DOING BUSINESS IN BRAZIL

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ADV.

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PRESENTATION AND Q&A

As Legal Partner of **South Summit Brazil 2024**, 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 any egal 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 exhaust the current political and economic situation and trends in Brazil. Nonetheless, we hope it will be useful to provide 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 investments in Brazil, but for those interested in a quick read, we have prepared a Q&A based on the main questions we normally receive from foreign clients that should help:

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

   Foreign investors (individuals or legal entities) can invest in Brazil mainly in 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, of very low use. In practice, it is common to operate through subsidiaries, *i.e.*, new companies created with their own legal identity, 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 to the US SEC, and have an administrator (*administrador*), who is legally responsible for the fund, and a manager (*gestor*), 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) etc.

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 smaller and simpler structures (such as holdings acting as subsidiaries, usually in the form of a Limitada), 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 of them?

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 incorporated by a single partner and officer, irrespective of the nationality of the partner. 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 the actual profit; and (iii) by the *Simples Nacional*, which concentrates several taxes, but which is prohibited to 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), and is 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 rights are: basic salary, 13th salary (Christmas Bonus), paid vacation, transportation allowance and Unemployment Compensation Fund (*Fundo de Garantia por Tempo de Serviço* – 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 will apply to work carried out in Brazil, even when the employee works for a foreign company. It also applies 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 will apply.

11. Can a company have a single partner?

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

12. Is there a limitation of investor liability?

In the main types of companies, Limitada and S.A., the liability of its partners 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 partners' assets.

13. Can administrators in Brazil be held responsible for acts of

management?

On a civil sphere basis, the managers of companies will only be held liable 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 (willful misconduct) or by recklessness, malpractice or gross negligence of the administrator.

14. Do foreign investors need representatives in Brazil?

Yes. Foreign investors must appoint a representative who resides in 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 quotaholder 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 foreigner and reside or not in Brazil. However, the Brazilian legislation requires that the foreign administrator non-resident in Brazil must appoint an attorney-in-fact resident in Brazil for purposes of receiving summons and other notifications on behalf of him/her.

16. How is the structure of the administration in Brazilian companies?

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 partners. However, in publicly-held companies, it is mandatory and, in other companies, 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 corporate capital is directly related to the initial value of the investment for the exploitation of the entity's corporate purpose and will be chosen by the partner or partners. It is recommended that it is 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, the 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 to the Brazilian Federal Revenue 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, or the individual on whose behalf a transaction is concluded.

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 partners/shareholders agreements in Brazil?

Yes. 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, 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, quite influenced by the US market. In addition to the contracts negotiated between the parties, acquisitions of Limitadas are formalized through amendments to articles of organization, which must be registered with the

Registry of Commerce; while acquisitions of S.A.s 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 combinations) depend on prior approval from the Brazilian antitrust authority, the Administrative Council for Economic Defense (*Conselho Administrativo de Defesa Econômica* - CADE). Prior approval from CADE is required for transactions: (i) that produce or may produce effects in Brazil; (ii) in which at least one of the involved economic groups has assessed 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 a gross income equal or superior to R$ 75 million in the previous fiscal year; and/or (iii) that result 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 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. How are data protection rules in Brazil?

The country has data and privacy protection standards. There is a General Data Protection Act in effectiveness since 2020, whose content was quite 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 Act 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 (*Instituto Brasileiro de Governança Corporativa* - IBGC), the country has the Prevention of Fraud and Money Laundering Act (*Lei de Prevenção à Fraude e à Lavagem de Dinheiro*) (criminal law) and the Clean Company Act (*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 the international level, has sought to include clear policies and rules related to the ESG movement. To mention a few examples: (i) CVM Resolution 59, which sets forth that companies listed with the B3 S.A. must disclose information on ESG indicators in the reference form; (ii) CVM Resolution 175, which sets forth the adoption of an attentive use of the term "green" in the classification of investment funds, resulting in more transparency to the market; (iii) the Social, Environmental and Climate Risks and Opportunities Report of the Central Bank of Brazil; and (iv) the ASG II Guide published by ANBIMA.

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

Law No 14,478/22, which regulates transactions with crypto assets in Brazil, was issued in December 21, 2022 and became effective one hundred and eighty (180) days after its enactment on June 19, 2023. The Central Bank of Brazil is responsible for the regulation of the crypto asset market, and the CVM is the one entitled to regulate the offering of crypto assets as securities. However, there is still no specific rules in relation to the criteria for the attainment of authorizations and minimum standards.. On the other hand, the Federal Revenue of Brazil (Normative Ruling No 1,888/19) requires that exchanges and people who transact crypto assets 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, valid as long as accepted between the contracting parties, are allowed. The Brazilian courts are discussing the effectiveness of different signature modes, and the safest route would be to use the platforms that are duly certified by the ICP-Brasil.

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 if the issue involves the 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 main choice is arbitration, due to benefits such as speed and confidentiality.

For more information, please visit **cmtadv.com.br**.

OVERVIEW

The Federative Republic of Brazil is the fifth largest country in terms of territory and the seventh most populous in the world, with more than 215 million inhabitants, adopting 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 is in the final stages for membership with 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 2024**, is close to Uruguay and Argentina, and is a region famous for the German and Italian colonization.

Brazil is an important agribusiness power, being a leader in chicken exports and having the second largest cattle herd 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 a 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 the e-commerce and logtechs was accelerated by the COVID-19 pandemic.

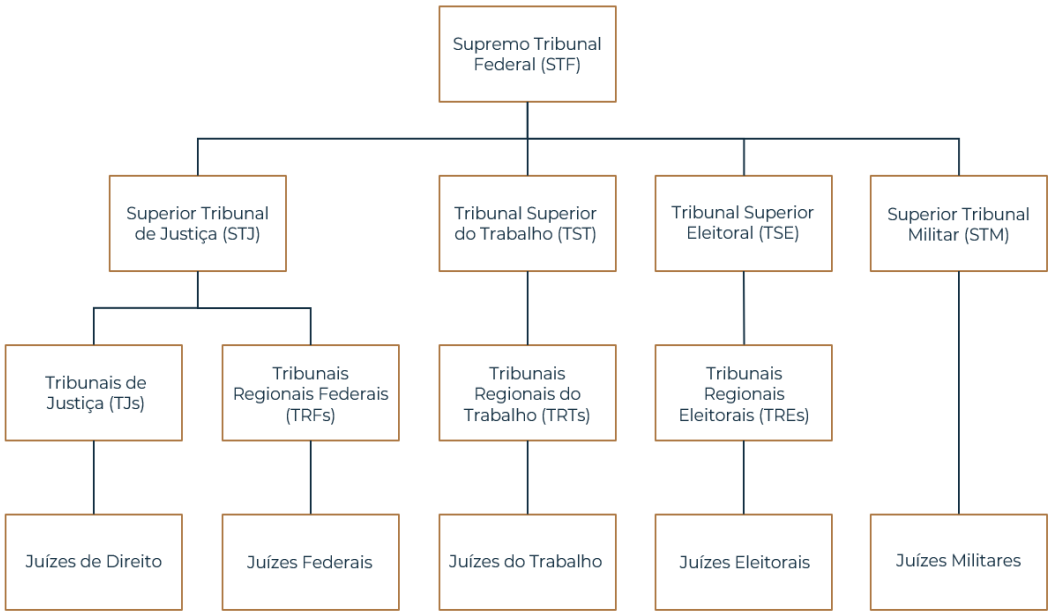
Brazil has provided a positive impression in the last year, significantly boosting the economic growth expectations for 2023. The GDP projection for the year was revised to an increase of 2.9%, highlighting the positive impact of the performance in the second quarter.

