Pinheiro Guimarães

BRAZIL INVESTMENT GUIDE

2025

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INTRODUCTION

The law firm of Pinheiro Guimarães was established in 1922, when Plinio Pinheiro Guimaraes joined the law offices of José de Miranda Valverde, already in existence for many years. With offices in Rio de Janeiro and in São Paulo, Pinheiro Guimarães represents a wide variety of both Brazilian and foreign clients.

Pinheiro Guimarães has been in the unique position of being able to accompany, on an institutional basis and over the decades, both the modernization of Brazil's company laws and tax structure as well as the development of world-class regulation of the country's financial institutions and capital markets. With this strong and historical depth of expertise in how Brazil's laws and regulations have evolved over the years and how they work today, the firm has always striven to be in a position to provide thorough, innovative, reliable and up-to-date legal support to its clients in the areas of both preventive and remedial law.

In the final analysis, our clients are the heart of the firm. Through our clients, we have been able to demonstrate a practical application of our knowledge and skills. And by working with our clients, we have been able to increase that knowledge and those skills. Our clients have given us their trust as well as the enviable opportunity of being challenged to resolve problems at times of the most novel and intricate nature.

Experiences working with our many clients, together with the legal, regulatory and dispute-resolution capital that the firm has built up internally and, of course, the professionals who actually do the work, all coalesced into the single purpose of preparing, for limited distribution, this Brazil Investment Guide, comprising a collection of brief overviews of various areas of the law in which Pinheiro Guimarães has succeeded in meeting its clients' needs over the years.

I. BRAZILIAN LEGAL FRAMEWORK

Brazil is a federative republic composed of the states, the municipalities, and the Federal District, with a presidential form of government consisting of three independent branches: executive, legislative, and judicial. In October of 1988, a new Federal Constitution was enacted maintaining the presidential form of government.

The executive branch consists of the president of the Republic and the ministers of state. The president has a broad range of powers including the right to appoint ministers, who preside over the various executive departments, and to appoint other executives in selected administrative and political posts. Presidential powers are limited under the Federal Constitution.

The legislative branch is composed of the National Congress, consisting of a Senate of 81 senators, each of whom is elected for an eight-year term, and a House of Representatives, comprising 513 representatives, each elected for a four-year term. In addition to proposing bills, approving laws submitted by the executive branch, and ratifying treaties, the legislative branch exercises, among other duties, financial and budgetary control over the federal government with the assistance of the Federal Accounts Tribunal.

The judicial branch comprises the Federal Supreme Court, the Superior Court of Justice, the Federal Courts of Appeals (as well as lower federal courts), Military Courts, Electoral Courts, Labor Courts, and State Courts of Appeals (as well as lower state courts).

The Federal Constitution establishes the jurisdiction of the republic, the states, the municipalities, and the Federal District, outlining the basic general legislative powers of each of them.

In addition, each state has its own constitution. The state constitutions provide for a similar separation of governmental powers and follow closely the Federal Constitution.

At the state level, executive power is exercised by governors, each of whom is elected for a four-year term, and by vice governors and the secretaries of state. The legislative branch of a state consists of the Legislative Assembly, formed by state representatives who are also elected for four-year terms. The judicial branch includes the Court of Appeals, the

Jury Courts (for criminal matters only), the Military Courts, and the lower state courts.

Municipalities are recognized by the Federal Constitution and by state constitutions as territorial units with political, administrative, and financial autonomy, established under the Federal Constitution and under the organic law of each municipality. Municipal governments consist of a mayor with executive functions assisted by municipal secretaries and a municipal chamber, the latter having legislative functions. The mayors and the members of the municipal chambers are elected for four-year terms. There is no judicial function at the municipal level.

The Federal Constitution further establishes the basic rules for the imposition of taxes by the republic, the states, the municipalities, and the Federal District, as well as the form of distribution of taxes collected by the republic.

The Federal Constitution deals with individual rights and liberties and expressly guarantees to both Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security, and property. It also deals with social and collective rights, nationality, and political rights as well as political parties.

The economic and financial order is also regulated in the Federal Constitution. The Federal Constitution determines that economic organization is based on the value of human labor and on the freedom of enterprise, with due regard for the following principles:

(i) national sovereignty;

(ii) private property;

(iii) social function of property;

(iv) freedom of competition;

(v) consumer protection;

(vi) environmental protection;

(vii) reduction in social and regional differences;

(viii) goal of full employment; and

(ix) favored treatment for small Brazilian companies organized under Brazilian law and with headquarters and management in Brazil.

There is one specific chapter in the Federal Constitution covering the National Financial System and stipulating that the National Financial System will be further regulated by supplementary law. Finally, the Federal Constitution outlines the basic principles of social order based on the dignity of labor and on the objectives of social justice and public welfare.

Depending on their source and on the importance and extent of their application, some Brazilian laws are subordinate to others. In first place in the hierarchy comes the Federal Constitution, to which all other forms of legislation are subject. After the Constitution come the supplementary laws, expounding in detail upon constitutional rules. Subordinate to the supplementary laws come the ordinary laws that constitute the structure of all Brazilian legislation (for example, the codes).

Delegated laws and provisional measures have the same importance as ordinary laws. The former are enacted by the president of the republic, under special delegation from the National Congress. Provisional measures are issued by the president of the Republic using his or her legislative powers in the specific circumstances provided for in the Federal Constitution. Provisional measures remain in effect for a period of 60 days, which period is automatically extended for an additional 60 days if the provisional measure is not voted upon by the National Congress. If a provisional measure is not voted upon within 45 days following its publication, no other matter on the Congressional agenda may be discussed or voted upon until that provisional measure has been submitted to a vote. If not voted upon by the end of the 120-day maximum term, the provisional measure ceases to be in effect as of such date, without thereby invalidating any lawful acts carried out on the basis of that provisional measure before that termination date.

State laws are subordinate to federal legislation. Accordingly, the state constitutions are subject to the Federal Constitution, followed by the supplementary laws and the ordinary state laws, which deal with matters not exclusively the prerogative of federal law. Finally, there are the municipal laws, which deal basically with matters concerning municipal administration, including the levying and collection of municipal taxes, the

application of revenue, and the organization of land use and local services in the municipality.

The principal source of Brazilian civil law is the Civil Code. Brazil's first Civil Code, in effect since 1916, was substituted entirely in 2002 by a new Civil Code. The new Civil Code entered into full force and effect in January of 2003. The Civil Code recognizes the principles of individualism and freedom to contract, subject, however, to limitations based on the social function of property and contracts.

Legislation is the principal source of law. Under the Federal Constitution, the republic has exclusive jurisdiction to legislate on matters involving civil, commercial, criminal, procedural, electoral, agrarian, maritime, aviation, space, and labor law, among other matters.

Where legislation is silent, the courts must look to other sources in order to resolve disputes. These sources, classified as indirect or mediate, include legal doctrine (treatise writers) and case law, as well as custom, analogy, and the general principles of law and equity. The Law of Introduction to Brazilian Legal Norms provides that "[w]hen legislation is silent, the judge must decide the case in accordance with analogy, customs, and general principles of law."

Only the federal government may legislate in the area of civil and criminal procedure. The Code of Civil Procedure sets down the fundamental rules governing the initiation, prosecution, and adjudication of civil disputes, as well as other matters (commercial, tax, and agrarian, for example) for which no specific procedural rules exist. The Code of Civil Procedure provides that "civil procedure will be ordered, disciplined, and interpreted in accordance with the values and fundamental rules established by the Federal Constitution" and that "civil jurisdiction is exercised by judges and courts throughout the national territory, in accordance with the provisions established in this Code."

Jurisdiction is exercised by the various bodies of the judiciary. For convenience, there are a number of special courts dealing with particular areas of the law, such as the Labor Courts, the Electoral Courts, and the Military Courts. The states have their own codes of judicial organization containing rules for the administration of justice, in strict conformity with the Federal Constitution and federal laws.

The Code of Civil Procedure establishes the rules that determine the jurisdiction of each court.

In the international sphere, the Code of Civil Procedure provides that Brazilian courts have jurisdiction whenever:

(i) the defendant, regardless of the defendant's nationality, is domiciled in Brazil;

(ii) the obligation is to be performed in Brazil;

(iii) the legal grounds consist of a fact occurred or an act performed in Brazil;

(iv) the claim is for payment of alimony either to a creditor domiciled or resident in Brazil, or from a debtor with ties to Brazil, such as possession or ownership of assets, income, or receipt of economic benefits in Brazil;

(v) the claim results from a consumer relationship with a consumer domiciled or resident in Brazil; or

(vi) the parties to the proceeding have expressly or impliedly submitted to Brazilian jurisdiction.

Furthermore, Brazilian courts have exclusive jurisdiction over the following matters:

(i) proceedings relating to real estate located in Brazil;

(ii) probate proceedings of a deceased person's Brazilian estate and the distribution of the deceased person's assets located in Brazil (regardless of the nationality or domicile of the deceased person); and

(iii) the allocation of assets located in Brazil in cases of divorce, judicial separation, or dissolution of common-law marriage (*união estável*), regardless of the nationality or domicile of the owner of the assets.

Finally, the Code of Civil Procedure provides that a proceeding brought before a foreign court does not prevent Brazilian courts from hearing a proceeding on the same matter and any others connected with it.

Which court in Brazil will have jurisdiction over any specific matter depends on various criteria, including the amount involved and the subject matter of the claim. Jurisdiction for insolvency proceedings and for

actions concerning the civil status and legal capacity of persons does not depend on the amounts involved.

With respect to territorial jurisdiction, the Code of Civil Procedure provides that, in general, actions involving personal rights and rights *in rem* over personal property must be brought in the courts of the place where the defendant is domiciled. In actions involving rights *in rem* over real estate, jurisdiction lies with the courts of the place where the real estate is located. However, there are a number of exceptions to these rules in the Code of Civil Procedure. The Code of Civil Procedure also refers to certain events the effect of which is to modify the rules relating to jurisdiction. This happens, for example, when there are two or more lawsuits based on the same cause of action, or when the parties and the causes of action in two or more lawsuits are identical but the subject matter of one claim includes the subject matter of the other claims.

There are two levels of jurisdiction: the trial level and the appellate level. The function of the Courts of Appeal is to hear appeals filed against decisions rendered by the lower courts. The Courts of Appeal have original jurisdiction only in certain cases depending on the subject matter and the parties involved.

The Federal Constitution provides for a Superior Court of Justice, which is, in fact, a third level of ordinary jurisdiction. The Superior Court of Justice will, *inter alia*, adjudicate at the special appeal level decisions that: (i) contravene a treaty or federal law, or deny the effectiveness of that treaty or law; (ii) find valid a law or act of a municipal or state government contested in light of federal law; or (iii) interpret the federal law in a manner other than the manner in which the law had been construed by another court. The Superior Court of Justice has original jurisdiction in certain cases depending on the subject matter and the parties involved, such as criminal cases filed against state governors or against judges of the Courts of Appeals or of other special courts, as well as requests for ratification of foreign judicial decisions.

It is also possible, by way of extraordinary appeal, to submit to the Federal Supreme Court cases decided by other courts, the decision in which would otherwise be final, whenever that decision: (i) is contrary to provisions of the Federal Constitution; (ii) declares a federal treaty or law unconstitutional; or (iii) upholds the validity of a municipal- or state-government law or act that was questioned as being contrary to the Federal Constitution.

When several similar cases are submitted to the Federal Supreme Court, the Federal Supreme Court may determine that those cases are of broad impact (*repercussão geral*). In that case, the decision reached by the Federal Supreme Court becomes a binding precedent and applies to all those cases as well as to similar cases filed in the future in respect of the same matter and on the same allegations. Any such decision in cases found by the Federal Supreme Court to be of broad impact, as well as decisions that the Federal Supreme Court includes in its *súmula vinculante* (a list of binding rulings of the Federal Supreme Court), will be binding on all courts in Brazil. The Federal Supreme Court has original jurisdiction in certain cases depending on the subject matter and parties involved, such as: (i) criminal cases filed against the president, ministers, members of the National Congress, and others; (ii) requests for declarations of constitutionality or unconstitutionality of a federal or state law; and (iii) proceedings between a foreign state or entity and a Brazilian federative entity.

II. COMPANY FORMS IN BRAZIL

The principal Brazilian company forms are: (i) the *sociedade limitada* (limited liability company); and (ii) the *sociedade anônima* (corporation). With rare and specific exceptions, both the limited liability company and the corporation are limited liability entities.

1. Limited Liability Companies

Limited liability companies are governed by article 1,052 et seq. of the Civil Code. A limited liability company is formed by one or more quotaholders – "quotaholders" being the name to indicate equity participants in a limited liability company. The quotaholders form the limited liability company by negotiating a written document called a *contrato social* (similar to articles of organization for a limited liability company in various states in the United States). The articles of organization set forth certain relevant information about the company and the rights and obligations of the quotaholders with respect to the company and among themselves, such as: (i) the names and identities of the quotaholders; (ii) the name of the company; (iii) the business purpose; (iv) the address of the company's head office; (v) the period of existence, which may be indefinite; (vi) the capital stock of the company, expressed in Brazilian currency, which capital stock may consist of assets after their appraisal and approval by the quotaholders; (vii) the amount of the capital stock of the company and the part to be paid in by each quotaholder; (viii) the name of the person or persons in charge of the management of the company; (ix) the participation of each quotaholder in the company's profits and losses; and (x) the company's fiscal year.

Once the articles of organization have been filed with the Commercial Registry and the company has made all requisite filings with the appropriate tax authorities and other regulatory entities, the limited liability company may initiate its business activities.

1.1 Governing Laws

One of the most important provisions of the Civil Code in respect of law governing companies refers to the possibility of applying the Corporations Law[1] to limited liability companies in matters not specifically covered otherwise in the chapter in the Civil Code governing limited liability companies. Provisions in the Corporations Law will apply to limited liability

[1] See Item 2 of this Section below.

companies in such matters only if the quotaholders include a specific provision to this effect in the articles of organization. If the quotaholders of a limited liability company have not included any such specific provision in the articles of organization, the rules for the *sociedade simples*[2] (rather than the Corporations Law) will apply in any matters relating to a limited liability company that have not otherwise been addressed in the chapter in the Civil Code governing limited liability companies.

1.2 Capital Stock

The capital structure of a limited liability company consists solely of equity participations called *quotas*, which may be of different classes or types. Quotas are generally not represented by certificates or registered in any registry book. The only definitive proof of ownership of quotas is the company's articles of organization.

The capital stock of a limited liability company need not be paid in at the time the limited liability company is created. However, in such cases, the articles of organization must regulate the terms and conditions for payment of the subscribed capital. Each quotaholder is liable for payment of the quotas allocated to that quotaholder in the articles of organization. Nevertheless, in the event of insolvency of a limited liability company, all of the quotaholders – even those who have already fully paid in their respective quotas in the capital stock – are jointly and severally liable for payment in full of any amount of the stated capital that has not yet been paid in. In a few specific cases (e.g., labor claims, where controlling quotaholders may be jointly and severally liable for a limited liability company's debts to employees) and exceptional situations where the doctrine of piercing the company veil may be applied, quotaholders may have joint and several liability for certain debts of the limited liability company.

Although in theory a limited liability company may have any number of quotaholders (or even one single quotaholder), in practice the number rarely exceeds ten. Quotaholders of a limited liability company may be individuals or entities. In spite of the fact that there is a cryptic provision in the Civil Code that might lead one to the conclusion that a foreign company may not participate in the capital stock of a limited liability company, the Commercial Registry and public entities have understood

[2] A *sociedade simples* is similar to a general partnership and is governed by the provisions of articles 997 to 1,038 of the Civil Code.

otherwise and raise no objections to the filing of articles of organization in which a foreign entity – or a foreign individual – appears as a quotaholder.

A foreign quotaholder of a Brazilian limited liability company, however, must appoint an attorney-in-fact in Brazil, who must be either a lawyer or another quotaholder, to represent the foreign quotaholder and to receive service of process on its behalf in any action relating to that quotaholder's equity participation in the company. Usually, the foreign quotaholder appoints an attorney-in-fact at the time the foreign quotaholder acquires equity in the limited liability company and upon the occasion of any quotaholders' meeting. If the foreign quotaholder is a corporation, the limited liability company must submit to the Commercial Registry the foreign quotaholder's incorporation documents duly notarized, consularized, or apostilled, translated by a public sworn translator and registered with the Brazilian Registry of Deeds and Documents.

Articles of organization may include specific rules regarding the assignment or transfer of quotas by quotaholders. If no such specific provision is set forth in the articles of organization, a quotaholder may assign or transfer quotas to: (i) any quotaholder, with or without the consent from the other quotaholders; or (ii) any third party, so long as the transfer is not objected to by quotaholders representing more than one-fourth of the company's capital stock. Any such assignment or transfer, however, will not be enforceable against the company or third parties prior to registration of the relevant amendment to the articles of organization, evidencing the assignment or transfer, with the Commercial Registry.

1.3 Management

The managers of a limited liability company may be (but need not be) quotaholders. They may be designated as managers in the articles of organization or in a separate document. If the designation is made in a separate document, the effectiveness of the designation is subject to the additional requirement that the manager take office by signing the company's corporate books within 30 days from the date of appointment. Furthermore, the relevant document whereby a manager is designated must, in any event, be registered with the Commercial Registry within ten days from the date on which the manager took office.

Depending on whether a manager is a quotaholder of the company or not, the Civil Code provides for different rules regarding the quorum required for his or her designation or removal.

If a manager is a quotaholder designated in the articles of organization, then the required quorum is: (i) at least a majority of the capital stock for his or her designation; and (ii) unless otherwise provided in the articles of organization, at least a majority of the capital stock for his or her removal. On the other hand, if a manager is a quotaholder designated in a separate document, the required quorum is also at least a majority of the capital stock for both his or her designation and removal; but in neither case may the articles of organization provide otherwise.

If, however, a manager is not a quotaholder (regardless of whether designated in the articles of organization or in a separate document), the quorum required for his or her designation is at least two-thirds of the capital stock (if the capital stock has not yet been fully paid), or at least a majority of the capital stock (if the capital stock has been fully paid); and at least a majority of the capital stock for his or her removal, regardless of whether the capital stock has been fully paid or not.

In addition to termination by removal, a manager's term of office may come to an end by lapse of time or by his or her resignation. In the event a manager should choose to resign, his or her resignation will become effective: (i) against the company, upon delivery of the notice of the resignation to the company; and (ii) against third parties, upon publication of the notice of resignation after that notice has been filed with the Commercial Registry.

Any individual residing in Brazil who is either a Brazilian citizen or a foreign national holding a temporary or permanent visa may be designated as a manager of a Brazilian company. In addition, any individual residing in a jurisdiction other than Brazil, regardless of whether a Brazilian citizen or a foreign national, may also serve as a manager of a Brazilian company. In the latter case, however, the individual residing abroad – whether a foreign national or a Brazilian citizen – must appoint a third-party resident in Brazil as his or her attorney-in-fact, with full power to receive service of process in Brazil on behalf of that individual in connection with any allegations of liability in judicial actions brought under any applicable Brazilian law or regulation. Any such power of attorney must be valid for at least a three-year period running from the end of the individual's term of office as manager.

1.4 Audit Committee (*Conselho Fiscal*)

Articles of organization may provide (but are not required to provide) for an audit committee (*conselho fiscal*). If a limited liability company has an audit committee, the audit committee will have the following duties, among others: (i) to examine, at least quarterly, the books, records, and financial situation of the company; (ii) to keep records of the results of those examinations; (iii) to express opinions on the business and transactions of the company for the relevant fiscal year, based on financial statements prepared by management; and (iv) to point out any error, fraud, or crime committed by management that may come to its attention, and to advise the quotaholders accordingly.

If the articles of organization provide for an audit committee, the audit committee will consist of three or more individuals and their respective alternates, elected by the quotaholders. Members of the audit committee need not be quotaholders, but they must be residents of Brazil.

1.5 Quotaholders' Decisions

The Civil Code specifies certain company decisions that require the approval of quotaholders as well as the number of votes necessary for each such approval, as follows:

(i) unanimity of quotaholders: conversion of the *limited liability company* into any other company form, unless another quorum for such decision is provided for in the articles of organization;

(ii) at least two-thirds of the capital stock: designation of managers who are not quotaholders, if the capital stock is not fully paid;

(iii) at least a majority of the capital stock: (a) amendment to the articles of organization; (b) merger, consolidation, or dissolution of the company; (c) suspension of liquidation proceedings; (d) designation and removal of managers who are quotaholders and were designated as managers in a separate document; (e) designation and removal of managers who are quotaholders and were designated as managers in the articles of organization, if not otherwise provided in the articles of organization; (f) removal of managers who are not quotaholders; (g) designation of managers who are not quotaholders, if the capital stock is fully paid; (h) management

compensation, if not otherwise provided for in the articles of organization; and (i) filing for reorganization; and

(iv) majority of the quotaholders present at the relevant meeting: (a) approval of management's accounts; (b) appointment and removal of liquidators and approval of their accounts; and (c) other cases.

In case of approval of an amendment to the articles of organization as a result of a consolidation or merger involving the company, any dissenting quotaholder will have the right to withdraw from the company.

1.6 Quotaholders' Meetings

Quotaholders' decisions must be adopted at quotaholders' meetings. In most cases, however, any such decisions may also be adopted by means of a quotaholders' resolution, duly signed by all quotaholders.

The minutes of any quotaholders' meeting must be recorded in the appropriate book and signed both by the quotaholder presiding at the meeting and by at least enough other quotaholders to ensure the validity of any decisions reached at the meeting. Any quotaholder wishing to sign the minutes may sign them even if enough other quotaholders, sufficient to assure the validity of the decisions, have already signed. A copy of the minutes, duly authenticated by the managers or by the chairman of the meeting, must be presented to the Commercial Registry for filing and recording within 20 days from the date of the meeting. Decisions adopted by means of a quotaholders' resolution without a quotaholders' meeting must also be recorded in the appropriate book and signed by at least enough quotaholders to ensure the validity of these decisions. A copy of any such decisions, duly authenticated by the managers, must be presented to the Commercial Registry for filing and recording within 20 days from the date the decisions were adopted.

The Civil Code provides for two different types of quotaholders' meetings: the *assembleia* and the *reunião*.

Assembleia

The Civil Code has determined certain procedures for calling an *assembleia*, which procedures may be dispensed with if all quotaholders

attend the *assembleia* or otherwise declare, in writing, that they are aware of the place, date, time, and agenda of the relevant *assembleia*.

An *assembleia* must be called by means of public announcements published at least three times in a newspaper of wide circulation at the place where the company's headquarters are located, with simultaneous disclosure of the full content of the documents on the website of the same newspaper, at least eight days prior to the date of the *assembleia*.

The *assembleia* will take place on its original scheduled date if quotaholders representing at least three-fourths of the capital stock are present at the meeting. If no such quorum is achieved, the *assembleia* must be adjourned to a later date, to be determined by the company through publication of a second announcement, at least five days prior to the rescheduled date. The *assembleia* may take place on the rescheduled date with any number of quotaholders present.

An *assembleia* must be held at least once a year, within the first four months after the closing of the prior fiscal year, in order to: (i) vote to accept (or not) the financial statements prepared by management; (ii) designate managers, if necessary; and (iii) decide on any other matter brought before the *assembleia*. Within 30 days prior to the date scheduled for the *assembleia*, the financial statements referred to in item (i) above must be delivered to those quotaholders who do not participate in the management of the company.

Reunião

Companies owned by ten or fewer quotaholders may reach their decisions in a *reunião*. According to the Civil Code, the articles of organization of any such company may contain specific provisions regarding how the calling, voting of proposals, and other procedures in connection with the *reunião* are to be carried out. If the articles of organization are silent, the legal provisions in the Civil Code regarding the *assembleia* will apply to the *reunião*.

2. Corporations

Corporations are governed by the Corporations Law. A corporation is incorporated by two or more shareholders subscribing to the entire capital stock of the company. Subscriptions may be carried out through a public offering or a private placement. In either case, at least 10%

of the capital stock must be fully paid in at the time of incorporation. The liability of a shareholder is limited to the issue price of the shares times the number of shares subscribed to by that shareholder. The issue price of the shares must be set based on either one or a combination of the following parameters: (i) future prospects of the corporation; (ii) the net worth of the corporation per share; and (iii) the market value of the shares. Anyone selling shares before they are fully paid in is jointly and severally liable with the purchaser, during two years after any such sale, for the payment in full of the subscription price for the shares.

Before it may engage in its business, a corporation must file its constitutive documents with the Commercial Registry and make all requisite filings with the appropriate tax authorities. Among the constitutive documents that a corporation must file with the Commercial Registry is the *estatuto social* – a single document containing those provisions generally found in a combination of the articles of incorporation and the bylaws of a corporation constituted in one of the American states. In terms of constitutive documents, an *estatuto social* of a corporation corresponds to the *contrato social* (articles of organization) of a limited liability company.[3] Because the overwhelming majority of the provisions contained in an *estatuto social* correspond to the provisions generally set forth in the bylaws of an American corporation, this Brazil Investment Guide will refer to an *estatuto social* as the "bylaws."

A corporation may be a closely held or a publicly traded company, depending on whether securities issued by it have authorization from the CVM to be traded on the stock exchange or in the over-the-counter market.

2.1 Capital Stock

The capital stock of a corporation is divided into shares, which may be common (with voting rights) or preferred (with or without voting rights). Shares must be issued in registered form. The Corporations Law provides that a maximum of 50% of the capital stock may consist of nonvoting preferred shares (or preferred shares with limited voting rights). There is no such limitation if the preferred shares have unlimited voting rights. Preferred shares may have, among other preferences, priority in the distribution of dividends and the reimbursement of capital.

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3 See Item 1 of this Section II, "Limited Liability Companies", above.

Common and preferred shares may be divided into one or more classes, and each share is entitled to one vote at shareholders' meetings. The bylaws of a corporation, however, may grant cumulative voting rights to one or more classes of common shares.

In general, any foreign person – whether an individual or a company – may be a shareholder of a Brazilian corporation, so long as that foreign person appoints an attorney-in-fact to act on its behalf in Brazil. Any such attorney-in-fact must be either a lawyer, or another shareholder, or an officer or director of the Brazilian corporation, and must have the power to represent that person in Brazil and to receive service of process in any action brought against that person based on that person's shareholdings.

2.2 Management

The management structure of a corporation generally consists of a *conselho de administração* (board of directors) elected by the general shareholders' meeting, and a *diretoria* (officers) appointed either by the board of directors or, if the company does not have a board of directors, by the general shareholders' meeting itself.

Whether closely held or publicly traded, every corporation must have at least two officers. The officers must be residents of Brazil but need not be shareholders of the corporation. Officers have the power to bind and represent the corporation, including the authority to grant powers of attorney.

In addition to having officers, publicly traded corporations and corporations with authorized capital are required to have boards of directors as well. Boards of directors are optional for closely held corporations without authorized capital.

Any board of directors of a corporation in Brazil must have at least three members, all of whom are elected at a general shareholders' meeting. A board of directors functions as a collective body, having, among other duties, the responsibilities for establishing the general policies of the company, and for electing and removing officers. A maximum of one-third of the members of a board of directors may be elected officers of that corporation as well.

Any individual residing in Brazil who is either a Brazilian citizen or a foreign national holding a temporary or permanent visa may be designated as a manager of a Brazilian corporation. In addition, any

individual residing in a jurisdiction other than Brazil, regardless of whether a Brazilian citizen or a foreign national, may also serve as a manager of a Brazilian corporation. In the latter case, however, the individual residing abroad – whether a foreign national or a Brazilian citizen – must appoint a third-party resident in Brazil as his or her attorney-in-fact, with full power to receive service of process in Brazil on behalf of that individual. Any such power of attorney must be valid for at least the three-year period running from the end of the individual's term of office as manager in connection with any allegations of liability in judicial actions or administrative proceedings brought under any applicable Brazilian law or regulation, including, but not limited to, the Corporations Law. Moreover, if the Brazilian corporation in which the foreign-domiciled individual is acting as a manager is a publicly traded company, the extension of the validity of that power of attorney for at least three years after the end of the manager's term of office must apply as well in the case of any administrative proceeding brought by the CVM.

2.3 Management Duties and Responsibilities

Members of the board of directors of a corporation, together with the officers of the corporation, are defined jointly in the Corporations Law as "managers" (*administradores*). That same Law establishes the standard of care, and the duties and responsibilities, that apply generally to the managers of a corporation in the performance of their respective corporate functions.

The Corporations Law introduced several concepts into Brazilian law regarding the duties and responsibilities applicable to managers of a corporation. These duties and responsibilities generally hold managers to a fiduciary duty in terms of the corporation, according to which duty they are obligated to act in the best interests of the corporation with such diligence and care that a person of integrity would adhere to in actively looking after his or her own business affairs. In particular, every manager, whether a member of the board or an officer, is required, among other things, to:

(i) act in the best interests of, and be loyal to, the corporation, regardless of whether any group or class of shareholders may have elected that given manager to his or her position, and regardless of where that group or class may stand on any given issue confronting the corporation;

(ii) act loyally, avoiding at all costs any situations of self-dealing or otherwise of taking advantage of business opportunities or inside information to which the manager was made privy by virtue of his or her position in the corporation; and

(iii) refuse to act in any situation where there may be a conflict of interest between those of the manager and those of the corporation.

Every manager is basically protected by a "business judgment rule" and is not personally liable for any obligation he or she undertakes in the name of the corporation, so long as the manager, in undertaking that obligation, is carrying out a regular management act. If, however, a manager, acting within the scope of his or her powers, should cause loss or harm: (i) through that manager's fault or willful intent, or (ii) in violation of the law or of the bylaws of the corporation, then the manager will be civilly liable for that loss or harm.

2.4 Shareholders' Meetings

There are two kinds of general shareholders' meetings: the annual (ordinary) general meeting, and the extraordinary general meeting.

Each year, the shareholders must meet in an annual (ordinary) general shareholders' meeting within the first four months after the close of the prior fiscal year to: (i) vote to accept (or not) the financial statements prepared by management; (ii) decide on the allocation of the corporation's results; and (iii) elect the members of the board of directors or (if the corporation has no board of directors) the officers, as the case may be, if necessary.

An extraordinary shareholders' meeting may be called at any time for the purpose of deciding upon matters that concern the shareholders, including any corporate action that may result in an amendment to the bylaws.

Shareholders may be represented at a general shareholders' meeting by a proxy appointed for that purpose less than one year before the date of the meeting. The proxy must be either a lawyer, or another shareholder, or an officer, or a director, of the corporation.

2.5 Shareholders' Rights

The Corporations Law provides that all shareholders are entitled to: (i) participate in profits; (ii) participate in the distribution of assets, in the event of liquidation; (iii) monitor how the corporation's business and affairs are being carried out; (iv) exercise preemptive rights to subscribe to new shares upon an increase in capital, in proportion to the number of shares held; and (v) withdraw from the company in certain cases provided for in the Corporations Law.

Generally, any shareholder, director, or officer who, while representing or otherwise acting on behalf of a corporation, through his or her fault (willful misconduct or negligent act or omission), causes harm, or breaches an obligation, to another person or to the corporation itself, may be held liable for any losses effectively suffered by the injured party.

III. FOREIGN INVESTMENTS IN BRAZIL

The two principal government agencies that regulate and carry out the country's economic policies are the Brazilian Monetary Council and the Central Bank of Brazil. Both have broad discretion in all matters involving the formulation and execution of the government's economic policy.

The Brazilian Monetary Council is the senior economic agency responsible for formulating monetary and credit policies. The Brazilian Monetary Council makes its principal decisions on economic matters relating to foreign investments in Brazil in conjunction with the Central Bank of Brazil. The Central Bank of Brazil, in turn, is responsible for carrying out the policies and guidelines set down by the Brazilian Monetary Council. In particular, the Central Bank of Brazil issues administrative regulations affecting several areas of the economy, including foreign investment.

The basic legal framework regulating foreign investments in Brazil was established by Law 4,131. Law 4,131 created a well-defined system of controls for the entry of foreign capital into Brazil as well as the outflow of foreign exchange.

In 2021, the Brazilian government carried out a broad reform of the legal framework applicable to foreign investments and exchange, resulting in the enactment of Law 14,286, also known as the "New Foreign Exchange Law." Law 14,286 came into effect on December 31, 2022.

Law 14,286 established, among other things, the policies and general rules applicable to foreign investments in Brazil, and delegated to the Central Bank of Brazil the authority to regulate and monitor the inflow and outflow of foreign capital of whatever nature, as well as to establish procedures for the remittance of funds to and from Brazil.

Based on the authority granted to it under Law 14,286, the Central Bank of Brazil approved several regulations on foreign investments, including Resolution 278. Resolution 278 establishes the rules for all forms of foreign investments in Brazil.

Pursuant to Resolution 278, the following types of transactions must be reported to the Central Bank of Brazil:

(i) cross-border credit: any indebtedness owing by a Brazilian debtor to a foreign creditor arising from any of the following

transactions: (a) a direct loan; (b) an issuance of securities in the international markets; (c) a private issuance of securities in the Brazilian market; (d) a financing; (e) an import financing of assets or services; (f) an export prepayment transaction; or (g) a cross-border financial lease; and

(ii) direct foreign investment: any direct holding of equity in a Brazilian entity by a foreign investor.

In the case of direct foreign investments, once foreign capital has entered Brazil, the Brazilian company receiving the investment must report to the Central Bank of Brazil the required information related to the investment whenever that investment is equal to or greater than US$100,000.00 or its equivalent in other currencies. Such reporting is made through the electronic information system of the Central Bank of Brazil for foreign equity investments (*Sistema de Prestação de Informações de Capital Estrangeiro de Investimento Estrangeiro Direto – SCE-IED*). As a result of the reporting, the investor has a degree of assurance that its investment, together with any amounts corresponding to appreciation of such reported investment, may be repatriated at any time, in full. That reporting also assures that dividends and interest on net equity may be paid to the investor whenever declared or otherwise available for distribution.

As a general rule, repatriation may be effected without any specific authorization from any government agency merely by submitting proof of the original reporting of foreign investment with the Central Bank of Brazil to a bank authorized to enter into foreign-exchange transactions. In the same way, profits may be freely remitted abroad. Except as otherwise provided by specific legislation, there are no restrictions on the entry of foreign capital for investment in economic activities in Brazil. See Item 2 of this Section below.

