



Doing
BUSINESS
IN BRAZIL

7th edition

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The British Chamber of Commerce and Industry in Brazil - Britcham

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**The British Chamber of Commerce and Industry in Brazil
BRITCHAM**

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Foreword

Over the past few years, Brazil has consolidated its leading role in the international scenario, either reactivating commercial agreements and relations with old partners or reopening relevant issues for discussion on the development of trade of goods and services throughout the international community.

Brexit opens the door for new business opportunities and discussions regarding the need for a Free Trade Agreement between the UK and Brazil. As is widely recognized, Brazil has not only a strong and globally integrated business base, but also a European-oriented culture and approach to business practice.

Despite the recent economic crisis worldwide and the severe recession it has faced, Brazil has been working to improve its business environment and keep its economy stable. In 2019, the country achieved substantial reforms in its pension system. By 2020, the National Congress is expected to pass a major tax reform, which should greatly simplify the calculation of taxes on sales and

consumption. Very soon, Brazil will access the OECD and the free-trade agreement between Mercosur and the European Community will be signed. These positive facts create good business opportunities and make the country an important and safe hub for the attraction of large foreign investments.

The economy has been responding positively. In 2020, Brazil's Gross Domestic Product (GDP) is expected to grow by 2.4%, the interest rate is close to international levels, and the inflation rate is expected to be 3.62% by the end of the year, confirming the scenario of stability.

With this background in mind, and aiming to continue the success of the previous editions of "Doing Business in Brazil", The British Chamber of Commerce and Industry in Brazil is proud to publish the seventh edition of this book, providing the foreign investor with a complete guide to the Brazilian legal system (one that is well-known for its complexity).

There have been many changes in Brazilian legislation that have affected foreign companies and investments since the last edition of this book, as well as certain developments in other areas. These changes and developments have led the members of the Legal and Tax Committee to expand and update the chapters on aviation, tax, private pension funds, logistics, transportation agencies, and mortgage and securitization companies, among others, as well as to reflect upon the state of the law in general.

It is important to note that this edition was co-written by the members of the São Paulo and Rio de Janeiro Legal, Tax and Regulatory Committees, all of whom are renowned law firms and auditing companies. The Legal, Tax and Regulatory Committees have no doubt that "Doing Business in Brazil" will continue to be a useful guide for foreign (not only British) investors, Brazilian and foreign law firms, accounting and auditing companies, embassies and consulates, and financial institutions and insurance companies, which means that it is essentially for anyone with a commercial or economic interest in Brazil.

The Legal, Tax & Regulatory Committees of
The British Chamber of Commerce and Industry in Brazil
BRITCHAM

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**The Legal, Tax & Regulatory Committees of
The British Chamber of Commerce and Industry in Brazil
BRITCHAM**

Abbreviations

ABS	American Bureau of Shipping
ACE	Economic Cooperation Agreements
ADR	American Depositary Receipts
AEO	<i>Operador Econômico Autorizado</i> Authorized Economic Operator
AGE	<i>Assembleia Geral Extraordinária</i> Extraordinary General Meetings
AGO	<i>Assembleia Geral Ordinária</i> Annual General Meetings
AGU	<i>Advocacia-Geral da União</i> Federal Attorney General
ALADI	Latin American Integration Association
ANA	<i>Agência Nacional de Águas</i> National Water Agency
ANAC	<i>Agência Nacional de Aviação Civil</i> National Civil Aviation Agency
ANATEL	<i>Agência Nacional de Telecomunicações</i> National Telecommunications Agency
ANBIMA	<i>Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais</i> Brazilian Financial and Capital Markets Association

ANCINE	<i>Agência Nacional do Cinema</i> National Cinema Agency
ANEEL	<i>Agência Nacional de Energia Elétrica</i> Brazilian Electricity Regulatory Agency
ANP	<i>Agência Nacional do Petróleo, Gás Natural e Biocombustíveis</i> National Agency of Petroleum, Natural Gas and Biofuels
ANS	<i>Agência Nacional de Saúde Suplementar</i> National Supplementary Health Agency
ANTAQ	<i>Agência Nacional de Transportes Aquaviários</i> National Water Transport Agency
ANTT	<i>Agência Nacional de Transportes Terrestres</i> National Land Transport Agency
ANVISA	<i>Agência Nacional de Vigilância Sanitária</i> National Sanitation Agency
B3 BM&F Bovespa	<i>Brasil, Bolsa, Balcão</i> Brazil Stock Exchange
BACEN BCB	<i>Banco Central do Brasil</i> Central Bank of Brazil
BEPS	Base Erosion and Profit Shifting
BNDES	<i>Banco Nacional de Desenvolvimento Econômico e Social</i> Brazilian Development Bank
BofD	Board of Directors
BPTO	Brazilian Patent and Trademark Office
CADE	<i>Conselho Administrativo de Defesa Econômica</i> Administrative Economic Defence Council

CAMED	Chamber of Medicine
CAMEX	<i>Secretaria-Executiva da Câmara de Comércio Exterior</i> Foreign Trade Chamber
CAP	Cost Plus Taxes and Profit
CARF	<i>Conselho Administrativo de Recursos Fiscais</i> Higher Chamber of the Administrative Tax Appeals Council
CBD	Convention on Biological Diversity
CBF	<i>Confederação Brasileira de Futebol</i> Brazilian Football Confederation
CCB	<i>Cédulas de Crédito Bancário</i> Banking Credit Notes
CCEE	Electrical Energy Trading Chamber
CCO	Chief Commercial Officer
CDC	Consumer Protection Code
CDCA	Certified Agribusiness Credit Rights
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CGEN	<i>Conselho de Gestão do Patrimônio Genético</i> Genetic Heritage Management Council
CGU	<i>Controladoria-Geral da União</i> Comptroller General of Brazil
CINM	International Business Centre of Madeira
CLT	Consolidation of Labour Laws

CMN	<i>Conselho Monetário Nacional</i> National Monetary Council
CNJ	<i>Conselho Nacional de Justiça</i> National Board of Justice
CNPE	National Council for Energy Policy
CNPJ	Entities Tax ID Number
CoAF	<i>Conselho de Controle de Atividades Financeiras</i> Council for Financial Activities Control
COFINS	<i>Contribuição para o Financiamento da Seguridade Social</i> Contribution for the Financing of Social Security
CONAMA	National Environmental Council
CONDECINE	<i>Contribution for the Development of the National Cinema Industry</i>
CONFAZ	<i>Conselho Nacional de Política Fazendária</i> National Council of Finance Policy
COO	Chief Operating Officer
COSRA	Council of Securities Regulators of the Americas
CPF	Individuals tax ID number
CPL	Cost Plus Profit
CRA	Receivables Certificate in Agribusiness
CSLL	<i>Contribuição Social sobre o Lucro Líquido</i> Social Contribution on Net Profit
CTC	Cape Town Protocol
CTN	National Tax Code

CUP	Paris Convention Agreement
CVA	Customs Valuation Agreement
CVM	<i>Comissão de Valores Mobiliários</i> Securities and Exchange Commission
DECOM	<i>Departamento de Defesa Comercial</i> Department of Commercial Defense
DIT	Department for International Trade
DNA	Deoxyribonucleic Acid
DR	Depositary Receipts
DrCI	Department of Asset Recovery and International Legal Cooperation
DU-E	Single Export Declaration
EED	Strategic Defence Company
EFTA	European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland)
ENCLLA	National Strategy Against Corruption and Money Laundering
EPC Contract	Engineering, Procurement and Construction Agreement
EPE	Energy Research Company
EST	Expressed Sequence Tags
ETVE	Entidad de Tenancia de Valores Extranjeros
EU	European Union
FCTA	Foreign Corrupt Practices Act

FDA	U.S. Food and Drug Administration
FDBT	Federal Department of Boards of Trade
FGTS	<i>Fundo de Garantia do Tempo de Serviço</i> Government Severance Indemnity Fund for Employees
FIFA	International Federation of Association Football
FIFO	'First In First Out'
FIF FIP	Investment Funds in Equity Fund Quotas
FIP	Equity Investment Funds
FIP - PD&I	Private Equity Funds - Intensive Economic Production in Research, Development and Innovation
FISTEL	<i>Fundo de Fiscalização das Telecomunicações</i> Telecommunications Fiscal Fund
FMIEE	Investment Funds in Emerging Companies
FNRB	National Fund for the Distribution of Benefits
FOP	Free on Board
FUNCINES	Funds of the National Film Industry
FUNDAP	Fund for Performance of Port Activities
Fust	Fund for the Universalization of Telecommunications Services
GATT	General Agreement on Tariffs and Trade
GFIP	<i>Guia de Recolhimento do Fundo de Garantia do Tempo de Serviço e Informações à Previdência Social</i> Employee Dismissal Fund and Social Security Information Payment Form

GNP	Gross National Product
GTIP	Group of Public Interest Evaluation
GURTs	Genetic Use Restriction Technologies
HMC	High Movie Council
HMO	Healthcare Management Organizations
IBAMA	<i>Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis</i> Brazilian Institute of Environment and Renewable Natural Resources
ICC	International Chamber of Commerce
ICMS	<i>Imposto sobre Circulação de Mercadorias e Serviços</i> State Value-Added Tax
ICTs	Scientific, Technological and Innovation Institutions
IDERA	Irrevocable Deregistration and Export Request Authorization
IED	<i>Investimento Estrangeiro Direto</i> Foreign Direct Investment
IHC	International Holding Companies
II	Import Duty
INCRA	National Institute for Settlement and Agrarian Reform
INSS	<i>Instituto Nacional do Seguro Social</i> National Social Security Institute
INPI	National Industrial Property Institute

IOF	Financial Operations Tax
IOSCO	International Organization of Securities Commissioners
IPI	<i>Imposto sobre Produto Industrializado</i> Excise Tax on Industrialised Products
IPO	Initial Public Offers
IPTU	Tax on Urban Property
IPVA	Vehicle Tax
IRPJ	<i>Imposto sobre a Renda da Pessoa Jurídica</i> Corporate Income Tax
IRRF	Withholding Income Tax
ITBI	Real Estate Conveyance Tax
ITC	International Trading Companies
ITCMD	Estate and Gift Tax
ITR	Tax on Rural Property
JSCP	Interest on Net Equity
JV	Joint Ventures
LAIA	Latin American Integration Association
LALUR	<i>Livro de Apuração do Lucro Real</i>
LCA	Letters of Credit for Agribusiness
LIFO	'Last in First Out'
LPCO	Export License, Permit, Certificate or Other

Ltda.	<i>Sociedade Limitada</i> – similar to a LLC
MCTIC	Ministry of Science, Technology, Innovations and Communication
MME	Ministry of Mines and Energy
MP	Provisional Measure
MPS	<i>Ministério da Previdência Social</i> Social Security Ministry
NCM	Mercosur Common Nomenclature
NEPA	National Environmental Policy Act
NRPOL	Reference Rules for Online Privacy
OECD	The Organisation for Economic Co-operation and Development
ONS	National System Operator
ORF	Open Reading Frames
PAC	Growth Acceleration Program
PCI	Price Quotation Method on Import
PCT	Patent Cooperation Treaty
PECEX	Price Quotation Method on Export
PGMU	General Universalization Targets Plan
PIC	Comparable Independent Price
PM	Provisional Measures
PNBL	National Broadband Program

PND	National Privatization Program
PPB	Basic Production Process
PPH	Patent Prosecution Highway
PPI	<i>Programa de Parcelamento Incentivado</i> Investment Partnership Program
PPP	Public Private Partnerships
PRL	Resale Price Less Profit
PRODECINE	National Film Development Programme
PROEX	<i>Programa de Financiamento às Exportações</i> Export Financing Program
PVA	Wholesale Price Less Profit
PVE	Foreign Visiting Teacher
PVEX	Export Sales Price
PVV	Retail Price Less Profit
RAB	<i>Registro Aeronáutico Brasileiro</i> Brazilian Aeronautical Registry
RDC	Differentiated Procurement Regime Regime Diferenciado de Contratação
RECAP	Special Regime for Acquisition of Capital Goods for Companies
RECOF	Regime for Industrial Establishment under Automated Customs Control
RECOM	Special Input Import Customs Regime



REIDI	Special Regime of Incentives for Infrastructure Development
REIF	Real Estate Investment Funds Law
REPES	Special Regime for the Export and Service and Information Technology Platform
REPETRE	Special benefit for the import and export of goods to be used in the economic research, exploration and development of oil and natural gas in Brazil
RFB	<i>Receita Federal do Brasil</i> Federal Revenue of Brazil
RGPS	<i>Regime Geral da Previdência Social</i> General Social Security Regime
RIA	Regulatory Impact Analysis
ROF	<i>Registro de Operações Financeiras</i> Financial Operations Registry
RZF	Free Trade Zone System
R&D	Research & Development
S.A.	<i>Sociedade por Ações</i> - similar to a Corporation
SAC	Secretary of Civil Aviation
SCD	<i>Sociedade de Crédito Direto</i> Direct Credit Company
SDE	National Secretariat of Economic Law
SECEX	<i>Secretaria de Comércio Exterior</i> Secretariat of Foreign Trade

SEP	<i>Sociedade de Empréstimo entre Pessoas</i> Peer to Peer Company
SFH	<i>Sistema Financeiro de Habitação</i> Housing Finance System
SFI	<i>Sistema de Financiamento Imobiliário</i> Real Estate Financing System
SIBACEN	Central Bank Information System
SIN	National Interconnected System
SISCOMEX	<i>Sistema Integrado de Comércio Exterior</i> Foreign Trade Integrated System
SisGen	<i>Sistema Nacional de Gestão do Patrimônio Genético e do Conhecimento Tradicional Associado</i> National System for the Management of Genetic Heritage and Associated Traditional Knowledge
SNJ	Ministry of Justice's National Justice Department
SNP	Single Nucleotide Polymorphism
SNVS	National System of Sanitary Vigilance
SPEs	Special Purpose Entities
SUS	<i>Sistema Único de Saúde</i> Unified Health System
SUSEP	Private Insurances Office
STF	Federal Supreme Court
STFC	Switched Fixed Telephone Service
STJ	Superior Court of Justice