THE BRAZILIAN LEGAL SYSTEM

Brazil adopts 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 (*Senado Federal*) and the House of Representatives (*Câmara dos Deputados*), 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 the 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 to the jurisdictional functioning of the State, the Department of Justice, which role is to defend the legal order, the democratic regime and the social and individual inalienable rights. It is a permanent and independent institution with the goal to, among others, (i) move, privately, public criminal actions, (ii) care for the actual 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 the public and social property, the environment and other natural and collective rights, and (iv) legally defend the

rights and interests of the indigenous people.

Brazil adopts 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 certain decisions rendered by higher courts in specific situations become binding as a law.

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 transactions and providing subsidies to certain economic sectors.

The BC is the main enforcer of the CMN rules, having as its main responsibilities the issuance of currency, control of the foreign exchange markets, carrying out of 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 markets, protecting investors by enacting resolutions, promoting the disclosure of information to the market and punishing fraudulent transactions.

The BC and the CVM are subordinated 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 basically in 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 any 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 markets, must be registered with the Individual Taxpayer's Registry (CPF) or the Corporate Taxpayer Registry (CNPJ), as applicable. 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 certain limitations when it comes to certain strategic markets, such as health care, navigation and cabotage, journalism and broadcasting, mining, hydraulic energy, national financial system, 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 became effective as from the end of 2022. Despite bringing 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 regulated by the Central Bank and not by the legislative power anymore, which brings more speed to the regulatory procedures of the exchange market. It 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 receiving judicial or administrative notifications on behalf of the investor;

(iii) contract services of depositary/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 exchanges.

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 one 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 to the investor's profile and others, responding for non-compliance with laws, standards, regulations or in case of guilt or willful misconduct.

The CVM has edited and enacted, on December 23, 2022, the Resolution 175/2022 ("CVM Resolution 175"), which modifies the regulatory structure of investment funds. This regulation is structured in a general part, addressing central structural issues that apply to all investment funds, complemented by normative annexes that specifically address each type of fund, whose distinction relates mainly to the types of investments made. The annexes related to Financial Investment Funds (*Fundos de Investimento Financeiro* - FIFs), Credit Rights Investment Funds (*Fundos de Investimento em Direitos Creditórios* - FIDCs), Real Estate Investment Funds (*Fundos de Investimento Imobiliário* - FIIs), Equity Investment Funds (*Fundos de Investimento em Participações* - FIPs), Exchange Traded Funds (*Fundos de Índice* – ETFs), FGTS Equity Mutual Funds (*Fundos Mútuos de Participação* – FGTS), Financing of the National Cinematographic Industry Investment Funds (*Fundos de Financiamento da Indústria Cinematográfica Nacional* – FUNCINEs), Incentivized Securities Mutual Funds (*Fundo Mútuo de Ações Incentivadas*), Culture and Arts Investment Funds (*Fundos de Investimento Cultural e Artístico* – FICARTs), Social Security Funds (*Fundos Previdenciários*) and Credit Rights Investment

Funds incorporated for purposes of the Implementation of Programs envisaging Social Interest Projects (*Fundos de Investimento em direitos creditórios constituídos no âmbito do Programa de Incentivo à Implementação de Projetos de Interesse Social* – PIPs) have been made available. The new regulation's effectiveness was postponed pursuant to CVM Resolution 181/2023, and became effective as of October 2, 2023 for newly incorporated funds. For Investment Funds that are already operational on the new effectiveness date of CVM Resolution 175, the deadline for compliance with its provisions will be December 31, 2024, except for already incorporated FIDCs, which will become subject to the new rules as of November 29th of this year.

The objective of this new structure is to provide adaptability to the Brazilian regulatory environment, as it facilitates its understanding and contributes to the reduction of regulatory compliance costs (gatekeeping).

Regarding the general part, the main changes are related to the possibility for the investment funds' regulations to provide for the creation of different classes of quotas with distinct rights and obligations (e.g., different amortization and redemption terms, management and administration fees, etc.). It may also provide for the patrimonial segregation for each class of quotas. Certain requirements must be observed, such as belonging to the same fund category. For instance, it will not be possible to have classes of quotas for real estate and financial investments within the same fund.

An element that attracts a lot of attention and aims to provide greater guarantee to investors is the possibility of asset segregation, which enables greater predictability regarding risk appetite. This protection results from the limitation of liability to the respective affected assets, meaning that each asset will only be responsible for obligations related to that class of quotas to which it pertains. This rule aims to bring the Brazilian reality closer to what has already been practiced in other markets. The possibility of creating segregated assets in the same fund enhances new opportunities for product structuring and cost reduction.

In the specific annexes, as per the ones already provided since its enactment, CVM Resolution 175 sets forth the express possibility for FIFs to invest in carbon credits and crypto assets, provided that certain requirements are observed such as registration and authorized trading in Brazil. Furthermore, as long as certain requirements are met, FIFs aimed at the general public will be able to invest up to the entire amount of their assets in foreign assets.

Regarding the FIDCs, it is worth to highlight that they became accessible to the common investor. Previously, it was a type of investment only available to

qualified/professional investors. This became possible because there were modifications in the liability rules applicable to fund managers for the structuring of the fund, as well as the obligation to verify the backing of the credit rights and requirements for the registration of the credit rights.

Last year, CVM enacted the CVM Resolution 184 to include annexes to the CVM Resolution 175, mainly the ones regarding the FIIs and FIPs.

