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Brazil: Law & Practice
and
Brazil: Trends & Developments

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BRAZIL

Law and Practice

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1. Legal System and Regulatory Framework

1.1 Legal System

Brazil applies the civil law as its legal system, divided into three main branches that are independent and harmonious with each other: Legislative, Judiciary and Executive. Brazil's main law is the Federal Constitution of 1988, which determines the fundamental foundations and objectives of the republic, as well as setting the rules in a number of areas, such as the national tax system and the criminal law.

The legislative branch is responsible for creating and modifying laws as well as supervising the acts of the Executive. At the federal level, the legislative power is exercised by the National Congress, which is composed of the Chamber of Representatives and the Senate.

Furthermore, only the Judiciary can interpret and apply the law, with the objective of guaranteeing the rights of individuals and promoting justice. The Judiciary is divided according to the matters and the nature of the legal relationship being discussed, and it cannot try to solve conflicts without being previously requested by the interested party. Recently, with the growth of the Brazilian economy and the increase in business activity, there has been a need to set up specialised business courts with broad territorial competence. These courts have competence to judge lawsuits related to corporations, industrial property and anti-competitive practices, among other things.

Finally, the Executive must manage and govern the country at three separate levels (federal, state and municipal) to ensure the well-being of the population.

1.2 Regulatory Framework for FDI

According to the Central Bank (BACEN), Foreign Direct Investment consists in the acquisition of interest in the capital stock of a Brazilian company by an investor (individual or legal entity) not resident in Brazil or headquartered abroad. That is, all capital contribution from abroad that is applied to the domestic productive structure in the form of equity participation in existing companies or in the creation of new companies is considered a Foreign Direct Investment, that includes M&A, the construction of new facilities, reinvestment of profits, and intercompany loans. In addition to the BACEN, the FDI may also be regulated by the National Monetary Council (CMN), the Securities Commission (CVM) and the Federal Revenue (RFB). Some sectors are subject to particular rules and additional scrutiny, as described in **8.1 Other Regimes**.

Registration of FDI

First, the foreign investor must obtain a taxpayer ID. If the investor is an individual, they must obtain a CPF (*Cadastro de Pessoas Físicas*), and if it is a legal entity, they must obtain a CNPJ (*Cadastro Nacional de Pessoa Jurídica*), through the BACEN online system.

The next step for the foreign investor is to register the investment in the RDE (Electronic Declaratory Register) – a registry of foreign capital operations whose main objective is to register cash operations whenever there is foreign capital invested or loaned in Brazil or Brazilian capital invested or loaned abroad. Each type of foreign cash receipt requires a different RDE to be filled out, and there are three different units:

- FDI (IED) – foreign direct investments in Brazilian companies (equity);

- Financial Transactions Registration (ROF) – foreign capital related to credit granted to Brazilian individuals or legal entities, and also those related to leasing, rent, charter and royalties; and
- Foreign Portfolio Investment – foreign investments in the financial and capital markets, investment funds and depositary receipts.

For each registration, an RDE number is generated, which is used to control the remittances of funds from and to the foreign investor.

The registration takes place as follows.

- Automatic – in cases of foreign currency inflows, FDI, transfers between FDI registration modalities, stock incorporation and remittances of dividends, interest on net equity and divestiture.
- Declaratory – when the Brazilian entity that receives the investment (eg, through subscription of shares by the foreign investor) is responsible for such registration.

Updating Financial and Economic Information
Companies that receive FDI must always keep their financial and economic information updated with BACEN.

- Update quarterly:
  (a) legal entities headquartered in Brazil, with FDI in their capital stock, in any amount, and with assets equal to or greater than BRL300 million.
- Update every five years:
  (a) legal entities headquartered in Brazil, with FDI in their capital stock, in any amount, and with net equity equal to or greater than BRL100 million; and
- Update annually:
  (a) legal entities headquartered in Brazil, with FDI in their capital stock, in any amount, and with net equity equal to or greater than BRL100 million.

Please note that several BACEN regulations have been modified as of the end of 2022 and will be implemented during 2023. Please see **12.1 Other Significant Issues** for some brief comments. The new rules do not automatically revoke all of the old regulations, but during 2023 they will start to take effect.

Ultimate Beneficiary Owner (UBO)
The RFB Normative Instruction No 1683/18 establishes that companies domiciled abroad that have assets in Brazil, such as real estate, vehicles, bank accounts, equity, or that import goods without exchange coverage destined to the payment of the capital of Brazilian companies and banking institutions from abroad that perform purchase and sale transactions of foreign currency with banks in Brazil, need to identify the ultimate beneficiary owner (UBO).

Such companies are obliged to inform and present the documents to the RFB within 90 days, as of the date of registration in the CNPJ, which can be extended for the same period, at the representative's request.

According to this instruction, the UBO is considered the entity or person that directly or indirectly owns more than 25% of the company's capital and/or can exercise main influence in in the corporate deliberations as well as have the power to elect the majority of the company's officers/directors.

2. Recent Developments and Market Trends

2.1 Recent Developments and Market Trends

Due to remnants of the end of the COVID-19 pandemic and the intense political changes that occurred during the presidential elections, companies were feeling cautious. Between January and June of 2022, Brazil was the third most attractive country for FDI, only behind the United States and China, according to a recent survey by the OECD. The United Nations Trade and Development Agency (UNCTAD) estimates that investments between January and September reached BRL66 billion, or 31% more than the total FDI entering the country in 2021 (BRL50 billion).

Business Environment Law

On 22 September 2022, Law No 14,451/2022 was published, promoting relevant changes in the Civil Code for *sociedades limitadas* (limited liability companies) legal quorum. The new law determines that the appointment of non quotaholder administrators will depend on the approval of, at least, two thirds of the stock capital, if the capital is not paid-up, or, at least, absolute majority of the stock capital, after its payment.

Also, amendments to the articles of association and approval of corporate operations (such as mergers) are now also subject to the decision of the absolute majority of the capital stock, with the approval of at least three quarters of the capital stock no longer being required.

This brings the scenario of *sociedades limitadas* closer to the corporate environment applicable to *sociedade por ações* (corporations). In other words, matters previously restricted to the decision of 75% of the stock capital will now be decided by the holders of 50%+1 of the stock capital.

Football Corporations Law

At the end of 2021, Law No 14,193/2021, known as the Football Corporations Law (SAF), was sanctioned. This law allowed soccer teams to incorporate a corporation and create specific legal directives, such as corporate governance, provided for specific tax rules, and also made it easier for them to raise funds to finance their daily activities. As a corporation, the SAF is also ruled, in a subsidiary way, by the provisions established by Law No 6,404/1976 and by Law No 9,615/1998. This corporate structure is common in large teams outside Brazil, such as Bayern Munich, which has large sports companies as shareholders, such as Adidas and Allianz.

One of the economic benefits of this new law is that, since soccer teams can now be companies, it will be possible to make public offerings of shares, having access to the capital markets (IPOs).

Furthermore, the new law also establishes a specific and progressive taxation regime for SAF. It unifies, by monthly payments in a single collection document, the following taxes: IRPJ, PIS/COFINS, CSLL and social security contributions, at a rate starting at 5% levied on the club's monthly revenues during the first five years, then 4% as of the sixth year.