STM	Superior Military Court
SUDAM	Acre, Pará, Roraima, Rondônia, Amapá, Amazonas, Tocantins, Mato Grosso, Mato Grosso do Sul, Goiás and part of Maranhão
SUDENE	Part of Maranhão, Piauí, Ceará, Rio Grande do Norte, Paraíba, Pernambuco, Alagoas, Sergipe, Bahia and parts of the states of Minas Gerais and Espírito Santo
TAC	Term of Commitment for Adjustment of Conduct
TCU	Federal Audit Court
TEC	Common External Tariff
TELEBRÁS	<i>Telecomunicações Brasileiras S.A.</i> Brazilian Telecommunications S.A.
TFA	Trade Facilitation Agreement
TJLP	Government's Long-Term Interest Rate
TK	Traditional Knowledge
TLD	Top Level Domain
TLP	Long-Term Rate
TPS	Public Benefit Survey
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TSE	Superior Electoral Court
TST	Superior Labour Court

TUP	Terminal de Uso Privado Terminal for Private Usage
UNCED	United Nations Conference on Environment and Development
UNCITRAL	United Nations Commission on International Trade Law
UNEP	United Nations Environment Program
WHT	Withholding Income Tax
WIPO	World Intellectual Property Organisation
WTO	World trade Organisation
ZEP	Export Processing Zones

An Overview of Brazil

Introduction

The Federative Republic of Brazil is the largest country in Latin America, and the fifth largest in the world. It covers over 8.5 million square kilometres and occupies over half of South America. Brazil shares borders with all the South American countries except Chile and Ecuador. Brasília is the capital, Portuguese is the official language, and the Real (R\$) has been the currency since 1994.

Brazil has roughly 208.5 million inhabitants, who represent one-third of Latin America's population. Approximately 84% live in the urban areas along the Atlantic Coast, although the expansion of agribusiness and industrial activity to the interior of the country has caused the population to increasingly expand away from the coast.

Despite of the recession experienced in the last two years, the Brazilian economy is still one of the ten largest in the world. In 2017, Brazil's Gross National Product (GNP) was around US\$2.06 trillion, an increase of 1.0% compared to 2016 figures, which shows an economy in recovery.

Accumulated inflation rates in December 2016 and December 2017 were 6.29% and 2.95%, respectively. The Brazilian external debt in June 2018 was approximately US\$301.2 billion,

which represents a decrease of US\$ 16 billion compared to 2017.

The largest States in Brazil in terms of GDP are São Paulo, Rio de Janeiro and Minas Gerais. These States are all in Brazil's southeast region and their combined population is around 74 million. The city of São Paulo produces around 19% of Brazil's GNP. B3 S/A (BRASIL, BOLSA, BALCÃO), which combines both the stock exchange of the State of São Paulo (B3) and the Commodities & Futures Exchange (BM&F), is one of the world's largest financial market infrastructure companies and the largest stock exchange in South America. It trades a large part of Brazilian production. In 2017, B3 had an Average Daily Trade Volume of R\$ 8,724.6 million, an increase of 17.6% when compared to 2016.

During the 1990's and through until 2002, Brazil underwent a massive privatisation programme, a measure introduced to deregulate the domestic economy and allow competition, aiming to develop various sectors of the economy.

This programme included the sale of industries and public service companies owned by Federal, State and Municipal governments. It also granted the private sector concessions to develop public services and natural resources. The programme reduced the role of the public sector in the Brazilian economy at Federal, State and Municipal levels; assigned more resources to social investment; reduced public sector debt; encouraged competition; and strengthened local capital markets.

The Brazilian Government has been continuing to encourage the private sector to invest in parts of the economy that have historically been the Government's responsibility, particularly in infrastructure. For example, in 2000 the Federal Government created a programme for the construction of thermal plants (the "Priority Thermolectric Programme") with mostly private participation, and in 2004 created a new electricity model, which allows for participation and investment from the private sector. In addition, the Federal Government enacted a Public Private Partnerships ("PPP") bill in December 2004, with the aim of developing infrastructure projects through partnerships between public entities and private investors. The initial Federal PPP projects are in the highway, railroad, ports and irrigation sectors. State Governments are also engaged in implementing PPP projects.

The Government was also active during the 2008 financial crisis, as it reduced taxes on consumer goods and stimulated credit

operations, thereby alleviating some of the negative effects of the global economic crisis and maintaining internal consumption at comfortable levels. Another strategy was the investment program known as the PAC (“Programa de Aceleração do Crescimento” - Growth Acceleration Program), which was devised to develop large scale infrastructure construction works in Brazil.

The telecommunications sector has also undergone important changes since its privatisation, with the Government granting concessions, through bids from competitors, for the privatised companies. These companies currently operate in a competitive market.

The oil and gas sectors also operate in a competitive market. The state-owned company Petroleo Brasileiro S.A. - Petrobras - enjoyed a monopoly on oil and gas activities until 1997. Since then, the Government has been granting concessions to develop oil fields through bids, as a way to increasingly open the market to competitors. In 2007, Petrobras discovered large oil reserves off the coast of Rio de Janeiro. These oilfields, located in the pre-salt layer below 2,000 meters of water and 5,000 meters of salt and sand, attracted considerable interest from foreign and national oil companies. Petrobras raised US\$70 billion in a share issue, which ended with the Brazilian Government owning 48% of the national oil company.

The discovery of high-potential offshore oilfields made the Brazilian oil and gas sectors attractive for the multinational oil majors and local players, but corruption scandals have hindered the company’s original plans.

Brazilian capital markets have also been experiencing important developments. In December 2000 B3 introduced the so-called New Market or Novo Mercado, a listing category which aims to attract greater foreign investment in Brazilian companies by applying stricter rules on corporate governance, accounting and disclosure, whilst improving the treatment of minority shareholders. In addition, in 2003 the CVM issued a regulation that improved the rules for public offers of securities, in order to develop the securities market. Aimed at protecting investors, such regulation increased disclosure requirements and transparency with respect to conditions and risks involved with such offers. In 2010, 12 companies registered their Initial Public Offers (IPOs) at B3, with a total value of US\$ 6.9 billion in market capitalisation. B3 also took steps to a fuller

integration with the international financial system, signing an agreement with the Shanghai Stock Exchange in 2011.

In 2007, Brazil passed Law 11.638/07 which mandates that companies with an annual income above R\$ 400 million (approx. US\$ 110 million) must perform financial audits as well as adopt an international accounting standard, which ensures transparency and compliance to regulations adopted around the world.

Brazil has also been experiencing structural reforms. In 2003 a Social Securities reform intending to reduce the imbalance between contributions and benefits paid, and the resultant increasing deficit, was approved. Also in 2003, the Congress approved the judiciary system reform, which includes a mechanism for external control of the judiciary system amongst other changes.

In 2017, the Congress approved the Labour Reform whose effects are still being assessed.

The combination of strong economic indicators and a governmental policy of reducing poverty through easier access to credit and stimulus to internal consumption has led to the growth of the middle class, which at present comprises more than half the Brazilian population.

A political crisis that resulted in a presidential impeachment, associated with the Car Wash Operation, a corruption scandal that implicated top politicians and the highest players of the infrastructure sector, have put Brazil into the biggest recession of its History, which lasted for two years.

Although the economy is recovering, the new Government has also suffered several allegations of corruption, which has hampered the growth expected for 2018.

Brazil will go through general elections in 2018 and tax and pension reforms are expected from the elected politicians. These reforms are deemed as necessary measures to re-establish the fiscal balance and the conditions for the resumption of a sustainable growth.

Along with Argentina, Paraguay, and Uruguay, Brazil is a member of the Mercosur. Mercosur is the result of the efforts of its members to strengthen their economic and political relationship. It is the world's fourth largest economic entity, after the European Union, the United States and Japan, and boasts a combined GNP of over US\$1 trillion. Its four members have been modernising and opening their national economies. In 1996, Mercosur signed agreements with Chile and Bolivia, effective from that October and February 1997,

respectively, for the development of free trade among the countries. Mercosur also signed free-trade agreements with Israel in 2007 and with Egypt in 2010. Mercosur's agenda, however, extends far beyond economic and trade issues, as it also covers education, employment, the environment, consumer protection and culture.

Brazil is divided into 26 States and one Federal district (within which Brasília is located). This table shows the 5 regions, their populations and the percentage of the population living in urban areas:

Region	States	Population	Urban Population
North	7	15,000,000	73,5%
Northeast	9	53,000,000	73,1%
Southeast	4	80,000,000	92,9%
South	3	27,000,000	84,9%
Central-west	3	14,000,000	88,8%

The largest city in Brazil and South America is São Paulo, with a population of more than 12 million. This figure increases to about 20 million when the urban centres - the metropolitan area - around São Paulo, known as Greater São Paulo, are included. 14 other cities, including Rio de Janeiro, have populations of over 1 million.

Brazil hosted the 2014 FIFA World Cup and games took place throughout the country. The city of Rio de Janeiro hosted the 2016 Olympic Games.

The Political System

Brazil is a democratic federative republic, consisting of the Union, States, Municipalities and the Federal District. It has a representative form of Government with universal elections for the Executive and Legislative Branches.

A new Constitution was introduced in October 1988. It provided a Presidential type of Government with three independent branches: the Executive, the Legislature and the Judiciary. A national referendum held in 1993 confirmed the presidential system as the

preferred regime and the republic as the preferred form of Government.

After more than 10 years of military dictatorship, Brazil readopted multiparty democracy in 1979. However, the armed forces maintained control over the Executive branch until 1985, when the first civilian President was elected through indirect vote by an electoral college. Direct, 4-yearly elections for governors and mayors were readopted in 1982, and for the President, in 1988.

The Brazilian democracy is open to various forms of political participation in addition to the vote, Advocacy and lobbying by industry associations, trade unions, social movements, and non-governmental organisations is not regulated and very-much welcomed. There are still several mechanisms for the direct participation of citizens in the decision-making procedures and the exercising of power control, for example, popular consultations and referendums, executive branch impeachment proceedings, forums and public hearings involving the general voting public and companies.

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

The Executive

At the Federal Level, the Executive is headed by the President. The President and Vice-President are elected by direct vote for four-year terms. It should be noted that since the implementation of direct elections in Brazil, voting is mandatory for citizens between 18 and 70 years of age. Both the President and Vice-President can stand for one re-election. The Executive's main responsibilities include:

- sanctioning and passing laws, as well as issuing decrees and regulations for their enforcement;
- proposing and carrying out public policies;
- entering into treaties, conventions and acts (which must be approved by the National Congress); and
- maintaining national security, public safety, and the Union-assigned public services.
- executing the Congress-approved annual budget.

The Executive also occasionally assumes the law-issuing roles of the legislature by passing Provisional Measures (PMs) in

urgent cases. PMs have the force of law, but must be approved converted measure into law by the National Congress within 60 days of its publication.⁴ Congress is allowed to extend the validity of the PMs once only, for an additional 60 days. If it does not do so, the PM will cease to have effect.

The Congress may, by resolution, delegate to the President the power to legislate. The resolution may State that the Congress will examine the subject of the proposed law.

The Vice-President assists the President when requested, and performs other roles attributed to the office by supplementary laws. The Vice-President will replace the President if he or she is incapacitated, impeached or leaves office.

The President appoints and dismisses Ministers of State. They have two general roles: first, to run their ministries, and second, to advise the head of the Government on their department's policies. However, the responsibility for these policies lies with the President. They remain subordinate to the President, who is solely responsible - after consulting with his or her ministers - for Federal administration.

The Executive exercises direct and indirect administration. The direct administration includes the Ministers of State and their administrations, secretariats, chambers and committees, as well as the President's administration. The indirect administration comprises governmental administrative organizations, state-run companies and state-run companies with private investors, Federal foundations, and Federal regulatory agencies.

The Legislature

The Legislature consists of a two-chamber National Congress (the Senate and the Chamber of Deputies). The Senate is comprised of 81 Senators who represent the States of the Federation (three Senators for each State and Federal District). They serve staggered eight-year terms. The Chamber of Deputies is comprised of 513 deputies who represent their electorate, and serve for concurrent four-year terms. Members of the Senate and the Chamber of Deputies are elected by direct popular vote. The Chamber of Deputies employs a proportional representation system, meaning that each State and the Federal District elect between 8 and 70 Representatives each.

The legislature approves and oversees the execution and

effectiveness of the annual budget and performs the State's legislative functions by passing:

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

Before any proposed legislation can become law, it must be approved by both chambers and receive Presidential sanction.

The Federal Constitution prescribes the matters falling within the exclusive remit of the Chamber of Deputies and the Senate. It empowers both bodies to make their own rules on organisation, regulations and appointment of employees. The Federal Constitution also sets the National Congress its functions, stating which matters must be submitted to the President for approval, and which fall under its own authority.

Each house has committees that analyse and report their findings on the specific matters submitted to them. The Chamber of Deputies has 20 permanent committees whilst the Senate has 12. Furthermore, temporary committees such as Parliamentary Inquiry Committees, can be created to investigate certain matters. Both States and municipalities have legislative branches.

The Senate also has the mandate to approve the President's nomination of Supreme and Superior Courts Ministers, the Directors of the Regulatory Agencies, the President of the Central Bank, and other government officials as defined by specific legislation.

