrorism Law No. 9,613/98, which was significantly amended in 2012, sets forth provisions which define that any action that conceals, dissimulates the nature, origin, location, disposition, movement or property of assets, rights or values originated, directly or indirectly, from any criminal offense, including misdemeanors, is to be understood as money laundering for criminal purposes.

Pursuant to the Brazilian Anti-Money Laundering Law, financial institutions must identify and maintain up-to-date records regarding their customers; maintain internal controls and updated registration information of its customers; record, for a five-year period, any transaction or set of transactions performed by individuals or entities pertaining to the same economic group involving Brazilian and foreign currency, securities, metals or any other asset which may be converted into money that exceeds the limit set by the competent authority; review transactions or proposals with characteristics which may indicate the existence of a crime; keep records of transactions involving checks for a minimum period of 5 years; inform the appropriate authorities (without the customer's knowledge) of any transaction or set of transactions performed by individuals or entities pertaining to the same group of companies; and communicate to the appropriate authorities, within 24 hours, any suspicious transaction.

Although money laundering has a relation with a prior criminal offense, the proper authorities may investigate the money laundering offense and initiate a criminal law suit even before the prior criminal offense has received a final decision from a Court of law.

It is important to stress that not only the owner of the money may be held criminally liable, but also whoever makes arrangements to facilitate the use, acquisition or retention

of criminal property on behalf of another person or even who works for an entity having the knowledge that it is used directly or indirectly for money laundering.

On the other hand, some corporations and persons, such as financial institutions, those dealing with currency or stock exchanges, insurance entities, credit card companies, leasing and factoring companies have the legal duty to set anti money laundering and terrorism financing policies up and report every suspicious activities to the authorities.

Environmental crimes: the environmental criminal infringements are stated in the Federal Act no. 9,605/98 and a significant part of the environmental crimes is considered misdemeanors, especially those actions that results in less offensive harms to the environment. The misdemeanor leads to the possibility to close the case without trial through the setting of a deal with the Public Prosecution Office.

On the other hand, there are more severe crimes that can expose the company and its representative to damage on their image and more severe penalties, because, as mentioned above, legal entities can only be held criminally liable for environmental crimes in Brazil.

IP and unfair competition crimes: in accordance with the applicable IP-related laws, some types of infringements may be considered crimes.

The crimes against copyright are of public nature, prosecuted by the Public Prosecution Office, while the other IP-related crimes are of private nature, which means that a criminal complaint must be filed by the victim or through associations that represent the rights holder.

Cartels and antitrust crimes: cartels are considered a serious criminal offense in Brazil, which could lead the executives and employees involved in agreements among competitors to jail, according to the section 4th of the Federal Act no. 8.137/90.

The agreements among competitors are subject to special offenses stated by the Law No. 8.666/93, when it takes place during bids involving governmental bodies in order to reduce, by any means, its competitiveness.

Until the launching of an investigation of the cartel by Antitrust Authorities it is possible to set a leniency agreement that could lead to a substantial reduction of the administrative penalties and to the dismiss of the criminal liability of the officers and employees of the lenient company that are involved in the criminal activity.

Brazilian antitrust law also sets the possibility to settle a special agreement, called Leniency Plus, that allows the dismissal of the criminal liability showing evidence of another cartel that the company is involved and has evidence about its existence.

Crimes against the Financial System: running a financial institution fraudulently or riskily, providing false information to the competent authorities regarding securities or accounting records, issuing fake bonds or without the proper license, having and dealing assets without accountancy register, to run a financial institution without licenses are some of the crimes that could put officers and managers into jail, because those infringements are considered felonies in Brazil, such as tax evasion.

Corruption: it is considered corruption to offer or pay bribe or any other type of advantage to any Brazilian or foreign authority in order to do, omit or retard an official duty.

The investigation of corruption actions in Brazil can also lead to the launching of other investigations abroad if the company fits in one of the cases stated by the Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act, for example.

Fraud: generally, companies are victims of unlawfully actions performed by its employees, clients and suppliers that may cause huge financial damages through the misappropriation of assets. The Brazilian law authorizes the freezing of assets that were gathered through the use of unlawful funds in order to secure the repair of the damages caused to the victim by the criminal.

Crimes against the consumers: individuals can be held criminally liable for acts against the right to information (misleading information, absence of warning and information regarding harmful or unhealthy products and services, or not providing a manual of the product in Portuguese) and against fair advertisement (misleading advertisement).

To offer, display for sale or maintain products in warehouses, or to render services that do not comply with the legal conditions, such as when a counterfeit product is offered for sale, is also considered a crime.

Brazil's anti-bribery laws

Brazil's enforcement of its new global anti-corruption law underscores the importance of internal anti-corruption compliance programs. Brazil's anti-corruption statute establishes civil and administrative liability of legal entities in relation to acts of corruption.

The Anti-Corruption Law (Law No. 12,846/2013) seeks to fill a gap in Brazil's legal system by addressing corruption and corruption-related practices with more effective legal mechanisms, such as severe sanctions assessed based on a strict liability concept.

The main features of the law are the following:

Subject Persons

The Anti-bribery Law sets forth that the following entities (legally or de facto organized, even if temporarily) will be strictly liable for the prohibited acts committed in their interest or benefit, exclusive or not:

- business organizations and sole proprietorships, incorporated or not, regardless of the type of organization or the corporate model adopted;
- any foundations or associations of entities or persons, and
- foreign companies with office, branch or representation in the Brazilian territory.

Prohibited Acts

The Anti-bribery law is not applicable only to corruption cases. It also applies to other illegal conducts committed against local and foreign public administration. The following conducts are prohibited by the new law:

- to promise, offer or give, directly or indirectly, an undue advantage to a public agent, or to a third person related to them;
- to finance, defray, sponsor or anyway subsidize, in a proven way, the performance of the wrongful acts provided for in the new law;
- to make use of an individual or legal entity interposed to conceal or dissimulate its real interests or the identity of the beneficiaries of the acts performed, in a proven way;
- to manipulate or defraud regarding public tenders and contracts with the Public Administration;
- to hinder the investigation or auditing activities by public agencies, entities or agents, or to interfere with their work, including within the scope of the regulatory agencies and supervisory bodies of the national financial system.

Sanctions

The sanctions set forth in the Anti-Bribery Law are harsh and include:

Administrative sanctions:

- fine in the amount of 0.1% to 20% of the gross revenue of the legal entity in the fiscal year (which in Brazil is the calendar year) previous to the initiation of the administrative proceedings, excluding taxes, which shall never be lower than the advantage obtained, when possible to estimate it; and
- publication of the condemnatory decision.

Judicial sanctions:

- loss of assets, rights or valuables representing, directly or indirectly, the advantage or benefit gained from the infringement;
- partial suspension or interdiction of its activities;
- compulsory dissolution of the legal entity; and
- prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or institutions controlled by the Government, from one to five years.

The application of the sanctions set forth in the Anti-bribery Law does not affect the application of sanctions arising out of violations of the Improbity Law (Law No. 8,429/92) or the Public Procurement Law (Law No. 8,666/93).

Strict Liability:
All administrative and judicial sanctions including loss of assets, rights or valuables shall be applied under the theory of strict liability.
This means that the authorities only need to show the illegal acts were committed in benefit or interest of the legal entity. The application of the remaining sanctions will require a finding of fault or intent of the entities involved.

Successor Liability:
The Anti-bribery Law sets forth successor liability in the event of amendments to the articles of association, transformation, merger, acquisition or a spin-off of the company. In case of merges and incorporations, successor liability will be limited to payment of fines and the full restitution of the damages, up to the limit of the assets transferred.

Factors to be taken into consideration in applying sanctions
The Anti-Bribery Law sets forth a list of factors that will be taken into consideration in applying the sanctions, which include, the seriousness of the offense; the advantage gained or sought; whether the offense was fully or partially completed; the level of the damages; the negative effects produced by the offense; among others.

The legal entity that has an effective compliance program in place will get credit for it since the *"the existence of mechanisms and internal integrity procedures, audit and incentive denunciation of irregularities in applying the code of conduct and ethics within the legal entity"* will also be taken into consideration when determining the sanctions to be applied. The criteria of evaluation of compliance programs will be established by specific regulation to be issued by the Federal Executive Branch.

Another important factor that will be taken into consideration when applying the sanctions will be *"the cooperation of the legal entity with the investigation of the offense"*.

In this context, and in line with anti-corruption systems adopted in other countries, especially the United States and the United Kingdom, Brazilian law will now expressly recognize that companies that have effective compliance programs in place and that cooperate with authorities for the investigation of the offenses shall receive a more favorable treatment.

Enforcement authorities
With respect to the administrative sanctions, the initiation and judgment of a proceeding to determine the responsibility of a legal entity is an incumbency of the highest authority of the relevant Agency or entity of the Executive, Legislative and Judiciary.

The Comptroller General's Office ("CGU") shall have authority to investigate, process and sanction illegal acts set forth in the law that are committed against foreign Public Administration. At Federal Executive Branch level, CGU will also have concurrent

authority to initiate administrative proceedings against legal entities as well as to audit the progress of proceedings handled by other authorities.

With respect to judicial sanctions, it should follow the same proceeding of the Brazilian Class Action, set forth in Law no. 7,347/85.

Leniency agreements

The Anti-bribery law allows the public administration to enter into leniency agreements with the legal entities responsible for prohibited acts established in this law, provided they effectively collaborate with the investigations, with the administrative proceeding, and that such collaboration results in: i) the identification of the ones involved in the violation, when applicable; and ii) rapid obtaining of information and documents proving the illegal acts under investigation.

Leniency agreements may only be executed when the following requirements are cumulatively fulfilled:

- the legal entity is the first one to come forward and demonstrate its willingness to cooperate with the investigation of the illegal act;
- the legal entity completely ceases its involvement in the investigated infringement as of the date of the proposal of the agreement;
- the legal entity admits its participation in the offense and fully and permanently cooperates with the investigations and the administrative proceeding, always attending, at its expenses and whenever requested, to all procedural acts, until its end.

The leniency agreement does not exempt the legal entity from its obligation to provide restitution for the damages caused. However, it will reduce the fine up to two thirds, and will exempt the legal entity from publication of the condemnatory decision and from prohibition to receive incentives, subsidies, grants, donations or loans from public agencies or entities and from public financial institutions or institutions controlled by the Government, from one to five years.

It is important to note the Anti-bribery Law also allows the Public Administration to enter into a leniency agreement with a legal entity responsible for committing illicit acts set forth in articles 86 to 88 of the Public Procurement Law (Law No. 8,666/93).

Labor

The labor relations are mainly regulated by the Federal Constitution and the Brazilian Labor Code (Consolidação das Leis do Trabalho). In addition, there are supplementary labor and social security legislations as well as collective bargaining agreements.

Employment Relationship
In Brazil, an employee is any individual who provides services on a regular basis for compensation and is under the orders/coordination of a company's representative.

If an individual meets such requirements the labor relationship is likely to be recognized if a labor claim is filed or if the company is investigated by the Labor Authorities. Thus, even if a Service Provider Agreement or an Individual Contractor Agreement contains clauses establishing the non-existence of a given labor relation, facts will prevail over form and the individual will be entitled to all mandatory labor rights.

Outsourcing
Two recently approved Laws (13.429/17 and 13.427/17) authorize the outsourcing of a company's core activities to a service-provision company whose economic capacity is proven to be compatible with their needs.

If the services are provided on the contracting company's premises, then the contracting company must ensure that the outsourced workers are granted the same conditions provided to its own employees as to meals in the canteen, transportation, medical and outpatient attention, and workplace safety measures.

The provision of food and outpatients' attention is optional at appropriate locations, when there is a mobilization of outsourced employees equal to or greater than 20% of the number of employees of the party contracting.

The contracting company has subsidiary liability for non-compliance with labor rights relating to the period in which the work occurs.

Hiring Process
A company must be legally established in Brazil in order to hire employees because there are some legal requirements that the employer has to comply with (such as deposits in the "FGTS" - Unemployment Compensation Fund - system, income-tax withholding, payment of social security contributions, etc.), which in turn require a local legal entity with a taxpayer's registration number ("CNPJ").

No written agreement is required by Brazilian law (as the employment relation is a factual circumstance), yet the individual agreement is very common in order to establish specific issues, such as a probation period, confidentiality, fringe benefits, and so on.

On the other hand, Labor Law requires all employees to have an Employment Booklet (*Carteira de Trabalho*), in which each new employer must fill out a form containing its own identification information, the date of the admission of the employee, his/her salary and function.

Before the beginning of the activities, the employee must be submitted to a hiring medical exam in order to verify that he/she is able to perform the activities.

Minimum Labor Rights
Below is a list of minimum rights, according to Brazilian Labor Legislation, which all employees are entitled to:

(i.) Minimum wage;
(ii.) Annual mandatory salary increase, according to the percentage rate usually set forth in the applicable Collective Bargaining Agreement;
(iii.) Annual vacation of 30 calendar days: in addition to the monthly remuneration, the employee is entitled to a vacation bonus equal to 1/3 of the employee's monthly compensation;
(iv.) Annual Christmas bonus (13th salary) equivalent to one month compensation;
(v.) Guaranteed Severance Fund ("FGTS"): every month the employer has to deposit the equivalent to 8% of the employee's monthly compensation in a special bank account at the Federal Saving Banks (Caixa Econômica Federal). The employee can only access this amount in few specific circumstances;
(vi.) Weekly paid rest, preferably on Sundays;
(vii.) Paid holidays: if an employee works during a holiday, the employer must pay for the day with the additional rate of at least 100% of the regular wage;
(viii.) Profit sharing: a profit sharing program may be implemented by negotiation between the company and the Labor Union or a committee of employees (assisted by a member the Labor Union);
(ix.) Other payments established in the Collective Bargaining Agreement executed between the company´s and employee's Unions.

Working Time:
Regular working hours are limited to 8 hours a day and 44 hours a week. The daily shift can be increased (limited to 2 extra hours per day – up to the limit of 10 total hours per day), respecting the limit of 44 hours a week. It is common to define individually the compensation during the week to avoid working on Saturdays – working hours of 8:48 a day, from Monday to Friday.

- Employees with daily shifts higher than 6 hours must have at least 1 hour of meal/ rest period;
- There are some activities, such as telephone operators and employees working on shift rotation, that cannot exceed 6 hours a day and 36 hours a week, with specific pauses, due to health issues;
- Overtime must be compensated with an additional 50% fee over the regular hourly rate, but collective bargaining agreements can set forth higher rates;
- Individual agreements or collective bargaining agreements may provide an offsetting system for overtime (bank of hours);
- Work performed between 10 p.m. and 5 a.m. (for urban employees) must be compensated with an additional 20% fee over the regular hourly rate, but Collective Bargaining Agreements can set forth higher rates;
- Companies with more than 10 employees must record employee's working hours manually, mechanically or electronically. Employees occupying a "position of trust" (managerial duties) and employees performing external activities, with no possibility of time control, are exempted from time records. However, external activities must be registered in the Labor Booklet and in the Employee's Registration Form.

Termination of Employment Agreement

Both employees and employers are allowed to terminate the employment relationship at any time without cause, unless the employee is entitled to a job tenure (set forth either by Labor Law or by the Collective Bargaining Agreement, e.g. Union's representative, employees who suffered a working accident/occupational disease, pregnant employees).

There are some mandatory severance payments and some procedures that have to be observed when terminating an employee without cause (e.g. written termination notice; prior notice period; date of payment; ratification of the Termination Form before the Labor Union or before the Regional Labor Office; termination medical exam; fulfillment of the employee's Labor Booklet). In addition, the company has to deal with any existing individual agreements that may establish non-compete clauses, intellectual property, and so on.