Regarding the FIIs, the rules include the flexibilization of the administrator and the manager's liabilities as it allows for the investment funds' regulations to define the autonomy of the service renderer in the performance of the investment policy and the need to observe the qualified quorum for the dismissal of the administrator, which also became applicable to the manager's substitution. Furthermore, the FIIs may restrict the voting rights of qualified investors by limiting the number of votes per quotaholder to percentages lower than 10% of the total issued quotas, as well as set forth different voting rights limits among quotaholders.

In relation to the FIPs, the annex includes changes in the investment portfolio's composition by allowing for structures such as convertible loans. The annex expands the ordinary limit for investments in assets abroad to 33%. There is also a flexibilization as to limits and deadlines with the permission for the investment fund's regulations to freely set forth deadlines, limits and amounts for certain investments. In relation to the Quotaholders' Meeting, there was a significant reduction of mandatory matters, which signifies a flexibilization of the FIPs' governance.

The content of the other recently enacted annexes regarding the other types of investment funds reflect, in general, the set forth in the rules currently in effectiveness for the respective category of investment funds.

The only annex still to be enacted refers to the Agroindustry Chain Investment Funds (*Fundos de Investimento em Cadeias Agroindustriais* – FIAGROs), which has been subject to public consultation and is currently under analysis by the CVM. For such investment funds, the current rules remain in effectiveness and follow the regulatory framework set forth in Law No 14.130/21 and the CVM Resolution 39 for investments in the agrobusiness in Brazil. The experimental legal framework was supposed to apply a FIDC, FII or FIP structure to the FIAGRO, as described above. The currently proposal, if approved, removes such restriction and allows for the incorporation of a FIAGRO, whose investment policy may intertwine investments in several assets' categories, which would result in a "multimarket" FIAGRO.

(i)

Quotas of Equity Investment Funds (FIPs)

FIPs are investment instruments widely used by foreign investors. They are currently regulated by Annex IV of CVM Resolution No 175, which provides that FIPs are directed only to qualified investors, as defined by the CVM as one of the following persons: (i) individuals or legal entities considered as qualified investors, i.e., who 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) individuals or legal entities considered as professional investors, i.e., who have financial investments in an amount greater than BRL 10 million and attest to this condition in writing; or (iv) investment clubs, provided that their portfolio is managed by one or more shareholders who are qualified investors.

The CVM regulation usually requires 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: (i) shares, subscription bonds, debentures, notes and other securities convertible or exchangeable into shares issued by companies, public or private, (ii) contracts or securities representing credits or interest in limited liability companies, (iii) quotas of other FIPs, and (iv) quotas of Securities' Funds (*Fundo de Ações*).

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, foreign investors who invest in Brazilian investments funds are subject to a withholding income tax with a standard rate of 15% on the income at the moment of its distribution, amortization or redemption of quotas. In the specific case of FIAs, such tax rate is reduced to 10%. Differently from local investors, foreign investors are not subject to a periodic semi-annually taxation. Furthermore, investors located in jurisdictions with privileged tax regimes are not eligible to be subject to such reduced tax rates, and are excluded from such tax benefits.

Law No 14,754 of 2023 defines certain exceptions to the general tax rules for specific categories of investment funds and particular situations. Such

exceptions include the FIIs, as well as investment in FIPs of persons non-residents in Brazil.

DIRECT FOREIGN INVESTMENTS

Foreign investors can operate in Brazil directly in two ways: (a) through direct investment in a Brazilian company; (b) by means of reinvestment of accrued profits; or (c) 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, of very low use.

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 private limited companies, to other European limited liability companies, and to the US limited liability companies, being the most common type of company in Brazil, for its relative simplicity and low operating cost. It is relevant to highlight the fact that it allows 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 Limitadas and the S.A.s 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, which may be of different classes with their own rights and/or restrictions. 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.

MATTER	LIMITADA	S.A.
Control	As a rule, control occurs with 50% plus one quota of the corporate capital. In specific cases, decisions are required to be taken by 2/3 of the corporate capital.	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	

PIERCING OF THE CORPORATE VEIL

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 ninety 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, or the individual on whose behalf a transaction is concluded. 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, and 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

The due diligence, as an audit procedure, usually financial, accounting and legal, has as main objectives: a) attainment of the best possible understanding about the business to be acquired, reducing the asymmetry of information between the parties; b) definition and enabling of price adjustments, before or after the closing of the transaction; c) evaluation of the risks of the business, identifying potential contingencies; d) reduction of the exposure of the seller to complaints from the buyer; and e) validation of 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, antitrust, intellectual property and compliance issues in general are also as relevant in Brazil as in any other jurisdiction.

ACQUISITION OF LIMITADAS

Acquisitions of Limitadas are formalized through amendments to articles of association, which must be registered with the relevant Registry of Commerce within thirty days as 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 quotas, it should be noted that the Limitadas are controlled by quotaholders holding more than 50% 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.

PARTNERS' AGREEMENT

The Brazilian legal system recognizes partners' agreements (called Quotaholders' Agreements in limited liability companies and Shareholders' Agreements in corporations). In general, partners' agreements 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 account for 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 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 transactions: (i) that produce or may produce effects in Brazil, even if they are closed abroad; (ii) whose parties

involved and their relevant economic groups 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) in the country.

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 notification of the transaction to CADE; 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 notification of the transaction to CADE.

3. CONCENTRATION ACT: Once it is 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 a concentration act according to the criteria of the Brazilian antitrust legislation. In general terms, the concentration act 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 as of the filing; or (ii) an ordinary procedure, applicable to complex transactions with a greater competitive impact, which can be completed within 330 days as of the filing.

TAX

The Brazilian tax system stands out for its uniqueness, especially because its structure is provided for in the Federal Constitution. This structure not only sets forth, but also assigns specific competences to the federative entities – Union, States, Federal District and Municipalities – allowing them to set and collect taxes based on different taxable events within their respective areas of jurisdiction. This taxing capacity is conditioned to the respect for the constitutional principles that guide the tax system The composition of this structure is complex, encompassing a series of rules ranging from the National Tax Code up to, federal, state and municipal ordinary and complementary laws. This structure is complemented by resolutions of the Federal Senate, as well as regulations and administrative acts that detail the application of tax laws. This set of regulations establishes the rules of the tax system, defines the obligations of taxpayers and the scope of the tax authority of the different federative entities.

Therefore, the national tax structure reflects a complex chain of competences and regulations that govern how taxes are set forth, collected, and managed, always subject to the principles established by the Federal Constitution. This system seeks to balance the need for revenue by governments at various levels, within a legal framework, and the proper distribution of tax revenues.

