

DOING BUSINESS IN BRAZIL

APRIL • 2022



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ADV.

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PRESENTATION AND Q&A

As Legal Partner of **South Summit Brazil 2022**, CMT's team was kindly invited to present to foreign investors a brief overview of the Brazilian legal system, answering the most common questions about making investments in Brazil.

The information contained in this Guide is not intended as and does not constitute legal advice and is for general informational purposes only. As such, this guide does not claim to suggest the ideal structure for investments in the country – especially because this will always be contingent on the specific objectives of each investor and the peculiarities of each investment – or to analyze current political and economic situations and trends in Brazil. Nonetheless, we hope it will be useful for providing an overview of the main issues to be considered when investing in Brazil.

In the chapters that follow, we will cover the main issues related to investment in Brazil, but for those interested in a quick read, we have prepared a Q&A based on the main questions we receive from foreign clients that should be useful:

1. What are the main ways for foreigners to invest in Brazil?

Foreign investors (individuals or legal entities) can invest in Brazil in mainly three ways: (i) investments through the financial or capital markets; (ii) direct investments through the acquisition of equity interests in Brazilian companies; and/or (iii) loans to Brazilian individuals or companies.

2. Can I operate in Brazil through a foreign branch?

Yes. Foreign companies may operate in Brazil through subsidiaries, branches, agencies or establishments subordinated to foreign companies. To this end, they must obtain authorization from the Federal Executive Branch, making this a highly complex and seldom recommended alternative, and, therefore, little used. In practice, it is common to operate through subsidiaries, i.e., new companies created with their own legal personality, owned by foreign individuals or companies.

3. What is the structure of investment funds in Brazil and what are the advantages of investing through investment funds?

They are regulated by the CVM, which is the national authority equivalent of the US SEC, and have an administrator, who is legally responsible for the fund, and a manager, who is responsible for the management of the fund's portfolio in accordance with its investment objectives and policy, providing governance and transparency to the structure. There are several types of funds, especially equity investment funds (FIP), real estate investment funds (FII), credit rights investment funds (FIDC), exchange traded funds (ETF) and retail funds (FIA, FIM and FIRF).

4. How long does it take to incorporate a company in Brazil?

It is common for the incorporation of a company in Brazil by foreign investors to take up to 180 days. However, it is possible to start with leaner and simpler structures (such as holdings acting as subsidiaries, usually in the form of limited liability companies, which can take less than 30 days.

5. What are the main types of companies in Brazil? What are the advantages and disadvantages of each?

There are two most common types of legal entities in Brazil: corporations (“S.A.”) and limited liability companies (“Limitada”). The Limitada is the most common type in the country and may be formed by a single member and officer, irrespective of the nationality of the member. The S.A. is generally reserved for more robust corporate governance structures or when there is an interest in fundraising and even financing through the capital markets.

6. What are the main taxes in Brazil?

The main taxes levied on business operations are taxes on profit (IRPJ and CSLL), on revenue (PIS and COFINS), on consumption and services (ICMS, ISS, IPI) and on payroll (INSS). In addition, there are taxes on financial transactions (IOF), on imports (II), on royalties (CIDE), on the ownership and transfer of urban properties (IPTU and ITBI), on the ownership of rural properties (ITR) and on transfers by death or donations (ITCMD).

7. What are the taxation regimes in Brazil?

The calculation of corporate taxes in Brazil may occur: (i) by the actual profit, which taxes only the actual profits, but with several ancillary obligations; (ii) by the presumed profit, in which the taxation is levied on a percentage of the revenue, defined according to the company’s sector of activity, regardless of actual profit; and (iii) by the Simples Nacional, which combines several taxes, but which is prohibited for companies with foreign investors.

8. How does Brazil protect intellectual property?

Brazil protects industrial property (trademarks, patents, industrial designs and utility models) and copyrights (software, artistic and scientific works), being a signatory to TRIPS, the Paris Convention, the Madrid Protocol and the Berne Convention.

9. What are the costs of hiring employees?

Employees have minimum guaranteed rights, the main ones of which are basic salary, 13th salary (Christmas Bonus), paid vacation, transportation allowance and FGTS. It is estimated that, considering minimum rights and payroll taxation, hiring an employee costs on average between 40% and 63% of their gross monthly salary.

10. Can foreign companies hire Brazilians?

Yes. However, Brazilian labor laws apply to work carried out in Brazil, even when the employee works for a foreign company, and to the work of foreign employees working in Brazil. In the case of Brazilian employees transferred abroad, the most beneficial rules between the Brazilian and the foreign jurisdiction apply.

11. Can a company have a single member?

The Limitada, the most common type in the country to receive foreign direct investment, may be incorporated by a single member, irrespective of nationality, while the S.A. may only have as its sole member a Brazilian company (wholly owned subsidiary).

12. Is there a limitation of investor liability?

In the main types of companies, Limitada and S.A., the liability of its members is limited to the subscribed corporate capital or at the share issue price. However, in extreme cases, disregarding the corporate entity is admitted, such as when the company is used to defraud creditors, perform illegal acts, or when the company's assets are intertwined with the member's assets. There are many cases in which the Labor Courts, for instance, pierce the corporate veil and reach the members' assets.

13. Can Administrators in Brazil be held responsible for acts of management?

On a Civil basis, the managers of companies will only be held responsible for: (i) acts performed in violation of the law or the articles of organization/incorporation of the companies they represent; and (ii) acts that, although exercised within their attributions, cause damage intentionally or by recklessness, malpractice or negligence of the administrator.

14. Do foreign investors need representatives in Brazil?

Yes. The foreign investor must appoint a representative who is a resident of Brazil (by means of a notarized power of attorney,

apostilled, with a sworn translation into Portuguese and registered at a Notary's Office) to represent him/her in matters related to his/her status as a member or shareholder of Brazilian companies before the Brazilian authorities.

15. Should Brazilian company administrators be Brazilian and reside in the country?

No. Administrators may be Brazilian or foreign and may reside or not in Brazil. However, at least an attorney-in-fact must be resident in Brazil for purposes of receiving summons on behalf of foreigners.

16. How is the structure of business administration in Brazil?

Apart from publicly-held companies, both S.A. and Limitada may be represented by a single manager, who may or may not be a member of the company, who will respond directly to the members. However, in publicly-held companies, it is mandatory, while in other companies it is optional (except in specific sectors) to set up a Board of Directors, in addition to an Audit Committee to supervise the management of administrators.

17. Is there a minimum capital contribution to incorporate a company in Brazil?

Except for specific situations (airline, financial, insurance, among others), no. Generally, the share capital is directly related to the initial value of the investment for the exploration of the entity's corporate purpose and will be chosen by the member or members, recommending that it be sufficient to support the working capital of the business. It is a fixed amount provided for in the company's articles of organization/incorporation.

18. Does Brazil require the disclosure of financial statements?

Companies incorporated in the form of corporations (S.A.) must publish management reports on the business, financial statements and opinions of the independent auditors and/or the Audit Committee, if any, annually.

19. Does Brazil require disclosure of the ultimate beneficial/owner (UBO)?

Foreign investors and Brazilian companies must inform the Brazilian Federal Revenue Service of their ultimate beneficial owner, who is, in short, the individual (and not the entity) who controls or influences, in a significant way, directly or indirectly, a particular entity.

20. Should foreign investments in Brazil be registered?

Foreign investments must be registered with the Central Bank of Brazil (RDE-IED or ROF, depending on the form of investment) within 30 days of the entry of capital into the country.

21. Is it possible to repatriate investments?

There are no restrictions on the repatriation of funds such as dividends, interest or divestment in equity interests, nor limits on the value or minimum/maximum investment time/repatriation of funds entering and leaving Brazil.

22. Are there member/shareholder agreements in Brazil?

Yes. In general, member agreements generally provide for the purchase and

sale of equity interests (between members and/or third parties), preemptive rights for the acquisition of equity interests, exercise of voting rights, exercise of control power and non-compete obligation, among others.

23. How to acquire a company in Brazil (M&A)?

The M&A process in Brazil is very similar to that practiced around the world, with a certain influence from the US market. In addition to the contracts negotiated between the parties, acquisitions of Limitadas are formalized through amendments to articles of organizations, which must be registered with the Registry of Commerce; acquisitions of S.A. are formalized in their own registration books, kept by the companies themselves or by financial institutions contracted for bookkeeping.

24. What are the competition rules applicable to M&A in Brazil?

In certain cases, M&A transactions (or other forms of business combination) depend on prior approval from the Brazilian antitrust authority (CADE). Prior approval from CADE is required for operations: (i) that produce or may produce effects in Brazil; (ii) in which at least one of the involved economic groups has glistered a gross income equal or superior to R\$ 750 million in the fiscal year prior to the transaction and at least one of the other economic groups involved in the transaction has had a gross income equal or superior to R\$ 75 million in the previous fiscal year; and/or (iii) that results in acts of concentration under antitrust legislation.

25. Is it possible to develop partnership programs to retain and encourage employees?

Yes. Partnership or stock options programs can be structured both in more robust structures, such as publicly traded companies, and in limited companies (Limitadas). The programs may involve both the effective granting of equity interests and phantom shares, provided that legal requirements are observed and that there is onerousness (should not be free of charge) and market risk (should not result in benefits prefixed and/or not subject to variations).

26. What are the data protection rules in Brazil?

The country has data and privacy protection standards. There is a General Data Protection Law, in place since 2020, the content of which has been influenced by the European General Data Protection Regulation (GDPR).