Overall, the introduction of a corporate structure in football teams in Brazil has been long awaited by the industry and may become a new form of FDI in Brazil.

3. Mergers and Acquisitions

3.1 Transaction Structures

Overview

M&A transactions in Brazil broke a record in the first six months of 2022, led by the technology sector. The second half of the year was marked by a drop in transactions compared to the first, mainly because of the presidential elections. Nevertheless, foreign investment in Brazil's productive sector again caused some surprise, and according to the BACEN, the accumulated FDI from January to September was USD70.7 billion, the highest value for this period since 2011 (USD77.8 billion).

The regulations and acts adopted in all M&A transactions in Brazil are not very distinctive from the ones in different countries.

The most common structures used are:

- purchase and sale of assets and/or equity;
- new capital stock subscription; and
- corporate transactions (eg, merger and spin-off).

Equity acquisition is usually adopted in Brazil, instead of assets acquisition. It is important to point out that when a company merges with another, meaning when it acquires, all at once, the entire operation and stock capital of the target company, including its goods, assets, technologies and specialised professionals, making the incorporated company cease to exist, all labour and environmental obligations are also transferred. For this reason, it is important that, before being approved by the parties, the transaction goes through a due diligence process to analyse the balance sheet, documentation, assets and legal matters of the target company. As is the case for incorporations of companies, regardless of the transaction being chosen, a key aspect to choosing a structure is the tax treatment as this can undergo many changes depending on the case. It is important to point out that transactions involving public companies must be approved by the CVM.

When it comes to documentation, an M&A transaction will typically include:

- a non-disclosure agreement;
- a memorandum of understanding;
- a stock purchase agreement; and
- a shareholders' agreement (for transactions that involve less than 100% equity).

3.2 Regulation of Domestic M&A Transactions

M&A transactions are a "sandbox" for international legal discussions, since the globalisation of business and the relevant participation of foreign agents in local transactions tend to contribute to the use of structures and clauses originated outside Brazil.

However, their internalisation into the national legal system requires care not only from the parties involved in their negotiation, but also from third parties that may be affected by the transaction. Parties cannot exclude the applicability of the legal obligations foreseen in the national legal framework for contracting parties (which are not always the same in other jurisdictions).

There is no specific regulatory framework for M&A transactions in Brazil. Normally, general rules are applicable, such as the Civil Code and the Corporate Law, as well as specific regulations, eg, from the BACEN and CVM.

It is important to point out that an M&A transaction, be it an acquisition of equity or a joint ven-

ture agreement, may be subject to prior approval from the Antitrust Enforcement Agency (CADE), responsible for enforcing the Antitrust Law, as stated in **6. Antitrust/Competition**.

4. Corporate Governance and Disclosure/Reporting

4.1 Corporate Governance Framework

Corporate Entities

Brazil has two main choices of corporate entities that can be created depending on the objectives and needs that the foreign investor seeks to fulfil in Brazil: a *sociedade limitada* or a *sociedade por ações*. Each one has its own type of legislation, so other devices can also be used in a subsidiary way. In the vast majority of cases, quotaholders/shareholders are liable up to the amount of the company's capital stock they have, however, their personal assets can be affected mainly in cases of fraud or labour lawsuits.

In both corporate entities, officers/directors can be elected directly in the constitutional documents or in a separate act. It is also important to emphasise that, as well as for quotaholders/shareholders, the officers/directors are also obliged to comply with the duties and obligations provided by the law and in the company's corporate documents.

Although, generally, officers/directors are not personally liable for obligations contracted on behalf of the company, the breach of one or more duties may lead to their personal liability for damages caused to third parties or to the company in case of fault, malice or violation of the provisions of the law or of the corporate documents.

Sociedade limitada

A *sociedade limitada* (also known as an LTDA) is an entity incorporated under the Brazilian Civil Code with one or more quotaholders (individuals or companies, Brazilian or foreign).

The capital stock is divided into "quotas" and all quotas grant their owners the right to vote at general quotaholders' meetings. With a simpler and less expensive governance structure, it offers a less regulated environment than the *sociedade por ações*.

Moreover, profits may be paid to its quotaholders at a disproportionate rate to the equity they own. The management is conducted by one or more officers/directors who can be quotaholders or not. They must be appointed in the articles of association or in a quotaholders' meeting, for a definite or indefinite term.

Law No 14,451/2022 was recently enacted, amending the Civil Code, modifying the resolution quorums of the partners of the *sociedade limitada*, as stated in **2.1 Outlook and FDI Developments**.

Sociedade por ações

Sociedades por ações (also known as S.A.) are incorporated by one or more shareholders (individuals or legal entities, Brazilian or foreign). The capital stock is divided into "shares". Usually, each share grants its owner a single vote at the overall shareholders' meetings but one share can also supply up to ten votes. The decision-making process must be made via shareholders' meeting and most resolution are approved by more than half of the capital stock. The management is performed by one or more officers (Brazilian or foreign) appointed in a shareholders' or board of directors' meeting (if the board is active) for a maximum three-year term.

Usually, an S.A.'s shares are exchangeable through the sale and purchase or conversion of other securities, such as debentures, to private investors or publicly in the stock exchange (B3). Managing an S.A. has a tendency to be extra bureaucratic, time consuming and expensive (eg, in general, all financial statements should be published).

Nevertheless, on 1 January 2022, a relevant change brought about by Law No 13,818/2019 came into effect, changing the general rule for the publication of corporate acts and financial statements. Some companies are exempted from publication requirements in the Official Gazette of the Union, the State or the Federal District, as the case may be, as long as they make the full text of documents available on the website of a widely circulated newspaper.

The measure, which aims to modernise the publication requirements by law, also significantly reduces in the costs related to mandatory publications, as well as increasing the publication's reach.

Required Documents

To start operations in Brazil, the following documents are required from the foreign investor:

- a power of attorney nominating a legal representative in Brazil, with powers to receive summons;
- a copy of the foreign investor's by-laws or articles of association and certificate of incorporation (for a legal entity), or the identification document (for an individual);
- a copy of the foreign investor's corporate act nominating its officers/managers (for a legal entity);
- a copy of the identification document of the legal person representing the foreign investor abroad; and
- all documents provided shall be notarised and apostilled in their country of origin.

Once received in Brazil, the documents shall be translated into Portuguese by a sworn translator and then registered with the public notary (*Tabelião de Registro de Títulos e Documentos*).

4.2 Relationship Between Companies and Minority Investors

Minority Investors

The legislative changes stated in **2.1 Outlook and FDI Developments**, were also beneficial to minority partners who, eg, in an LTDA with five quotaholders together hold more than 51% of the stock capital, may prevail over the decisions of the majority partner. Thus, the minority quotaholder now has the possibility to "block" the majority quotaholder's will in amendments to the articles of association.

From the legal point of view, the minority shareholder is seen as a vulnerable part of the corporate relationship and is protected by law.

Under the Brazilian corporate laws, there is no specific definition of a minor investor. The law is interpreted considering a reverse interpretation of a majority investor, meaning that everything that is not a majority investor would be classified as a minor one. A majority shareholder, by the legal definition, is the entrepreneur/investor who owns more than 50% of the capital stock of a company, independent of its corporate nature.