Employees can also be terminated with cause, but only in very specific situations set forth in the Labor Code. Termination with cause is considered the most severe punishment, to the extent that the mandatory severance payments will be reduced and the employment agreement is summarily terminated (except if the employee is a representative of the labor union, in which case the termination will have to be preceded by an investigatory proceeding carried out before Brazilian Labor Courts).

In order to avoid the risk of having the termination with cause converted into a termination without cause by the Labor Court, the employer has to be very cautious when applying this punishment.

Inspections
The Ministry of Labor and Employment may inspect companies at any time to check whether the procedures adopted by the employer are in compliance with Brazilian Labor Law. In the event of irregularities, the company may be subject to pay a fine. Furthermore, the company may face an investigation conducted by the Labor Prosecutor, who may offer the execution of a Term of Adjustment of Conduct or may file a public civil action against the company.

Worker's Unions
Employees are represented by Unions, defined by location and activity. Such Union have statutory authority to represent the employees' rights before the employer or its association (equivalent to workers union). Collective agreements are periodically negotiated between the Worker's Union and the Association. The main goal of the Worker's Union is to ensure additional benefits to the employees through Collective Bargaining Agreements.

Collective rules prevail over the provisions of law on the following matters, among others: working schedule, this also as to reduction of the mid-period break to, at the minimum, 30 minutes; bank of hours; modalities of recording the schedule; plan of posts and salaries; identification of posts qualified as positions of trust; home office; standby regime; intermittent work; definition of the level of unhealthiness; incentive premiums; sharing in profits and results; extension of working schedule in an unhealthy environment, with no need for authorization from the Ministry of Labor.

Corporate

Direct Investment in Brazil

When investing in Brazil, the first decision foreign investors should take relates to the kind of business vehicle or structure through which they intend to make their investment in the country. There are basically 2 (two) different ways to invest in Brazil: (1) equity interests acquired through financial capital or the capital market (addressed in Section "Capital and Securities Market" below), and (2) equity interests directly acquired regarding or paid-in to Brazilian entities (addressed in this Section);

Brazil currently admits several types of vehicles: individually-owned limited-liability companies (*Empresa Individual de Responsabilidade Limitada* – "Eireli"), – a relatively new type, partnerships (*sociedade em comum*), undeclared (or silent) partnerships (*sociedade em conta de participação*), simple companies (*sociedade simples*), partnerships under a firm name (*sociedade em nome coletivo*), limited partnerships (*sociedade em comandita simples*), limited liability companies (*sociedade limitada*) - which might be constituted by one or more quotaholders (being the limited liability company constituted by one single quotaholder called "*limitada unipessoal*", corporations (*sociedade anônima*), limited partnerships with share capital (*sociedade em comandita por ações*), and cooperatives (*sociedade cooperativa*).

Joint-ventures also exist in Brazil, yet they must fit into one of the above listed categories.

The choice of the vehicle must take into consideration several aspects of the business activities to be carried out, such as the intended number of partners/shareholders/ quotaholders, the corporate capital structure (e.g. common or preferred quotas/shares, whether with or without premium, voting rights), the extent of the information to be disclosed (e.g. whether to publish company acts and financial statements or not), the titles to be issued by the company (e.g. debentures or other bonds), the relationship between the equity holders, and the management structure.

The main type of business vehicles through which most foreign direct investment is carried on in Brazil are limited-liability companies (*sociedades limitadas*) and corporations (*sociedades anônimas*). Due to a recent reform in legislation, individually-owned limitedliability companies (Eireli) are now also an option to be considered by foreign investors.

Foreign companies may also choose to invest by opening branches in Brazil. However, it is not usually a practical option (and, for this reason, rarely used), since it depends on a governmental authorization which involves the fulfilment of an extensive list of requirements.

Regardless of the type of business vehicle chosen by the foreign investor, there are some general proceedings to be carried out, such as (i) enrollments with the National Taxpayers' Registry (both individuals and legal entities), (ii) execution of powers of attorney in accordance with applicable law based on the type of business vehicle (e.g. granting powers to represent the parties before the Brazilian Federal Revenue, the Central Bank of Brazil, and the Board of Trade), (iii) registration of the foreign investments before the Central Bank of Brazil, (iv) filing of the incorporation acts before the Board of Trade, (v) publication of the corporate acts (mainly for corporations), and (vi) filing for environmental licenses and operational permits according to the activities to be performed.

Legal entities must provide full disclosure of their control chain up to the final beneficiary, i.e the individual who directly or indirectly holds, controls or significantly influences the legal entity or the individual in whose name the transaction is conducted. Such significant influence is assumed whenever an individual, whether directly or indirectly, (i) holds more than 25% of the equity or (ii) holds or exerts supremacy on the deliberations and the power to elect the majority of the managers of the legal entity, even without holding the majority of the equity[1].

Legal entities with their headquarters abroad must offer proof of their legal existence (e.g. incorporation acts, certificates of good standing) and a statement declaring that the applicable law has been respected when they were incorporated.

To be accepted in Brazil, documents from foreign countries must be notarized, validated by the Consulate/Embassy (or apostilled) and translated by a sworn translator (exceptions apply).

Incorporating a Limited-Liability Company (sociedade limitada):
Limited-liability companies are governed by the Brazilian Civil Code (Law No. 10,406/2002).

The liability of its quotaholders is limited to the total value of the quotas owned by each of them; however, all quotaholders are jointly liable before third parties for paying in the total amount declared as the corporate capital. This means that, once all the quotaholders have paid in the total quotas subscribed by them, they should not be personally liable for any debts the company has assumed in compliance with the Law and the articles of association.

Said limited liability is not absolute and it is possible to pierce the corporate veil in

[1] According to Article 8, § 1° and 2°, of Normative Ruling RFB N° 1863/2018, available here, and applicable as of December 28, 2018 for new companies.

Brazil whenever abuse of legal personality is proven. However, the quotaholders are personally liable for consumer, labor and environmental debts. It is important to notice that Law No. 13,874/2019 sets forth some hypothesis to pierce the companies' namely: (i) repetitive compliance of partner's or administrator's obligations by the company; (ii) transfer of assets or liabilities without consideration, except for those of insignificant value; and (iii) other acts of non-compliance with patrimonial autonomy.

The incorporation of a sociedade limitada used to require at least 2 (two) quotaholders, who shall execute the articles of association to be filed with the Board of Trade. However, with the enactment of Law No. 13,874/2019, sociedades limitadas could be created with only one (1) quotaholder under very specific conditions.

The draft of the articles of association should include:

- Full qualifications of the quotaholders (individuals and/or legal entities) and their representatives (in cases of legal entities);
- Corporate name (including a reference of the main activity of the company, as well as the term LTDA at its end);
- Corporate capital, in Brazilian Reais, divided into quotas, capital distribution, form (money or assets) and term for payment. No minimum capital is required, except for some specific activities. The Board of Trade now admits the existence of preferred quotas;
- Location of the Company - headquarters and branches (complete addresses);
- Corporate purpose;
- Term of validity of the Company (that can be for an indefinitely time);
- Date of the end of the fiscal year (that may be different from the calendar year);
- Management structure (Officers and/or Board of Directors);
- Full qualifications of the managers, their powers and attributions, considering that:
  - at least one (1) officer is required;
  - only individuals can be appointed (legal entities cannot be appointed to run a company in Brazil);
  - the manager can be appointed in the articles of association or in a separate corporate act;
  - foreigners may be appointed as executive officers provided that they are residents in Brazil and hold a permanent Visa[3];
  - Brazilians or foreigners who live abroad may be appointed to the board of directors, yet a specific Power-of-Attorney is required;
  - individuals cannot take office if so prevented by law (and they must declare in writing they are not prevented by law when appointed);

[3] http://www.mdic.gov.br/

- Composition and installation of a Fiscal Board, which is an internal elective body whose relevant duties and responsibilities include the general supervision of the management by periodically examining and issuing opinions on management reports and the financial information of the company. Members are elected in the annual meeting/assembly, they may be quotaholders or not and must be residents in Brazil;
- Each quotaholder's participation in profits and losses;
- Whether the Brazilian Corporations' Law will be applicable whenever the rules regarding sociedade limitada are silent on a specific matter; and
- Jurisdiction.

Sociedades limitadas admit a certain level of freedom of form and content as long as it is not prevented by law nor changes the nature of the company's legal type. Examples of this flexibility are the creation of a board of directors, preferred quotas, and treasury quotas. The clauses of the articles of association can be broadly amended by the quotaholders at any time, as long as the corresponding legal quorum is met, which, in turn, varies according to the matter to be amended.

Quotaholders must decide on the approval of the following corporate matters: financial statements and accounts, appointments and dismissals of managers as well as their compensation, amendments to the articles of association, mergers, splits, dissolution, the appointment of liquidators and the approval of their accounts.

Such decisions must either be taken in quotaholders meetings, whenever so defined by the articles of association, or in assemblies in accordance with the law. These meetings/assemblies must follow some legal procedures for call notices, attendance and deliberations. The meeting or assembly may be replaced by a quotaholders' unanimous written resolution on the matter that would be discussed at the meeting or assembly. The quotaholders meeting should take place at least once a year to vote on the managers' accounts, the financial statements and the appointment of the managers and members of the fiscal board (if applicable).

The company may be dissolved in the following events: expiry of its term (if applicable), by mutual agreement, by decision of the absolute majority of its quotaholders (for companies with undefined terms) by extinction of the authorization required to operate (if applicable). or in the absence of at least 2 (two) quotaholders – if longer than 180 days in case of pure limited liability companies.

Incorporating an individually-owned limited-liability company (Eireli)

Eireli stands for individually-owned limited-liability company, a simplified type of company, with limited liability similar to the sociedade limitada. Just like a sociedade limitada unipessoal, in an Eireli there is only one (1) owner. However, there's a necessity of a minimum corporate capital of 100 (a hundred) times the minimum – wage in force

in Brazil, which must be totally paid in at the moment of the incorporation of the company. The certainty of a substantial paid in corporate capital distinguishes it from a sole quotaholder limited liability company.

The Eireli was admitted in Brazil in 2011 through an amendment to section 980-A of the Brazilian Civil Code. After some discussion as to whether Eirelis could also be owned by legal entities, and not only individuals, a new Normative Ruling has finally settled the matter, allowing Eirelis to be incorporated by an individual or a legal entity, whether Brazilian or foreign.

Its incorporation act is similar to the articles of association of a sociedade limitada, but in a much simpler form. It basically requires:

- Full qualifications of the owner (either an individual or a legal entity);
- Corporate name (including Eireli at the end);
- Corporate capital in Brazilian Reais, which must be of at least 100 minimum wages to be totally paid-in at incorporation;
- Location of the company – headquarters and branches (complete address);
- Corporate purpose;
- Term of validity of the company (that can be for an indefinitely time);
- Date of the end of the fiscal year (if different from the calendar year);
- Full qualifications of the managers (individuals cannot take office if so prevented by law and they must declare in writing they are not prevented by law when appointed);
- Statement that its owner does not hold any other Eirelis (in case the owner is an individual).

Any decisions regarding the Eireli should be taken by its owner or his/her representative in a public or private written instrument (e.g opening of branches, capital increases or reductions, and amendments to the act of incorporation).

An Eireli may be merged, extinguished or converted into any other type of business vehicle upon decision of its owner.

Should the individual owner deceases, the succession of the company will be carried out either through a court order (alvará judicial) or through a distribution order (partilha) in accordance with a court decision or a public deed of asset distribution.

Incorporating a corporation (*sociedade anônima*)

Corporations are organized and incorporated in accordance with Law No. 6,404/76 ("Brazilian Corporations' Law"). The capital of a corporation should be divided into shares and the liability of the shareholders is limited to the issue price of the shares subscribed or acquired.

The corporation can be publicly or closely-held depending on whether its securities are traded in the securities market. The Brazilian Corporations' Law allows incorporation by public subscription. However, due to the complexity of the acts involving the public market, companies are usually incorporated by private subscription through a general assembly and only go public after that. In some cases, even privately owned corporations are incorporated as a sociedade limitada and then transformed into a corporation.

The private incorporation of a sociedade anônima requires the execution of several acts, including:

- The subscription of the shares by at least 2 (two) shareholders – individuals or legal entities, which must be formalized through a subscription list (Boletim de Subscrição);
- The initial payment of at least 10% (ten percent) of the issue price of the shares subscribed in cash, which in turn must be deposited into a bank;
- An appraisal report whenever the subscription price is paid in assets;
- A shareholder resolution approving the incorporation (adopted in a general meeting or through a public deed). Said resolution must also include the approval of the bylaws and the bylaws themselves, and appoint the members of the management and fiscal board (as applicable);
- The filing of the documents before the Board of Trade;
- Publication of the incorporation acts.

The by-laws of a sociedade anônima should include information, settings and decisions regarding:

- Corporate name (including the terms Cia. or S/A);
- Capital structure: in Brazilian Reais; divided into shares, admitting different species, classes and forms of shares; capital distribution; payment (money or duly appraised assets); term for payment (no minimum capital is required except for some specific activities expressly required by law); and whether the company will issue debentures or other credit titles;
- Location of the company – headquarters and branches (complete address);
- Corporate purpose;
- Term of validity of the company (that can be for an indefinitely time);
- Date of the end of the fiscal year (if different from the calendar year);
- Management structure: whether it will be divided between board of directors and executive officers, as well as the powers and attributions of each management body. Note that the decision as to the management structure should consider that:

  - at least two (2) officers and - when there is a Board of Directors

  - three (3) directors are required; - only individuals can be appointed (legal entities cannot be appointed to manage a corporation in Brazil);

  - the General Meeting of Shareholders appoints the Board of Directors and the Board of Directors appoints the Executive Officers (when the management structure consists of two bodies);

- all the managers are appointed for a determined term of office;
- foreigners may be appointed as executive officers as long as they are domiciled in Brazil and have a permanent Visa;
- Brazilians or foreigners who live abroad may be appointed to the board of directors, yet a specific Power-of-Attorney is required;

The private incorporation of a sociedade anônima requires the execution of several acts, including:

- The subscription of the shares by at least 2 (two) shareholders – individuals or legal entities, which must be formalized through a subscription list (Boletim de Subscrição);
- The initial payment of at least 10% (ten percent) of the issue price of the shares subscribed in cash, which in turn must be deposited into a bank;
- An appraisal report whenever the subscription price is paid in assets;
- A shareholder resolution approving the incorporation (adopted in a general meeting or through a public deed). Said resolution must also include the approval of the bylaws and the bylaws themselves, and appoint the members of the management and fiscal board (as applicable);
- The filing of the documents before the Board of Trade;
- Publication of the incorporation acts.

Corporations have a list of corporate books to keep record of all their corporate acts (i.e., book of minutes of shareholders' meetings, meetings of the board of directors, meetings of the fiscal board, meetings of the executive officers, lists of attendance in the meetings, registry of shares, share assignments).

There are several corporate acts that must be published in both the official gazette and a regular newspaper. These publications include incorporation acts, call notices, financial statements, general meetings of shareholders and those meetings of the board of directors that are meant to generate effects over third parties (exceptions apply in some cases). Due to the estimated costs, red tape and the exposure triggered by such duty to publish certain corporate acts, many investors would rather incorporate a limited liability company than a corporation.

The Brazilian Corporations' Law grants a pack of essential rights to the shareholders, such as the right to participate in the profits, participate in the assets in the event of winding up, oversee management, withdraw from the corporation in the cases provided for by Corporation Law, and the right of first refusal in the event of subscription of new shares or convertible titles issued by the corporation.

Furthermore, the Brazilian Corporations' Law grants exclusive authority to shareholders to decide on some relevant matters during the general meetings. These meetings can be held as ordinary shareholders meeting or special shareholders meeting, according to the matter discussed and must necessarily attend some legal formalities regarding publications, call notices, attendance and resolutions.