Profits earned in Brazil and reinvested in the same business, or in any other, are, as a general rule, considered foreign reinvestments. As such, they are added to the original investment and are considered foreign capital for all purposes.

Whenever a serious imbalance in Brazil's balance of payments occurs, the Central Bank of Brazil has the authority to impose temporary restrictions on imports and on the remittance of capital abroad.

The most common method of foreign investment consists of the remittance of capital to Brazil for direct investment. That direct investment generally takes place in the form of a subscription to shares in a corporation or to quotas in a limited liability company – the two principal company forms in Brazil[4] – although Brazilian regulations also provide for direct investment in any other types of entities domiciled in Brazil, such as investment funds, partnerships, consortium and individual entrepreneurs.[5] In either case, the investor pays directly to the Brazilian company the subscription price of the shares or quotas, as the case may be. Nonresident investors may also acquire equity held by third parties in Brazilian entities, with payment being made to any such third party (selling party) either in Brazil or abroad.

The entity receiving the foreign investment must report the required information regarding the foreign investment to the Central Bank of Brazil within 30 days of the date of the investment. For cash investments, the reporting is automatic based on the information available in the foreign exchange system of the Central Bank of Brazil.

A reported foreign investment in Brazil may be repatriated, either: (i) by the redemption of shares or quotas (i.e., upon a reduction of capital or liquidation); or (ii) by an assignment or transfer of those shares or quotas to a third party. The Central Bank of Brazil imposes no restrictions on any such repatriation. If the amount remitted exceeds the total value of the investment, repatriation of the excess is subject to taxation on the capital gain realized by the nonresident investor.

Subject to compliance with reporting and any other applicable legal or regulatory requirements, the status of foreign capital, together with its concomitant right to be remitted to its foreign investor abroad, is granted in the case of direct foreign investments in two distinct cases.

First, any foreign funds or goods that are remitted from abroad and actually enter Brazil for the purpose of making a direct investment in a Brazilian company are granted the status of foreign capital. That status is granted in the name of the nonresident investor, who may be either an individual or a company resident or headquartered abroad. Any investment

4 On the principal company forms in Brazil, see Section II, "Company Forms in Brazil," above.

5 An individual entrepreneur is a type of entity held solely by one shareholder (the entrepreneur, an individual who carries out an economic activity), equivalent to a sole proprietorship.

in a Brazilian entity made by a foreign person actually residing in Brazil is treated as Brazilian capital and may not qualify as foreign capital.

Second, any profits generated in Brazil, in respect of any investment that itself qualifies as foreign capital, are also granted the status of foreign capital.

Profits or dividends earned by nonresident investors in Brazil attributable to shares or quotas the investment in which qualifies (and is registered) as foreign capital with the Central Bank of Brazil may be remitted abroad. So long as those profits or dividends correspond to results disclosed in properly prepared financial statements, such remittances may be effected at any time. Dividends remitted to a nonresident investor are not currently subject to any withholding tax in Brazil. See Item 8.1 of Section VI below.

1. Foreign Investments in the Brazilian Financial and Capital Markets

The basic rules and regulations regarding foreign investments in the Brazilian financial and capital markets are set out in Joint Resolution 13, issued by the Central Bank of Brazil and the CVM, and in Resolution 13 of the CVM (not to be confused with Joint Resolution 13). Joint Resolution 13 provides that an investor who is not a resident of Brazil may freely invest in any financial instrument or security available to an investor who is, in fact, a resident of Brazil.

The general requirements for a foreign resident to make investments under Joint Resolution 13 are:[6] (i) appointment of a Brazilian entity[7] as its representative in Brazil;[8] and (ii) registration as a nonresident

6 Except as indicated below in footnote 8, these requirements do not apply to investments in financial assets made by nonresident entities with funds deposited into accounts denominated in Brazilian Reais and held by such nonresident entities in Brazil.

7 Any such entity may be any of the following: any Brazilian financial institution, any other institution authorized to operate by the Central Bank of Brazil, any clearing house, or any entity overseen by the Central Bank of Brazil within the Brazilian Payments System that provides clearing and settlement services.

8 The requirement for the appointment of a Brazilian representative does not apply to any nonresident individual investing in: (i) securities with his or her own funds (including with funds deposited into accounts denominated in Brazilian Reais held by such individual in Brazil); (ii) financial assets with his or her own funds deposited into accounts denominated in Brazilian Reais held by such individual in Brazil; or (iii) financial assets with his or her own funds deposited into accounts other than accounts denominated in Brazilian Reais and held by such individual in Brazil, up to a monthly contribution of R$2 million per intermediary institution engaged by such individual to invest in the Brazilian financial market or securities market.

investor before the CVM.[9] Below is a chart summarizing the application of the requirements referred to above:

Nonresident Investor (NRI)	Investment made with funds held in account denominated in BRL held by NRI in Brazil		Investment made with funds remitted from outside Brazil (in BRL or foreign currency)	
	Financial Asset	**Security**	**Financial Asset**	**Security**
Individual	Any amount[1]	Any amount[1]	≤ BRL 2mm[1]	Any amount[1]
			> BRL 2mm[2]	
Entity	Any amount[1]	Any amount[3]	Any amount[3]	Any amount[3]

[1] Appointment of representative: N/A; registration with CVM: N/A.
[2] Appointment of representative: required; registration with CVM: N/A.
[3] Appointment of representative: required; registration with CVM: required.

Foreign capital invested in accordance with Joint Resolution 13 may be invested in any financial instruments and securities available to domestic investors, including government securities, publicly traded securities on the stock exchanges, futures in the commodities and futures exchange, and quotas of local investment funds.

Any financial assets or securities resulting from any investments made pursuant to Joint Resolution 13 must be: (i) kept by a financial institution, or by any other institution authorized by the Central Bank of Brazil or the CVM, to act as bookkeeper of financial assets or securities; (ii) kept in custody with a financial institution, or with any other institution authorized by the Central Bank of Brazil or the CVM to provide such services; (iii) registered with a registration system authorized by the Central Bank of Brazil or the CVM to act as registrar for financial assets or securities, such as B3 or SELIC; (iv) deposited with a central depositary system authorized by the Central Bank of Brazil or by the CVM to act as a central depository for financial assets or securities, such as B3 or SELIC; or (v) held in a deposit account or pre-paid payment account[10] with any financial institution or payment institution authorized by the Central Bank of Brazil, or in a registration account with a brokerage firm or securities dealership.

The transfer or assignment of a Joint Resolution 13-investment outside Brazil is permitted if it takes place by virtue of an inheritance or bequest, or in the context of a merger, a merger of shares, or other corporate transaction that does not change the final holders of the investment and the

9 The requirement for the registration of the nonresident investor before the CVM does not apply to any nonresident individual.

10 Each transaction using funds deposited into a pre-paid payment account is limited to R$100,000.

amount of the financial assets or securities directly or indirectly owned by each investor in the transaction. Any such permitted transfer or assignment must be communicated to the CVM by the Brazilian entity representing the nonresident investor whose investment is being transferred. Any other transfer or assignment of a Joint Resolution 13-investment outside Brazil may only be made with the prior approval of the CVM.

2. Restrictions on Foreign Investments in Brazil

Brazilian law currently provides for certain specific restrictions on foreign investments in Brazil. Participation of foreign capital in the following activities is prohibited by the Federal Constitution:

(i) nuclear energy;

(ii) post office services; and

(iii) the aerospace industry (i.e., launching and orbital positioning of satellites, vehicles, aircraft and related activities).[11]

Brazilian law also imposes certain limitations on foreign investments in the following activities:

(i) mining activities: only Brazilian individuals and companies formed in Brazil (which companies may be under foreign control) may apply for and obtain federal authorization to operate in the mining sector;

(ii) hydraulic-energy activities: only Brazilian individuals and companies formed in Brazil (which companies may be under foreign control) may apply for and obtain federal authorization to operate in the hydraulic-energy sector;

(iii) domestic-flights routes: only Brazilian individuals and companies formed in Brazil (which companies may be under foreign control) may apply for and obtain federal authorization to operate commercial domestic flights;

(iv) media: newspapers, magazines and other periodicals, as well as radio and television networks, must be held either by native

11 The prohibition does not apply to the manufacturing or marketing of those items or their accessories.

Brazilians (or by individuals who have been naturalized for more than ten years), or by companies formed under Brazilian law and having their head offices in Brazil. If the media interests are held by a Brazilian company: (i) at least 70% of the total capital stock of that company, and at least 70% of the total capital stock of that company having the right to vote, must be held, directly or indirectly, by native Brazilians (or by individuals who have been naturalized for more than ten years); and (ii) foreigners and Brazilian individuals who have been naturalized for less than ten years may hold no more than 30% of the total capital stock of that company, and no more than 30% of the total capital stock of that company having the right to vote. In addition, managerial, editorial, and programming decisions must be made solely by native Brazilians (or by individuals who have been naturalized for more than ten years);

(v) financial institutions: the incorporation of, or the acquisition of an equity interest in, a Brazilian financial institution, as well as the opening of a branch of a foreign financial institution in Brazil, all require the prior authorization by the Central Bank of Brazil;

(vi) ownership of rural real estate: both the acquisition, and the leasing, of rural real estate by foreign individuals or entities (including Brazilian companies under foreign control), are subject to certain limitations and may require congressional authorization;

(vii) business in frontier areas: for national security reasons, the acquisition of real estate (and of any security interest in real estate) alongside frontier areas is subject to the prior authorization by the National Security Council; and

(viii) maritime transportation: the operation of foreign vessels in Brazil is subject to certain limitations.

IV. CROSS-BORDER LOANS

Foreign-sourced loans to Brazilian borrowers are subject to certain restrictions not applicable to foreign equity investments in Brazilian companies. Before obtaining a foreign-sourced loan, a Brazilian borrower must report the transaction to the Central Bank of Brazil through the electronic information system for foreign credit (*Sistema de Prestação de Informações de Capital Estrangeiro de Crédito Externo – SCE-Crédito*). To effect such reporting, the borrower must inform the Central Bank of Brazil of, among other things, the basic financial terms and conditions of the loan, such as the principal amount, the repayment terms, and the interest rate.

Pursuant to Resolution 278, credit transactions – such as direct loans, issuances of debt securities in the international capital markets, private issuances of securities in the Brazilian capital markets, and financings involving amounts equal to or greater than US$1 million (or its equivalent in other currencies) – must be reported to the Central Bank of Brazil. In cases of export prepayment transactions and foreign financial leasing operations, registration is mandatory if the amount involved is equal to or greater than US$1 million (or its equivalent in other currencies) and the tenor for repayment is greater than 360 days. Any financing of imported goods or services must be reported to the Central Bank of Brazil if the credit transaction is equal to or greater than US$500,000.00 (or its equivalent in other currencies) and the tenor for repayment exceeds 180 days.

The borrower must report the required information regarding the credit transaction to the Central Bank of Brazil: (i) prior to the entry of funds into the country, in the event the transaction involves the disbursement of funds; or (ii) within 30 days of the delivery of goods by the creditor, in Brazil or abroad.

Once the transaction has been reported, the borrower, or the issuer of a debt instrument, will be able to make remittances in respect of scheduled payments of principal and interest, as reported in the SCE-Crédito system, as well as fees, expenses, and other amounts contemplated in the respective credit documentation (such as those due by reason of increased costs or broken-funding provisions). For that purpose, the borrower must also report the required information regarding the schedule of payments to the Central Bank of Brazil within 30 days of the entry of the funds into the country or of the date on which the goods have been cleared through customs, as the case may be. In the case of information regarding remittance

of funds, the reporting is automatic based on the information available in the foreign-exchange system of the Central Bank of Brazil.

Under current Central Bank of Brazil rules, there is no minimum term to maturity required for a foreign-sourced loan. Foreign exchange transactions in connection with the inflow of proceeds to Brazil deriving from any foreign-sourced loan, financing, or issuance of a cross-border negotiable debt instrument (irrespective of the term of the transaction) will be subject to an IOF/Exchange tax at a rate of zero.[12] The remittance of funds abroad to service those cross-border loans, financings, or cross-border negotiable debt instruments currently remains subject to the IOF/Exchange tax at a rate of zero, regardless of the term of the transaction. In any case, the Brazilian government may increase (or, if greater than zero, decrease) the IOF Exchange rate at any time and from time to time. However, any such increase (or decrease) may apply only to foreign-exchange transactions carried out after the determination of the increase (or decrease).

Payments of interest under such foreign-sourced loans or securities will be considered an expense for the borrower and, therefore, may be deducted from the borrower's taxable income.

All payments of interest, fees, commissions, and expenses made in respect of foreign credit transactions, whether through the issuance of securities or not (and regardless of the term to maturity), are generally subject to a 15% withholding tax. In case of payments made to a person who is a resident in a jurisdiction that does not tax income, or that taxes it at a maximum rate of 17% or less, or where the laws impose restrictions on the disclosure of ownership structures, or do not allow the identification of the actual beneficiary of income attributed to nonresidents, the withholding tax is 25%. The withholding income tax rate remains 15% in respect of debt obligations related to international debt securities previously registered with the Central Bank of Brazil.[13] In those cases where Brazil is a party to a treaty to avoid double taxation with the country where the beneficiary of the payment is domiciled, the withholding tax rate will be determined by the provisions of that treaty.

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12 On the IOF/Exchange tax, see Section VI, "Taxes Applicable to Legal Entities in Brazil," Item 7, "Tax on Financial and Foreign-Exchange Transactions (IOF)," below.

13 On privileged tax regimes and tax regimes in low- or nil-tax jurisdictions, see Section VI, "Taxes Applicable to Legal Entities in Brazil," Item 8.6, "Privileged Tax Regime and Low-or Nil-Tax Jurisdictions."

Withholding for income tax will apply (albeit at a 0% rate), if the proceeds of the foreign-sourced loan are used to finance the borrower's exports and that loan is repaid with exports from Brazil made by the borrower or by entities that make up part of the borrower's economic group. This is typically the case with export prepayment transactions, a form of financing widely used by Brazilian exporters.

An export prepayment transaction is usually structured as a foreign-sourced loan backed by the borrower's export receivables. Such a transaction may be structured as a two-tier back-to-back loan transaction, whereby the borrower is an offshore affiliate of the Brazilian exporter and uses the proceeds of the loan to prepay exports of the Brazilian exporter, or as a direct export prepayment between the foreign lender and the Brazilian exporter.

In an export-prepayment transaction, the borrower may direct its customers to make payments for the exported goods (up to the amount of the registered loan) directly to the lender. The loan may also be secured by the proceeds from the borrower's exports. If such is the case, the proceeds may be directed to a collection account held in the name of the borrower and controlled by a collateral or administrative agent or by the lender.

Pursuant to Supplementary Law 214, setting down modifications to taxation on goods and services, loan and and credit transactions are deemed financial services and, therefore, generally subject to the Goods and Services Tax (IBS) and the Contribution on Goods and Services (CBS). The importation of financial services will be subject to the IBS and CBS tax rates applicable to financial services provided by suppliers of financial services domiciled in Brazil. Nevertheless, a zero tax rate may apply in specific cases of importation and they may also be subject to a special calculation-basis reduction in certain cases. As a general rule, the Brazilian resident importer will be the taxpayer of the CBS and IBS on the importation of financial services.

V. SECURED TRANSACTIONS: TYPES OF SECURITY INTERESTS

There are essentially four types of security interests[14] under Brazilian law.[15] These are: (i) the *hipoteca,* or, the "mortgage," as a security interest in real estate and certain assets and rights attached to real estate, as well as in vessels and aircraft, in the form of a hypothecation; (ii) the *penhor*, or "pledge," as a security interest in chattels and in rights in personal property; (iii) the *alienação fiduciária em garantia*, or, "fiduciary transfer of collateral," whereby a security interest is created in collateral that may consist either of real estate or of chattels, including vessels and aircraft; and (iv) the *cessão fiduciária*, or "fiduciary assignment" – basically another form of the fiduciary transfer of collateral, except that, with a fiduciary assignment, a security interest is created in collateral consisting of rights. Since its introduction into Brazilian law in the 1960s as a modern security device, and having initially been intended for use in a limited fashion, the fiduciary transfer of collateral has expanded its scope to such a point that, in practice, it has, in many instances, displaced the traditional mortgage and pledge in Brazil as the security device preferred by creditors.

1. Mortgage

1.1 Comparing a Brazilian Mortgage (*Hipoteca)* with a Common-Law Mortgage

To translate the Brazilian term "*hipoteca*" as "mortgage" in English begs a number of questions. Strictly speaking, the Brazilian *hipoteca* is not the same thing as a common-law mortgage. The *hipoteca* is a security interest that finds its origin in Roman law. With the exception of filing an *hipoteca* with the Real Estate Registry, as required in Brazil since the nineteenth century to perfect the security interest, and of limiting the *hipoteca* to real estate and a few other types of assets, as detailed above, the *hipoteca*, as used in Brazil today, has gone through few significant changes since Roman times. It is a hypothecation, meaning that the creditor holds an interest in the collateral to secure payment of an obligation. But the creditor takes neither title to, nor possession of, the collateral. Moreover, with an

14 Security interest, as used herein, means an interest in property, created by an agreement, to secure payment or performance of an obligation.

15 The antichresis (*anticrese*), a form of security in which the creditor takes the fruits and rents from real estate to reduce the outstanding indebtedness, is still listed as a statutory form of security device, along with the mortgage and the pledge, in the Civil Code. In practice, the antichresis has fallen into disuse.

hipoteca, the debtor runs no risk of forfeiting collateral that might have a value in excess of the amount of the outstanding obligation.

Finally, an *hipoteca* may be enforced not only by means of a power of sale but also through a judicial proceeding. In other words, a creditor having a security interest in real estate in the form of an *hipoteca* may foreclose the *hipoteca* by exercising a right to sell the real estate collateral in an out-of-court sale, or go through a court proceeding to execute on the real-estate collateral.

The foregoing description of an *hipoteca* contrasts radically with the classical common-law mortgage. The form of what is called the "classical common-law mortgage" finally took shape in fourteenth-century England after centuries of trial and error in the English Courts of Law. By the terms of the classical common-law mortgage, the debtor transferred title to the real-estate collateral to the creditor. Originally, the creditor customarily took possession of the real estate while the debtor's obligation remained outstanding. If the debtor paid on time, the creditor was obligated by covenant to reconvey full title to the real estate back to the debtor. On the other hand, if the debtor failed to pay on time, the obligor took full title to the real estate, without any judicial proceedings. In essence, the defaulting debtor forfeited his or her real estate to the creditor by operation of law, regardless of the outstanding amount of the past-due indebtedness, and regardless of the value of the real-estate collateral.

The classical common-law mortgage, the origins of which do not trace back to Roman law but, rather, to medieval English law of some 1,000 years ago, went through profound modifications – not so much in form, but, rather, in the way it functioned in practice – in the English Courts of Equity from the seventeenth century on. These modifications essentially transformed the classical common-law mortgage, in functional terms, into a security interest very similar to the Brazilian *hipoteca*. Today, although the manner in which the common-law mortgage functions may differ somewhat from jurisdiction to jurisdiction, in general terms the common-law mortgage has become, in practice, nothing more than a device to secure payment of an obligation. The creditor no longer takes possession of the real-estate collateral while the obligation is outstanding; and even if the mortgage documents may recite, in the style of the classical common-law mortgage, that title passes to the creditor for so long as the obligation remains outstanding, such language will be of little or no practical effect. The creditor's security lies in the real estate, and the creditor will look almost

without exception to the proceeds from the sale of the real estate in the case of foreclosure to recover any past due amounts.

By legislation enacted in England in 1925, a common-law mortgage no longer provides that the obligor convey title to the real estate collateral to the creditor. Rather, in a mortgage in England today, the obligor grants a lease of the real estate collateral for a period of 3,000 years (sic), thereby eliminating the obligation on the part of the creditor to have to reconvey title to the real estate to the obligor upon payment in full. At the same time, from the nineteenth century on, it came to be common in England for creditors to include a power-of-sale clause in mortgage deeds, permitting the creditors to take real-estate collateral directly to an out-of-court sale in the event of default on the part of the obligor. The inclusion of a power of sale clause in a mortgage deed came to be provided for by statute as well. As a result, upon default of the obligor, most mortgages are enforced in England today through the exercise, by the creditor, of a power of sale whereby the real-estate collateral is sold without the parties' having to go through any judicial proceedings.

In the United States, there are fifty or more jurisdictions, each with its own mortgage laws. Nevertheless, the majority of the states have followed the equitable view of a mortgage as developed in the Courts of Equity in England, whereby regardless of what the document may recite, a mortgage is nothing more than a lien on the real-estate collateral. Strict foreclosure, whereby a creditor takes title to the real-estate collateral following default by the obligor, is not a possibility in these states. A mortgage in these states is nothing more than a hypothecation, very much like the Brazilian *hipoteca*. In the remaining states, the possibility of strict foreclosure may exist in theory; but in practice, almost all mortgages in these states are foreclosed by sale of the mortgaged property – either through a judicial proceeding, which all states provide for, or through a power-of-sale clause in the mortgage deed, which a few states permit.

In short, today, in almost all common-law jurisdictions, a mortgage is very like an *hipoteca* in Brazil; and one is reasonably justified in translating the term "*hipoteca*" as "*mortgage*" in English. Until recently, perhaps the biggest difference between an *hipoteca* and a common-law mortgage lay in the fact that an *hipoteca* could only be foreclosed through a court proceeding. As a result of Law 14,711, however, Brazil now gives the mortgage creditor the option of foreclosing by exercising a power of sale and effecting a sale of the mortgaged property without having to go to court.

In the United States, one may foreclose a mortgage in any of the 50 states by resorting to judicial proceedings as well; and in about half of those states, the only method of foreclosure available is sale through judicial foreclosure. But in some states, a creditor may foreclose a mortgage by exercising a power of sale, thus avoiding judicial proceedings altogether. In England, sale in lieu of foreclosure is, today, the customary manner in which a creditor may execute on a mortgage.

1.2 The Nature of the Mortgage in Brazil

The *hipoteca*, or mortgage, is Brazil's traditional security interest in real estate. It applies only to real estate (and to certain assets and rights attached to real estate) as well as to vessels and aircraft. Until 1997, when Brazil enacted legislation extending the use of the fiduciary transfer of collateral to real estate, the mortgage was the only security device used in Brazil in which real estate could serve as collateral.

A mortgage is created by means of a public deed executed by the parties before a notary[16] and filed in the Real Estate Registry of the jurisdiction where the real-estate collateral is located. Filing the mortgage deed with the Real Estate Registry essentially perfects the mortgage, puts third parties on notice that the mortgage was granted, and (assuming that there are no prior mortgages on the same piece of real estate already filed with the Real Estate Registry) assures the creditor that the mortgage is a first and prior lien.

A mortgage in Brazil is an accessory to an underlying principal obligation payable in the future. The intention of the mortgage is to provide the creditor with assurances that the obligation will be paid, which assurances are greater than the creditor would otherwise have by relying solely on the creditworthiness of the debtor.

Brazilian law permits multiple mortgages on the same property. Accordingly, for example, a debtor who has already granted a mortgage on a piece of real estate in favor of one creditor may grant a second mortgage on that real estate to another creditor. In this case, and assuming that the first creditor timely registered that creditor's mortgage deed, the holder of the second mortgage would be entitled to proceeds from the sale of the real estate to apply against the debtor's outstanding obligation the payment of which is

16 There are few exceptions where a mortgage may be created by means of a private negotiable instrument rather than by executing a public deed before a notary.

secured by the second mortgage only after the obligation owing to the creditor holding the first mortgage has been paid off.

1.3 Foreclosing a Mortgage in Brazil

If a debtor should default in its payment obligations to a creditor holding a mortgage in Brazil as security for that payment, and so long as the debtor is not declared bankrupt, does not request a judicial reorganization, and has not requested a court to ratify a prepackaged reorganization to which the creditor is a party, the creditor may foreclose that mortgage either by bringing an execution proceeding in court against the debtor or through an out-of-court sale.[17]

Execution Proceeding

An execution proceeding is a proceeding to demand specific performance of certain obligations or to collect on a sum-certain debt[18] that is past due and that is evidenced by any of several instruments listed in the Brazilian Code of Civil Procedure as "extrajudicial execution instruments." Among the extrajudicial execution instruments that may be used as the basis for an execution proceeding in Brazil is a "contract with a mortgage security" – that is, a documented obligation the payment of which is secured by a mortgage.

For a description of the steps involved in an execution proceeding in general and, in particular, in one such proceeding based on past-due indebtedness the payment of which is secured by a mortgage, see Section XI, "Judicial Proceedings for the Enforcement of Rights," Item 1.1, "Execution Proceeding (*Execução*)," below.

Out-of-court Sale

The out-of-court sale proceeding in connection with a mortgage is intended to be faster and less expensive than an execution proceeding.

If an obligation the payment of which is secured by a mortgage is past due and owing, the creditor may request an official from the Real Estate Registry where the real estate is located to notify the debtor officially

17 An out-of-court sale by a mortgage creditor, pursuant to a power of sale, is not available to a mortgage creditor whenever the obligation secured by the mortgage arises from a financing transaction in the agribusiness sector.

18 A sum-certain debt is defined as an obligation that is, or by means of a simple arithmetic calculation may be, clearly determined or established.

to pay the amount outstanding within 15 days. If the debtor pays up the amounts past due within the 15-day period, the contract for the mortgage will continue in full force and effect, and the real estate will not be sold.

In the event such payment is not timely made, however, the official from the Real Estate Registry will certify to that fact and will record it in the Registry. Subject to the creditor's consent, the debtor, should the debtor choose to do so, may transfer title to the real estate directly to the creditor in payment of the amounts owing. The direct advantages to the parties in releasing the debtor from its obligation by transferring title to the real estate to the creditor in this manner lie in the fact that it will put an end to the matter and avoid the procedures for, and the expenses incident to, the out-of-court sale of the real estate.

Unless the debtor and the creditor have agreed that the debtor be released from its obligations by means of a transfer of full title in the real estate to the creditor, within 60 days from the date on which the official from the Real Estate Registry records in the Registry that the payment of past due and owing amounts was not timely made, the creditor must put the real estate up for sale at a public out-of-court auction. The minimum price acceptable for the sale of the real estate at the first auction will be the greater of (i) the value attributed to the property by the parties in the instrument whereby the mortgage was provided for and (ii) the valuation price used by governmental authorities to calculate the real estate transfer tax.

If the minimum price is not achieved at first auction, the creditor will have a 15-day period by the end of which the creditor must hold a second auction. The minimum price acceptable for the real estate at the second auction is the amount of the past due obligations (plus interest, penalties and other contractual charges), expenses (including expenses relating to notification of the debtor, and expenses in holding the public auction and the auctioneer's commission), taxes and outstanding charges against the property (such as insurance premiums and condominium fees). In case no bid achieves such minimum amount, the creditor may, at its sole discretion, accept any bid that achieves at least 50% of the valuation price of the real-estate collateral. In such a case, the debtor will remain liable for the payment of the outstanding debt (deducted by the amount of the bid accepted by the creditor), which may be collected through an execution proceeding and, as the case may be, foreclosure on other collateral securing such debt, except in case the secured debt consists of a financing to the acquisition or construction of the residential real estate of the debtor, in which case the debtor is released

from any further obligation to pay any amounts to the creditor in respect of the indebtedness the payment of which was secured by the mortgage.

It may be that the real estate is sold at one of the auctions, in which case the creditor must deliver to the obligor, within fifteen days of the auction, any amount recovered from such a sale in excess of the amount of the past due obligations, plus expenses, taxes and other charges as noted above.

However, it may be that the minimum price is still not achieved at the second auction. In such a case, the creditor may either: (i) acquire full title to the real-estate collateral at a price equal to the minimum price used as reference in the second auction; or (ii) sell the real-estate collateral to a third party, through a direct private sale, at a minimum price equal to the price used as a reference in the second auction, within 180 days from the last auction. In any case, the debtor will remain liable for the payment of the outstanding debt (deducted by the price used as a reference in the second auction or the sale price paid by the third party, as the case may be), which may be collected through an execution proceeding and, as the case may be, foreclosure on other collateral securing such debt, except in case the secured debt consists of a financing to the acquisition or construction of the residential real estate of the debtor, in which case the debtor is released from any further obligation to pay any amounts to the creditor in respect of the indebtedness the payment of which was secured by the mortgage.

1.4 Effects of Bankruptcy and Judicial Reorganization on a Mortgage

There are two developments evidencing an adverse turn of events in a debtor's financial condition that will directly affect the ability of the holder of a mortgage, granted by that debtor and securing the payment of an obligation owing by that debtor, to foreclose that mortgage. These are: (i) the declaration of the bankruptcy of the debtor; and (ii) the submission, by the debtor, of a request for its judicial reorganization. A third development, namely, a request by the debtor for a court to ratify a prepackaged reorganization, may also affect the ability of that holder of a mortgage to foreclose the mortgage if the obligation owing to the holder of that mortgage is included in the prepackaged reorganization.

Bankruptcy

Upon the declaration of bankruptcy (*falência*) of a debtor, all of the debtor's obligations yet to mature are automatically accelerated. Any

obligation payable in a foreign currency will be converted into Brazilian currency at the exchange rate in effect on the date of the declaration of bankruptcy. And any actions to collect on any indebtedness of the debtor are automatically stayed.

Any obligations of a debtor whose bankruptcy has been declared, the payment of which obligations is secured by a mortgage in Brazil, will rank in a class together with the obligations of other creditors holding collateral (*in rem*) security. Each mortgage will continue to be valid. But in each case the creditor will be entitled to receive in the liquidation process an amount equal to the total amount of the proceeds from the sale of the mortgaged property, but only after payment of the super priority claims described and ranked in Section XIII, "Insolvency Proceedings, Liquidation, Judicial and Prepackaged Reorganization," Item 2, " Judicial Reorganization (*Recuperação Judicial*)," and the labor claims, limited to 150 minimum monthly salaries. Depending on the value of the real estate, the amount of the outstanding obligation owing to the creditor holding the mortgage, and the amounts of any such costs, obligations and claims payable by the bankrupt estate, it is possible that the creditor holding a mortgage may receive less than the total amount of the obligations owed to that creditor. In any such case, the creditor will become an unsecured creditor for the shortfall.

For a description of the procedure in a bankruptcy liquidation, see Section XIII, "Insolvency Proceedings, Liquidation, Judicial and Prepackaged Reorganization," Item 1, "Bankruptcy Liquidation," below.

Judicial Reorganization (Recuperação Judicial)

If the debtor files for judicial reorganization (*recuperação judicial*), all creditors holding mortgages in Brazil on any property owned by the debtor, as security for payment of obligations owing by the debtor, will be subject to the terms of the judicial-reorganization plan. That plan must be voted upon and approved by the creditors and by the court in accordance with Brazil's reorganization and bankruptcy laws.

Upon the court's granting the debtor's request for a judicial reorganization, foreclosure of a mortgage in Brazil and any other execution or collection proceedings against the debtor are automatically stayed for a period of 180 days, extendable once, for the same period, from the date on which the court grants the debtor's request for a judicial reorganization. In spite of specific language in the Bankruptcy Law stipulating that, after the

stay period (together with any extension) has run, creditors of a debtor in a judicial-reorganization proceeding may either initiate proceedings against the debtor or resume pending actions, it is generally the case that the court will maintain the stay until the reorganization plan has been voted on by the creditors. The approval of the reorganization plan by the creditors is likely to occur long after the stay limit (as extended if that should be the case) has run.

In practical terms, it is likely that the final reorganization plan, approved by the various collective bodies of creditors of the debtor subject to judicial reorganization in the manner prescribed in the Bankruptcy Law, will provide for payment to the secured creditors of something less than the full amount of the outstanding obligations the payment of which is secured by their respective security interests, and something less than the value of the collateral subject to those security interests.

For a description of the various steps involved in a judicial reorganization and, in particular, the role undertaken by the creditors, see Section XIII, "Insolvency Proceedings, Liquidation, Judicial and Prepackaged Reorganization," Item 2, "Judicial Reorganization (*Recuperação Judicial*)," below.

Prepackaged Reorganization (Recuperação Extrajudicial)

The debtor may reach an agreement on a reorganization with its creditors (or some of them) without going through a full-fledged judicial reorganization. Any such reorganization is termed a "prepackaged reorganization" (*recuperação extrajudicial*).

Not all creditors of the debtor will necessarily be parties to any such prepackaged reorganization. In this regard, the Bankruptcy Law was amended in 2020 and now provides that the automatic stay of 180 days is also applicable in the case of prepackaged reorganizations, with the proviso that such an automatic stay is effective exclusively with respect to claims addressed under the respective prepackaged reorganization.

For a description of the purpose of, and the mechanics involved in, a prepackaged reorganization, see Section XIII, "Insolvency Proceedings, Liquidation, and Judicial and Prepackaged Reorganization," Item 3, "Prepackaged Reorganization (*Recuperação Extrajudicial*)," below.

2. Pledge

2.1 The Nature of a Pledge in Brazil

As does the Brazilian mortgage, or "*hipoteca*," the Brazilian pledge finds its origins in Roman law. And like a pledge in a common-law jurisdiction, a Brazilian pledge is the traditional form of security interest in chattels and rights in Brazil. In both common-law jurisdictions and in Brazil, the delivery of the pledged collateral to the creditor (*tradição*) has always been of the essence of a pledge. Traditionally, a pledge has created a possessory security interest.

A pledge does not transfer title to the collateral to the creditor in common-law jurisdictions or in Brazil. Having possession of the pledged collateral, a creditor in a common-law jurisdiction traditionally, as a matter of law, has had the power of sale in the event the debtor should default, permitting the creditor to sell the pledged collateral without going through a court proceeding. In Brazil, the creditor holding a pledge of collateral may exercise a power of sale without going through a court proceeding only if the debtor has given its express prior consent allowing the creditor to do so. Depending on the bargaining position of the parties to a pledge, a creditor taking a pledge in Brazil customarily tries to include a provision in the pledge documentation permitting the creditor to have the power of sale if the debtor should fail to pay the secured obligation on time.

In the course of the nineteenth and twentieth centuries, the increased need for credit arising from the mechanization of agriculture and the industrial revolution, together with the structuring of commercial intermediaries between a manufacturer and the final consumer of goods that the manufacturer produced, caused many jurisdictions to seek ways to create security interests in chattels without, however, transferring the possession of those chattels to the creditor. In the United States, various states came up with a variety of security devices of this nature, such as the conditional sale, the chattel mortgage and trust receipts. There was no intention to treat these security devices as pledges or even as forms or variations of pledges. Although, in each case, the collateral securing payment of an obligation was personal property and not real estate, rather than transferring possession, these devices purported to transfer title to the chattels to the creditor while leaving possession of those chattels with the debtor. It was the debtor who needed to keep possession of the chattels given as collateral to continue carrying on his or her business. These security devices focused on collateral that consisted primarily of machinery, equipment, furniture and inventories.