Under this context, by the end of 2023, the enactment of Constitutional Amendment No. 132 marked the beginning of a long-awaited tax reform in Brazil. This reform aimed primarily to simplify the complex national tax system, especially regarding consumption taxation. With this intention, the referred amendment proposed the unification of several taxes levied on the final consumer into a consolidated system. For this purpose, a value-added tax model was introduced, structured into two main components: the Contribution on Goods and Services, under federal competence, intended to replace the PIS/COFINS taxes (Social Integration Program and the Contribution for Social Security Financing); and the Goods and Services Tax, of subnational character, designed to absorb and replace the state-level ICMS (State Goods and Services Tax), municipal ISS (Service Tax), and federal IPI (Tax on Manufactured Products).

The tax reform is marked by a long-term transition, with the expectation that the new tax system will be fully functional by 2033. During this time, taxpayers will have to simultaneously navigate between two tax systems - the current one and the newly introduced one.

With that being said, we highlighted the main elements of the current tax

system and introduced the specific aspects of the tax reform.

1. CURRENT TAX SYSTEM

The calculation of the companies' profits for tax purposes is performed through two main methods: the Actual Profit and Presumed Profit. These regimes are fundamental to determine the tax base of the income tax and the Social Contribution on Net Income, which directly affect the tax burden and fiscal management of companies.

Actual Profit: this method reflects the concept of profit based on the actual revenue 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 most services, for instance, the law considers 32% of monthly gross revenue as the company's net income.

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

OVERVIEW OF THE BRAZILIAN TAX SYSTEM: A FEW TAXES

a) INCOME TAXES (IRPJ/CSLL)

Brazilian companies are subject to pay two main taxes on their profit: the income tax (IRPJ) and Social Contribution on Net Income (CSSL). The IRPJ and CSLL are due at the rate of 34%. The tax can be calculated under the Actual Profit or Presumed Profit regimes.

For companies subject to the Actual Profit, IRPJ and CSLL are levied directly on the company's net profit, adjusted in accordance with the legislation in effectiveness. This calculation can be performed on an annual or quarterly basis. Under the Actual Profit, tax credits may be offset without time limitation, but their offsetting is limited to 30% of the adjusted company's net profit declared in subsequent periods.

Under the Presumed Profit regime, an estimated calculation base is established for the incidence of income tax and the Social Contribution on Net Income based on the companies' revenues. Commonly, this tax base is set at 32% of revenues, over which combined rates of 34% are applied. This assumed margin

may vary according to the sector and segment of the company's operation, reflecting variations in how the presumed profit is calculated.

TAXES ON CONSUMPTION (IMPACTED BY TAX REFORM)

a) (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. These contributions are calculated according to two regimes: cumulative or non-cumulative. Under the cumulative regime, a total rate of 3.65% is applied on gross revenue. On the other hand, the non-cumulative regime has a rate of 9.25%, 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 the PIS/COFINS. To qualify for the non-incidence of tax, proof of entry of foreign exchange in Brazil is required, as established by legislation. The capital gain on the sale of non-operating assets, *i.e.*, non-current assets, is exempt from PIS/COFINS under both cumulative and non-cumulative regimes.

Additionally, the PIS/COFINS is also levied on the importation of goods and services, including: (i) upon 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 or entities domiciled outside the country as consideration for services rendered.

b) Tax on Manufactured Products (IPI)

The IPI is levied on manufactured products (national and imported) and collected by the federal authorities. It is levied 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, and is only levied on the value added between one transaction and another.

c) State Goods and Services Tax (ICMS)

The ICMS is collected by the state tax authorities and levied on three main activities: (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. For transactions conducted within the limits of a single state, the average ICMS rate is 18%, but it may vary depending on the nature of the operation of goods and services or due to other specificities according to state regulations. For transactions crossing state borders, the applicable average rates are 12% or 7%, depending on the locations of the originating and destination states.

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

Currently, many states in Brazil use tax benefits related to ICMS as a strategy to attract economic investments to their regions, aiming to improve socioeconomic indicators. These benefits include exemptions, reductions in the tax base or rates, and the granting of presumed ICMS credits. However, with the implementation of the tax reform, a significant reduction in these benefits is expected. This occurs because the taxation of the Tax on Goods and Services and the Contribution on Goods and Services will be based on the destination of products and services, which turns into obsolete the practice of using tax incentives to attract investments.

d) Service Tax (ISS)

The ISS is a municipal tax levied on services in general not subject to the ICMS. It is calculated considering 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 rates may vary between 2% and 5% depending on the municipality where the service provider is located and the service location.

The determination of the location for the ISS collection depends on the nature of the service offered, which may be in the municipality where the service provider is located or where the service is actually performed.

The ISS is also levied on services originating outside of Brazil or on those originating outside of 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.

PAYROLL TAXATION

a) National Social Security Institute - INSS

The INSS is a social security tax levied on the payroll and borne by employers, employees, managers and self-employed workers. For these last ones, the calculation is done based on the gross salary, including certain benefits, although the tax base is limited to an amount determined by the government. In the case of employers, the INSS is levied 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%.

There is an alternative system called Payroll Relief (*Desoneração da Folha de Pagamento*) that 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. Currently, the continuity of this policy is under analysis by the National Congress, with discussions about its possible extinction expected to take place in 2024.

OTHER TAXES

a) Taxes 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. However, transfer of funds related to investments made by non-residents in Brazil in the Brazilian financial and capital markets are exempt from IOF. There are other rates or specific exemptions that may be applicable to certain transactions.

Loan transactions between legal entities and individuals, as a general rule, are subject to the IOF. Most of these 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.

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

The Import Tax is levied 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 a direct import cost, which does not generate tax credits.

c) Contributions for Intervention in the Economic Domain (CIDE)

The CIDE is a federal tax in Brazil created to finance transportation infrastructure projects and support the energy sector, including the promotion of alternative sources. For example, the CIDE-Fuels (*CIDE-Combustíveis*) applies to the importation and commercialization of oil and its derivatives, allocating resources for infrastructure and energy policies. CIDE-Royalties, on the other hand, applies to remittances abroad for royalties or technical services, aiming to finance technological development and innovation. In essence, the CIDE seeks to regulate specific markets, promote the development, and finance initiatives of public interest

The CIDE is 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.

d) Urban Property Tax (IPTU)

The 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.

The Tax Reform brought the possibility of updating the IPTU calculation base through executive decree, which simplifies the review of the registered property values. However, this requires careful implementation to avoid abuses by municipal administrations, which could use this tool to unduly increase the tax burden, contrary to the principle of legality.

e) Tax on Transmission *Causa Mortis* and Donation (ITCMD)

The ITCMD is a state tax levied on the donation or transfer via inheritance. The maximum rate is established by the Federal Senate and may not exceed 8%.