Ordinary general meetings should take place at least once a year, in the first 4 (four) months after the end of the previous fiscal year, in which shareholders should vote, in accordance with the provisions of the Brazilian Corporate Law, about (i) the management's accounts, (ii) the financial statements, (iii) the destination of the financial results and the payment of dividends (if any), and (iv) the appointment of the managers and members of the fiscal board (if applicable). All other matters which, by law, are not exclusive of ordinary meetings, should be decided by means of special shareholders meeting.

The company may be wound up in three different ways, as follows: (1) by force of law: when its term expires (if applicable), in the cases provided for in the bylaws, by resolution of the shareholders in a general meeting, in the absence of at least 2 shareholders (unless plurality of shareholders is recomposed within the period stipulated by law), and in the extinction of the authorization to operate (if required); (2) by court order, when its incorporation is annulled in proceedings commenced by any of the shareholders or when it has been proven that the corporation cannot achieve its corporate purposes (in proceedings commenced by shareholders representing five per cent or more of the capital), or in the event of bankruptcy; and (3) by the decision of a competent administrative authority, in the cases and in the manner provided for by any special law.

Mergers and Acquisitions

There are many ways to do mergers & acquisitions in Brazil and structures to enable the deals. The most common way is by the purchase and sale of an equity participation or asset, but it is also usual to do mergers and absorptions. M&As require some formalities, such as public disclosure (publication in newspaper and in the Official Gazette, depending on the type of company, as per the specific sections above) and filing before the Board of Trade (depending on the type of transaction adopted).

A careful due diligence is recommended since the deals may bring to the buyer/investor risks associated with tax, labor, corruption, environmental and consumer liabilities, among others. In this sense, collaterals and in rem guarantees are widely used.

Furthermore, it is important to comply with the foreign investment requirements as well as with the capital markets and the Securities and Exchange Commission's rules if there is a public held company involved in the transaction. There are also some regulated sectors which require special attention due to the existence of restrictions to non-Brazilian investment, including aviation, media and mining. In addition to that, deals on regulated markets may require the grant of prior approvals by the regulatory authorities (e.g. energy, health insurance).

Merger Control

The control of competition aspects in merger transactions is made by CADE, the Brazilian antitrust authority, pursuant to Law No. 12,529/11 and CADE's Rule 2/2012. The law brings a restrictive list of transactions that are subject to mandatory pre-merger notification.

Namely, any transaction related to typical M&A deals (including acquisition of equity participation), formation of joint-ventures, associations or other types of associative agreements that has effects in Brazil must be notified.

The thresholds to consider a filing process for CADE's analysis are: (i) if one of the parties (or its economic group) has sales volume or turnover in Brazil equal to or higher than R$750 million, and (ii) the other party (or its economic group) has sales volume or turnover in Brazil equal to or higher than R$75 million, both in the year prior to the transaction. It is worth mentioning that the requirement on revenues must consider the parties' economic group, and not just revenues of the buyer and the target.

Brazilian regulations state that the definition of "economic group" must take into consideration one of the following concepts (i) all companies that are controlled directly or indirectly by the same parent company or individual; and (ii) all companies in which any of the companies identified in item (i) holds a participation, directly or indirectly, of more than 20% in the corporate or voting capital.

The administrative costs for filing are R$85,000, apart from any fees with lawyers or experts that the parties hire. The merger control is made prior to the closing of the transaction and CADE has 240 days to decide (in very complex cases, it may request additional 90 days). For simpler cases, involving low market concentration, there is a faster procedure, by which CADE has 30 days to decide. After the analysis, CADE may fully approve the transaction, fully reject it or impose restrictions for approval (e.g.: sale of a specific business unit).

If a transaction meets such conditions, but is not submitted to CADE, or if the parties close the deal and transfer assets or start operating jointly prior to CADE's approval, parties and its managers may be punished for what is known as gun jumping.

The penalty varies from R$60,000 to R$60 million (depending on the economic situation of the parties) and the transaction might be considered null and void. Finally, transactions taking place in Brazil are usually governed by Brazilian law, but it is possible to choose a foreign law.

Corporate Reorganization & Bankruptcy

The current Brazilian restructuring and bankruptcy law, Federal Law No. 11,101, was enacted on February 9th, 2005. The statute regulates the judicial recovery, the extrajudicial recovery and the bankruptcy (liquidation) of individual entrepreneurs and legal entities. The referred law is not applicable to self-employed professionals, non-commercial companies, cooperatives, state-owned (or government-controlled) entities, financial institutions (e.g. banks and stock brokers), credit unions, consortia, supplementary pension companies, health care plan companies, insurance companies, special savings companies and other organizations held equivalent by law. However, there is a trend of allowing the filing for judicial recovery cases by associations and rural producers.

When facing a crisis, it is usual that debtors initially negotiate with creditors. It is becoming common for entrepreneurs to engage in informal creditor workouts, such as standstill contracts (which are not statutorily regulated in Brazil). Informal creditor workouts, however, are often insufficient to allow for the turnaround of the debtor. More acute crises demand a higher degree of intervention: filing for judicial or extrajudicial recoveries are available options. Finally, should the economic-financial crisis be insuperable, an insolvent entrepreneur is likely to face liquidation under a bankruptcy proceeding, which may be initiated by the debtor (voluntary bankruptcy) or by the creditors.

Law No. 11,101 has no provisions on the filing of a restructuring procedure by groups of companies. Nonetheless, there are many judicial decisions allowing for groups of companies to file jointly (procedural consolidation). Procedural consolidation may sometimes lead to substantive consolidation – consolidation of assets and liabilities –, which is dependent on the approval of said measure either by the creditors or by the Court.

Brazilian Law does not have any provisions concerning transnational reorganization or bankruptcy proceedings, and there is also no international treaty on this issue. Despite the lack of statutory provisions, there is a small number of judicial decisions regarding cross-board bankruptcies and reorganizations.

Debtor's point of view

Law No. 11,101 provides debtors with three (3) different options to face an insolvency scenario. Judicial reorganizations are designed to allow debtors to overcome acute financial crises, whereas extrajudicial (out-of-court) reorganizations are usually deemed

as an appropriate means for less severe turnarounds. Finally, should the debtor have no way to restructure its activity, voluntary bankruptcy (liquidation) proceedings are available.

One of the major benefits for the debtor when choosing a judicial reorganization proceeding over directly negotiating with creditors is that a stay period, suspending the course of actions and executions against the debtor, takes place once the Court confirms the conditions for filing were met. In out-of-court reorganizations, the stay period usually comes about at a later stage: as a rule, the decision confirming the plan also suspends the course of actions and executions against the debtor.

Creditor's point of view
In reorganization proceedings, the general meeting of creditors has, among others attributions, the prerogative to analyze the financial and economic feasibility of the reorganization plan presented by the debtor. Each creditor has the right to vote on the plan – certain classes of creditors vote solely on a head count basis, whereas others also vote in proportion to the amount of each individual claim.

Creditors that are not listed – or are listed incorrectly regarding its classification or the value of its credit – in the chart of creditors in a judicial reorganization or in a bankruptcy proceeding shall timely file a proof of claim requesting the correction of its credit (amount and/or classification). Filing late claims or not filing claims may cause the loss of voting rights at the general meeting of creditors, among others consequences.

In judicial and out-of-court reorganizations, credits listed in foreign currency shall not be converted into Brazilian Reais (unless the creditor has expressly consented to a different stipulation). For exclusive purposes of voting at general meetings, foreign currency claims shall be converted into Brazilian Reais at the exchange rate prevailing on the day before the general meeting of creditors. In liquidation bankruptcy proceedings, the credits are automatically converted into Brazilian Reais based on the exchange rate prevailing on the date of the decision that decrees the debtor's bankruptcy.

There are many types of guarantees in Brazil – and some additional conditions might have to be complied with by foreign creditors. As long as certain conditions are met, fiduciary liens are not subject to judicial or out-of-court reorganizations or to liquidation bankruptcy proceedings. Furthermore, creditors preserve their rights and privileges against personal guarantors, as a rule.

Investor's point of view
Judicial reorganizations and bankruptcy proceedings provide means for the sale of the debtor's assets to occur free of any encumbrance (by contrast, the disposal of assets in out-of-court reorganizations does not lead to the same result). In these deals, the winning bidder shall be free from all debtor's liabilities concerning that asset.

Leasing some of the debtor's assets, free of any liabilities to the lessor as well, is also common.

Investment in distressed assets shall be done in Court as a rule. Furthermore, it is strongly recommended to have a complete due diligence performed before any deal. Finally, there is no provision regarding DIP financing under the Brazilian legal system.

Judicial Reorganization Proceedings

Only the debtor may file for judicial reorganization. No creditor may force a debtor into a reorganization procedure.

During the course of the process, directors and officers will continue to carry on the debtor's activities (debtor-in-possession), under the supervision of the judicial administrator (who is appointed by the Court) and of the Committee of Creditors, if any (in practice, the formation of the Committee of Creditors rarely takes place). Once the judicial recovery petition has been filed, the debtor is no longer allowed to dispose or encumber any items or rights of his permanent assets, unless of the sale or encumbrance is of evident utility, which has to be recognized by the Court after hearing the Creditor's Committee. In case the Court understands that there are signs of irregularities in the debtor's administration, the Court shall force the directors and officers to step down, replacing them pursuant to the debtor's articles of incorporation or to the judicial reorganization plan.

All the existing credits on the date of the filing for judicial reorganization are subject to the proceeding, even if not yet due. However, there are some legal exceptions, such as claims secured by fiduciary guarantees and advances on currency exchange contracts, as well as tax debts (in this respect, certain statutes provide for specific tax relief for debtors under judicial reorganization).

The debtor shall draft a judicial reorganization plan and submit it to the Bankruptcy Court within 60 days of the decision that granted the processing of the judicial reorganization. The plan may establish a vast range of means of reorganization
(v.g. sale of assets, installment payment, reductions on claims). If any creditor objects the plan, the Court must call a general meeting of creditors to deliberate on the approval or rejection of the judicial reorganization plan; should there be no objections, the plan is automatically deemed approved.

Normally such a plan is previously negotiated with the main creditors; in practice, it is also accepted that the original plan be amended according to the negotiation among the debtor and the creditors. The reorganization plan can provide for the transfer of part of the debtor's permanent assets as a means of reorganization and DIP financing.

The general meeting of creditors may be called by the Court at any time and it is divided in four (4) classes of creditors: labor creditors, secured creditors, unsecured creditors and

micro and small enterprises creditors. The general meeting of creditors shall deliberate, according to the quorum established by law, any matter that may affect the creditors' interests (including the approval or not of the judicial reorganization plan).

The Court will grant the judicial reorganization if there is no objection to the plan or if it is approved by the general meeting of creditors. If not approved by the general meeting, the reorganization proceeding will be converted into liquidation bankruptcy. Nevertheless, provided certain criteria are met, the Court may still confirm a plan that was not approved by the general meeting of creditors, a doctrine referred to as "cram down".

If the judicial reorganization is granted (confirmation of the reorganization plan), the debtor will remain under judicial oversight for two (2) years – even if the judicial reorganization plan provides a longer period to comply with the debtor's obligations, which normally occurs. The non-performance of any obligation established in the reorganization plan during this two (2)-year period will result in the conversion of the judicial reorganization into bankruptcy. After such period, a default on the performance of the plan no longer leads to the conversion into liquidation in an automatic fashion.

In large reorganizations, matters at dispute at the Bankruptcy Court will frequently be taken to Appeals Courts and even to Apex Courts. Some of the main issues arising from the various interests at stake on a reorganization proceeding, among many other matters, include the following: the validity of liens; the insertion or exclusion of claims from reorganization proceedings; the value and classification of claims; management of the debtor during the proceeding; voting quora; conflicts of interest; prorogation or lifting of the automatic stay; abusive voting with regards to the reorganization plan; legality of the reorganization plan; jurisdiction over the assets and liabilities of the debtor; substantive and procedural consolidation in case of reorganization proceedings filed by groups of companies.

Additionally, it is increasingly common for reorganization proceedings to involve disputes regarding arbitration clauses. These disputes often revolve around jurisdiction (competence conflicts between the Bankruptcy Court and the Arbitral Tribunal on matters related to the assets and liabilities of the firm under reorganization) and shareholders' disputes on the management of the debtor. The filing of a reorganization proceeding does not prevent the restructuring entity from being a party to arbitral disputes.

A simplified proceeding of judicial reorganization is available for micro and small enterprises. Such special procedure is not mandatory: the debtor can choose between the regular regime of judicial recovery or the special procedure for micro and small enterprises. The plan encompasses all existing credits at the time of the filing, even if not yet due, except those from lending of official funds, tax credits and other legal exceptions. The plan may provide only for an up to thirty-six (36) months installment payment of equal and successive amounts, as well as credit haircuts; the first installment

must be paid within 180 days from the distribution of the recovery petition. The plan must also provide for the need of authorization by the judge for the debtor to increase expenses or hire employees. There is no judicial administrator and no general meeting of creditors. If creditors holding over half the credits of each class object to the plan, the judicial reorganization will be dismissed and it will be converted into bankruptcy. Otherwise, the judicial reorganization will be granted.

Out-of-court reorganization proceedings
Only the debtor may file for out-of-court reorganization.

The out-of-court reorganization consists of a private agreement among the debtor and its creditors, which has to be filed in Court in order to judicially ratify the plan. The recovery plan is negotiated out-of-court among the debtor and its creditors and once the negotiation is finished, the debtor files for the extrajudicial recovery seeking for the plan to be confirmed by the Court. Creditors may present oppositions to the recovery plan. The extrajudicial recovery plan will not be confirmed only if the plan does not comply with the law. If the Court does not confirm the out-of-court plan, the refusal does not result in automatic bankruptcy.

The plan will encompass the creditors that adhered to the plan, but the recovery plan may be imposed on the dissenting creditors as long as 60% of the creditors of each class vote in favor of the plan (and this is the main advantage when comparing the out-of-court reorganization to a private agreement with creditors). The plan can establish a vast range of means of reorganization. On the other hand, the out-of-court reorganization has some limitations. For example, it cannot adjust the same list of claims that are also not subject to judicial reorganizations, and, on top of that, additional claims are excluded, which is the case of labor-related or occupational accident claims. Furthermore, it is not possible to arrange deals by which assets of the debtor could be sold free of any encumbrance or past liabilities.

There is no judicial administrator nor general meeting of creditors. The Court merely ratifies the out-of-court plan. For such reasons, the out-of-court reorganization is faster and cheaper than the judicial reorganization.

Bankruptcy Proceedings
A creditor can file a bankruptcy proceeding against a debtor if some requirements are met; however, creditors not domiciled in Brazil have to post a bond to cover the court fees and potential damages to the debtor. The debtor can also file for bankruptcy voluntarily, which is less usual.

In liquidation proceedings, the debtor is removed from the management of its assets, thus losing the right to dispose of it. The debtor, its directors and officers still have some duties – but they have the right to monitor the bankruptcy proceedings and request certain actions to preserve its rights and assets and even intervene in legal proceedings

to which the bankrupt estate is a party. The decree of bankruptcy determines the early maturity of the debt, with proportional deduction of interest, and, as a rule, interest ceases to accrue.

The bankruptcy judicial administrator may revoke acts performed with the intent to harm creditors if there is proof of both a fraudulent collusion between the debtor and a third party, and of actual damage to the bankruptcy estate. Law No. 11,101 also lists some acts that are deemed ineffective with regards to the bankrupt estate regardless of whether the intent to commit fraud was present.

The revocation or the ineffectiveness of some acts have, as consequence, the return of the assets to the bankrupt estate in kind (with all accessories) or in its market value, with addition of damages (but the Bankruptcy Law protects the bona fide party, who will be entitled to restitution of the assets or of the amount transferred to the debtor). The debtor and its partners, directors or officers, among others, may be subject to civil and criminal liabilities.