Brazil sought to achieve a similar result by adjusting the statutory form of pledge, reciting in the pledge documentation that the collateral would be delivered to the creditor by actually leaving the collateral physically in the possession of the debtor, who would hold the collateral as a bailee, or "faithful depository," for the creditor, pursuant to another device from the Roman law, the "*clausula constituti*." In this manner, several new security devices were created by legislation in Brazil, included among which are the commercial pledge, the industrial pledge, the agricultural pledge and the pledge of vehicles. The disadvantage to the creditor in these cases (as opposed to a creditor with a traditional pledge in which the creditor would take actual possession of the collateral) lies in the fact that the creditor would have to go through the process of seizing the collateral before enforcing this type of pledge through a judicial sale.

All of these Brazilian security devices, new when they were created but consisting of variations on the pledge, are still provided for today in the Civil Code in the Section covering pledges.

2.2 Enforcing a Pledge in Brazil

Like the mortgage in Brazil, a contract providing for an obligation to pay indebtedness secured by a pledge is one of the extrajudicial execution instruments provided for in Brazilian law. Accordingly, if there is no provision in the pledge documentation that permits the creditor to exercise a power of sale of the collateral extrajudicially, the process of enforcing a pledge follows the same proceedings as those described in Item 1.2 of this Section for foreclosure of a mortgage, and in Section XI, "Judicial Proceeding for the Enforcement of Rights," Item 1.1, "Execution Proceeding (*Execução*)," below for an execution proceeding.

2.3 Effects of Bankruptcy and Judicial Reorganization on a Pledge

The effects of bankruptcy and judicial reorganization on a pledge in Brazil are essentially the same as those set forth above in Item 1.4 of this Section for a mortgage.

3. Fiduciary Transfer or Assignment of Collateral: Chattels and Rights

3.1 Fiduciary Transfer of Collateral: Brazil's Modern Security Device

In the 1960s, Brazil enacted legislation instituting the fiduciary transfer of collateral. The fiduciary transfer of collateral was a novel security device whereby the debtor transferred to the creditor conditional title to

personal-property collateral. If the debtor paid on time, the creditor thereupon ceased to have title to or any other interest in the collateral, and the debtor regained full title to the collateral outright. However, if the debtor failed to pay on time, subject to certain procedural requisites and details, the creditor could sell the collateral without going through a court proceeding. Any surplus from the proceeds of the sale over the aggregate amount of the indebtedness and related costs went to the debtor. If the proceeds from the sale were insufficient to cover the outstanding amounts, the creditor could seek payment of the shortfall as an unsecured creditor.

Initially, the fiduciary transfer of collateral had the objective of promoting the extension of credit to persons acquiring new products – especially, automobiles. The use of this new security device was limited to creditors that were financial institutions. For the creditor, the fiduciary transfer of collateral brought two significant advantages. First, it came with a statutory power of sale, meaning that, upon default by the debtor (and subject to certain procedural requisites and details), the creditor could carry out the sale of the collateral without going to court and without the consent of the debtor. Second, because the creditor held conditional title to the collateral so long as the indebtedness remained outstanding, the collateral was not considered to be part of the debtor's assets. As a result, the creditor's lien on the collateral was first and prior, not subordinated to any statutory labor or tax liens, or to costs incurred by the bankruptcy estate in any eventual bankruptcy proceeding. Collateral securing the payment of obligations of the debtor by means of a fiduciary security device simply was not included as part of the debtor's assets in a bankruptcy or judicial-reorganization proceeding brought by or against that debtor. Consequently, the credit secured by such collateral was not subject to the judicial reorganization proceeding.

Over time, the use of the fiduciary transfer of collateral has expanded. Today, in terms of personal property, it extends to collateral that consists of shares of the capital stock of a corporation, fungible assets (within the Brazilian capital markets and with a Brazilian financial institution as creditor), nonfungible assets (with no restrictions as to who the creditor could be), and negotiable instruments, credit rights and choses in action generally. In 1997, Brazilian legislation provided that the payment of real estate financings in general could be secured not only by Brazilian mortgages but also by the fiduciary transfer of real-estate collateral. The law evolved to establish that the fiduciary transfer of real-estate collateral was not limited to entities operating within the scope of Brazil's System for Real Estate

Financing but, rather, could actually be contracted by anyone, including individuals and companies.

Most of the provisions governing the fiduciary transfer of collateral are contained in ordinary legislation. In 2002, the concept of the fiduciary transfer of collateral was finally introduced into the Civil Code – not as one of the traditional forms of security interests (comprising the mortgage, the pledge, and the anachronistic antichresis) but, rather, as a form of title, or ownership, "in the nature of a lien" (or, "*com escopo de garantia*"). Accordingly, the concept of "fiduciary title in the nature of a lien" was not included in the section of the Civil Code covering mortgages and pledges. Instead, it was included in the section covering title, or ownership; and "fiduciary title" (*propriedade fiduciária*) was defined as a form of conditional title, applicable only in the case of nonfungible personal property, that the debtor transferred to the creditor "in the nature of a lien." By its terms, the concept as introduced in the Civil Code to address the fiduciary transfer did not cover fungible personal property, and it did not extend to real-estate collateral.

One could argue that "fiduciary title" should really be construed as being the security interest itself, and that a "fiduciary transfer of collateral" should be construed to be the act whereby a debtor passes the security interest, or "fiduciary title," to a creditor. In due course, if custom and usage, together with a consolidation of statutory provisions governing the fiduciary transfer of collateral and fiduciary title, should coalesce in a clear and consistent manner, this may come to be the understanding. Be that as it may, in practice today, because: (i) the concept of "fiduciary title" as set forth in the Civil Code is of limited application; (ii) most transactions involving fiduciary transfers of collateral and fiduciary assignments fall outside that concept; and (iii) most transactions involving fiduciary transfers of collateral are subject primarily to legislation separate from the Civil Code; in common parlance in financial circles in Brazil, one customarily hears more references to the "fiduciary transfer of collateral" than to "fiduciary title," both in describing this novel security device, and in specifying the security interest created thereby.

Owing to the variety of pieces of legislation addressing diverse aspects of fiduciary transfers of collateral, the novelty of the security device itself, and the academic debate as to where this modern security device fits into the structured code-based legal system in Brazil, there are a number of questions as to how this security device should work that still vex the courts.

One may expect at least some degree of legal uncertainty regarding the fiduciary transfer of collateral to continue for some time. But the overall impact of the fiduciary transfer of collateral on secured transactions in Brazil has been substantial and, from the point of view of a creditor, positive.

3.2 Collecting Past Due Amounts Owing by a Debtor pursuant to a Fiduciary Transfer of Collateral Consisting of Chattels and Rights

Chattels

In the event a debtor, having made a fiduciary transfer to a creditor of collateral consisting of chattels, should default in making payment, the creditor must proceed to sell the collateral to a third party. Any sale of the collateral may be either a sale carried out through the judiciary, or a sale effected out of court. The right of the creditor to carry out any such a sale out of court is a right not dependent upon any contractual provision to that effect but, rather, based on a power of sale specifically provided for, in this case, by statute.

The proceeds of any such sale will be delivered to the creditor in payment of its credit and of any costs it may have incurred in the process of collecting. Should the proceeds be greater than the amounts owing to the creditor together with costs, the balance will be turned over to the debtor. If the proceeds of the sale of the collateral are not sufficient to pay off the outstanding indebtedness together with costs, the creditor may seek payment of the balance from the debtor as an unsecured creditor.

It is possible that a debtor, who transferred fiduciarily to a creditor certain collateral consisting of chattels, may refuse to make those chattels available to the creditor following the debtor's default. The creditor may, nevertheless, carry out the sale of those chattels even though the creditor does not have actual possession of them. At the same time, the creditor, as well as any eventual third-party purchaser of the chattels making up the collateral, may request a court to grant the right to search for, and seize, the collateral that remains in the possession of the debtor.

Rather than resort to the judiciary to get an authorization for search and seizure, a creditor may pursue another course of action. So long as there is a highlighted provision to this effect in the document providing for the fiduciary transfer, a creditor may take action through the Registry of Deeds and Documents of the place where the debtor is domiciled or the

chattel is located.[19] The action consists of requesting an official from that Registry to notify the debtor officially to pay the amount of indebtedness outstanding within 20 days. If the debtor pays up the amounts past due within the 20-day period, the contract for the fiduciary transfer of a chattel will continue in full force and effect; and full title to the chattel will not be consolidated in the creditor.

In the event such payment is not timely made, however, the official from the Registry of Deeds and Documents will record in the Registry that title to the chattel has been consolidated in the name of the creditor or, in case the fiduciary transfer is registered solely with another governmental authority, the official will inform such fact to that authority so that it may record the consolidation of title.

Upon consolidation of title in the name of the creditor, the debtor must deliver or make the chattel available to the creditor so that it may proceed with the out-of-court sale referred to above.

Rights and Intangibles

The form of the fiduciary transfer of collateral used in the case of rights and intangibles – that is, for example, accounts receivable, securities, and financial assets – is the fiduciary assignment. In the case of financial assets subject to registration in one of the central clearing houses authorized to operate by the Central Bank of Brazil or the CVM, such as B3 and SELIC,[20] the fiduciary assignment must be registered with the appropriate clearing house. Upon the failure of the debtor to pay the secured obligations in a timely manner, proceedings established by the respective clearing house will allow the creditor to transfer definitive title to the financial assets to the creditor's own name, irrespective of any action taken by third parties. Thereupon, the creditor may proceed to sell those assets.

As in the case with a sale of collateral consisting of chattels, described above, in the event the proceeds from the sale of the financial assets are insufficient to cover the amount owing on the past due obligation together with costs of collection, the creditor may pursue the debtor for payment of the balance as an unsecured creditor.

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19 If a chattel consists of a motor vehicle, a creditor has the option of carrying out the foreclosure proceeding directly before the competent department of motor vehicles.

20 On B3 and SELIC, see Section III, "Foreign Investments in Brazil," Item 1, "Foreign Investments in the Brazilian Financial and Capital Markets," above.

In the case of a fiduciary assignment of securities and financial assets that are not subject to registration with a central clearing house, the fiduciary assignment must be registered with the appropriate Registry of Deeds and Documents and with the relevant registrar or custodian of the assets. Should the debtor fail to pay its obligation to a creditor to which any such securities or financial assets have been assigned as security for payment, the process for selling the securities or assets is essentially the same as described above when securities or financial assets are registered with central clearing houses. In the latter case, however, the creditor has the advantages of selling the securities or assets through a clearing house with detailed rules as to how the sale will take place, and of counting on greater liquidity for the securities or assets that the creditor may be selling in the market.

As for the fiduciary assignment of accounts receivable, the creditor is customarily a financial institution at which the debtor will hold an account through which all receivables subject to the fiduciary assignment will pass. The debtor gives its clients, whose payments to the debtor have been assigned fiduciarily to the creditor to secure payment of a loan, irrevocable instructions to make payments to the debtor exclusively into the debtor's account held at the creditor financial institution. If the debtor defaults, the creditor will hold the accounts receivable and use the funds towards payment of the indebtedness.

3.3 Effects of Bankruptcy and Judicial Reorganization on a Fiduciary Transfer of Collateral Consisting of Chattels and Rights

The novelty of the fiduciary transfer of collateral – whether that transfer be of chattels, rights, or real estate – has created some confusion in Brazilian courts and among legal scholars. In principle, if title to the collateral (even though it be only conditional title) has passed to the creditor for the period of time in which the secured obligation is outstanding, that collateral is, in theory, no longer a part of the assets of the debtor – at least unless and until the debtor pays off his or her obligation. So, it would follow, the position of a creditor holding collateral subject to a fiduciary transfer should not change if the debtor is declared bankrupt or if the debtor files for judicial reorganization; and such a creditor should be entitled to proceed to sell the collateral once the debtor is in arrears, regardless of whether the debtor has been declared bankrupt or is in proceedings for a judicial reorganization.

By its terms, this is essentially what Brazilian law prescribes.

In terms of a declaration of bankruptcy, this conclusion appears to represent not only the statutory law but also the majority view in the courts and among legal scholars. In our view, this conclusion is reasonable and makes sense. With a declaration of bankruptcy, the debtor's business terminates. There would be no reason to bring the creditor holding collateral given by the debtor, which collateral is subject to a fiduciary transfer, into bankruptcy proceedings. The collateral held by the creditor would, in principle, be irrelevant to the future business of the debtor, because there will be no future business.

Other creditors not holding collateral pursuant to a fiduciary transfer may not be amused with the situation; but unless there is some evidence of fraud, it is the legal function of a fiduciary transfer of collateral to segregate that collateral from the patrimony of the debtor for so long as the obligation the payment of which is secured thereby remains unpaid.

In the case of a request for judicial reorganization, however, the matter is not that simple. The Bankruptcy Law acknowledges that there may be credits held by creditors to whom collateral has been transferred fiduciarily by a debtor subject to judicial reorganization. Moreover, it provides that such credits are not subject to the reorganization proceedings. However, there is one statutory restriction applicable to a creditor holding conditional title to collateral pursuant to a fiduciary transfer of collateral. That restriction provides that the creditor, in such a case, may not "sell or remove from the debtor's premises any capital assets essential to the debtor's business activities" during the "stay" period – the period of 180 days from the date a Brazilian court grants the debtor's request for a judicial reorganization. What "capital assets essential to the debtor's business activities" may consist of is somewhat vague and certainly subject to interpretation, and the courts have taken some liberty in interpreting the law in this regard. For example, it is common for the courts to extend the stay period until the reorganization plan has been approved by the creditors. As a result, when a debtor asks for a judicial reorganization, secured creditors holding collateral pursuant to a fiduciary transfer of collateral are often prevented from exercising their rights against the debtor for periods much longer than the basic stay period of 180 days.

At the same time, in the case of a judicial reorganization, a fiduciary assignment of accounts receivable presents special issues that the courts have had to address. In principle, a fiduciary assignment of future

accounts receivable is a valid fiduciary assignment. But if a debtor seeking to recuperate its business is deprived of its accounts receivable because those accounts receivable were given to a creditor pursuant to a fiduciary assignment, a reasonable argument may often be made that those accounts receivable are essential for the debtor in a judicial reorganization proceeding to get on with the debtor's business. For some time, how the courts face this question has been resolved on a case-by-case basis. In some cases, the courts in proceedings for judicial reorganization have recognized a fiduciary assignment of accounts receivable but have limited the amounts of those accounts receivable available to the creditor for repayment of past due amounts to something less than 100%. In view of a recent decision handed down by the Superior Court of Justice, however, holding that a fiduciary assignment of accounts receivable is not to be included as part of a judicial reorganization, the law on this matter may be firming up in favor of the creditor.

4. Fiduciary Transfer of Collateral: Real Estate

4.1 The Nature of a Fiduciary Transfer of Collateral Consisting of Real Estate

Fiduciary title to real-estate collateral is constituted by the registration of the agreement for a fiduciary transfer of collateral in the appropriate Real Estate Registry. Once the debt is paid off, the fiduciary title terminates, the registration of the fiduciary title is cancelled in the Real Estate Registry, and the debtor regains full title to the real estate.

4.2 Collecting Past Due Amounts Owing by a Debtor Pursuant to a Fiduciary Transfer of Collateral Consisting of Real Estate

The foreclosure proceeding in connection with a fiduciary transfer of real-estate collateral is very similar to the out-of-court foreclosure proceeding of a traditional Brazilian mortgage.

If an obligation the payment of which is secured by a fiduciary transfer of real-estate collateral is past due and owing, the creditor may request an official from the Real Estate Registry where the contract for the fiduciary transfer is registered to notify the debtor officially to pay the amount outstanding within 15 days. If the debtor pays up the amounts past due within the 15-day period, the contract for the fiduciary transfer of collateral will continue in full force and effect, and full title to the real estate will not be consolidated in the creditor.

In the event such payment is not timely made, however, the official from the Real Estate Registry will certify to that fact and will record in the Registry that title to the real estate has been consolidated in the name of the creditor. Subject to the creditor's consent, the debtor, should the debtor choose to do so, may transfer title to the real estate directly to the creditor in payment of the amounts owing. The direct advantages to the parties in releasing the debtor from his or her obligation by transferring title to the real estate to the creditor lies in the fact that it will put an end to the matter and avoid the procedures for, and the expenses incident to, the out-of-court sale of the real estate.

Unless the debtor and the creditor have agreed that the debtor be released of its obligations by means of a transfer of full title in the real estate to the creditor, the creditor must, within 60 days from acquiring transferrable title to the real estate, put the real estate up for sale at a public out-of-court auction. The minimum price acceptable for the sale of the real estate at the first auction will be the greater of (i) the value attributed to the property by the parties in the instrument whereby the fiduciary transfer of real-estate collateral was provided for, and (ii) the valuation price used by governmental authorities to calculate the real estate transfer tax.

If the minimum price is not achieved at first auction, the creditor will have a 15-day period by the end of which the creditor must hold a second auction. The minimum price acceptable for the real estate at the second auction is the amount of the past due obligations (plus interest, penalties and other contractual charges), expenses (including expenses relating to notification of the debtor, expenses in holding the public auction and the auctioneer's commission), taxes and outstanding charges against the property (such as insurance premiums and condominium fees). In the event that no bid achieves such minimum amount, the creditor may, at its sole discretion, accept any bid that achieves at least 50% of the valuation price of the real-estate collateral.

It may be that the real estate is sold at one of the auctions, in which case the creditor must deliver to the obligor, within five days of the auction, any amount recovered from such a sale in excess of the amount of the past due obligations, plus expenses, taxes and other charges as noted above.

However, it may be that the minimum price is still not achieved at the second auction. In such a case, the creditor will take full title to the real-estate collateral. What happens thereafter depends on whether the real-

estate collateral secured the payment of indebtedness arising from a financing of the acquisition or construction of the residential real estate of the debtor or not.

If the indebtedness the payment of which was secured by real-estate collateral arose from a financing for residential real estate of the debtor, upon the creditor's taking full title to the real estate subsequent to a second auction, the debtor is thereupon released from any further obligation to pay any amount to the creditor.[21]

On the other hand, if the indebtedness was not incurred to finance the acquisition or construction of the debtor's residence, the debtor will continue to be liable to the creditor for an amount determined by taking the outstanding amount of the debt and reducing it by 50% of the valuation price of the real-estate collateral. This latter amount may be collected through an execution proceeding against other collateral that may have been given to the creditor as collateral; or, if there is no other collateral, the creditor may proceed against the debtor as an unsecured creditor.

4.3 Effects of Bankruptcy or Judicial Reorganization on a Fiduciary Transfer of Real-Estate Collateral

The effects of bankruptcy and judicial reorganization on a fiduciary transfer of real-estate collateral are essentially the same as those described above in Item 3.3 for those effects on a fiduciary transfer when the collateral consists of chattels and rights. There have been cases where the court in a judicial-reorganization proceeding has blocked the sale of real estate transferred fiduciarily by a debtor, alleging that the real estate was essential to the recuperation of the distressed debtor. In these cases, the debtor has been able to convince the court that the real estate, allegedly a capital asset, is essential to the business. A relatively common case in which the courts have made such a finding occurs when the real estate is land on which the debtor has constructed a factory.

21 Thereafter, the creditor may keep the real estate, rent it, or continue efforts to sell the residential real estate in any legal manner it may see fit to employ.

VI. TAXES APPLICABLE TO LEGAL ENTITIES IN BRAZIL

Brazilian companies are required to pay the following taxes (among other possible levies): (i) Corporate Income Tax (*Imposto de Renda da Pessoa Jurídica*, or IRPJ); (ii) Social Contribution on Net Profits (*Contribuição Social sobre o Lucro Líquido*, or CSLL); (iii) Social Contribution to Finance Social Security (*Contribuição para o Financiamento da Seguridade Social*, or COFINS); and (iv) Contribution to the Social Integration Program (*Programa de Integração Social*, or PIS).

In addition, Brazilian companies may also be required to pay other taxes relating directly to the company's activities, such as a value-added tax on the sale of goods (*Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre Prestações de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação*, or ICMS), an excise tax on services (*Imposto sobre Serviços de Qualquer Natureza*, or ISS), a value-added tax on the manufacturing of goods (*Imposto sobre Produtos Industrializados*, or IPI), and a tax on financial and foreign-exchange transactions (*Imposto sobre Operações de Câmbio*, or IOF/Exchange).

Nevertheless, Constitutional Amendment 132 in 2023 initiated a substantial tax reform relating to goods and services based on a dual value-added model by replacing the ISS, ICMS, IPI, PIS, and COFINS (taxes on consumption) by three new taxes: the Goods and Services Tax (IBS), the Contribution on Goods and Services (CBS) and the Excise Tax (IS). Such dual value-added tax reform will be implemented in phases from 2026 to 2033, during which period both tax systems will coexist.

In 2025, the Brazilian National Congress enacted Supplementary Law 214, providing for the regulation of the IBS, CBS, and IS, and creating the IBS Management Committee *(Comitê Gestor do IBS)*.[22]

The Brazilian Congress is also discussing certain bills proposing a tax reform in respect of the IRPJ and CSLL (taxes on corporate income). As a result, the existing tax-reform bills may be amended, modified, and even ultimately rejected by the Brazilian Congress. Therefore, it is not possible to foresee if and on what terms the corporate income tax reform will be approved.

22 For more information on the recently enacted goods and services tax reform, see Item 10 below.

1. Corporate Income Tax (IRPJ)

The taxable income of a company may be determined by either of two methods: (i) actual profits; or (ii) presumed profits. If the company uses the actual-profits method, its taxable income will be the positive difference between all the company's revenues (including financial revenues) and the costs and expenses necessary to obtain those revenues. On the other hand, the taxable income of companies that elect to use the presumed-profits method will be the sum of: (i) a certain percentage (which will depend on the type of business) multiplied by the company's gross revenues from the sale of goods and services (without any expense deduction) plus (ii) 100% of capital gains and other revenues, such as revenues from financial transactions.

As a general rule, financial institutions, companies with gross annual revenue in excess of R$78,000,000, and companies that receive profits, income or capital gains from abroad, among others, must calculate taxable income using the actual-profits method.

The corporate income tax rate currently in effect in Brazil is 15%. Any taxable income in excess of R$20,000 per month is further subject to a surtax of 10%.

Tax losses may be carried forward indefinitely, but the amount that may be used to offset income is limited to 30% of the current year's taxable income.

2. Social Contribution on Net Profits (CSLL)

In addition to the corporate income tax described above, a company must also pay CSLL – a social contribution levied on the company's net profit. The tax rate for the CSLL for companies in general is 9%. For financial institutions, the tax rate for the CSLL is (i) 20% for banks, and (ii) 15% for private health care insurance operators, special savings companies, securities dealerships, brokerage firms, credit, finance and investment companies, real estate credit companies, credit card administrators, leasing companies, credit unions, and savings and loan associations. In any event, the tax basis for the CSLL is generally the same as that for the corporate income tax. This social contribution is not deductible in calculating either the corporate income tax or the CSLL itself.

3. Social Contribution to Finance Social Security (COFINS) and Contribution to the Social Integration Program (PIS)[23]

PIS and COFINS are federal taxes levied on the monthly gross revenues of legal entities. Both social contributions may be determined by either of two methods: (i) cumulative; or (ii) noncumulative (calculated as a value-added type of tax). Currently, under the cumulative method, which is mandatory in the case of certain companies (e.g., companies that use the presumed-profit income-tax regime, and financial institutions), PIS and COFINS are levied on the gross revenue, which is strictly interpreted to mean proceeds obtained from the sale of goods and services. The rates for most companies are 0.65% for PIS and 3% for COFINS (except for financial institutions, which pay COFINS at a rate of 4%). In addition, under this method, these social contributions have a cascading effect, the impact of which is to increase the overall tax burden and the cost of goods and services in Brazil.

As a general rule, companies that use the actual-profits income-tax regime are subject to PIS and COFINS under the noncumulative method. Noncumulative PIS tax provisions were introduced in 2002 by Law 10,637. Among those provisions is one that increased the PIS tax rate to 1.65%. At the same time, this legislation created a credit mechanism designed to eliminate the cascading effect of PIS. According to this new noncumulative mechanism, in general, taxpayers may recognize PIS credits corresponding to 1.65% of certain costs and expenses. Such credits may be used to offset the PIS due on their taxable revenue.

Law 10,833 effectively applies similar noncumulative rules to COFINS. In exchange for an increased COFINS tax rate (7.6%), COFINS tax credits corresponding to up to 7.6% of certain costs and expenses may be offset against COFINS due on the monthly taxable revenue.

As a result of the introduction of the noncumulative laws described above, the aggregate overall rate for PIS and COFINS under the noncumulative method was increased to 9.25%: (i) a PIS rate of 1.65%; plus (ii) a COFINS rate of 7.6%.

23 For more information on the recently enacted goods and services tax reform, see Item 10 below.

The PIS and the COFINS tax bases for calculating the credits are essentially the same and include, for example: (i) cost of products purchased for resale; (ii) cost of goods and services (excluding labor costs); (iii) lease payments with respect to real estate; and (iv) depreciation of fixed assets used in business activities.

Currently, financial revenues generated by companies subject to the noncumulative method are taxed for PIS and COFINS at a 4.65% rate (0.65% for PIS and 4.0% for COFINS), except for revenues related to interest on net equity (*juros sobre o capital próprio*), in which case the tax rate is 9.25% (1.65% for PIS and 7.6% for COFINS).

Finally, among other specific transactions, sales of equity investments (as long term investments), fixed assets and intangible assets, and the exportation of goods and services (provided that the relevant export transaction involves the actual inflow into Brazil of foreign-exchange proceeds from the sale of those goods and services to a foreign purchaser) are exempted from PIS and COFINS.

4. Excise Tax on Services (ISS)[24]

The ISS is a municipal excise tax levied on the rendering of certain services specified in the applicable law. The usual (and highest possible) rate is 5%. That rate may vary depending on the service provided and on the municipality where that service is being rendered. The ISS is usually levied on the gross revenue from services. Expenses incurred in rendering the services may not be deducted for the purpose of calculating the ISS.

Services subject to the ISS are listed in Supplementary Law 116, which also sets forth general rules for its application. Those rules must be observed by all municipalities. Pursuant to those general rules, each municipality may create and levy the ISS within its territory.

Supplementary Law 116 provides that exports of services are not subject to the ISS. However, if those services: (i) are performed in Brazil; and (ii) produce their results in Brazil, even if the payment for the services involves the actual inflow of currency from abroad, the ISS will apply. There is substantial debate as to the meaning of the concept of "results

24 For more information on the recently enacted goods and services tax reform, see Item 10 below.

produced in Brazil" introduced by Supplementary Law 116. Accordingly, in order to determine whether the ISS exemption in respect of service-export transactions applies in any given situation, one must analyze the question separately, on a case-by-case basis.

5. Value-Added Tax on the Manufacturing of Goods (IPI)[25]

The IPI is levied on the production and on the importation of industrialized goods. The IPI is a value-added tax charged on the aggregate value of imported and domestically manufactured products. The amount of tax due may be offset by any credits arising from the tax imposed on the purchase of raw materials, intermediary products and packaging materials. Rates are assessed on the value of industrialized goods as they are imported or as they are produced from domestic plants. Those rates vary in accordance with the nature of the goods. The average rate is 10%, which rate may be increased or reduced by the tax administration. The IPI is not levied on exports.

6. Value-Added Tax on the Sale of Goods (ICMS)[26]

The ICMS is the principal tax assessed by the states. It applies in the case of transactions involving the circulation of goods (including imports), interstate and intermunicipal transportation, and communication services. The ICMS is a value-added tax that allows the taxpayer to record tax credits from the ICMS paid on the purchase of goods, raw materials, intermediary products and packaging materials. Credits related to fixed assets are admitted with restrictions.

Intrastate rates vary from 17% to 23%. Average rates are 20% for most states, including the States of Rio de Janeiro, Roraima, Amazonas, Ceará, Paraíba, Tocantins and Rio Grande do Norte, as well as the Federal District. For the State of Maranhão, the rate is 23%. For the State of Piauí, the general rate is 22.5%.[27] For the States of Bahia and Pernambuco, the rate is 20.5%. For the States of Rondônia and Paraná, the general rate is 19.5%. For the States of Pará, Acre, Alagoas, Sergipe and Goiás, the rate is currently 19%. For the States of São Paulo, Minas Gerais and Amapá, the rate is

25 For more information on the recently enacted goods and services tax reform, see Item 10 below.

26 For more information on the recently enacted goods and services tax reform, see Item 10 below.

27 The general rate for the State of Piauí will be 21.5% until April 1, 2025.

currently 18%. For the States of Rio Grande do Sul, Espírito Santo, Mato Grosso, Mato Grosso do Sul and Santa Catarina, the rate is 17%. In interstate transactions, the applicable rates are 7% or 12%, depending on the destination of the product. In the case of interstate transactions involving imported goods, the applicable rate is 4%.

7. Tax on Financial and Foreign-Exchange Transactions (IOF)

Conversion into Brazilian currency of funds received in foreign currency by a Brazilian entity, as well as the conversion into foreign currency of funds received in Brazilian currency, are both subject to the tax on foreign-exchange transactions ("IOF/Exchange"). Currently, for most foreign-exchange transactions, the IOF/Exchange is assessed at the rate of 0.38%. However, the Brazilian government may increase that rate at any time up to a rate of 25%. Should that occur, the change in the rate would apply only with respect to future foreign-exchange transactions.

8. Special Tax Rules

8.1 Dividends

To the extent they are related to profits generated after January 1, 1996, the payment of dividends, including stock dividends as well as dividends in cash or kind, paid by a Brazilian company to a nonresident investor, is currently not subject to any withholding for income tax in Brazil.

The Brazilian National Congress is currently discussing certain bills of law the objectives of which include, among other things, establishing a withholding tax on dividend income.

8.2 Interest on Net Equity (*juros sobre o capital próprio*)

So long as the limits described below are observed, Law 9,249 allows a Brazilian company to pay interest on net equity (*juros sobre capital próprio* – "JCP") to its shareholders or quotaholders (as the case may be),[28] and to treat those payments as deductible expenses for purposes of calculating Brazilian IRPJ and CSLL. For tax purposes, this deduction is limited to the daily pro rata variation of the Brazilian long-term interest rate,

28 For a discussion of company forms in Brazil, namely, the corporation (*sociedade anônima*), the equity holders of which are called "shareholders" (*acionistas*); and the limited liability company (*sociedade limitada*), the equity holders of which are called "quotaholders" (*quotistas*), see Section II, "Company Forms in Brazil," above.

or *taxa de juros a longo prazo* (TJLP), as determined by the Central Bank of Brazil from time to time. The amount of the deduction may not exceed the greater of:

(i) 50% of net profits (after deducting the CSLL and before taking into account the provision for corporate income tax and the amounts attributable to shareholders or quotaholders (as the case may be) as JCP) related to the period in respect of which the payment is made; and

(ii) 50% of the sum of retained profits and profit reserves as at the date of the beginning of the period in respect of which the payment is made.

On December 29, 2023, Law 14,789 was enacted, imposing relevant restrictions relating to the calculation basis of the JCP.

Payment of JCP to a nonresident investor is, as a rule, subject to a withholding for income tax at the rate of 15%. However, if the nonresident investor is domiciled in a low- or nil-tax jurisdiction, the applicable rate is 25%. For the definition of low- or nil-tax jurisdiction, see Item 8.6 of this Section below.

The Brazilian federal tax authorities consider JCP to be interest rather than dividends. As a result, for purposes of certain tax treaties to which Brazil is a party (for example, the tax treaties entered into with South Africa, Portugal, Chile, Israel and Mexico), JCP should be taxed pursuant to the section of those treaties that governs payment and taxation of "interest."

8.3 Capital Gains Realized by a Nonresident Investor

According to Article 26 of Law 10,833, gains arising from the disposition or sale of assets located in Brazil, such as shares and other equity interests, are subject to income tax in Brazil, regardless of whether the sale or the disposition is made by the nonresident investor to a Brazilian resident or to a person who is resident abroad.

As a general rule, capital gains realized as a result of a sale or disposition of common shares are equal to the positive difference between the amount realized on the sale or exchange of the relevant shares and their acquisition cost.

Capital gains realized by a nonresident investor on the disposition of shares or other equity interests that are not carried out on the Brazilian stock exchange are subject to a withholding for Brazilian income tax ("WHT") at rates from 15% to 22.5%, depending on the amount of the capital gains, as follows: (i) a WHT rate of 15% applies to capital gains of up to R$5,000,000; (ii) a WHT rate of 17.5% applies to capital gains in amounts greater than R$5,000,000 up to R$10,000,000; (iii) a WHT rate of 20% applies to capital gains greater than R$10,000,000 up to R$30,000,000; and (iv) a WHT rate of 22.5% applies to capital gains in amounts greater than R$30,000,000. If a nonresident investor is domiciled in a low- or nil-tax jurisdiction, regardless of the amount of the capital gains, the rate is 25%. On the definition of low- or nil-tax jurisdiction, see Item 8.6 of this Section below.

8.4 Thin Capitalization – General Rule

For the purposes of calculating the IRPJ and the CSLL, Law 12,249 sets forth certain limits on the deductibility of interest and other expenses paid by legal entities domiciled in Brazil to certain entities located abroad.

There are basically two different situations:

(i) interest paid or credited to any related party (as defined by applicable tax law, including controlling, controlled and affiliated companies) that is neither domiciled in a low- or nil-tax jurisdiction nor a company or other entity that benefits from a privileged tax regime as defined by Brazilian law; and

(ii) interest paid or credited to any person (regardless of whether a related party or not) domiciled in a low- or nil-tax jurisdiction or benefiting from a privileged tax regime.

For the definition of privileged tax regime, and of a low- or nil-tax jurisdiction, see Item 8.6 of this Section below.