In this regard, there are two ways of becoming a minority shareholder:

- the investor acquires preferred shares – normally, this type of share does not grant voting rights, in return for receiving a financial benefit; or
- the investor acquires common shares – the right to vote is guaranteed, however, the shareholder's owned shares are insufficient to grant them a controlling or majority power.

Basic Shareholder Rights
All shareholders have the following rights:

- to participate in the corporation's profit sharing;
- to receive the corporation's assets in case of its liquidation;
- to supervise the corporation's administrative bodies;
- the pre-emptive right for the subscription of new shares, convertible participation certificates, convertible debentures and subscription bonds; and
- the withdrawal from the corporation in the cases provided for by law.

Protective Rights for Minority Shareholders
Minority shareholders have some specific rights in the Law No 6,404/1976 (LSA), eg:

- to withdraw;
- to tag along in case of transfer of control; and
- to request an increase in the term for convening a meeting or its interruption in the publicly held corporation.

In addition to such rights, the LSA also provides other effective mechanisms for the protection of minorities, such as:

- the protection of the minority in case of delisting of shares;
- the participation in the composition of the board of directors and the board of auditors;
- the provision for arbitration in conflict resolution; and
- the shareholders' agreement.

4.3 Disclosure and Reporting Obligations
The disclosure obligations regarding FDI are discussed in **7. Foreign Investment/National Security**.

5. Capital Markets

5.1 Capital Markets
The Brazilian capital market is formed by the set of economic agents and legal instruments dedicated to the distribution of securities that mobilises the savings resources of individuals, companies and public agents, promoting the efficient allocation of these savings to finance the production, marketing, investment and consumption of economic agents. The Brazilian capital market is regulated by the CVM and is also subject to self-regulation by private entities, by delegation of the CVM, such as:

- B3; and
- the Brazilian Association of Financial and Capital Markets Entities (ANBIMA).

The federal government has sanctioned Law No 14,430 of 3 August 2022 (Law No 14,430), which provides the Brazilian legal framework for securitisation. Law No 14,430 introduced the legal definition for securitisation in the Brazilian legislation, which is a process that involves the acquisition of credit rights to support the issuance of Certificates of Receivables or other securities to investors, the payment of which is primarily conditional on the receipt of resources from the credit rights and other assets, rights

and guarantees that support it. Until the new law was issued, the rules were contained in several laws, and the government deemed it necessary to issue a legal diploma for the sector offering more ease and agility to operations.

In addition to the previously permitted agribusiness receivables certificates and real estate receivables certificates, Law No 14,430 also extended the possibility of securitisation of any kind of credit rights. This law represents a true legal landmark for securitisation in the country, expanding the possibilities of financing to various sectors of the economy.

5.2 Securities Regulation

Refer to **5.1 Capital Markets**.

The main laws and regulations on capital markets are:

- the LSA; and
- Law No 6,385/1976, which regulates the local capital markets and establishes the CVM.

The major legislative development in the area is the repeal of CVM Instructions 476/06 and 400/03, which regulated public offerings of securities (stocks, debentures, investment fund shares, real estate and agribusiness receivables certificates, etc). CVM Resolution 160, published on 13 July 2022, brings important innovations and, when it comes into effect, it will contain the entire regulatory framework related to the system of public offerings of securities, replacing CVM Instruction 400/03, which deals with offerings subject to prior registration by the CVM, and CVM Instruction 476/09, which governs public offerings with restricted efforts, among other changes.

With the entry into force of Resolution 160 on 2 January 2023, there will be two offering registration rites: the ordinary one, whose registration requires previous analysis by CVM; and the automatic one, which does not need such analysis. Thus, public offerings that are automatically exempt from registration, such as Restricted Offerings, will cease to exist.

It is worth emphasising that offerings in progress as of 2 January 2023 will continue to be governed by the rules in effect on the date the registration application is filed or the information about the commencement of the offering is provided.

As mentioned in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, all foreign capital remitted to Brazil must be registered in the BACEN. In the case of indirect investments, foreign investors must register with the CVM, contract a financial institution as legal representative, appoint a fiscal representative and execute a custody agreement with a local entity.

All foreign investments have to observe the main applicable regulations:

- Law No 4,131/1962, which regulates FDI in Brazil;
- BACEN Resolution 4,373/2014, which provides for non-resident investors' investments in the Brazilian financial and capital markets; and
- CVM Resolution 560, which regulates the registration, operations and disclosure of information of non-resident investors in Brazil.

5.3 Investment Funds

Investment funds bring together the resources of several investors to be jointly invested in the financial market. To open an investment fund, it

is necessary to obtain the CVM's approval, as well as to open a company with a CNPJ and a company name for managing resources. After opening, it will be necessary to request authorisation from the CVM for the company to manage the fund's resources. The investment fund held by foreign investors will be subject to the same regulatory review procedures as any foreign investment by the local authorities and as provided in **5.2 Securities Regulation**.

6. Antitrust/Competition

6.1 Applicable Regulator and Process Overview

Overview

CADE is a federal agency, linked to the Ministry of Justice, whose mission is to ensure free competition in the market, being the entity responsible, not only for investigating and deciding, in the last instance, on competition issues, but also for fostering and disseminating the culture of free competition. As such, it has three main functions, as set out below.

- Preventive - to analyse and decide on any type of economic concentration that may put free competition at risk.
- Repressive and Punitive - to investigate and judge anti-competitive acts, such as cartels, that may be harmful to free competition.
- Educative - to inform the public about the behaviours that can harm competition, and to encourage and stimulate studies and academic research on the subject.

CADE's main bodies are:

- the Administrative Tribunal for Economic Defence (TADE);
- the General Superintendence (SG); and
- the Department of Economic Studies (DEE).

Merger Control Regime

Law No 12,529/2001 (Brazilian Antitrust Law) does not specifically provide for FDI. However, the following transactions may be subject to CADE's prior review:

- mergers and consolidations;
- acquisitions of direct or indirect control or parts of a company;
- incorporations of shares; or
- associative contracts, consortia or joint ventures.

Framing

The Brazilian Antitrust Law adopts a system of pre-merger control. This means that CADE must approve transactions before they are fully effective by filing a notification.

The burden of filing a notification falls on all parties involved in the transaction. According to CADE, the notification must be submitted jointly by:

- the buyer and the target in transactions related to acquisitions of control or equity;
- the merging companies in merger transactions; and
- the contracting party in other cases.

In practice, in general, the buyer leads the notification process with the co-operation of the seller.

There is no deadline for submitting the notification, as long as it is submitted before the consummation of the transaction - failure to do so would be consistent with the practice of the crime of gun-jumping.

The parties that fit into the following situations must submit a notification to CADE before the consummation of the operation:

- at least one of the economic groups involved in the transaction has registered a turnover of at least BRL750 million; and
- the other economic group has registered a turnover of at least BRL75 million.

It is necessary to take into consideration all the companies that form the economic group, and, according to CADE, the following entities constitute an economic group:

- entities subject to common control; and
- all entities in which any of the companies subject to a common control holds, directly or indirectly, at least 20% of the shares or voting capital.

Once they have been reached, the notification of the operation is mandatory. However, in exceptional cases, even if not framed, CADE can order the filing of a transaction up to one year after its closed.

Also, the submission of a notification to CADE requires the payment of a fee in the amount of BLR85,000.