In bankruptcy proceedings, all the assets and documents of the firm under bankruptcy are collected by the judicial administrator (appointed by the bankruptcy judge), who will also specify and classify the claims against the debtor.

Afterwards, the debtor's assets will be sold in Court and the creditors will be paid according to their classification (ranking of priorities). Finally, the judicial administrator, who coordinates the proceeding, will submit its accounts for judicial approval and the Court may conclude the liquidation process.

Brazilian Bankruptcy Law does not grant a fresh start for the debtor as a result of the termination of the bankruptcy procedure.

Capital & Securities Markets

Regulatory Framework Overview

The agents in the Brazilian financial, capital and insurance markets are subject to specific regulators. The regulatory agencies have the power to create rules (under the applicable legal framework), monitor, supervise and enforce the applicable regulation, as well as impose fines and other penalties to the agents in case of misconduct. The most important regulators are:

- Brazilian Central Bank ("BACEN"): traditional central banking functions, including financial regulation, exchange control;
- Securities and Exchange Commission ("CVM"): supervision of the securities markets, including publicly traded companies, asset-management industry and investment funds;
- Private Insurance Regulator ("SUSEP"): regulation and supervision of the insurance industry; and
- Complementary Pensions National Regulator ("PREVIC"): regulation and supervision of the complementary pension industry.

It is also worth mentioning that the National Monetary Council ("CMN") is responsible for the monetary politics and general framework that must be observed by the other agents, although it is not an "executive" entity.

The laws guiding the capital market are Law No. 6,385/1976 (which created and regulates the CVM), Law No. 6,404/1976 (Brazilian Corporations' Law), Law No. 4.595/64 (which creates the National Financial System), and Law No. 4,728/65 (organizing BACEN's legal framework and duties).

CVM and BACEN

The creation and operation of organized exchanges, settlement/custody systems or agents, broker-dealers and other financial institutions all require prior authorization from CVM and/or BACEN. The necessary authorization depends on each specific market and the services that the new entity intends to offer. The entity(es) with powers to grant the license also have powers to supervise and regulate such activities.

CVM supervises all security-related activities, including public offering, underwriting, the stock market, debt markets, as well as agents operating within such markets: institutions (broker-dealers), investors and security issuers (publicly-traded companies, funds).

As the capital market regulator, CVM has legal powers to punish non-compliant/illegal behaviors by all agents in the market, including investors, issuers (companies, investment

funds), broker-dealers and exchanges. Frauds, illegal issues, non-fair trading practices (including market manipulation and insider trading), and failures in the disclosure duties are all under CVM's surveillance, in its duty to protect the market and all its agents, including the investors.

CVM has a board of 4 commissioners and one president, all appointed by the President of Brazil for 5-year term of office. The Commission is funded by the federal government.

Investigations and administrative proceedings can be triggered from CVM's internal sources and investigations as well as from complaints made by investors or other market agents (including brokers, the stock exchange and other regulatory agencies/ governmental authorities).

Penalties can only be imposed by CVM after an administrative proceeding – observed the due process of law and other constitutional guarantees. On the other hand, stop orders can be issued to any market agent by the regulator without any prior notice, demanding the interruption of illegal activities.

Regarding the financial institutions (including banks and brokers acting in the securities market), BACEN, in order to maintain the financial stability, has powers to take measures to regulate and limit banking activities. In this sense, financial institutions must meet minimum capital and net worth requirements, and must have its risk indexes limited to those approved by BACEN (and international) regulation.

Much like CVM, BACEN also conducts administrative proceedings that may lead to penalties such as warnings, fines, suspensions and temporary disqualifications.

Agents that have penalties imposed due to decisions on administrative proceedings from both CVM and BACEN can present appeals to an Administrative Court of Appeals of the National Financial System ("CRSFN"), which has the final decision on administrative levels. Penalties confirmed by the Administrative Court of Appeals may also be challenged before the judicial courts.

Financial institutions and publicly-traded corporations must have their financial statements audited by independent external auditors duly registered before CVM. Such firms or professionals must also observe CVM's regulations and its Federal Council rules, which encompasses international accounting standards. Listed corporations, funds and financial institutions must also file quarterly financial information with the respective regulator (CVM or BACEN) and have such documents reviewed by an independent auditor.

Stock Exchange and publicly-traded companies

In addition to the CVM – and having its authority arising from CVM's regulation –, B3 (the entity resulting from the merger of BM&FBOVESPA and Cetip), is currently the only active stock exchange in Brazil, having self-regulatory powers, and setting rules for the trading and post-trading in the Brazilian market.

B3, one of the most important and economically relevant exchanges globally and the leading exchange market in South America, is the place of trade of securities including equities, depositary receipts, exchange traded funds, real estate investment funds, gold, foreign currencies, derivatives (listed and over the counter) – including interest rates, futures and options of the assets traded on spot market – fund shares, government and corporation's debts notes and bonds. It also has a market surveillance and enforcement division, which oversees the transactions performed within its environment, mainly supervising broker-dealers.

Although the economy in Brazil is more bank-oriented than capital market-oriented, securities are an important tool in the corporate finance puzzle.

Public securities issuance, including stocks and debentures (and other debts notes), cannot be performed without prior registration with CVM and B3. Only publicly-held companies may access, under CVM rules and B3 regulation, the equity and debt markets (through both exchange market or over-the-counter markets) to raise investors' funds to finance their projects, having its securities traded on stock exchange and over-the-counter markets.

In order to be registered before CVM, the corporation must comply with rules and requirements mandated by statute, issued by CVM. The registration requires proper disclosure of information regarding both the securities and the issuer, and once registered, the company must file periodic reports (including the submission of quarterly financial statements) and report extraordinary events (material facts disclosure).

Publicly-held corporations headquartered abroad may use the depositary receipts system ("DRs") to have securities representing their shares traded in the Brazilian market. These DRs shall be previously approved by CVM and B3, and the issuer (or a bank) could coordinate this proceeding, that comprehends the deposit of the shares with a foreign bank and the issuance of the DRs representing such shares, being such DRs available for trade in the Brazilian exchange market.

Increased Corporate Governance special listing segments

Publicly-traded corporations may join one of the special listing segments of the stock exchange. It is a contract by which the company agrees to adopt principles and follow specific rules, in addition to the "basic" regulation, applicable to all companies that have securities publicly traded.

There are three different classifications, depending on the duties that the companies, the controlling shareholders, and the managers agree to. It is a progressive classification, being Nível 1 the special segment with less requirements, Nível 2 an intermediate level and Novo Mercado the one with the highest standards and requirements .

The requirements are additional shares dispersion and liquidity (in order to protect the minority shareholders), information disclosure, corporate governance practices, minority shareholder rights. In the Novo Mercado segment, the companies must have only voting shares (common shares) representing its capital stock.

Additionally, B3 also created two different segments for small and midsize companies that prefer to gradual access the formal market: Bovespa Mais and Bovespa Mais 2. These segments allow companies improve their corporate governance and transparence in their communication with the market. These companies may finance their growth project with smaller and restricted fundraising operations. These segments also allow companies become a listed company without come public. There a period of 7 years for these companies carry out their IPO.

Foreign Investors

Foreign investors may invest in the capital markets and some tax benefits may be applicable to such investments, including advantages related to income tax on capital gains. Please refer to the Tax Chapter of this Doing Business for further information.

International investment in Brazil must be performed in accordance with the BACEN regulation on the issue, which includes the appointment of a legal representative in Brazil, the filing of a specific form and the registration before the CVM.

Investment Funds

Investment funds in Brazil are supervised by both CVM and ANBIMA (Association of Financial and Capital Markets Entities). The latter sets standards and benchmarks for the industry, through best practices guidelines.

CVM regulates all Brazilian types of funds, that can be classified as unstructured or 555 funds, and as structured funds.

The unstructured funds are destinated to investments in financial assets exclusively and are regulated only by CVM Resolution n° 555/14 (ICVM 555). According with the risk of the major assets in its portfolio, an unstructured fund can be classified as (i) a fixed-income funds, (ii) equities funds, (iii) balanced funds, and (iv) currency funds.

Differently, the structured funds are vehicle of investments with a peculiar and more complex strategy of investments, and also with higher risks. The structured funds are regulated by ICVM 555 and also for specific rulings issued by CVM for each one of them.

Currently, there are four structured funds in Brazil: (i) equity investment funds ("FIP"), (ii) real estate investments funds ("FII"), (iii) credits investment funds ("FDIC"), and (iv) exchange traded funds ("ETF").

All funds must hire a professional administrator (in charge of operations, who coordinates the organization of the fund and the relationship before auditors, accountants, lawyers), a manager (in charge of investment decision and the execution of investment policies) and a custodian.

Last year, Brazilian Law of Economic Freedom amended the Civil Code and established a specific regulation for the investment funds, which was previous regulated as all others co-ownerships. Pursuant the new rules, the investment funds are a special co-ownership with the purpose of investing in financial assets, assets and rights of any kind.

The principal amendments are: (i) simplification of the procedures to create an investment fund (the register of the rules of an investment fund before CVM is sufficient, and its register before Registry of Deeds and Documents is not necessary anymore); (ii) limitation of liability of the shareholders, the different types of shares, and the service providers of the investment funds; and (iii) accountability of investment funds for legal and contractual obligations assumed by them, with the application of insolvency rules to the investment funds. CVM must regulate the limitation of liability mentioned in item (ii) and the matter will be subject to a public hearing conducted by CVM.

Real Estate

Introduction
The Brazilian Federal Constitution assures the right of ownership. The right of ownership must be exercised in accordance with the principle of the social purpose of property.

In relation to real estate properties, the Brazilian law distinguishes between urban and rural real estate properties, as these two kinds of properties regulated by specific rules. The Brazilian law also divides the assets into two main groups: movable and immovable. This Chapter will deal with foreign investments in the immovable sector, also known as real estate properties.

The right of ownership includes the right of the owner to use, enjoy and dispose of its real estate property and reclaim it from anyone who unlawfully tries to possess it. This right may belong to several individuals or legal entities. According to the Brazilian Civil Code, real estate properties are the land and all that can be incorporated into it, either naturally or artificially. For all legal effects, the following are considered to be real estate properties: (i) the in rem rights over the real estate properties and the actions that they assure; and (ii) the right to open succession.

As a rule, the ownership of the land also extends to the corresponding air space and subsoil, to a height and depth that are useful to the exercise of ownership. Therefore, the owner is able to construct on the land, provided that the urban and environmental law limitations are observed.

The Brazilian law provides certain limits to the ownership. For instance, it does not extend to natural deposits, including gas, ore, mines and other mineral resources, subject to the provisions of specific rules.

Legislation
The Brazilian Civil Code is the main statute ruling real estate transactions. It contains provisions regarding ownership and transfer of real estate properties, as well as rights and security interests related to the real estate properties:

In addition, real estate properties are also regulated, among other rules, by Federal Laws such as the following:

- Law No. 6,015, dated December 31st , 1973, which rules the Public Registers, included the Real Estate Registry;
- Law No. 4,591, dated December 16th, 1964, which refers to the Condominiums and Real Estate Developments;

- Law No. 6,766, dated December 19th, 1979, which refers to the Urban Land subdivision of Real Estate Properties;
- Law No. 8,245, dated October 18th, 1991, which refers to the Urban Lease of Real Estate Properties;
- Law No. 9,514, dated November 20th 1997, that creates the Real Estate Financial System and the fiduciary title of real estate property (*alienação fiduciária de coisa imóvel*).

Acquisition of Real Estate Property

There are mainly four different ways to acquire a real estate property, as recognized by the Brazilian Civil Code, as follows:

- Adverse possession (*usucapião*): it occurs when a party maintains a real estate property that is not his or hers for a determined period of time, besides fulfilling certain legal requirements, to a point that the property is simply acquired in virtue of the time spent on the property using it as if they were the owner;
- Succession Acquisition: it is an acquisition by inheritance, when a real estate property is passed from a deceased person to their successors by means of a specific lawsuit or, depending on the case, by a public deed;
- Accession: the acquisition by accession is the one in which, by the force of nature or human labor, for instance, land is incorporated to one's real estate property and therefore becomes a part of it; and
- Real Estate Transaction: the most common of all is when the real estate property is acquired by an agreement (purchase and sale, exchange, donation, etc.). It takes place when both parties sign a contract agreeing to the terms of the business. This agreement must be properly registered before the competent Real Estate Registry in order to transfer the ownership.

It is worth mentioning that, often, purchaser and seller execute a private agreement of commitment of purchase and sale (contrato de promessa de venda e compra), prior to the final purchase and sale contract. This is done, in order to ensure that the negotiation will have the expected result, whilst also creating responsibilities for both parties to discourage withdrawals. This agreement is generally executed by means of a private instrument and it can also be registered before the competent Real Estate Registry, so as to be valid before third parties.

Acquisition of Real Estate Property by Foreigners

As a general rule, foreign individuals and entities (whether resident or not in Brazil) can acquire urban properties without restrictions. With the exception of certain properties that are subject to specific legal regimes, provided that some formalities are observed, such as being registered with the Brazilian Federal Revenue. For instance, they can acquire urban properties for residential, commercial or industrial purposes (although the location of the investment must be taken into consideration).

As mentioned above, there are no specific restrictions imposed to foreigners to acquire urban properties, but the Federal Constitution imposes restrictions to the acquisition and lease of rural properties by foreign individuals or legal entities, whether resident or not in Brazil. It is important to underline that foreign entities with or without authorization to operate in Brazil and foreign individuals whether resident or not in Brazil may be restricted or prohibited from acquiring rural properties[1].

Requirements to acquire a Real Estate Property

There are some requirements to acquire a real estate property, as follows:

- The acquirers must be capable by law to perform the transaction, which means that they shall be of legal age and be mentally healthy, or, if not capable, they need to be duly represented for this specific matter;
- The real estate transaction must be registered before the Real Estate Registry to be effective to third parties. In addition, this transaction, as a rule, must be formalized by a public deed, which shall be signed by the parties before the Public Notary, otherwise, the transaction might be considered null and void. The public deed is mandatory whenever the amount involved is above 30 national minimum wages. The mentioned deed must be registered with the competent Real Estate Registry on the location of the property, in order for the transfer of the property ownership to be concluded[2];
- It is strongly recommended to do a due diligence in the real estate property to identify potential risks regarding its acquisition. It is essential that the acquirer researches the updated real estate record (matrícula) issued by the Real Estate Registry in order to verify: (i) who the legal owner is; and (ii) if there are no encumbrances over the real estate property;
- In addition, regarding the real estate due diligence, depending on the type of property, it is necessary to look into a reasonable amount of certificates and documents[3]. Including those regarding the seller, the previous owners and potential companies where they might have (or had) ownership interest. Furthermore, it is advisable that the acquirer jointly with their technical experts personally do an inspection of the site and surroundings where the property is located.

Due to the above, a prior contact with a specialist real estate lawyer, a broker and, as the case may be, with specialized engineers, architects and environmental specialists is advisable.

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[1] As provides Law No. 5,709 of October 7th, 1971 and Decree No. 74.965 of November 26 th, 1974, which regulates the acquisition of rural property by a foreigner that resides in Brazil or by a foreign company authorized to operate in Brazil, among other provisions.

[2] Since May 26th, 2020, through the Provision No. 100 published by the National Council of Justice, public deeds can be drafted electronically, by the Electronic Notarial Acts System named "e-Notariado", which will be available in the internet through the Brazil's Notarial Public Entity. The notarial acts to be issued by the e-Notariado will be deemed public instruments for all the legal effects, being effective in front of the public registries, financial institutions, boards of trade and they will also be legally effective before public administration bodies and private entities.