With respect to situation (i), as a general rule, the debt-equity ratio of a Brazilian borrower is limited to 2:1. This means that a Brazilian borrower may deduct interest paid or credited to a foreign lender who is a related party only in respect of indebtedness that does not exceed twice the amount of the Brazilian borrower's equity held by that related party. In the event a foreign lender that is a related party does not have any equity interest

in a Brazilian borrower, the borrower may deduct interest paid or credited to such foreign lender that does not exceed twice the net equity of the Brazilian borrower. The amount of interest relating to indebtedness in excess of the 2:1 debt-equity ratio is not deductible by the Brazilian borrower for Brazilian income-tax purposes.

On the other hand, with respect to situation (ii), as a general rule, the global indebtedness of a Brazilian taxpayer to persons domiciled in a low- or nil-tax jurisdiction, or to foreign lenders that benefit from a privileged tax regime, must not exceed 30% of the net worth of the Brazilian company. This rule applies regardless of whether the foreign lender is a party related to the Brazilian borrower or not. The amount of interest payable in respect of indebtedness in excess of 30% of the Brazilian borrower's net worth is not deductible by the Brazilian borrower for Brazilian income-tax purposes.

The thin capitalization rules apply in addition to the transfer-pricing rules for cross-border debt transactions carried out between related parties or with any person which is domiciled in a low- or nil-tax jurisdiction, or with any person that benefits from a privileged tax regime.

8.5 Transfer-Pricing Rules

In 2024, pursuant to Law 14,596, Brazil adopted new transfer-pricing rules. Law 14,596 sets down certain tax principles and delegates to Brazilian authorities the power further to regulate most of the provisions of that law.

Among other things, Law 14,596 requires the application of the arm's-length principle, namely, that all transactions subject to transfer-pricing control must reflect terms and conditions compatible with those that would have been reached between unrelated parties in comparable transactions.

Law 14,596 also provided that the taxpayer may no longer choose whatever method it wishes to use to comply with transfer-pricing controls. Rather, the taxpayer must select from among those methods listed as acceptable in the law and implement that method in its business. In any event, the most appropriate method will be the one that provides the most reliable information on terms and conditions arising from comparable transactions between unrelated parties, especially in the case of commodities. Nevertheless, other methods not provided for in Law 14,596

may also be adopted so long as the alternative methodology produces results consistent with those that would have been determined in comparable transactions carried out between unrelated parties.

With respect to debt transactions, Law 14,596 provides for the non-deductibility of any interest arising from transactions characterized as capital transactions. For debt transactions in general, remuneration is limited to the risk-free return rate or the risk-adjusted return rate, depending on the nature of the transaction.

8.6 Privileged Tax Regime and Low- or Nil-Tax Jurisdictions

As pointed out above, Brazilian tax law provides for certain special tax rules applicable to persons domiciled in a country or jurisdiction: (i) classified as "low- or nil-tax jurisdictions", i.e., a country or jurisdiction (1) that does not impose income tax; or (2) where the maximum income-tax rate is lower than 17%; or (3) the laws of which jurisdiction do not allow access to: (a) information related to shareholder composition or ownership of investments, or (b) identification of beneficial owners of earnings attributed to nonresidents; or (ii) classified as "privileged tax regimes" i.e., a country or jurisdiction that (1) either does not tax income or else taxes it at a maximum rate lower than 17%; (2) grants tax advantages to a nonresident entity or individual: (a) without the need for that entity or individual to carry out a substantial economic activity in the country or in the territory; or (b) conditioned upon that entity or individual *not* engaging in any substantial economic activity in the country or in the territory; or (3) does not tax foreign-sourced income, or else taxes it at a maximum rate lower than 17%; or (4) restricts the disclosure of ownership of assets and ownership rights, or restricts disclosure regarding economic transactions carried out.

On October 18, 2024, Decree 12,226 was enacted to regulate article 24-C of Law 9,430. That article 24-C allows, on an exceptional basis, that any interested taxpayer may request and obtain the elimination of the qualification of a jurisdiction as a low- or nil-tax jurisdiction, or the qualification of a jurisdiction as privileged tax regime, if that qualification, in either case, derives exclusively from the non-taxation of income at a rate in excess of 17%, whenever those countries or jurisdictions promote national development through significant investments in Brazil.

Brazilian federal tax authorities have adopted a system of listing those countries and jurisdictions considered by the Brazilian tax authorities to be low-or-nil tax jurisdictions and privileged tax regimes. The current list

is set forth in Normative Instruction 1,037. That list has not yet been updated to reflect the amendments to Law 9,430 with respect to new concepts of privileged tax regime and low- or nil-tax jurisdictions described above. For a list of those jurisdictions considered to be low- or nil-tax jurisdictions and privileged tax regimes by the Brazilian tax authorities under Normative Instruction 1,037, see Exhibit B and Exhibit C to this Brazil Investment Guide.

9. Tax Treaties

Brazil is a signatory to tax treaties with many countries, including Japan, Spain, Luxembourg, France, Belgium, Austria, Ukraine, Hungary, Canada, Denmark, Sweden and the Netherlands, among others. Such tax treaties are generally based on the OECD model tax convention on income and capital. Different rates and exemptions may apply to certain transactions involving jurisdictions that are parties to treaties with Brazil.

10. Goods and Services Tax Reform - Constitutional Amendment 132

Constitutional Amendment 132 substantially changed the way Brazil taxes goods and services, replacing several existing "indirect taxes" (ICMS, IPI, ISS and PIS/COFINS) with three new ones: the Goods and Services Tax ("IBS"), the Contribution on Goods and Services ("CBS") and the Excise Tax ("IS").

Constitutional Amendment 132 also provided the directive to carry out tax reform. The actual implementation of that tax reform, however, requires the enactment and issuance of additional supplementary laws and regulations. Supplementary Law 214 was enacted in 2025, setting down general rules regarding IBS, CBS, and IS. Certain provisions of that law have been vetoed by the President of the Republic, and those vetoes are currently being analyzed by the Brazilian National Congress for approval or rejection.

The Brazilian Congress and the relevant regulatory agencies are currently discussing additional laws and regulations necessary for the implementation of the tax reform, including a second supplementary law to regulate the IBS Management Committee, IBS administrative litigation, allocation of tax resources, and provisions regarding the transition from the ICMS to the IBS.

In general terms, IBS and CBS will each have single rates, applicable to all types of goods and services and subject to the exceptions expressly provided for in Constitutional Amendment 132. The CBS and IS rates will be established by federal law, and the IBS rate will, for any state or municipality, consist of the rate established by the relevant state or municipality of destination for the transaction. Any such rates will be determined by the relevant authority, subject to the general rules and limitations established by Suplementary Law 214.

Subject to one exception, the IPI will no longer apply to any goods manufactured in Brazil. That sole exception applies whenever the same or similar goods manufactured outside the Manaus Free-trade Zone ("ZFM") are manufactured inside the ZMF as well. In any such case, the IPI will continue to apply to those goods, but only to the extent to which they are manufactured outside the ZMF. In other words, the IPI never applies to any goods manufactured in the ZMF; and the IPI does not apply to any goods manufactured outside the ZMF unless those same goods are also manufactured inside the ZMF itself. In this manner, the program of tax incentives for manufacturing in the ZMF is kept in place.

Tax reform concerning goods and services will be introduced in phases from 2026 to 2033, culminating in the extinction of ISS and ICMS. PIS and COFINS will be eliminated in 2027. Details regarding implementation of the tax reform are still under discussions before the Brazilian Congress and the Brazilian Secretariat for Federal Revenue, and no IBS, CBS and IS rates have been defined yet.

VII. BRAZILIAN LABOR LAWS

The basic labor law in Brazil dates from 1943. Brazil's labor laws are compiled in a piece of federal legislation denominated the Consolidation of Labor Laws. The Labor Law is an extensive (922 articles) and detailed "code-like" legal document, setting out the rules regarding employment relationships.

1. Employee

For the purposes of the Labor Law, an employee is any individual who provides services to an employer on a regular basis, under subordination and in consideration for payment of a salary.

2. Work Card

Pursuant to the Labor Law, each worker must obtain a work card (*Carteira de Trabalho e Previdência Social*). As a general rule, the work card will be electronic. In some specific instances, however, it may be a physical document.

The work card identifies the employee and contains detailed information regarding, among other things, previous employment, the unions with which the worker is associated, labor accidents, monthly salaries with raises, and vacation time. Pursuant to article 13 of the Labor Law, the work card is mandatory for the engagement of any person in an employment relationship.

The employer is required by law to keep a registry of all employees in a special book or on an electronic system in which all data regarding the employees' admission, work hours, vacations, wages, work-related accidents, and other aspects relating to the employees must be recorded.

3. Employment Contracts

An employment contract is an agreement by which an individual undertakes, in return for payment of a salary, to work on a regular basis, for another individual or for a company, in a subordinate capacity. An employment contract may only be modified through mutual consent of the employer and the employee. Even if such consent is given, the modifications may only be made if they do not, directly or indirectly, adversely affect the employee. This means that even if the employee affirmatively consents to

modifications to the employment contract, if those modifications are detrimental to his or her interests, those modifications will be legally ineffective.

An employee who holds a degree from a university and receives a monthly salary higher than R$16,314.82 (i.e., two times the maximum amount of monthly Social Security benefits, which is currently R$8,157.41) may negotiate his or her labor contract, subject to certain limits established by the Labor Law. In this case, the employment contract will prevail over the Labor Law and collective bargaining agreements if the contract regulates, among other matters set forth in the Labor Law: (i) working hours; (ii) comp time (*banco de horas*)[29] for each semester; (iii) breaks during work shifts; (iv) the appointment of a representative to act on behalf of the employees in the workplace; and (v) trading work days for holidays, and vice-versa ("holiday exchanges").

There are basically three kinds of employment contracts: (a) definite-term contracts; (b) indefinite-term contracts; and (c) intermittent contracts.

An employment contract is considered to be for a definite period when its duration depends on a preestablished time limit or on the performance of specific services.

According to the Labor Law, there is a presumption that every contract is for an indefinite term unless the employment contract provides otherwise.

A definite-term contract will be valid only if it qualifies under at least one of several possible standards, such as: (i) the services that are provided under the contract must justify the determination of a time limit; (ii) the contract must relate to a transitory commercial activity; or (iii) the contract is for a trial period (in which case the trial period must not last for more than 90 days).

If the employment relationship is regulated by a definite-term employment contract, the employer does not owe any indemnification to the employee when the period of the contract has expired. In such a case, however, the employee will be entitled to receive his or her Christmas Bonus,

29 Compensatory time is the procedure under which extra hours of work on a certain day are offset by a corresponding decrease of working hours on another day.

paid pro rata (on a last-monthly-salary basis), as well as any accumulated but unused vacation time together with vacation time currently being accumulated, also paid pro rata (on a last-monthly-salary basis).

Employees may also be hired for a definite term by means of a contract for a trial period. The trial period may not last for more than 90 days. Once this period is over, if the employment relationship does not terminate, the contract will automatically be converted to an indefinite-term contract.

If the definite-term contract terminates before the end of the preestablished period, the employer must pay the employee a total indemnification equivalent to one-half of the monthly salaries to which the employee would be entitled through the end of the period originally agreed to.

An intermittent contract is a kind of labor contract pursuant to which the employer is not obligated to offer any minimum working hours and the employee is not obligated to accept any work offered. The agreement provides that the employee will be available for work if and when required. Therefore, no particular number of hours or days of work is specified in the contract.

Under this arrangement, which must be expressly provided for in the employment contract, employees will alternate between periods of work and inactivity and will be paid on an hourly basis. Such payment by the hour may not be lower than the minimum hourly wage established by law or the amount payable to other regular employees who perform the same activities. The employer must inform the employee of the work shift that the employee will have to observe at least three business days in advance. The employee will have one business day to accept expressly the employers' work-shift proposal, the assumption being that silence on the part of the employee will be understood to constitute a refusal.

4. Apprentices

An apprentice is a person older than 14 and younger than 24 years of age who is employed to perform activities in which the person is undergoing methodical professional training. The number of apprentices in any establishment or place of business must be more than 5% but less than 15% of all employees having duties that require professional instruction. The employer must enroll the apprentices in National Learning Centers,

where the apprentices will receive professionalizing instruction. Work hours for apprentices may not exceed six hours per day, as a rule, and eight hours per day for those who have completed elementary school (*ensino fundamental*). Except in those cases where the apprentice is handicapped, a contract providing for an apprenticeship may not last for more than two years. The contract must always be registered in the apprentice's work card.

5. Trainees

As provided by Law 11,788, a company may engage trainees by means of a contract entered into between a trainee (who must be a student), the company, and an educational institution where the trainee is studying. Trainees are not considered employees. The trainee must be registered with a public or private undergraduate institution (*curso superior*), a high school, or a trade school (*entidade de ensino profissionalizante do segundo grau*). The contracting party must provide the student with a personal-liability insurance policy. Monetary compensation is not required in the case of a mandatory traineeship, but compensation is required in the case of an elective traineeship.[30]

Except in those cases in which a trainee is handicapped, a contract for a traineeship may not last for more than two years. The work hours for trainees vary from four to eight hours per day, depending on the activity carried out. Trainees are entitled to paid vacation upon completing a period of one year from the date on which they were first contracted.

6. Handicapped Employees

Employers who hire 100 or more employees are required to hire handicapped employees (*pessoas portadoras de deficiências*) in a number equivalent to from 2% to 5% of the total number of employees. The Labor Law considers a person to be handicapped whenever that person has a physical, mental or anatomical anomaly that may cause incapacity to perform his or her activities.

7. Work Hours

The standard workday is eight hours, and the standard workweek is 44 hours. Some professions have their weekly and daily work hours defined in specific legislation (for example, in the case of bank

30 Under Brazilian law, in order to graduate in some professions, students must have some minimum number of hours of work as trainees.

employees, six hours daily and thirty hours weekly). Other professions have their work hours set through collective bargaining agreements.

8. Overtime (*Hora Extra*)

An employer may allow an employee to put in up to two hours of overtime per day, with compensation. Any stipulation to the effect that an employee may work overtime and be compensated for it must be provided for in a collective bargaining agreement or in a written agreement between the employer and the employee. An employee may not be required to work overtime without a written agreement to that effect and is, therefore, entitled to refuse to work overtime in the absence of such agreement.

The minimum compensation for overtime is 50% greater than the normal hourly wage. Such increase may be waived if, under individual or collective-bargaining agreements, excess hours of work on one day are offset by a corresponding decrease of working hours on another day (compensatory time, or *banco de horas*). In any case, the maximum limit of ten working hours per day may not be exceeded.

The following employees are not subject to the workday limits established by the Labor Law and, therefore, are not entitled to overtime compensation: (a) employees who perform their activities out of the company's premises that are not subject to the employer's control of the workday, (b) employees holding management positions (such as managers, supervisors and officers), and (c) employees who work from home hired to perform their activities by tasks or production.

Authorities responsible for work safety and health must approve any extension of work hours in connection with any activity involving risk to the employee's health. For this purpose, the authorities proceed with the necessary examination of the premises and verification of the methods and processes applied in the activities in which the employee is involved prior to approving (or disapproving) such extension.

9. Night Work

Night work is work performed between 10:00 p.m. and 5:00 a.m. Compensation for night work must be at least 20% higher than the hourly wage applicable to daytime work. In urban activities, and for the purposes of calculations of daily working hours and overtime compensation,

nighttime hours are computed as 52 minutes and 30 seconds (*hora noturna reduzida*). Minors are prohibited from working at night.

10. Rest Period and Breaks

Each employee is entitled to a rest period of at least 11 hours between two consecutive work shifts.

Within any given workday, if the work period is four hours or less, the employee is not entitled to a break. If the work period in a given day is from four to six hours, the employee is entitled to a break of 15 minutes. If the work period in a given workday exceeds six hours, the employee is entitled to a break of at least one hour but no more than two hours.

11. Vacation

An employee acquires the right to a paid vacation upon completing a period of one year following the beginning of the employment relationship and upon completing additional periods of one year successively thereafter. The length of the vacation period depends on the number of days the employee actually worked during the one-year period to which the vacation time refers. The maximum vacation period is 30 days and is only required to be granted to employees who, in addition to working for the entire year, register fewer than five absences during that year. The employee's salary is paid with respect to vacation time in the same manner in which it is paid when the employee is working – i.e., the employee continues to receive his or her salary even when on vacation. In addition, the employee has a right to a vacation bonus equal to one-third of the employee's monthly salary, which bonus must be paid to the employee together with the vacation salary.

Although the maximum vacation period is 30 days, an employee is not obligated to take his or her vacation all at once – that is, by taking one single 30-day vacation. Rather, if the employer and the employee agree, the employee may divide his or her vacation time into up to three periods. One period must consist of at least 14 consecutive days. Each of the other two periods must run for at least five consecutive days each.

A vacation must be granted to the employee within the year following the end of a 12-month period of employment that generated the right to vacation time. An employer who does not grant vacation to an employee who has accrued the right to that vacation must pay an amount

corresponding to twice the remuneration for the period of vacation not granted.

Finally, an employee is allowed to exchange one-third of his or her vacation period for extra remuneration.

12. Salaries and Contributions

In article 7, Item IV, of the Federal Constitution, the minimum salary is defined as the minimum amount payable monthly by the employer to every worker, including rural workers, regardless of gender. The minimum salary is intended to be capable of satisfying a worker's basic needs regarding food, housing, clothing and transportation in every part of the country. The minimum salary (*salário mínimo*) set by the Federal Government is currently R$1,518 per month.[31] States also have the right (but no obligation) to set the minimum salary applicable in their respective jurisdictions, so long as that minimum salary is not less than the minimum salary established by the Federal Government. Any clause in an employment contract providing for a salary lower than the minimum salary then in effect is null and void. In the event an employment contract should provide for a salary below the applicable minimum salary, the employee is entitled to claim the difference from the employer.

So long as they are granted in accordance with applicable law, meal vouchers, cost allowances, discretionary premiums, travel expenses, and medical insurance are not considered to be part of the employee's salary for any purpose, even if those benefits are paid on a regular basis.

13. Christmas Bonus (*Décimo Terceiro Salário*)

Payment of the Christmas Bonus, or thirteenth monthly salary (*décimo terceiro salário*), is due in proportion to the total period an employee has worked during the year to which the Christmas Bonus refers. The Christmas Bonus is payable at the end of each calendar year. If the employee worked during the entire year, the Christmas Bonus will be in the amount of one full monthly salary. Such payments are subject to the social security contribution due to the National Social Security Institute described below in Item 17 of this Section.

31 According to a federal measure enacted in December 2024. The minimum salary is reviewed on an annual basis and established each year by means of a federal law presented by the Executive Branch of the Federal Government to Congress.

14. Transportation

The employee is responsible for transportation costs up to a limit of 6% of his or her monthly salary. Should the total monthly transportation expenses of any given employee exceed this amount, the employer must cover the additional expense.

15. Dangerous Work and Insalubrious Working Conditions

The Labor Law defines dangerous activities as those that require the employees to have permanent contact with inflammable materials, electricity, radioactivity, or explosives, as well as those that involve risks of exposure to robbery and other types of physical violence, and those activities carried out using motorcycles on public roads. If their work requires them to engage in dangerous activities, employees are entitled to an additional 30% over their respective base salaries (i.e., monthly salary without additional bonus, gratification or profit sharing). It is incumbent upon the Special Secretariat of Social Security and Labor to determine those activities that expose employees to working conditions considered to be permanently dangerous.

The Labor Law defines insalubrious activities as those in which employees work with excessive noise, cold, humidity, or heat, among insalubrious conditions. If employees carry out their job responsibilities in insalubrious working conditions, they are entitled to an additional amount of 10%, 20%, or 40% over the minimum monthly salary, added to their respective monthly base salaries, according to criteria set down by the Special Secretariat of Social Security and Labor for each activity.

16. Equity Compensation

The Labor Law does not regulate or expressly define equity compensation, whether it be in the form of stock options or stock grants.

In general, Brazilian Labor Courts hold that stock options should not be considered to constitute a part of an employee's regular salary if the plan satisfies certain conditions: (i) the employee must take risks with the acquisition of the stock options; (ii) the employee must pay a reasonable price for the stock options; (iii) the employer may not establish a guaranteed price for sale of the stock options or subsidize their purchase; and (iv) the purchase of shares by the employee must be mediated by a securities broker and may not be made directly from the employer.

If a stock-option plan meets the foregoing conditions, stock options granted under that plan will not count as part of an employee's remuneration. As a result, stock options granted under such a plan should not be taken into account as part of the regular monthly salary for the purposes of calculating the Christmas bonus, vacation bonus, social security contribution or severance pay.

17. Social Security (INSS)

Both the employer as well as the employee are required to make monthly contributions to the Brazilian Government's social security programs in respect of the employment relationship. These contributions are made to the National Social Security Institute (*Instituto Nacional do Seguro Social* – "INSS") and are calculated as a factor of the remuneration of the respective employee.

17.1 Employer's Contribution

The social security contribution of an employer due to the INSS in respect of its employment relationships is generally due at a monthly rate of approximately 28% of the aggregate salaries, remuneration and any amounts otherwise effectively paid to its employees during the relevant month.

17.2 Employee's Contribution

The social security contribution of an employee is calculated according to his or her salary range at a rate applicable to what is defined as the employee's "salary contribution." According to Social Security laws, the salary contribution for any given month consists of any remuneration actually received by the employee during that month. The salary contribution may neither be lower than the monthly minimum salary nor greater than an amount established from time to time by the Federal Government. That maximum amount currently in effect is R$8,157.41.[32] The actual amount of the social security contribution itself of an employee will be a factor of his or her salary contribution, within the foregoing limits, calculated in accordance with a chart issued by the Ministry of Social Security and the Ministry of Finance.

32 According to a Federal Interministerial Ordinance enacted in January 2025. The maximum contribution is reviewed on an annual basis and established each year by means of a federal decree issued by the Federal Government.

18. Discharge, Employment Tenure and Unemployment Guarantee Fund

The ability of the employer to discharge an employee and the consequences resulting therefrom depend upon the employment contract, the length of the employment relationship and the grounds for discharge. The employee may either be a tenured employee (employee with employment stability) or a regular employee. See Item 18.2 of this Section below.

18.1 Notice of Discharge (*Aviso Prévio*)

The party wishing to terminate an employment contract, whether it be the employer or the employee, must give to the other party 30-days' advance notice of that party's intention to terminate the employment relationship. For each additional year of service, the period required for the advance notice is increased by three days, up to a limit of 90 days.

If the employer wishes to terminate an employee and fails to give such notice, the employee is entitled to receive his or her salary corresponding to the period required for the notice, and the notice period is included in calculating the length of the employment relationship. Similarly, the failure by the employee to give notice entitles the employer to reduce the employee's final salary by an amount corresponding to the 30-day advance-notice period.

The dismissal notice or the payment receipt must specify each type of payment due to the employee and show the amount actually paid in connection with each of them.

18.2 Unemployment Guarantee Fund

Prior to 1966, an employee who worked for at least ten years for the same employer was granted employment tenure, or "job stability" (*estabilidade*), which meant that the employee had the right to remain employed even against the employer's wishes so long as there was no serious reason (i.e., cause) to justify his or her dismissal. However, in 1966, Law 5,107 created the Unemployment Guarantee Fund (*Fundo de Garantia do Tempo de Serviço* – "FGTS"), the purpose of which was to replace, on a voluntary basis, the system allowing for employment tenure. In 1990, Law 5,107 was revoked by Law 8,036. According to the Federal Constitution and to Law 8,036, all employees hired after October 1988 must necessarily be subject to the FGTS system and may not opt to be subject to the old system leading to employment tenure. However, those employees

who were granted employment tenure prior to 1988 are still subject to the employment-tenure system and, therefore, to the provisions of the Labor Law relevant to that system.

Under the FGTS system, the employer must deposit each month the equivalent of 8% of each employee's monthly remuneration (which includes not only the monthly salary but also all other benefits paid to the employee on a regular basis) in a specific bank account opened by the company in the name of the employee. Amounts held in an FGTS account bear interest.

Withdrawals from the employee's FGTS account may be made only by the employee, and only on grounds set forth in Law 8,036 and other specifically applicable legislation, such grounds consisting of:

(i) dismissal without cause;

(ii) liquidation of the company;

(iii) retirement under the government social security program;

(iv) death of the employee;

(v) termination of a definite-term employment contract;

(vi) total or partial payment of debts to the national housing financing system;

(vii) full or partial payment of the purchase price of the employee's own home;

(viii) the occurrence of the month of the employee's birthday, any such withdrawal permitted to be made on an annual basis;

(ix) the balance in the employee's FGTS account being lower than R$80.00 and there having been no deposits in or withdrawals from that account for at least one year; or

(x) an employee, or a dependent of that employee, having contracted a rare disease, as defined by the Brazilian Ministry of Health.

In addition, if an employee is not covered by the FGTS system and has been making contributions to the FGTS (when unemployed, for example) for more than three uninterrupted years, then the employee may withdraw the funds from his or her FGTS account. Finally, when an employee reaches his or her 70th birthday, he or she may withdraw all the funds held in his or her FGTS account.

The employee may also consider the employment contract terminated and be entitled to withdraw the amount from his or her FGTS account under the following circumstances, among others:

(i) whenever the work demanded is either beyond the employee's physical or intellectual capacity, against public policy, or unrelated to the purposes of the employment contract;

(ii) whenever the employee is required to endure physical danger;

(iii) whenever the employer fails to comply with its contractual obligations; or

(iv) whenever the employer or an agent of the employer acts in a way that adversely affects the employee's honor and reputation.

18.3 Dismissal Without Cause

The FGTS system changed the employee's rights substantially, especially in connection with dismissals without cause. An employee who is dismissed without cause is entitled to withdraw the amount deposited in his or her FGTS account, together with interest accrued thereon, and to receive from the employer, as an indemnification, an additional amount equivalent to 40% of the total amount in the FGTS account of the employee at the time of dismissal.

18.4 Dismissal for Cause (*Justa Causa*)

The Labor Law defines, among others, the following grounds as constituting serious fault (cause):

(i) acts of impropriety;

(ii) misconduct;

(iii) criminal conviction;

(iv) drunkenness;

(v) disclosure of trade secrets;

(vi) abandonment of employment; and

(vii) acts showing lack of discipline or insubordination.

18.5 Employment Tenure after the Constitution of 1988

As mentioned above, the Federal Constitution in force since 1988 abolished the option of employment tenure, going forward, for employees who work for more than ten years for the same employer. However, there are still some special cases where employment tenure is granted.

Employees appointed as managers or officers of unions may not be dismissed during the period between the date of the employee's taking office in the union and one year after the end of his or her term of office.[33] The same rule applies to employees' representatives on a company's Internal Commission for Prevention of Accidents (CIPA).[34] While holding those positions, employees may only be dismissed for cause.

18.6 Severance Costs

If an employee is dismissed without cause, the employee is entitled to: (i) the unpaid balance of his or her monthly remuneration; (ii) an amount in respect of vested vacation and "pro rata" vacation;[35] (iii) "pro rata" thirteenth monthly salary (Christmas Bonus); and (iv) a 40% increment over the total amount in the FGTS account of the employee at the time of dismissal.

Severance pay in respect of vacation and the employee's thirteenth monthly salary are calculated based on the highest monthly remuneration of the employee, which includes not only the monthly salary, but also other salary-nature benefits paid to the employee on a regular basis.

33 Article 8 of the Federal Constitution and article 54, §3º, of the Labor Law.

34 Article 165 of the Labor Law.

35 Upon an employee's dismissal, the employer must pay, as severance, a base salary (plus benefits) proportional to the vested vacation and to the accrued (but unvested) vacation to that date, plus an additional amount equal to one-third of the vacation severance pay.

In addition, the employer must pay a social security contribution due to the INSS at a rate of approximately 28% on the amount paid to the employee upon dismissal.[36]

19. Succession

Rights of employees are in no way affected by any change in the corporate structure of their employers.[37] Accordingly, if the employer is succeeded by another company (due to a merger or acquisition, for example), the successor company automatically becomes exclusively liable by operation of law for all labor liabilities of the former company, including the period prior to the merger or acquisition. If, however, this succession proves to be fraudulent, both companies will become liable for any labor-related obligations.

The successor company will become liable for the entire amount being claimed by the employee, even if a portion of such amount corresponds to the period prior to the succession, and even if the parties to the act that brought about the succession entered into an agreement whereby the company succeeded by the other (or its shareholders) assumes all the obligations in connection with labor agreements up to the date of the succession.

Should there be an agreement between the successor and the succeeded party (or third parties, such as former shareholders of the succeeded party) whereby the succeeded party (or any such third party) undertakes to indemnify the successor for amounts paid by the latter to employees in connection with amounts due by the succeeded party prior to the succession, the successor may use a judicial remedy called third-party summons (*denunciação da lide* – a form of impleader), by means of which the successor basically joins the succeeded party to the lawsuit. When such remedy is used, the succeeded party is served with process and joins the proceeding. If judgment is entered against the successor in any such proceeding, the successor will thereby be assured of being able to make good on its right to be indemnified by the succeeded party (or by such third party). By using this remedy, if the successor is found to be liable in a final judgment to pay any amounts for which it has the right to be indemnified by the

36 INSS total contribution may vary as a result of other minor payments required to be made to certain governmental agencies. Whether an employer is subject to these other payments depends on the nature of that employer's business.

37 Articles 10 and 448 of the Labor Law.

succeeded party, once having paid the obligation, the successor has the right to demand payment from the succeeded party in the same action, without the need to file a separate lawsuit.

That said, however, it is not uncommon for labor courts to deny this kind of remedy, holding that the successor's claim for indemnification constitutes, in essence, a civil claim (rather than a labor claim), over which labor courts have no subject-matter jurisdiction.

On the other hand, the prevailing understanding of the Superior Labor Court (Precedent # 411) states that, provided that the selling party is solvent or economically sound at the time of the transaction or acquisition, the buyer in a merger or acquisition transaction will not be liable for the labor debts, prior to or after the closing date, related to the remaining employees of the selling party that were not hired by the legal entity acquired or merged, or linked to the business acquired or merged, as the case may be, unless there is evidence of fraud or bad faith in the transaction or acquisition, in which case the buyers will be jointly and severally liable with the sellers.

20. Economic Group or Group of Companies (*Grupo Econômico*)

The Labor Law defines an "economic group" as consisting of one or more companies under the direction, control or management of another. By the terms of the Labor Law, the fact that the companies purportedly making up the economic group have the same shareholders is not sufficient to conclude that the economic group exists for legal purposes. There must also be common interests among the companies or joint business activities.

The effect of defining an economic group is to make all legal entities making up that group jointly and severally liable with the others for all of the labor obligations of those legal entities. As a result, an employee of one company could bring an action in the labor courts against another company of the same economic group to claim any payments owed to such employee. The employee would be considered an employee of the group rather than an employee of a specific company of the economic group.

In practice, and as a general rule, the labor courts tend to favor the employee. Accordingly, in the case of the question of an economic group, although the Labor Law provides that the simple fact that each of two legal entities has the same shareholder, or the same individuals acting as its officers, is not enough to find the existence of an economic group, it is still

possible to find court decisions ruling that, regardless of the existence of common interest, effective community of interests, or pooled operations or activities, whenever two or more legal entities have common shareholders, or common officers or directors, there is an indication of an economic group for labor purposes, thereby imposing joint and several liability on the two entities for all of the labor obligations of each of them. In other words, it is not uncommon for the labor courts to disregard any inquiry into whether there are any common interests between the two entities, or whether the two entities engage in any joint business activities. If they have interlocking shareholders, or interlocking officers or directors, the courts may conclude that those entities make up an economic group.

21. Unions

Freedom of association is guaranteed by article 8 of the Federal Constitution. The principal purpose of a union is to represent the general interests of its members as a group or individually. In addition, unions must provide free legal assistance to their members. In Brazil, unions may either represent employees or employers. In other words, unions in Brazil do not necessarily simply represent labor. There are certain unions that do, in fact, just represent labor. But there are also unions that represent solely the employers (banks, industries, etc.).

Other than registration with the appropriate agency, there are no government requirements for the organization of a union. An association of several unions is denominated a federation (*federação*), and a group of federations is denominated a confederation (*confederação*). No more than one organization may be established at any level (unions, federations or confederations) to represent the same professional or economic group in the same geographic area.

Unions are financed by voluntary contributions from their members and by other contributions set forth in collective-bargaining agreements, payable by the employees represented by such union. If expressly authorized by the employees, those contributions may be deducted by the employer directly from the payroll for the benefit of the union representing the employees' category of workers.

22. Collective Bargaining

Article 611 of the Labor Law defines a collective-bargaining convention (*convenção coletiva*) as an agreement entered into between two

or more unions (at least one representing employees and at least one other representing employers) establishing rules regarding working conditions.

In addition to collective-bargaining conventions, a union representing workers may also enter into an agreement directly with a specific employer through collective-bargaining agreements (*acordos coletivos*). The period of validity for collective-bargaining conventions and collective-bargaining agreements is limited to no more than two years; and, in any case, those conventions and agreements must set down all the terms and conditions governing the employment relationship during their respective periods of validity. Collective-bargaining agreements entered into by a union representing labor directly with a specific employer will always prevail over the conditions established by the collective-bargaining convention entered into by two or more unions.

Neither the unions representing labor nor the unions representing employers may refuse to participate in collective bargaining when invited to do so. Should a party refuse to participate, notice is given to the local office of the Labor Department of the Federal Government, and the unwilling party may be compelled to join the negotiations. If either party persists in refusing to participate, or if the negotiations break down, the other party may bring a collective labor claim (*dissídio coletivo*) filed with the state labor court.

The provisions of a collective-bargaining agreement or convention are deemed to be incorporated into each individual labor contract. The collective-bargaining agreement or convention will prevail over the Labor Law whenever it regulates, among other topics set forth in the Labor Law: (i) work hours; (ii) compensatory time; (iii) breaks during work shifts; (iv) corporate regulation; (v) the appointment of a representative to act on behalf of the employees in the workplace; (vi) compensation based on productivity; (vii) holidays; (viii) gradations of insalubrious working conditions; (ix) extension of the workday under insalubrious working conditions without prior authorization from the labor authorities; (x) bonuses and other incentive awards; and (xi) profit sharing.

The Labor Law provides that the terms and conditions resulting from collective bargaining will not remain in force after termination of the collective-bargaining agreement. If the collective-bargaining agreement is terminated, and the unions representing both labor and the employers (or the unions representing labor and the specific employer, as the case may be) do not reach an agreement, one of the parties may submit the matter to the labor

courts by means of a *dissídio coletivo* (a form of collective labor claim). The court will determine the terms and conditions to be in effect as from such date and may extend those terms and conditions to all relevant labor contracts.