Judgment

The notification must contain satisfactory details about the transaction and various supporting documents. The initial analysis will be conducted by the SG and, once it has concluded that there is sufficient information for an antitrust analysis, the process will be officially initiated with the publication of a public notice in the Official Journal.

The SG will decide which procedure the submitted transaction will follow, ie, either fast track or ordinary, depending on the complexity of the transaction.

The analysis of fast-track processes, applicable to cases where there is less potential for anti-competitive effects, will be performed within a maximum of 30 days by the SG. In ordinary proceedings, ie, those defined as complex, the deadline is 240 days (extendable to 330 days).

The SG will issue a preliminary assessment, which may result in:

- unconditional approval;
- conditional approval; or
- rejection.

In case of unconditional approval, after a period of 15 days, the operation is officially approved and can be implemented. In all other scenarios, a final decision will be required by TADE.

6.2 Criteria for Review

CADE, according to the Guide for Horizontal Merger Review, generally conducts the analysis in four or five steps, which are:

- definition of the relevant market involved in the transaction;
- analysis of the level of horizontal concentration in order to indicate whether the new company may exercise market power (a more detailed analysis may be performed if the level of horizontal concentration resulting from the transactions is higher than 20% and/or higher than 30% in cases of vertical integration);
- assessment of whether the firm resulting from the transaction will be able to abuse market power as a result of the higher concentration

associated with the transaction, considering aspects such as:
  (a) the possibility of timely, likely and sufficient new entry; and
  (b) the level of competition in the market after the transaction;
- evaluation of the purchasing power existing in the market or created by the transaction, in the case of an input market; and
- assessment of the potential economic efficiencies associated with the transaction.

In the case of complex cross-border transactions that are being reviewed simultaneously in multiple jurisdictions, the parties will likely be required to grant a confidentiality waiver for sharing confidential information among agencies in the other jurisdictions.

It is worth noting that the submission of misleading or false information, documents or statements is punishable by a monetary fine ranging from BRL5,000 to BRL5 million. Furthermore, the request for approval of the transaction to CADE will also be seriously jeopardised and may be rejected.

CADE may require additional information and additional steps, depending on the complexity of the transaction. However, in most cases of horizontal concentration, the steps described above are sufficient for a final decision.

6.3 Remedies and Commitments

At the time of judgment, CADE may approve the concentration act fully, reject it or approve it partially, in which case it will determine the restrictions that must be observed, as a condition for the validity and effectiveness of the operation.

In cases where restrictions are imposed, they can be applied unilaterally or by agreement between the parties, whenever it is proven that the imposition of restrictions will restore consumer welfare and economic efficiency. When the harm caused by the elimination of competition cannot be remedied by any type of restriction/remedy, CADE will reject the transaction.

The Brazilian Antitrust Law provides for the application of structural or behavioural remedies, depending on the case, such as:

- the sale of assets or a set of assets that constitute a business activity;
- the spin-off of a company;
- the disposal of corporate control;
- the accounting or legal separation of activities;
- the compulsory licensing of intellectual property rights; and
- any other act or measure necessary for the elimination of the harmful effects to the economic order.

6.4 Enforcement

The antitrust policy adopted in the Brazilian legislation is preventive to the transaction, ie, CADE's approval must be obtained before its execution.

The practice of "gun jumping", which consists in the consummation of the concentration acts before CADE's approval, is prohibited by the Brazilian Antitrust Law, and is subject to the decree of nullity of the transaction and a fine, ranging from BRL60,000 to BRL60 million. The fine will depend on the analysis of the case, and should be taken into consideration: the economic conditions of the groups involved, their intention, the competitive damage in the market, etc. In parallel, CADE may open an administrative proceeding with the application of other penalties.

In the case of foreign companies, they will be subject to the Antitrust Law whenever they are domiciled in Brazil. That is, whenever they operate or have a branch, agency, branch office, office, establishment, agent or representative in the country; there are no special restrictions for FDI.

Therefore, the recommendation is that the restrictions and limitations to the operation be observed until the final decision of CADE, since the non-compliance can generate severe penalties.

7. Foreign Investment/National Security

7.1 Applicable Regulator and Process Overview

There is no national security review regime in the current Brazilian legislation. However, it is worth noting, as pointed out in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, that foreign investment must be registered with the BACEN.

7.2 Criteria for Review

Although there is no national security review regime, all foreign investments must comply with two main federal laws: the Securities Law (Law No 6,385/1976) and the LSA, as well as the **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**.

7.3 Remedies and Commitments

Please see **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, since Brazil does not have a national security review regime.

7.4 Enforcement

Please see **8.1 Other Regimes** for details of the restrictions in some sectors for FDI.

8. Other Review/Approvals

8.1 Other Regimes

The current legislation grants Brazilian companies a monopoly in certain sectors, prohibiting FDI in areas such as nuclear energy, mail and telegraph services, and the aerospace industry.

Moreover, other economic sectors have specific restrictions on foreign capital, such as the following.

- Mining: only Brazilian citizens or companies organised under Brazilian laws with headquarters and an administrative body located in the country can practise the exploration and use of mineral resources in Brazil, federal authorisation or concession is still required.
- Telecommunications: only companies with majority capital owned by a company domiciled in Brazil, organised under Brazilian law and having their principal place of business and administration in Brazil.
- Broadcasting (radio and free-access television): limitation of up to 30% of the station's ownership held by foreign investors.
- Farms and frontier lands: the acquisition and leasing of rural properties by foreigners in Brazil is subject to several requirements and bureaucracies. Despite the existence of a new bill presented to the National Congress that should facilitate the purchase, ownership and leasing of rural properties in Brazil by foreign investors, so far there have been no updates on the matter.

9. Tax

9.1 Taxation of Business Activities

Direct Taxes – Corporate Income

Brazilian entities are subject to taxes over income and taxes over their sales and revenue. The income taxation of these entities is made up of an income tax (*Imposto de Renda da Pessoa Jurídica*; or IRPJ) and a social contribution (*Contribuição Social sobre o Lucro Líquido*; or CSLL), both federal taxes are levied over the companies' profit. The tax rates are as follows:

- IRPJ – 15%, with a surcharge of 10% on monthly profits that exceed BRL20,000;
- CSLL – the general rate of 9% (some financial institutions are subject to a tax rate of 15% or more); and
- resulting total effective rate – approximately 34%.

There is an income tax reform proposal under discussion by the National Congress; it was submitted to the Federal Senate in August 2021 for deliberation, but there has not been any relevant progress since then. The proposal reduces the tax rates mentioned above and introduces taxation over dividends (for dividends, see **9.2 Withholding Taxes on Dividends, Interest, Etc**). The reduction is not proportional to the dividend taxation, but it would result in the following:

- IRPJ levied at a rate of 8%, the 10% surcharge maintained;
- CSLL charged at a rate of 8%; and
- resulting total effective rate of approximately 26%.

There are two main ways of calculating the taxable income, the Actual Profit Method (APM) and the Presumed Profit Method (PPM). The APM applies a nominal taxation rate over tax adjusted accounting income and makes it possible to carry forward net operating losses (NOLs) to offset taxable income in future years, but subject to a 30% limit of the annual income.