The Judiciary

The Judiciary is comprised of Federal and State courts, and is headed by the Federal Supreme Court (STF). The STF is the final appeal court for Federal and State courts on Federal Constitution matters. The 11 STF members are appointed by the President after an absolute Senate majority has been achieved.

Under the STF are special courts. These are the final courts of appeal for non-constitutional matters:

- Superior Court of Justice (STJ): this court hears appeals on how to interpret and apply Federal law;

- Superior Military Court (STM);
- Superior Electoral Court (TSE); and
- Superior Labour Court (TST).

Below these special courts are the Federal Regional Courts and the State Courts of Appeal. These hear appeals against decisions taken by both the Lower Federal Courts and the Lower State Courts (which are usually the first instance courts). Federal Courts can hear cases to which the Federal Government or any of its Government corporations or entities are party. The State Courts hear cases that involve individuals or entities not related to the Federal Government, nor to State or Municipal entities or authorities.

Finally, there are the First Instance Courts for Employment Matters; the Regional Employment Courts of Appeal (which only deal with employment litigation matters); the Lower Electoral Courts and Regional Electoral Courts (organisation, inspection and summing-up of the elections), and the Lower Military Courts (military crimes). All these courts form part of the Federal judicial system.

At the bottom of the court hierarchy are:

- Employment Courts and Regional Employment Courts of Appeal (for employment litigation only);
- Lower and Regional Electoral Courts (for election organisation, inspection and summing-up); and
- Lower Military Courts (for military crimes).

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

Political Divisions

States

Brazil is divided into 5 regions and 26 States, being,

- North: Acre, Amapá, Amazonas, Pará, Rondônia, Roraima and Tocantins;

- Northeast: Alagoas, Bahia, Ceará, Maranhão, Paraíba, Pernambuco, Piauí, Rio Grande do Norte and Sergipe;
- Southeast: Espírito Santo, Minas Gerais, Rio de Janeiro and São Paulo;
- Central-West: Goiás, Mato Grosso and Mato Grosso do Sul, and
- South: Paraná, Rio Grande do Sul and Santa Catarina.

Each has its own constitution, governor and State legislature. The Federal District, located within the borders of Goiás State, within the Central-Western region, also has its own governor and legislature.

The Governor exercises each State's executive powers. The Governor and Vice-Governor are elected by direct vote for four-year terms. Secretaries of State assist the governor in exercising their functions. Their number and powers vary from State to State but, under State laws and the State Constitution, they all govern the State. The State Assembly, comprised of the State deputies - also elected by direct vote - exercises the legislative power. The number of deputies for each State's Assembly is proportionate to its population.

The organisation of the State judiciary is the responsibility of each State, and is carried out by the highest State court, the State Court of Appeals. The State Court of Appeals is subordinate to both the STF (the Federal Supreme Court), and the STJ (the High Court of Justice).

Municipalities

Municipalities, which make up the states, are the smallest self-governing units in Brazil. They elect their own chief executives (mayors), deputy mayors and members of the legislature (councillors), and control the local public services.

Municipalities are created by State law and are subject to Federal law requirements on minimum population size, public revenue and the consent of the population. The mayor governs the Municipality, with the help of Municipal secretaries or departmental directors. The council is the Municipality's legislative body. It may legislate on certain local matters authorised by the Federal Constitution.

The State Courts have jurisdiction over the municipalities.

The Legal System

Brazil is a civil law country and its legal system is based upon laws enacted by the National Congress, State Assemblies and Municipal Councils as per the procedures set forth in their constitution or organisational law, as the case may be.

The courts base their decisions on this enacted law. If however, a case does not fall within a specific rule or law, the Introductory Law to Norms of The Brazilian Law states that courts may base their decisions on case law, general principles of law, analogy, custom and use¹.

Sources of Law

Basically, the seven sources of law are:

- **Legislation.** This is the principal source of law. The Federal Constitution gives the National Congress power to legislate on areas such as criminal, civil, commercial, and employment law.
- **Case law.** This is the courts' interpretation of laws, throughout its hierarchy. The most important role of case law is to provide uniformity to the courts' interpretation of law and rules.
- **General principles of law.** These apply general legal values to the interpretation of current laws and the drafting of new ones."
- **Analogy.** The court applies prior interpretations to analogous cases that are not covered by other laws.
- **Custom and use.** This subsidiary source of law can only apply if it does not contradict laws already in force. The parties to a dispute of any kind can refer to custom and use. This is used particularly in commercial disputes.
- **Equity.** In cases permitted by law, the court will apply principles of fairness².
- **Legal doctrine.** This includes legal opinions and academic texts. Paradoxically, some academics believe legal doctrine is not a source of law,

despite their works being quoted by the courts to substantiate their ruling.

The Federal Constitution

As mentioned earlier, Brazil is composed of the Federal Union, States and the Federal District and Municipalities. Each can pass laws and regulations with regard to subjects under their respective jurisdiction, as per the Federal Constitution, and in accordance with its provisions. The Federal Constitution of 1988 heads the legal system and provides the fundamental rights of the citizens. It also sets the country's political and administrative organisation. The Constitution defines the roles of the Executive, Legislative and Judiciary. It legislates on tax, socioeconomic and economic policies, civil and commercial law, employment relations and criminal law.

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

The Federal Constitution is divided into different titles covering:

- Titles I and II – essential principles: Chapter I of Title II describes individual rights and liberties. It also guarantees the inviolability of the right to life, liberty, equality, security and property;
- Title III – the organisation of the state;
- Title IV – the organisation of the Legislature and National Congress amongst other public bodies, including the Executive and Judiciary;
- Title V – the defence of the state and democratic institutions;
- Title VI – taxes and the fiscal budget;
- Title VII – economic and financial order;
- Title VIII – social order; and
- Title IX – general dispositions.

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1. Article 4th of the Introductory Law to Norms of The Brazilian Law (Decree-Law # 4.657/1942).
 2. Article 140 of the Civil Procedure Code (Law # 13.105/2015).

Each State has its own constitution and each Municipality has its own organisational law, which must be in accordance with the principals and rules set forth in the Federal Constitution.

There is a hierarchy in the application of the Laws within the Brazilian Legal System based upon legal criteria such as (i) temporality, (ii) jurisdiction, and (iii) specificity, among others. These criteria are used to avoid conflicts between laws or misuse of the prevailing legislation.

Recent Political and Economic History

Brazil started as a Portuguese Colony and had the unique experience of hosting the Conquering Royal Family that left its heir as the ruler of the country. This Ruler declared independence from Portugal before later returning to Portugal and leaving his son in Brazil. During his reign his Military Leaders declared Brazil a Republic without a fight and kept the Royal Family safe and prosperous.

The Republic alternated between democratic and not so democratic times, but at no point was there ever a full rebellion or a significant domestic war.

For the past half century, Brazil has experienced a varied political life. Following the military regime, which governed from 1964 to 1985, there was a 'transition' period, instigated and ruled by the military government, which led Brazil to full democracy with the approval of today's Federal Constitution in 1988, thus setting the foundations for a Democratic Republic that respects due process of law, checks and balances, Congress and Judiciary independence, free press, and social and civil rights. After a period struggling with high inflation, an aging governmental structure, and the first impeachment of a duly elected President (Fernando Collor), in the 1990's President Fernando Henrique Cardoso's Government put Brazil back on track, promoted economic and financial stability and decreased inflation, with rates falling sharply, regulatory agencies, privatization, PPP projects and State Budget management all contributing to a revamping of the business environment. The country then saw the growth of the Gross Domestic Product and the strengthening of the local currency

before facing an extraordinary and unique development - a former factory worker won the Brazilian Presidential election.

The Government of Luiz Inácio Lula da Silva

Luiz Inácio Lula da Silva's presidency, contrary to all expectations, unfolded with no real surprises at all in conducting the Brazilian economy. Lula kept Brazil's macroeconomic situation stable and this has brought unquestionable results. Under Lula, Brazil expanded its agribusiness, with ethanol becoming the face of the Government's investments in agribusiness and heavy Government funding in marketing programs advertising the product. However, areas such as soy and meat production also played a significant role in the expansion of agribusiness, witnessing a boom in production compared to previous years. In addition, the Brazilian economy also benefitted from a global rise in commodity prices.

Another mark of Lula's Government was the discovery of the pre-salt oil reserve, an offshore find that nearly doubled the country's oil reserves, although to date, no significant production has yielded from these fields. Former President Lula also further stabilized the currency by multiplying Brazil's foreign currency reserves and increasing the strength of the Real. Such was the increase in foreign currency reserves that, in 2011, Brazil was reported to be the fifth largest creditor of the United States' foreign debt.

Under Lula, Brazil also invested Treasury and Development Bank funds in infrastructure projects, mainly through the *Projeto de Aceleração do Crescimento*, or PAC, launched in 2007 by the Federal Government. Despite high investments, in 2010, only 46% of the PAC projects had either started or been concluded.

In addition to the measures mentioned above, President Luiz Inácio Lula da Silva, always escorted by Brazilian entrepreneurs representing various sectors of the market, visited countries on several continents, spreading the word on Brazilian products and developing foreign trade. As a consequence, Brazil signed commercial treaties with countries such as India, China and Russia, and also fostered trade with countries with which it had already had a firm commercial base.

Despite the advancement of the country and the President's notable popularity, Lula's Government was also marked by corruption scandals in the highest echelon of Government. Most

notably was the *Mensalão* case, which came to light in 2005, gaining notoriety as an allegedly widespread cash-for-votes scheme involving high-level Government officials, members of the Brazilian Congress, and business leaders in the private sector. The scheme allegedly consisted of monthly contributions to members of the Brazilian Congress in order to obtain political support in matters before the Federal Government (*Mensalão* can be loosely translated as “big monthly stipend”). Senior officials of President Luiz Inácio Lula da Silva’s Government were implicated in the case, including, but not limited to, Lula’s former chief of staff, José Dirceu.

The Government of Dilma Roussef

President Luiz Inácio Lula da Silva appointed Dilma Rousseff as José Dirceu’s successor and new chief of staff to his Government in 2005. During the final years of his Government, Lula supported the Rousseff’s successfully candidacy for the Brazilian Presidency. Following a disputed first round victory against opposition candidates José Serra of the PSDB and Marina Silva of the Green Party (PV), Rousseff went on to dispute the second-round vote with José Serra, a former Health Minister and Governor of São Paulo State. In October 2010, Rousseff was elected the first female president of Brazil, with 55% of the popular vote.

In 2013, under the Government of President Dilma, Brazil was the scene of a series of protests, especially in the major state capitals, which were initially against increases in public transport fares, but which then came to incorporate demonstrations against the mega-events of FIFA (Confederations Cup and World Cup) and even towards broader issues, such as the fight against corruption. These were the biggest protests in the country since the calls for the impeachment of Fernando Collor in 1992.

In response, the Brazilian government announced several measures in an attempt to meet protesters’ demands, and the Brazilian Congress voted in a series of concessions (the so-called “positive agenda”), such as making corruption a heinous crime, archiving the PEC 37 which would have prohibited investigations by the Public Prosecutor’s Office, and a secret ballot on voting to ban the mandate of lawmakers accused of irregularities. There was also a revocation of the recent increases in public transportation fares in several cities of the country, with the return to pre-movement prices.

In October 2014, the presidential elections were held in Brazil, resulting in the re-election of Dilma Rousseff, of the Workers' Party (PT). The victory was very narrow, becoming the closest presidential race in history. The presidential campaign was notable for a low voter turnout, riots and controversies, mainly due to the 'Operation Car Wash', which brought to the surface a huge corruption scheme that hit companies, the political class, and political parties as a whole.

Dilma began her second term in a weakened position, thanks mainly to the economic and political crisis, which led her approval rating dropping to just 9%, the lowest ever for a President of the Republic.

Operation Car Wash

On March 17, 2014, the Federal Police initiated a series of investigations that would come to be known as 'Operation Car Wash', initially investigating a corruption and money laundering scheme involving billions of reais and numerous politicians from the largest parties in the country. The operation had a direct impact on the country's politics, contributing to the unpopularity of the Dilma government.

Impeachment of Dilma Roussef

Driven by her low approval rates and the numerous scandals, the impeachment process of Dilma Roussef began in December 2015, resulting in the annulment of her mandate. Dilma Rousseff therefore became the second person exercising the position of President of the Federative Republic of Brazil to be impeached, Fernando Collor having been the first in 1992.

The Government of Michel Temer

After the impeachment of Dilma Roussef, the government was then assumed by the Vice-President Michel Temer. All the corruption scandals involving the Temer government, coupled with unpopular reform proposals, made Temer's popularity, according to CNI/Ibope polls, fall to 3% in September 2017, making him even more unpopular than Dilma Rousseff.

In 2018, Operation Car Wash had a historical development

with the arrest of former President Luiz Inácio Lula da Silva. Sérgio Moro, a federal lower-court judge, issued the arrest warrant due to a conviction in the second instance calling for 12 years and one month in prison for corruption and money laundering.

Among the main reforms, we should mention: the New Fiscal Regime, a constitutional amendment that establishes a limit for the increase of Federal Government expenditures for 20 years; the Law of Outsourcing, a law that allows the outsourcing of work for end-activities; and the Labour Reform, which was a significant change in the Consolidation of Labour Laws (CLT) and changed the future of politics by ending the history of mandatory union funding that started at 1964.

Unfortunately, new scandals arose out of the Operation Car Wash investigations that decreased President Temer's influence over Congress and the government failed to carry out the much needed Social Security Reform.