27. How does public procurement work in Brazil?

Acquisitions (and certain sales) by the Brazilian Government are made through a bidding procedure to select the most advantageous proposal for the government through objective and impersonal criteria. The Bidding Law establishes five bidding modalities: (i) reverse auction; (ii) competition; (iii) tender; (iv) auction; and (v) competitive dialogue.

28. Are there compliance and anti-corruption rules in Brazil?

In addition to manuals of good governance practices issued by influential organizations, especially the Brazilian Institute of Corporate Governance (IBGC), the country has the Law for the Prevention of Fraud and Money Laundering (Lei de Prevenção à Fraude e à Lavagem de Dinheiro) (criminal law) and the Clean

Company Law (Lei da Empresa Limpa) (administrative law), to mention the main examples, whose main objective is the accountability for fraudulent practices and activities, corruption and money laundering.

29. Are there ESG rules in Brazil?

The country, like the rest of the world, in addition to signing pacts at an international level, has sought to include clear policies and rules related to the ESG movement. To cite some examples: (i) CVM Resolution 59, which proposes that companies listed on B3 S.A. disclose information on ESG indicators in the reference form; (ii) the Social, Environmental and Climate Risks and Opportunities Report of the Central Bank of Brazil; and (iii) the ASG II Guide published by ANBIMA.

30. Are there rules for the use of cryptocurrencies in Brazil?

Cryptoassets today are not regulated in Brazil, although there are bills in progress. For the Central Bank of Brazil (Notice No. 31.379/17), cryptoassets are not under its supervision; for the Securities and Exchange Commission, as a rule, cryptoassets do not constitute securities; and the Federal Revenue Service of Brazil (IN No. 1.888/19) requires that exchanges and people who transact cryptoassets only report such information to the RFB.

31. Are electronically signed contracts valid in Brazil?

Yes. Both digital signatures, certified by ICP-Brasil, and electronic signatures, carried out through a private platform are allowed and valid, providing they are accepted between the contracting parties.

32. How does the judicial system work in Brazil?

Brazil adopts the civil law system, whose main source is written law. In general, the Judiciary Branch is divided into 5 federal courts and 27 state courts and, if the controversy is not resolved in this context, the case may be brought to the Superior Court of Justice and/or the Supreme Court, the latter should the issue involve violation of the Federal Constitution.

33. What are the main methods of conflict resolution in Brazil?

Disputes in Brazil can be resolved through the Judiciary or through private alternative methods, such as mediation and arbitration. In corporate and investment contracts, the parties are entitled to choose the method of conflict resolution, and the choice is common for arbitration, due to benefits such as speed and confidentiality.



OVERVIEW

The Federative Republic of Brazil is the fifth largest country in terms of territory and the sixth most populous in the world, with more than 211 million inhabitants, with Portuguese as the official language. It is considered an “upper-middle economy” by the World Bank, being a member of the BRICS, MERCOSUL’s main player and a non-permanent member of the UN Security Council (it was sworn in earlier this year for its 11th term) and is in the final stages for membership of the OCDE.

The country is composed of 26 states and the Federal District, with Brasilia as its capital and political center. However, the economic epicenter is located in the Southeast region, where the cities of São Paulo and Rio de Janeiro are located. The State of Rio Grande do Sul, seat of **South Summit Brazil 2022**, is close to Uruguay and Argentina, and is a region famous for its German and Italian colonization.

Brazil is an important agribusiness

power, being a leader in exports of chicken and having the second largest herds of cattle in the world. It is the second largest exporter of iron ore and has a vast and prosperous industrial market, especially in the chemical, oil, food and aviation sectors. The country has a very advanced financial system in regulatory terms, with the Central Bank acting in the regulation and development of important financial solutions, such as the arrangement of instant payments (Pix) and the rapid implementation of Open Banking.

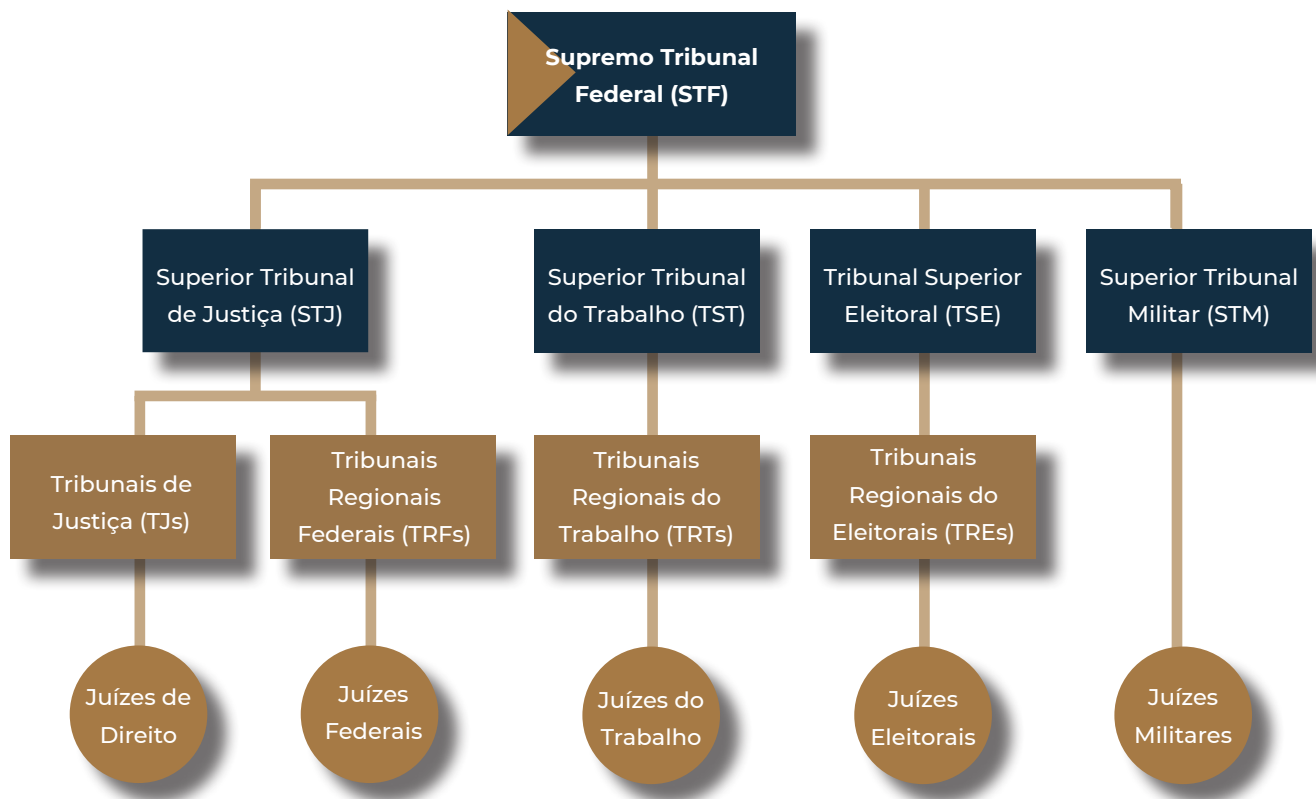
In the field of technology, Brazil has shown very positive results, and the development of some sectors such as e-commerce and logtechs was accelerated by the COVID-19 pandemic.

Brazil is gradually recovering from the COVID-19 crisis, showing a 4.6% GDP growth in 2021 (BRL 8.7 trillion), surpassing the 3.9% losses accumulated during the pandemic.

THE BRAZILIAN LEGAL SYSTEM

Brazil uses the system of presidential government, consisting of a federal government, twenty-six states, a federal district, in which Brasilia, the national capital, is located, and more than 5,500 municipalities. Each of these members of the federation has the power to elect their representatives and enact their own laws within the limits established in the Federal Constitution, in force since 1988.

The President of the Republic is the head of the Federal Executive Branch. The Federal Legislative Branch, at the federal level, is represented by the National Congress, composed of two legislative houses: the Federal Senate and the Chamber of Deputies, both composed of representatives directly elected by the people. The Judiciary has the following organizational structure:



In general, the jurisdiction of the federal courts is restricted to cases involving federal administration (such as state companies, municipalities, etc.), and the state courts have subsidiary jurisdiction (that is, jurisdiction over any other cases that are not subject to federal or special courts).

As an institution essential for the jurisdictional functioning of the State,

the Department of Justice, whose role is to defend the legal order, the democratic regime and the social and individual inalienable rights, is a permanent and independent institution, whose function is, among others, to (i) move, private, public criminal actions, (ii) ensure the due respect for the Public Powers and relevant public services and the rights set forth in the Brazilian Federal Constitution by promoting the necessary measures to

guarantee them, (iii) move claims for the protection of public and social property, the environment and other natural and collective rights, and (iv) legally defend the rights and interests of indigenous peoples.

Brazil uses the Civil Law system, in which legislation is the main source of regulation. This means that, contrary to what happens in the Common Law system, only some decisions rendered by higher courts in specific situations



FOREIGN INVESTMENTS IN BRAZIL

In Brazil, there are essentially three bodies that dictate the rules with respect to foreign investments: (i) the National Monetary Council (“CMN”); (ii) the Central Bank (“BC”); and (iii) the Securities and Exchange Commission (“CVM”).

CMN is the maximum entity of the National Financial System, establishing general guidelines on foreign exchange and credit policies in Brazil, regulating the constitution, operation and monitoring of Brazilian financial institutions, coordinating public debt operations and providing subsidies to certain economic sectors.