Alternatively, the PPM, an optional regime for companies whose gross revenue in the previous year was less than BRL78 million, corresponds to an estimated profit margin applied over the gross revenue rather than the actual one. This is generally:

- 8% (for the IRPJ)/12% (for the CSLL) for industrial and commerce activities; and
- 32% for services.

Indirect Taxes – Revenue and Sales

Looking to entities' gross revenues, not profit, Brazil imposes two similar social contributions, the Social Integration Programme (PIS) and the Contribution to Social Security Financing (COFINS). They can be calculated, depending on certain conditions, according to a non-cumulative or a cumulative regime, with combined rates of 3.65% for the cumulative regime and 9.25% for the non-cumulative regime; the non-cumulative system allows the appropriation of tax credits on some costs and expenses as determined by law.

Further to the above, there are other taxes imposed on sales:

- State Value-Add Tax (ICMS), which is a non-cumulative state tax levied on an average rate of 18% over the sale of goods, communication services and intercity or interstate transportation;
- Services Tax (ISSQN), a cumulative municipal tax applied over gross service revenues, at

rates varying from 2% to 5%, depending on local legislation and type of service; and
- Excise Tax (IPI), a non-cumulative federal tax levied over sales of industrialised products and goods sold by importers, the rate of which varies depending on the nature of the product.

There are also special tax rules for imports and exports. Exports are exempt of indirect taxation, ie, PIS/COFINS, ICMS, IPI, however, imported goods are subject to PIS/COFINS, ICMS, IPI and also Import Tax (II), which tax rate varies depending on the nature of the product. The import of services is subject to taxation that can reach up to 40%, namely:

- withholding income tax at 15% to 25%;
- a special contribution (CIDE) at 10%;
- PIS/COFINS at 9.25%; and
- ISSQN from 2% to 5%.

Also, for international transactions involving foreign exchange transactions, there is usually a financial transaction tax (IOF/FX) levied at 0.38% over the foreign exchange contract value.

9.2 Withholding Taxes on Dividends, Interest, Etc

Double Tax Treaties

For international remittance, it is always important to take a special look into Brazil's International Double Tax Treaties (DTT) list. Brazil currently has a total of 36 DTTs in force and, despite the restricted number, there are some important countries among them. It is also worth mentioning that the newer DTTs, eg, signed with United Arab Emirates, Singapore and Switzerland, are more aligned with the OECD and the BEPS.

Despite the problematic position of the Brazilian tax authorities (RFB) regarding DTT applicability over national law, it is possible to gain important tax savings from the texts of many of these treaties, considering that some include matching credit provisions.

By these clauses, which can be found in DTTs with Canada, France, Italy, Luxembourg and the Netherlands for example, a tax credit is granted on a fixed tax rate for the income beneficiary, usually at a higher rate than it was held in Brazil.

Another provision that can bring tax efficiency is indirect tax credit, which allows the beneficiary to offset over the income tax due abroad the income tax paid by the Brazilian entity over its own profit. That is to say, it allows the beneficiary to offset the IRPJ and CSLL (approximately 34%) collected by the Brazilian entity instead of withholding income tax.

Some DTTs signed by Brazil bring limitation of benefits clauses in order to avoid treaty-shopping.

Dividends

Dividends are not subject to taxation, regardless of whether the beneficiary is a local shareholder or a foreign one. Dividends are exempt from the income tax and the Tax on Foreign Exchange Transactions (IOF/FX) rate is currently zero.

However, according to the current version of the income tax reform proposal (see **9.1 Taxation of Business Activities**), dividends would be subject to a withholding income tax (WHT) levied at 15%, applicable even for dividends based on retained earnings from prior years, which is a very controversial aspect of the proposal.

Still looking into the proposal, the most important exception to the WHT is cases where dividends are paid by a Brazilian entity to its controller or

to another entity subject to common corporate control and which holds at least 10% of the voting capital of the paying company, assuming that the beneficiary is also a Brazilian entity.

Interest

Interest remitted abroad is subject to WHT at a general tax rate of 15%. If the beneficiary has its residence or is domiciled in a jurisdiction considered as a tax haven, the applicable rate is 25%.

The interest is liable to a deduction for the Brazilian entity source of the payment, if it adopts the APM, respects thin capitalisation rules and, if the investor is a related party, observes transfer pricing limits (see **9.3 Tax Mitigation Strategies**).

Interest on Net Equity

In Brazil, entities adopting the APM have the option to deduct a deemed interest on shareholder's invested capital. This income is called *juros sobre capital proprio*, loosely translated to "interest on net equity", being deductible for IRPJ and CSLL and taxed at source when paid to foreign investors at a rate of 15%, generating a possible tax benefit of around 19% (34% less 15% withholding at source).

Through the DTTs, the nature of such income is qualified as dividends or interest, depending on each DTT. For the old ones, the interest on net equity is usually understood as dividends, but this nature is changed on newer DTTs.

In the above-mentioned income tax reform proposal, the interest on net equity is being revoked from Brazilian legislation.

Royalty

For royalty remittance abroad, the taxation in Brazil is in general:

- WHT at 15%, 25% for tax havens;
- special contribution (CIDE) at 10%;
- PIS/COFINS, 9.25% can be charged by RFB, but there are arguments to defend its non-incidence;
- ISSQN from 2% to 5%, but also with the possibility to defend its non-incidence; and
- IOF/FX over foreign exchange at 0.38%.

For a brand royalty, it can be harder to defend the inapplicability of ISSQN, considering that, although it may sound absurd, the remuneration from the licence of a brand can be considered as a service fee for the licensor. In this same sense, the risk of a PIS/COFINS charge is also higher than compared to a royalty paid based on other reasons, eg, other rights, patents or properties.

9.3 Tax Mitigation Strategies

Deals – Acquisition of Structures

In a share deal, the buyer can achieve two important tax mitigations, the step-up in basis for depreciable assets and the goodwill amortisation. For the first one, the tax benefit will be utilised during the depreciation period.

For the amortisation of goodwill, namely the difference between the purchase price and the net equity plus the fair market value of assets and liabilities, this amount can be amortised from IRPJ and CSLL over a minimum of five years (1/60 per month).

However, in order to benefit from it, some legal requirements must be observed; eg, draft a PPA report, file it before the RFB or a public notary, and merge the acquiring and target companies.

The business carried out between related parties is not accepted for goodwill amortisation and the RFB has a restrictive approach when the business involves the use of a vehicle entity.

In an asset deal, although uncommon, the tax benefits from the step up in basis for depreciable assets can be also achieved.

ICMS Incentives/Reductions

As the ICMS is a value added tax regulated by states (see **9.1 Taxation of Business Activities** for more information), there are states that grant incentives and others that do not. Current legislation provides government grants are valid until 2032, therefore, until then, the ICMS incentives that fulfil legal/formal requirements will be considered valid.

Thus, analysing the possibility of ICMS incentives for the state of interest or for those that surround it can bring an important competitive advantage.

Earnings Stripping

The payment of interest is liable to deduction if the Brazilian entity adopts the APM, respects thin capitalisation rules and, if the investor is a related party, observes transfer pricing limits (see **9.5 Anti-evasion Regimes** for more information about thin capitalisation and TP rules).