23. Profit Sharing

The Federal Constitution provides in article 7, item XI, that all employees have a right to participate in the profits of those legal entities that employ them. Provisional Measure 794, first enacted in December of 1994 and later converted into Law 10,101 in 2000, further regulated that right.

Law 10,101 provides that arrangements regarding profit sharing by employees must be negotiated between employers and employees with the participation of a labor-union representative. Such arrangements may be negotiated either through a commission composed of a representative of each party (employer, employee and union), or as part of the employee's collective-bargaining agreement. In any event, the resulting agreement must contain clear and objective rules regarding the employees' rights.

In addition, Law 10,101 expressly provides that no payments made by employers to employees under negotiated-profit-sharing arrangements will be considered to be part of the employees' respective salaries. Accordingly, no social-security contribution or other labor charges are payable in respect of payments made to an employee under a profit-sharing program. If the profit-sharing arrangements between the employer and the employees do not comply with the provisions of Law 10,101, a court may decide that all payments made by the employer to its employees under those profit-sharing arrangements must be deemed to be part of the employees' salaries. As a result, a social-security contribution, as well as other labor charges, may be due in respect of those payments.

24. Labor Accidents and Occupational Diseases

A labor accident is defined as any accident that occurs during the performance of the employee's work for the employer, and that causes bodily injury or disability to the employee, resulting in death or in the loss or reduction of the employee's working capacity. The following are also treated as labor accidents:

(i) any illness resulting from the performance of certain activities classified as unhealthy by the Special Secretariat of Social Security and Labor;

(ii) any accident suffered by an employee at the work site and during work hours as a result of an act of sabotage, negligence, recklessness, force majeure or act of God; and

(iii) any accident that does not occur at the work site but occurs while the employee is engaged in the employer's business or on the employee's way to work.

The employer is required to insure its employees against injury resulting from labor accidents, and the Ministry of Social Security determines the cost for the employer of that insurance coverage. The contribution of the employer is calculated based on the employer's monthly payroll and according to the company's degree of risk. The monthly contribution may amount to up to 3% of that payroll. Companies having a rate of labor accidents higher than average will be subject to a further contribution, which may amount to 1%, 2% or 3% of the total remuneration for labor accident insurance. Provided that the employer is not in arrears in respect of its obligation to pay premiums for labor accident insurance (*Seguro de Acidente de Trabalho* – SAT), the INSS will bear the costs of an employee's compensation during that employee's absence as a result of any occupational accident or disease up to a cap currently set at R$8,157.41 per month.

Should the INSS detect a failure on the part of the employer to provide mandatory personal protective equipment (PPE) in the case of an injured employee on leave of absence, or failure on the part of that employer otherwise to comply with the occupational safety and health regulations, the INSS may request reimbursement from the employer for that employee's compensation during his or her leave of absence that resulted from any occupational accident or disease.

25. Foreign-Citizen Work in Brazil: Visa Procedures and Conditions

Provided he or she has the appropriate Brazilian visa, a foreign national may come to Brazil to engage in gainful employment in a Brazilian legal entity. A Brazilian tourist visa is not adequate to permit a foreign national to work at a Brazilian company or corporation.

If a foreign national intends to come to Brazil and work in a Brazilian company or corporation, depending on the case, he or she must hold either a permanent visa or a temporary visa. In the case of a foreign national intending to hold a position other than one of management in a Brazilian company or corporation, unless that person is already the bearer of a Brazilian permanent visa, that person must obtain a temporary visa from the Brazilian government. The class of persons "other than management" generally comprises most of the work force of a Brazilian company or corporation. "Management," on the other hand, comprises: (i) in the case of a Brazilian company, the manager or managers, as officially so designated by the quotaholders; and (ii) in the case of a Brazilian corporation, any Member of the Board (*Conselheiro*) elected by the shareholders, as well as any executive officer (*diretor*) elected by the Board; or, if the corporation does not have a Board, elected by the shareholders. Any foreign national intending to come to Brazil to take on a management position in a Brazilian company or corporation must hold a permanent visa.

A foreign national who intends to come to Brazil and exercise remunerated-employment activities (other than management) at a company or corporation established in Brazil must apply for a temporary visa. A temporary visa will be granted only to foreign nationals who meet the requirements of the Brazilian Immigration Council, such as: (i) having at least a certain level of education and work experience compatible with the activity that he or she will be carrying out in Brazil, and (ii) complying with the standards provided by the Brazilian Immigration Council. The professional experience that must be demonstrated to the Brazilian Immigration Council consists of one of the following: (a) a minimum education of twelve years, together with four years of experience in a profession that does not require a technical education or college degree; (b) three years of experience in a profession that requires a technical education; (c) two years of experience in a profession that requires a college degree, such two-year period counting from the conclusion of the qualifying course; (d) one year of experience whenever the individual holds a postgraduate degree involving at least 360 hours of course study, provided that the experience is compatible with the specialization and with the activity to be performed; or (e) three years of experience in a profession related to an artistic or cultural activity that does not require formal education. No professional experience is required if the individual holds a master's degree or a doctorate degree.

As a rule, a temporary visa will be issued for a period of up to two years. Upon expiration of that period, the foreign national may apply for the conversion of the temporary visa into a permanent visa, so long as he or she can demonstrate: (i) the existence of an ongoing employment relationship or adequate financial means of support in Brazil; (ii) a clean criminal record for the preceding five years, issued both in Brazil and in the jurisdiction of birth; and (iii) good moral character along with evidence of social and professional integration in Brazil.[38] [39] Upon the approval of the permanent visa, the individual would be free to be employed by, or to take on a management position in, a Brazilian company or corporation without the requirement for such Brazilian company or corporation to participate in the process or sponsor a new temporary visa on behalf of the foreign national.

Any foreign national who has entered Brazil with a temporary visa and executed an employment contract with a Brazilian company or corporation may engage in a remunerated activity only with that Brazilian company or corporation.

Any foreign national who intends to come to Brazil to hold a management position in a Brazilian company or corporation must apply for a permanent visa. The granting of a permanent visa is conditional upon the appointment, in a duly registered company act of the Brazilian company or corporation, of the individual as manager, and upon the approval of the authority responsible for regulating the hiring company or corporation. The visa will be granted for an indefinite period.

In order to employ foreign nationals in positions vested with management powers, a Brazilian company or corporation must prove that, for each position to be held by a foreign national: (i) the company or corporation is the recipient of foreign investments in an amount of R$600,000 or more; or (ii) the company or corporation is the recipient of foreign investments in an amount of at least R$150,000 and intends to create at least ten new jobs during the following two years. The Brazilian company or corporation intending to appoint a foreign national to a management position is the proper party to apply for a permanent visa for that foreign national.

[38] Should the foreign national be unable to demonstrate good moral character and to provide evidence of social and professional integration in Brazil, the initial term of residence will be extended to four years.

[39] In the event that the foreign national marries a Brazilian citizen or has a Brazilian child, the two-year requirement shall be waived. In such circumstances, the permanent visa will be granted independently and shall not be contingent upon the nature of the visa previously held.

In addition, if a foreign national intends to come to Brazil, settle down, and invest his or her own resources originating from a foreign source (minimum of R$500,000) in productive activities, he or she may apply for a temporary visa, which application must be accompanied by a three-year investment project having the objective of creating new jobs. The request for such a visa may be made to the Brazilin Immigration Council. In certain situations, the Brazilian Immigration Council may actually grant a temporary visa even if the investment is less than R$500,000. In the latter case, the investment may not be less than R$150,000 and must be directed to innovation or research activities of a scientific or technological nature. In this case, the temporary visa will be granted for an indefinite period, contingent upon the applicant's continued stay in Brazil and the execution of the investment project.

A foreign national seeking a position in Brazil in any of the following cases will need specific authorizations from governmental authorities other than the Special Secretariat for Social Security and Labor: (i) foreign professors, researchers and scientists; (ii) foreign nationals under an internship; (iii) foreign crewmembers of foreign ships; (iv) foreign nationals contracted to render technical assistance or technology-transfer services; (v) foreign artists or sports figures; and (vi) foreign nationals working on board a foreign vessel or platform.

26. Short Summary of New-Company Procedures

Before hiring any employees, a company must be registered with the INSS. To obtain this registration, the company must present to the INSS the company's constitutive documents registered with the Commercial Registry as well as evidence of the company's registration with the taxpayers' registry (CNPJ).

The employer must also proceed to register the employees in the social-integration program (*Programa de Integração Social*, PIS/PASEP). To register an employee in that program, the employer must fill in a PIS/PASEP registration form and present it to *Caixa Econômica Federal*, a bank owned by the Federal Government. If the employee already has a PIS/PASEP registration, the company must inform *Caixa Econômica Federal* of the new employment relationship.

After registering the employees in the social integration program, the company must open an FGTS account for each employee. The company must present a copy of the CNPJ certificate, the form issued by

Caixa Econômica Federal, a list of employees, and the company's constitutive documents registered with the Commercial Registry.

Employers are required to register the company and employees in the eSocial system — a digital platform that consolidates the submission of mandatory employment-related information to various federal agencies, including the Ministry of Labor and Employment. This encompasses data such as new hires, terminations, payroll details, and social security contributions. To initiate this process, the company must access the eSocial portal and register using its CNPJ number. Employers must complete the eSocial registration process for all new employees at least one business day before those new employees start their employment.

The Labor Law requires that any employer in Brazil must retain in its files certain records and documents, as follows:

(i) Labor Inspection Book;

(ii) Employee Registration Book or an equivalent electronic information registration system;

(iii) Occupational Safety and Health Program;

(iv) Work hours chart;

(v) Records of hours worked by employees whenever the employer has more than twenty employees; and

(vi) Documentation and receipts evidencing payment of wages and taxes.

27. Labor Claims – Statute of Limitations

Since the enactment of the Federal Constitution in 1988, an employee has had two years after termination of his or her employment contract in which to file a labor claim against his or her former employer. If the employee does not bring a labor claim within that two-year period, the employee will lose the right to proceed against his or her former employer. If, however, the employee does file a timely labor claim, that labor claim may only refer to the last five years prior to the actual filing of the labor claim (and not to the last five years of employment). Any claims in respect of years going back more than five years from the date of the filing of a labor claim will be barred by the statute of limitations. Accordingly, if an

employee intends to bring a labor claim, it is in the employee's interest to file the labor claim soon after the employment relationship has been terminated.

28. Labor Courts

When it comes to labor claims, Brazil is a litigious country. In any given year, one may reasonably expect that more than two million new labor claims will be filed in court.[40] Many companies have hundreds, if not thousands, of outstanding labor claims pending against them at any given time. In order to handle the large number of labor disputes brought in Brazil, Brazil has a separate judiciary solely for the purpose of handling labor claims. Brazilian labor courts have exclusive jurisdiction over the adjudication of labor disputes.

The labor courts in Brazil are in fact a judiciary separate from the civil courts. The labor courts are not administrative courts but, rather, operate as an autonomous court system and part of the judicial branch. Brazil's labor courts comprise local trial courts, regional appellate courts, and a Superior Labor Court. The Superior Labor Court is the highest court in Brazil for labor matters.

Brazil's labor courts were established with the Labor Law in the 1940s. Like the Labor Law itself, Brazil's labor courts have a strong tendency to favor employees in adversary proceedings regarding labor rights. Common claims of employees who bring labor claims include allegations to the effect that: (i) the employee worked overtime but did not receive compensation for it; (ii) the employee's monthly salary should be increased to the level of a co-worker who performed the same function but earned a higher salary (with back pay calculated on the basis of the new monthly salary); and (iii) the employee was classified as performing one kind of work when, in fact, he or she performed another kind of work that would entitle the employee to greater benefits.

It is not only an employee who may bring a labor claim in the Brazilian labor courts. The Public Prosecutor's Office for Labor (*Ministério Público do Trabalho*) may also bring what are in effect public-interest class actions (*ações civis públicas*) against an employer or against a group of employers if that Office concludes that the employer or employers have been violating labor laws to the detriment of the employees. In many such cases,

40 For example, between January and October 2024, there were 3.45 million new labor claims filed before the Brazilian Labor Courts.

the litigation ends up being settled with a consent decree imposing certain obligations on the employer (*Termo de Ajustamento de Conduta* - TAC) and a fine.

29. Outsourcing

The Outsourcing Law regulates services provided through outsourced manpower and companies that manage that outsourced manpower.

The Outsourcing Law authorizes a company to outsource all of its activities, regardless of whether those activities constitute the company's core business activities or activities ancillary to or supportive of the core business. Under that law, any company contracting to outsource certain activities to an outsourcing company will be held secondarily liable for any labor obligations or benefits owing by the outsourcing company to the outsourced employees arising during the period in which the services were rendered to the contracting company. In effect, the contracting company guarantees payment, by the outsourcing company, of the outsourcing company's labor obligations and benefits owing to those employees of the outsourcing company who were allocated to work for the contracting company, limited to the period during which those employees in fact worked for the contracting company.

In 2017, the Outsourcing Law was amended by Laws 13,467 and 13,429. Prior to those amendments, the labor courts had concluded that the only activities that a company could outsource were activities that did not constitute the core activities of that company. In other words, companies were allowed to outsource only their activities that were supportive of their core activities. Companies could outsource their activities "means" but not their activities "end." For example, the labor courts generally held that companies could outsource custodial, catering and security services as being activities that helped to give the companies their "means" for achieving their principal business ends but did not constitute their "end," or "core" activities themselves.

To date, according to the new regulation established by the Outsourcing Law as amended in 2017, it is possible to use outsourced manpower in Brazil at least without some of the restrictions to which outsourcing was subject in the past. However, should an outsourcing company fail to pay labor obligations and benefits to its employees, or should that outsourcing company become insolvent and leave labor obligations

unpaid, the unpaid employees will still have a claim against the company that hired the outsourcing company in the first place, provided that those employees are able to show that the work they performed was specifically for the benefit of the contracting company.

In this case, and because the assets of many companies providing outsourced services consist of manpower, companies contracting outsourcing companies to provide services need to be vigilant as to the financial soundness of the outsourcing company. In addition, it behooves those contracting companies to monitor the proper payment by the outsourcing company of all of its labor obligations with respect to its employees, including withholding taxes, contributions to the INSS and to the FGTS. See Items 17 and 18.2 in this Section.

VIII. INTELLECTUAL PROPERTY

Intellectual property laws in Brazil underwent significant changes after 1996. A new industrial property law (Law 9,279) was enacted in 1996. New software and copyright laws were passed in 1998: Law 9,609, covering software; and Law 9,610, covering copyrights. These new acts realigned local legislation with international-community standards (primarily to comply with Trade-Related Aspects of Intellectual Property Rights-TRIPS rules), for the most part by widening the fields of subject matters eligible for a patent and of trademarks eligible for registration.

1. Trademarks

Trademarks are protected by Law 9,279, as amended. According to that law, a trademark is defined as a distinctive sign that differentiates a product or service from others, whether that product or service is identical or similar, having a different origin.

Trademark protection is obtained through registration of the trademark with the National Industrial Property Institute (*Instituto Nacional da Propriedade Industrial* – "INPI"). The registration of a trademark with INPI is valid for ten years from the date the registration is granted, renewable indefinitely for subsequent ten-year periods, provided that the respective renewal fees are timely paid.

Registration may be subject to forfeiture if the mark is not used, for the purposes for which it was registered, for a period greater than five years. However, if the use of a mark has been licensed to a third party, actual registration of the license agreement itself will not be required in order to prove the effective use of the mark. This means that, even though a license agreement may not have been registered with the INPI, the use of a mark by the licensee under that agreement will inure to the benefit of the trademark owner for the purposes of avoiding the application of the five-year forfeiture rule.

Third parties may oppose any proposed registration. Such opposition may be asserted either during the registration proceeding, or by filing an administrative or judicial action to have a granted registration annulled, on the grounds (among others) of similarity to and likelihood of confusion with previously registered trademarks.

In 2019, Brazil joined the Madrid Protocol, as a result of which Brazil adopted the international procedure for trademark registration. This procedure allows trademark owners to file a single trademark application for registration simultaneously in more than one of the countries signatories to that Protocol. By joining the Madrid Protocol, trademark owners abroad will have more incentive to register their trademarks in Brazil and abroad due to the reduced costs and an expedited process of analysis.

2. Patents

Patents of inventions and utility models are granted by the INPI through an administrative proceeding in which a technician examines the invention or development, verifies whether it complies with legal requirements for a patent grant, and, upon fulfillment of the requirements and procedures set forth in Law 9,279, issues the letters patent.

There are two types of patents in Brazil: one for inventions, and the other for utility models. Inventions may be defined as developments that have a technical or industrial use, reflect a creative activity, and are considered by a specialist to be innovative *vis-à-vis* the current state-of-the-art technology. A utility model may be defined as an improved device, or the improvement itself, that has technical or industrial use, with an innovative format or configuration providing better results in the use of the device or in its manufacturing.

The protection term for patents expires 20 years after filing a request for registration, for inventions, and 15 years after the request for filing, for utility models. Nonetheless, to protect the inventor from delays in the evaluation and registration procedures before the INPI, which may take years to be concluded and therefore reduce considerably the period of time during which the patent is protected by law after its registration, Law 9,279 ensures protection for a minimum term of ten years after registration, for patents of invention, and seven years after registration, for patents for utility models.

3. Industrial Design

Industrial design is also protected by Law 9,279. According to that law, industrial design is defined as the ornamental plastic form of an object or the ornamental set of lines and colors that may be applied to a product, providing a new and original visual result to its external aspect, which can be used for an industrial purpose.

Pursuant to the provisions of Law 9,279, registration of industrial design is not preceded by technical analysis of its object. During the registration process, the INPI must analyze only the formal aspects of the application. If the formal requirements are met, the INPI simultaneously publishes the application and grants its registration. Industrial design protection has a term of ten years from the date of registration, renewable for three subsequent periods of five years each.

Although the INPI does not analyze the merits of the industrial design prior to its registration, the owner may request the INPI to carry out an analysis as to the aspects of novelty and originality of an industrial design at any time during the term of the registration.

Third parties may file an administrative or judicial action to have the granted registration annulled on the grounds (among others) of lack of novelty or originality.

4. Agreements

The INPI is also responsible for the registration of license and other agreements related to industrial property rights. Such registration is a condition precedent to the enforcement of intellectual property rights against third parties by a licensee.

Industrial-property-related agreements are generally classified by the INPI as technology-transfer agreements, which include license agreements to use a patent, a trademark or an industrial design, as well as agreement for the transfer of know-how not patented, technical assistance services, and franchise agreements. Each technology-transfer agreement must be registered with the INPI in order to: (i) allow deduction of expenses in calculating corporate income tax; and (ii) cause the agreement to be enforceable against third parties.

5. Copyright

According to Law 9,610, legal protection of literary, artistic and scientific works is divided into (i) moral rights, which comprised an exhaustive list of rights of the author of a work pertaining to the identity and authorship of the work, such as the right to receive credit and the right to ensure that the work remains intact without modifications, and (ii) patrimonial rights, which are the exclusive rights of the author to use, enjoy and dispose of the work.

Patrimonial rights of the work may be assigned by the author to third parties, in part or in whole, any such assignment lasting for 70 years from the beginning of the year following the death of the author of the work, if the author has heirs. Otherwise, the work will fall under public domain immediately after the author's death. Moral rights, on the other hand, have no time limitation, may be claimed by the author or by the author's heirs (after the author's death), and may not be assigned under any circumstances.

Because Brazil is a signatory to the Bern Convention, no registration is required to secure ownership and protection of artistic, scientific, or literary works. This rule is restated in Law 9,610. Accordingly, a work is under protection provided by the copyright law from the date the work is published regardless of registration. The author may, nonetheless, seek registration of his or her work in the appropriate office (depending on the nature of the work) to ensure formal record of the publication date.

6. Software

Under Law 9,609, software is considered to be a subject matter appropriate for copyright protection. The provisions of Law 9,610 apply to the copyright of software to the extent that its provisions are not inconsistent with Law 9,609. The term for protection of computer programs is 50 years from the beginning of the year following the year in which the software is created, released in the market, or otherwise disclosed to the public. Because Brazil is a signatory of the Bern Convention, no registration is required to secure ownership and protection of artistic, scientific, or literary works of software.

The main differences between the legal protections granted to literary, artistic, and scientific works by Law 9,610 and those granted to software by Law 9,609 are the following:

(i) although an employee or service provider hired by a person to develop a software is the author of that work (and, as such, could be entitled to the rights over the work under Law 9,610), Law 9,609 provides that the software is owned exclusively by the employer or the party that hired the services (unless otherwise agreed to by the parties); and

(ii) the moral rights governed by Law 9,610 are generally not granted to authors of software programs, except for the right to claim authorship and the right to oppose unauthorized changes to the program that may harm the author's honor or reputation.

7. Data Protection

In 2018, the General Law for Data Protection was enacted to regulate data protection of individuals and the conditions under which any individual or entity may process personal data. Individuals and entities processing personal data are required to make their businesses compliant with the requirements set down in the General Law for Data Protection.

The General Law for Data Protection authorized the creation of both the National Authority for Data Protection ("ANPD"), responsible for the supervision of data-processing activities; and the National Council for the Protection of Personal Data and Privacy, responsible for the proposition of strategies and guidelines with respect to the national policy for the protection of personal data. On August 26, 2020, the Federal Government enacted Decree 10,474 for the purpose of defining the regimental and organizational structure of the National Authority for Data Protection.

Since the start of its activities, the ANPD has issued regulations regarding supervision and administrative-sanctioning procedures, notification of security incidents, role of the data-protection officer, and international data transfer, among others.

IX. ANTITRUST LAWS

The Antitrust Law currently in effect in Brazil was enacted in 2011 and entered into full force and effect on May 30, 2012. The Antitrust Law: (i) regulates the protection of free competition and the repression of violations against the economic order in Brazil; (ii) establishes the structure of the Brazilian Antitrust System (*Sistema Brasileiro de Defesa da Concorrência* – "SBDC"); and (iii) provides for antitrust investigations, their procedures, the merger-notification regime and notification thresholds, among other antitrust issues.

The Antitrust Law applies to all antitrust activities carried out in whole or in part, or that may produce effects, in Brazil. According to the Antitrust Law, any foreign company that operates directly or indirectly in Brazil will be deemed to be located in Brazil. Furthermore, all companies or entities that are part of an economic group, one or more companies of which, de facto or de jure, commits a violation against the economic order, will be held jointly and severally liable with that company or those companies for any losses or harm caused by that violation.

The agency responsible for administering the SBDC is the Administrative Council for Economic Defense (*Conselho Administrativo de Defesa Econômica* – "CADE"), which is composed of two main bodies, as explained below:

(i) the General Superintendency, headed by a General Superintendent and two substitute directors, whose responsibilities include preliminary enforcement functions regarding an anticompetitive investigation as well as a review of any inquiry regarding a merger; and

(ii) an Administrative Tribunal, formed by CADE Commissioners, which decides competition cases and mergers whenever: (a) the General Superintendent has not granted full approval; or (b) there is an appeal by a third party or by indication of one of the Commissioners. The Tribunal's Commissioners have single four-year terms.

In addition to the above-mentioned organs, CADE also houses the Department of Economic Studies (*Departamento de Estudos Econômicos* – "DEE"). The DEE is in charge of providing nonbinding economic opinions and preparing economic studies for cases under review.

The General Superintendent is responsible for receiving requests for approvals of mergers, instructing the procedures for reviewing any such requests, and ultimately approving mergers (or not), on a case-by-case basis. The General Superintendent's decision will be made by the General Superintendent alone and will be subject to review by the Administrative Tribunal only upon appeal (by third parties, by regulatory agencies, or at the request of one of the Tribunal's Commissioners). Such roles are intended to simplify and expedite merger review and avoid overlapping functions.

In addition, the Antitrust Law sets forth the definition of a merger (article 90), establishing that acts, contracts and agreements (in which two or more independent companies integrate their economic power) must be submitted to the antitrust authorities for review and approval if they meet, concurrently, the following objective thresholds (article 88):[41]

(i) at least one of the economic groups involved in the transaction registered gross revenues or business volume of R$750 million or more, in Brazil (in the year prior to the transaction); and

(ii) at least one other economic group involved in the transaction registered gross revenues or business volume of R$75 million or more, in Brazil (in the year prior to the transaction).

CADE Resolution 33 provides the definition for "economic group." For the purposes of calculating revenue thresholds, CADE considers an economic group to be:[42]

(i) all companies under common control, whether internal or external; together with

(ii) all companies in which any of the companies qualifying in item (i) above holds, directly or indirectly, at least 20% of the capital stock or of the voting capital.

41 The thresholds recited above are the thresholds currently in effect, pursuant to Joint Ministerial Ordinance No. 994 of the Ministries of Justice and of Finance, issued on May 30, 2012. Gross revenue thresholds, originally established by the Antitrust Law, were: (i) at least one economic group that posted Brazilian gross revenues or business volume of R$400,000,000 or more on the latest balance sheet; and (ii) at least one economic group that posted Brazilian gross revenues or business volume of R$30,000,000 or more on the latest balance sheet.

42 Article 4, paragraph 1, of CADE Resolution 33.

For investment funds, however, the concept of "economic group" is slightly different. Article 4, paragraph 2, of CADE Resolution 33, provides that, for the purposes of calculating revenue thresholds in the case of investment funds, CADE considers the following to be part of the same economic group:

(i) the economic group of each shareholder of a fund that holds, directly or indirectly, 50% or more of the shares of the fund, either by individual shareholdings or by means of a shareholders' agreement; together with

(ii) those companies controlled by the fund involved in the transaction as well as those companies in which such fund holds, directly or indirectly, shareholdings of 20% or more in the capital stock or the voting capital.[43]

Article 90 of the Antitrust Law considers a merger to have occurred whenever: (i) two or more independent companies merge to form a new company; (ii) one or more companies acquire the control or parts of another company; (iii) one or more companies merge into another company or companies; or (iv) two or more companies sign an associative, copartnership or joint-venture agreement.

Particularly in connection with associative agreements, CADE Resolution 17, which came into effect in 2017, defines such agreements as any agreements for a period equal to or greater than two years, creating a common enterprise between the parties for carrying out economic activities,[44] in which:

(i) the parties agree to share the risks and results of the relevant economic activity; and

(ii) the parties are competitors in the relevant market affected by the agreement.

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43 The extent of the meaning of "control" in this context has been subject to debate. Nonetheless, the debate does not reduce the importance of the definitions set forth in article 4 of CADE Resolution 33.

44 For purposes of CADE Resolution 17, an "economic activity" consists of the acquisition or offer of goods or services in the market, regardless of whether the purpose of acquiring or offering those goods or services is to reap a profit or not. In those cases in which the purpose is not to reap a profit, the activity must, nevertheless, be an activity that could, at least in theory, otherwise be carried out by a private company having a profit motive.

CADE Resolution 17 further provides that the associative agreements defined above must be submitted to CADE for approval. Moreover, parties entering into associative agreements that meet the criteria listed in items (i) and (ii) above but that provide for a term of less than two years, or for a term of indefinite duration, must nevertheless report those agreements to CADE in the event they continue in effect for a period greater than two years. If these agreements are renewed, they must be reported to CADE prior to their renewal. If the renewal is for a period of two years or more, the renewal will then require the actual prior approval of CADE.

In addition, the Antitrust Law provides that the approval of any merger must occur prior to the actual merger itself. In this regard, the Antitrust Law provides that the closing in a merger transaction may only occur after the definitive approval of the merger by the antitrust authorities. In the event the parties should fail to comply with these requirements (for instance, if the parties start to take steps to carry out the transaction prior to the approval, thus changing the competitive structures of the market and the conditions of the parties), the parties will be subject to: (i) fines ranging from R$60,000 to R$60,000,000; (ii) annulment of the transaction; and (iii) the possibility of an administrative proceeding being initiated.[45]

With respect to timeline, the Antitrust Law provides that the merger-analysis procedure must be carried out within 240 days. This deadline may be extended for an additional period of 90 days.

CADE's Internal Regulations[46] stipulate that if CADE's analysis takes more than 330 days (240 days plus the 90-day extension) – that is, in the event CADE fails to comply with the peremptory time limit for the merger analysis – the merger will be deemed approved (tacit approval).

According to CADE Resolution 33, simple mergers may be analyzed by CADE by means of a fast-track procedure (*procedimento sumário*). The fast-track procedure consists of an expedited analysis by CADE in cases where the transaction has no (or little) possibility of causing anticompetitive harm. The eligibility of transactions for the fast-track procedure is entirely at CADE's discretion. Article 8 of CADE Resolution

45 Pursuant to article 88, paragraph 3 of the Antitrust Law, concerning gun-jumping provisions.

46 CADE's Internal Regulations were approved by Resolution No. 22, issued by CADE on June 19, 2019.

33 determines that the following transactions are eligible for the fast-track procedure:

(i) classic or cooperative joint ventures, in which two or more companies join forces to constitute a new company, under common control, the sole purpose of which is to tap into a market, the products and services of which are neither vertically nor horizontally related;

(ii) substitution of players in the market (situations in which an acquiring company was not actively engaged in the relevant market or in markets vertically related thereto prior to the transaction);

(iii) low market share with horizontal overlap (i.e., a merger that results in control of less than 20% of the relevant market, at the General Superintendent's discretion);

(iv) low market share with vertical integration (i.e., none of the merging parties or their economic groups controls more than 30% of any relevant markets that are vertically integrated);

(v) lack of causal link (i.e., a horizontal merger resulting in an HHI[47] variation lower than 200, provided that the merger does not result in the control of more than 50% of the relevant market); and

(vi) simple cases that do not fit the foregoing classifications but that, in the opinion of the General Superintendent, do not require a detailed antitrust analysis.

Although there is no specified time limit during which a fast-track procedure must reach completion, a transaction eligible for such procedure should be expected to be analyzed faster than the regular (non-fast-track or ordinary) procedure. In practical terms, CADE should be expected to analyze a merger, in the fast-track procedure, on average in less than a month. On the other hand, transactions not eligible for the fast-track procedure (non-fast-track or ordinary) require more information for purposes

[47] HHI stands for "Herfindahl-Hirschman Index", which is an index adopted by antitrust agencies to measure the size of firms in relation to an industry.

of starting the antitrust review and should be expected to be analyzed by CADE on average within three months from the filing of the form.

In addition, according to article 9, item I, of CADE Resolution 33, if the revenues threshold is met, any equity acquisition that results in the acquisition of control of a company (either single or shared control) must be submitted to CADE.

CADE must also be informed of any acquisition of equity in a company that exceeds the revenues threshold, even though the acquisition does not result in the acquisition of control of the company (single or shared), in the following cases:[48]

(i) If the acquiring party and the company the equity of which is being acquired are not competitors or do not operate in vertically-related markets:

  (a) any acquisition in which the party acquiring the equity ends up owning (directly or indirectly) 20% or more of the company's capital stock or voting capital; or

  (b) any acquisition in which the party acquiring the equity already owns at least 20% of the company's capital stock or voting capital, and the shareholdings being acquired from at least one of the selling shareholders also represent 20% or more of the company's capital stock or voting stock; and

(ii) If the acquiring party and the company the equity of which is being acquired are competitors or operate in vertically-related markets:

  (a) any acquisition in which the party acquiring the equity ends up owning (directly or indirectly) 5% or more of the company's capital stock or voting capital; or

  (b) any acquisition that is the last acquisition that, individually or together with other prior acquisitions, increases the ownership interest of the acquiring party by 5% or more, whenever the party acquiring the equity

48 Pursuant to article 10 of CADE Resolution 33.

already owns 5% or more of the company's capital stock or voting capital.

Equity acquisitions made by a single controller are not subject to mandatory antitrust filing.

Whenever a person subscribes to bonds or to other securities issued by a company, which bonds or securities are convertible into shares of the issuing company, article 11 of CADE Resolution 33 determines that CADE must be informed of the subscription if both of the following conditions have been met:

(i) a future conversion of such bonds or securities into shares would qualify for mandatory notification to CADE pursuant to articles 9 and 10 of CADE Resolution 33; and

(ii) other than those rights already granted by applicable law, the bonds or securities entitle the acquiring party to: (a) the right to appoint members of management or supervisory organs, or (b) the right to vote on, or to veto, sensitive matters.

Furthermore, as per CADE Resolution 33[49] and CADE's Internal Regulations,[50] prior to the actual subscription, the antitrust agency is not required to give its approval of the relevant subscriptions within the context of public offerings of shares or public offerings of bonds or securities convertible into shares. Nevertheless, governance rights related to those shares, bonds or securities may not be exercised by the subscribing party before CADE approves the transaction.

In addition, CADE is not required to approve, in advance, any other transaction carried out on the stock exchange or in an organized over-the-counter market.[51] However, the governance rights related to the ownership interest acquired in any such transaction may not be exercised before CADE approves the transaction.

Finally, in the event the exercise of governance rights related to shares acquired in public offerings or in other transactions carried out on stock exchanges or in an organized over-the-counter market is necessary to

49 Pursuant to article 11, paragraph 2 of CADE Resolution 33.

50 Pursuant to article 107 of CADE's Internal Regulations.

51 Pursuant to article 108 of CADE's Internal Regulations.

protect fully the investment value, CADE may, upon request by the parties, authorize such exercise before issuing the final decision on the transaction.[52]

52 Pursuant to article 107, paragraph 2 of CADE's Internal Regulations.

X. ENVIRONMENTAL PROTECTION LAWS

In general terms, the Federal Constitution grants the Brazilian federal, state, and municipal governments the power to enact environmental legislation and to issue regulations under those laws. While the federal government has the power to promulgate environmental regulations setting forth general standards of environmental protection, state governments have the power to enact supplementary environmental regulations, so long as they do not conflict with the general standards outlined in federal legislation. Municipalities, in turn, may only issue regulations with respect to environmental matters of local interest.

1. Environmental Licensing

Environmental licensing is the administrative procedure whereby the competent environmental authority authorizes the location, installation, expansion, and operation of enterprises and activities that use environmental resources that are effectively or potentially polluting, or that may in any way cause environmental degradation. This procedure considers the applicable legal and regulatory provisions, as well as relevant technical standards.

Under federal, state, and municipal environmental laws and regulations, companies are required to obtain environmental licenses to construct and operate their production facilities whenever they are classified as potential polluters.