The CB is the main executor of the CMN rules, having as its main responsibilities the issuance of currency, control of the foreign exchange markets, and carrying out foreign exchange transactions on behalf of companies in the public sector and the National Treasury. It has an obligation to supervise, regulate and control the entire banking and financial system, in addition to implementing the approved national monetary policy.

CVM is responsible for overseeing the capital market, protecting investors by promulgating resolutions, promoting the disclosure of information to the market

and punishing fraudulent operations.

The CB and the CVM are subordinate to the CMN and, therefore, decisions regarding administrative proceedings of both entities may be subject to the National Financial System Appeals Board, a CMN body.

FOREIGN CAPITAL

Foreign investors (individuals or legal entities) can invest in Brazil in basically three ways: (i) investments through the financial or capital markets; (ii) direct investments, through the acquisition of equity interests in Brazilian companies; or (iii) loans to Brazilian individuals or companies.

Brazilian law considers foreign capital all capital or other assets brought to Brazil for use in economic activities.

Any foreign investment, whether in foreign currency or other assets, is subject to registration with the BC, which maintains strict control over the entry/exit of investments in the country. Any foreigners, individuals or legal entities who hold assets located in Brazil subject to public records, such as real estate, vehicles,

equity interests, bank accounts and investments in the capital market, must obtain registration with the Individual Taxpayer's Registry (CPF) or the Corporate Taxpayer Registry (CNPJ), as the case may be. Such registrations must be made prior to the investments and require the foreign investor to grant a power of attorney to a person resident in Brazil to represent him/her before the Brazilian public authorities and facilitate the summons of the foreign investor (in the person of his/her attorney, who is in Brazil) by the public agencies.

There are no restrictions on the repatriation of funds such as dividends, interest, or divestment in equity interests, nor limits on the value or minimum/maximum investment time/repatriation of funds.

Despite the favorable environment for foreign investments, Brazil has a number of limitations when it comes to certain strategic markets, such as health care, navigation and cabotage, journalism and broadcasting, mining, hydraulic energy, the national financial system and road freight transport. In addition, there are

also certain restrictions on the exercise of activities by foreigners in border crossings.

At the end of 2021, the new legal framework for foreign exchange (Law No. 14.286/21) was enacted, which regulates the circulation of capital in Brazil and will take effect from the end of 2022. Despite introducing some novelties, the greatest merit of the new rule is to revoke the various exchange rules that were spread among laws and decrees, and consolidate such rules in only one normative instrument, which provides, for example: (i) the possibility for the BC to increase the range of companies that may have accounts in foreign currency; (ii) permission for foreign currency purchase and sale operations below USD 500 to be carried out P2P, without the need for supervision of the BC; (iii) equivalence of the treatment of accounts in Brazilian Reais held by non-residents (the CC5s) with accounts held by residents in the country, reducing bureaucracy in the opening and movement process; and (iv) consolidation of exceptions to the mandatory use of national currency rule.

INDIRECT FOREIGN INVESTMENTS

In order to invest in the Brazilian financial and capital markets, foreign investors residing abroad need to be aware of the rules of the CMN, the BC and the CVM, bodies that, in addition to creating regulations regarding foreign investments in the country, also supervise their compliance.

According to these bodies, to be regularized as a non-resident foreign investor in Brazil, it is necessary to:

(i) in the case of investments in the capital markets, file a request with the CVM, which will be automatically approved, but will continue to be monitored, and may be suspended in case of verified and proven irregularity;

(ii) indicate a financial institution as its legal representative in Brazil, which will be responsible for providing the necessary information to the authorities of the Brazilian market and for receiving judicial or administrative notifications on behalf of the investor;

(iii) contract services of depository/custodian of assets through a custody

agreement duly presented by the investor to CVM; and

(iv) appoint a tax representative to declare and pay the taxes due in the country.

Subject to certain legal conditions, the foreign investor may be exempt from capital gains tax on transactions carried out on the Brazilian stock exchange.



INVESTMENT FUNDS

Investment funds in Brazil are regulated by the CVM, pursuant to Law No. 6.385/76, with powers to issue rules on funds, supervise market agents and decide disputes at the administrative level.

In the Brazilian legal system, the funds have a condominium nature (special nature) and do not have legal personality. That is, they are legally represented by an administrator duly accredited before the CVM (financial institution). Even so, investment funds have the capacity to act in judicial/administrative proceedings, segregated equity and accounting. The members of the funds have powers to participate in the members' meetings and decide on the structuring of the funds, subject to the terms and conditions established in the documents that govern them (notably their regulations).

The fund administrator is the entity responsible for the fund as regards all legal purposes, while the manager is the person who has the obligation to manage the fund's portfolio in accordance with the purpose and investment policy set out in the fund's regulation. The fund's service providers have fiduciary duties similar to the administrators of a corporation, such as duty of care, duty to inform, abstention from conflict of interest, adequacy in relation to the investor's profile and others', responding for non-compliance with laws, standards, regulations or in cases of intent or recklessness.

The CVM¹ contains specific regulation that deals with several types of investment funds, which can basically be divided as follows²:

¹ Please note that the market expects CVM to issue new fund regulations this year, replacing the ones above. However, we cannot anticipate when this should occur, nor the final content of the new regulations.

² There are types of investment funds in Brazil additional to the above. Given the limits of this material, we focus our attention on the most common market structures and those that are most used by foreign investors.

(i) retail funds, regulated by CVM Ruling No 555, such as: **(a)** equity investment funds (FIA), which basically invest more than 2/3 of their equity in shares or similar instruments; **(b)** multimarket funds (FIM), which, similarly to the US hedge funds, have discretionary powers to invest in a wide range of products, including stocks, bonds, commodities, derivatives, etc. (subject to the terms of the regulation); **(c)** fixed income investment funds (FIRF), which basically invest in public securities or private credit instruments, depending on the type of fund;

(ii) index funds or exchange-traded funds (ETFs), regulated by the CVM Ruling No 359, as a still shy industry (compared to the US), but growing in Brazil, comprising of funds whose shares are traded on a passive management stock exchange, basically replicating a market index (benchmark);

(iii) credit rights investment funds (FIDC), regulated by CVM Ruling No 356, basically acquiring receivables through the assignment of credit rights from originators to a given fund, as a securitization instrument;

(iv) real estate investment funds (FII), regulated by CVM Ruling No 478 and Law 8.668/93, as a structure for investing in real estate assets and similar instruments;

(v) equity investment funds (FIPs), vehicles of private equity regulated by CVM Ruling No 578, further explained below; and

(vi) investment funds in agro-industrial chains (FIAGRO), which contain a new and recent regulatory framework through Law No. 14.130/21, in order to invest in Brazilian agrobusiness

sectors (with due regard to the fact that FIAGROs may have the structure of FIDCs, FIIs or FIPs, as defined above).

Quotas of Equity Investment Funds (FIPs)

Private equity funds (FIPs) are investment instruments widely used by foreign investors. Pursuant to CVM Resolution No 30, FIPs are directed only to qualified investors, as defined by the CVM as one of the following persons: (i) individuals or legal entities that have financial investments in an amount greater than BRL 1 million and attest to this condition in writing; (ii) individuals holding any of the certifications that the CVM accepts for purposes of consideration as a qualified investor; (iii) professional managers of securities portfolios, securities analysts and consultants; or (iv) investment clubs, provided that their portfolio is managed by one or more shareholders who are qualified investors.

The CVM regulations usually require FIPs or private equity (PE) funds to exert significant influence on their investees, which may occur through different legal structures. They must invest at least 90% of their net equity in the following assets: shares, subscription bonds, debentures and other securities convertible or exchangeable into shares issued by companies, open or closed, as well as securities representing interests in limited liability companies.

Infrastructure Equity Investment Funds (FIP-IE) may invest up to 100% in non-convertible debentures and other FIPs. In addition, PE funds may invest up to 20% in assets outside Brazil, provided that such assets have an economic nature equivalent to those in which the fund is authorized to invest. The current

regulations do not establish maximum or minimum investment deadlines for PE funds.

In general terms, the income earned on investments in FIP, FIF, FIP and FIEE, when paid, credited, delivered or

remitted to a beneficiary resident or domiciled abroad, individual or collective, who perform financial operations in the country in accordance with the rules and conditions established by the CMN, are subject to the application of income tax at zero rate.

DIRECT FOREIGN INVESTMENTS

Foreign investors can operate in Brazil directly in two ways: **(a)** through direct investment in a Brazilian company; or **(b)** through subsidiaries, branches, representative offices, agencies or establishments in the country, which, due to the need for prior authorization from the Federal Executive Branch, becomes a highly complex alternative, little recommended and, therefore, little used.

All direct investments in Brazil, whether in cash or other assets, must be registered by the Brazilian company in a Central Bank self-declaration system called SISBACEN – RDE-IED/ROF within 30 days as of the entry of funds into Brazil.

MAIN CORPORATE TYPES

There are two most common types of companies in Brazil: corporations (“S.A.”), governed by Law No 6.404/76, and limited

liability companies (“Limitada”), governed by Law No 10.406/02.

The Limitadas are similar to the English limited liability companies, to other European limited liability companies, and to the North American limited liability companies, being the most common type of company in Brazil due to their relative simplicity and low operating cost. It is relevant to highlight the fact that they allow for the existence of a single partner, Brazilian or foreign.

S.A.s are comparable to the English public limited companies and the US corporations and are generally reserved for more robust corporate governance structures with an interest in capital market financing.