Current scenario

As a consequence of the political crisis, Brazil, together with a number of other countries, experienced a change in their ideological frameworks of both the ruling powers and a considerable part of their populations, with the emergence of new liberal and conservative movements, with the work of thinkers and influencers with ideals openly focused on right-wing ideas. In the political field, the greatest expression of this movement has been the election to the position of President of the Republic of the State Deputy Jair Bolsonaro.

In 2018, 47.3% of the seats in the Chamber were occupied by newly-elected Deputies, meaning 243 new faces, the greatest renewal since the Constitutional Convention of 1987. The Senate also underwent a meaningful renewal, with 46 of the 54 disputed seats being won by new names, whilst of the 32 who sought re-election, only eight have been successful.

Voters demanded that economic growth should be the focus of the new government in the medium to long term. A broad spectrum of politicians has agreed on the need for political stability and a relatively liberal economy. They also emphasize welfare reform, thereby attracting foreign investment, and controlling inflation as the basis for long-term sustainable economic growth.

The legislative agenda is full of economic topics. With Jair

Bolsonaro (PSL) in the Presidency, complex matters are emerging in the voting agenda of the National Congress.

The first matter the new government faced in the Legislative was the most urgent topic for the economic team led by the Minister of the Economy, Paulo Guedes: the Social Security Reform, passed in late 2019. Another crucial structural matter is Tax Reform, currently under discussion in the Congress.

Besides structural reforms, several microeconomic measures decreasing bureaucracy and improving the quality of regulation are being implemented to boost the economy, help create jobs and balance public accounts.

No country has ever pushed Social Security or Tax reforms through without a certain degree of turbulence, and the country is still suffering from the polarization that developed around the election time and the combatting of corruption, both of which still create political instability with every new development.

Jair Bolsonaro is still searching for and calibrating the tone of his government and balancing a liberal approach with a conservative moral agenda.

On the other hand, the recognition that the Brazilian State is too ponderous, thereby decreasing the productivity of the private sector, and has therefore become a burden to the population, has spread throughout society. Recently elected Governors, mayors and elected congressman, all promising new approaches, have a willingness to improve the business environment.

There is a great deal of energy in the country and the institutions have proven to be strong by keeping democracy, the rule of the law and the republic safe and functioning during the impeachment of two Presidents and the debacle of the greatest corruption scheme known to the modern times.

The forecast now is of clear skies after storms that look out over a society that is used to bending but not breaking in its path towards prosperity.

International Treaties

Given the influence of the American and French Constitutions, in Brazil the Executive and the Legislature together approve, ratify

and enact international treaties.

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

There have always been discussions in Brazil as to whether international treaties are binding over domestic legislation. The STF has ruled that treaties incorporated into the Brazilian legal system have the same force as ordinary laws. Therefore, if a treaty conflicts with a domestic law on the same subject, the most recent in time will prevail³. The exception is in tax matters: the Brazilian National Tax Code expressly establishes that treaties rank over ordinary laws. Moreover, treaties on human rights may have the same status of a constitutional amendment depending on the congressional approval quorum.

Brazil has reviewed its foreign trade policy and is now focusing on negotiating new free trade and preferential agreements. The Free Trade Agreement between Southern Common Market (Mercosur)⁴ and the European Union (EU) seems to be a priority for Brazil. This trade agreement can intensify the already dense economic relations with the EU - Brazil ranks as the sixth main investor in the EU (offshores excluded), and it is the third destination of EU investment stocks in the world⁵. In June, 2019 the political announcement of the agreement took place and the formal documents are expected to be signed and approved by late 2021.

There are other advancements of Mercosur trade negotiations, such as the joint statement signed in June, 2018 with the Pacific Alliance⁶, which signaled the shared intent to increase trade relations between the two blocs. Another important achievement was the launch of negotiations with the Republic of Korea in May, 2018, with Canada in March 2018, and the ongoing negotiations with the EFTA countries (Iceland, Liechtenstein,

Norway and Switzerland). It is also worth mentioning the recent analysis of a possible economic partnership agreement with Japan⁷.

Mercosur is also expanding its preferential trade agreement with India, and conducting trade negotiations with Lebanon and Tunisia. In addition, Brazil is currently negotiating an expansion of the Agreement for Economic Complementation No. 53 (ACE No. 53) (a preferential trade agreement with Mexico).

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

As part of the Brazilian Government's wider plan to attract foreign investors, Brazil has formally applied to become a full member of the Organisation for Economic Co-operation and Development (OECD). The country's collaboration with the OECD started in 90's and gradually deepened. In 2007, Brazil and other emerging economies became "Key Partners" of the organization. Currently, Brazil participates in numerous OECD committees and working parties, including as an Associate of the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and as a member of the Global Forum on Exchange of Information and Transparency for Tax Purposes. Furthermore, Brazil adhered to 82

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3. Please note that Brazil is subject to principles laid down by the Vienna Convention on Law of Treaties, such as the ones referring to observance and application of treaties. After years of congressional debates, the Vienna Convention was ratified by Brazil in 2009 and published under Presidential Decree n. 7,030/09 (before that, the convention was informally in force in Brazil, as its rules were considered applicable as international practice).
 4. Created in 1991 in order to establish a common market in the South America region, the Mercosur today represents the 5th largest economy in the world with all its countries combined (US\$ 2.78 trillion in 2017, ahead of the UK with US\$ 2.62 billion and India with US\$ 2.61 trillion). The founding members of the block were Brazil, Argentina, Paraguay and Uruguay. Venezuela joined the bloc in 2012, but has been suspended since December 2016 for failure to comply with its protocol of accession.
 5. Cf. <http://www.itamaraty.gov.br/en/speeches-articles-and-interviews/other-high-ranking-officials-articles/19403-the-eu-mercosur-negotiations-ambassador-e-verton-vieira-vargas-europe-s-world-23-04-2018>
 6. Created in 2011, the Pacific Alliance is formed by Chile, Peru, Colombia and Mexico.
 7. Cf. Joint Report by the Brazilian National Confederation of Industry (CNI) and Keidanren (Japan Business Federation).

out of 254 OECD legal instruments (and requested adherence to other 65), including the Convention on Mutual Administrative Assistance in Tax Matter⁸.

Logistics

As noted in other chapters, Brazil is a country of continental proportions and in order to make possible the transport of goods and merchandise across such a large territory, an enormous logistical network is required, using varied means of transport. Considering Brazil's integration with the MERCOSUR and global markets, the combined use of multi-modal transport is the only way to serve such a large and heterogeneous territory.

The Brazilian Government plays a key role in the development of logistics infrastructure projects in Brazil. Projects can be tendered and regulated at the federal, state or municipal level, depending on the sector and territory involved.

At the federal level, the current policy for fostering investments in Infrastructure is embodied in the Investments Partnership Program ("PPI"), created by Federal Law 13,334/2016. The PPI is applicable for key ventures involving privatization, public concession, Public-Private Partnerships (PPP) and other forms of partnership with the private sector conducted by the Federal Government or state-owned companies (or delegated by such to local authorities), as well as those included in the National Privatization Program (Federal Law 9,491/1997).

At the state and municipal levels, each Government can set its guidelines and conditions for partnerships, subject to the general frameworks and guidance set by federal legislation.

It is widely known that Brazil faces several infrastructure challenges and a large sum of investment is needed. Despite the complex economic and political scenario, since 2016, both Federal and State Governments have developed a number of projects, either directly or via state-owned companies, involving public tenders or direct sales.

Brazil has 39 public ports that operate under the 'landlord' system. Within this system, the Government is responsible for the operation of the port and its infrastructure, whilst the port *terminals*

are leased to private companies. Brazilian ports have been duly modernized after the implementation of the changes required by the International Ship and Port Facility (ISPS) Code, issued by the International Maritime Organization.

Moreover, Brazilian legislation regarding ports has changed significantly over recent years. With the enacting of Federal Law 12,815/2015, the operation of fully private ports under the *Terminal de Uso Privado* regime (“TUP”) became possible. The implementation and operation of a TUP demands an authorization granted by the National Agency of Waterway Transportation (“Antaq”).

As for industrial waterways, or ‘*hidrovias*’, multi-mode transport is necessary for their viable operation, since despite the fact that Brazil is well served by wide navigable rivers throughout its territory, it is dependent upon the road and rail infrastructure to complete the network. The most important river basin in commercial terms is the Paraná-Tietê, which is responsible for connecting the South and South-eastern regions. Another important area is the Paraguay-Paraná basin, connecting Uruguay with Mato Grosso State. Other basins include those of the Madeira, São Francisco and Tocantins-Araguaia rivers. The biggest in terms of volume is the Amazon basin, with 18 million tonnes transported by water in 2000, out of a total of 20.9 million tonnes for the whole of Brazil.

The road network is the unifying factor, linking diverse geographical areas and entering the cities. The country has some 1.8 million kilometres of roads, of which 146,000 are surfaced (State and Federal highways). These highways are administrated by the Government at Federal or State level, either directly or through the concession of toll roads.

The concession of toll roads is one of the most consolidated sectors in Brazil, with a substantial number of successful projects. Some concessionaires holding federal projects tendered between 2011 and 2014, however, are facing financial trouble due to a decrease in demand and struggles to obtain financing, and may have to return the concessions for re-bidding. Other concessions granted in the past are now reaching their termination dates are now being renewed or having their bidding processes re-launched, and new projects are under development.

8. Cf. <http://www.oecd.org/brazil/Active-with-Brazil.pdf>

Bus lines are operated under Government license and companies are subject to regular inspections. Cargo transport is carried out on a free-market basis, free from Government authorizations or concessions.

Railway projects in Brazil are usually developed at the federal level, under public concession, and are subject to the surveillance and regulation of the National Agency of Land Transportation (“ANTT”). Most of the existing concessions were granted in the late 1990’s, by means of a privatization program that transferred the right to exploitation of the Brazilian rail network, at that time held by a public company called RRFSA, to private parties.

For a long period, railway concessions were subject to limited regulation and surveillance. Since 2010, the sector’s regulation and concession models have been the object of discussion and reforms aimed at increasing investments and expanding the railway infrastructure in Brazil. During this time, different alternatives have been considered for the granting of new concessions.

Despite the difficulties faced in making projects feasible, especially considering the heavy amount of investments required for the expansion and construction of railroads, the projects are now becoming more mature. Four public procurements are expected to be launched before the end of 2019 and others are being structured. The ‘Ferrovia Norte-Sul’ is the most advanced, with publication of its tender notice expected before the end of the year.

In parallel, the Government is negotiating the renewal of the main rail concessions, including those held by VLI, Vale, MRS and Rumo Logística, in order to transfer new investment undertakings to the concessionaires. The proposals still have to be approved by the Federal Audit Court (TCU).

Historically, airports in Brazil have always been operated by INFRAERO, a federal, state-owned company. Since 2011 however, Brazil has seen a change in its policy regarding the management and maintenance of airports, and a process has started for granting licenses to operate the largest airports to the private sector. The delegation of airports’ investments and operation to the private sector initially aimed to promote investments in connection with the 2014 World Cup and 2016 Olympic Games. Since then, 10 airports have been the object of concession. The sector attracted substantial investments, but certain concessionaires have been facing financial difficulties in the aftermath of the Operation Car

Wash investigations. The existing concessions are detailed in the table below.

In addition, further concessions are being structured by the Brazilian Government: two in the southeast, four in the centre-west and 6 in the northeast. Foreign investments are expected.

Brazil's airport security is also up to international standards, with the government Airport Infrastructure Agency, INFRAERO, providing electronic surveillance of airports and metal detectors together with the police authorities.

It is important to note that in 2019 a change in law took place and now a 100% of the voting share in airline companies in Brazil are open to foreign investors.

There is a lot of expectation for further development of the logistic sector in Brazil and the increase of opportunities in this sector. There are a number of ongoing projects designed to implement the infrastructure required for logistics, and several others are being planned.

Foreign Investment in Brazil

Direct Investment

Foreign direct investment (IED) means that the foreign investor has either established some sort of corporate entity to achieve its intended objectives or acquired an ownership interest in a Brazilian company that already exists.

All IED must be registered with the Central Bank of Brazil (BACEN) in the original foreign currency. The investor has 30 days from the inflow of funds to apply for the registration of the IED. Foreign capitals may take the form of: Cash, rights and assets sent to Brazil at fair market value, reinvested earnings, conversion of foreign-currency loans or current-account balances, liabilities and others.

All external loans, direct or through the issuance of securities abroad, as well as other forms of foreign capital, such as royalties due abroad or long-term import financing, are subject to the Financial Operations Registry (ROF), with the BACEN, and export prepayments. All this information is recorded in the Central Bank Information System (SIBACEN), which allows the inclusion and

exclusion of agents (individuals or legal entities), in addition to conducting consultations, records and updates as necessary.

The National Monetary Council (CMN) has the highest regulatory authority over foreign investments. Furthermore, the foreign-exchange policy is controlled and supervised by BACEN.

In general terms, there are no restrictions in respect of the repatriation of funds or remittance of profits, regardless of the length of time the funds remain in Brazil, provided that the sum of capital to be sent abroad is the same as that registered with the BACEN. Corporate entities receiving foreign investment are subject to the same general tax rules applicable to Brazilian companies owned by individuals or other corporate entities residing and domiciled in Brazil.

Usually, foreign ownership of local enterprises is allowed and, in general, no particular type of operation receives special treatment. However, there are some restrictions on foreign investor control in some economic segments such as communications (television, radio stations and newspapers), aviation (airlines), shipping (coastal and freshwater shipping), mining (exploration and extraction of mineral resources), hyoelectricity (electricity generation) and ownership of rural lands and lands near Brazil's borders.