[3] Examples of documents are: (i) fiscal clearance certificates (such as IPTU); (ii) clearance certificates issued by the local courts to verify the existence of lawsuits involving disputes on the real estate.

Most common real estate guarantees

There are some personal and in rem guarantees that are usually adopted in a large range of transactions. The real estate fiduciary sale (*alienação fiduciária de imóvel*) and the mortgage (*hipoteca*) are the most widely common real estate guarantees in the Brazilian market.

The real estate fiduciary sale is regulated by the Law No. 9,514/2017. The debtor/guarantor transfers the conditional ownership of the real estate property to the creditor/guaranteed as a guarantee for the payment of the debt and the guarantor maintains the immediate possession of the real estate property. It is broadly used in the real estate market, since it is a collateral that is easier to enforce when compared to the traditional mortgage.

This kind of guarantee enables the debtor to pay the total price of the real estate property in a lump sum, using third party resources (often a financial institution). Such guarantee might be formalized by either a private or a public agreement and it must be registered with the competent Real Estate Registry to produce effect to third parties.

The real estate fiduciary sale agreement may be executed out of court. On default of the debtor, the creditor/guaranteed must send a notice to the debtor through the Real Estate Registry, providing the debtor with the opportunity to settle the debt. In case the debtor does not fulfill the payment, the ownership of the real estate property will be consolidated in favor of the creditor, provided that some formalities are observed.

The creditor shall be responsible for conducting the extrajudicial sale of the real estate property by means of two public auctions. In the first one, the highest bid must not be below the price of the real estate property. In the second auction, the highest bid must be accepted, provided that it is equal or higher than the value of the debt and further expenses (for example: real estate taxes and legal fees).

After the consolidation of the real estate property, in favor of the creditor/guaranteed and until the date of the second auction, the guarantor has first refusal right to acquire the property. For this purpose, the debtor must pay the debt, legal expenses, the real estate transfer taxes incurred by the creditor to consolidate the property, as well as further taxes and expenses in virtue of the correspondent acquisition of the real estate property.

The mortgage is regulated by the Brazilian Civil Code. As a general rule, it is formalized by means of a public deed executed before a Public Notary. The mortgage is used to guarantee the payment of a debt or certain obligations. In order to become enforceable against third parties, it must be registered before the competent Real Estate Registry.

In this kind of guarantee, the ownership of the real estate property and its possession remain with the guarantor. According to the Brazilian legislation the parties must not

stipulate a clause prohibiting the sale of the mortgaged property. For this reason, it is common that the parties set forth the early maturity of the debt in the event of default of the mortgagor.

It is important to highlight that the mortgage must only be enforced by a judicial lawsuit and the practice shows that it may be a slow, uncertain and expensive process.

Finally, it should be noted that the Law No. 13,986, published in April 07th, 2020, made it possible for rural properties, located or not in frontier strips, to be:

- Pledged as in real guarantee (real estate fiduciary sale and the mortgage) to foreign legal entities as well as to Brazilian Legal entities equated to foreign legal entities (the latter being "Brazilian legal entities in which, for any reason, foreign individuals or legal entities that have the majority of the share capital and reside or are headquartered abroad"); and
- Transferred to the ownership of these legal entities in settlement of transactions, through real guarantee, payment in kind or in any other way.

Timberland & Agribusiness

Introduction

Agribusiness and timberland are strategic sectors for the Brazilian economy. The segment has been creating innumerous opportunities for national and foreign investors in all areas of the production chain: from the early stages of supplying seeds and fertilizers to the actual production, industrialization, logistics and commercialization of goods. The agricultural production in Brazil grow at rates above the world average.

Currently Brazil is the third largest exporter of agricultural products in the world. It accounts for 8% of world exports of agricultural products, behind European Union (15%) and USA (15%). It is the largest exporter of coffee, orange juice, sugar, soybean, beef and chicken meat[1]. In 2020, the agribusiness share in the total exported by Brazil reached 49.8%[2], a historic record.

More than 180 countries trust Brazilian livestock products. All slaughter plants adopt animal welfare procedures. For example, 88% of Brazilian cattle is grass-fed. The World Organization for Animal Health (OIE) officially recognizes that Brazil is free from the several diseases, such as avian influenza and African swine fever [3].

In 2020, Brazil became the number 1 in soybean producer in the world, overcoming the USA. The growth of soybean area in underutilized pasturelands near new port infrastructure in the north of Brazil is a competitive advantage.

Food and wood production have substantially increased in Brazil over the past two decades and are expected to continue to grow, as a result of positive farm margins and land availability in Brazil. The drivers of this prosperity are the country's unique characteristics, such as its favorable climate, soil, light and abundance of water, its vast extent of agricultural land as well as its strategic localization, united with its long-term investments in technology.

Brazil has also ranks highly in the biofuels and bioelectricity, and pulp and paper segments. Planted tree sector supplies a vast range of industries, including pulp, paper, plywood, panels and biomass industries, and is enhancing its productivity, by increasing the use of technology and combining the reforestation with other agricultural activities, such as cattle raising and apiculture, for instance.

[1] FAO/OCDE (2019)

[2] Secex/Ministério da Economia, 2020

[3] ComexStat (2018)

In addition, Brazil has a sustainable agriculture and livestock production with environmental protection. Preserved native vegetation occupies 66% of the entire Brazilian territory. The remaining of the Brazilian territory is distributed among the areas occupied by crops and planted forests (7,6%); cattle (19.7%) and cities and other energy investments (11.3%)[4].

In order to keep its growth sustainable and also to contribute to the climate change agenda - to which the agribusiness and timberland sectors have a lot to contribute -, policies and programs were instituted with that aim, for example, to increase the generation and consumption of bioenergy, combat illegal deforestation, restore and reforest 12 million hectares of forest, among other objectives related to agriculture, industry, transport and energy.

Legislation

Besides the Brazilian Constitution and the Brazilian Civil Code, the other main laws to govern rural properties and activities, including timber plantation, are: (i) Law N° 12,651, dated May 25th, 2012 ("New Forestry Code"), which rules the environment and native vegetation; ii) Decree No. 24,643, of July 10th, 1934 ("Water Code"), which rules the use of water; (iii) Law No. 6,634, of May 2nd, 1979 ("Border Strip Law"), which rules the border strip — the internal area of 150 km of width, parallel to the land border of the national territory — which, is considered a strategic area to Brazilian National Security; (iv) Law No. 5,709, dated October 7th, 1971 ("Acquisition of Land by Foreigners"), which rules the acquisition of rural land by foreigners; (v) Law No. 4,504, dated November 30th, 1964, ("Land Statute"), which establishes the rights and obligations concerning rural real properties including rural partnerships and leases as well as agrarian reform of land, among other provisions; (vi) Decree-Law No. 3,365, dated June 21st, 1941 ("Agrarian Reform Law"), which rules the expropriation of properties in public interest.

Currently, the acquisition of rural land by foreign investors is only possible for projects related to the investor's core business upon approval of MAPA and other federal authorities depending on the project's main purpose, area size and location, among others. The restrictions to the acquisition of rural land apply to foreign individuals or legal entities, as well as Brazilian entities controlled by foreigners. Yet, there are alternatives to allow the use of the rural land by foreigners such as the acquisition of the surface right or can be pledge as in rem collateral to foreign legal entities as well as to Brazilian Legal entities equated to foreign legal entities.

Another relevant references to the segment are Law No. 8,929 of August 22nd, 1994 ("CPR Law"), which provides for the Rural Product Note (CPR), a credit holding backed by collateral, represented by rural or commercial guarantees, and Law No. 13,288, dated May 16th, 2016, that rules the obligations and responsibilities in contractual relations between integrated and integrating producers.

[4] USGS (United States Geological Survey)/ NASA (2017)

Most importantly, the commencement of Law No. 13.986 of April 7th, 2020, known as the Agribusiness Law, on April 8th, 2020, represented a milestone for the segment as it comprises a set of rules aimiming at improving the business environment in the entire agribusiness production chain and inaugurates a new regulatory mark for this segment's private financing.

The Agribusiness Law amends several uncodified laws, improving credit mechanisms that were already consolidated. Among the main progresses provided by the new regulatory mark we highlight the following:

The Joint Guarantor Fund ("FGS") – The FGS shall work as a additional guarantee for financial institutions and shall be constituted by at least two debtors (without maximum limit), one creditor and one guarantor, if applicable. The fund shall be constituted with the participants' resources, according to a division of quotas, whereas, at least 4% of the amount of the renegotiated debt for which debtors are liable, 4% of the amount of renegotiated debt for which creditors are liable and 2% of the amount of the renegotiated debt for the guarantor financial institution. In addition to the amount collected with the fund and the joint liability from all the participants of the fund, debtors may also offer other guaranties to creditors.

Rural Assets in Appropriation – This institute, which is a celebrated progress, enables the rural landowner to divide its properties into small parts so that he may offer them as a guarantee in different credit transactions. The encumbrance shall fall only within the land, accessions and improvements, expressly excluding the plantations and movable properties existing on it, enabling the possibility to include concurrent guarantees in the same transaction.

The Rural Asset in Appropriation shall be represented by the Rural Real Estate Credit Note ("CIR") for financial transactions, which shall be contracted not only with financial institutions but also with investment funds. For transactions done with cooperatives, cereal producers or any other creditors, the transaction shall be represented by the Rural Product Credit Note.

Another relevant matter of the institute is that all obligations bonded to it shall not be used to perform or guarantee the performance of any other obligation assumed by the owner and unlinked to the obligation from which he is bound, including cases of judicial reorganization, with the exception of labor, social-security and tax obligations from the land owner.

Update of the Rural Product Credit Note - Law No. 8.929, as of August 22nd, 1994, which enacted the Rural Product Credit Note ("CPR") has received several changes with the purpose to modernize the security issuance and make it safer, whereas, the following changes must be emphasized:

• Greater clarity in the definition of rural products that can be the subject to the CPR: there was an increase in the list of products that can be the subject to the CPR, expressing the possibility to issue the CPR for agricultural products, planted forest and fishing products, also becoming valid for its derivatives, by-products and residues of economic value subjected to processing or to first industrialization process. In addition, another major progress is to enable the issuance of CPR for products related to the conservation and management of native or planted forests.

• Eligibility to issue the CPR: The new wording allowed a clearer interpretation in relation to those who are entitled to issue a CPR. Now, the rural producer may be a natural or legal person, whose purpose might not be exclusively rural production. In addition to these, the agricultural and livestock cooperative as well as the association of rural producers, whose purpose is the production, commercialization and industrialization of rural products, are eligible, in addition to natural or legal persons, who explore native or planted forests or who benefit or promote the first industrialization of rural products that can be subject to the CPR.

• Exchange rate change: The financial CPR may now be issued with an exchange rate change clause to be used for the security redemption, whether in favor of a national or foreign non-resident investor.

• Form of debt update: The financial CPR may contain clauses establishing the necessary standards for the clear identification of the interest rate, whether fixed or floating, inflation adjustment index and also stating the schedule for the performance of the obligations;

• Book-entry or Instrument Form: The CPR may now be issued in a book-entry or instrument form, by means of an electronic bookkeeping system to be managed by an entity authorized by the Brazilian Central Bank. This will facilitate and give greater safety for the issuance of CPRs used as guarantees in structured transactions.

• Expansion of the list of guarantees: There was an expansion of the list and greater clarity regarding the collaterals that may be constituted by a CPR, bringing more safety and transparency for the transactions. The fiduciary sale of agricultural products and their by-products may fall on present or future assets, fungible or noninterchangeable, consumable or not, whose ownership belongs to the settlor, debtor or third guarantor. Moreover, the search and seizure or auction promoted by the creditor for the fiduciary sold asset does not eliminate its subsequent execution, including the mortgage and the pledge constituted on the same note, to satisfy the remaining credit of the debt, providing more certainty in the satisfaction of the credit.

Update of provisions of Law No. 11,076, of December 30, 2004. Following what happened with the law that regulates the CPR, there was also a detailed update in the Law that regulates other agribusiness securities. Among those, it is worth to highlight the following changes:

- Book-entry or Instrument Form: The Agriculture Deposit Certificate (CDA) and Agricultural Warrant (WA) shall be issued directly in book-entry form, which shall occur through an entry in an electronic bookkeeping system managed by an entity authorized by the Brazilian Central Bank to exercise bookkeeping activity.
- Protection from the effects of Judicial Reorganization: In cases where the holder of the CDA and the corresponding WA are different from the depositor, the product subject to these securities shall not be confused with the depositor's property or be subject to the effects of its judicial reorganization or bankruptcy, prevailing the ownership rights on the asset over to the final endorser who presents himself to the depositary.
- Issuance for non-resident investors: The credit securities referred to in Law No. 11.076/04 may now be issued in favor of non-resident investors.

Establishment of in rem guarantee of rural properties by foreigners and Brazilian Entities Controlled by Foreigners as well as the receipt of rural properties for settlement of transactions: Another important progress for the private development of the agribusiness are the changes to the provisions of Laws 5.709/71 and 6.634/79 that enable that (i) rural properties can be pledge as in rem collateral to foreign legal entities as well as to Brazilian Legal entities equated to foreign legal entities (the latter being "Brazilian legal entities in which, for any reason, foreign individuals or legal entities that have the majority of the share capital and reside or are headquartered abroad"), and (ii) rural properties can be transferred to these legal entities in the cases of settlement of transactions.

Although Law 5,709/71 does not prohibit the establishment of mortgages or the chattel mortgage of rural properties to foreigners, there was controversy about such possibilities, especially regarding the chattel mortgage, which generated a scenario of legal uncertainty for foreign investors. In the case of chattel mortgage, for example, there were those who understood that it simply could not be implemented, since rural property, even if resolvable, could not be transferred to foreigners, without complying with the requirements of Law 5.709/71. Others understood that the fiduciary sale could be established, but, in case of default, the property could not be consolidated in favor of the foreigner.

Law 13,986/20 eliminates this legal uncertainty, by adding item II, second paragraph of article first of Law 5,709/71 to exclude from the scope of the law, the "hypotheses of collateral, including the transfer of fiduciary property, in favor of a legal entity, national or foreign".

In the same sense, item III was included in the same provision, to exclude the "cases of receipt of property in liquidation of a transaction with a legal entity, national or foreign, or national legal entity in which, for any reason, foreign individuals or legal entities that

have the majority of their share capital and that reside or are headquartered abroad, participate through real guarantee, payment in kind or in any other way".

This provision is extremely relevant, as it opens the possibility for foreign legal entities, or Brazilian legal entities equivalent to foreigners, to become owners of rural properties without observing the restrictions of Law 5.709/71. In the event of default on a chattel mortgage contract, for example, the foreigner may consolidate ownership of the rural property in his name, after complying with the legal procedures provided for in Law 9.514/97.

Another possibility opened by the law is for a foreign legal entity to take out a loan and receive a rural property from the debtor.

It is also worth noting that Law No. 6,634/79 was also modified to enable both the setting up of in rem guarantees and to receive properties for settlement of transactions, involving rural properties located in frontier strips.

In addition to the amendments above described, several of other legal dispositions were improved in order to bring more transparency, agility and legal certainty for the private financing of the agribusiness chain.

Contracts

First and foremost, it is important to notice that under Brazilian contract Law, an important distinction is made based on the type of relationship established between the parties of a contract. In consumer relations, in which one party do not have the same bargaining power and position than the other party (B2C contracts), the contract will be governed by the Brazilian Consumer Protection Code ("CDC"), which contains different rights and duties to be observed by the consumers and suppliers (please see Consumer & Product Liability section). On the other hand, if it is a civil and/or a commercial relationship, in which both parties have a presumed equal bargaining power and position in the agreement (B2B contracts), the contract will be governed by the Brazilian Civil Code ("BCC") and by specific regulations depending on the type of contract involved (such as agency and franchise agreements). In these cases, BCC provides for equal protection for both parties, as well as safeguards as much as possible the Principle of Party Autonomy when executing and performing the agreement, except for public policy and mandatory provisions.