The Tax Reform brought important changes to the rules of application, calculation, and responsibility for the ITCMD. For inheritance cases, the competent state for tax collection is where the deceased was domiciled. As for donations, the competence lies with the state where the donor resides. Regarding international inheritance involving real estate or rights related to them, the competence lies with the state where the property is located.

For international donations with a donor residing outside the country, the tax collection occurs in the Brazilian state where the beneficiary resides. If the beneficiary also lives outside Brazil, the competence lies with the state where the donated good is located. Goods left by deceased individuals abroad will be taxed by the Brazilian state where the deceased resided, or, in their absence, by the state of residence of the heir or legatee.

A new aspect introduced is the progressivity of ITCMD, based on the value of the inherited or donated asset.

These modifications await the elaboration and approval of a Complementary Law to be officially implemented.

f) Real Estate Transfer Tax (ITBI)

The ITBI is a municipal tax levied on operations involving the transfer of real property ownership by purchase, sale, donation 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 the ITBI.

2. OTHER RELEVANT MATTERS

a) 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%.

b) 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), meaning that there is no income tax on these distributions, regardless of the investor's nationality.

In Brazil, there is the option to compensate shareholders through the payment of interest on equity (JCP) as an alternative composition for dividend distribution. For tax purposes, the payment is based on the Long-Term Interest Rate (TJLP), which is determined by the Central Bank and applied to certain portions of the net worth and subject to certain legal requirements.

The payment of JCP 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). With Law No. 14,789/23, significant changes in the calculation methodology of JCP occurred from 2024 onwards, adjusting the bases for its calculation and specifying exclusions.

Although the current tax reform does not specifically include changes in federal taxes, it determines that the Executive Branch shall present, within 90 days after its publication, a bill to revise the Income Tax rules, with predictions of financial and budget impacts, as well as proposition to modify the payroll taxation.

Regarding the income, the tax reform is already underway through recent bills, which includes changes such as the taxation of assets in offshore and financial investments abroad, changes in the calculation of the JCP, and the review of payroll tax relief, which was vetoed by the President.

Any increase in federal revenue resulting from changes in dividend income taxation can be used to reduce taxes on payroll and consumption. This approach highlights the need to monitor the development of the Reform and proposed changes, whether through Provisional Measures or specific legislation.

c) 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%. The highest rate applies if the beneficiary is located at a fiscally favorable jurisdiction.

d) Royalties

The payment of royalties to the holder of such right domiciled or residing outside the country are taxed at the source, subject to the IRRF. Royalty may be understood as a revenue derived from the use, utilization or exploitation of rights of copyrights, trademarks, patents, among other intellectual property rights. The applicable IRRF rate is 15% to 25%, with the highest rate applied if the beneficiary is located at a tax-favored jurisdiction. In addition to the IRRF, the

payment of royalties is subject to the CIDE at the rate of 10%. This matter is under discussion in the Supreme Court (STF).

e) Tax on Importation of Services

The importation of services is levied at the time the amounts are paid, employed, contracted or delivered to individuals or entities residents or domiciled outside the country. The applicable IRRF rate is 15% to 25%, with the highest rate applied if the beneficiary is located at a tax-favored jurisdiction. In addition to the IRRF, other taxes are levied, including ISSQN, PIS/COFINS, CIDE and IOF.

f) Capital Gain

The income tax for non-residents on capital gain is levied at a rate of 15% to 22.5% depending on the amount of the gain. Those located in favorable tax jurisdictions are subject to a 25% tax rate.

g) 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, United Arab Emirates, Ecuador, Slovakia, Spain, Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Netherlands, Peru, Portugal, Czech Republic, Russia, Sweden, Switzerland, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

3. TAX REFORM

a) Tax Simplification

The tax reform proposes a significant restructuring of the Brazilian tax system, consolidating five existing taxes - PIS, COFINS, and IPI (federal), as well as ICMS (state) and ISS (municipal) - into a single Value-Added Tax (VAT). This tax adopts a non-cumulative approach, applying exclusively to the value added at each stage of the production chain, eliminating the multiple or "cascading" taxation that characterizes the current system.

The introduction of the VAT aligns Brazil with international practices, as more than 170 countries have already implemented this model, including nations in the European Union, Canada, Australia, India, and various countries in Latin America, such as Mexico, Colombia, Chile, and Argentina. The structure of the

Brazilian VAT will encompass two elements: the Contribution on Goods and Services (CBS), under federal jurisdiction, and the Tax on Goods and Services (IBS), managed by states and municipalities.

This reform also aims to change the location of tax levying, which will be shifted from the origin (where products are produced) to the destination (where they are consumed). This is a strategy to end the tax war between states and municipalities, which offer tax incentives to attract business investments. According to the proposal, both imported and local products will be equally taxed under the new VAT, while exports and investments will be exempted.

The legislation will include both standard and special rates, with the last ones aimed at critical sectors of the economy. The general rate will be established by complementary law to be enacted during the year of 2024. Although the standard rate to be applied is not determined yet, it is anticipated that the Brazilian VAT will be relatively high compared to international standards.

Furthermore, the reform introduces the concept of fiscal neutrality, allowing the offsetting of taxes paid in previous stages from the amount due in subsequent stages, with the levying of taxes only on the value added. Constitutional legislation now allows tax credits for all acquisition transactions, excluding those for personal use or consumption, as defined by complementary law, reducing disputes over credit eligibility, a common issue in the current tax system.

b) Selective Tax

The Selective Tax will be implemented as an additional fee applied to the production, sale, or importation of products considered harmful to the publichealth or the environment, such as cigarettes and alcoholic beverages. This tax, under federal jurisdiction, will have its revenue shared with states and municipalities.

The new tax, created to replace the IPI, has as tax base the production, extraction, commercialization, or import of goods and services considered harmful to the public health or the environment, as defined by complementary law. This tax will be applied only once throughout the production chain, with rates determined by the legislation, which may vary according to the unit of measure or to be calculated on the value (*ad valorem*).

Regarding the influence of this tax on the bases of other taxes introduced or modified by the tax reform, the value of the Selective Tax will be included in the tax base of ISS, ICMS, IBS, and CBS. However, the opposite will not be true, meaning that these taxes will not influence the tax base of the Selective Tax.

There is still significant uncertainty about the specific criteria that will define what is considered "harmful to the public health and the environment" for tax purposes.

c) Differentiated Rates and Sectors

Reduced rates and exemptions have been defined to foster activities in various sectors, aiming to stimulate economic development, promote public health and education, and support social well-being. Among the measures adopted are a 60% reduction in rates for essential services such as education and health, medical and accessibility devices, medicines, products for menstrual health, urban, semi-urban, and metropolitan public transportation, human consumption food, natural juices, hygiene and cleaning products for low-income families, inputs and agricultural products, fisheries, aquaculture, forestry, events, cultural, artistic, journalistic, audiovisual productions, sports activities, institutional communication, as well as goods and services related to the national security and sovereignty.