The main differences between the Limited Liability Companies and the S.A. are:

| MATTER | LIMITADA | S.A. |
|--|--|---|
| Partners | It may be incorporated by a single partner. | As a rule, it must hold two or more shareholders. |
| Corporate capital | Corporate capital is divided into quotas, and, as a rule, there is no minimum corporate capital required to be invested for its incorporation. | Corporate capital is divided into shares, which may have different classes, with their own rights and/or restrictions. As a rule, there is no minimum corporate capital to be invested for its incorporation. |
| Control | As a rule, control occurs with 75% of the corporate capital. In specific cases, decisions are required to be taken unanimously. | As a rule, control occurs with 50% plus one share of the corporate capital with voting rights. |
| Management | The management is composed of one or more officers, partners or not, who are individuals, domiciled in Brazil or abroad. It is possible to have other management bodies, in structures similar to the S.A. | The management is composed of one or more officers, shareholders or not, who are individuals domiciled in Brazil or abroad, elected by a Board of Directors (of optional existence in closely-held S.A.s), or by the Shareholders' Meeting. |
| Securities | Offering of securities in the capital market is not permitted. | The trading of securities in the capital market is allowed, after due registration with the CVM. |
| Dividends | Disproportionate distribution of profits among members is permitted. | Disproportionate distribution of profits among shareholders is not permitted. |
| Registration and Publication of Corporate Acts | All corporate acts involving the interest of third parties must be registered with a Board of Trade. However, there is no need to publish corporate acts, generally. | All corporate acts involving third party interest must be registered with a Board of Trade and, in certain cases, published in newspapers and websites. |
| Electronic Signatures | Electronic signatures of corporate documents, such as minutes of a meeting of members/shareholders, minutes of a shareholders' meeting, minutes of a board meeting, minutes of a meeting of the board of directors, etc., are allowed with full legal effectiveness. | |

DISREGARD OF LEGAL PERSONALITY

Although both Limitadas and S.A.s have a regime of limiting the liability of the partners to the corporate capital, judicial decisions may allow the involvement of the personal assets of managers and/or partners when the company does not have sufficient assets to fulfill its obligations due to fraud or abuse by its partners and/or managers to frustrate the enforceability of the company's debts, or when the company's assets are intertwined with the personal assets of its partners or administrators.

ALTERNATIVE FORMS OF INVESTMENT

Brazil offers other forms of direct investment to foreign investors, including:

(i) Joint Ventures: They can be formed in a contractual or corporate manner, so that independent companies can operate an investment jointly.

(ii) Special Partnership: Type of partnership registered in the accounting books of a partner (called ostensible partner), who will be responsible for representing the partnership before third parties, while the other partner contributes only with the resources necessary for the exploration of the business (participating partner), not being presented to third parties.

(iii) Consortia. Two or more companies, Brazilian or foreign, may associate for the specific purpose of conducting a particular enterprise according to rules established in a contract. The consortium is not considered a legal entity; therefore, the parties are only bound by the conditions of the contract but must

maintain their own accounting for tax purposes.

(iv) Loans. Through loans, there is the financing of activities performed by Brazilian companies, and subsequently, the loan can be returned to the investor with interest and monetary restatement or depending on the agreement between the parties, be converted into equity interest in the Brazilian company.

ULTIMATE BENEFICIAL OWNER

With the registration in the Corporate Taxpayer Registry (CNPJ), there is an obligation that, within 90 days, the foreign investor or the Brazilian company indicate its Ultimate Beneficial Owner, which is the individual who controls or influences, in a significant way, directly or indirectly, a certain entity. The obligation to inform the Ultimate Beneficial Owner of the foreign investor will be incumbent on its local representative with the Brazilian Federal Revenue Service.

VALIDATION OF DOCUMENTS IN BRAZIL

Any foreign documents, to produce effects in Brazil, must be notarized in the country of origin, apostilled or notarized by a Brazilian consulate/embassy and, when in Brazil, translated by a sworn translator, being subsequently registered with the Registry of Deeds and Documents.

MERGERS AND ACQUISITIONS

In Brazil, M&A transactions are structured very similarly to the rest of the world, and documents such as confidentiality agreements, letters of intent and memoranda of understanding (binding or non-binding), contracts for the purchase and sale of equity interests and partner agreements are commonly and widely used.

DUE DILIGENCE

Due diligence, as an audit procedure, usually financial, accounting and legal, has as its main objectives: a) to obtain the best possible understanding about the business to be acquired, reducing the asymmetry of information between the parties; b) to define and allow price adjustments, before or after the closing of the transaction; c) to evaluate the risks of the business, identifying potential contingencies; d) to reduce the exposure of the seller to complaints from the buyer; and e) to validate the information received from the seller.

From a legal perspective, the main topics to be analyzed, especially considering the impacts in Brazil, involve issues of corporate, labor, tax and environmental law. However, contractual, regulatory, real estate, intellectual property and compliance issues in general are also as relevant in Brazil as in any other jurisdiction.

ACQUISITION OF LIMITED LIABILITY COMPANIES

Acquisitions of limited liability companies are formalized through

amendments to articles of association, which must be registered with the relevant Registry of Commerce within 30 days of the transaction. Although amendments to the articles of association are public, the conditions of the transaction and other documents may be kept confidential.

In the same amendment to the articles of association that formalizes the purchase and sale, the buyer may make any changes it deems necessary, such as replacement of officers, change of corporate name, change of address, etc.

If the acquisition does not involve all the shares, it should be noted that the limited liability companies are controlled by shareholders holding 75% of the corporate capital, which is the quorum necessary to approve the most relevant resolutions.

ACQUISITION OF CORPORATIONS

Acquisitions of corporations are formalized in their own registration books, maintained by the companies themselves or by financial institutions contracted for bookkeeping, without the need for public records or communications to third parties, except in cases of specific legal requirements, especially for publicly traded companies.

If the acquisition does not involve all the shares, it should be noted that the corporations are controlled with 50% plus one share of the voting corporate capital, which is the quorum required to pass the most relevant resolutions.

PATNERS' AGREEMENT

The Brazilian legal system recognizes partner agreements (called Members' Agreements in limited liability companies and Shareholders' Agreements in corporations). In general, partner agreements generally provide for the purchase and sale of equity interests (between partners and/or third parties), preemptive rights for the acquisition of equity interests, exercise of voting rights, exercise of control power and non-compete obligation

When filed at the headquarters of the companies, these agreements must be respected even by the management, which will not compute votes or register transfers in disagreement with the partners' agreements.

It is common that the partners' agreements also provide for dispute resolution mechanisms, both direct, such as deadlock resolution clauses (deadlocks) and purchase or sale, and indirect, such as submission to the Judiciary or Arbitration Chambers.

ANTITRUST APPROVAL

In certain cases, provided for in Law No 12.529/11, M&A transactions (or other forms of businesses combinations) depend on the prior approval of the Administrative Council for Economic Defense – CADE, which is the authority responsible for antitrust regulation and supervision in Brazil.

Prior approval from CADE is required for operations: (i) that produce or may produce effects in Brazil; (ii) whose parties involved exceed certain revenue limits; and (iii) that result in concentration under antitrust legislation.

The assessment of the need to submit the transaction to CADE can be summarized as follows:

1. EFFECTS IN BRAZIL: The transaction takes effect in Brazil if: (i) it occurs in Brazil; or (ii) it occurs abroad, but with respect to a company that has or will have a direct presence (through a local subsidiary, distributors or sales representatives in Brazil) or indirect presence (through exports to Brazil).

2. REVENUE LIMITS: If the transaction will have effects in Brazil, it must be assessed whether: (i) at least one of the economic groups involved in the transaction recorded has a gross revenue equal to or greater than BRL 750 million in the fiscal year prior to the transaction; and (ii) at least one of the other economic groups involved in the transaction recorded a gross revenue equal to or greater than BRL 75 million in the fiscal year prior to the transaction.

3. CONCENTRATION: Once it has been defined that the transaction will produce effects in Brazil and that the parties reach the revenue thresholds, it should be evaluated whether there will be an act of concentration according to the criteria of the Brazilian antitrust legislation. In general terms, the concentration may occur: (i) through the combination of two or more previously independent companies; (ii) through the acquisition of control or equity interests, rights convertible into equity interests or assets of a company; or (iii) through associative agreements in general, such as consortia and joint ventures, with certain exceptions.

The previous analysis of CADE may occur through: (i) a summary procedure, applicable to transactions of less complexity that CADE deems to have a lower competitive impact, generally completed within 30 days of the filing; or (ii) an ordinary procedure, applicable to complex transactions with a greater competitive impact, which can be completed within 330 days of the filing.

TAX

The Brazilian tax system is different from other systems as its structure is provided for in the Federal Constitution, which provides for the tax jurisdiction of federal, state and municipal governments. All spheres are authorized to collect taxes upon the occurrence of different events within their respective areas of jurisdiction, subject to the applicable constitutional principles.

The tax structure is composed of the National Tax Code, federal, state and municipal ordinary and complementary laws and resolutions of the Federal Senate as well as regulations and administrative acts.

There are two methods to calculate the profit of companies for tax purposes:

Actual Profit: this method reflects the concept of billing based on revenue received and expenses accepted as deductible by law; or

Presumed Profit: the law considers a certain percentage of the company's gross revenue as its net revenue. For services, in general, the law considers 32% of monthly gross revenue as revenue.