In the past few decades, Brazilian contract law has experienced relevant gains in terms of certainty, foreseeability and parties' autonomy protection. In this sense, the Principle of Party Autonomy was reinforced by the Economic Freedom Act (please see Economic Freedom Act section). Below you will find some highlights regarding contractual practices in Brazil.

Choice of Forum
As a general rule, Brazilian Law allows the parties to choose the forum (venue) that will have exclusive jurisdiction to rule their disputes. Some exceptions apply regarding special regulations for some types of contracts, including trade representative contracts (agency agreements), for which the mandatory forum is the representative's place of business. Therefore, it is recommendable to analyze the statute applicable to the relationship prior to agreeing upon a choice of forum clause.

Choice of Law
Agreements executed in Brazil and to be performed in Brazil (article 21, II, Brazilian Civil Procedure Code) will be governed by Brazilian law, unless the parties have chosen a different law to govern the agreement.

Arbitration clause
Parties are allowed to submit their disputes to arbitration, which will have exclusive jurisdiction to rule the case. The choice of the parties to submit their disputes to arbitration is binding, and the judiciary will not be allowed to review the merits of the case. Therefore, if the agreement has an arbitration clause, the party will not be

authorized to access a Court to discuss any contractual obligations, except as so permitted by the Law (for example, in order to seek interim and provisional measures before the formation of the arbitral tribunal or to enforce the arbitration clause, obliging the counter-party to respect the arbitration clause, when it is refusing to do so).

Parties should be aware about the main aspects in writing an arbitration clause, which are: (i.) the seat of arbitration; (ii.) the number of arbitrators; (iii.1) the institutional arbitration and its rules; or, (iii.2) in case of an ad hoc arbitration, which rules shall apply to the proceedings, especially regarding the rules for arbitral tribunal formation.

UN Convention on International Sales of Goods (CISG)
Brazil has been a CISG signatory since 2014 and has not placed any reservations.

Bilingual contracts
All documents used in Court litigation in Brazil must be written in Portuguese or translated into Portuguese by a sworn translator (which can be done after the dispute arises). In case translation is needed, it is important to consider that the translator has autonomy to interpret the agreement in order to translate it (and the parties will not have any control over the translation). Thus, if the agreement needs to be written in a different language than Portuguese, but will be also executed in Brazil, it is recommended to execute a bi-columned contract, in both languages. Bilingual contracts are widely accepted in Brazil, but parties should be aware that in cases the agreement is subject to the Brazilian Courts jurisdiction, the Portuguese version will be the one applied by the Courts, even in cases where the agreement provides for a language prevalence clause establishing that the non-Portuguese version should prevail.

Written agreements
Freedom of form is the basic rule in Brazilian contract law. Some exceptions apply, especially regarding real estate matters, for which a public deed is mandatory whenever the amount involved is above 30 national minimum wages. Even if no specific form rule applies, it is recommendable to formalize written documents.

Electronic contracts and digital signature
Digital signatures are accepted in Brazil, as the agreement is executed through a public key certificate registered before the ICP-Brasil, which is regulated by the Brazilian Provisory Measure No. 2200-2/2001.

The ICP-Brasil is the Brazilian system instituted by Brazilian authorities and a Management Committee composed by people from the relevant Brazilian Ministry, responsible for guaranteeing the authenticity of electronic signatures. Electronic signatures made with a certificate issued by a non-licensed certifying company before the ICP-Brasil are also valid and effective according to Provisory Measure No. 2200-2/2001, if the parties have expressly agreed that this is a valid and acceptable means of signature.

Even though electronic contracts are considered to be a legal binding document, some difficulties arise regarding certain formalities that are still required by Law to make a contract enforceable. For example, the document should be executed by the debtor and by two witnesses in order for the creditor to enforce it before the State Courts. Despite the recent decision from the Superior Court of Justice ruling that the execution of two witnesses is not necessary when the contract has digital signatures duly certified through the use of a public key certificate registered under ICP-Brasil, the question regarding its enforceability is still very controversial in the Brazilian courts. In this sense, it is highly recommended that parties, for precaution, collect the signatures of two witnesses so that the enforceability of the contract shall not be questioned in the future.

"Four-corners" interpretation and pre-contractual negotiation

Although widely inserted into contracts, entire agreement clauses do not stand if contradicted by pre-contractual negotiations or contractual behavior of the parties. The Courts will take into consideration the intention of the parties more than the literal sense of the words. A "four-corners" interpretation rule is not usual for Brazilian practice and should not be considered enforceable under the Brazilian interpretation rules. External data and behaviors are a valid source of interpretation.

Penalty clauses

Penalty clauses are widely accepted as consequences of a contractual breach. The penalty clause, however, cannot exceed the global contract price. Even if this limit is respected, however, the amount fixed can be reduced by the Courts if the obligation has been partially fulfilled or if the amount of the penalty is outright excessive.

It is important to highlight that the parties can establish a penalty clause as the sole indemnification the party will receive in case of breach. In this case, no further damages can be claimed even if proven by the aggrieved party (compensatory penalty clause). The parties may, on the contrary, establish that the parties are authorized to claim additional damages in addition to the penalty clause (non-compensatory penalty clause). Compensatory penalty clauses are the general rule and applicable by default. Therefore, if the possibility of claiming additional damages is of the parties' will, they have to expressly include it in the agreement.

Exclusion or limitation of liability clauses

Unlike penalty clauses, limitation of liability clauses require that the aggrieved party bring evidence of the extent of the damage incurred, which, in turn, will be indemnified up to a given cap.

There is some debate as to the validity of exclusion or limitation of liability clauses, especially when they involve public policy, willful misconduct, gross negligence and when they refer to the main obligation of the contract. In case of standard terms and conditions, this debate is even stronger and the validity of exclusion or limitation of liability clauses are subject to restricted requirements.

Economic Freedom Act

The Law No. 13,874/19, known as Economic Freedom Act, was enacted by the congress on September 20, 2019 and, among other provisions, reinforced the contractual freedom in negotiations among private entities.

The act states that the principle of minimum intervention must prevail in contractual field. Moreover, it establishes that parties are presumed to be equal within the relationship and that the risks allocation between them shall be respected, setting forth that the contract review is an exceptional measure to be taken by the courts.

In general terms, the changes in the contractual sphere aim to increase the legal certainty between the parties and the protection of the person against the intervention of the State over valid and effective agreements, establishing that private contractual relationships are subject to the principle of the minimum intervention.

Thus, it strives for the preservation of the agreements and of the content validly negotiated between the parties, establishing the exceptional character of the judicial review of the contract.

Intellectual Property

Brazil is a signatory to most international IP agreements, including the Paris Convention, the Berne Convention, the Patent Cooperation Treaty the TRIPS agreement and the Madrid Protocol, which is effective in Brazil since October 02, 2019.

Securing intellectual property rights in Brazil
It is advisable for foreign companies doing business in Brazil to register their IP rights at the outset so as to enjoy unhindered protection and avoid any infringement issues at a later date. Brazilian law allows foreign companies to register all forms of IP including patents, industrial designs, trademarks and copyrights.

Foreign applicants are required to file applications through a Brazilian attorney or agent, which must be granted powers to receive judicial or administrative summons on the applicant's behalf.

The National Institute of Industrial Property (Instituto Nacional da Propriedade Industrial), which is subject to the Ministry of Industry, and Foreign Trade and Services, is the government authority responsible for the administration of patents, industrial designs, trademarks, geographical indications, software, and design of integrated circuits in Brazil, as well as recordal of technology transfer agreements.

Although applications for patents and industrial designs have been declining, the National Institute of Industrial Property received in 2018[1] a record number of trademark and software applications:

Year	Patents	Industrial design	Trade-marks	Geo-graphical indica-tions	Software	Recordal of agree-ments
2013	34.050	6.847	163.422	6	1.508	1.725
2014	33.182	6.590	157.016	12	1.609	1.710
2015	33.043	6.039	158.709	12	1.616	1.400
2016	31.020	6.027	166.368	5	1.802	1.027
2017	28.667	6.000	186.103	10	1.692	1.166
2018	27.551	6.111	204.419	7	2.511	1.207

[1] https://www.gov.br/inpi/pt-br/composicao/estatisticas/arquivos/publicacoes/boletim_jan_2019_vf_revisada.pdf

Other noteworthy registries are the Network Information Center .BR for domain names, and the National Plant Variety Registry, for plant varieties. Copyright registration is also available before different entities, depending on the copyrighted work and registrant's option.

Patents

The Industrial Property Act of 1996 (Law No. 9,279/96) establishes the framework for protection and enforceability of Patents, Industrial Designs, Trademarks and Geographical Indications, as well as for the repression of unfair competition and recordal of technology transfer agreements.

A patent may be filed as an invention patent or as an utility model. While an invention patent protects a product or process whose underlying technology is novel, has industrial application and inventive activity, an utility model protects a product whose new shape or arrangement results in a functional improvement in its use or manufacture and that is novel, has industrial application and involves an inventive act.

Due to the huge backlog of patent applications, the Brazilian PTO launched a new project to speed up the examination proceedings and reduce the backlog, being currently the average time to decide a patent application is 5.2 years. The BPTO also improved its fast-track system by making agreements with renowned patent offices around the world. Moreover, fast-track programs related to important global issues were implemented, such as the Green Patent Program. As a result, the Brazilian PTO currently has more than 15 different ways of fast-tracking the examination of a patent application depending on the situation of the applicant or the nature of the application.

Third parties may challenge patent applications by means of presenting information and documents to the examiner's attention by means of submission of relevant information and documents. Administrative Nullity Proceedings may be requested by the National Institute of Industrial Property or third parties with legitimate interests within six months of the grant date. The protection term of invention patents is of 20 years and of 15 years in case of utility models, both counted from the filing date. A special provision in the Industrial Property Act grants patentees a minimum protection term of 10 years counted from grant date for invention patents and of 7 years for utility models.

If the grant of the patent is for a product, then the patentee has a right to prevent others from making, using, offering for sale, selling or importing the patented product in Brazil. If the patent is for a process, then the patentee has the right to prevent others from using the process, using the product directly obtained by the process, offering for sale, selling or importing the product indirectly obtained by the process.

The Industrial Property Act also provides for some limitations to the patentee's exclusive right to explore the technology, such as conduction of studies, research and tests using patented technology.

Granted patents may be enforced by means of civil or criminal actions. In case of the former, the patentee may claim retroactive damages counted from the date of the application's publication. Patent applicants may send prospective infringers cease and desist letters and request accelerated examination.

Industrial Designs
An industrial design is considered to be any ornamental plastic form of an object or any ornamental arrangement of lines and colours that may be applied to a product, that provides a new and original visual result in its external configuration, and that may serve as a type for industrial manufacture.

Registrations are valid for a ten-year term, renewable for three further five-year periods. Applications are granted automatically and may be subject to Administrative Nullity Proceedings requested by either the National Institute of Industrial Property or third parties with legitimate interests within five years of the grant date.

Plant varieties
Plant variety rights are protected in Brazil by the Protection of Plant Varieties Act of 1997 (Law No. 9,456/97) and the UPOV Convention.

The protection term is of 15 or 18 years depending on the type of plant to which protection is sought.

Geographical indications
Geographical Indications are divided between indication of source and appellation of origin.

The first is the geographical name of a country, city or region that has become known as a center of extraction, production or manufacture of a determined product or for providing a determined service.

The second is the geographical name of a country, city or region that designates a product or service, the qualities or characteristics of which are exclusively or essentially due to the geographical environment, including natural and human factors.

Registration is restricted to the legal persons representing all of the producers established in the country, city or region to which geographical indication is sought. The registration is valid indefinitely.

Trademarks
According to the Industrial Property Act, *"any visually perceptive distinctive sign, when not prohibited under law, is susceptible of registration as a mark"*.

Despite the broad meaning of the expression "visually perceptive", the National Institute of Industrial Property allows only applications for word, device, word and device, and three-dimensional marks. Motion, sound and other non-traditional marks are not accepted. Marks may be applied to identify goods and services, or to certify their conformity with determined technical norms or specifications. Multiclass applications are not yet accepted in Brazil.

Brazil adopts a first-to-file rule for obtaining trademark rights. However, this rule is mitigated when the applicant applied for an identical or similar mark to identify identical, similar or akin products or services to a mark which (1) the applicant was aware of (even if not registered in Brazil) and acted in bad-faith, and (2) a third party used in good faith, for at least six months prior to the priority date of the application.

While trade names of foreign entities are protected throughout Brazil by force of the Paris Convention, protection of the ones of national entities is limited to the state where the entity has registered its trade name. Prior use of a mark (or an expression similar thereof) as trade name by either foreign or national entities may be grounds to oppose applications.

The Brazilian Patent and Trademark Office is accepting joint ownership trademark applications since September 15, 2020, being also possible for one to convert existing sole ownership trademark applications or registrations into joint ownership proceedings. Until such date, only sole trademark registrants were allowed, even though joint ownership was already available for patent and design patent owners.

The BPTO drastically reduced their backlog of work in trademark matters and currently, trademark applications have been examined in around 10-12 months. Once registered, a trademark is valid for ten years and can be renewed thereafter indefinitely for further ten year periods.

Administrative Nullity Proceedings may be requested by the National Institute of Industrial Property or third parties with legitimate interests within six months of the grant date. Non-use cancellation actions may be requested five years after the grant date.

Brazil is a member of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks ("Madrid Protocol"), which entered in force and became effective on October 02, 2019.

In to designate Brazil under an international register, the basic application must enjoy a priority date of October 2nd or later (Article 14(5) of the Protocol). Moreover, applicant must declare that applicant (directly or through a controlled company) effectively and lawfully conducts business in connection with the goods and services for which Brazil is being designated.

Once the Brazilian Patent Trademark Office (BPTO) is notified by International Bureau, it will carry out substantive examination under domestic law within 18 months (Article 5(2)(b) of the Protocol). The BPTO may issue a notification of refusal based on opposition after the 18-month time limit (Article 5(2)(c) of the Protocol). For your reference, the BPTO is currently examining national applications within about 10-12 months.

The Individual Fee for designating Brazil in an international register is payable in two parts (Rule 34(3)(a) of the Common Regulations). Applicant designating Brazil under an international register must have a local representative in order to file any petitions before the BPTO (including for responding to ex officio provisional refusal), which shall be written in Portuguese.

Domain names

Domain names are registered at the third level, under one of the seventy-two categories. The most popular, concentrating around 90% of the registrations, is .com.br.

Although foreign entities are allowed to register Brazilian domain names, registrants must possess a Brazilian taxpayer's enrollment number (CNPJ for legal persons and CPF for natural persons). Normally, foreign entities register domain names under their local subsidiary's contact information or use trustee services rendered by specialized companies or law firms.

There is a special procedure to allow a provisional registration by foreign entities, but this procedure is highly bureaucratic and thus seldom used.

Domain names registered on or after October 1st, 2010 are subject to a dispute resolution proceedings akin to UDRP. Such disputes are processed by one of three arbitration centers, including WIPO's Arbitration and Mediation Center.

Copyright

The Copyright Act of 1998 (Law No. 9,610/98) establishes the framework for the protection and enforceability of copyrights and neighboring rights.

Copyright protection grants authors of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings the exclusive right to use and commercially exploit such works. Most artistic works are protected for 70 years counted from January 1st, of the year subsequent to its author's (or last coauthor's) death, but audiovisual and photographic works, and neighboring rights are protected for 70 years counted from January 1st, of the year subsequent to its publishing or, in case of neighboring rights, the recording, transmission or public performance.