The environmental licensing procedure, in general, includes a preliminary license, an installation license, and an operating license. The preliminary license is issued during the planning phase of the project and approves its location and environmental feasibility, establishing the requirements to be met in the next stage of the procedure. The installation license authorizes the start of construction, and the operating license authorizes the commissioning and operation of activities.

The competent authority responsible for environmental licensing is defined in accordance with the framework established by Article 23 of the Federal Constitution and regulated by Complementary Law 140, of December 8, 2011, which set down the rules for cooperation among the federal, state, and municipal governments.

2. Environmental Liability

In Brazil, environmental liability is divided into three independent spheres: civil, administrative, and criminal. At the federal level, there are two principal pieces of legislation dealing with liability for environmental damage: Law 6,938 and Law 9,605.

Law 6,938 sets forth the Brazilian national environmental protection policy and lays out the civil sanctions applicable to individuals and legal entities found liable for environmental damage. It also prohibits governmental agencies from granting financing to entities that are not licensed by environmental agencies and that are not in compliance with applicable environmental protection laws and regulations.

In addition, Law 6,938 establishes the polluters' strict liability and the obligation to compensate for or repair any harm caused to the environment and third parties affected by their activities.

Strict liability is one of the main features of civil liability under Brazilian environmental legislation. Strict liability means that the party responsible for environmental damage is obligated to repair that damage even if it was not caused by the responsible party's fault or intent. The legislation establishes the concept of "indirect polluter," which is broadly applied to include other agents who, while not directly responsible for the harmful activity, may also be held liable for environmental damages.

Law 6,938 imposes other sanctions in the event of a violation of its provisions, including fines, termination or suspension of credit lines granted by official credit agencies, and even suspension of activities.

Law 9,605, also known as the "Environmental Crimes Law", sets forth a list of environmental crimes and their associated sanctions. It also determines that any person who contributes to the perpetration of any environmental crime will be liable to the extent of his or her fault. This includes not only the legal entity but also includes managers, officers, auditors, technicians, and agents of that entity, who may be held liable if they knew about the criminal activity and failed to act to prevent it, if, in fact, they could have done so.

Criminal liability under Brazilian legislation is always based on fault and it is never considered strict liability.

Violators of the provisions of Law 9,605 will be subject to sanctions imposed by the Environmental Crimes Law, including fines (ranging from one minimum monthly salary (currently R$1,518.00) to 360 minimum monthly salaries), imprisonment, restriction of rights (such as total or partial restriction on business activities, temporary shutdown of facilities or business, prohibition from entering into transactions with the government), and community services.

In addition, perpetrators of environmental infractions may be subject to administrative sanctions, including fines ranging from R$50 to R$50,000,000, to be imposed by the relevant environmental agency pursuant to Decree 6,514.

XI. JUDICIAL PROCEEDINGS FOR THE ENFORCEMENT OF RIGHTS

1. Judicial Proceeding Initiated in Brazil

As a general rule, there are two different civil proceedings for the enforcement of rights in Brazil: (i) the execution proceeding (*execução*); and (ii) the ordinary proceeding (*processo de conhecimento*). In addition to these two forms of civil proceedings, a creditor may pursue a third form called an action for collection (*ação monitória*). Depending on the circumstances involved in the case, an action for collection will proceed either as an execution proceeding, or as an ordinary proceeding, as discussed below. The procedure applicable to any given claim will depend on the type of the claim and the documentation supporting the claim.

1.1 Execution Proceeding (*Execução*)

Traditionally, there have been two types of proceedings in Brazil called "execution proceedings" (*execução*): (i) execution on a judgment, based on a favorable court judgment or arbitral award, any such judgment or award referred to as a "judicial execution instrument" (*título executivo judicial*); and (ii) execution of any of certain instruments evidencing a sum-certain debt, which instruments are referred to as "extrajudicial execution instruments" (*títulos executivos extrajudiciais*). In each case, the execution proceeding constituted a separate judicial proceeding. In the case of execution on a judgment, the execution proceeding followed the ordinary (evidentiary) proceeding that resulted in an obligation to pay a sum certain.

Today, a party with a favorable judgment enforces the judgment by continuing in the same proceeding that resulted in the judgment, in a process called an "enforcement of the judgment" (*cumprimento da sentença*). The process of enforcing the judgment is still commonly referred to in practice as an "execution on the judgment"; and by the terms of the Code of Civil Procedure, the parties are referred to in the enforcement of the judgment as the "executing party" (*exequente*) and the "party being executed against" (*executado*). The defenses available to the defendant in an enforcement of a judgment are fewer than those available to a defendant in an execution proceeding brought on the basis of an extrajudicial execution instrument. But in most other terms, the proceedings are similar.

The Arbitration Law provides that an arbitral award obligating one party to pay damages to the other is considered an execution instrument

and may be enforced through a separate execution proceeding brought in a court of law. The Code of Civil Procedure includes an arbitral award as one of the many "judicial execution instruments" classified as such in that Code.

The Code of Civil Procedure defines extrajudicial execution instruments as, among others: (i) bills of exchange; (ii) promissory notes; (iii) trade acceptance bills; (iv) checks; (v) public deeds; (vi) agreements secured by mortgages, pledges, and other *in rem* rights;[53] (vii) any statement signed by a debtor and two witnesses whereby the debtor undertook to pay a sum-certain debt; and (viii) life insurance policies upon the death of the insured. When signed outside Brazil, any of these instruments will be extrajudicial execution instruments only if, in addition, they meet the legal formalities required for their validity in the place of their issuance, and they designate Brazil as the place where payment of the obligation is to be made.

Generally, execution proceedings take the following course:

(i) the creditor files a complaint, and the debtor will be summoned to pay the amount claimed within three business days or to present its defense in the form of a petition to challenge the execution (*embargos à execução*) within 15 business days;[54]

(ii) if the debtor does not pay the claimed amount, the court officers will attach sufficient assets of the debtor to cover payment of the debt, court costs and legal fees. Despite the creditor's right to specify assets of the debtor to be attached, the debtor may be obligated, at any time, to indicate assets for attachment that have an aggregate value sufficient to pay off the full amount owing. In the case of secured debt – in particular, debt the payment of which is secured by a mortgage or a pledge – the asset to be attached will preferably be the collateral securing the payment of that debt. However, the creditor may reject the collateral and seek the attachment of other assets if the collateral may have suffered a reduction in value;

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53 For further information regarding mortgages, pledges and other *in rem* rights, see Section V, "Secured Transactions: Types of Security Interests," above.

54 The amount claimed is increased by 10% to 20% to cover a court-awarded fee (*sucumbência*) payable to the creditor's counsel, should the creditor prevail. Should the creditor lose, the creditor must pay the *sucumbência* to the debtor's counsel, generally on a percentage of 10% to 20% over the amount of the claim reduced by the court.

(iii) once attachment has taken place, a custodian will be appointed (usually the debtor itself), and the debtor will be notified of the attachment – either in person or through the debtor's attorney;

(iv) the debtor has 15 business days, counted, as a general rule, from the date on which evidence of service of process on the defendant was filed in the court proceedings, in which to present its defense (*embargos à execução*), challenging the execution. The creditor may answer the debtor's challenge within another period of 15 business days, and the court will subsequently order the parties to provide evidence of their allegations, scheduling a date for a hearing, if deemed necessary;

(v) except in specific circumstances provided for in law, the filing of the defendant's defense in the form of a challenge to the execution does not suspend the course of the execution proceeding; accordingly, appraisal of assets, as the case may be, and subsequent steps in the execution proceeding, may be conducted simultaneously with the processing of the defendant's challenge to the execution;

(vi) after the court has appreciated the debtor's challenge to the execution and reached a decision as to whether to accept it or not, the decision is subject to appeal by either or both of the parties. If there is an appeal, the appeal must be filed within 15 business days after the decision as to the defendant's challenge to the execution has been published. Motions for clarification, on the other hand, must be filed within five business days after the decision is published. An appeal likewise does not suspend the execution proceeding;

(vii) in any event, the defeated party must pay both the court-awarded attorney's fees to the opposing counsel as well as any court costs. These fees may vary in amount from 10% to 20% of (a) the amount of the claim, should the creditor prevail or (b) the amount reduced by the court, should the debtor prevail, subject, in any event, to a global cap of 20% of the amount referred to in item (a) or (b) above, as the case may be. If the party against which the execution proceeding is filed challenges the execution by means of the *embargos à execução,* the court will assess the attorney's fees payable by the party defeated in the execution proceeding (which could be the creditor or the

defendant in the execution proceeding), subject to the 20% global cap referred to above. Should the party defeated in the execution proceeding fail to comply with the judicial order granted within the *embargos à execução* or fail to pay the amounts owed to the prevailing party in the execution proceeding, such prevailing party will initiate a procedure (within the execution proceeding) called enforcement of judgment (*cumprimento de sentença*) and if the amount of the award is not voluntarily paid the defeated party will be obligated to pay a penalty of 10% of the amount of the award in favor of the plaintiff, together with an additional fee of 10% of the amount of the award as attorney's fees payable to plaintiff's attorneys;

(viii) if the parties do not agree on the market value of the attached assets, a court officer will present an appraisal of the market value of those assets. In the event such an appraisal is not possible, an expert will then be appointed by the court to appraise the assets and present a report within ten business days;

(ix) the report as to the appraisal of the assets will be submitted to the parties, at which point the creditor will be entitled to choose between: (i) taking title to the assets directly as payment of the debt (*adjudicação*); or (ii) carrying out a private sale of the assets within a period fixed by the court. In both cases, regardless of whether title to the assets is transferred to the creditor by the court or the assets are put up for sale, the value being attributed to the assets must be approved by the court;

(x) if the creditor should choose to take title to the assets directly: (a) to the extent the value attributed by the court to those assets exceeds the amount owing by the debtor, the creditor must deposit the difference with the court, where that excess amount will be placed at the disposition of the debtor; and (b) to the extent the value attributed to those assets falls short of the amount owing by the debtor, the creditor may continue with the execution proceeding in an attempt to recoup the shortfall;

(xi) if, on the other hand, the creditor should choose to sell the assets in a private sale: (a) to the extent the proceeds from the sale are greater than the amount owing by the debtor, the creditor must deposit the difference with the court, where that excess amount

will be placed at the disposition of the debtor; and (b) to the extent the proceeds from the sale are less than the amount owing by the debtor, the creditor may continue with the execution proceeding in an attempt to recoup the shortfall;

(xii) in the event that neither the transfer to the creditor of title to the assets, nor the private sale of those assets, should occur, the court will set a date and time for a public auction. The public auction will be carried out by a public auctioneer accredited by the court. In the case of collateral consisting of real estate, the auctioneer may be a real estate broker. The public auction will be held after notices have been published on the worldwide web;

(xiii) the public auction will be carried out in two stages: in the first stage, the value ascribed to the assets in the appraisal report is treated as the minimum price acceptable for those assets. If the assets are not sold, a second auction will be held at which the assets will be sold at the highest price offered at the auction (which must not be lower than 50% of the official appraised value of the assets); and

(xiv) the proceeds from the sale will be applied in satisfaction of the creditor's claim, together with court-awarded attorney's fees and court costs. Should the proceeds be insufficient to cover the whole amount of the claim, the creditor may proceed with the enforcement of its rights by attaching other assets of the debtor. Should the proceeds exceed the amount of the claim, the excess is paid to the debtor.

1.2 Ordinary Proceeding

In the absence of an extrajudicial execution instrument that evidences a claim for a sum-certain debt and qualifies for the filing of an execution proceeding as described above, the plaintiff will need to initiate an evidentiary proceeding to obtain a final judgment for payment of a sum certain. With such a judgment in hand, the plaintiff will have a judicial execution instrument that will allow the plaintiff to enforce the judgment through a continuation of the evidentiary proceeding following a process very like an execution proceeding based on an extrajudicial execution instrument.

If the plaintiff is not domiciled in Brazil and does not have title to property registered in Brazil, the plaintiff must post a bond to cover the payment of court costs and attorneys' fees. The bond, however, is not required: (i) where a waiver for such requirement is provided for in international treaties or conventions to which Brazil is a party; (ii) in execution proceedings based on a judicial execution instrument or on an extrajudicial execution instrument; and (iii) in counterclaims.

Ordinary proceedings are evidentiary proceedings and are usually divided into three phases: (i) the pleading phase (*fase postulatória*); (ii) the production-of-evidence phase (*fase instrutória*); and the judgment phase (*fase decisória*).

The pleading phase comprises the filing of the complaint (*petição inicial*), the answer (*contestação*), and any additional pleadings. After the plaintiff has filed the complaint, the judge may schedule a conciliation hearing. If the parties do not reach an agreement at that hearing, the defendant must present its answer within 15 business days from the date of the hearing. The hearing will not take place in cases where both parties declare that they are not interested in settling, or in those cases in which an out-of-court settlement is not permitted by law. In these cases, the defendant must present its answer within 15 business days from the date of confirmation that the defendant was served with process, or from the date on which the defendant advises the court that it is not interested in any preliminary hearing, as applicable. If the defendant does not present its answer within the 15-day deadline, all allegations of facts made by the plaintiff will be deemed true. The defendant may present a counterclaim in its defense, in which case the plaintiff must present its answer to the counterclaim within 15 business days.

The pleading phase terminates with a pretrial order (*despacho saneador*), issued after the court has reviewed the pleadings to determine if the case is legally sound and if the procedural prerequisites have been complied with, including an analysis of the plaintiff's cause of action against the defendant. The production of evidence begins when the parties are allowed to submit documentary and testimonial evidence. The final phase is the judgment phase, at the end of which the actual judgment is rendered by the court. In practice, however, the last two phases tend to overlap. The court's hearing (*audiência*) usually encompasses both the production of evidence as well as the process leading to judgment.

The decision on the claim will impose on the defeated party the obligation to pay court costs and attorney's fees to the opposing counsel, varying from 10% to 20% of the disputed amount. According to applicable law, the amount of the attorney's fees awarded will be increased in the event any appeals filed are rejected, limited, in any event, to a cap of 20% of the disputed amount.

If the plaintiff should recover a final favorable judgment, the plaintiff may then proceed to enforce the judgment as part of the same proceeding, without the need to file a separate execution proceeding. The defendant will be notified to pay the amount awarded to plaintiff within 15 business days. If the amount of the award is not paid within that period, the court will assess a penalty of 10% of the amount of the award in favor of the plaintiff, together with an additional 10% of the amount of that penalty as attorney's fees payable to plaintiff's attorneys.

The defense available to the defendant in this stage is called a "challenge" (*impugnação)*, which may be presented by the defendant within 15 business days after the 15-day deadline for payment has expired. The challenge will generally not stay the proceeding except in those cases in which: (i) allowing the enforcement to proceed could cause significant irreparable loss or harm to the debtor; and (ii) the debtor offers assets to secure payment of the damages awarded to plaintiff in the judgment, up to the amount of that award. In any such case, the plaintiff could, nevertheless, proceed with the enforcement proceeding. If the plaintiff should choose to so proceed, the plaintiff may be required to post a bond to secure the payment of any possible indemnification owing to the debtor for losses or harm that might befall the debtor by virtue of the plaintiff's having proceeded to carry out the provisional enforcement.

If the challenge of the debtor is rejected, the defeated party must comply with the final decision and pay the applicable fines. The procedure of enforcing a judgment will follow generally the steps of an execution proceeding as set forth in Item 1.1 above.

The principal difference between an enforcement proceeding based on a judicial decision issued pursuant to an evidentiary proceeding (*título executivo judicial*) and an execution proceeding based on an extrajudicial-executory instrument (*título executivo extrajudicial)* is that, in the former case, defense arguments available to the debtor challenging the judgment would be limited to allegations of: (i) invalid service of process; (ii) unenforceability of the judgment; (iii) improper judicial attachment or

incorrect court appraisal; (iv) plaintiff's not being the real party in interest (*parte ilegítima*); (v) attempting to collect in an excessive amount; (vi) lack of jurisdiction; and (vii) any fact that occurs after the judgment that modifies or extinguishes the obligation, such as (for example) payment. Allegations available to a defendant to challenge an execution proceeding brought on the basis of an extrajudicial execution instrument generally include the above allegations, *mutatis mutandis*, together with any allegations that the defendant could otherwise make as a defense in an ordinary (evidentiary) proceeding brought to recover amounts of an obligation past due.

1.3 Action for Collection

If a claim for a sum certain or demanding delivery of a certain piece of personal property or fungible asset is based on a contract or credit document that is not an execution instrument, the applicable procedure for its enforcement most likely will be an action for collection (*ação monitória*) rather than an ordinary proceeding.

In order to file an action for collection, a creditor must file a complaint attaching the same documents required for the filing of an execution proceeding. If the creditor is not domiciled in Brazil and does not possess any real property in Brazil, the creditor must post a bond to cover the court costs and attorneys' fees. The same exceptions regarding such a bond, specified in Item 1.2 of this Section, are applicable.[55]

In such a proceeding, the defendant will be notified to pay its debt or to file a defense against the collection within 15 business days. If the defendant does not file a defense, the proceeding will be converted into an execution proceeding and will proceed in a manner similar to that described in the final part of the ordinary proceeding (i.e., enforcement of a judgment) in Item 1.2 above.[56] If the defendant files a defense, the action for collection will thereafter follow the steps in an ordinary proceeding as described in the initial part of the ordinary proceeding in Item 1.2 above.

2. Ratification of a Foreign Judgment

In the case of enforcement of a contract governed by foreign law and providing for submission to a foreign jurisdiction, rather than initiating

55 Article 83 of the Code of Civil Procedure.

56 In such case, the claimed amount will be increased by 5% to cover a court-awarded fee (*sucumbência*) payable to the creditor's counsel, should the creditor prevail.

a proceeding directly in Brazil, the creditor may obtain judgment in a court of competent jurisdiction outside Brazil and bring that judgment for enforcement in Brazil.

In order to be enforced in Brazil, any foreign judgment must first be ratified by the Superior Court of Justice in Brazil. In order to be ratified by the Superior Court of Justice, a foreign judgment must meet the following conditions: (i) it must comply with all formalities necessary for its enforcement under the laws of the place where it was issued; (ii) it must have been issued by a competent court after proper service of process on the parties; (iii) it must not be contrary to Brazilian national sovereignty, good morals or public policy or otherwise offend human dignity; (iv) it must not violate a final and unappealable decision issued by a Brazilian court; (v) it must not violate any Brazilian rules providing for the exclusive jurisdiction of Brazilian courts; and (vi) unless an exemption is provided by an international treaty to which Brazil is a signatory, the judgment must be (a) duly authenticated by a competent Brazilian consulate or, if the place where the judgment is issued is a contracting state to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, dated October 5, 1961, apostilled; and (b) accompanied by a sworn translation thereof into Portuguese. If the foregoing conditions are met, the Superior Court of Justice will ratify the foreign judgment for enforcement in Brazil without reviewing the merits.

The decision of the Superior Court of Justice ratifying the foreign judgment will itself be a judgment and, therefore, an execution instrument. Such judgment will then be enforceable as part of the same procedure in the same manner described in Item 1.2 of this Section (i.e., enforcement phase in an ordinary proceeding – or, essentially, execution on a judgment).

XII. ARBITRATION

Arbitration is admitted in Brazil as a valid method for dispute resolution. The provisions governing arbitration proceedings are set down in the current Arbitration Law, enacted in 1996 and subsequently amended. Arbitration is used primarily in business and contractual disputes, where there is generally no question as to whether the parties could validly opt for arbitration and waive their rights to take a dispute to the judicial courts. Arbitration may be chosen either before a conflict arises (by means of an arbitration clause inserted in the contract[57]), or after a conflict has been identified (by means of a separate arbitration agreement, in which the specific issue to be submitted to arbitration is described).

After a period of adapting to the Arbitration Law, Brazil has increasingly become a pro-arbitration jurisdiction. Brazilian courts have been consistently upholding choices made by parties to a dispute to submit that dispute to arbitration – either by refusing to hear cases arising under contracts with arbitration provisions, or by enforcing the respective arbitral awards. Brazil is also signatory to, and has ratified, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards – The New York Convention (1958).

In order to avoid discussion as to the validity of an arbitration clause or an arbitration agreement, it behooves the parties to include in an arbitration clause or agreement certain basic provisions, such as: (i) the choice of procedural rules (especially by reference to institutional rules of an existing chamber for arbitration or to the UNCITRAL rules for *ad hoc* arbitration); (ii) the number of arbitrators making up the arbitral tribunal and the method for their selection; (iii) the place where the arbitration proceeding will be conducted and where the award will be issued; (iv) the language of the arbitration proceeding; (v) the law applicable to the dispute; and (vi) the competent jurisdiction to rule upon requests for injunctive relief and to enforce constrictive orders and the arbitral award, if necessary.

It is possible that injunctive relief may be needed prior to an arbitration proceeding. If that should be the case, and so long as the arbitral

[57] Case law in Brazil allows any person, in spite of the fact that he or she is a party to a contract containing an arbitration clause, to pursue enforcement in court of a claim for sum-certain debt under such contract, by means of an execution proceeding, so long as the contract qualifies as an extrajudicial execution instrument. However, any discussion on the merits in relation to that contract and its performance by the parties will remain subject to arbitration before the existing arbitral tribunal formed or to be formed to hear the case.

tribunal has not yet been constituted, either party seeking to resolve a dispute may request injunctive relief in a court of law. If the interested party does not request the commencement of the arbitration proceeding within 30 business days after the injunctive relief is granted, the effectiveness of that relief terminates. After the tribunal is constituted, the parties may resort only to the arbitral tribunal itself for the purpose of requesting injunctive relief. If any injunctive relief is requested in a court of law prior to the constitution of the arbitral tribunal, that tribunal (once constituted) may review and modify the decision rendered by the court of law. Relief requested before a court of law does not affect or concern the merits of the dispute, judgment as to which is reserved exclusively for the jurisdiction of the arbitral tribunal.

There are some chambers for arbitration, such as the International Chamber of Commerce, that entertain requests for emergency arbitration. If the parties have agreed upon or have not expressly ruled out the use of such a device (depending on what the rules provide for), emergency arbitration may be put into play by the parties following the rules of the specific chamber for arbitration regarding a hearing on a request for emergency relief that may be needed prior to the actual constitution of the arbitral tribunal. This practice is still not usual in local arbitration proceedings, but it may be expected to develop in the near future.

An arbitration proceeding is considered to have commenced immediately after all arbitrators involved have accepted their appointments. Any issues related to jurisdiction, disqualification of an arbitrator, and annulment, invalidity or ineffectiveness of the arbitration clause or agreement must be raised at the first opportunity after the commencement of the proceeding. Any arbitrator who is found to be disqualified to act in the proceeding must be replaced. If any challenge to jurisdiction or to the arbitration clause or agreement is accepted, the case will be forwarded to the competent court of law. Unless otherwise agreed, the final arbitral award must be issued within six months after the commencement of the arbitration or, if an arbitrator has been replaced, after the replacement has been duly designated.

Arbitral awards have the same force and effect as court judgments and are final and binding upon the parties. Domestic awards do not require any type of prior recognition or ratification for purposes of enforcement. Foreign final arbitration awards, however, must be ratified by the Superior Court of Justice as a condition to becoming effective in Brazil.

As in other jurisdictions, ratification will be denied in Brazil if the subject matter is not one that could be submitted to an arbitration proceeding in Brazil, or if the award offends public policy. Other causes that may prevent a foreign arbitral award from being ratified for enforcement in Brazil include: (i) the nullity of the arbitration proceeding, the arbitration clause, or the arbitration agreement; (ii) failure of the arbitration proceeding to comply with the provisions of the arbitration clause or the arbitration agreement; and (iii) the award having been declared null and void, or having its effects stayed by judicial authority in the jurisdiction where it was issued. After the ratification process has been completed, a foreign final arbitral award will have the same force and effect in Brazil as that of any judgment handed down by a Brazilian court of law, or of any other arbitral award issued in Brazil.

Once an arbitral award has been issued, if the party to the arbitration who is required to comply with the terms of the award should fail to do so, the other party may enforce the award with the assistance of a judicial court in Brazil. The arbitral award will be considered to be a "judicial execution instrument," and the proceeding will be the same as that of an enforcement of a judgment, as described in Section XI, "Judicial Proceedings for the Enforcement of Rights," Item 1.1, "Execution Proceeding (*Execução*)", above – the enforcement of a judgment being, in essence, a form of execution. The merits of the arbitral award may not be reviewed by the court, and objections to the enforcement are restricted to formality issues, especially those related to the effective submission of the parties to arbitration, or to compliance with due process.

The Arbitration Law provides that, within five days from the issuance of an arbitration award, the parties may present to the arbitral tribunal a motion for clarification seeking correction of any material aspect of the award, as well as clarification of any aspect that is obscure, contradictory or doubtful. After the decision on any such motion for clarification, the jurisdiction of the arbitral tribunal terminates, and there is no possibility of an appeal against the award. The parties are, however, entitled to request a court of law to annul an arbitration award, within 90 days after the award has been issued, based on a limited number of circumstances, as provided in the Arbitration Law.

Among those circumstances that may be alleged are ones to the effect that: (i) the arbitration agreement is null and void; (ii) the arbitration award does not comply with legal requirements; or (iii) the award exceeded the scope for arbitration provided for in the arbitration agreement. If a

request for annulment is granted, the court will determine that the arbitral tribunal should render another award. Courts of law in Brazil have been vigilant in judging annulment requests in order not to allow any such request to become a "disguised appeal" against a validly issued arbitral award. In addition, the parties may request a court of law to render a complementary award if the arbitral tribunal does not review all the requests subject to the arbitration proceeding.

XIII. INSOLVENCY PROCEEDINGS, LIQUIDATION, AND JUDICIAL AND PREPACKAGED REORGANIZATION

Brazil's current Bankruptcy Law was enacted on February 9, 2005, creating a new legal framework for bankruptcy proceedings in Brazil. The law was enacted after significant pressure from national and international bodies for modernization of Brazilian insolvency laws in view of the fact that the remedies available prior to the enactment of the new statute (i.e., composition with creditors (*concordata*) and bankruptcy (*falência*)) were believed to provide inadequate protection to creditors. Additionally, on December 24, 2020, Law 14,112 was enacted, modifying the legislation regarding bankruptcy proceedings, including the Bankruptcy Law. The principal changes provided by Law 14,112 will be addressed below.

The Bankruptcy Law regulates judicial reorganization, prepackaged reorganization and court-supervised liquidation. The Bankruptcy Law does not apply to: (i) government-owned entities (*empresas públicas*) or entities in which the government holds shareholder control (*sociedades de economia mista*); (ii) public or private sector financial institutions; (iii) credit unions (*sociedades cooperativas de crédito*); (iv) consortia; (v) supplementary pension-plan companies (*entidades de previdência complementar*); (vi) health-care-plan companies (*sociedades operadoras de plano de assistência à saúde*); (vii) insurance companies; or (viii) special savings companies (*sociedades de capitalização*).

The Bankruptcy Law, amended by Law 14,112, introduced a number of innovations to the available bankruptcy proceedings, such as: (i) excluding the *concordata suspensiva* (a proceeding that suspended the effects of an ongoing bankruptcy liquidation to give the debtor a further chance to reschedule payments to its creditors); (ii) establishing expedited measures for liquidating assets (described below); (iii) determining a minimum claim amount to qualify a creditor to petition for a debtor's liquidation;[58] (iv) setting down a new priority ranking of claims in the event of liquidation (described below); (v) eliminating liability of the buyer arising by virtue of company succession for tax, labor, social security, and other liabilities with respect to certain assets of a distressed company (*unidades produtivas isoladas*) acquired in a judicial sale carried out under a bankruptcy proceeding; (vi) providing for certain mechanisms for

58 Claims for amounts greater than 40 federal minimum monthly salaries, as set forth by the Federal Government.

participation in and oversight of debtor's activities by creditors, e.g., the creditors' committee; (vii) providing for an automatic stay period of 180 days, exceptionally extendable once, for the same period, to allow for the processing of the restructuring; (viii) allowing the possibility of consolidating debtors of a same economic group in the same bankruptcy proceeding (joint administration of cases and substantive consolidation); (ix) providing for the possibility of creditors' submitting an alternative creditors' plan; (x) providing for the possibility of using mediation and conciliation prior or incidental to the judicial reorganization proceeding; (xi) permitting not only legal entities, but also individuals, engaged in rural activities, to file requests for judicial reorganization; (xii) incorporating provisions of the UNCITRAL Model Law on Cross-Border Insolvency into Brazilian legislation for the purpose of facilitating cooperation between courts and other competent authorities of participating countries on matters related to cross-border insolvency; (xiii) introducing the possibility of payment of a debtor's tax liabilities in installments; and (xiv) detailing prioritized treatment of postpetition debt, opening up the possibility for debtor-in-possession financing.

Judicial reorganization under the Bankruptcy Law generally binds all prepetition claims against the debtor (i.e., claims held by creditors against the debtor prior to the filing of the judicial-reorganization proceeding), regardless of whether those creditors are secured or unsecured. That said, the Bankruptcy Law still excludes several classes of claims from the judicial reorganization, such as: (i) tax liabilities; (ii) claims secured by a lien in the form of a fiduciary transfer of collateral or a fiduciary assignment; (iii) claims based on financial lease agreements; (iv) advances against foreign-exchange contracts; (v) claims of the owner or the committed seller of real estate under an agreement containing an irrevocability or irreversibility clause (including real-estate-development transactions); and (vi) claims of an owner under a conditional sale arrangement.

In addition, the Bankruptcy Law provides that the competent jurisdiction for confirming judicial or prepackaged-reorganization plans and declaring the liquidation of a company is the jurisdiction where the "center of main interest" of that company is located.

Although some provisions in the Bankruptcy Law remain unchanged from the previous bankruptcy statute, most of the relevant provisions in the former insolvency law were, in essence, significantly changed by the Bankruptcy Law; and a new bankruptcy regime was

effectively put in place. Furthermore, deadlines now established in the Bankruptcy Law generally run for calendar days and not for business days, as was the case with the previous bankruptcy statute.

1. Bankruptcy Liquidation

Bankruptcy liquidation may be declared if a debtor fails to pay an obligation represented by an execution instrument having a past due amount greater than 40 minimum monthly salaries.[59]

The primary basis for the filing of a bankruptcy-liquidation proceeding in Brazil is payment default, as described above. In such a case, the creditor must prove that the amount owing is a sum-certain debt that was unpaid at maturity. The creditor must also prove that the debt instrument that supports the creditor's claim is eligible for an execution proceeding. See Section XI, "Judicial Proceedings for the Enforcement of Rights," Item 1.1, "Execution Proceeding (*Execução*)," above.

An obligation is deemed "certain" where there is no dispute as to its existence. For the purposes of filing a bankruptcy-liquidation proceeding in Brazil, proof of the failure of an obligor to pay its obligations at maturity must be made by means of a document evidencing the official protest[60] of the obligation. Following presentation of such document before a public official of the Registry of Protests, the debtor is asked either to pay the outstanding debt or to present the reasons why payment was not made. If the debtor does not pay the debt, the public official will certify the nonpayment (together with the reasons presented by the debtor for nonpayment, if any) and return the document to the creditor, who will be able to use this document to file a request for a bankruptcy-liquidation proceeding.

The proper venue for filing for insolvency proceedings is the "center of main interest" of the debtor, which may be understood to be its "principal place of business." The requirements that need to be met for an insolvency request to be accepted differ according to the type of proceeding.

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59 Article 94 of the Bankruptcy Law. The minimum monthly salary is determined from time to time by the Federal Government. The minimum monthly salary currently in effect is R$1,320.00. See Section VII, "Brazilian Labor Laws," Item 12, "Salaries and Contributions," above.

60 The protest is merely a certification by a public official of the Registry of Protests that a payment obligation is past due.

A bankruptcy liquidation may be initiated upon the request of the debtor itself (*autofalência*); or of any creditor based on a failure of the debtor to pay a sum-certain debt at maturity, which failure to pay continues after the instrument evidencing the obligation has been officially protested, as mentioned above.

Additional grounds for initiating bankruptcy proceedings in Brazil arise whenever a debtor: (i) does not pay or deposit the amount owed to a creditor, or fails to indicate assets to be attached for the purposes of securing payment of that amount, in either case within the legal timeframe after having been served with process in an execution proceeding; (ii) uses fraudulent means to make payments; (iii) carries out, or tries to carry out, sham transactions for the sale of all or part of its assets to third parties, creditors or otherwise ("bulk transfer"), with the intent to delay payments or defraud creditors; (iv) transfers its business to third parties without the consent of all its creditors if such transfer leaves the debtor without assets sufficient to cover its liabilities; (v) simulates the transfer of its principal place of business for the purpose of circumventing the law or adversely affecting creditors' rights; (vi) grants, or tries to grant, collateral as security to any creditor without retaining unencumbered assets having an aggregate value sufficient at least to cover its liabilities; (vii) abandons its business without keeping a representative having both full power and authority to take over the business and enough resources to pay its creditors; (viii) hides or tries to hide, leaving the debtor's domicile; or (ix) fails to perform, within the legal timeframe, an obligation assumed under a judicial-reorganization plan.

A bankruptcy-liquidation proceeding based on the occurrence of any of the situations recited above may be initiated by any creditor with sufficient documentary evidence to support its claim.

After the request for a bankruptcy-liquidation proceeding has been filed, the court will analyze the request to determine if it is legally sound and if the procedural requirements have been complied with, including an analysis of the basis for the creditor's request for the bankruptcy liquidation of the debtor. After that analysis has been made and the court is satisfied, the court will determine that process be served on the debtor, and the prebankruptcy stage will be initiated.

Upon being served with process in a bankruptcy-liquidation proceeding, the debtor will have ten days to settle the claim or to file an answer or reply (*contestação*). In addition, the debtor may file a request for judicial reorganization within the same deadline. When filing an answer, the

debtor must present all documentary evidence supporting its arguments as to why the bankruptcy proceeding should be dismissed. After analyzing the evidence presented by the debtor and its reply, the court will render its decision. Should the debtor not be able to convince the court of the reasonableness of its arguments for not paying the debt, its liquidation will be declared forthwith.

The settlement, which may be made simultaneously with the answer, consists of a deposit with the court of the total amount of the debtor's unpaid obligations plus monetary adjustment (indexation), interest, and attorneys' fees. In such a case, the debtor's bankruptcy may not be declared, and the court will simply permit the creditors to withdraw from the funds deposited by the debtor such amounts as may be necessary to satisfy their respective claims.

If the debtor neither makes a settlement nor presents a defense, the court will order the liquidation of the debtor.