An interesting observation is the possibility for companies to choose to be under the Simples Nacional regime. Such tax collection and inspection regime is divided between the Federal Government, States and municipalities, being applicable to Micro and Small Companies. However, it does not apply to companies that have a foreign partner.

OVERVIEW OF THE BRAZILIAN TAX SYSTEM: THE MOST RELEVANT TAXES

● INCOME TAX (IRPJ/CSLL)

Brazilian companies are subject to income tax (IRPJ) and Social Contribution on Net Income (CSLL). The IRPJ and CSLL are due at the rate of 34%. The tax can be calculated under the regimes of Actual Profit or Presumed Profit. For companies subject to Taxable Income, IRPJ and CSLL are taxed on taxable income adjusted in accordance with the legislation in force and calculated on an annual or quarterly basis. Under Taxable Income, tax credits may be offset without time limitation, but their offset is limited to 30% of the taxable income declared in subsequent periods.

● TAX ON GROSS REVENUES (PIS/COFINS)

The Social Integration Program and the Contribution for Social Security Financing (PIS/COFINS) are taxes levied on monthly revenues received by Brazilian companies and calculated according to a cumulative or non-cumulative regime. PIS/COFINS has a rate of 3.65% on gross revenue under the cumulative regime and 9.25% under the non-cumulative regime – with the permission of tax credits on some costs and expenses expressly determined by law.

Revenues on the export of goods and

services are exempt from PIS/COFINS. The entry of foreign exchange in Brazil is necessary as a requirement determined by law for qualification as a non-levy event. The capital gain on the sale of non-operating assets, i.e., non-current assets, is exempt under both cumulative and non-cumulative regimes.

In general, PIS/COFINS is also taxed on the importation of goods and services: (i) on the entry of foreign goods into national territory, in the case of importation of assets; and (ii) upon payment/sending of foreign currency to persons domiciled outside the country as consideration for services rendered.

● TAX ON CONSUMPTION AND SERVICES

Tax on Manufactured Products (IPI)

The IPI is taxed on manufactured products (national and imported) and collected by the federal authorities. It is taxed upon customs clearance, when of foreign origin, or through the production of the industrialized product by the industrial establishment. In this context, industrialization is characterized as any operation that modifies the nature, operation, finishing, presentation or purpose of the product or improves it for consumption. As a general rule, the IPI is not a cumulative tax, but only levied on the value added between one transaction and another.

State Goods and Services Tax (ICMS)

The ICMS is collected by the state tax authorities and taxed on: (i) the sale of goods; (ii) the provision of intercity and interstate transportation services and (iii) the provision of communication

services. As a rule, this is a non-cumulative tax based on the value of the transaction or the price indicated for the sale of goods and the provision of services. The average ICMS is 18%, but it may vary depending on the operation of goods and services or due to other specificities, in accordance with state regulations.

ICMS is also levied on import of goods from outside the country. It is similar to the VAT adopted by certain European countries.

Service Tax (ISS)

ISS is a municipal tax levied on services in general not subject to the ICMS. It is calculated on the value of the service charged by the service provider. According to the Federal Constitution and the Supplementary Law that regulates the ISS, the applicable rate may vary between 2% and 5%, depending on the municipality where the service provider is located and the service location.

ISS is also levied on services originating outside Brazil or on those originating outside Brazil and completed in the country. In this case, the service receiver in Brazil must withhold the tax for the benefit of the municipality where it is located. It is relevant whether the result of the service is ascertainable in Brazil or outside the country.

National Social Security Institute - INSS

The INSS is a social security tax levied on the payroll and borne by both employers and employees. The INSS taxed on employees, managers and self-employed workers is calculated on the gross salary, including certain benefits.

In this case, the tax base is limited to an amount determined by the government. The employer's INSS is taxed on the total amount paid to the employee, manager and service provider, including indirect benefits. The applicable rate depends on the company's activity and varies between 25% and 30%.

Since 2011, there has been an alternative system called Payroll Relief. The payroll relief allows the company to collect the INSS determined by a percentage of the company's gross revenue (from 1% to 4.5% depending on the sector). Among the sectors benefited by the measure are the hotel sector, information technology, industrial, construction, call centers, wholesale, transportation and other services related to this sector.

● OTHER TAXES

Tax on Financial Transactions (IOF)

Financial transactions related to the conversion of currencies, loans, securities and insurances are subject to the IOF.

Any foreign exchange transactions carried out in Brazil are subject to the IOF. The current rate is 0.38% for most transactions. There is no IOF in the entry and exit of funds related to investments made by non-residents in Brazil in the Brazilian financial and capital markets. There are other rates or exemptions that may be applicable to certain transactions.

Loan transactions between legal entities and individuals, as a general rule, are subject to IOF. Most transactions are taxed at a rate of 0.0041% per day, limited

to 365 days, which totals 1.5%, if the borrower is a legal entity. If the borrower is an individual, the applicable rate is 0.00082%. In both cases, an additional rate of 0.38% is generally applicable.

Tax on Cross-Border Transactions (Import Tax – II)

Import Tax is taxed on the import of goods and collected on customs clearance. It is calculated on the customs value at a specific rate, depending on the classification of the imported product and its origin. This tax is not recoverable, being considered an effective import cost, which does not generate tax credits.

Contributions for Intervention in the Economic Domain (CIDE)

CIDE is a tax levied at the rate of 10% on the amount paid, credited, delivered, employed or sent out of the country as royalties or technical services or related to technical or administrative assistance contracts.

Urban Property Tax (IPTU)

IPTU is a municipal tax levied annually on property owners in urban areas. The value refers to each property. Thus, if an individual owns more than one property, he/she must pay for all of them. The applicable tax rate varies according to the city and the type of property involved.

Tax on Transmission Causa Mortis and Donation (ITCMD)

The ITCMD is a state tax levied on a donation or transfer via inheritance. Each state determines the applicable rate, which may not exceed 8%, as established by the Federal Senate.

Real Estate Transfer Tax (ITBI)

ITBI is a municipal tax levied on the purchase, sale or assignment of property or rights related thereto. In general, this tax is calculated based on the market value of the property, at a rate determined by the city in which the property is located. Normally, the payment of share capital using real estate is immune to the application of ITBI.

● TAXATION OF NON-RESIDENTS IN BRAZIL

Income received from sources located in Brazil by non-residents is subject to exclusive or definitive taxation at the source, according to income characteristics. For example: the disposal of goods and rights is subject to a definitive taxation in the form of capital gain, with rates ranging from 15% to 22.5%; labor income, with or without employment relationship, paid, credited, delivered, employed or remitted to non-residents is subject to the levy of withholding tax at the rate of 25%. Amounts paid, credited, delivered, employed or remitted to non-residents as royalties of any nature and remuneration of technical services are subject to the levying of withholding tax at the rate of 15%, or if received by a resident in a country with favored taxation, at the rate of 25%.

Dividends

Dividends related to gains generated and paid by Brazilian companies to any partners (resident in Brazil or not) are not subject to Withholding Income Tax (IRRF). In Brazil, there is the option to pay interest on the capital of the partners as an alternative composition.

For tax purposes, the payment is based on the Long-Term Interest Rate (TJLP), which is determined by the BC and applied to certain sub-accounts of the equity account and subject to certain legal requirements.

The payment of such interest is deductible for IRPJ and CSLL purposes, which results in a net tax benefit for the company. The payment of such interest is currently subject to the IRRF at the rate of 15% to 25% (if the beneficiary is located in a fiscally favorable jurisdiction).

Interest on Loans

The payment, by a Brazilian legal entity/individual, of interest on loans to a non-resident in Brazil is subject to an IRRF at a rate of 15% to 25% (if the beneficiary is located at a fiscally favorable jurisdiction).

Royalties

Royalties are taxed at the source, upon payment, credit, remittance or the like to the holder of such right domiciled or residing outside the country. Royalties may be understood as a revenue derived from the use, utilization or exploitation of rights. The applicable IRRF rate is 15% to 25% (if the beneficiary is located at a tax-favored jurisdiction). In addition to the IRRF, the payment of royalties is subject to CIDE at the rate of 10%. This matter is under discussion in the Supreme Court.

Tax on Importation of Services

The importation of services is taxed at the time the amounts are paid, employed, contracted or delivered to residents or domiciled outside the country. The applicable IRRF rate is 15% to 25% (if the beneficiary is located at a

tax-favored jurisdiction). In addition to IRRF, other taxes are levied (ISSQN, PIS/COFINS, CIDE and IOF).

Capital Gains

Income tax for non-residents on capital gains is taxed at a rate of 15% to 22.5% depending on the amount of the gain. Non-residents of favorable tax jurisdictions are subject to a 25% tax rate.

Taxation Treaties

Double taxation treaties are instruments of International Public

Law whereby two States, based on mutual concessions, waive their tax claims. These treaties follow the model established by the OECD. Currently, Brazil has treaties to avoid double taxation and prevent tax fraud with: South Africa, Germany, Argentina, Austria, Belgium, Canada, Chile, China, South Korea, Denmark, the United Arab Emirates, Ecuador, Slovakia, Spain, the Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, the Netherlands, Peru, Portugal, the Czech Republic, Russia, Sweden, Switzerland, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

INTELLECTUAL PROPERTY

In Brazil, intellectual property rights can be divided into three groups:

- **Industrial property:** the protection of an intellectual creation focused on business activity, involving the creation, development and/or manufacture of products and services. It covers trademarks, patents, industrial designs and utility models.

- **Copyright and Related Rights:** the right that derives from an intellectual creation in the literary, artistic and scientific field, protecting the author in relation to the work he/she has created. It covers software, artistic works and their interpretations.