The law is highly influenced by the French droit d'auteur as legislation focuses on the protection of the author. As a result, author's moral rights cannot be transferred nor waived, and there are several provisions restricting assignment of rights.

It is worth noting that there is no statutory provision governing work for hire, so service agreements concerning the creation of artistic works should be carefully drafted.

Although Copyright protection is an automatic right, which comes into effect when the artistic work is materialized, it is advisable to register the works before the relevant registry to use as evidence of ownership and anteriority of the copyrighted work. Brazilian judges, usually unversed in Copyright Law, also feel more comfortable dealing with registered copyrights when deciding infringement issues.

The artistic works can be registered at the National Library (mostly literally works), the National School of Fine Arts (mostly, visual arts), the National Cinema Agency (audiovisual works), or at any public notary.

Software

The Software Act of 1998 (Law No. 9,609/98) establishes the framework for the protection and enforceability of software in Brazil. Although a software is protected as Copyrights, some moral rights normally granted to authors of artistic works are not granted to programmers. The protection term also differs from regular copyright, being limited to 50 years counted from January 1st of the year subsequent to the publication or creation of the computer program. Despite being also an automatic right, software may be registered at the National Institute of Industrial Property.

Enforcing intellectual property rights in Brazil

IP rights can be enforced by bringing infringement lawsuits in civil courts or through criminal prosecution. Depending on which IP right was infringed, the owner may rely on different procedures, remedies and sanctions, as specifically set out under the relevant IP legislations governing the specific form of IP.

Over the years, various decisions passed in favor of foreign companies against local infringers have demonstrated the Brazilian judiciary's impartial approach. Nonetheless, judges of small towns where the defendant or its production plant is located are more likely not to grant interim injunctions or to award damages.

IP litigation in Brazil demands careful planning and strategy, as most jurisdictions lack specialized courts or judges, which may affect the quality of the rulings. Due to flexible territorial jurisdiction rules, plaintiffs bring IP lawsuits before the courts of Rio de Janeiro and São Paulo, which have specialized courts.

Per statutory provisions, lawsuits seeking the nullity of patents, industrial designs, trademarks and geographical indications must necessarily be brought before a Federal court and with the National Institute of Industrial Property as a party. As case law of the Superior Court of Justice prevents Federal courts to decide damage claims on infringement lawsuits, such actions are brought before a State court.

Entertainment

The total revenue of the Brazilian Media and Entertainment market should reach USD 48.7 billion in 2020, according to PwC.

The rise of digital services aroused the government's attention which, in the recent years, begun regulating and taxing such services. For instance, streaming services were regulated to incur in service tax.

Tax incentives
In the past decades, the Media and Entertainment segment has become a market of the Government's interest. It has tried to develop it by proposing legislation aimed to institute new programs, enhance private funding and open special lines of investments.

The three levels of Government (Federal, State and Municipal) have enacted tax incentive laws to promote cultural, audiovisual and sports projects.

They all function similarly. The applicant submits a detailed project with proposed budget to a Governmental entity that analyses it. If approved, the applicant may seek out individuals or companies to fund the project. In return, investors are benefited with publicity arising out of the project and, most importantly, may deduct some or all of the invested money of the amount of taxes that should be paid by the investor.

The limits and percentages that investors may deduct of their taxes varies according to the law authorizing the investment.

Film and Television
The audiovisual sector is regulated by the National Cinema Agency (Agência Nacional do Cinema – ANCINE, in Portuguese). For instance, there are screen quotas enforcing a minimum number screening of domestic content and sector-oriented taxes which payment is required before an audiovisual work is commercially exploited.

ANCINE conducted public consultations on the regulation of several aspects of streaming services, aiming to impose to such services screen quotas and sector-oriented taxes.

Lines of credit extended by the government and tax incentives helped to develop the Brazilian audiovisual industry. In 2017, Brazilian producers premiered a record number of 158 feature films in more than 3,000 movie theaters, although the sales of tickets decreased 42,8% in comparison with 2016. National movies represented only 18,9% of the market in 2017.

Music
Brazilians are avid consumers of all genres of music and from both domestic and foreign artists. Important music festivals and sold out stadium concerts happens all year round.

Radio is still the most powerful medium to expose new music and gain attention for new releases in Brazil, streaming services are following closely behind.

Although online piracy is still a problem, the rise of streaming services and better broadband Internet access are expected to halt illegal downloads.

The year of 2017 started with a landmark ruling of the Superior Court of Justice deciding that streaming services are required to pay public performance rights. Even though the decision is not binding, Brazilian judges are likely to adopt its rationale in future cases.

Sports
Although soccer is the most watched and practiced sport in Brazil, fans also enjoy watching other sports, specially mixed martial arts, volleyball and surf. Either attending the events or watching television or Internet transmissions, Brazilians also follow competitions and matches taking place abroad.

The segment is somewhat regulated by Federal Law 9.615/98, dubbed "the Pele Act", honoring the famed soccer player. Such a legislation provides for a wide variety of provisions including inter alia broadcasting rights, the work of professional athletes and funding of sports development programs.

Videogames
Eager to develop a videogame industry, ANCINE granted a R$ 10 million line of credit in 2018 devoted to the development of videogames. Twenty two projects from all regions of Brazil were selected.

Competitive playing is also on the rise with the rapid development of e-sports. Videogames became so popular that there are dedicated e-sports teams and tournaments. For instance, some matches of the Brazilian Tournament of League of Legends (CBLOL) were transmitted in a popular sports cable channel.

Books and publishing
Brazil has a healthy publishing industry that releases new titles of national and foreign authors frequently. Most books are printed in Portuguese and foreign titles are usually translated or imported.

The industry welcomed a Supreme Court ruling of March 2017 that extended the constitutional tax immunity of printed books to e-books and e-book readers. This is expected to lower the prices of such products and help to develop further e-reading in Brazil.

Data Privacy

By means of enacting Law No. 13,709/18, Brazil took a significant step in relation to the protection of personal data and privacy, matters hitherto regulated by a collection of federal laws, such as the Internet Act (Law No. 12,965/2014) and its regulatory decree (Presidential Decree No. 8,771/2016), and the Consumer Protection Code.

The Brazilian General Data Protection Act ("LGPD") came into force on September 18, and is applicable for companies operating in Brazil, no matter if their headquarters or database is located abroad.

The new law raised Brazil to a new category of legislative protection in the matter of personal data, comparable to hundreds of countries that already have had specific legislation on personal data protection. The implementation of the European General Data Protection Regulation ("GDPR") was an inspiration for the Brazilian LGPD both in terms of timing and content. GDPR has been considered by many jurists in the interpretation of LGPD, and it is expected that the Brazilian Courts also make use of GDPR as an interpretative source.

LGPD seeks to harmonize the protection of fundamental rights and freedoms of natural persons with economic and technological development and innovation.

The law sets forth (i) the hypotheses in which the processing of personal data is accepted; (ii) the principles to be followed in processing activities; (iii) the requirements for obtaining the valid consent of the data subjects; (iv) the rights of the data subjects; (v) the processing of sensitive personal data and data of children and adolescents; (vi) the processing of personal data by the Government; (vi) the requirements for the international transfer of data; (viii) the obligations of data processing agents and their liability for damages caused to the data subjects; (ix) the safety measures and standards to be observed in the processing activity; and (x) administrative sanctions applicable to the hypotheses of infractions committed to the standards provided by law.

On 08/27/2020, Federal Decree n° 10.474/2020 was published, approving the Regimental Structure and ANPD Commission and Trust Functions Table, pending the indication and approval of the members of internal bodies of the ANPD (National Authority of Data Protection). Under the terms of the Decree, ANPD is an entity associated with the Presidency of the Republic, with technical and decision-making autonomy, and with jurisdiction throughout the national territory. ANPD's main goal is the protection of fundamental rights such as liberty and privacy, as well as the free development of the natural person's personality. The Decree became effective at the nomination of ANPD's president-director, which occurred on October 15th, 2020.

It is important to note that the penalties determined by the LGPD will be enforced by the ANPD as of August 1st, 2021. Regardless, Consumer Protection Authorities may inspect companies and apply penalties due to violations to the LGPD in consumer relations.

The ANPD will be composed of (i) the Direct Council (the highest decision-making body of the ANPD), (ii) the advisory body: the National Council for the Protection of Personal Data and Privacy, (iii) organs of direct and immediate assistance to the Directing Council: General Secretary, General Coordination of Administration and General Coordination of Institutional and International Relations, (iv) sectional bodies: Internal Affairs, Ombudsman and Legal Advisory; (v.) specific bodies private: General Coordination of Standardization, General Coordination of Inspection and General Coordination of Technology and Research. Decree n° 10.474 / 2020 also provides that the Board of Directors is composed of five administrators, who will be appointed by the President of the Republic and will have a four-year term.

Decree n° 10.474 / 2020 establishes that ANPD will have the competence to ensure the protection of personal data, to elaborate guidelines for the National Data Protection Policy, to supervise and apply sanctions in case of non-compliance with LGPD, among others. The Federal Decree also provides for ANPD exclusivity in the application of the sanctions provided for in the legislation in force, regardless of the powers of the other Federal Administration bodies. The ANPD will also complement the content of the LGPD, by specifying some measures to be adopted and deadlines to be observed, and defining the safety standards to be followed.

As a rule, the LGPD applies:
- to processing activities carried out in Brazil;
- to activities whose goal is the supply of goods and services in the country;
- to the processing of data of individuals located in the national territory or
- in cases involving data collected in the country - considering any data collected in Brazil where the data subject is present at the time of collection.

The processing of personal data by legal persons governed by public law has specific rules defined by the LGPD.

Processing of personal data
LGPD establishes limited events in which the processing of personal data may occur. One of them is the processing of personal data upon the consent of the data subjects – which must be the freely given, informed and express, prior to the collection, use, processing, transfer and disclosure of personal data, irrespective of the purpose of such actions.

Consent should be given by writing, in a specially highlighted contractual clause, or by other means that demonstrate the indication of the data subject's agreement to the processing. Consent must be provided in Portuguese and in a clear language.

Before consenting, the data subject should receive conspicuous and complete information on (i) the types of data collected, (ii) purposes for which the data is collected, used, stored and treated, (iii) conditions based on which the data may be disclosed to third parties (iv) and means employed to protect the collected data. Consent is limited to the types of data and purposes specified and expressly consented to by the data subject, so fresh consent is required for the collection of other data or uses for other purposes.

The data subject has the right to, at any time, withdraw his or her consent, as well as obtain information on the stored data and update it. This also means that the entity collecting data must provide the data subject information and an easy tool to withdraw the prior consent.

The processing of personal data regardless of the data subject's consent is allowed in specific situations described in the LGPD. Such situations are the following: (i) for the fulfillment of legal or regulatory obligations by the controller; (ii) when required for the performance of a contract or preliminary procedures related to a contract, to which the data subject is a party or at his or her request; (iii) for the regular exercise of a right in judicial, administrative or arbitral proceedings; (iv) when necessary for the purposes of the legitimate interests pursued by the controller or by a third party; (v) by the public administration, for the execution of public policies; (vi) for the conduction of research by research entities, provided that the data anonymization is guaranteed to the maximum extent possible; (vii) for the protection of the life or physical integrity of the data subject or third parties; (viii) for the protection of health, by health and/or sanitary entities; and (ix) for credit protection.

The consent shall also be waived for the processing of information that has been public disclosure by the data subject, safeguarding the fundamental rights of the data subject, provided for in the LGPD and in the Federal Constitution.

Rights of the data subject

Among others, the data subject shall have the right to obtain from the controller:
(i.) confirmation as to whether or not personal data concerning him or her are being processed, and information regarding the purposes of the processing;
(ii.) ease and gratuitous access to the personal data;
(iii.) the rectification of incomplete, inaccurate or outdated personal data;
(iv.) the erasure of personal data when the processing is no longer necessary in relation to the purposes for which the personal data were collected;

The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, and has also the right to transmit those data to another controller (Right to data portability).

The data subject may request information of his or her data by contacting the natural or legal person, by presenting a requirement before the ANPD or by filing a complaint before the court. In consumer relations, the data subject may also file a complaint before consumer protection and defense authorities.

Controller and processor
The controller shall be a natural or legal person, of public or private law, who is responsible for decisions concerning personal data processing. The processor is the natural or legal person, of public or private law, who performs personal data processing on behalf of the controller.

The controller shall implement appropriate measures to ensure and to be able to demonstrate that processing is performed in accordance with LGPD. The controller and the processor shall maintain a record of processing activities under its responsibility, especially when based on legitimate interest.

The controller shall designate a data protection officer as well as publish the contact details of the data protection officer and communicate them to the supervisory authority. Both the controller and the processor may be liable for providing compensation for the damages caused to data users when they infringe LGPD.

Besides that, controller and processor are also subject to administrative sanctions due to non-compliance with the LGPD. These sanctions, which may be applied by the ANPD, are the following:

(i) warning, with the indication of a term for adopting corrective measures; (ii) fine up to 2% of the companies' revenue, limited to BRL 50.000.000,00 per infraction; (iii) a daily fine; (iv) disclosure of the infraction; (v) blocking of personal data related to the infraction; (vi) erasure of the personal data related to the infraction; (vii) partial suspension of the operation of the database for a maximum period of 6 months, extendable for an equal period, until the treatment activity is regularized by the controller; (viii) suspension of the data processing activity for a maximum period of 6 months, extendable for an equal period; (ix) total or partial prohibition on the data processing activities.

Data Protection Officer
Every controller must have a Data Protection Officer in charge of personal data processing to act as a communication channel with the controller for the data subjects and for the ANPD. The identity and contact information of the Data Protection Officer shall be publicly disclosed, clearly and objectively, preferably on the controller's website.03

International Data Transfer
LGPD establishes, as general rule, the prohibition of international data transfer. Therefore, the international transfer of personal data will only be allowed in specific

situations provided by LGPD, such as in cases when the ANPD states that a recipient country or international organization provides a degree of personal data protection adequate to the one provided by Brazilian law. Moreover, the transfer is allowed when the controller offers and proves guarantees of compliance with the principles, rights of the data subject and with the regime of protection provided by LGPD, in the form of specific contractual clauses (that shall be verified by ANPD) or standard contractual clauses (to be defined by ANPD). The cross-border transfer may also take place when the data subject gives specific and highlighted previous consent for that purpose and only when clear information on the international feature of the operation is provided to the data subject.

Communication of a personal data breach

Data processing agents (controller and processor) are responsible for adopting security and confidentiality measures, be they physical, technical (in particular all their own Information Technologies measures) and administrative measures, capable of protecting personal data against unauthorized access.

The controller should communicate to the data subject and to the ANPD any personal data breach that may cause any risk or damages to the data subjects. The warning must be performed in a reasonable deadline, which will be further specified by the ANPD.

The communication shall (i) describe the nature of the personal data breach; (ii) provide information on the data subjects affected by the data breach; (iii) describe safeguards, security measures and mechanisms to ensure the protection of personal data; (iv) describe the likely consequences of the personal data breach; (v) inform the reasons for the delay when the communication is not immediate; (vi) describe the measures taken or proposed to be taken by the controller to mitigate the possible adverse effects.

Liability

The data processing agents will be liable for the repair of property or moral damage, individual or collective damage resulting from the irregular processing of data.

The processing of data is considered irregular in case of non-compliance with the legislation or when the processing activity does not provide the security that can legitimately be expected by the data subject, considering, therefore, (i.) the way of processing personal data; (ii) the results and risks that may be expected; and (iii) the techniques for processing personal data available at the time the processing was performed.