The most common types of corporate entity

There are some lawful means by which foreigner investors can make direct investments in Brazil. Currently, there are two types of entities most commonly used for direct investments: the *Sociedade Limitada - Ltda.* (similar to a LLC) and *Sociedade por Ações - S.A.* (similar to a Corporation). The Ltda. has its capital divided into units of ownership (quotas) representing the interest of each member in the capital of the company. In the case of the S.A., its capital is divided into shares and it may be a privately held or publicly traded company. Publicly traded companies are subject to normative rules endorsed by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários - CVM*).

Each one of them has its own characteristics, as follows:

	Ltda.	S/A.
Capital	Divided into shares	Divided into stocks
Responsibility	Subsidiary liability limited to the value of paid-up shares	Limited to the issuance price of acquired or subscribed stock
Name	The company name is followed by the expression "Ltda"	The company name is followed by "Sociedade Anônima" or "S/A" or is preceded by the word "Company" or its abbreviation "Cia"
Constitutional act	Bylaws	Bylaws
Administration	A nominated administrator with no restrictions on the period of time the individual should remain in the position	A Board of Directors, composed of board members, with a maximum three-year mandate, after which a new election is required, with re-election being possible

Brazil requires that foreigner investors, whether individuals or legal entities, are registered with a tax ID number provided by the Brazilian Federal Revenue Office (RFB). In the case of individuals, this tax ID number is called a 'CPF', and legal entities are registered with a 'CNPJ'. In both cases, the legal investor must appoint a person residing in Brazil to be their legal representative. The legal representative will be responsible and liable, among other duties, for the withholding and payment of income tax levied on the capital gains earned by a foreign-based individual or legal entity with the sale of assets or rights located in Brazil.

The excessive bureaucracy in all aspects of a company's life is part of the difficulties involved in starting a business in Brazil. Many requirements in the routines of entrepreneurs directly affect the quality of the Brazilian business environment. Brazil ranked 125th out of a total of 190 countries, for example, in the result of the World Bank's most recent "Doing Business" survey (conducted in 2018). Questions such as "time required to start a business", "tax payments" and "obtaining permits for construction" negatively influence the country's position.

Legalization process

Initially, when foreign documents arrive, it must be verified that the foreign investor comes from a country that has ratified the Hague Convention. This will allow the validation of foreign documents through the "Hague Handbook" or "Apostille" (a French-named notarization type with international validity), which certifies the public documents between the Convention signatory countries.

In order to have legal value, if the investor's documents are from a country not covered by the Hague Convention, they must be registered with the consulate in the country of issuance (or with an office offering Brazilian diplomatic representation) through a sworn translation procedure prior to submission to the Brazilian public agencies.

With the presentation of documents (as described above), the company or individual foreign investor may participate as a partner in a Brazilian company (and thus acquire legal personality in Brazil) by filing all the necessary information with the competent agencies.

One important step is the choosing of a foreign investor attorney, through the presentation of a power of attorney. The proxy

may also be the managing director or director of the company being formed. It is important to note that the legal representative must be domiciled in Brazil, and be a native or naturalized Brazilian, or an alien with a permanent visa in Brazil, in addition to have a fixed residence in Brazil, as he or she will have legal and tax responsibilities before the Brazilian authorities.

Indirect Investment

Stock Exchange Investments

Investors domiciled abroad may invest in the Brazilian financial and capital markets¹. The ‘*Comissão de Valores Mobiliários*’ (Securities Commission - CVM) provides that any investor domiciled abroad must first register as a non-resident investor. An “investor domiciled abroad” includes individuals, corporate entities, foreign mutual and investment funds, and collective investment entities.

To avoid repetition of “investors domiciled abroad” or “non-resident investors”, we will use the term “foreign investor”.

Before investing in Brazil, the foreign investor must:

- appoint one or more legal and tax representatives in Brazil;
- fill in an identification form; and,
- register with the CVM.

The foreign investor’s legal and tax representative must either be, or include, a BACEN authorised entity², and must:

- keep and, when requested, provide BACEN and CVM identification information and the representation agreement with the foreign investor;
- register and keep updated registrations as a foreign investor with the CVM, and of the foreign investment with BACEN;
- provide BACEN and CVM with any information they request;

- endorse the foreign investor's signature on the identification information form; and,
- whenever the representation agreement ends or if any irregularities connected to it arise, immediately report such fact to BACEN and CVM.

All financial assets and securities, as well as certain financial transactions that the foreign investor negotiates, must: (i) be registered or kept in custody or a deposit account with BACEN or CVM authorised institutions; or (ii) be registered in the BACEN or CVM approved registration, settlement and custody systems.

The foreign investor's transactions in derivatives or other futures markets must: (i) be in, or registered with, the stock or commodities and futures exchanges, or in over-the-counter markets organised by entities authorised by the CVM; or (ii) be registered with the BACEN or CVM approved registration, settlement and custody systems.

Foreign investors can only use funds entering Brazil under CMN Resolution No. 4,373 to buy or sell securities of registered, publicly held companies on CVM-controlled exchange trading floors, electronic systems or over-the-counter markets. The funds may not be used to buy or sell securities negotiated in non-organised over-the-counter markets, or in over-the-counter markets that lack CVM authorisation.

Depository Receipts

Publicly held corporations can use depository receipts (DRs) to represent their shares in order to trade in foreign markets. Under a DR programme, a Brazilian custodian keeps custody of shares in a Brazilian corporation on behalf of a foreign finance institution. The depository issues DRs representing the company's shares. The investor can trade these DRs abroad in the currency of that country³.

If the corporation's DR programme allows it, foreign investors may buy DRs in the primary market when the company

1. CMN Resolution 4,373/14.
2. The investor may also appoint an individual or non-financial corporate entity.
3. Investments in DRs are regulated mainly by CMN Resolution No. 4,373/2014.

issues new shares. It may also buy and sell DRs in the secondary market either over the counter or in exchange transactions.

The CVM must approve DR programmes. It will analyse the custody and deposit agreements and other related documents before granting authorisation.

The custodian will register the foreign DR investments with BACEN before the first transfer of DR-related money to Brazil. The custodian must update the registration by informing BACEN of all increases and decreases.

Mutual Funds

Real Estate Investment Funds

Corporate entities or individuals domiciled abroad, foreign mutual funds, and other foreign mutual investment entities may invest in quotas of Brazilian real estate investment funds.

Real estate investment funds are closed-ended mutual funds for investing in real estate projects and properties⁴. The CVM authorises their creation and regulation.

Quotas representing interests in mutual funds - a type of security - may be listed for trading on stock exchanges. The fund administrator holds the fund's assets as fiduciary, and must be a CVM-authorized financial institution. The administrator must manage the fund according to its articles of association and follow quotaholder general meeting decisions.

Emerging Companies Funds

Corporate entities or individuals domiciled abroad, foreign mutual funds and other foreign mutual investment entities may invest in quotas of emerging companies' funds in Brazil.

Emerging companies funds (foreign capital) are closed-ended mutual funds, destined exclusively to foreign investors, with maximum terms of ten years⁵. The quotaholders may, however, extend this term by 5 years if two thirds of the issued quotas vote to do so at a general meeting. These funds invest in emerging companies' securities and the CVM authorises their creation and regulation. Emerging companies are those with annual sales of less than R\$60,000,000⁶. The fund must check that the company has not exceeded this limit when it makes its first investment.

The fund cannot invest in any company:

- that belongs to a group of companies with net worth greater than R\$120,000,000;
- in which the fund's quotaholders or the fund administrator, or their spouses or relatives, hold shares representing over 10% of the company's capital; or,
- in which the fund's quotaholders or the fund administrator or their spouses or relatives have a management position⁷.

If the fund publicly issued the quotas with CVM registration, the fund may list the quotas representing interests in the fund for trading in stock exchanges or in over-the-counter markets. The fund administrator may be an individual, a company or a financial institution and must be authorised by the CVM to act as administrator of an investment portfolio.

The fund must have at least 75% of its investments in emerging companies' securities. The fund can invest the remainder in fixed income funds, fixed income securities, and securities of publicly held corporations that were acquired in stock exchanges or in over-the-counter markets.

Brazilian Eurobonds and Notes

Foreign investors may invest in Brazilian fixed-income securities that are placed and negotiated abroad. They may be placed either privately or publicly depending upon:

- the company's intended market base and the information it will provide investors;
- their features, such as currency (including Brazilian reais), amortisation schedule and interest

4. Law No. 8,668/93 and CVM Instruction No. 472/2008.

5. CVM Instruction No. 278/98.

6. As shown in the financial statement of the year ended before acquisition of its securities.

7. Unless the fund administrator merely holds an exclusively advisory position in the company.

- rates; and,
- the company's needs and the receptivity of the chosen foreign market.

Securities are referred to by a variety of names depending upon their maturity terms. Commercial papers normally mature within 30-360 days, whilst bonds and notes have longer maturity dates - over 360 days.

Corporate Law

Different Types of Corporate Entities

Overview

The main reason for incorporating a legal entity in Brazil is that upon registration with the Board of Trade, it becomes a corporate entity with a legal personality separate from its owners. Therefore, as a general rule¹, creditors cannot seize shareholders' assets to settle the company's debts.

In this sense, a foreign entity interested in doing business in Brazil may either incorporate a branch or a local subsidiary in the country. Since the formation of a branch in Brazil represents more significant exposure to the parent company (as described below) and requires authorization from the Federal Government, the overwhelming majority of foreign entities prefer to incorporate a local subsidiary to operate the business. Also, in comparison to the incorporation of a subsidiary, the formation of a local branch entails certain adverse tax effects.

In summary, Brazilian corporate entities are ruled by the

Civil Code (as in the case of limited liability companies and most partnerships) and the Corporation Law (as in the case of joint-stock corporations).

The most common types of corporate entities in Brazil are limited liability companies (*sociedades limitadas*) and joint-stock corporations (*sociedades anônimas*). In this chapter, however, we will describe all the different types of corporate entities that exist.

Joint-stock corporation

(*sociedade anônima*)

As mentioned above, joint-stock corporations (or simply corporations) are one of the most widely-used corporate structures in Brazil. These entities are subject to more sophisticated regulations (set forth in the Corporation Law – Federal Law No. 6,404/76), in terms of governance structure, the raising of capital (*e.g.* trading of shares on the Stock Exchange), and conflict resolution mechanisms.

The capital stock (*capital social*) of joint-stock corporations is divided into shares and the shareholders' liability is limited to the value of the shares they have subscribed or acquired.

Corporations can be publicly listed or privately held. Publicly listed corporations are those with shares that are freely traded on the Brazilian Stock Exchange (*B3 – Brasil, Bolsa, Balcão*) or in over-the-counter markets. As such, they need to be registered with the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*) and are subject to CVM regulations, in addition to the Corporation Law. Privately held corporations, on the other hand, are normally owned by a smaller number of shareholders and do not offer their stocks to the general public on the stock exchange.

Incorporation procedures

To form a corporation, the shareholders must hold an incorporation meeting to approve the corporation's bylaws and decide up on any other matters, such as the appointment of directors and officers, specification of the company's activities, allocation of capital etc.

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1. In exceptional cases (such as fraud and unlawful acts), creditors can lift the corporate veil. Courts are more likely to lift the corporate veil in cases involving labour and tax-related debts.

The additional requirements for establishing a corporation are as follows:

- at least two shareholders must subscribe all the shares representing the capital stock described in the bylaws;
- a cash down-payment of at least 10% of the issue price of the subscribed shares must be deposited in a commercial bank and such amounts will be released after registration of the corporation with the Board of Trade.

If any shares are paid-up by using assets, goods, transfer of technology, trademark licensing etc., instead of cash, the company must call a general meeting to approve the valuation of such assets.

Capital structure

A corporation's capital stock can be divided into common or preferred shares (of different classes and series, if necessary), depending on the rights assigned to their holders. Common shares follow the rule "one share, one vote", while preferred shares may have restricted or non-voting rights (but on the other hand their holders are typically assigned certain special financial rights, such as priority on the distribution of profits).

All shares must be nominative, and the company must record their ownership in the Nominative Shares Registry Book. Corporations may also have book-entry shares, which must be kept in bank accounts in their owners' name at a designated financial institution.

In some cases, private corporations which have been privatised (*i.e.*, were formally state-owned entities) create a special class of preferred share: golden shares, which are owned by the Government and usually grant special rights to their holders, such as veto rights in relation to the corporation's most sensitive business decisions.

Debentures

Unlike limited liability companies, corporations are permitted to issue debentures (and other securities), which afford credit rights to their holders, pursuant to the terms and

conditions set forth in the deed of issuance of the debenture. Creditors may be shareholders or non-shareholders (depending of the nature of the issuance –public or private).

Shareholders' essential rights

Pursuant to local law, shareholders of a corporation have the following essential rights:

- a share in the company's profits (if any);
- a share of the company's assets in case of liquidation;
- the right to supervise the management of the company's business; and
- pre-emptive rights on the subscription of new shares and other securities convertible into shares (e.g. debentures),

Shareholders' agreement

Shareholders may execute shareholders' agreements to regulate specific matters concerning the business, such as negotiation of shares, first refusal rights, exercise of voting rights and appointment of management. Shares subject to the provisions of a certain shareholders' agreement may not be traded on the Stock Exchange.

Shareholders' agreements are binding to their parties and to the corporation itself, provided they have been filed at the company's head offices. The obligations undertaken by the parties thereto are subject to specific performance in case of non-compliance by any other party or the corporation.

Management bodies

A corporation may have the following management bodies in the context of its corporate governance structure: (i) a board of directors (*conselho de administração*); (ii) a board of officers (*diretoria executiva*); (iii) an audit committee (*conselho fiscal*); and (iv) assistance committees (*comitês de assessoramento*), which are formed to perform specific tasks and assist the board of directors in certain managements issues.