- **Sui generis rights:** those rights which, although belonging to the field of intellectual property, are not considered industrial property or copyright. It

covers protection of new plant varieties, integrated circuit topography, traditional knowledge and folkloric manifestations.

TRADEMARKS

The protection of trademarks in Brazil is established by the Industrial Property Law ("LPI") (Law No. 9.279/96), observing the international rules contained in TRIPS, the Paris Convention and Madrid Protocol. In Brazil, the registration of a trademark remains in force for **10 years**, renewable indefinitely for equal periods successively, upon payment of the respective fees.

To protect a trademark, its registration must be made: (i) at the National Institute of Intellectual Property ("INPI"), for protection within the national territory; or (ii) at the INPI, via the Madrid Protocol, for protection in any country that is a signatory to the Protocol; or (iii) at the

country's Trademark Registration Office, when it is not a signatory to the Madrid Protocol.

PATENTS AND UTILITY MODELS

In Brazil, the regulation of patents and utility models is also made by the INPI and the rules for their protection stipulated by the LPI. In Brazil, the term for protection of **invention patents is 20 years** and **for utility models it is 15 years**, both counted from the date of filing of the application with the INPI.

After this period, the patent will come into the public domain and may be exploited by third parties. To be considered new, the patent may not have been accessible to the public prior to the filing date of the patent application, regardless of whether it has been presented in written or oral form, in Brazil or abroad. In addition, the following items are not considered as inventions or utility models: (a) discoveries, scientific theories and mathematical methods; (b) purely abstract conceptions; (c) schemes, plans, principles or methods which are considered as commercial, accounting, financial, educational, advertising, lottery or inspection; (d) literary, architectural, artistic and scientific works or any aesthetic creation; (e) computer programs; (f) presentation of information; (g) game rules; (h) operative or surgical techniques and methods, as well as therapeutic or diagnostic methods, for application in the human or animal body; and (i) all or part of natural living beings and biological materials found in nature, or even isolated from it, including the genome or germplasm of any natural living being and natural biological processes.

To protect a patent, the application must be made: (i) directly to the INPI, for protection in the national territory; or (ii) at the registration office of the country

where the protection is intended. The protection ensures the right of the proprietor to prohibit third parties from manufacturing, using, offering for sale, importing or selling the invention without their consent in the territory of the patent, and the right to sell, allow the use or license for third parties to use the patent.

INDUSTRIAL DRAWINGS

Industrial designs are protected by the LPI and regulated by the INPI, based on the Industrial Designs Manual, established by Resolution No. 232/19. In Brazil, the registration of an industrial design remains in force for a period of **10 years** from the date of filing, extendable for 3 successive periods of 5 years each.

The LPI defines industrial design as the ornamental or aesthetic aspect of an object or set of characteristics that can be applied to a product, and this new aspect should be considered as original in relation to the altered design and that serves as a type of industrial manufacture. In summary, industrial design can be defined as the protection of the product design.

According to the IPL, the following are not recordable as industrial designs: (i) objects (or patterns) with a purely artistic character; (ii) what is contrary to morals and good customs or that offends the honor or image of people, or violates freedom of conscience, belief, religious worship or idea and feelings worthy of respect and veneration; (iii) what is common or vulgar; and (iv) what is essentially determined by technical or functional characteristics.

To protect an industrial design, the registration must be performed: (i) directly to the INPI, for protection in the national territory; or (ii) at the registration office of the country where the protection

is intended. The application may be published internationally for countries which are members of the Hague Convention, if the intended countries are signatories.

TRANSFER OF TECHNOLOGY AGREEMENT

After the granting of the request by the INPI, in addition to the guaranteed protection, the holder may dispose of its assets as it sees fit. For transactions involving industrial property assets to be made safely, technology transfer agreements must be entered into.

INPI annotates/registers contracts for: (i) license for patent exploitation and industrial design; (ii) license for trademark use; (iii) technology supply; (iv) technical and scientific assistance services; (v) franchise; and (vi) assignment of patent, industrial design and trademark.

In Brazil, technology transfer agreements entered into between the interested parties are limited by the effectiveness or validity of these rights and should therefore be analyzed on a case-by-case basis.

COPYRIGHT

In Brazil, the Copyright Law (Law No. 9.610/98) regulates the rights and obligations related to copyright and related rights, including software, subject to the provisions of the Berne Convention.

In Brazil, the term of copyright protection is **70 years**, from January 1st of the year following the death of the author or the year following publication of the author's work, in the case of audiovisual and photographic work. After this period, the work enters the public domain and can be freely reproduced – as long as the author is mentioned.

To protect an authorial work, as a rule, there is no formality to be carried out – it must simply have been created by the author, who, in turn, must be able to prove his/her authorship. However, if it is the author's will, his/her work can be registered at the National Library or in another institution of his/her preference. In Brazil, the federal body responsible for copyright is the Secretariat of Copyright and Intellectual Property – SDAPI, and the protection of musical works, specifically, is carried out by the Central Office of Collection and Distribution (ECAD).

SOFTWARE

The software (or computer program) is the joint written instructions in the programming language (source code) that commands a certain equipment to function in a certain manner towards a defined end. In Brazil, the Software Law (Law No. 9.609/98) regulates the protection of software in Brazil, subject to the Copyright Law, the Berne Convention and the TRIPS agreement. In Brazil, the term of protection for software is **50 years**, from January 1st of the year following its publication or creation.

As a rule, software is protected by copyright as a literary work and therefore does not require registration. Pursuant to article 4 of the Software Law, when a software is developed by a programmer within his/her activities as an employee/contracted party to a company, all its related rights belong to the employer/contractor. The exception to this rule only exists in the case of the computer program being created without having any relation with the employment agreement/service rendering agreement and without the use of any resources, information, materials, facilities, equipment or trade secrets. In this case, the rights of usage and exploitation belong to the programmer.

The INPI allows for the registration of the computer program in an electronic manner directly on the entity's website. This ensures higher legal security and facilitates the proof of authorship in the development of a software before the Judiciary. Its registration is therefore valid for the same protection term guaranteed

by the Software Law in all countries who are signatories of the Bern Convention. The protection is, therefore, international. However, the Software Law established the competence of its application and registration with the INPI, allowing the author to register and protect it before a federal body.



LABOR AND EMPLOYMENT

The basic regulation of labor in Brazil is carried out by the Federal Constitution and the Consolidation of Labor Laws (CLT). The labor legislation is complemented by other supporting laws, containing occupational health and safety standards, recommendations of the Ministry of Labor and Employment and social security standards, in addition to collective labor agreements and conventions that are signed by the Unions.

In the judicial sphere, labor issues are addressed by the Labor Court, as indicated in the chapter on the "Brazil Overview".

At the administrative level, the Ministry of Labor and Employment (MTE) is responsible for supervising working conditions and the Public Ministry of Labor (MPT) carries out the investigation of complaints made and may propose conduct adjustment terms to correct conduct considered illegal.

LABOR RELATIONS IN BRAZIL

The CLT defines who is employed, being the person who provides services in favor of someone or a company, under

their direction and for a consideration.

The employment contract may be oral or written, and it is recommended that it be formalized in writing, containing all the conditions and limitations under which the work will be performed, such as salary, contracted hours, place of service provision, confidentiality and non-competition clauses, benefits, responsibilities, etc.

The employment contract is usually established indefinitely. There are exceptions to this rule, such as the employment contract by experience, which has an initial term of 90 days, but which can be converted indefinitely upon permanent admission of the employee. There is also the fixed-term employment contract, which may have a maximum term of 2 years.

ADMISSION PROCESS OF EMPLOYEES IN BRAZIL

Before an employee is hired, they must undergo a medical examination, which will assess their health conditions and whether they are able to carry out the activities for which they have been hired.

The employer must make the appropriate entries in the employee's Employment Booklet (CPTS), which will include the name of the employer, the date of hiring, the position and the salary. The same information should be entered in the records of Brazilian agencies, such as e-social.

CHANGE IN COMPANY PROPERTY

Any changes in the corporate structure of the company will not affect the rights acquired by employees or modify the employment contracts signed. Thus, the purchaser of any company will assume all existing working conditions and will be responsible for all labor obligations that are claimed by these employees, even if related to periods prior to the acquisition of the business.

BRAZILIANS WORKING FOR FOREIGN COMPANIES

In general, Brazilian labor laws apply to work carried out in Brazil, even when the employee works for a foreign company or when the employee is foreign and works in Brazil, and in the latter case, foreigners may need a specific work visa to carry out their activities.

BRAZILIAN EMPLOYEES TRANSFERRED ABROAD

The work carried out by Brazilian employees transferred abroad is regulated by Law No. 7.064/82. The applicable rights will be those of the place where the work is being carried out, safeguarding the application of Brazilian labor protection legislation, when more favorable to the worker, in addition to the rights provided for in this specific legislation.

EMPLOYEE RIGHTS IN BRAZIL

In Brazil, the basic rights of Brazilian employees are provided in the Federal Constitution, in the CLT and in uncodified statutes, especially in the norms related to health and safety at work. In summary, any Brazilian employee has the following rights:

- Basic salary, which may not be less than the minimum wage established by law or by collective bargaining agreements;
- Receipt of the Christmas Bonus, the value of which is the same as a monthly remuneration, which can be paid in up to two installments (one in November and one in December);
- 30 days of paid vacation after 12 months of work;
- Receipt of vacation bonus, in the amount of 1/3 of the value of a monthly salary;
- A paid day off in the week, preferably on Sundays;
- Government Severance Indemnity Fund (FGTS), which is a monthly contribution of 8% (eight percent) on the employee's monthly salary;
- Transportation voucher, if the employee manifests to the company the need to use public transportation to travel to the company's establishment;
- Maternity leave of 120 days, which may be extended to 180 days, if the company chooses to be part of the Citizen Company program, which consists of providing tax benefits to companies that offer their employees the extension of maternity and paternity leave; and

- Paternity leave of 5 calendar days, which may be extended to 20 days, if the company is part of the Citizen Company program.