Additionally, a 30% reduction has been approved for services provided by self-employed professionals such as doctors and lawyers. Furthermore, the tax reform provides exemptions for critical sectors, including collective passenger transportation, medical and accessibility devices, medicines, menstrual health products, horticultural products such as vegetables, fruits, and eggs, higher education under the “University for All Program” (*Universidade para Todos* - Prouni), vehicles for people with disabilities, autism, and taxi drivers, services provided by non-profit entities for innovation, science, and technology, rural producers with annual revenue of up to R$ 3.6 million, and projects of urban rehabilitation in historical areas.

d) Specific Regimes

Exceptional treatments have been proposed for the collection of Value-Added Taxes (VATs), specifically IBS and CBS, for a variety of products and services. This special treatment may include modifications both in the tax base and in the applied rates.

Among the beneficiaries of this measure are fuels and lubricants; financial services, including real estate operations, health plans, and prognostic contests, such as lotteries; cooperatives; and a range of services in the hospitality and leisure sector, such as hospitality, amusement and theme parks, bars, travel agencies, tourism, restaurants, and regional aviation.

Additionally, diplomatic missions and representations of international organizations are also included, as well as collective passenger transportation services, both intercity and interstate road, rail, waterway, or air; the events sector; and sports activities promoted by Joint-Stock Football Corporations (*Sociedades Anônimas do Futebol* - SAFs).

The exact definition of how these specific regimes will be applied will depend on the elaboration of complementary laws.

It is worth noting that the Simples Nacional has been preserved by the Proposed Amendment to the Constitution (PEC) of the reform.

e) Transition Period

The tax reform establishes a seven-year period, from 2026 to 2032, for the transition towards the unification of taxes, with the abolition of current taxes scheduled to begin in 2033. This transition period aims to preserve the revenue of states and municipalities.

Detailed stages of the transition include:

- 2026: Initial implementation of the CBS and IBS, with experimental rates of 0.9% for CBS and 0.1% for IBS.
- 2027: Elimination of the PIS/COFINS and adjustment of the CBS rate to a reference value, to be determined by the Ministry of Finance. Simultaneously, the IPI will be reduced to zero, except for products from the Manaus Free Trade Zone.
- From 2029 to 2032: Progressive reduction of the ICMS and ISS, following a decreasing scale (90% of current rates in 2029, 80% in 2030, 70% in 2031, and 60% in 2032).
- 2033: Complete implementation of the new tax system and abolition of previous taxes and legislation.
- From 2029 to 2078: Gradual adjustment of the tax collection system to transition from the principle of origin to destination.

This meticulously planned transition aims to simplify the complex Brazilian tax system, promoting efficiency and equitability in tax collection.

f) Strategic Planning for Reform Impacts

The Brazilian tax reform brings with it a series of changes that redefine the country's fiscal system, with significant impacts on the operating companies. This transformation goes beyond a simple revision of rates, as it introduces a new approach to the calculation based on destination taxation, introducing

altered tax rates and new categories of taxes, such as the selective tax. Upon such changes, it becomes imperative for companies to adopt an effective strategic and operational planning to adapt to this new tax scenario.

During the transition, a series of implementations will be necessary, aiming to align the country's new tax framework and the continuity of current taxes. This exercise should include a review of current operations, with special attention to the movement of goods, the fiscal classification of products, and the determination of how they fit in relation to the benefits and exceptions stipulated by the reform.

Additionally, with the abolition of the regional tax benefits, it will be necessary for companies to reevaluate and adjust their logistics and organizational structure. The optimization of operations will need to be reconsidered to maintain efficiency and competitiveness in an environment without previous tax incentives. This operational realignment requires attention to the details of specific sectors and products that may suffer from changes in tax rates, such as agribusiness and essential services, such as public transportation and healthcare.

For companies, preparing for these changes is not just a matter of compliance but an opportunity for strategic planning that can define their trajectory of growth and success in the coming years. Adapting to the new tax rules and strategically utilizing the new tax structures will be a definitive element for companies not only to survive, but to thrive in the new fiscal landscape of Brazil.

INTELLECTUAL PROPERTY

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

- **Industrial property:** it is 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,utility models, geographical indications and repression of unfair competition

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

- ***Sui generis* rights:** it consists of the 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 Act ("LPI") (Law No 9,279/96), observing the international rules contained in the TRIPS, Paris Convention and Madrid Protocol. In Brazil, the registration of a trademark will be in force for **10 years** renewable indefinitely for successive equal periods, upon payment of the respective fees.

To protect a trademark, its registration must be made: (i) with 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 of the Madrid Protocol.

It is necessary to highlight that there are criteria for the registration request, and subsequent protection, of such trademarks to be granted. The LPI provides a list of examples regarding the form of signs whose protection is intended, as well as aspects that must be taken into consideration. These mainly relate to avoiding conflicts with already registered trademarks.

PATENTS AND UTILITY MODELS

In Brazil, the regulation of patents of inventions and utility models is also done by the INPI and the rules for their protection are set forth in the LPI. The invention must be novel, involve inventive activity, and be susceptible to industrial application; while the utility model only differs in the second element, as it relates to an inventive step related to the improvement of something already invented. In Brazil, the term for protection of **invention patents is 20 years** and **utility models is 15 years**, both counted as 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 in written or oral form and its environment, in Brazil or abroad. In addition, inventions and utility models will not be considered: (a) discoveries, unrealized ideas, scientific theories and mathematical methods; (b) purely abstract conceptions; (c) schemes, plans, principles or commercial, accounting, financial, educational, advertising, drawing and inspection methods; (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 DESIGNS

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 will be in force for a period of **10 years** as 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 one, and that serves as a type of industrial manufacture. In summary, industrial design can be defined as the protection of the product design, that differ in functional aspects, protected by a patent.

According to the LPI, 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 intangible assets as it sees fit. For transactions involving industrial property assets to be made safely, technology transfer agreements must be entered into.

The 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 Act (Law No 9,610/98 - LDA) regulates the rights and obligations related to copyright and related rights, including software

anddatabases, subject to the provisions of the Berne Convention.