The prebankruptcy stage (which starts upon filing of the request for the bankruptcy-liquidation proceeding and lasts until the declaration of liquidation) may take between one and six months, depending on the bankruptcy court. A decision declaring the liquidation of a debtor is subject to appeal. Such appeal, however, does not automatically stay or suspend the effects of the declaration of bankruptcy unless a stay is expressly granted by the appellate court.[61] A decision denying the filing of a request for the bankruptcy liquidation of a debtor is subject to appeal.

The declaration of liquidation results in a freeze of the debtor's assets and the loss of its ability to manage and dispose of its assets.

Upon declaration of liquidation, a judicial administrator will be appointed by the court to perform the necessary acts to appraise and sell the assets of the bankruptcy estate and to pay off the relevant creditors with the proceeds from the sale. The judicial administrator, who is entitled to fees, is present in both bankruptcy-liquidation and judicial-reorganization proceedings and, under the supervision of the court, has the obligation to monitor such proceedings, taking any and all steps necessary to ensure their regular course. In a bankruptcy-liquidation proceeding, the debtor is

61 Even if the stay is not granted by the appellate court, the judicial administrator (appointed under the terms described below) may not proceed to sell the assets of the bankruptcy estate unless and until such time as a final decision is rendered with respect to the declaration of bankruptcy.

removed from the management of the insolvent company, and the judicial administrator is made responsible for the protection of the bankruptcy estate. On the other hand, in a judicial-reorganization proceeding, the operation of the business remains with the debtor and its managers (i.e., Brazil adopts a "debtor-in-possession," or "DIP" concept). The judicial administrator oversees the proceeding in order to assure that it is following its regular course as provided for by law.[62]

The duties of the judicial administrator in a bankruptcy-liquidation proceeding include the following: (i) collecting and evaluating the assets of the bankruptcy estate; (ii) representing the bankruptcy estate as plaintiff or defendant in court, or in arbitral or administrative proceedings; (iii) collecting any debts owed to the bankruptcy estate; (iv) with the authorization of the court, disposing of the assets of the bankruptcy estate through a public auction or through the sale in advance of assets that are perishable or subject to deterioration to the point of running the risk of considerable loss in value; (v) using the proceeds from the sale for the payment of claims filed by the creditors and admitted by the court, with due regard to statutory preference rights; (vi) overseeing the sale of assets and payment of creditors; and (vii) requesting all measures and diligence necessary to comply with the law, protect the bankruptcy estate, and cause the efficiency of the management of assets and the proceeding. If these duties are not complied with, the judicial administrator may be dismissed and replaced by the court.

The declaration of bankruptcy has the following consequences:

(i) except as indicated above, all civil and commercial creditors of the bankrupt company must participate in the proceedings, asserting and proving their claims, in order to be paid;

(ii) all actions proposed by the creditors will be suspended except for, *inter alia*, actions initiated prior to the declaration of bankruptcy seeking payment of an undetermined sum, which actions may continue until a determination is made as to the amount owed. In such cases, the creditor may request that the judicial administrator reserve an amount equal to the judgment

62 The Bankruptcy Law provides that the debtor and its managers may be removed from the management of the company for practice of certain acts enumerated in the law, such as fraud, criminal offense, carrying out a sham transaction or omitting credits from the list of creditors, among others.

sought until a sum certain is determined and the credit admitted into the bankruptcy proceedings;

(iii) subject to a few exceptions (such as labor-related matters), the bankruptcy court becomes the only court competent to hear and adjudicate actions against the bankrupt company;

(iv) all unmatured debt of the bankrupt company will immediately and automatically become due and payable;

(v) bilateral agreements entered into by the bankrupt company are not affected by the declaration of bankruptcy, but the judicial administrator has the right to terminate such agreements at his or her own discretion, if neither party has performed its obligations by the time the bankruptcy is declared. As this rule applies to all future obligations arising out of bilateral agreements, the judicial administrator may "cherry-pick" agreements based on the interests of the bankruptcy estate. Contracting parties to such agreements may, within 90 days, request the judicial administrator to report, within ten days, whether the bankrupt company will comply with its obligations. In case of noncompliance, the contracting party may file a claim for damages. If accepted by the court, the claim will be included in the list of unsecured debts of the bankrupt company;

(vi) certain transactions conducted within a period of time that may not exceed 90 days prior to the declaration of bankruptcy, called the *termo legal*,[63] will be considered null and void. The following acts, performed by the debtor during the *termo legal*, regardless of whether the bankrupt debtor acted with fraudulent intent or not, are ineffective against the bankrupt estate: (a) prepayment of obligations yet to mature; (b) payment, in any manner other than that provided for by contract, of obligations maturing during the *termo legal*; (c) granting of a security interest to secure obligations incurred prior to the *termo legal*; and (d) transfer of the business without the express consent of all creditors, if such transfer leaves the debtor without assets

63 Such *termo legal* period, similar to the "period of voidable preferences" in common law jurisdictions, is determined by the court and may not exceed 90 days prior to the date of: (i) the first protest of a claim against the company that has not been cancelled; (ii) the filing for bankruptcy; or (iii) the filing for judicial reorganization; whichever occurs first.

having an aggregate value sufficient at least to pay all of its liabilities. Registration of *in rem* rights, and the transfer of assets or rights related to real estate after the bankruptcy is declared, are ineffective, unless there has been a previous registration with the relevant registry. Reimbursement of funds and cancellation of liens may be sought to benefit the bankruptcy estate. Furthermore, any fraudulent action of the bankrupt debtor that causes damages to the bankruptcy estate will be revoked;[64] and

(vii) the court will call upon the bankrupt debtor to present a list of its creditors within five days after the declaration of bankruptcy, which list will be published in the Official Gazette. Thereafter, the bankruptcy court will set a term of 15 days from the publication of the list of creditors presented by the debtor for creditors to present their claims to the judicial administrator, together with the relevant documentation supporting the claims. The term set by the court is not final, and additional or late claims may still be presented after such term has expired, directly to the bankruptcy court. As a late creditor, however, any creditor filing any such additional or late claim will not benefit from any distribution or payment made prior to the assertion of its claim in view of the fact that it will have forfeited its right to participate in any apportionment or payment of proceeds that may already have taken place prior to the time of the filing of the additional or late claim. As to any claim for an amount yet to be determined, the creditor may either: (a) propose a declaratory action to determine the sum owed by the debtor prior to asserting its claim and requesting that the judicial administrator reserve an amount equal to this sum (any such action to be brought before the bankruptcy court); or (b) assert its claim for the amount yet to be determined, presenting an estimate of the amount owed and asking for a determination of the actual amount owed during the credit-verification proceedings. In any event, claims asserted by creditors will be verified by the judicial administrator and are subject to challenge by the debtor or by other creditors.

64 In addition, any act or transaction made for no consideration, as well as any waiver of an economic right or forgiveness of a debt owed to the bankrupt company, if carried out during the period of two years prior to the declaration of bankruptcy, are ineffective.

After examining the documents filed by the creditors, the judicial administrator must prepare an updated list of creditors setting forth the amounts claimed by each, which updated list will also be published in the Official Gazette. Thereafter, the bankruptcy court will set a term of ten days from the publication of the list of creditors presented by the judicial administrator during which the bankruptcy estate and dissatisfied creditors may file oppositions to that list before the bankruptcy court. Those oppositions may question only the existence, amount or classification of the credits. A decision on the merits of the oppositions and the final amounts of the credits will thereafter be rendered by the court. After the decision is rendered, the judicial administrator must publish a final list of creditors, ranking their claims. The court's final decision with respect to the creditors' claims and the final list of creditors is subject to appeal to the appellate court. This process of obtaining a final determination on the credits is usually complex and may take anywhere from a few months to several years.

The Bankruptcy Law (as amended by Law 14,112) provides for two priority rankings in a bankruptcy liquidation proceeding, each commonly referred to as a "waterfall." The court may not modify the priority rankings for either waterfall.

The first waterfall consists of a ranking of super-priority claims comprising: (i) administrative expenses related to the liquidation and to labor claims falling due during the three months prior to the liquidation order; judicial administrator's fees during the bankruptcy liquidation; and labor-related claims or occupational accident claims referring to services rendered after the decree of the bankruptcy liquidation; (ii) claims arising from DIP financings granted to the debtor during the judicial reorganization proceeding; (iii) claims subject to restitution in cash to a creditor (i.e., third parties' assets in debtor's possession when the bankruptcy is declared, including advances against foreign exchange contracts (ACC) and advances against delivery of export bills of trade (ACE)); (iv) administrative expenses and labor claims arising from services rendered after the bankruptcy decree; (v) claims resulting from acts performed after the declaration of bankruptcy, together with claims resulting from acts performed after the filing of a request for a judicial reorganization (if it should be the case that the declaration of bankruptcy was preceded by an attempt at a judicial reorganization); (vi) sums provided to the bankruptcy estate by the creditors; (vii) expenses with inventory, management, asset liquidation, and distribution of the proceeds, as well as court costs of the bankruptcy liquidation proceedings; (viii) court costs with respect to actions and

executions in which the bankrupt estate is defeated; and (ix) taxes relating to facts that have occurred after the declaration of bankruptcy.

After the claims listed in the waterfall for super-priority claims have been fully paid, the amended Bankruptcy Law provides that a second waterfall of claims should be paid with the remaining proceeds from the sale of the assets of the bankruptcy estate. This second waterfall consists of the following claims, to be paid in the following order: (a) labor-related claims up to 150 minimum monthly salaries per creditor plus claims for damages arising from labor-related accidents; (b) secured claims (up to the value of the collateral); (c) tax claims (except for fines); (d) unsecured claims (including labor-related claims in excess of the amount referred to in item (a) above and the balance of the secured credits that remains unpaid after sale of the collateral); (e) contractual penalties and fines for breach of criminal or administrative laws (including tax-related fines); and (f) subordinated claims, such as claims asserted by shareholders or managers without an employment relationship arising out of transactions that were not entered into on an arms-length basis and have not followed market conditions; and (g) interest falling due after the liquidation decree.

According to the Bankruptcy Law, as amended by Law 14,112, the judicial administrator must present to the court, within 60 days running from his or her appointment, a detailed plan for the disposal of the debtor's assets to start the liquidation process. The estimated time for disposing of the debtor's assets must be less than 180 days from the collection of those assets. If no assets are found to be collected, or if the ones collected are insufficient for the costs of the proceeding, the liquidation will only proceed if an interested creditor chooses to pay the necessary amount for the expenses and fees of the judicial administrator.

The liquidation process consists of selling the assets of the bankruptcy estate (through a judicial public auction or otherwise if specifically authorized by the court) and payment of the creditors' claims. Even if credits remain unpaid after the final liquidation of all assets of the bankruptcy estate, all liabilities in connection with the bankruptcy are deemed extinguished three years after the bankruptcy decree.

The Bankruptcy Law expressly eliminates succession for tax and social-security liabilities passing to any party acquiring certain assets of a distressed company in judicial sales carried out under a bankruptcy proceeding. This provision is intended to increase the interest of investors

in taking part in judicial auctions involving the sale of assets of bankrupt companies.

Furthermore, ever since Law 14,112 amended the Bankruptcy Law in 2020, the mere "extension" of the effects of liquidation to the shareholders, officers and directors of the company is expressly prohibited, except in the event that the general legal requirements for piercing the corporate veil are met, in which case the bankruptcy court may disregard the corporate entity of the debtor to reach assets of its shareholders.

2. Judicial Reorganization (*Recuperação Judicial*)

A judicial-reorganization proceeding may be initiated only by the distressed company itself; involuntary filing (i.e., a petition filed by a creditor) is not allowed. The debtor must meet the following requirements for a successful filing: (i) the debtor must have been carrying on the debtor's business in a regular manner for at least two years; (ii) the debtor must not be bankrupt or, if the debtor has been declared bankrupt, the resulting liabilities must have been declared extinguished by a final and undisputable court decision; (iii) an in-court reorganization must not have been granted to the debtor at any time during the five years prior to the filing of the petition initiating the judicial-reorganization procedure; and (iv) the debtor, its management, and its controlling shareholder must not have been convicted of any bankruptcy crime.

In amending the Bankruptcy Law, Law 14,112 also established that not only legal entities, but also individuals, in each case engaged in rural activities, could file requests for judicial reorganization, provided that the amount of the total claims not exceed R$ 4.8 million. If the R$4.8 million threshold is met, only claims arising exclusively from rural activities will be subject to the judicial reorganization.

Subject to certain exceptions, all claims (including contingent claims) held by creditors against the debtor prior to the filing date are subject to a judicial reorganization proceeding. Claims against the debtor that are not subject to a judicial-reorganization proceeding are: (i) tax liabilities; (ii) claims secured by a fiduciary transfer of collateral or a fiduciary assignment; (iii) claims based on financial lease agreements; (iv) advances against foreign-exchange contracts (ACCs); (v) claims of the owner or the committed seller of real estate under an agreement containing an irrevocability or irreversibility clause (including real-estate-development

transactions); and (vi) claims of an owner under a conditional sale arrangement.

After the filing of a request for a judicial reorganization, the court must decide whether it will accept the filing or not. If necessary, the court may appoint an expert witness to verify the debtor's actual operating conditions and to verify whether the documents submitted along with the filing papers are in proper form and complete.

If the court accepts the filing, the court will order the debtor to present a reorganization plan within 60 days from the date of such order, which plan must contain: (i) evidence of the economic feasibility of the debtor and its business; (ii) an analysis of the financial and economic condition of the debtor and an appraisal report with respect to its assets and properties; and (iii) a detailed description of a proposal setting forth how the debtor proposes to pay its indebtedness and what mechanisms the debtor intends to employ in order to carry out the reorganization of the company. The penalty for not complying with this requirement to present a reorganization plan is the conversion of the judicial-reorganization procedure into one of liquidation of the debtor.

The Bankruptcy Law provides for a list of judicial reorganization mechanisms that a debtor may adopt when presenting a reorganization plan. That list is not an exhaustive list but includes, for example: (i) the granting of grace periods and special payment conditions; (ii) company reorganizations (spin-off, merger, consolidation or transformation); (iii) assignments of shares; (iv) changes in company control; (v) formation of a company of creditors; (vi) partial sales of assets; (vii) financial leasing; (viii) issuance of securities; (ix) formation of special purpose companies to transfer the debtor's assets in payment of claims; (x) conversion of claims into capital stock; and (xi) full sale of the debtor, through the constitution of an Isolated Production Unit, under certain conditions. Any creditor may challenge the judicial reorganization plan of the debtor within 30 days after a notice advising that the plan was submitted and published in the Official Gazette.

The initial order that accepts the filing imposes an automatic stay, for a period of 180 days, of any collection proceeding against the debtor that is based on a claim outstanding prior to the order and that is not otherwise exempted from the stay. That automatic stay does not apply to: (i) labor lawsuits (to the extent that a final judgment for a sum certain has not yet been handed down); (ii) tax collections; (iii) lawsuits seeking a

monetary award, the precise amount of which has not yet been determined by the court; and (iv) collection efforts to recover past due indebtedness, the payment of which is secured by fiduciary transfers of collateral (both personal property and real estate), fiduciary assignments; and (v) certain other types of claims that the Bankruptcy Law excludes from the automatic stay. Even though the Bankruptcy Law provides that such stay period may only be extendable once, for an equal period of 180 days, case law has determined that the term is flexible. In practice, courts usually extend the stay period until the judicial-reorganization plan has been either approved or rejected by the creditors. After the Bankruptcy Law was amended by Law 14,112 in 2020, if the stay period elapses and the debtor has not submitted a plan to voting, the creditors become entitled to do so themselves under certain conditions.

In addition, since the 2020 amendments to the Bankruptcy Law, it is possible for a debtor to obtain an urgent relief for the stay of collection proceedings for a period of up to 60 days prior to the filing of the judicial reorganization. This preparatory proceeding is intended to create a negotiation environment with creditors even before the filing of the principal case, through a mediation or conciliation proceeding. In the event of a subsequent request for a judicial or out-of-court reorganization, the time that has already run in the stay period granted in the preparatory proceeding will be deducted from the stay period granted in respect of the principal proceeding. The 2020 amendments also made it possible to initiate mediation and conciliation proceedings incidental to the judicial reorganization proceeding.

The duties of the judicial administrator in a judicial reorganization proceeding differ from those of a judicial administrator in bankruptcy liquidation. In a judicial reorganization, the judicial administrator does not manage the debtor. Rather, the judicial administrator's duties in a judicial reorganization are more in the nature of monitoring the debtor and include the following: (i) supervising the debtor's activities and carrying out the reorganization plan; (ii) requesting the bankruptcy of the distressed company if any obligation set out in the reorganization plan is not complied with; (iii) preparing monthly reports on the debtor's activities; (iv) preparing reports on the status of compliance with the terms of the reorganization plan; (v) aiding the parties in reaching agreements through alternative-dispute-resolution methods; (vi) overseeing the negotiations between the debtor and the creditors; and (vii) certifying the

accurateness and conformity of the information provided by the debtor in its judicial reorganization plan.

The Bankruptcy Law provides that the creditors of a debtor seeking judicial reorganization be divided into four classes: (i) creditors with labor-related claims and claims for damages arising from labor-related accidents, (ii) secured creditors, (iii) unsecured creditors, creditors with special privileges, creditors with general privileges[65] and subordinated creditors; and (iv) small-business-enterprise creditors. Prior to the amendments to the Bankruptcy Law brought about by Law 14,112 in 2020, a reorganization plan could be approved by creditors only at a general meeting and subject to certain thresholds. Subsequent to the 2020 amendments, it has now become possible for creditors to approve a reorganization plan not only in a general meeting but also by means of an undertaking by accession (basically, all persons voting signing a separate document) or by any other method deemed secure by the court, provided that the division of classes is respected and approval thresholds are met.

The process for approval of a reorganization plan requires the affirmative vote of each of the four classes into which the creditors will have been divided for the purpose (among others) of managing the approval process. That process provides for two ways in which a vote for approval may be achieved, depending on which class of creditors (as described above) is voting.

In the case of the two classes of secured creditors and unsecured creditors, the approval of the plan by each class requires both the affirmative vote of creditors representing over 50% of the credits held in their respective class as well as the affirmative vote of at least 50% of the creditors themselves, regardless of the value of their credits. In each case, a creditor's vote will be counted so long as the creditor is present and voting at the

65 "Special privileged claims" are statutory rights giving certain persons priority liens on certain property. Examples include a lien to secure payment of salvage costs to someone who incurred those costs to rescue some imperiled property, and mechanic's liens. For the purpose of bankruptcy, "special privileged claims" include claims of microentrepreneurs as well as micro and small businesses. "General privileged claims" are statutory priorities addressing, for the most part, amounts owing and unpaid in respect of a deceased person, including, by way of example: (i) funeral expenses; (ii) maintenance expenses for the family of the deceased person for the three-month period preceding death; and (iii) salaries of domestic employees of the deceased person for the last six months of his or her life. For the purposes of bankruptcy, "general privileged claims" include claims of suppliers of goods to the debtor during a period of judicial reorganization.

meeting, or is otherwise voting in a legally acceptable manner not requiring a meeting in person.

In the case of the class of creditors holding labor-related claims as well as the class consisting of small-business-enterprise creditors, the threshold in each case for achieving a vote favorable to the plan is a simple majority of those creditors present at the respective general meeting (or otherwise voting in a legally acceptable manner not requiring a meeting in person), regardless of the value of their respective credits.

The thresholds for approval of a reorganization plan as set forth above for all the classes of creditors are hereinafter referred to as the "General Quorum for Judicial-Reorganization Plan Approval." For voting purposes, claims in foreign currency are kept in the original currency in the creditors' list and converted into Brazilian currency at the closing exchange rate the day before the general meeting.

In the absence of the required majority approval, the Bankruptcy Law allows court-ordered "cramdown" if the following requirements are met: (i) the reorganization plan is accepted by: (a) creditors holding the majority of credits (in terms of amount) present at the relevant general meeting (or otherwise casting their votes in an alternative manner approved by Law 14,112); (b) all classes but one as per the General Quorum for Judicial-Reorganization Plan Approval; and (c) creditors holding at least one-third of the credits in terms of amount) of any class rejecting the plan; and (ii) the plan does not provide for different treatment of creditors within any class that has rejected the plan.

If the plan is approved, and it is not tainted by any illegality, the court will grant the judicial reorganization of the debtor, and the debtor will remain under judicial reorganization until the fulfillment of all of the obligations provided for in that plan that mature within two years from the granting of the judicial reorganization.[66] If, during that two-year period, the debtor should fail to comply with the terms of the approved reorganization plan, the case is converted into one of liquidation; and the creditors will be reinstated in their rights and liens on the same terms and conditions under which the creditors originally contracted with the debtor prior to the

66 The practice, however, is for companies to remain under judicial reorganization for longer periods.

reorganization plan. The decision granting the judicial reorganization is subject to appeal.

The amendments to the Bankruptcy Law set forth in Law 14,112 provide that creditors may submit an alternative plan if: (i) the stay period has elapsed without a reorganization plan having been submitted to a vote by the creditors (end of exclusivity period); or (ii) after the rejection of the plan proposed by the debtor in the general meeting (or otherwise by means of an alternative manner for voting approved by Law 14,112), the creditors vote for the granting of a 30-day period to present this alternative plan.

The reorganization plan proposed by creditors will only be submitted to a vote if: (i) it meets the general requirements set by the Bankruptcy Law for the reorganization plan proposed by the debtor; (ii) it is supported, in writing, by creditors holding over 25% of all claims subject to the judicial reorganization proceeding, or by the creditors holding over 35% of the claims present at the general meeting of creditors (or otherwise voting in a legally acceptable manner not requiring attendance in person) that rejected the debtors' plan; (iii) it does not impose any obligations on the debtor's shareholders (other than obligations already applicable by law or contract); (iv) the creditors supporting the plan waive any guaranties provided by individuals to their respective claims; and (v) it does not impose a greater hardship on the debtor or on its shareholders than would otherwise be imposed in the event of the debtor's liquidation. On the other hand, the alternative plan may provide for the capitalization of the claims, including a change in the debtor's control, allowing the debtor's shareholders to exercise the right to withdraw.

Law 14,112 of 2020 also provided legal protection and efficiency to debtor-in-possession (DIP) financing operations. In addition to establishing that claims for DIP financings rank second in the overall priority in the bankruptcy-liquidation-payment waterfall, the law now sets forth that in the event a decision authorizing a DIP transaction is reversed by the court of appeals, the post-petition nature of the claim and the security interest granted in favor of a good faith lender may not be changed if the amounts loaned have already been disbursed (mootness of the appeal post-disbursement). The court may also authorize the debtor to give a DIP lender subordinated security interests without the consent of the original security holder, provided that the subordinated collateral, in any event, will be limited to any excess resulting from the disposal of the collateral subject to the

original security device and that such provision will not apply to any type of fiduciary transfer or fiduciary assignment.

The Bankruptcy Law also provides for the possibility of establishing a creditors' committee to oversee: (i) insolvency proceedings; (ii) the activities of the distressed company; and (iii) the duties performed by the judicial administrator. In exercising this function, the committee members of the distressed company must have free access to the premises of the debtor as well as to company documents, books and records. The refusal of the managers of the distressed company to provide any of that information, or the submission of false information to the committee, may result in the removal of managers and be characterized as a bankruptcy crime.

A creditors' committee consists of one representative and two substitutes from each class of creditors (labor, secured, unsecured and small-business-enterprise classes of creditors). Creditors' committees participate directly in monitoring the management of distressed companies. The committee members are not compensated by the company, but expenses incurred by members of creditors' committees in discharging their duties provided by law are reimbursable if authorized by the court.

The court may determine the liquidation of the debtor if: (i) the reorganization plan is rejected by the creditors at the general meeting (or otherwise voting in a legally acceptable manner not requiring attendance in person), and such creditors have no intention of presenting an alternative plan; (ii) the debtor should fail to perform as prescribed in the plan during the two-year period following the approval of the plan; (iii) installments of tax payments assumed by the debtor in connection with the judicial reorganization are not timely paid; or (iv) the assets sold during the judicial reorganization proceeding are deemed to leave the debtor without enough assets to secure the payment of claims of creditors that are not subject to the proceeding.

3. Prepackaged Reorganization (*Recuperação Extrajudicial*)

A debtor facing temporary financial difficulties may present a reorganization plan directly to its creditors, which plan may thereafter be submitted to the courts for ratification in certain cases. The purpose of such a prepackaged reorganization is to facilitate negotiations among debtors and creditors and avoid minority hold-out issues.

A debtor may not file for prepackaged reorganization if it has already filed a request for a judicial reorganization that is pending conclusion, or if it obtained a judicial reorganization or the confirmation of another prepackaged restructuring plan less than two years before the relevant prepackaged-reorganization filing. After the debtor has filed for a prepackaged reorganization, creditors signatory to that reorganization may withdraw their agreement to the plan only with the express consent of the other signatories.

A prepackaged-reorganization plan may cover all or only certain groups and types of debt of a distressed company. Claims not qualifying for inclusion in prepackaged reorganizations are generally those which would not be included in a judicial reorganization. For example, labor claims may only be affected in a prepackaged-reorganization plan in limited instances.

Among the amendments to the Bankruptcy Law made by Law 14,112, the automatic stay of 180 days is also applicable in the case of prepackaged reorganizations, effective only with respect to the claims covered by the plan.

Upon fulfillment of certain conditions, including the approval by creditors holding at least fifty percent of all credits within each group or type of credit included in the reorganization plan, the prepackaged-reorganization plan may be submitted for ratification by a court. Unless they are able to show that the plan is illegal, minority creditors within the included groups will be bound by the terms and conditions in the reorganization plan, as agreed to by the majority. The case may be filed with the support of only one-third of the claims of each of the impaired claims' groups, but the plan may be approved only if the debtor manages to obtain the support of the abovementioned 50% threshold.

4. Cross-Border Issues and Ancillary Proceedings

Prior to the amendments to the Bankruptcy Law introduced by Law 14,112 the Bankruptcy Law did not address cross-border insolvency proceedings, and Brazilian courts did not automatically recognize the effects of insolvency proceedings that take place in other jurisdictions. After the amendments, a section dedicated to cross-border insolvency was introduced into the Bankruptcy Law to incorporate the Model Law on Cross-Border Insolvency developed by UNCITRAL – the United Nations Commission on International Trade Law – with important changes with respect to

recognition of foreign insolvency proceedings and protection of creditors' rights. As a result, since 2020, insolvency proceedings outside Brazil may be recognized by a Brazilian bankruptcy court, and the Brazilian court must cooperate with the foreign court in conducting the insolvency proceedings.

The purpose of these new provisions regarding cross-border insolvency is to provide effective mechanisms for dealing with cross-border insolvency cases so as to promote the objectives of: (i) cooperation between the courts and other competent authorities of Brazil and foreign countries involved in cases of cross-border insolvency; (ii) greater legal certainty for trade and investment; (iii) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor; (iv) protection and maximization of the value of the debtor's assets; (v) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment; and (vi) promoting the liquidation of the assets of a debtor in economic and financial crisis, with the preservation and optimization of the productive use of goods, assets and resources of the debtor.

The following are the cases in which the provisions relating to transnational bankruptcy may be applied: (i) a foreign court or representative requests assistance in Brazil in connection with a foreign proceeding; (ii) assistance is sought in a foreign jurisdiction in connection with a bankruptcy proceeding in Brazil; (iii) a foreign proceeding and a bankruptcy proceeding in Brazil, in respect of the same debtor, are taking place concurrently; and (iv) creditors or other interested parties in a foreign jurisdiction have an interest in requesting the commencement of, or participating in, a bankruptcy proceeding in Brazil.

The debtor's principal establishment in Brazil will determine the jurisdiction in Brazil for recognition of a foreign proceeding and for cooperation with foreign authorities. Law 14,112 also provides that a foreign representative of a foreign proceeding is entitled to submit requests directly to a Brazilian Court, and that no such requests subjects the foreign representative, or the foreign assets and affairs of the debtor, to the jurisdiction of the Brazilian courts for any purpose other than the application.

With respect to the recognition of a foreign proceeding, a foreign representative may apply to a Brazilian court for recognition of the foreign proceeding in which that foreign representative has been appointed. If the requirements for recognition are satisfied, the foreign proceeding will be recognized (i) as a "foreign main proceeding" if it is taking place in the

jurisdiction where the debtor has its "center of its main interests"; or (ii) as a "foreign non-main proceeding" if the debtor has an establishment in the foreign jurisdiction. Any decision granting or rejecting the recognition request is appealable. Upon recognition of a foreign proceeding, whether main or non-main, the Brazilian court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in Brazil to the foreign representative or to another person designated by the court, provided that the court is satisfied that the interests of Brazilian creditors are adequately protected.

After recognition of a foreign main proceeding, a Brazilian bankruptcy proceeding may be commenced only if the debtor has assets located in Brazil. The effects of any proceeding in Brazil must be restricted to the assets of the debtor that are located in Brazil and, to the extent necessary to implement cooperation and coordination under this section, to other assets of the debtor that, under the laws of Brazil, should be administered in that proceeding.

In any main or non-main cross-border insolvency proceeding, no assets or resources remaining from the liquidation will be handed over to the debtor if there are still unpaid liabilities in any other proceedings ongoing in other jurisdictions. The main proceedings may only be closed after the closing of the non-main proceedings or after a finding that, in none of the non-main proceedings, is there any net asset remaining.

Without prejudice to secured claims or rights *in rem*, a creditor who has received partial payment in respect of its claim in a proceeding pursuant to a foreign proceeding may not receive a payment for the same claim in a Brazilian bankruptcy proceeding regarding the same debtor, whenever, and so long as, the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

XIV. CHOICE OF LAW AND JURISDICTION

The Law of Introduction to the Brazilian Legal System is an introductory law to Brazilian legislation and regulates, among other things, matters involving conflicts of law and jurisdiction.

The Law of Introduction to the Brazilian Legal System provides that: (i) obligations are governed by the law of the jurisdiction where they have been constituted; and (ii) obligations resulting from contracts are deemed to have been constituted in the jurisdiction where the proponent resides. Brazil's Code of Civil Procedure also sets forth certain rules on international jurisdiction.[67]

The Law of Introduction to the Brazilian Legal System also addresses the question of governing laws for issues relating to legal identity, name, capacity and family rights, as well as those relating to personal property and real estate. Personal property and real estate are each governed by the law of the place where the personal property, or the real estate (as the case may be), is located. Foreign laws are usually accepted and enforced in Brazilian courts except if those laws are found to be offensive to Brazilian public policy, national sovereignty or good morals.

The choice of forum and jurisdiction is regulated by the Law of Introduction to Brazilian Legal System and by the Code of Civil Procedure. Except for issues over which Brazilian courts have exclusive jurisdiction (as described below), the submission to the nonexclusive jurisdiction of foreign courts is legal, valid and binding under the laws of Brazil and will be respected by the Brazilian courts.

Brazilian courts have exclusive jurisdiction to decide: (i) issues relating to real estate located in Brazil; (ii) probate proceedings of a deceased person's Brazilian estate and the distribution of the deceased person's assets located in Brazil (regardless of the nationality or domicile of the deceased); and (iii) the division of assets located in Brazil in cases of divorce, judicial separation or dissolution of a common-law marriage (*união estável*), regardless of the nationality or domicile of the owner of the assets.

Moreover, Federal Senate Resolution 48/2007 determined that the federal government and its agencies are prohibited from submitting to the jurisdiction of a foreign court for the purposes of adjudication on the

67 See Section I "Brazilian Legal Framework" for more details on international jurisdiction.

merits of any dispute, controversy, or claim against the federal government or its agencies arising out of or relating to international credit transactions entered into by the federal government. However, any dispute, controversy, or claim arising out of or relating to any such external credit transaction entered into by the federal government, including the performance, interpretation, construction, breach, termination or invalidity of the transaction documents, may be settled by international arbitration.

Another example of exclusive jurisdiction of Brazilian courts is found in Law 14,133. Law 14,133 governs bidding procedures and auctions for entering into contracts with the government and governmental entities. Pursuant to that law (and subject to certain exceptions), agreements entered into by Brazilian federal, state, and municipal governments or governmental entities, with persons or legal entities resident or domiciled outside Brazil, must designate Brazilian courts as the courts with exclusive jurisdiction to settle any disputes in connection with those agreements.

The Code of Civil Procedure further provides that Brazilian courts have nonexclusive jurisdiction whenever: (i) the defendant, regardless of his or her nationality, is domiciled in Brazil; (ii) the obligation is to be performed in Brazil; (iii) the legal basis for the action consists of a fact that occurred, or an act that was performed, in Brazil; (iv) the claim is for alimony payable to a creditor domiciled or resident in Brazil, or payable by a debtor with ties to Brazil, such as possession or ownership of assets, income, or receipt of economic benefits in Brazil; (v) the claim results from a consumer relationship with a consumer domiciled or resident in Brazil; or (vi) the parties to the proceeding have expressly or impliedly submitted to Brazilian jurisdiction.

On the other hand, Brazilian courts do not have jurisdiction to decide controversies arising from international contracts in which there is an explicit and exclusive submission by the parties to the courts of a foreign jurisdiction. In the event one of the parties should, nevertheless, initiate an action in respect of one such controversy in a Brazilian court, so long as the submission to the exclusive jurisdiction of a foreign court is argued by the defendant at the time of its defense in the Brazilian proceeding, the Brazilian court may be expected to decline to hear the matter.

XV. ANTI-CORRUPTION LAWS

The Clean Company Act came into effect in 2014. It was conceived in response to the recommendation of the Organization for Economic Cooperation and Development and as a result of the ratification, by Brazil, of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

At the federal level, the Clean Company Act is regulated by Decree 11,129. Decree 11,129 introduced further rules relating to: (i) an administrative liability proceeding, including a preliminary investigation stage defining the methodology for calculation of applicable fines as well as any determination as to its aggravating and extenuating factors; (ii) leniency agreements and the so-called "integrity programs"; and (iii) the national registrar of punished companies.

Companies, foundations, associations of entities or persons, and foreign companies with a branch, office or representation in Brazilian territory, are subject to the Clean Company Act (any of such companies, foundations, associations, branches, offices or representations herein defined as an "Entity Subject to Liability"). The Clean Company Act holds any Entity Subject to Liability to a standard of strict liability. Pursuant to the Clean Company Act, the liability of an Entity Subject to Liability is determined individually and without regard to the liability of its managers, officers, directors, or third parties, who may have participated in the illegal act.