Dispute Resolution

The Civil Court System

Brazil has both federal and state court systems. The Brazilian Federal Constitution of 1988 grants federal courts limited and exclusive jurisdiction. They must generally hear cases involving the federal government or its entities, cases involving a foreign state, cases based on international treaties, or cases related to human rights violations. Underlying the listed cases is a presumption that they involve strong national interest. State courts will have jurisdiction over all other types of cases, except labor and electoral disputes, which are subject to specialized courts.

In both systems, federal and state, there are three tiers: trial courts, intermediate appellate courts, and the highest courts. In trial courts, a single judge finds the facts and adjudicates the case – there is no jury trial for civil cases.

Usually subdivided in three-judge panels, appellate courts rule on appeals against a trial court adjudication. They apply a standard of review both to factual and legal issues. In the state system, there is one appellate court per state, which hears appeals from that state's trial courts. In the federal system, in turn, there is one appellate court per region, or circuit, which comprises several states. A federal appellate court hears appeals from the federal trial courts located within that given region. In total, there are five federal regions in Brazil.

The highest courts in both systems are the Supreme Federal Court ("STF") and the Superior Court of Justice ("STJ"). The STF has eleven justices, ten of them evenly divided into two panels. With the fulfillment of certain requirements, it grants leave to hear cases with a relevant federal constitutional issue; it has the last word as to the interpretation of the Brazilian Constitution. The STJ, in turn, has thirty-three justices and is divided into three sections, each with jurisdiction over an area of law (public, private or criminal law). Each section has ten justices, divided evenly into two panels. If certain requirements are met, the STJ grants leave to hear cases involving a federal law; it has the last word in the interpretation of the federal laws. Both courts should consider the facts as found by the lower courts - they should not weigh evidence anew or find new facts. They have traditionally been considered courts of revision, as opposed to cassation, since they decide the cases on their merits.

Civil Procedure – Law No. 13,105/2015

Civil procedure in Brazil is regarded as a field of public law and most of its principles and rules derive from the Federal Constitution of 1988 and are established in the Civil Procedure Code. The current Civil Procedure Code ("CPC") was enacted in Brazil by Federal Law No. 13,105/2015, which entered into effect as of March, 2016.

Besides the CPC, specific laws also govern specific procedural rules, such as:

- Federal Law No. 7,347 of 1985, governing class actions;
- Federal Law No. 8,078 of 1990, establishing the federal consumer code;
- Federal Law No. 8,245 of 1991, establishing procedural rules for urban lease disputes;
- Federal Law No. 9,099 of 1995, governing the procedure in state small-claim courts;
- Federal Law No. 12,016 of 2009, governing the writ of mandamus;

The Brazilian Judiciary faces a series of challenges because of the excessive number of ongoing lawsuits and the current CPC was enacted to open up new perspectives for conducting litigation in the country. Among these changes, we highlight the following:

- Strengthening of alternative dispute resolution to facilitate out-of-court settlements between parties;
- Extension of pre-trial proceedings, enabling the parties to obtain in-depth knowledge on the factual situation that will be presented in court and consequently assess their probabilities of success;
- Repetitive lawsuit management through the possibility of suspending ongoing lawsuits whenever there is the intention of creating legal precedents on the legal issues that will be applied to repetitive cases – thereby avoiding the unnecessary expenditure of resources and work and the creation of a model for binding precedents with the aim of achieving the benefits of work rationality, as well as legal certainty and predictability;
- A model for binding precedents, which shall be followed by lower courts (stare decisis);
- The Principle of the Cooperation between the parties and the Judge was strengthened by the Code. Although the essence of the judicial proceeding is the resolution of conflicts and contrary interests, the parties, the Judge and all the individuals involved in civil lawsuits will be demanded to act in a collaborative way to the effective solution of the case. By that, it is possible to conclude that the parties must act in good faith and procedural loyalty, the Judge shall always promote the adversary proceeding, the due process and base properly his or hers decisions;
- Higher procedural costs for losing parties, with a provision establishing that fees attributed at the lower levels should be increased if appeals are filed, aiming at stimulating compliance with judgments;
- Strengthening the power of judges in enforcement proceedings, as judges have been expressly granted all means of coercion and subrogation needed to ensure enforcement of court decisions, including not only the seizure of debtor's assets

in order to satisfy judgments but also impose restrictions on the debtor such as the ineligibility to make contracts with public institutions;

- Better regulations for Free Access to Justice, making it available only to those parties who effectively need it, and within the bounds of such need.

The CPC's provisions aim for the reduction of litigations, with the introduction of instruments that are capable of avoiding unnecessary lawsuits, as well as allowing for the establishment of agreements and clearly defined rules of conduct that should be followed by society.

One of the main changes of the current CPC from its predecessor, dated of 1973, is the effect of Constitutional principles over proceedings in Civil Courts. It means that Brazilian Federal Constitution's principles formally provide the basis of the CPC, such as the absolute requirement to respect the adversary system, the celerity and effectiveness of the proceedings.

Stages of a Civil Claim in the Brazilian Judiciary

Provisional remedies: plaintiffs may resort to provisional remedies, such as attachment and preliminary injunctions, pursuant to a simplified proceeding incidental to and in connection with a regular lawsuit, invoked while the primary action is pending and providing proof of urgency, to assure that the plaintiff's rights are preserved or that he or she will not suffer irreparable harm.

Pleadings stage: It starts with the plaintiff filing a complaint. If, after a preliminary and formal analysis of the claim, no cause of rejection is found, the defendant is served to appear in a mediation session before a mediator named by the court, which will not take place only if both parties refuse to mediate, or if the matter at issue does not allow a settlement. Fifteen working days after the mediation session, defendant may answer the complaint and present its counterclaims, if any.

Certain issues addressed in the answer may require a reply from plaintiff. At this moment, the judge may dismiss the claim in certain cases or judge it immediately if the evidence in the record is deemed sufficient.

Otherwise, the judge should issue an order addressing eventual irregularities in the procedure, establishing the scope of the lawsuit (the issues of fact to be proved and of law to be argued), allocating the burden of proof and, if necessary, scheduling a hearing to collect testimony.

Discovery stage: the parties may obtain an expert opinion, if necessary, collect testimony and request further documents - although the parties should present their documents at their pleadings. Once the discovery has finished, the parties may file their final arguments.

Trial stage: the judge adjudicates the case.

Appeals stage: the parties may appeal the judgment.

The final stage is the enforcement of the judgment, when the losing party does not voluntarily comply with it. It is not possible to indicate a timeframe for each stage in civil proceedings, as they vary from case to case, depending on the complexity of the case and the court.

Brazilian Civil Code (Law No. 10,406/2002)
Civil law norms in Brazil are established in the Civil Code and in other federal legislation. The Civil Code currently in force was enacted in 2002 and entered into force on January 11th, 2003. The Code is divided in a General Part, with sections dealing with Persons, Goods and Legal Facts, and a Special Part, with sections dealing with the Law of Obligations (including Contracts), the Law of Corporations, the Law of Things, Family Law, and Inheritance Law.

In addition to the Civil Code, there are other important statutes dealing with civil law, being the most relevant ones: Children and Teenagers Statute (Law No. 8,069/90); Federal Consumer Code (Law No. 8,078/90); and statutes regarding intellectual property: Law No. 9,279/96 on industrial property; Law No. 9,456/97 on cultivars; Law No. 9,609/98 on Software; Law No. 9,610/98 – on copyrights and rights of authors.

Litigation Due diligence
The main objective of a due diligence is to find out any liabilities, contingent or materialized, and to minimize any risks that could result therein.

The due diligence could involve investigation into the business, tax, financial, accounting and legal aspects of a target company. The legal due diligence mainly consists in the review of documents to identify potential legal issues that may present risks and/or impediments to the (i) transaction or (ii) in the general operations of the target, that could in a certain way affect the value or consideration in connection with the transaction.

Therefore, issues related to structure and documentation, as well as legal and contractual impediments are identified. The due diligence is also crucial to confirm the representations and warranties provided in the agreements.

Under a due diligence process, not only the issues shall be identified but also suggestions and solutions to deal with said issues should be presented to the client.

A complete legal due diligence would usually cover the following areas: corporate, contracts, labor, insurance, regulatory, real property, environmental, intellectual property and litigation (tax, labor, social security and civil).

Regarding litigation, it is important to examine all the certificates of lawsuits provided by the courts and by some administrative authorities, as well as certificates provided by protest offices. It is important to investigate the company and its quota holders and the search should contemplate all the locations where the company is based, has branches or ordinarily conducts business, as well as where quota holders have addresses.

It is also relevant to analyze the reports provided by attorneys who represent the company, which should contain information of the pending lawsuits and proceedings with the indication of the amount involved and the chances of success.

The accurate analysis of all these documents is very important to identify the potential risks and the amount involved thereto in order to reach the purposes mentioned above.

Arbitration

The current Brazilian Arbitration Act was enacted in 1996, as the Law No. 9.307, which established, among other provisions, the binding nature of the arbitral awards and placed them vis-à-vis a judicial award in terms of enforcement.

The Brazilian Arbitration Act is not based in the UNCITRAL Model Law on International Commercial Arbitration, although some of its provisions were inspired by the latter.

After years of debate on unsubstantiated inconsistencies between the Brazilian Arbitration Act and the Federal Constitution, in 2001, the STF ruled that the Arbitration Act was constitutional. In the following year, Brazil became a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958).

In 2015, the Brazilian Arbitration Act was amended to eliminate some existing legal uncertainties and to regulate usual practices, leading case law and scholarly tendencies

Brazil has been experiencing consistent and increasingly educated support of the State courts towards a favorable commercial environment and the ultimate insertion of Brazil as a true global player. This privileged position is expected to be strengthened as arbitration evolves.

The choice for arbitration must be expressed in writing (articles 3 and 4, § 1st of the Brazilian Arbitration Act; paragraph 2 of Article II of the New York Convention), under penalty of nullity as per Article 166 of the Brazilian Civil Code. Only disposable property rights can be resolved by arbitration. Hence, arbitral tribunals are unlikely to resolve issues related to consumer law, tax law or labor law, for instance.

The arbitration clause inserted in the by-laws of a company after its incorporation is binding to all shareholders. In the case a shareholder does not agree with the insertion, they have the right to withdraw from the company.

The Brazilian Arbitration Act admits arbitration involving state-owned entities. However, these arbitral proceedings must not receive confidential treatment and the seat of arbitration must be in Brazil.

The Brazilian Arbitration Act accepts the power of State courts to grant interim measures prior to the constitution of the arbitral tribunal. If the measure is granted, the interested party must file a request for arbitration within the following 30 days under penalty of the measure being revoked. After the constitution of the arbitral tribunal, the arbitrators are vested with powers to render any interim measures and review the ones previously granted by State courts.

The arbitral award is not subject to appeal but only to a request for clarification or correction of material errors.

Parties may request annulment of an arbitral award to State courts by filing a specific motion or presenting a response to a motion for enforcement filed by the prevailing party. In this circumstance, the parties are entitled to request the State court to determine that the arbitral tribunal issue a different award or, alternatively, request the State court to issue a supplementary award if the challenged award failed to decide any of the pleas brought forth in the arbitral proceeding.

As Brazil is not a signatory of the Washington Convention, nor has ratified any of the Bilateral Investment Treaties it has signed. Therefore, investor-state arbitration is widely unavailable and most of the conflicts involving foreign investors are resolved through commercial arbitration with state-owned entities as parties.

Recognition of Foreign Judgments and Awards

The Brazilian Constitution states that the STJ must recognize a foreign judgment or award prior to their enforcement (exequatur). The Internal Rules of the STJ regulate this recognition procedure, which allows partial recognition.

In order to be recognized, the foreign judgment or award must have been rendered by a competent authority, must contain elements that prove that the parties were duly served summons and evidence that the award is no longer subject to appeal. A foreign judgment or award that violates the national sovereignty, the dignity of the human person or Brazilian public policy will not be recognized.

Consumer & Product Liability

Consumer protection has constitutional status and the rules provided by consumer legislation are mandatory. The Brazilian Consumer Protection Code ("CDC") is based on the premise that consumers are the weaker party in the supply chain. The recognition of the vulnerability of consumers in face of suppliers, the facilitated access to consumer protection bodies and the reversal of the burden of proof in procedures initiated by consumers are examples that demonstrate the strong consumer protection culture in Brazil.

Brazilian courts interpret the concepts of "consumer" and "supplier" very broadly. Therefore, even companies may be treated as "consumers" according to the case, and local subsidiaries of foreign companies are considered as "suppliers".

The CDC governs the rights and duties of consumers and suppliers, giving special attention to the quality and safety of products and services. Among the basic rights ensured to consumers, one can highlight: (i.) the protection of life, health and safety against risks arising from dangerous products and services; (ii.) adequate information about products and services; (iii.) freedom from misleading and abusive advertising; (iv.) prevention and redress of damages; and (v.) effective and facilitated defense of rights.

The CDC also provides the criteria for the definition of defective products and services and non-compliance defects; the remedies available for consumers; strict and joint liability of agents involved in the supply chain; the instances in which the supplier might not be deemed liable towards the consumer; and the applicable statute of limitations. It also imposes several duties on the suppliers, related not only to the adequacy and safety requirements of products and services, but also to the offer and advertising of such products or services. It also establishes several commercial practices deemed abusive against consumers and consequently forbidden to suppliers, and establishes applicable procedural rules in product liability litigation, whether filed individually or brought by the legitimate parties by means of collective action.

Decree 7,962/2013 set forth specific obligation to be observed by the suppliers of e-commerce websites. Websites must provide sufficient, clear and visible information regarding (i.) the supplier's data and contacts; (ii.) methods of payment, deadlines and conditions of the offer; (ii.) the ways to the consumer perform the right to desist from the contract during the cooling-off period.

Consumer relations are also subject to other specific federal legislation. Besides, some municipalities and states have their local and specific legislation that must be complied with by suppliers.

Certain products may require approval of Government agencies, such as the National Sanitation Agency ("ANVISA") and the National Institute of Metrology, Quality and Technology ("INMETRO"), before they are allowed to be sold in the Brazilian market in order to verify if they do not constitute a danger to the health or safety of consumers.

In case a default that endangers the health and security of consumers is verified after the introduction of a product in the market, the supplier ought to perform a recall of this product, whose proceeding is foreseen in the CDC and in specific ordinances issued by the Ministry of Justice.

The administrative Brazilian Consumer Protection System encompasses the National Consumer Secretariat (SENACON), the Brazilian Consumer Protection and Defense Department (DPDC) and other state and municipal agencies (PROCON's). This system has the power to enforce several administrative sanctions against suppliers under the consumer protection legislation.

If a supplier infringes any provision of the CDC or other consumer protection legislation, the competent body of the Brazilian Consumer Protection System may start an administrative proceeding in order to verify the infringement. The supplier has the right to present an administrative defense.

However, in case the administrative body concludes that the CDC or other applicable consumer legislation has been violated, a fine and/or other penalty will be imposed against the supplier. The judicial system may review this administrative decision by way of an annulment lawsuit.

The Public Attorney´s Office ("*Ministério Público*") is also entitled to investigate violations against consumer rights on a collective basis. After an administrative procedure, they may file a Class Action against the supplier or shelve the investigation.

This Class Action may request specific actions to be performed by suppliers, as well as compensation for individual and/or collective moral damages, besides material damages. It is important to highlight that the Public Defender's Office, the Federal Government, States, Municipalities, government bodies and associations legally established for at least one year are also authorized to act on behalf of consumers as plaintiffs of a Class Action under Brazilian law.

Individual consumer rights are usually brought to Small Claims Courts. The number of judicial procedures in face of a supplier can be very high, as there is a tendency of courts to rule in favor of the consumers, besides the fact that no court fees are charged to file a complaint and no attorney is needed when the amount involved is up to the equivalent to twenty times the minimum wage.

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