WORKING HOURS LIMIT

The employee's working hours are 8 hours per day from Monday to Friday and 4 hours on Saturdays, totaling 44 hours per week of work. It may be established, through agreement with the employee, the realization of more working hours during the week, so that there is no work on Saturdays, provided that the limit of 10 daily working hours is respected. Companies with more than 20 employees must maintain reliable control of their working hours and pay as overtime all hours worked exceeding 8 hours per day and 44 hours per week. Overtime is paid with an additional remuneration of at least 50% over the normal hourly remuneration, if worked during the week, and at least 100%, if worked on a paid weekly rest.

Employees who work outside the premises of the companies (such as sellers and those working from home) and employees who occupy positions of trust (such as managers and directors), are not entitled to receive overtime, if they are not subject to control of working hours.

Employees who work more than 6 hours a day are entitled to at least 1 hour of meal break and rest.

For employees who work at night (from 10 pm to 5 am), there is the need to pay an allowance for the hours worked in such a period. The percentage of the additional due is at least 20% over the value of the normal hour and there is also a reduction of the hour worked at night, with the night hour being 52:30 (e.g., an 8-hour shift at night is equivalent to 7 hours of real work).

TERMINATION OF EMPLOYMENT CONTRACT

The termination of the employment contract may occur due to four situations:

Resignation: The employee decides to terminate the contract, being entitled to the following severance pay: (i) salary balance; (ii) overdue and proportional vacation increased by 1/3; (iii) proportional Christmas Bonus. The employee will not be entitled to withdraw the FGTS amounts and receive unemployment benefit.

Mutual agreement: Employee and employer decide to terminate the contract, guaranteeing to the employee the following severance pay: (i) salary balance, (ii) prior notice period in half; (iii) overdue and proportional vacation increased by 1/3; (iv) proportional Christmas Bonus; (v) a 20% fine on the FGTS balance in the employee's linked account. In this type of termination, the employee may withdraw up to 80% of the amounts deposited as FGTS and will not be entitled to unemployment insurance.

Dismissal without cause: The employer decides to terminate the contract, guaranteeing the employee the following severance pay: (i) salary balance; (ii) proportional prior notice period (one month of salary plus three days per year of work in the company); (iii) overdue and proportional vacation increased by 1/3; (iv) proportional Christmas Bonus; (v) a 40% fine on the FGTS deposited during the entire contract, and the employee will be entitled to withdraw all the amounts deposited as FGTS and will be entitled to unemployment insurance.

Dismissal with cause: The employer decides to terminate the contract due to serious misconduct by the employee,

guaranteeing to the employee the following severance pay: (i) salary balance; and (ii) vacation due increased by 1/3. There is controversy in the jurisprudence regarding the right to receive proportional vacation with 1/3 and Christmas bonus.

UNIONS

All employees, even those who are not members, are represented by a workers' union, which is defined according to the predominant activity carried out by the company and are entitled to the rights established in a Collective Labor Agreement (CCT).

These instruments present rights to be incorporated into employment contracts and which have to be respected by companies. They usually define issues such as salary increases, benefits such as meal vouchers, daycare or educational allowances, working hours, the possibility of adopting a bank of hours, and additional stability for those already provided for by law (e.g., pre-retirement), among others.

LIMITATION PERIODS

The labor statute of limitation is 2 years from the end of the employment contract, reaching the installments related to the previous 5 years, or five (5) years during the term of the employment contract.

DEFINITION OF ECONOMIC GROUPS

Whenever one or more companies are under the direction, control or administration of another, or even when, though maintaining their respective autonomies, they are part of an economic group, they will be jointly and severally liable for the obligations arising from the employment relationship.

PROFIT AND/OR RESULT SHARING

Law 10.101/00 regulates and provides for the possibility of negotiation by companies with their employees through their unions or a special committee of employees elected for this purpose (including a union representative), of a profit-sharing plan.

DATA PROTECTION

Brazil has several laws and regulations that are related in one form or another to Data Protection and Privacy. However, until 2018, none of these laws addressed the issue in a specific way, neither providing a robust regulatory framework dedicated thereto. In 2018, Brazil approved the General Data Protection Law ("LGPD"), Law No. 13.709/18, which came into force in 2020.

NATIONAL DATA PROTECTION AUTHORITY

Created together with the LGPD, the National Data Protection Authority ("ANPD") started its activities at the end of 2020. Currently, the ANPD is beginning to regulate specific topics related to the interpretation of the LGPD and is already providing guidelines and directives, in

accordance with its regulatory agenda.

In addition, the ANPD has already begun investigating security incidents involving personal data, as well as violations of the LGPD, without prejudicing previously addressed complaints, and complaints and requests from data subjects regarding organizations.

WHAT ARE ORGANIZATIONS DOING ABOUT LGPD?

Considering the variety of structures, dimensions, resources and even realities, there are several paths adopted by organizations to work with the LGPD and ensure compliance with its terms and conditions.

Some companies have decided to follow the traditional and safer path, seeking to implement a Privacy and Data Protection Program considering, in the

implementation, the adequacy of their processes regarding the LGPD. Other companies, considering the challenges and difficulties that a program of this nature has, have chosen to evaluate processes of greater relevance and, strategically, adapt only specific and necessary points in relation to the mapped processes.

Regardless of their choices, some companies are being required to work with the LGPD because the ANPD has required the presentation of clarifications or evidence regarding issues involving compliance with the LGPD, such as compliance with data subjects' requirements related to their rights, compliance with the duty of transparency regarding the processing carried out or even the demonstration of an adequate legal basis for certain personal data processing activities.

COMPLIANCE AND ANTI-CORRUPTION

Since 1998, Law No. 9.613 has existed in Brazil – Fraud Prevention and Money Laundering Law (“PLD”) (Lei de Prevenção à Fraude e à Lavagem de Dinheiro) –, the main objective of which is the criminal liability of those responsible for fraudulent and money laundering practices and activities. After the legislation was enacted, other regulations were adopted in Brazil, addressing monitoring and reporting obligations related to fraud prevention and money laundering. The CB became responsible for the regulation and supervision of banking activities and the CVM for activities involving the capital market.

In 2013, Brazil enacted the Clean Company Law (Law No. 12.846/13 - Lei da Empresa Limpa), being the first law in the country to hold companies responsible for acts of corruption committed by their employees and/or representatives during corporate activities. This is an administrative law, not a criminal one. Such Law imposes objective liability on companies operating in Brazil for national or international corruption. All forms of facilitation and/or illicit negotiations are considered illegal, with no exceptions whatsoever. For purposes of the Clean Company Act, a company's compliance program will be reviewed at the time of

application of penalties/sanctions. One of the benefits, therefore, of having a compliance program implemented is the possibility of decreasing and/or mitigating applicable penalties.

MAIN BRAZILIAN ANTI-CORRUPTION AND ANTI-FRAUD AND ANTI-MONEY LAUNDERING LAWS

DECREE-LAW No. 2.848/40 – BRAZILIAN CRIMINAL CODE

Objective: criminal liability for all individuals who offer or promise an illicit advantage for a public agent to omit or not to perform an official act.

Penalties: 2 to 12 years of imprisonment and fine.

LAW No. 8.137/90 – LAW TO COMBAT CRIMES AGAINST THE TAX ORDER, ECONOMIC ORDER AND CONSUMER RELATIONS

Purpose: accountability of corruption activities practiced in the face of tax and fiscal inspection authorities, including municipal, state and federal authorities.

Penalties: from three to eight years of imprisonment and fine.

LAW No. 9.613/98 – ANTI MONEY LAUNDERING AND FRAUD PREVENTION LAW

Purpose: definition of money laundering as an act of hiding and/or concealing the nature, origin, location, disposition and/or ownership of assets, rights and/or financial values directly or indirectly linked to criminal practices. Whomsoever engages in activities and/or operations that have the purpose of

hiding the identity of the owner, the origin of the values and/or assets and/or including the destination of the goods and financial values, may be held responsible for the crime of money laundering. In addition, one of the main objectives of this legislation is to ensure the incentive for individuals and companies to contribute to the fulfillment of the mechanisms of prevention and repression of fraud and money laundering, imposing obligations to register and report suspicious activities to the competent authorities.

Penalties: From three to ten years of imprisonment and fine.

LAW No. 12.846/13 – CLEAN COMPANY LAW

Purpose: accountability of companies for acts of corruption committed by employees, service providers and/or representatives. This Law imposes objective liability for companies that practice acts of corruption in Brazil or abroad if they are carried out during their corporate activities.

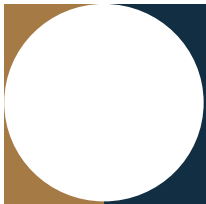
Fines and penalties: up to 20% of the company's revenue, including extraordinary publication of the imposition of penalties and damages caused by the act of corruption. In the legislation, there are also other consequences of a conviction for the practice of acts of corruption, such as (i) confiscation of assets, rights and values obtained because of illicit activities; (ii) partial suspension or interdiction of the company's business activities; (iii) prohibition of receiving incentives, subsidies, guarantees, public credits and/or public financing. The competent authority, during the determination of penalties, should consider the company's compliance program, including corporate practices and procedures, such as code of

ethics, internal policies, and operational procedures.