The payment of royalty to shareholders cannot be deducted. However, in certain scenarios, royalty paid to an indirect controller can be. In a similar way, the payment of technical support for its controller can also be deductible if the legal requirements are observed.

Net Operating Losses

See **9.1 Taxation of Business Activities**.

Restructuring of Economic Activity

Brazil does not allow tax consolidation by companies and their controlled subsidiaries. However, reorganising the economic activity executed by one entity into two or more entities can provide tax efficiency by allowing the new entity to adopt the PPM or allowing one of the entities to adopt the PPM and generate tax credits between intragroup transactions.

To follow the strategy above and be successful, the RFB will demand that the restructuring involves, at least:

- business purposes in addition to the tax saving;
- both companies having economic substance; and
- intragroup transactions comply with margin requirements.

Offshore Structure

In order to avoid the Brazilian WHT on the sale of FDI (see **9.5 Anti-evasion Regimes**), it is possible to use an offshore company as an intermediary between the foreign investor and the target Brazilian company.

In this case, the indirect disposition of Brazilian assets is not covered by domestic legislation, although tax authorities can disregard the structure if there is a lack of substance or when tax saving is the only driver for the structure.

Judicial Claims for the Refund of Unduly Paid Taxes and Cash Flow Improvements

In previous years, the Brazilian Supreme Court and Superior Court have analysed several tax-related claims, many with a favourable outcome for taxpayers.

Such legal discussions aim to recover unduly paid taxes in the five years prior to the filing of the lawsuit plus interest, as well as to improve a company's competitiveness and cash flow.

It is important to emphasise that such discussions may be addressed through a writ of mandamus in order to prevent any risks of payment of succumbence fees.

9.4 Tax on Sale or Other Dispositions of FDI

Capital gains derived by a foreign investor from the sale of FDI are subject to taxation according to the same rules applicable to tax residents. Thus, the capital gains are levied at a progressive tax rate ranging from 15% to 22.5% in a WHT system.

Some exceptions to the above are:

- capital gains related to transactions carried out on the Brazilian stock exchange, which are exempt; and
- income distributed by private equity funds (FIPs) or capital gains in connection with the sale/amortisation of their quotas are levied on a 0% WHT rate.

9.5 Anti-evasion Regimes

Anti-avoidance Rules

Brazil does not have special anti-avoidance rules for certain types of FDI or anti-hybrid mismatch rules. The National Tax Code does contain a general anti-avoidance rule, which authorises the RFB to disregard transactions carried on by tax payers with the intention to change or disguise the true nature of the transaction.

As this provision demands further regulation in order to be valid, which has not been implemented as yet, there is a lot of discussion around whether it is possible or not for the RFB to rely on this rule to effectively disregard tax planning (and, for example, postulate the necessity of the characteristics exposed in **9.3 Tax Mitigation Strategies** regarding the restructuring of economic activity when analysing companies' restructuring).

On this subject, in 2022 the Supreme Court decided on a lawsuit where it was being argued that the illegality of this general anti-avoidance rule was legal. However, on the vote of the rapporteur minister, it was highlighted that further regulation is required in order for this to take effect.

Thin Capitalisation

Brazilian thin capitalisation rules impose the debt limit on which deductible interest payments are allowed, based on the following criteria:

- when the foreign related party is a shareholder, the deductibility of interests paid abroad will be allowed as long as the debt does not exceed twice the equity participation by such foreign related party in the net equity of the Brazilian entity;
- when the foreign related party is not a shareholder, the deductibility of interests paid abroad will be allowed as long as the debt does not exceed twice the net equity of the Brazilian legal entity; and
- when the foreign party is resident or domiciled in a tax haven and/or subjected to a privileged tax regime, the deductibility of interests paid abroad will be allowed as long as the debt does not exceed more than 30% of the net equity of the Brazilian legal entity.

Transfer Pricing (TP) Rules

Brazilian TP rules do not follow the OECD model. Instead of adopting the arm's length principle, Brazilian TP rules generally establish fixed margins as a standard comparison.

Those rules mainly need to be observed in two situations:

- cross-border transactions between related parties; and
- cross-border transactions with a party resident or domiciled in a tax haven and/or subjected to a privileged tax-regime.

It is important to mention that the Brazilian government, seeking to join the OECD in the near future, should publish new TP legislation in the coming months, implementing the arm's length principle, and adopting international rules.

10. Employment and Labour

10.1 Employment and Labour Framework

Labour relations in Brazil are regulated by the Consolidation of Labour Laws (CLT), with positive norms written in the 1940s. The rules have undergone important changes in recent years, especially with the labour reform in 2017. Brazilian labour law is very protective, as the Labour Court sees the "low-sufficiency" of employees in relation to employment and attributes various protection mechanisms in order to equalise or at least minimise risks to employment.

Furthermore, collective law has a strong presence in Brazil, and the country's legislation favours, in many aspects, what is negotiated under the law, with the workers' union being able to negotiate various rights and duties with companies or with the union that represents them. Therefore, it is common for Brazilian companies to deal with negotiations in collective agreements and conventions.

For those who are interested in FDI, it is important that the foreign market is aware of the laws that regulate expatriates' rights and benefits.

10.2 Employee Compensation

Employee compensation is created especially for cash salaries through bank transactions. For employees, there is also the payment of part of the social security contributions and guarantee funds, as well as the possibility of including commissions and premiums. Payment through pensions is not very common.

In the event of a change-of-control or other investment transaction in the company or even in the Brazilian jurisdiction, it is essential that employees do not suffer a reduction in their salaries and that the new persons responsible continue the respective payments as consideration for the work performed.

10.3 Employment Protection

In the event of an acquisition, change-of-control of the company or other investment transaction in Brazil, it is essential that employers respect the base salary received by the employees before the corporate change and there must be prior communication about the changes and/or maintenance of the benefits granted.

However, it is important to clarify that in such event, rights and duties remain and the employment relationship is maintained with the company, regardless of split, acquisition, merger or any other modality, and the company assumes all the obligations previously provided for, so that the rights of employees cannot be reduced.

The employment contract is maintained, including in relation to the functions performed, salary and working hours, so that any change will only be allowed if there is no harm to the employee.

If the new employer chooses to terminate the employment contract, it must notify the employee in advance or pay the indemnified prior notice,

with all severance payments due for the years of service provided.

Also, in the event of an investment acquisition or transaction, the union's involvement is important to ensure respect for employees' rights through collective bargaining.

11. Intellectual Property and Data Protection

11.1 Intellectual Property Considerations for Approval of FDI

The intellectual property that encompasses the issues of technological development is highly regulated. It is also important to observe tax laws, investment regulations, production incentives, trade policies and competition rules. Therefore, from a policy perspective, the existence of a pro-competitive business environment is of great importance for FDI.

There are tax benefits related to innovation projects, in addition to royalty payments, for licensing and for the assignment of intangible assets, which increase technological development, as well as national and international partnerships. It can also be seen that regardless of the area or sector, considering the possibility of other beneficial laws and incentives in the field of intellectual property being introduced through policy initiatives, Brazil will become an increasingly attractive country.

11.2 Intellectual Property Protections

To boost economic development, the Brazilian National Institute of Intellectual Property (INPI), which is the agency responsible for granting and maintaining industrial property registrations, has evolved to speed up, simplify and ensure the quality of its services. Besides a well-structured agency, which aims to protect intellectual property, there is extensive Brazilian legislation on the subject, which must be thoroughly observed. Among the possible protections, the trademark protection in Brazil stands out with a 57% increase since 2019.