The board of directors is appointed by the shareholders at a general meeting. It is responsible for defining the general strategy of the business, as well as appointing the corporation's officers.

The board of directors plays an important dual role in the governance structure, serving both as advisors to senior officers about management issues and as monitors of management.

Officers are appointed by the board of directors and have the duty to oversee the daily business operations, as well as represent the corporation in all relevant commercial activities. The specific positions may vary on a case-by-case basis, but most corporations have at least some of the following officers: Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO) and Chief Commercial Officer (CCO). Depending on the size of the business, the same person may hold more than one of these offices.

Both directors and officers may be replaced or removed at any time, without cause, by the General Meeting or the board of directors, as applicable. The management of a corporation is not personally liable for their acts provided that they are acting lawfully on behalf of the corporation.

The audit committee is responsible for the oversight of financial reporting and disclosure of the management of the corporation. In certain cases, the audit committee may also have oversight responsibilities in relation to other matters, such as the corporation's internal control and risk management policies. As a rule, this committee may be formed to operate either permanently or temporarily. If it does not operate permanently, shareholders holding at least 10% of the voting capital, or 5% of the non-voting capital, may request that an audit committee be formed.

Finally, the directors and officers may also create other assistance committees, which will have a mandate to perform specific tasks, such as risk management, internal audit and compliance. These committees are normally required to ensure the execution of the corporation's internal policies.

Public offerings

In the event of a change of control in a corporation, the purchaser is required to make a public offering to acquire shares held by minority shareholders (in addition to the shares of the controlling shareholder). In this case, the purchase price per share relating to the shares of the minority shareholders must be equivalent to at least 80% of the price per share paid to the controlling shareholder.

General meetings

General meetings may be classified as annual general meetings (AGO) or extraordinary general meetings (AGE). Corporations must hold their AGOs during the first four months of the fiscal year to decide on the following matters:

- management accounts and financial statements relating to the previous fiscal year;
- distribution of profits (if any); and
- appointment of members of the management bodies.

AGEs are convened to decide on any amendment to the bylaws, as well as any other matters not within the scope of the AGO.

Corporations must publish a notice of any meeting in the Official Gazette and local newspapers and respect the appropriate quorum to proceed with the meeting (either at the first or the second call).

Corporations may pay dividends to their shareholders out of their profits. There are no restrictions on the distribution and remittance of profits or dividends abroad. In this case, the company must execute a FX transaction to remit funds to its foreign shareholders, and the financial institution hired to execute such a transaction must inform the Brazilian Central Bank of the remittance of profits. Profits and dividends distributed to shareholders are currently not subject to income tax under Brazilian law.

Arbitration

Corporations' bylaws may provide that any dispute between shareholders, members of management bodies and the corporation itself shall be submitted to arbitration.

Mixed Capital Corporation (*sociedade de economia mista*)

Mixed capital corporations play an important role in the Brazilian economy. This is a type of state-owned entity, in which the Government must have the corporate control (*i.e.*, the majority of voting shares), but private investors may also acquire equity interest and be shareholders.

These entities must be created as a joint-stock corporation

and are subject to the same rules as any other corporation, in addition to certain additional obligations in terms of transparency, accountability and management, due to the fact that they are indirectly a part of the Public Administration.

When the Government acts as controlling shareholder of mixed capital corporations, it is subject to the same duties and responsibilities as controlling shareholders of other private corporations, but is allowed to pursue the public goals that motivated the incorporation of the entity. However, this mandate to pursue public goals should be interpreted in a restrictive manner and may not be construed as being permission to seek any public interests.

Limited Liability Company (*Sociedade limitada*)

Alongside corporations, limited liability companies (*sociedades limitadas*) are the most common type of corporate entities in Brazil. As per the legal framework set out by the Civil Code, these companies are now more similar to corporations and subject to a more complex legal regime. This is the corporate entity that most resembles UK and US private limited liability companies.

Although limited liability companies are subject to the provisions of the Civil Code, the Articles of Association may provide that the Corporation Law will be the subsidiary legislation – *i.e.* its rules will be applied if the Civil Code does not regulate any specific matter. If the company does not include this provision, the rules on professional partnerships will be applied when the Civil Code is silent.

Incorporation procedures

Both simple or business entities may be incorporated as limited liability companies, depending on the activities that are planned to be carried out by the entity pursuant to its corporate purpose set out in its Articles of Association (*contrato social*), which is the basic document of the company (equivalent to a corporation's bylaws) and specifies the basic rules for the operation, such as the provisions on voting rights, responsibilities of the managers, the kind of business to be undertaken, etc.

If the limited liability company is a business entity, it must register its Articles of Association with the Board of Trade (*Junta Comercial*) of the State where its headquarters is located. If the

limited liability company is a professional partnership, it must register its Articles of Association with the local Civil Registry for Corporate Entities (*Registro Civil de Pessoas Jurídicas*).

As a rule, a limited liability company can be incorporated in 45-60 days.

Capital structure

The capital is divided into quotas (which may have equal or unequal value) representing the contribution of quotaholders in money, credits, rights or assets. Quotas are not securities (therefore, they cannot be publicly traded) nor are they represented by certificates; ownership and the number of issued quotas are recorded in the Articles of Association. As a result, should there be a transfer of quotas, the Articles of Association must be amended to reflect the new quotaholding structure of the company. Quotaholders' liability is limited to the amount of their ownership interest. However, until the quota capital is fully paid-up, all quotaholders are jointly liable up to the value of the entire quota capital.

There is no minimum capital requirement for limited liability companies (except in a few specific cases), but such entities are required to have at least two shareholders, which may be either individuals or corporate entities (and they need not be resident in Brazil, provided that any foreign quotaholder is represented by a person residing in Brazil who will be authorized to service Court summonses).

Once the quota capital is fully paid-up, it may be increased at a later time. Existing quotaholders have pre-emptive rights in subscribing newly issued quotas. On the other hand, limited liability companies may reduce their quota capital (provided that the quota capital is fully paid-up), in the event of irreparable losses. In addition, these companies may also reduce their quota capital if it becomes disproportionate to their corporate purposes.

Management

Limited liability companies may be managed by one or more quotaholders – or even by a third party who is not a quotaholder (provided that the manager is resident in Brazil)². In both cases, the manager(s) must be appointed in the Articles of Association or designated in a separate resolution taken by the quotaholders. The

assignment of a third party as the company's manager is subject to approval of (i) all the quotaholders if the quota capital is not fully paid-up; or (ii) 2/3 of the quotaholders if the quota capital is fully paid-up.

The manager may be removed or replaced at any time. However, if the manager has been appointed in the Articles of Association, the quotaholders may only remove him or her by means of a resolution passed by quotaholders representing 2/3 of the quota capital³.

General meetings and resolutions

These companies must hold an ordinary general meeting of quotaholders within the first four months of the financial year to resolve certain matters, such as (i) approval of management accounts and the financial statements; (ii) distributions of profits (if any); and (iii) appointment of managers (when applicable).

The company must publish a notice of the meeting three times in the Official Gazette and in a widely circulated newspaper, unless all the quotaholders (i) are present at the meeting; or (ii) declare in writing that they are aware of the date and place of the meeting, as well as its agenda.

If the company does not have more than 10 quotaholders, the meeting can be convened and held with greater flexibility, as the quotaholders or managers are not required to comply with all the rules applicable to a general meeting. Moreover, the general meeting does not need to be held if the quotaholders approve a written resolution addressing all relevant topics of the proposed agenda.

Quotaholders must decide on certain legal issues raised by the Civil Code, besides those that may be listed in the Articles of Association. This table shows the different types of actions and the quorum required to pass the relevant resolution.

RESOLUTION	MAJORITY
To approve the managers' accounts	Majority of the quotaholders present
To appoint ⁴ and remove the managers	Majority of the quota capital

To set the managers' remuneration	Majority of the quota capital
To amend the Articles of Association	3/4 of the quota capital
To takeover, merge, dissolve or end the company's liquidation	3/4 of the quota capital
To appoint and remove liquidators and approve their accounts	Majority of the quotaholders present
To request judicial reorganization	Majority of the quota capital

Right of withdrawal

Pursuant to the Civil Code, if most of a company's quotaholders decide to amend its Articles of Association or in case of a merger or amalgamation, dissenting quotaholders have a right of withdrawal – *i.e.* they are entitled to liquidate their quotas and be reimbursed by means of a valuation of such quotas (in most cases, based on the market value of the quotas).

Even though the Civil Code only provides for the right of withdrawal in these specific cases, local Courts (including Brazilian Higher Courts) have found that any quotaholder has the right to withdraw from a limited liability company at any time

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2. Although this is not a usual governance structure in Brazil for this type of entity, limited liability companies are permitted to have a board of directors (serving both as advisors to managers about management issues and as monitors of management), as well as an audit committee (*conselho fiscal*), in addition to the managers appointed.
 3. Unless the Articles of Association provide for a different quorum. In other cases, such as when the manager is not a quotaholder, quotaholders representing the majority of the capital stock must approve their removal.
 4. Separately from the Articles of Association.

and without cause, if the *affectio societatis* has been affected – in other words, if the quotaholders are not personally and jointly committed to reaching a common goal anymore, as they were at the time of the formation of the company.

Exclusion of quotaholders

In exceptional cases, when the majority of the quotaholders of a limited liability company is able to provide evidence that a quotaholder (i) is a risk to the company's activities or (ii) has seriously violated his or her duties and responsibilities, such quotaholders may exclude the breaching quotaholder. In practical terms, the exclusion of a quotaholder: (i) can be resolved at a general meeting (with the vote of the majority of the other quotaholders), if this is expressly allowed by the Articles of Association; or (ii) can be determined by a Court with competent jurisdiction, if the extrajudicial exclusion is not permitted under the Articles of Association.

Distribution of profits

Finally, it is important to point out that the quotaholders may decide, at their own discretion, how they intend to distribute any accrued profits – *i.e.*, distributions do not need to be made on a *pro rata* basis vis-à-vis the equity interest held by each quotaholder. There are no restrictions on the distribution and remittance of profits or dividends abroad. In this case, the company must execute a FX transaction to remit funds to its foreign quotaholders and the financial institution hired to execute such a transaction will be responsible for informing the Brazilian Central Bank of the remittance of profits. Profits and dividends distributed to quotaholders are not subject to income tax under Brazilian law.

Liquidation, bankruptcy and judicial reorganisation

If a company is insolvent, depending on the case, it may file for bankruptcy (*falência*) or judicial reorganisation (*recuperação judicial*). In the first case, the company is extinguished after liquidation of its assets and payment (to the extent possible) of its debts. In the case of judicial reorganisation, the company and its creditors try to reach an agreement and approve a debt and liability reorganization plan pursuant to which the debtor will likely have better conditions to satisfy its obligations and try to

restructure the operation of the company.

Limited liability companies may go into liquidation: (i) as a result of the end of their term (when applicable); (ii) by a unanimous decision taken by the quotaholders (or a decision taken by the majority of them should the company have an indefinite term); (iii) if they only have one single shareholder (and are not able to cure this situation within 180 days); (iv) as a result of the expiry of its license to operate.

Large-sized entity

(sociedade de grande porte)

Large-sized entities (*sociedades de grande porte*) are entities or groups of entities under common control that have (i) more than R\$240 million in assets; or (ii) more than R\$300 million in gross annual revenue, both measured as of the prior fiscal year.

Large-sized entities are subject to the rules set forth in the Brazilian Corporation Law (Federal Law No. 6,404/76) relating to bookkeeping and preparation of financial statements and are also required to have independent auditors, regardless of the type of these corporate entities.

This means that even if a large-sized entity is organized as a limited liability company, it will be subject to such specific provisions of the Brazilian Corporation Law (which, as previously discussed, is not generally applicable to limited liability companies).

Single Holder Limited Liability Entity

(empresa individual de responsabilidade limitada)

Single holder limited liability entities (*empresas individuais de responsabilidade limitada*) are used by individual entrepreneurs. An entity such as this can be incorporated by a single quotaholder (individuals only), who will hold the whole of the quota capital and have his liability limited to the amount of ownership interest.

The minimum quota capital of these entities is the amount equivalent to 100 times the current federal minimum wage and the quota capital must be fully paid-up at the time of the incorporation of the entity. The sole quotaholder can only hold quotas of one single holder limited liability entity at any given time.

These entities are governed by the provisions applicable to limited liability companies (*sociedades limitadas*).

Foreign companies - Licence to operate

Under Brazilian law, foreign companies must obtain a licence to operate⁵, issued by the Federal Government, before carrying out its business activities in the country. This is also applicable to the opening of local branches by such foreign companies.

In order to set up a branch in Brazil, foreign parent companies must submit an authorization request to the Federal Department of Boards of Trade (FDBT), so that the Department may issue its technical opinion. The final authorization, however, is given by the Brazilian President, by means of a Federal Decree approving the incorporation of the branch.

The authorization request must be accompanied by the following supporting documents:

- evidence of incorporation of the parent company;
- the company's Articles of Association or bylaws;
- a list of the members of all administrative bodies;
- an internal resolution approving the opening of a branch in Brazil;
- an internal resolution defining the capital that the parent company intends to assign to local operations;
- proof that the company has appointed a representative in Brazil with powers to accept the conditions required for the authorisation; and
- the most recent balance sheet.

Local law treats a branch (which must have the same shareholding structure as the parent company) as an extension of the parent company. Therefore, both the local branch and the parent company may be liable for any losses suffered by third parties in Brazil.

This is an important issue usually considered by foreign entities when deciding whether to incorporate a subsidiary of the foreign parent company or a branch of such company: since the foreign entity's

exposure is limited if it incorporates a subsidiary (as the subsidiary is a Brazilian company (even if controlled by a foreign entity) and would be solely liable for any obligations in connection with its operations), this is a more common corporate structure for foreign investors.