In Brazil, the term of copyright protection is **70 years**, from January 1 of the year following the death of the author or the year following its publication, in the case of audiovisual and photographic works. 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 fulfilled – simply having been created by the author, who, in turn, must be able to prove his/her authorship, and the work must be among those listed as eligible for protection by the Copyright Act. However, if it is the author's will, his/her work can be registered with the National Library or with another institution of his/her preference. In Brazil, the federal body responsible for copyrights 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 Act (Law No 9,609/98) regulates the protection of software in Brazil, subject to the Copyright Act, the Berne Convention and the TRIPS agreement. In Brazil, the term of protection for software is **50 years**, from January 1 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, as well as, there is the possibility for the software author to grant to a third party the right to use, service, trade, and transfer, through specific licensing agreements. Pursuant to article 4 of the Software Act, 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 case the computer program is 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. In this sense, its registration is valid for the same protection term guaranteed by the Software Act, in all countries signatories of the Bern Convention. The protection is, therefore, international. However, the Software Act established the jurisdiction 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 (*Consolidação das Leis Trabalhistas* - CLT). The labor legislation is supplemented by other ancillary laws, containing occupational health and safety standards, recommendations of the Ministry of Labor and Employment and social security standards, in addition to collective bargaining agreements and conventions that are entered into with 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 the working conditions and the Public Ministry of Labor (MPT) carries out the investigation of complaints made, and may propose conduct adjustment agreements, to correct conducts considered illegal.

LABOR RELATIONS IN BRAZIL

The CLT defines who is an employee: it is the person who provides services in the benefit 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 usually provides for an indefinite term. There are exceptions to this rule, such as the employment contract by experience, which has an initial term of 90 (ninety) 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 two years.

ADMISSION PROCESS OF EMPLOYEES IN BRAZIL

Before an employee is hired, he/she must undergo a medical examination, which will assess his/her health conditions and whether he/she is able to carry

out the activities for which he/she was 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'S CORPORATE PROPERTY

Any changes in the corporate structure of the company will not affect the rights acquired by employees or modify the employment contracts entered into. 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. 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 ancillary legislation, especially the rules 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, which is the same as a monthly remuneration, and can be paid in up to two installments (one in November and one in December);

- 30 (thirty) days of paid vacation after 12 (twelve) 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;

- Unemployment Compensation Fund (FGTS), which is a monthly contribution of 8% (eight percent) on the employee's monthly salary;

- Transportation voucher, if it manifests to the company the need to use public transportation to travel to the company's workplace;

- Maternity leave of 120 (one hundred and twenty) 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 (five) calendar days, which may be extended to 20 days, if the company is part of the Citizen Company program.

WORKING HOURS LIMIT

The employees' 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 set forth, through agreements with the employee, the performance 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), if they are not subject to any working hours control, are not entitled to receive overtime.

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

For employees who work at night (from 10 pm to 5 am), there will be a need to pay an allowance for the hours worked in such 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 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 a 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 a 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 labor union, which is defined according to the predominant activity carried out by the company, and are entitled to the rights set forth in a Collective Bargaining Agreement (CCT).

These instruments will grant rights that will be incorporated into the employment contracts and will 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 worked hours register (*banco de horas*), and additional stability to those already provided for by law (e.g., pre-retirement), among others.

LIMITATION PERIODS

The labor statute of limitation is 2 (two) years as from the end of the employment contract, reaching the installments related to the previous 5 years, or 5 (five) 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, even keeping each their autonomy, 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 labor unions or a special committee of employees elected for this purpose (including a labor union representative), of a profit-sharing plan.

IMPORTANT TOPICS BROUGHT IN 2023

Throughout the year of 2023, employers found themselves facing the need to

quickly adapt to a series of significant changes in their routines, reflecting a new reality. Below, we present a few of the most important updates that occurred:

- **CIPA / Moral Harassment:** On March 20, 2023, the text of MTP ORDINANCE No. 4,219/2022 became effective, which alters rules and determines the inclusion of various practices for those companies that have the CIPA - Internal Committee for Accident Prevention and Harassment. The main change contained in the Ordinance refers to the prevention and combating of sexual harassment and other types of violence at work. The Ordinance provides, among other rules, for (i) the implementation of periodic training, with effective supervision; (ii) the inclusion of conduct rules regarding sexual harassment and other forms of violence in the company's internal rules, with wide dissemination; (iii) the establishment of procedures for receiving and monitoring complaints, for investigation of facts and, when applicable, for the application of administrative sanctions to those directly and indirectly responsible for acts of sexual harassment and violence, ensuring the anonymity of the complainant, without prejudice to the applicable legal procedures; (iv) at least every 12 (twelve) months, the training, guidance, and sensibilization of employees of all hierarchical levels of the company on topics related to violence, harassment, equality, and diversity in the workplace, in accessible and appropriate formats, and that present maximum effectiveness of such actions.

- **Equality Salary Law:** This law addresses transparency and salary equality issues. It establishes the remuneration criteria applicable to men and women performing work of equivalent value or holding of identical positions. The provisions of this law apply to companies with 100 or more employees, based or with a branch or representation in the Brazilian territory.

- **Work on Sundays and Holidays in Commerce**: This measure establishes that work on holidays in general commerce activities is allowed, if authorized in a collective labor agreement and municipal legislation, in accordance with article 30, I, of the Constitution.

- **eSocial: Reporting of Events Related to Labor Lawsuits**: Since October 1, 2023, information about labor lawsuits before the Labor Court, as well as agreements closed, are reported through the eSocial. This measure was formalized by Normative Instruction No. 2,147 of the Federal Revenue, published on June 30, 2023. This regulation establishes the replacement of the GFIP by the DCTFWeb for the investigation of information related to social security contributions and social contributions due to third parties, as a result of condemnatory or homologous decisions handed down by the Labor Court.

- **Assistance Contribution (STF Decision):** In September 2023, the

Supreme Federal Court accepted an appeal with infringing effects and began to admit the charging of the assistance contribution provided for in article 513 of the CLT.

DATA PROTECTION

Brazil has several laws and regulations that are related, in some way, to Data Protection and Privacy. However, until 2018, none of these laws addressed the issue in a specific way and provided a robust regulatory framework dedicated thereto. In 2018, Brazil approved the General Data Protection Act ("LGPD"), Law No 13,709/18, which became effective 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 directions according to its regulatory agenda.

In addition, the ANPD has already started to investigate security incidents involving personal data, as well as violations of the LGPD, without prejudice to already addressing complaints, notifications and requests from data subjects to organizations.

More recently, a specific regulation was approved regarding the calculation of the sanctions, and the first sanctions based on non-compliance with the LGPD have already been imposed. In 2024, considering the advancement of discussions involving Artificial Intelligence and the extensive involvement of the Data Protection environment with the topic, an intense action from the ANPD is expected in terms of investigation, guidance, and even sanctions.