2022 has been the year of practical application for the legislative changes launched in 2021, mainly in the patents segment.

The most relevant change was the revocation of the minimum term of patent protection of ten years for invention and seven years for utility model patents. As a result, patents can only be granted with a protection term of, respectively, 20 and 15 years as from the date of filing of the application before the INPI.

Among other updates, as part of a so-called Backlog Combat Plan, the evaluation of patent applications shall be concluded by the INPI within a maximum term of two years from the examination request. The Plan aims to reduce and facilitate the granting of patent protection in Brazil, defining new requirements for the breaking of patents and dismissing the necessity of a prior consent of the ANVISA (Brazilian National Health Surveillance Agency) for the granting of patents in order to avoid a double inter-authority analysis.

11.3 Data Protection and Privacy Considerations

Brazil, in recent years, has followed the global movement of concern by governments over data protection. In 2018, Law No 13,709, known as the Brazilian General Data Protection Law (LGPD), was enacted, which was considered a major milestone and advance in the quest for the protection of personal data. The LGPD, in addition to protecting the data of individuals, also

has the function of establishing limits on the use of data and defending the rights of data subjects, and provides sanctions applicable to cases of non-compliance. Its basis is similar to the EU General Data Protection Regulation (GDPR), which has been in force since September 2020.

With regard to extraterritorial application, for the international transfer of personal data collected in Brazilian territory, it is necessary to observe whether the recipient country has legislation on the subject or whether the responsibilities of each party are established in a private contract. Therefore, in a preliminary analysis, there is no provision for liability in the foreign jurisdiction for the international transfer of personal data from Brazil to foreign headquarters, and it must be analysed on a case-by-case basis.

The supervision and regulation of the LGPD is the responsibility of the National Data Protection Authority (ANPD), a federal agency, which has been fully active since August 2021. The agency has coercive power, and can apply administrative sanctions to data processing agents in case of non-compliance with the LGPD. The sanctions range from a warning and disclosure of the infringement to the application of fines that can reach 2% of the revenue of the legal entity, group or conglomerate in its last financial year, limited, in total, to BRL50 million per violation.

The main role of the ANPD, above the coercive power, is to guide and support government agencies and companies in relation to the situations in which they can or cannot process citizens' personal data.

In the current scenario, it is observed that the lawsuits related to the LGPD are generally of a labour nature and that, although the judiciary is still adapting and understanding the new legislation, the market and citizens are moving in search of their rights as holders of personal data. Thus, data protection and compliance with the LGPD should be on the minds of anyone seeking to invest in Brazil.

12. Miscellaneous

12.1 Other Significant Issues

A number of changes to the foreign exchange law were enacted at the end of December 2022. Many of the old regulations on foreign capital and loans will be replaced by new and updated regulations during 2023. Generally speaking, the new rules tend to be simpler and more straightforward, thereby reducing bureaucracy. It is also important to mention that several new tax rules were also published at the end of 2022 and the beginning of 2023, including a new transfer pricing regulation, new rules regarding payment of PIS/COFINS contributions and increases to the ICMS. These will imply relevant changes going forwards and it is important to keep an eye on them in 2023.

Finocchio & Ustra (FIUS) is a full-service law firm, a benchmark in São Paulo and one of the best law firms in Brazil. It has a relevant history of success cases in small, medium, and large domestic and foreign companies, resulting from its strategic way of acting. Focused on understanding and improving its clients' businesses, the firm places the client at the center of its business and harnesses multidisciplinary efforts to mitigate risks and deliver strategic, innovative, reliable and effective solutions. The team is its best asset, and today FIUS is incredibly proud to have an extremely talented team that acts freely in an ethical and collaborative environment that allows, with respect and transparency, the development of people. The firm's core values are based on respect, innovation, excellence, and preparing for coming corporate challenges. It is up to FIUS to build a future that surpasses what it has achieved in the past.

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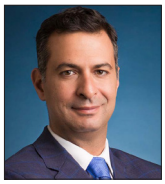

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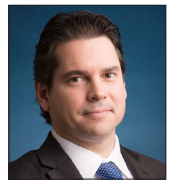

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Trends and Developments

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The Political and Economic Outlook for Brazil in 2023

By a very tight margin (50.9% to 49.1%), the left-wing former President Luis Inacio Lula da Silva won Brazil's presidential election in 2022, while elections for the Congress and Senate gave a majority of the seats to right-wing conservatives more aligned to the incumbent President Jair Bolsonaro.

This is the third term Lula was elected, having occupied the office from 2003 to 2010. He is perceived as being more diplomatic, dedicated to the environment and to social inequality in Brazil. On the other hand, due to government spending, some believe his administration could have a negative impact on the fiscal consolidation, especially with regard to Brazil's spending caps.

Compared to other global markets, the macroeconomic outlook for Brazil in 2023 is relatively positive. Lula will be inheriting an economy that has begun to recover from the pandemic and is expected to grow.

A deteriorating global outlook, tighter fiscal policy, and the effects of higher interest rates might reduce GDP growth. Lower commodity prices and the slowdown in major trading partners could reduce external demand. Tighter credit conditions will limit household consumption along with a slowdown in job generation in 2023.

Unemployment in Q3 2022 was at 9%, the lowest level since 2015 and a significant reduction when compared to 2021, when unemployment was at 12-14%.

On top of that, Brazilian GDP according to the Central Bank's (BACEN) poll of economists (Focus Report published in December 2022) is projected to have a cumulative growth in 2022 of 3% and a slim 0.7% growth projection for 2023. It is important to note that projected GDP growth in the December 2021 Focus Report was 0.5%.

The Brazilian federal funds rate (Selic) is currently set at 13.75% after significant rate hikes set by the BACEN in 2021 and 2022 ended in September 2022. The scenario for 2023 is highly dependent on the global economy, but is expected to be kept somewhere near this level.

As for inflation, which haunted Brazilians for many years, the National General Price Index (IPCA) should be around 4-5% for 2022, coming down from 10% in 2021.

Finally, Brazil is seen as relatively stable and free of geopolitical risks compared to other developing countries that tend to receive foreign investments.

Brazil and the Global Economic Scenario

The world has become more aware of the risks of depending on other countries to supply commodities and critical products. Therefore, a movement towards the decentralisation of production chains over the next few years and a reduction of trade relations with politically dif-

ferent countries can be expected. Part of the production chain currently dependent on China will be transferred to countries closer and politically more aligned with the United States and Western Europe.

Companies will avoid over-depending on a supplier, even if they can establish long-term contracts and resort to courts to enforce them. As there is no global court able to enforce agreements, there should be an increased concern in selecting as partners those countries that are likely to become politically hostile with an increased number of companies opting to do business in more stable jurisdictions.

This trend has been called friend-shoring or ally-shoring. It brings a unique opportunity to Brazil, which has the sixth largest population in the world, relatively cheap labour, extensive territory and abundant natural resources. In addition, it is not far from the United States and Western Europe and closely aligned with Western politics. Thus, Brazil is a strong candidate to receive part of the demand currently served by China, which could bring foreign investments and boost the country's economic development.