The foreign company must have a permanent representative in Brazil, who must have the power to handle any operational matters, as well as receive Court summonses.

Once the incorporation of the branch has been approved, the company must deliver the same documentation provided to the Federal Department of Trade Boards to the relevant registry and tax authorities, for incorporation purposes.

Local branches of foreign companies are required to publish their annual financial statements in the Official Gazette and in a widely circulated newspaper. On the other hand, the parent company must publish in Brazil all financial documents that are required to be disclosed pursuant to its country of origin's regulation. Furthermore, the Federal Government must approve any amendments to the foreign company's Articles of Association or bylaws which may affect local operations or consumers.

A foreign company with a branch in Brazil may request authorization to become a Brazilian company, by means of the transfer of its head offices to Brazilian territory. In this case, the foreign company will also be required to obtain prior authorisation from the Federal Government.

Partnerships

General Partnership (*sociedade em nome coletivo*)

This partnership is set up by at least two individuals, who will be jointly and severally liable for any obligations in connection with the partnership. Nevertheless, in the Articles of Association, the partners may regulate whether one of them will have the right to seek reimbursement for any losses exceeding a certain proportion established in the Articles of Association. All partners may take part in the management.

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5. In certain cases, even Brazilian companies may be required to obtain a licence to operate so that they are permitted to develop its business – e.g. financial institutions and insurance companies.

Limited Partnership (*sociedade em comandita simples*)

The limited partnership comprises two or more partners segregated into two categories:

- Active partners (*comanditados*), who take part in management and have joint and unlimited liability.
- Passive partners (*comanditários*), whose liability is limited to their capital contribution. These partners are not allowed to perform any managerial acts – if they do, they could be jointly and severally liable for the partnership’s obligations (as they would be considered to have acted as active partners).

Joint Stock Command Company (*sociedade em comandita por ações*)

Joint-stock command companies (*sociedades em comandita por ações*) are governed by the provisions of the Corporation Law. Its capital is divided into shares.

These companies must be managed by one or more of its shareholders, who will have subsidiary and unlimited liability for all company’s debts. Even if the manager resigns, he/she will remain liable for any debts incurred by the company under his/her management.

Unincorporated joint venture (*sociedade em conta de participação*)⁶

This partnership is not subject to usual incorporation procedures. It is formed by means of the execution of a private instrument between two or more partners with the purpose of carrying out one or more business ventures.

Pursuant to local law, a silent partnership is not an independent legal entity – therefore, it does not have a separate legal personality aside from its partners, except for tax purposes.

Silent partnerships’ partners are categorised into two classes:

- Ostensive partners, who may be individuals or legal entities. These partners assume joint and unlimited liability in their own name before third

parties and are responsible for the partnership's management. In the event of bankruptcy of the ostensive partner, the silent partnership is automatically liquidated.

- Silent partners, who are not entitled to perform any managerial acts and are not liable before third parties, but only before the ostensive partner, in accordance with the terms and conditions set forth in the partnership agreement.

This partnership's distinguishing feature is that it constitutes rights and obligations only among its partners, but not towards third parties. In any business transactions, third parties shall deal exclusively with the ostensive partner, assuming the partnership does not acquire an independent legal personality.

Professional partnership (*sociedade simples*)

Professional partnerships are usually formed by certain professionals with the purpose of rendering mainly professional services – *e.g.*, intellectual, scientific, literary or artistic activities. These partnerships are only permitted to carry out a limited range of services, as they are not entitled to develop typical business activities.

It is important to highlight that the classification as a professional partnership refers to the nature of the activities carried out by a legal entity. In other words, professional partnerships are not exactly a type of corporate entity, but a designation assigned to entities that carry out activities such as those mentioned above. As such, a professional partnership may adopt any of the corporate structures regulated by the Civil Code (and therefore be subject to the relevant rules applicable to such corporate structures).

Small-sized entities (*empresas de pequeno porte*)

Based on its annual gross revenue, a legal entity may be considered a microenterprise (*microempresa*) or a small-sized entity

6. 'Special Partnership Agreement' and 'Silent Partnership' are also terms used to designate this type of partnership.

(*empresa de pequeno porte*). Microenterprises are entities with an annual gross revenue lower than or equal to R\$ 360,000, while small-sized entities are those with an annual gross revenue higher than R\$ 360,000 but lower than or equal to R\$ 4.8 million.

For public policy purposes (*e.g.* to encourage entrepreneurial activity), these entities may enjoy certain legal benefits, such as more favourable tax rules, access to public bids in better conditions and to specific lines of public credit.

Joint ventures

A joint ventures (JV) is an arrangement between two or more companies created to carry out a certain task or execute a certain project. In Brazil, JVs are usually separated into two different types: contractual joint ventures (or consortia) and corporate joint ventures.

Contractual joint venture or consortium

A contractual joint venture (or consortium) is not a corporate entity, but simply an agreement executed by the parties regulating their rights, obligations and responsibilities. Except if otherwise specified in the consortium agreement (or expressly agreed with a third party in relation to any specific transaction or deal), each party is liable for its own obligations (*i.e.*, the contracting parties are not jointly liable for obligations arising out of the activities carried out by the consortium). As such, the insolvency of one of the parties does not affect the other parties and the consortium may continue with the remaining contracting parties.

The consortium agreement must appoint a leader for the consortium, who is responsible for bookkeeping and custody of the books and records that support its operations, pursuant to applicable rules.

The consortium agreement must also address at least the following matters:

- the name of the consortium (if any);
- the project that is planned to be executed by the consortium;

- duration, address and jurisdiction;
- each party's obligations and responsibilities;
- rules on the distribution of profits between the parties;
- management and accounting rules, representation of the parties and administrative fees (if any);
- how to resolve matters of common interest, with a description of the number of votes that each party will have; and
- each party's contribution to common expenses (if any).

The parties are liable for the taxes arising from the operations of the consortium, in the proportion referred to in the consortium agreement. However, they could be jointly and severally liable for the consortium's obligations related to the hiring of legal entities and individuals.

The consortium agreement (as well as its amendments) must be filed with the Board of Trade of the State where the consortium's head offices is located.

Corporate joint venture

In the case of corporate JVs, the parties incorporate a new company (which may adopt any corporate structure) and become its shareholders. Regardless of the corporate structure used for the JV, the partners' rights and obligations in relation to the business arrangement will be set out in the Articles of Association or bylaws of the newly incorporated entity.

Corporate JVs are frequently created for the purpose of taking part in public bids and privatisation auctions, for instance. In these cases, they are usually incorporated to act as a special purpose vehicle (*sociedade de propósito específico*), in order to segregate its assets from those of its partners, and to isolate the risk involved in the execution of the project or the activity that is planned to be carried out by the JV.

Duties and Liabilities of Directors and Officers

Consequences relating to the assets of the "actions" of shareholders/quotaholders, officers and/or directors of Brazilian Companies.

Above, we talked in a broad sense about the duties and responsibilities of shareholders, officers and/or directors of a company in Brazil. Going forward, we will briefly comment on the consequences of the actions they carry out.

The name company herein is understood as Corporation (*Sociedade Anônima*) and/or Limited Company (*Sociedade Limitada*) since a large part of existing jurisprudence refers to Limited Companies.

Consequences relating to Assets

1. The Procedures for Piercing the Corporate Veil should be considered in a wider sense, which makes shareholders/quotaholders, officers and/or directors secondarily liable (sometimes even jointly and severally liable), if the companies in which they are shareholders/quotaholders, officers and/or directors do not comply with their obligations to pay or to do something.
2. Piercing the Corporate Veil, in principle, aims to affect the assets of its shareholders/quotaholders, officers and/or directors, if they have acted with malice or in bad faith, or have engaged in fraudulent activities, characterized by deviation of the purpose or the commingling of assets.
3. There are several legal documents mentioning the possibility of applying this doctrine. We have only listed some specific laws but there are many more:
 - (i) Consumer Protection Law;
 - (ii) Brazilian Tax Code;

- (iii) State Tax Codes;
 - (iv) Local Tax Codes;
 - (v) Civil Code;
 - (vi) Legislation on Social Security;
 - (vii) Environmental Law;
 - (viii) Antitrust Law;
 - (ix) Labour Legislation;
 - (x) Corporation Law;
 - (xi) Income Tax Regulation;
 - (xii) Sports Legislation;
 - (xiii) Court-supervised Reorganization Law;
 - (xiv) Capital Market Legislation;
 - (xv) Legislation governing Financial Institutions;
 - (xvi) Code of Civil Procedure;
 - (xvii) Legislation on Private Pensions.
4. Prior to the enactment of the New Code of Civil Procedure (in 2015), piercing the corporate veil was abused by judges, mainly in tax, social security and labour courts.
 5. The doctrine was applied without due process of law, that is, the creditor would request that the procedure be applied against the shareholders/quotaholders, officers and/or directors, and the Judge could grant it, without even giving notice to the shareholders/quotaholders, officers and/or directors that their assets would be pledged as collateral for debts of the companies, if their obligations could not be fulfilled.
In practice, the assets of the shareholders/quotaholders, officers and/or directors were pledged, and only after they were aware of the pledge, could they defend themselves through the so-called Third-Party's Motion to Stay Execution.
 6. In good time, there was a change in the Civil Procedural Law (the New Law of Civil Procedure of 2015) which began regulating the matter, so that

Piercing the Corporate Veil is applied as instigated by the interested party (creditor). In the meantime, the shareholders/ quotaholders, officers and/or directors are served with notice to make a statement with the right to a fair hearing, prior to the levying of execution upon their assets, which would not previously have occurred.

7. In principle, the liability of shareholders/ quotaholders, officers and/or directors is secondary, that is, primarily it is entreated to the Company's assets and, if they are unable to fulfil the obligations, it is entreated to the assets of the shareholders/ quotaholders, officers and/or directors.
8. What happens in practice, more often than not, is called the "unlawful dissolution of the company". This occurs when a company becomes financially unfeasible and the shareholders/quotaholders, officers and/or directors, for financial and/or bureaucratic reasons (there is a lot of bureaucracy involved I dissolving a company in Brazil), abandon it, ceasing to officially dissolve (liquidate) them.
9. In these cases of "unlawful dissolution", attention must be paid to the debts owed to the employees, since the Labour Court applies "disregard" in these circumstances. In the same manner as Social Security, in most cases.
10. The Labour Court goes even further, as it considers that given the mere fact that the company does not pay its employees' salaries (even if they are working normally), the employee has the right to request the piercing of the corporate veil against the shareholders/ quotaholders, officers and/or directors, holding them responsible, personally, for the labour debts.
11. Labour courts have a tendency to hold the

shareholders/quotaholders, officers and/or directors accountable, even if they are no longer part of the company and have no debts, including incurring debts when they were part of the company. This system is widely disputed, but it is still applied by some labour judges.

12. For shareholders/quotaholders of a company, even if they only hold a minimum percentage of shares or quotas (1% or 2% of a Limited Company, for example), without any management power over it, the Labour Court insists on holding them accountable for unpaid salaries and/or social security liabilities.
13. Some labour judges even blame the shareholders/quotaholders, officers and/or directors who join the companies after the debts were incurred.
14. In relation to tax debts, the decisions of the various courts have been more compliant, so that, even in cases of "unlawful dissolution", if there has been no intent, bad faith or fraud, but simply failure to pay a certain amount of tax, the simple fact of the company's financial inability to pay taxes, does not hold its shareholders/quotaholders, officers and/or directors accountable.
15. Also regarding "unlawful dissolution" of the company, another aspect to be considered, in relation to tax debts, is the responsibility of the shareholders/quotaholders, officers and/or directors who are no longer part of the company, at the time it is "unlawfully dissolved". In these cases, the personal assets of the shareholders/quotaholders, officers and/or directors would only be accountable if their liability for non-payment of taxes could be proven at the time, *i.e.*, having acted with excessive power or in violation of the law, the articles of organization or the articles of incorporation.

Resignation of Directors and Officers

According to Black’s Law Dictionary⁷, resignation means “The act by which an officer renounces the further exercise of his office and returns the same into the hands⁸ of those from whom he received it.”

Resignation is a faculty of the officer or director that can be executed at any time and at his or her convenience. The company is not required to accept the resignation in order for it to produce its effects. However, certain legal duties must be complied with by the resigning officer.

Unless agreed otherwise, the resignation requires no motive or prior notice. The resigning officer is required (as per article 1.063, §3 of the Brazilian Civil Code, and article 151 of Brazilian Corporations Act) to present a letter of resignation to the company. The letter of resignation is irrevocable. The officer’s resignation is effective before the company as of the receipt of the letter of resignation. For third parties, though, resignation will only be effective after the letter of resignation is filed with the board of trade and published. Not only the company, but also the resigning officer is entitled to undertake the filing and publication.

Liability of the resigning officer for regular management acts carried out in the company’s ordinary course of business ends with the approval of the officer’s financial statements by the partners’ meeting, in accordance with article 1.071, I of the Brazilian Civil Code, and article 122, III of the Brazilian Corporation Act.

Restructuring and Insolvency

Introduction

The Brazilian Bankruptcy Law (Law No. 11,101/2005), enacted on February 9, 2005, provides for bankruptcy and for two forms of reorganization: (i) an out-of-court reorganization procedure known as extrajudicial restructuring (a “pre-pack”), and (ii) a court-supervised reorganization procedure known as judicial

restructuring. A debtor may use either procedure to produce a reorganization plan which will bind all creditors, provided certain requisites are met.