WHAT ARE ORGANIZATIONS DOING ABOUT THE LGPD?

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

Some companies have decided to follow the traditional and robust path, to seek to implement a Privacy and Data Protection Program considering, in the implementation, the adequacy of their processes to the LGPD. Other companies, considering the challenges and difficulties that a program of this nature has, chose 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 deal with the LGPD, since 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, Brazil has had Law No 9,613 – Fraud Prevention and Money Laundering Act ("PLD") (*Lei de Prevenção à Fraude e à Lavagem de Dinheiro)* – , whose main objective 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 the monitoring and reporting of obligations related to fraud prevention and money laundering. The BC 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 Act (Law No 12,846/13 - *Lei da Empresa Limpa*), being the first law in the country to hold companies liable for acts of corruption committed by its 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. In this sense, one of the benefits 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 COUNTER 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 ACT

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. Whoever 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 or, still, 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 encouragement 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 ACT

Purpose: accountability of companies for acts of corruption committed by employees, service providers and/or representatives. This Act imposes objective liability for companies that practice acts of corruption against a government entity 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) seizure of assets, rights and values obtained because of illicit activities; (ii) partial suspension or shutdown of the company's business activities; (iii) prohibition to receive incentives, subsidies, guarantees, public credits and/or public financing. The competent authority, during the calculation 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, called whistleblower. The complaint must be made to the Federal, State, District or Municipal Administration and to the entities responsible for the investigations and accountability. The legislation promotes broad protection for the whistleblower to protect himself 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.

LAW No. 12,529/11 - ANTITRUST LAW

Purpose: to hold companies and individuals accountable for antitrust conduct. This Law imposes strict liability on those who engage in acts with the aim or that may generate the following effects: I - restrict, distort or in any way harm free competition or free enterprise; II - dominate a relevant market of goods or services; III - arbitrarily increase profits; and IV – abuse of a dominant position.

Fines and penalties: fine of up to 20% of the company's revenue; publication, at the expense of the breacher, of an extract of the condemning decision in a newspaper indicated in the decision, for 2 consecutive days, for 1 to 3 consecutive weeks; prohibition to enter into contracts with official financial institutions and to participate in public bidding processes for the acquisitions, sales, execution of works and services, concession of public services, in the federal, state, municipal and Federal District entities, as well as in entities of the indirect administration, for a period not less than 5 years; registration of the breacher in the National Registry of Consumer Protection (*Cadastro Nacional de Defesa do Consumidor*); division of the company, transfer of corporate control, sale of assets, or partial cessation of activity; prohibition from conducting business in its own name or as a representative of a legal entity, for a period of up to 5 (five) years; and any other act or measure necessary to eliminate the harmful effects to the economic order.

PUBLIC BIDS

Government entities at the federal, 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. Whilst contracting, the public sector must respect the content of Law No 14,133/21 ("Bidding Act") 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 federal level by Law No 8,666/93 (former bidding law, still in force) and the current Bidding Act – Law No 14,133/21, whereas state-owned companies enter into contracts based on their own regulations and Federal Law No. 13,303/2016.

PARTICIPATION OF FOREIGNERS

In 2021, the new Bidding Act (Law No 14,133/2021) became effective and brought Brazil closer to the "Agreement on Government Procurement (GPA)", *i.e.*, 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 Act sets forth 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 the notice, through 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 or useless movable property or legally seized to 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 according to 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 Act provides a list of hypotheses that are examples of cases in which the competition is unfeasible. Article 75, on its turn, provides an exhaustive list of cases in which the Public Administration is exempted 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 the planning and must be compatible with the contracting plan, whenever prepared, 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 the one in which bidders must submit their bids or proposals, which can take place in two ways: open mode, in which case bidders will submit their bids through public and successive bids, increasing or decreasing, or closed mode, in which case the bids will remain confidential until the date and time designated for their disclosure.

The **judgment phase** is the one in which the Government carries out the

objective judgment of the proposals, according to the criteria previously set forth 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. It is divided 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 the one in which, once the judgment and qualification phases are closed, and the administrative appeals are exhausted, the bidding process will be forwarded to the higher authority, which, subject to all legal requirements, will award the object and approve the bidding.

BUDGET OVERSIGHT BOARD

The Budget Oversight Boards (*Tribunais de Contas*) 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 (*Tribunal de Contas da União* - TCU), and in the State and municipal spheres the supervision is performed, as a rule, by the relevant State Budget Oversight Boards (*Tribunais de Contas Estaduais* - TCE).

NATIONAL PUBLIC PROCUREMENT PORTAL (PNPC)

As from the amendment of the Bidding Act, the so-called National Public Procurement Portal (*Portal Nacional de Contratações Públicas* - "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 performance 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 fee 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, telecom, 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 fees 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 brings 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 fee 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 fees 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 to 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.

SANITARY AND REGULATORY

General information on products' registration

It is mandatory that products that could present possible health risks such as pharmaceutical drugs, cosmetics, food, medical devices, pesticides, sanitizing and tobacco products are required to seek pre-market approval from the Brazilian Health Regulatory Agency (*Agência Nacional de Vigilância Sanitária* - ANVISA***)*** in order to be legally imported to Brazil or distributed or commercialized in Brazil.

The pre-market approval is a legal act and control measure prior to the commercialization of the product, which recognizes the suitability of a product to the Brazilian sanitary regulation, and it is granted by the ANVISA. Naturally, there are requirements to be fulfilled and a procedure to be followed.

It is important to stress that it is not possible for foreign companies to make administrative arrangements for the issuance of pre-market approvals directly with ANVISA. Foreign companies shall have partner companies legally incorporated in Brazil that will be legally liable for the products imported and distributed in the Brazilian territory.

There are also certain categories of products subject to health regulations that are exempt pre-market approvals, because they represent a lower health risk (Article 41 of the Law No. 9.882/1999).

Products authorized to be distributed throughout the Brazilian territory must necessarily correspond to the ones evaluated and approved by ANVISA, and no changes are allowed without prior authorization from the Agency (Article 13 of the Law No. 6.360/1976).

All establishments that manufacture products subject to the ANVISA must comply with the requirements of **Good Manufacturing Practices** (**GMP**), in accordance withto ANVISA's a regulatory requirement, including pharmaceutical drugs, medical devices, cosmetics and fragrances, sanitizers, food and Active Pharmaceutical Ingredients (APIs), located either on national territory or abroad.

There are also certain legal requirements on the labelling, advertisement and even transportation of products, which are imposed either by ANVISA or by the

Federal, State or Municipality legislative power or other local authorities or agencies.

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