LAW No. 13.964/19 – WHISTLEBLOWER REGULATION

Purpose: Ensure the right to report crimes against the Government, administrative offenses and/or any actions or omissions to the detriment of the public interest by one of the persons involved, termed as whistleblower. The complaint must be made to the Federal,

State, District or Municipal Administration and to the entities responsible for investigations and accountability. The legislation promotes broad protection for the whistleblower to protect him/herself from retaliation in the criminal and civil fields of liability, except in cases where he/she is declaring false information. The whistleblower should be compensated for the information provided in cases where his/her whistleblowing results in the recovery of assets or resources by the authorities.



PUBLIC BIDS

Government entities at the national, state and municipal levels in Brazil contract products and services from Brazilian and foreign companies through an isonomic procedure and with broad participation of economic agents. In its contracting, the public sector must respect the content of Law No. 14.133/21 (“Bidding Law”) and observe the provisions of item XXI, of Article 37, of the Federal Constitution of Brazil of 1988 (“CF”), which establishes that, except in the cases specified in the legislation, works, services, purchases and disposals will be contracted through a public bidding process.

The bidding process is regulated at the national level through Law No. 8.666/93 (former bidding law, still in force) and the current Bidding Law – Law No 14.133/21.

PARTICIPATION OF FOREIGNERS

In 2021, the new Bidding Law (Law No 14.133/2021) came into force, which brought Brazil closer to the “Agreement

on Government Procurement (GPA)”, the World Trade Organization (WTO) Public Procurement Agreement. The bases of the so-called GPA translate into equal access and fair competition in the participation of foreigners in local bids and contracts, within the environment of the signatory countries. Thus, aspects related to the equivalence of documents submitted by foreign companies will have a more equitable treatment from the application of the new legislation.

BIDDING PROCEDURE

The bidding process can be understood as an administrative procedure used to select the most advantageous proposal for the public administration, through objective and impersonal criteria. The Bidding Law establishes five bidding modalities:

1. Reverse Auction: modality reserved for the acquisition of common goods and services, whose performance

and quality standards can be objectively defined by notice through the usual specifications in the market.

2. Competition: modality reserved for the contracting of special goods and services and of common and special engineering works and services.

3. Tender offer: modality reserved for the choice of technical, scientific or artistic works.

4. Auction: modality reserved for the sale of real estate property, worthless or obsolete goods or legally seized property for those who offer the highest bid.

5. Competitive dialogue: modality reserved for the contracting of works, services and purchases in which the Public Administration conducts dialogues with previously selected bidders, in accordance with objective criteria.

Exceptionally, the Public Administration may directly contract products and services without the need of a bid whenever the competition is unfeasible or not essential in the hypothesis set forth in the law. Article 74 of the new Bidding Law provides for a list of hypotheses that are examples of cases in which the competition is unfeasible. Article 75 provides for an exhaustive list of cases in which the Public Administration is exempt from pursuing a bid.

BIDDING STAGES

The common procedure to be observed in public tenders is divided into seven phases.

The **preparatory phase of the bidding process**, still internal in the Government, is characterized by planning and must be compatible with the

contracting plan, whenever prepared, and with the budgetary laws, and all technical, marketing and management considerations that may interfere with the contracting.

The **disclosure phase of the bidding notice** comprises the publication of all elements of the notice, including draft contract, terms of reference, preliminary draft, projects and other annexes on an official website on the same date of disclosure of the notice.

The **bid submission stage** is that in which bidders must submit their bids or proposals, which can take place in two ways: open mode, where bidders submit their bids through public and successive bids, increasing or decreasing, or closed mode, where the bids remain confidential until the date and time designated for their disclosure.

The **judgment phase** is that in which the Government carries out the objective judgment of the proposals, in accordance with the criteria previously established in the notice (lowest price, highest discount, best technique or artistic content, technique and price, highest bid (in the case of an auction), or highest economic return).

The **qualification phase** is one in which the set of information and documents necessary and sufficient to demonstrate the ability of the bidder to carry out the object of the bidding is verified, dividing into legal, technical, fiscal, social and labor qualification, as well as economic and financial qualification.

In **the appeal stage**, the interested parties are entitled to appeal against decisions made during the bidding procedure.

Finally, the approval phase is that in which, once the judgment and qualification phases are closed and the administrative appeals are exhausted, the bidding process will be forwarded to a higher authority, which, subject to all legal requirements, will award the object and approve the bidding.

BUDGET OVERSIGHT BOARD

The Budget Oversight Boards have a primordial role of performing the accounting, financial, budgetary, operational and asset supervision of the public bodies and entities. It is the institution in charge of supervising the good application of public resources by the administrators. Besides caring for the legal, accounting and budgetary issues involving the public administration (through compliance due diligences), it must also take into account the quality of the public spending through operation due diligences.

In the federal sphere, the control of the public accounts is performed by the Federal Budget Oversight Board, and in the State and municipal spheres the supervision is performed, as a rule, by the relevant State Budget Oversight Boards.

NATIONAL PUBLIC PROCUREMENT PORTAL (PNPC)

From the edition of the Bidding Law, the so-called National Public Procurement Portal (“PNPC”) was established, an official website for the centralized and mandatory disclosure of acts required in bidding processes and administrative contracts in Brazil. Through the website, it is possible to consult the Annual Contracting Plans of the Bodies and Entities of the Government as well as the call instruments and acts authorizing the contracts, price registration minutes and public contracts.

UTILITY SERVICES GRANT

The provision of public services in Brazil is carried out by the Government, directly by the State itself or by individuals under the regime of authorization, concession, or permission. The concession of public services must comply with the provisions of law with the general regime of public concessions established by Law No. 8.987/95.

PUBLIC SERVICE CONCESSION

Public service concession deals with the delegation of the execution of a service under the responsibility of the Public Power to the individual, formalized

through an administrative contract, in which the investments made by the concessionaire and the provision of services are remunerated through a tariff charged to users.

The concessions are made in the service sectors where there is a need for investment in infrastructure, as in the case of airports, railways, highways, ports, electricity, basic sanitation, telephony, etc.

Given the complexity of the issues involving public service concessions, these can only be delegated to legal entities by proving the technical and economic-

financial capacity of the service provider, to be verified during the bidding process.

In addition, although provided by a private entity, it is subject to the regulation and supervision of the public entity that delegated the service, also called the Granting Authority. The tariffs charged to users are regulated and the supervision of the Contract is also carried out by the regulatory authorities.

There are also public-private management models for health and education services, public transport companies, culture, tourism, sports, leisure, science, and technology, among others.

PUBLIC-PRIVATE PARTNERSHIPS - PPPs

In addition to the possibility of public services being provided entirely by private individuals, by concession, permission or authorization, it is authorized by Brazilian law to establish partnerships between the public and private sectors through the so-called Public-Private Partnerships – PPPs.

Law 11.079/04 provides the general rules for contracting public-private partnerships within the scope of public administration and divides them into two modalities: a) sponsored concession; and b) administrative concession.

(a) A **sponsored concession** is the concession of services or public works in which the individual is remunerated, in addition to the tariff charged to users, through pecuniary consideration of the public partner. In these cases, the tariffs charged to users are not sufficient to compensate for the investments made by the private partner, so that the Government, in addition to the tariffs

charged to users, complements the remuneration of the private partner through regular contributions of budgetary resources.

(b) The **administrative concession**, in turn, is the service contract of which the Government is a direct or indirect user of the services. In this modality, the service is remunerated by the Government, even if it is used by third-party users, and the private partner is not remunerated by tariff.

In both modalities, it is necessary to carry out a bidding process in the competition modality. This is a procedure with the objective of selecting the most advantageous proposal for the public administration through objective and impersonal criteria as well as verifying the technical, legal, and economic-financial capacity of the companies participating in the bidding process.

REGULATORY AGENCIES

Regulatory agencies are entities belonging to the Public Administration. They are created by law, and have a financial, operational, and administrative autonomy. They regulate and control the activities which compose the object of the concession, permission, or authorization of public service. Among the main roles of the regulatory agencies, which vary according to their creation law, there are: the drafting of rules that discipline the regulated sector, supervision, defense of consumer rights, management of delegated public service concession contracts and encouragement for competition, to minimize the effects of natural monopolies and development of mechanisms that support the competition.

INVESTMENT PARTNERSHIPS PROGRAM – PPI

The Investment Partnership Program (“PPI”) was created by Law No. 13.334/16 with the purpose of expanding and strengthening the interaction between the State and the private sector through the structuring and development of projects that culminate in the conclusion of public-private partnership contracts, concessions, and other privatization measures.

The objectives of the PPI are: (i) to expand investment and employment opportunities and stimulate technological and industrial development, in harmony

with the social and economic development goals of Brazil; (ii) to ensure the expansion of public infrastructure, with appropriate tariffs for users; (iii) to promote broad and fair competition in the execution of partnerships and in the provision of services; and (iv) to ensure the stability and legal certainty of contracts, with the guarantee of minimum intervention in business and investments.

Projects qualified in the Investment Partnerships Program are treated as a national priority and all bodies and entities involved start to act so that the processes and acts necessary for the structuring, release and execution of the project occur efficiently and economically.



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