Bankruptcy

Creditors may petition to have the debtor declared bankrupt. If the debtor is declared bankrupt, a liquidation proceeding begins. In bankruptcy the debtor's assets are scheduled and liquidated, and the proceeds distributed to satisfy creditor claims.

One or more holders of unpaid, liquidated and enforceable claims that are higher than a certain minimum amount (40 times the minimum monthly wage; approximately £7,500) may file a petition for declaration of bankruptcy. A bankruptcy petition may also be based upon certain "bankruptcy acts", *e.g.*, granting security interests to a creditor in connection with an existing debt without leaving a sufficient amount of unencumbered assets to satisfy all outstanding debts.

Liquidation of the debtor's assets will be carried out in one of the following forms, in the order of preference set forth in the Law:

- disposal of the company, with the sale of its establishments as a block;
- disposal of the company, with the sale of its branches or manufacturing plants separately;
- disposal, as a block, of the assets constituting each of the debtors' establishments;
- disposal of the assets considered individually.

The bankruptcy law authorizes the adoption of more than one of the forms of disposal listed above. It also provides that the sale of assets shall start regardless of the completion of the general list of creditors, which is expected to expedite the proceedings as

7. <https://thelawdictionary.org/resignation/>

8. The word 'bauds' appears here in the original definition found in 'Black's Law Dictionary. This word, however, does not exist in the English language and may have been a typing error. For the purposes of understanding, the liberty has been taken here to interpret the term.

opposed to what happened under the previous legislation. The general rule for the sale and liquidation of assets is that the judge shall order a public auction. The law also provides for sealed bids and public proclamation modalities for disposal of assets.

The winning bidder shall not inherit the debtor's obligations, including tax and labour related obligations and occupational accident obligations, as opposed to that which occurred under the former law.

A general list of the creditors shall be drawn up by the judicial administrator and ratified by the court. Claims will be classified pursuant to article 83 of the Bankruptcy Law, whereupon the order of preference of the creditors will be ascertained. An important inversion has taken place in the order of preference enjoyed by different kinds of creditors under the new Bankruptcy Law: secured claims now enjoy preference over tax claims, up to the value of their guarantees. This represents a significant improvement in the chances of credit recovery, since tax debts are generally the bulk of the debts of a distressed company in Brazil. Furthermore, the priority enjoyed by labour claims in bankruptcy proceedings is now limited to a cap of 150 minimum monthly wages (currently equivalent to approximately US\$ 38,188.77).

The order established in the new bankruptcy law is as follows:

- labour related claims, limited to one hundred and fifty monthly minimum wages per creditor, and occupational claims;
- claims with in rem guarantees, to the limit of the value of the encumbered asset;
- tax claims, regardless of their nature and length of constitution, except for tax fines;
- claims entitled to special privilege;
- claims entitled to general privilege;
- unsecured claims;
- contractual penalties and fines for breach of criminal or administrative law, including tax related fines;
- subordinated claims.

In addition, certain claims defined in article 84 of the Bankruptcy Law, such as fees payable to the judicial administrator and their assistants, as well as labour-related claims or occupational

accidents referring to services rendered after the decreeing of bankruptcy, and judicial fees related to the bankruptcy lawsuit, shall take absolute priority over all claims listed above.

Reorganizations

Only the debtor may propose a reorganization plan under Brazilian law. No plan may be adopted over the debtor's objection. Consequently, both extrajudicial and judicial restructurings require the debtor's cooperation and consent.

Extrajudicial Restructuring

Under extrajudicial restructuring, the debtor may contact his/her/its creditors to negotiate a restructuring plan. Labour claims, tax claims, claims deriving from advances against exchange and claims secured by chattel mortgages may not be included in this out-of-court restructuring modality.

The extrajudicial restructuring plan signed by any number of creditors may be submitted for court confirmation. If the plan is supported by more than $3/5$ (60%) of the creditors (in the amount of claims in each class of creditors affected by it), the court may, at the request of the debtor, render the plan binding to all affected creditors, including the dissenting ones.

Commencement of out-of-court negotiations to implement a pre-pack does not trigger a stay of proceedings, contrary to that which occurs in judicial restructuring. Consequently, the debtor may need a "standstill" agreement with his/her/its creditors to obtain time to negotiate a pre-pack.

Judicial Restructuring

A petition for judicial restructuring must include a statement of the causes of the financial distress, financial statements for the three most current years of operations, a listing of creditors and claims, and a listing of employees and employee claims, amongst other things. Tax claims, claims secured by advances against exchange, and claims secured by chattel mortgages are not subject to a judicial restructuring.

The court decision commencing the proceeding will

include the appointment of a judicial administrator who will be responsible, amongst other things, for managing the claims verification process and overseeing the debtor's management of his/her/its business.

A stay of proceedings is triggered by the decree commencing a judicial restructuring. The stay-period, however, does not apply to legal actions aimed at the collection of debts that have yet to be liquidated (Article 6, §1). However, execution of any judgment rendered therein is stayed, whilst the stay may not exceed 180 days counting from the date the court decision is issued.

The debtor shall propose a restructuring plan within the 60 days following the publication of the decree starting the proceeding. The plan should include a statement of its financial feasibility, a report on the debtor's economic condition, and an appraisal of assets/business units signed by a certified professional or specialized company.

Once the plan is proposed and the list of recognized creditors and claims has been finalized, creditors may file objections to the plan within the term fixed by the judge. If no objections are filed, the plan is confirmed by the court without a creditor vote. If, however, one or more creditors object, the court will call a meeting of creditors to consider and vote on the plan. The plan may be modified or amended at the creditors' meeting, subject to the debtor's authorization, but it may not be modified in a manner that unfairly discriminates against creditors not attending the meeting. The plan which is approved by the required majorities in each class of claims (labour, secured, unsecured and micro-enterprise or small business) will be confirmed by the court and become binding to all creditors subject to a judicial restructuring proceeding (including those creditors who voted against approval of the plan).

Should the plan fail to obtain the requisite creditor majorities as established by the Bankruptcy Law, the debtor will be declared bankrupt. Also, should the debtor fail to comply with any of the provisions of the approved restructuring plan, he/she/it shall be declared bankrupt.

Media and Foreign Investment

The legal framework that governs the foreign investments in Brazilian news and broadcasting companies ("Brazilian Media Companies") is grounded in the Brazilian Federal Constitution, which includes the rule provided for in article 222 (introduced by means of the 36th Constitutional Amendment, dated 28 May, 2002). A few months following the modification of the constitutional rule, the Brazilian congress passed Federal Law No. 10,610, further regulating the matter.

These rules have proven to be an important legal milestone for the development of the local market and Brazilian Media Companies to the extent that they have allowed significantly greater flexibility for said companies to raise funds overseas and enter into strategic partnerships with foreign companies. The rules have also been supportive of Brazilian Media Companies while applying international accounting and management practices and standards in order to favour their international business with third party investors.

Current Legal Framework

Pursuant to said article 222 of the Brazilian Federal Constitution and Brazilian Federal Law No. 10,610, foreign investors are allowed to hold up to 30% of the voting capital stock and the total capital stock of Brazilian Media Companies, which must be mandatorily held by legal entities incorporated under Brazilian law.

Legal entities incorporated under Brazilian law, but controlled by foreign investors, must not exceed the abovementioned limit of 30% of the voting capital stock and the total capital stock of Brazilian Media Companies. The remaining 70% of the voting capital stock and total capital stock of said companies must be exclusively held by native Brazilian citizens⁹.

9. For the purposes of the current legal framework, the expression "foreigners" shall mean foreign persons or foreign persons naturalized as Brazilian citizens for less than 10 years, and "native Brazilians citizens" shall mean native Brazilian persons or foreign persons naturalized as Brazilian citizens for more than 10 years.

Nonetheless, although foreign investors are authorized to participate in the capital stock of Brazilian Media Companies, the current legal framework provides for certain restrictions for the management of Brazilian Media Companies by foreigners that should be addressed when considering investing in the Brazilian media market.

Such restrictions include, for instance, situations where native Brazilian citizens must be responsible for the definition of the editorial content, the selection of the programme schedule and the management of the corporate activities of Brazilian Media Companies. Likewise, foreign investors cannot hold rights that could ensure access to more comprehensive and broader rights than those held by native Brazilian citizens¹⁰.

In view of the corporate restrictions outlined above, the majority of the transactions involving equity interest held by foreign investors in Brazilian Media Companies have been concluded on the basis of a standard set of rules (mostly veto rights) that both complied with the current legal framework and addressed the interests of foreign investors, which generally vary depending on the type of investor, such as foreign media groups or financial/private equity investors.

Such issues must be carefully addressed by foreign investors since the agreements entered into with the holders of equity interest of Brazilian Media Companies may be declared null and void if they result in breaches of the corporate restrictions described above.

In addition to these considerations, it is worth mentioning that Brazilian Federal Law No. 10,610 authorized the Federal Executive Branch to request documents and information from Brazilian Media Companies in order to confirm their compliance with such corporate restrictions.

Brazilian Media Companies must also present annual statements to the relevant Board of Commerce where its constitutional documents have been filed certifying the composition of at least 70% of the voting capital stock and of the total capital stock, including the identification of native Brazilian citizens holding such percentage of the capital stock.

Furthermore, changes related to corporate purposes, directors and officers and corporate control, as well as the transfer of public concessions, permissions or authorizations to perform media activities are subject to the prior approval of the Federal Executive Branch, through the Ministry of Science, Technology, Innovation and Communications.

Despite the challenges being faced for the development of the Brazilian media market, the current legal framework has largely enhanced the opportunities for foreign investors in the local market, whether by means of private equity investments in Brazilian Media Companies, or through the establishment of strategic partnerships with Brazilian Media Companies.

Managers and Investors’ Liability

Acknowledgements

The Brazilian market is undeniably important in the global scenario, and it is essential that any foreign investor should carry out a detailed business plan before moving into the market. Because of certain peculiarities inherent in doing business here, it is recommended that investors rely on local advice. It is also important to fully understand the issue of responsibility of foreign investors and managers in order to avoid shocks (during the implementation of a project in Brazil) which could have a direct impact on personal equity and that of other parties associated with the local business. In this guide, the most significant aspects related to the existing risks and ways to mitigate them will be discussed.

The Concept of Liability in Brazil

Before addressing the most significant aspects related to existing risks and ways of mitigating them regarding liability, it is necessary to briefly explain what the Brazilian legal system regulates by means of different legal texts, as well the liabilities attributed to investors, local managers, directors and other legal representatives of the Brazilian company, delimiting the degree of exposure to the

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10. Although the concept of “superior rights” has not been legally defined, it shall be generally understood as a restriction for the creation of any corporate subordination of native Brazilian citizens to foreigners in connection with the management of Brazilian Media Companies.

risk of contingencies that this business might have.

As a general rule, the Brazilian Civil Code (Law No. 10,406/2002) adopts the principle of subjective liability of managers and investors in case of damages to third parties. Therefore, in order to have liability attributed to the manager for acts practiced in the management of the company that are harmful to third parties, it is necessary that the fault or gross negligence of the agent be ascertained, that is, the manager must have intended to commit the wrongful act.

Considering that a company with foreign investment is legally incorporated in Brazil, with its Articles of Incorporation/Bylaws¹¹ duly registered with the competent board of trade, in theory, the manager would only be liable when deliberately acting against the principles listed in the company's corporate rules and other regulations, or against the applicable law.

However, the practical application by the Brazilian Judiciary, in numerous cases, does not reflect these fundamental principles when the focus is the liability of the manager or foreign investor. Analysing a wide range of different lawsuits, it can be seen that judges often pierce the corporate veil, imposing personal liability on otherwise immune corporate managers, directors, or shareholders for the company's wrongful acts.

The exercising of the management function of a company in Brazil, by itself, already undeniably causes the manager exposure of a personal and equity-related nature, insofar as s/he can be called to account for various obligations and debts of the company, especially those of an environmental, labour and consumer nature.

It should be noted that the Brazilian Corporation Law (Law No. 6,404/1976) establishes two criteria for management liability: (i) "to act within its attributions with fraud or gross negligence", and (ii) "violation of the law or the company's corporate regulations". The main difference between the two situations is found in the so-called 'burden of proof'. Contrary to the first, in which it is necessary that the fraud or gross negligence of the manager be proven, in the second hypothesis, the manager's wrongful acts are presumed. In this case, the burden of proving the occurrence of a motive that excludes the illegality of the fact and the exemption of liability lies with the manager.

Understanding the legal obligations is, therefore, essential in order to be able to act in such a way that distances or minimizes the liabilities that are inherent to the management position.

	SUBJECTIVE LIABILITY	OBJECTIVE LIABILITY
Application	It is imperative that the intent or fraud of the agent is ascertained. Therefore, the manager must have had the intention of committing the wrongful act.	It <u>does not depend</u> on the evidence of the intent or fraud of the agent causing the harm, only the causal relationship between the conduct and the damage, even if the causative agent has not acted with intent or guilt.
Elements	Negligence, imprudence and malpractice.	Causal relationship between conduct and result.

Because of the great subjectivity in the characterization of a regular management act, the doctrine absorbed the concepts of the Business Judgment Rule, which is covered by Article 158 of the Brazilian Corporation Law. It provides that the manager is not personally liable for the obligations that may incur on behalf of the company or by a regular management act made without conflict of interest, in good faith and being duly informed.

Management acts are those performed by the managers in the achievement of the corporate purpose, in accordance with the law, the company's corporate rules and their duties (diligence, loyalty, secrecy and reporting). The manager cannot guarantee a positive outcome of a management decision, having a margin of discretion within which they choose to take one decision or another.

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- Articles of Incorporation/Bylaws: a governing document that sets forth the basic terms of a corporation's existence, including the number and classes of shares and the purposes and duration of the company.