The Clean Company Act also provides that:

(i) controlling companies, companies controlled by, and companies under common control with, an Entity Subject to Liability (and, within the terms of the respective contract, companies participating in a consortium) will be held jointly and severally liable with the Entity Subject to Liability for payment of fines and indemnification for damages;

(ii) company reorganizations, such as mergers and spin-offs, will not prevent enforcement actions under the Clean Company Act;

(iii) in the event of a merger, the liability of the successor company for payment of fines and indemnification for damages is limited to the assets transferred; and

(iv) the existence of a company or other juridical person may be disregarded whenever, after due process, it is found that the company (or other juridical person) has been used to facilitate, disguise or cover up the practice of illegal acts, in which case management, together with shareholders or quotaholders (as the case may be)[68] having management powers, may be held liable for the sanctions applied to the company.

Conduct subject to sanctions under the Clean Company Act consists of "acts against national or foreign public property, against the principles of public administration, or against international commitments undertaken by Brazil." This conduct includes the following:

(i) promising, offering, or giving, directly or indirectly, an undue advantage to a civil servant, or to a third person related to that civil servant;

(ii) financing, bearing the costs of, sponsoring, or in any manner supporting the perpetration of illegal acts enumerated in the Clean Company Act;

(iii) using an individual or legal entity as an intermediary to disguise or cover up his, her or its real interests, or the identity of the beneficiaries of illegal acts;

(iv) with respect to public biddings and contracts:[69] (a) frustrating or defrauding, by means of an agreement, combination, or any other manner or form, the competitive character of a public bidding process; (b) preventing, upsetting, or defrauding the performance of any act in connection with a public bidding process; (c) preventing or trying to prevent a bidding party from participating in a bidding process by means of fraud or by offering an advantage of any type; (d) defrauding a public bidding process or a contract resulting therefrom; (e) constituting, in a fraudulent or irregular manner, a company

68 As used in this Brazilian Investment Guide, "shareholders" refers to persons holding equity in a corporation (*sociedade anônima*), and "quotaholders" refers to persons holding equity in a limited liability company (*sociedade limitada*). For an explanation of these two different company forms in Brazil, see Section II, "Company Forms in Brazil," above.

69 Conduct classified as an administrative offense under Law 14,133 or under other public-procurement laws, which conduct constitutes a harmful act under the Clean Company Act, will be investigated and adjudicated jointly in accordance with the Clean Company Act.

to participate in a public bidding process or to enter into an administrative contract; (f) fraudulently obtaining an undue advantage or benefit through modifications to, or extensions of, contracts entered into with the public administration, without being authorized to do so by law, by the terms of the bidding documentation, or by the terms of the respective contractual instruments; (g) manipulating or defrauding the economic and financial fairness of contracts entered into with the government; or (h) obstructing any investigation or inspection of governmental agencies, entities or agents, or interfering with their activities.

Decree 11,129 established that the Clean Company Act also applies to conduct that: (i) is carried out in Brazil or abroad, by any Brazilian entity against any foreign governmental authority, (ii) is carried out, in whole or in part, in Brazil, (iii) brings about effects or may bring about effects in Brazil, or (iv) is carried out abroad against any Brazilian governmental authority.

Alleged violations of the Clean Company Act go through a preliminary investigation to determine their nature and impact. If justified by the preliminary investigation, the alleged violations, and the names of the alleged violators, are submitted to an administrative proceeding to determine liability. As a result of any such proceeding, sanctions may be imposed on persons found responsible. During the mandatory preliminary-investigation stage, authorities may request the lifting of tax- and bank-secrecy protection and may also seek expert assistance. Moreover, those authorities may obtain search and seizure orders before initiating an administrative procedure to determine liability. Any such investigation and proceeding may be commenced by the highest authority of each organization or entity of the executive, legislative and judicial branches of government against which the alleged violation may have been perpetrated, on its own initiative or in response to a valid request.

At the federal executive-branch level, the General Control Office of the Federal Government (*Controladoria Geral da União* – "CGU") will have jurisdiction — concurrent with the highest authority of each organization or entity of the federal executive branch — to initiate a preliminary investigation and an administrative proceeding (as well as directly to pursue administrative proceedings already initiated) and impose

the applicable sanctions. The CGU will also have jurisdiction to investigate illegal acts committed against foreign public administrations.

Once the occurrence of a violation of the Clean Company Act has been determined, the Clean Company Act provides that the following administrative sanctions will apply: (i) a fine, in an amount ranging from 0.1% to 20% of the gross revenue of the Entity Subject to Liability in the last fiscal year prior to the commencement of the administrative proceeding, excluding only those taxes directly levied on such gross revenue and limited to R$60,000,000.00; and (ii) the publishing of a public notice of the decision that determined the occurrence of the illegal act on the website of the Entity Subject to Liability in a media vehicle nationally distributed, or in a public notice posted at the premises of the Entity Subject to Liability.

The application of the sanctions described above does not exclude the obligation on the part of the Entity Subject to Liability to make full reparation for the damage caused to the public administration. Additionally, in certain circumstances, the Entity Subject to Liability will also be prohibited from participating in public biddings and from entering into agreements with the public administration.

In applying administrative sanctions, the following factors should be taken into consideration: (i) seriousness of the violation; (ii) benefits obtained or sought to be obtained by the violating party; (iii) whether or not the purported violation was actually consummated; (iv) extent of the losses or danger of losses; (v) negative effect derived from the violation; (vi) economic situation of the party committing the violation; (vii) cooperation of the Entity Subject to Liability in the process of investigating the violation; (viii) existence of an Integrity Program (as defined below); and (ix) value of the contracts entered into by the Entity Subject to Liability with the public organization or entity that suffered the damages.

Decree 11,129 establishes guidelines for the imposition of administrative sanctions, especially the form of calculation of the fine. In addition, Decree 11,129 introduces the internationally recognized risk-based approach and sets criteria for assessing the existence and effectiveness of integrity programs. These criteria are adopted by Law 14,133 and Decree 12,304, which establish that an integrity program be: (i) a requirement for procuring large-scale construction, services and supplies; (ii) a tie-breaking criteria between two or more proposals; and (iii) a condition for reinstating a previously sanctioned bidder or contractor.

In addition to any liability that may be imposed in the administrative proceedings discussed above, the Union, the States, the Federal District, the Municipalities, and the Prosecutor's Office may initiate public-interest civil actions seeking to apply the following judicial sanctions (individually or cumulatively) to the Entity Subject to Liability: (i) seizure of assets, rights or funds obtained through the violation; (ii) suspension or partial interruption of the activities of the Entity Subject to Liability; (iii) compulsory dissolution of the Entity Subject to Liability (which may only be determined if either of the following is proven: (a) the Entity Subject to Liability has customarily facilitated or promoted the practice of illegal acts, or (b) the Entity Subject to Liability was constituted for the purpose of disguising or covering up illegal interests or the identity of the beneficiaries of the illegal acts); and (iv) prohibition from receiving incentives, subsidies, donations or loans from public entities and from financial institutions that are either of a governmental nature or controlled by the government, for a period ranging from 1 to 5 years.

Both the Clean Company Act as well as Decree 11,129 provide for the possibility of entering into a leniency agreement with Entities Subject to Liability that effectively collaborate with the investigations and the administrative proceeding, to the extent such collaboration results in: (i) identification of others involved in the violation, when applicable; and (ii) fast collection of evidence that confirms the occurrence of the infraction under scrutiny. Leniency agreements are also intended to (a) increase the investigative capacity of governmental authorities; (b) enhance the government's ability to recover assets; and (c) promote the culture of integrity within the private sector.

A leniency agreement may only be negotiated and executed if all of the following requirements have been satisfied: (i) the Entity Subject to Liability is the first entity to manifest its interest to cooperate with the investigations of the illicit act, when this circumstance is relevant; (ii) the Entity Subject to Liability ceases to participate in the acts under investigation from the date on which the agreement is proposed; (iii) the Entity Subject to Liability admits to its participation in the illicit act; (iv) the Entity Subject to Liability cooperates fully and permanently with the investigations and the administrative proceeding, appearing, at its own expense, whenever called, to all procedural acts, until the proceeding is terminated; (v) the Entity Subject to Liability undertakes to provide information, documents and other elements that provide evidence of the infraction under scrutiny; (vi) the Entity Subject to Liability makes full compensation in relation to the

uncontroversial amount of the damage; and (vii) the Entity Subject to Liability loses, in favor of the damaged authority or the Federal Government, the amounts earned directly or indirectly as a result of illicit act.

Decree 11,129 establishes that the CGU and the Attorney General for the Federal Government (*Advocacia-Geral da União* – "AGU") must jointly negotiate, monitor and execute leniency agreements within the federal executive branch and in cases of illegal acts against the foreign public administration.

Entering into a leniency agreement: (i) exempts the Entity Subject to Liability from: (a) the publication of the decision in which it is found guilty of violating the provisions of the Clean Company Act; and (b) the prohibition to receive incentives, subsidies, donations or loans from public entities or financial institutions that are public or are controlled by the government; (ii) may result in a reduction of up to two-thirds of the amount of the applicable fine; (iii) does not exempt the Entity Subject to Liability from the obligation to indemnify persons suffering losses or harm caused by its violation of the Clean Company Act; and (v) enables the deduction of the amount paid under other proceedings related to the same illicit act subject of the leniency agreement.

The reduction of the applicable fine is capped at 10%, with potential reductions as follows: (i) up to 0.5% if the act is not consummated; (ii) up to 1% if the Entity Subject to Liability voluntarily loses any gains obtained, directly or indirectly, from the illicit act and fully compensates the damages; (iii) up to 1.5% for full cooperation with authorities; (iv) up to 2% for voluntary admission of liability; and (v) up to 5% if the Entity Subject to Liability implements and applies an effective integrity program.

The leniency agreement may be monitored by governmental authorities or independent monitors appointed by governmental authorities and may be dismissed depending on the features of the illicit act. The governmental authorities may, at their sole discretion, change or replace the obligations set forth in the leniency agreement. In case of default, the company party to the leniency agreement (i) cannot enter into a new leniency agreement for the period of three years from the final administrative decision declaring the termination of the agreement, (ii) loses the benefits negotiated, and (iii) suffers the acceleration the due date of penalties and indemnifications.

XVI. PUBLIC OFFERING OF SECURITIES IN BRAZIL

A public offering of securities has become both a viable and a popular option by means of which Brazilian companies may raise funds in the Brazilian capital markets. The oversight agency, the CVM, is a model of a regulatory agency and enjoys a solid reputation internationally, having been a founding member of the International Organization of Securities Commissions (IOSCO). The laws applicable to securities and the Brazilian capital markets (most notably, the Capital Markets Law), together with the regulations issued by the CVM, form a body of sophisticated and complete rules and procedures governing public offerings of securities and permitting them to take place with a high degree of legal certainty. Moreover, the CVM has demonstrated that it will enforce those laws and regulations in an equitable, predictable and rigorous manner.

1. Registration Requirements Under Brazilian Law

CVM regulations provide certain limited exceptions whereby an issuer need not be registered with the CVM prior to a public offering of its securities in Brazil. Those exceptions, however, are not of wide application; and, in general terms, no offering of securities may be made to the public in Brazil without the prior registration of both the issuer and the offering with the CVM. The issuance, offering, or trading of any such securities without the prior registration of both the issuer (unless otherwise exempted) and the securities offering itself is considered a criminal offense.[70]

1.1 Registration of the Offering

The scope of the regulations governing the registration of a securities offering is delimited by the precise definitions of the terms "security" and "public offering" as prescribed by the relevant provisions of Brazilian law.

The Capital Markets Law explicitly designates the following instruments as "securities":

(i) shares, debentures and warrants;

(ii) coupons, rights, subscription receipts and other certificates relating to the securities referred to in item (i) above;

70 Law 7,492.

(iii) certificates of deposit of securities;

(iv) certificates of debentures;

(v) shares issued by investment funds and investment clubs in any assets;

(vi) commercial paper;

(vii) futures, options and other derivative agreements the underlying assets of which are securities;

(viii) other derivative agreements regardless of the respective underlying assets;

(ix) when publicly offered, any other collective investment instrument or agreement that creates the right to participate in profits or compensation, including as a result of the rendering of services, the profits of which arise from the efforts of the entrepreneur or from the efforts of third parties; and

(x) assets comprising the Brazilian Greenhouse Gas Emissions Trading System (*Sistema Brasileiro de Comércio de Emissões de Gases de Efeito Estufa*) and carbon credits, when traded in the financial and capital markets.

Resolution 160 stipulates that a public offering is any communication made by the offeror, issuer or any individual or legal entity acting on behalf of the issuer, the offeror or the underwriters, with the objective of soliciting investors to invest in specific securities. The communication may be disseminated by any means that enables it to reach a broad range of potential investors and is characterized by content and context that seek to generate interest and attract investment. The following examples illustrate what is considered a public offering under the Capital Markets Law and Resolution 160:

(i) the use of advertising materials targeted at the general investing public;

(ii) solicitation, either in whole or in part, of unspecified investors to invest in the securities, any such solicitation being carried out by any individual or legal entity, regardless of whether or not that individual or entity is a member of the securities

distribution system, and regardless of whether or not that individual or entity is acting on behalf of the issuer, the offering, or the institutions participating in the distribution consortium;

(iii) seeking information on the feasibility of the offering or collecting investment intentions from unspecified potential subscribers or acquirers;

(iv) conducting negotiations in offices, stores, establishments open to the public, or by means of internet websites, electronic media, social media, notices, or emails, in each case intended, in whole or in part, for unspecified subscribers or acquirers; and

(v) any of the actions described in items (ii) through (iv) above, even if the communication is directed to identified recipients, if that communication results from standardized and mass communication.

Pursuant to the Capital Markets Law and Resolution 160, only members of the Brazilian securities distribution system (*integrantes do sistema de distribuição brasileiro*), duly enrolled with the CVM, are authorized to intermediate securities transactions in Brazil.

Resolution 160 grants the CVM the power to waive certain requirements so long as, in granting any such waiver, the CVM gives priority to the public interest and to safeguarding the investor with adequate information and protection. Requirements that may be waived in this manner include disclosures, terms, and procedures. Granting a waiver to any such requirements is at the sole discretion of the CVM. To grant any such waiver, the CVM will take into account the particular circumstances of the transaction, collectively or individually. These circumstances include:

(i) the price of each security being offered or the total offering amount;

(ii) the distribution plan for the securities;

(iii) whether the offering is being made in multiple jurisdictions to facilitate coordination with the different registration processes involved, ensuring that local investors are treated equally;

(iv) the characteristics of the exchange offering;

(v) the geographic location of the targeted investors, as well as their number, or identity;

(vi) whether or not the targeted investors are restricted to qualified investors;[71] and

(vii) any limitations on the trading of the securities acquired in the offering.

Resolution 160 outlines specific conditions that enable certain public offerings of securities to be automatically registered by the CVM. These include:

(i) follow-on offering of shares, subscription bonuses, debentures convertible into or exchangeable for shares, depositary receipts backed by shares under the program of Sponsored Brazilian Depositary Receipts Level III and deposit certificates in respect of these securities from operational issuers, intended solely for (a) professional investors;[72] or (b) qualified investors, subject to presentation of a prospectus and an offering statement (*lâmina da oferta*);

(ii) follow-on offering of shares, subscription bonuses, debentures convertible into or exchangeable for shares and deposit certificates in respect of these securities from issuers of shares with high exposure to the market ("EGEM"), intended for (a) professional investors, exclusively; or (b) the general investing public, subject to presentation of a prospectus and an offering statement (*lâmina da oferta*);

71 "Qualified investors" are defined as (i) professional investors; (ii) individuals or legal entities with financial investments in an amount greater than R$ 1,000,000 and who execute a certificate to that effect on a form specifically prescribed for that purpose by the CVM; (iii) individuals who have passed qualifying examinations or who hold certifications granted by the CVM as prerequisites to the formal registration as portfolio managers, securities analysts and securities consultants, acting for their own accounts; and (iv) investment clubs managed by qualified investors.

72 "Professional investors" are defined as (i) financial institutions; (ii) insurance companies; (iii) pension funds; (iv) individuals or legal entities with financial investments in an amount greater than R$ 10,000,000 and who execute a certificate to that effect on a form specifically prescribed for that purpose by the CVM; (v) investment funds; (vi) investment clubs the portfolios of which are managed by a portfolio manager authorized by the CVM; (vii) portfolio managers, securities analysts and securities consultants authorized by CVM, acting for their own account; (viii) nonresident investors; and (ix) trusts.

(iii) follow-on offering of depositary receipts backed by shares under the program of Sponsored Brazilian Depositary Receipts Levels I and II;

(iv) distribution of debentures that are neither convertible into, nor exchange able for, shares or other debt securities issued by a frequent issuer of fixed income securities ("EFRF") intended for (a) professional investors, exclusively; or (b) the general investing public, subject to presentation of a prospectus and offering statement (*lâmina da oferta*);

(v) distribution of debentures that are neither convertible into, nor exchangeable for, shares; or of other debt securities issued by operational issuers registered under Categories A and B intended for (a) professional investors; or (b) qualified investors;

(vi) distribution of depositary receipts backed by debt securities under the program of Sponsored Brazilian Depositary Receipts Levels I, II or III, intended solely for professional investors;

(vii) initial offering of shares issued by nonexclusive closed-end investment funds, intended for (a) professional investors; or (b) qualified investors;

(viii) follow-on offering of shares issued by closed-end investment funds, intended for (a) professional investors; (b) qualified investors; or (c) general investing public, if the previous offering of shares by such fund has been analyzed by the CVM and that there have been no changes to the fund's investment policy or an expansion of its target audience;

(ix) distribution of securitization bonds issued by securitization companies registered with the CVM and backed by a debt owed by one debtor and the debtor is a Frequent Issuer of Fixed Income (*Emissor Frequente de Renda Fixa*, or "EFRF") or an Issuer with Significant Market Exposure (*Emissor de Grande Exposição de Mercado*, or "EGEM"), intended for (a) professional investors; or (b) the general investing public, subject to presentation of a prospectus and an offering statement (*lâmina da oferta*);

(x) distribution of securitization bonds issued by securitization companies registered with the CVM, backed by debt owed by multiple debtors or by a debtor not classified as an EFRF or EGEM, intended for (a) professional investors; or (b) qualified investors;

(xi) distribution of nonconvertible debentures in connection with an investment project in the infrastructure sector or for intensive economic production in research, development, and innovation, subject to requirements in Law 12,431;

(xii) debt securities when the issuer is not registered with the CVM;

(xiii) public offerings intended for the general investing public, for the placement on a stock exchange of shares issued through a primary distribution resulting from a private capital increase, in an amount exceeding five percent of the total issuance but less than one-third of the outstanding shares in the market; and

(xiv) distribution of securities representing debt intended exclusively for creditors of the issuer in a judicial or prepackaged reorganization, subject to specific rules.

Resolution 160 provides that the following public offerings of securities are automatically registered by the CVM, if the registration request has been previously analyzed by a self-regulatory entity authorized by the CVM ("ANBIMA"):

(i) initial public offering of shares, subscription bonuses, debentures convertible into or exchangeable for shares, and deposit certificates in respect of these securities from operational issuers, subject to presentation of a prospectus and an offering statement (*lâmina da oferta*);

(ii) follow-on offering of shares, subscription bonuses, debentures convertible into or exchangeable for shares and depositary receipts backed by shares under the program of Sponsored Brazilian Depositary Receipts Level III in respect of these securities from operational issuers, intended for the general investing public;

(iii) distribution of debentures that are neither convertible into nor exchangeable for shares; or of other debt securities issued by

operational issuers registered under Categories A and B**,** intended for the general investing public, in the following circumstances: (a) whenever the security being offered presents characteristics identical to those securities distributed in a prior public offering aimed at the general investing public, except for the remuneration rate; or (b) whenever the security is standardized based on a model defined by ANBIMA;[73]

(iv) initial offering of shares issued by nonexclusive closed-end investment funds, intended for the general investing public;

(v) follow-on offering of shares issued by closed-end investment funds, intended for the general investing public; and

(vi) distribution of securitization bonds issued by securitization companies registered with the CVM, backed by debt owed by multiple debtors or by a debtor not classified as an EFRF or EGEM, intended for the general investing public, whenever the security being offered presents characteristics identical to those securities distributed under a prior public offering aimed at the general investing public, except for the interest rate.

Moreover, Resolution 160 also provides for an ordinary registration applicable to the following public offerings of securities:

(i) initial public offering of shares, subscription bonuses debentures convertible into or exchangeable for shares, deposit certificates in respect of these securities and depositary receipts backed by shares under the program of Sponsored Brazilian Depositary Receipts Levels I, II or III in respect of these securities, which offerings have not been previously analyzed by ANBIMA;

(ii) follow-on offering of shares, subscription bonuses, debentures convertible into or exchangeable for shares, deposit certificates in respect of these securities or depositary receipts backed by shares or debentures convertible or exchangeable for shares under the program of Sponsored Brazilian Depositary Receipts Level III in respect of these securities whenever: (a) an economic and financial feasibility study is required; or (b) the

73 On registration under Categories A and B, see Item 1.2 below.

securities are intended for the general investing public, which offerings have not been previously analyzed by ANBIMA;

(iii) distributions of debentures or other debt securities issued by operational issuers registered under Categories A and B, intended for the general investing public, which distributions have not been previously analyzed by ANBIMA;

(iv) distributions of depositary receipts backed by debt securities under the program of Sponsored Brazilian Depositary Receipts Level III, intended for (a) qualified investors; or (b) the general investing public;

(v) initial or follow-on offerings of shares issued by nonexclusive closed-end investment funds, intended for the general investing public, which offerings have not been previously analyzed by ANBIMA;

(vi) distributions of securitization bonds issued by securitization companies registered with the CVM and intended for the general investing public, which distributions have not been previously analyzed by ANBIMA or whenever the security being offered presents characteristics identical to those securities distributed under a prior public offering aimed at the general investing public, except for the interest rate; and

(vii) distribution of any other securities that are not under the automatic registration regime by the CVM.

Furthermore, Resolution 160 also includes a list of securities offerings that are not covered by the resolution, referred to as "Safe-Harbor" offerings. These securities offerings include:

(i) initial or follow-on offerings of shares in exclusive closed-end investment funds;

(ii) follow-on offerings of shares in closed-end investment funds intended solely for shareholders of the fund so long as there are fewer than 100 shareholders on the date of the offering, and so long as the shares are not admitted to trading on an organized market;

(iii) offerings resulting from compensation plans for managers, employees, and individuals who provide services to the issuer or to an affiliate of the issuer, and nonprofit entities maintained by the issuer;

(iv) sole and indivisible lots of securities intended for single investors;

(v) securities offered as part of an exchange in connection with a tender offer, subject to a specific rule concerning tender offers, and provided that such securities are admitted to trading on organized markets in Brazil;

(vi) initial or follow-on offerings of securities issued abroad and admitted to trading in foreign-organized markets of securities and settled abroad in foreign currency, whenever acquired by professional investors residing in Brazil through an international account. Trading of these assets is prohibited on regulated securities markets in Brazil after their acquisition; and

(vii) shares owned by the Federal Government, States, Federal District, municipalities and other entities of public administration, subject to specific rules.

1.2 Registration of the Issuer

The issuance and sale to the public of securities in Brazil, as well as the trading of those securities on regulated markets, including the stock exchange and over-the-counter markets, require the issuer to be registered with the CVM as an issuer of securities, subject to exceptions in the CVM regulations.

In accordance with CVM Resolution 80, a securities issuer may apply for registration under either of two different categories. A Category A registration permits any security issued by the issuer to be traded in the regulated markets. On the other hand, a Category B registration permits trading in certain securities issued by the issuer but does not permit trading in the issuer's shares or deposit certificates representing shares, or in certain other securities representing the right to acquire shares of the issuer, such as convertibles, warrants, and similar instruments.

As a result, Category A is typically suitable for issuers seeking to carry out a public offering of equity securities, whereas Category B is

generally suitable for issuers seeking to make a public offering of debt securities.

Upon being granted registration, an issuer becomes subject to various ongoing reporting obligations and must comply with additional CVM regulations, including the submission of interim financial information and other corporate documents, disclosure of material information pertaining to its business operations, restrictions on share trading by controlling shareholders and management, insider information requirements, and other corporate governance rules. The cancellation of an issuer's registration requires the acquisition of a certain percentage of the issuer's outstanding securities through a tender offer launched exclusively for that purpose.

EXHIBIT A

SUMMARY OF LEGISLATION

"Antitrust Law"	Law No. 12,529, of November 30, 2011, as amended.
"Arbitration Law"	Law No. 9,307, of September 23, 1996, as amended.
"B3"	B3 S.A. – Brasil, Bolsa, Balcão.
"Bankruptcy Law"	Law No. 11,101, of February 9, 2005, as amended.
"CADE Resolution 17"	Resolution No. 17, issued by CADE on October 18, 2016, as amended.
"CADE Resolution 33"	Resolution No. 33, issued by CADE on April 14, 2022, as amended.
"Capital Markets Law"	Law No. 6,385, of December 7, 1976, as amended.
"Civil Code"	Law No. 10,406, of January 10, 2002, as amended.
"Clean Company Act"	Law No. 12,846, of August 1, 2013, as amended.
"Code of Civil Procedure"	Law No. 13,105, of March 16, 2015, as amended.
"Constitutional Amendment 132"	Amendment to Federal Constitution No. 132, of December 20, 2023.
"Corporations Law"	Law No. 6,404, of December 15, 1976, as amended.
"CVM"	The Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*).
"Decree 6,514"	Decree No. 6,514, of July 22, 2008, as amended.
"Decree 11,129"	Decree No. 11,129, of July 11, 2022, as amended.
"Decree 12,304"	Decree No. 12,304, of December 9, 2024, as amended.

"Decree 99,274"	Decree No. 99,274, of June 6, 1990, as amended.
"Federal Constitution"	Constitution of the Federative Republic of Brazil, of October 5, 1988, as amended.
"Federal Senate Resolution 48/2007"	Federal Senate Resolution No. 48, of December 21, 2007.
"General Law for Data Protection"	Law No. 13,709, of August 14, 2018, as amended.
"Joint Resolution 13"	Joint Resolution No. 13, issued by the Central Bank of Brazil and the CVM on December 3, 2024, as amended.
"Joint Statement 994"	Joint Statement No. 994, of the Ministries of Justice and Finance, of May 30, 2012.
"Labor Law"	Decree-law No. 5,452 of May 1, 1943, as amended, which approved the Consolidation of the Labor Laws.
"Law 4,131"	Law No. 4,131, of September 3, 1962, as amended.
"Law 5,107"	Law No. 5,107, of September 13, 1966, as amended.
"Law 6,938"	Law No. 6,938, of August 31, 1981, as amended.
"Law 7,492"	Law No. 7,492, of July 16, 1986, as amended.
"Law 8,036"	Law No. 8,036, of May 11, 1990, as amended.
"Law 9,249"	Law No. 9,249, of December 26, 1995, as amended.
"Law 9,279"	Law No. 9,279, of May 14, 1996, as amended.
"Law 9,430"	Law No. 9,430, of December 27, 1966, as amended.
"Law 9,514"	Law No. 9,514, of November 20, 1997, as amended.
"Law 9,605"	Law No. 9,605, of February 12, 1988, as amended.

"Law 9,609"	Law No. 9,609, of February 19, 1988, as amended.
"Law 9,610"	Law No. 9,610, of February 19, 1988, as amended.
"Law 10,101"	Law No. 10.101, of December 19, 2000, as amended.
"Law 10,637"	Law No. 10,637, of December 30, 2002, as amended.
"Law 10,833"	Law No. 10,833, of December 29, 2003, as amended.
"Law 11,232"	Law No. 11,232, of December 22, 2005, as amended.
"Law 11,727"	Law No. 11,727, of June 23, 2008, as amended.
"Law 11,788"	Law No. 11,788, of September 25, 2008, as amended.
"Law 12,249"	Law No. 12,249, of June 11, 2010, as amended.
"Law 12,431"	Law No. 12,431, of Jue 24, 2011, as amended.
"Law 13,429"	Law No. 13,429, of March 31, 2017, as amended.
"Law 13,467"	Law No. 13,467, of July 13, 2017, as amended.
"Law 13,476"	Law No. 13,476, of August 28, 2017, as amended.
"Law 14,112"	Law No. 14,112, of December 24, 2020, as amended.
"Law 14,133"	Law No. 14,133, of April 1st, 2021, as amended.
"Law 14,286"	Law No. 14,286, of December 29, 2021, as amended.
"Law 14,596"	Law No. 14,596, of June 14, 2023, as amended.
"Law 14,711"	Law No. 14,711, of October 31, 2023, as amended.

"Law of Introduction to the Brazilian Legal System"	Decree-law No. 4,657, of September 4, 1942, as amended.
"Normative Instruction 1,037"	Normative Instruction No. 1,037, issued by the Secretariat for Brazilian Internal Revenue Service (*Secretaria da Receita Federal do Brasil*) on June 4, 2010.
"Outsourcing Law"	Law No. 6,019, of January 3, 1974, as amended.
"PM 1,152"	Provisional Measure No. 1,152, of December 28, 2022, as amended.
"Resolution 13"	Resolution No. 13, issued by the CVM on November 18, 2020, as amended.
"Resolution 80"	Resolution No. 80, issued by the CVM on March 29, 2022, as amended.
"Resolution 160"	Resolution No. 160, issued by the CVM on July 13, 2022, as amended.
"Resolution 278"	Resolution No. 278, issued by the Central Bank of Brazil on December 31, 2022, as amended.
"SELIC"	Sistema Especial de Liquidação e de Custódia.
"Supplementary Law 116"	Supplementary Law No. 116, of July 31, 2003, as amended. Supplementary Law 214, enacted on January 16, 2025
"Supplementary Law 214"	Supplementary Law No. 214, of January 16, 2025, as amended.

EXHIBIT B

LIST OF COUNTRIES OR JURISDICTIONS THAT DO NOT TAX INCOME OR THAT TAX IT AT A TAX RATE LOWER THAN 20%, OR DO NOT PROVIDE ACCESS TO INFORMATION RELATED TO SHAREHOLDING COMPOSITION, AS PROVIDED FOR IN NORMATIVE INSTRUCTION 1,037:

1. Andorra
2. Anguilla
3. Antigua e Barbuda
4. Aruba
5. Ascension Island
6. Commonwealth of the Bahamas
7. Bahrain
8. Barbados
9. Belize
10. Bermuda
11. Brunei
12. Campione D'Italia
13. Channel Islands (Alderney, Guernsey, Jersey e Sark)
14. Cayman Islands
15. Cypress
16. Cook Island
17. Djibouti
18. Dominica
19. United Arab Emirates
20. Gibraltar
21. Granada
22. Hong Kong
23. Kiribati
24. Labuan
25. Lebanon
26. Liberia
27. Liechtenstein
28. Macau
29. Maldives
30. Isle of Man
31. Marshall Islands
32. Mauritius
33. Monaco
34. Montserrat
35. Nauru
36. Niue
37. Norfolk Island
38. Panama
39. Pitcairn Islands
40. French Polynesia
41. Queshm Island
42. American Samoa
43. Western Samoa
44. Santa Helena
45. Santa Lucia
46. Federation of Saint Kitts and Nevis
47. Island of St. Peter and Miguelão
48. Saint Vincent and the Grenadines
49. Seychelles
50. Solomon Islands
51. Swaziland
52. Sultanate of Oman
53. Tonga
54. Tristan da Cunha
55. Turks and Caicos Islands
56. Vanuatu
57. United States Virgin Islands
58. British Virgin Islands
59. Curaçao
60. Saint Martin
61. Ireland

EXHIBIT C

LIST OF "PRIVILEGED TAX REGIMES" AS DEFINED IN NORMATIVE INSTRUCTION 1,037:

1. the regime applicable to any legal entity incorporated as a "*Sociedad Anónima Financiera de Inversión*" (Safi) in Uruguay, up to December 31, 2010;

2. the regime applicable to any legal entity incorporated in Denmark as a holding company that does not perform substantial economic activity;

3. the regime applicable to any legal entity incorporated in the Netherlands as a holding company that does not perform substantial economic activity;

4. the regime applicable to any legal entity incorporated in Iceland as an International Trading Company (ITC);

5. the regime applicable to any legal entity incorporated in the United States of America as a Limited Liability Company (LLC) that is not subject to the US federal income tax and has its equity held by nonresidents of the US;

6. the regime applicable to any legal entity incorporated in Spain as an "*Entidad de Tenencia de Valores Extranjeros*" (ETVE) (this item temporarily suspended pursuant to Executive Declaratory Act 22, of the Brazilian Internal Revenue Service, of November 30, 2010);

7. the regime applicable to any legal entity incorporated in Malta as an International Trading Company (ITC) or an International Holding Company (IHC);

8. the regime applicable to any entity incorporated in Switzerland as a holding company, domiciliary company, auxiliary company, mixed company or administrative company, the tax treatment for which entity results in an income tax rate lower than 20% considering the Swiss federal, cantonal and municipal tax legislation; as well as any other regimes applicable to other entities, the tax treatment of which entities, as a result of application of rulings issued by local tax authorities, results in an income tax rate lower than 20% under federal, cantonal and municipal legislation;

9. the regime applicable to any legal entity incorporated in Austria as a holding company that does not perform substantial economic activity;

10. the regime applicable to any legal entity incorporated in Costa Rica as a Duty Free Zone Regime (RZF);

11. the regime applicable to any legal entity incorporated in Portugal as an International Business Center in Madeira (CINM); and

12. the regime applicable to any legal entity incorporated in Singapore for special tax regimes applied to:

    (a) nonresident ship owner or charterer or air transport undertaking;
    (b) the insurance and reinsurance business;
    (c) finance and treasury centers;
    (d) trustee companies;
    (e) debt securities;
    (f) global trading companies and other qualifying companies;
    (g) financial-sector incentive companies;
    (h) processing services for financial institutions;
    (i) shipping investment managers;
    (j) trust income to which a beneficiary is entitled;
    (k) leasing of aircraft and aircraft engines;
    (l) aircraft investments managers;
    (m) container investment enterprises;
    (n) container investment managers;
    (o) insurance brokerage;
    (p) managing qualifying registered business trust or company;
    (q) ship brokering and forward-freight agreement trading;
    (r) shipping-related support services;
    (s) venture capital companies; and
    (t) international growth companies.

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