However, Brazil still faces some challenges related to tax and labour.

A comprehensive tax reform is long overdue while the country still relies on complex indirect taxation and high corporate income tax rates. Even with some efforts to pass reforms in 2021 and 2022, they have not been approved by Congress and the discussion should have a relevant place on the political agenda in 2023.

Brazil has a federal system with 27 states that share the right to charge and collect a "VAT style" tax (ICMS, in Portuguese), giving rise to most of the problems for companies doing business in Brazil due to the complexity of rules. Although this is envisaged as the most necessary overhaul in the tax system, at the same time it is the least likely to happen, since an amendment to the Brazilian Constitution would be required to modify the current system.

Looking at corporate income tax, Brazil has one of the highest rates at the company level when compared to other OECD countries but nevertheless has no taxation on dividends. Because allowing a lower rate at the company level and imposing tax on dividend could potentially foster investment (moreover if Brazil amplifies its tax treaty network), and given the fact that corporate income tax does not require an amendment to the Constitution, this is something to keep an eye on during 2023.

Simplifying tax filings and reporting is also much needed and could progress swiftly during the first months of 2023.

The long-awaited accession of Brazil to the OECD which started to take place during Mr Bolsonaro's tenure might suffer setbacks since the newly elected Lula has strong opinions against joining the organisation.

Becoming a full member of the OECD can lead to great improvements on how the country is perceived for receiving foreign investments, how global transfer pricing rules interplay with the Brazilian transfer pricing rules and how foreign tax credits generated in Brazil can be utilised abroad (particularly in the United States of America).

In 2022, Brazil has signed important new double tax convention with the United Kingdom and has

amended older conventions to comprise updated OCDE rules.

Regarding labour legislation, in September 2022, Law No 14,442/2022 introduced a set of regulations for telework and minor changes on workers' meal allowance. Telework does not require the worker to have a prevalence of out-of-office work days, and hybrid settings can now qualify as telework; working overseas can also fall under the scope of telework.

Opportunities and Challenges Ahead for Brazil

Reducing CO_2 emissions in electricity production was one of the primary measures to fight global warming. As a result, Europe deactivated thermoelectric plants that used coal and oil and replaced them with natural gas thermoelectric plants. The countries are now suffering from cuts in the supply of Russian natural gas.

Brazil has a very different energy production matrix than the rest of the world, producing most of its electricity from hydropower and renewable energy, therefore, being less vulnerable to price variation and depending more on rainfall and weather factors. In contrast, 67.4% of the world's electricity comes from fossil fuels. China is responsible for a third of global electricity, 65.9% from fossil fuels and 63.2% from coal.

Another advantage is that Brazilian energy is relatively clean and this is attractive to countries that seek carbon neutrality. By shifting demands for industrial activities with high electricity consumption from China to Brazil, such countries could reduce 74% of the CO_2 emitted by the supply chain.

As aforementioned, during his campaign Brazil's new president promised more attention to climate, ESG and environmental matters. Brazilian companies have since been more aware and devoted more time to address such issues. These companies can enjoy certain advantages from complying with a this set of standards, such as being able to:

- attract new investors;
- issue debt and use capital markets with reduced interest rates;
- communicate more wisely the investment made in such areas; and
- effectively comply with the requirements set forth by several legislations that demand the disclosure of ESG information.

Effective as of January 2023, publicly listed companies (in A and B categories) will need to comply with Resolution No 59/2021 issued by the Brazilian Securities and Exchange Commission (CVM) and file their reference form before the CVM containing information such as whether the company has disclosed ESG data in its annual reports, the methodology used, and if ESG reports have been audited or not.

Despite the turmoil and uncertainties of an election year, these factors will likely help the economy and provide a better setting, especially for M&A activities and international contracts. The Brazilian Association of Private Equity and Venture Capital (ABVCAP) signalled financial services and information technology as the primary investment targets. The Brazilian stock market is also likely to recover in 2023 and, according to investment analysts, overall IPOs could recover as well.

New legislation has been passed in recent years that can contribute to deal activity in Brazil. Large private companies and publicly held corporations have had potential costs reduced as

it is now possible for them to publish only summaries of documents and financial statements in newspapers with national reach. Other relevant changes include the following.

- Companies are to maintain digital corporate records in line with DREI provision No 82/2021 and corporate records can be signed using a digital certificate.
- It is possible to have remote voting and hold remote shareholder meetings.
- Under older rules, corporations in Brazil needed to have at least two officers who could not be non-residents. After changes made by the CVM, companies are allowed to have only one officer who is not required to reside in Brazil.
- Law No 14,193/2021, known as the Football Corporations Law (SAF), provided for easier access to capital markets and a privileged tax regime.

With a reliable political and economic outlook, a devalued currency, and investors moving away from other emerging markets, Brazil could be a prime target for investments in 2023.

Final Remarks: How to Strategically Manage Legal Issues in Brazil

Brazil is a country well known for its high rates of litigation in general, but especially regarding labour and tax. Also, courts in Brazil tend to take many years to issue final rulings on such matters, forcing companies to carry uncertainties and liabilities for a long time on their balance sheets.

In addition, and as a consequence of the above, legislation and the interpretation of the law is not always straightforward, which is worsened by the tradition in the Brazilian legal system (which comes from Roman and Latin influences) of long arguments and dense legalese writings.

In order to effectively manage the legal aspects of a company in Brazil while also being cost effective, companies doing business in the country should plan to have preventive measures in place; not only to avoid pitfalls from day-to-day routines and operations becoming litigious cases, but also to act as a real business partner in other areas of the company.

Legal departments and law firms in Brazil are starting to see technology and new ways of doing old things as an opportunity to help drive decisions in the company instead of only handling problems once they happen. Using design thinking and agile methodologies has allowed companies to navigate legal issues faster in Brazil; for example, automation and AI can allow legal directors and managers in Brazil to dedicate more of their time to strategically think about the business and focus on innovation, while increasing controls and reducing risks.

Contributed by: Bruno Marques Santo, Felipe Lopes de Faria Cervone, José Luis Finocchio Junior and Octávio Lopes Santos Teixeira Ustra, **Finocchio & Ustra**

Finocchio & Ustra (FIUS) is a full-service law firm, a benchmark in São Paulo and one of the best law firms in Brazil. It has a relevant history of success cases in small, medium, and large domestic and foreign companies, resulting from its strategic way of acting. Focused on understanding and improving its clients' businesses, the firm places the client at the center of its business and harnesses multidisciplinary efforts to mitigate risks and deliver strategic, innovative, reliable and effective solutions. The team is its best asset, and today FIUS is incredibly proud to have an extremely talented team that acts freely in an ethical and collaborative environment that allows, with respect and transparency, the development of people. The firm's core values are based on respect, innovation, excellence, and preparing for coming corporate challenges. It is up to FIUS to build a future that surpasses what it has achieved in the past.

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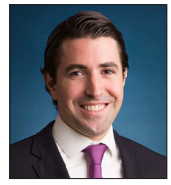

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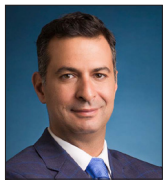

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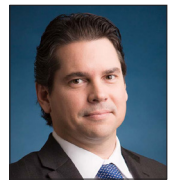

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