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Inhalt

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Practice Advisory: Brazilian Perspective

Mobility in the Post-Pandemic Era

We had little immigration news during the COVID-19 pandemic period. We have had a very strict control on the entry of foreigners (especially non-residents) and also with Brazilians in Brazil. We had several Federal Police Ordinances based on the National Health Surveillance Agency (ANVISA) position in order to regulate this new and challenge issue. These Ordinances started with very strict entry rules (requirement of vaccines, status of disease symptoms) and became more flexible as the disease became more controlled by public authorities.

Regarding this point and in terms of legislation, we highlight Ordinance N. 18-DIREX of 10/19/2020. This norm was important, as it regulated the issue of stays, residences of foreigners who were in Brazil in the most critical period of the pandemic and could not or were able to regularize due to the problems arising from COVID-19.

COVID-19 was very severe in Brazil, unfortunately causing many deaths. We had several phases of improvement and worsening, however, it is important to highlight especially the period from 03/16/2020 to 11/03/2020 when many public agencies, private companies were practically stopped (lockdown).

In this way, the aforementioned Ordinance suspended the procedural deadlines in this period and determined in its article 7. that it was disregarded for those who were abroad and could not return to Brazil during this period of time. This fact is important, because according to Brazilian legislation, the immigrant who holds a migratory residence for an indefinite period of stay and is absent from Brazil for a period longer than 2 (two) years, loses the residence/stay. Therefore, these people “received” an extra 7 months or so to leave Brazil.

Digital Nomad Visa

Normative Resolution no. 45 of 09/09/2021, however published in the Official Gazette only on 01/24/2022, instituted the digital nomad visa or residence in Brazil. This visa or migratory residency can be requested via the Brazilian Consulate or via the Ministry of Justice if the foreigner has already entered Brazil as a visitor (tourism/business) for example. The residency is valid for a period of 1 (one) year and can probably be extended for another 1 (one) year. The foreigner needs to prove the status of digital nomad and prove that he/she has an employment or service contract that proves the link with a foreign employer; and proof of means of subsistence, from a foreign paying source, in a monthly amount equal to or greater than US$ 1,500.00 (one thousand five hundred dollars) or availability of bank funds in the minimum amount of US$ 18,000.00 (eighteen thousand dollars).

The humanitarian landscape

Brazil has several humanitarian projects to receive foreigners who are experiencing difficulties in their countries of origin. Brazilian legislation allows for the legal reception of refugees, asylum seekers or stateless persons. However, it is important to mention the Interministerial Ordinance no. 09 of 03/14/2018. It is important, as it makes the regularization of foreigners from French Guiana, Suriname, Guyana and especially Venezuela simple and quick. Basically, foreigners need to present an identity document; birth certificate; criminal record certificate and when they don't have these documents, they look for a way to replace them with others possibilities.

With regard to the war in Ukraine, we have Interministerial Ordinance MJSP/MRE No. 36, of 03/13/2023. It is also a very simple and quick possibility of migratory regularization. A Ukrainian passport; birth certificate; criminal record certificate is also required, but if the Ukrainian citizen does not have these documents, other solutions can be found to regularize the person.

Residence period for the 2 situations above: 2 (two) years, which can be transformed into residence for an indefinite period. The person can work or even open their own business in Brazil.

Russian citizens are not entitled to this more beneficial rule of granting visas, but many are arriving in Brazil as a digital nomad.

MERCOSUR

For migratory purposes, the following countries are signatories of Mercosur: (i) Argentina, (ii) Bolivia, (iii) Chile, (iv) Colombia; (v) Ecuador, (vi) Paraguay,

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(vii) Peru and (viii) Uruguay. All citizens of these countries can apply for migratory residency in Brazil by basically presenting an identity document; birth certificate with the full name of the parents and a criminal record certificate issued in the last 90 days before the application. These last 2 documents need to have the apostille stamp to be valid in Brazil. Period of residency: 2 (two) years, which may be transformed into residency for an indefinite period. The person can work, be a director or even open their own business in Brazil.

At the moment, Brazilian immigration agencies returned to work normally. However, I emphasize that there is a project to change the immigration rules, considering the election of the new President of Brazil Luiz Inácio Lula da Silva. These changes can be profound considering that Federal Law 13,445 of 05/24/2017 (Foreigner's Law) is a law based on principles and therefore needed to be heavily regulated. Its Regulatory Decree (9.199/2017) has 319 articles. Since the support of the National Congress is not necessary to change a Decree, this change can be changed by a new Decree, that is, by means of an act of the Executive Power itself.

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The Agreement between the European Union and Mercosur: Current Status and Future Possibilities in the Coming Months

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Introduction

The trade agreement between the European Union (EU) and Mercosur has garnered significant interest in the political and economic spheres in recent years. After intense negotiations, a preliminary agreement was finally reached in June 2019. However, its ratification has faced controversy and challenges since then. In this article, we will analyze the current state of the agreement and explore the possibilities it holds in the coming months.

Current Status of the Agreement

Since its announcement, the EU-Mercosur agreement has elicited mixed reactions. On one hand, its potential to boost trade and investment between the regions, as well as strengthen political and cultural ties, has been highlighted. The agreement is expected to grant Mercosur countries access to a market of 500 million consumers in the EU, potentially boosting their exports and fostering economic growth.

However, its ratification encounters several obstacles. Among them are concerns about environmental and labor standards in some Mercosur countries, as well as the potential impact on the European agricultural industry. Environmental groups and farmers in Europe have expressed opposition to the agreement, arguing that it could lead to increased deforestation in the region and affect the competitiveness of local agricultural products.

Furthermore, certain EU countries, including France and Ireland, have threatened to veto the agreement if environmental and labor concerns are not adequately addressed. This situation has created tensions and initiated a process of review and dialogue to reach a consensus.

In this complex scenario, Brazil assumes importance for two reasons: firstly, due to the presidency of Mercosur, which has been occupied by the Brazilian President since July 2023. This presidency provides at least temporary lea-

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dership that can accelerate final discussions and submit the agreement for approval by each South American country. Secondly, regarding environmental issues, Brazil, as a vast country rich in natural resources, can once again lead efforts to make the necessary maneuvers for progress.

Industries that Might Benefit from the EU-Mercosur Agreement

Several industries could potentially benefit from the EU-Mercosur agreement:

Agriculture and Agribusiness: Despite concerns, the agreement could create opportunities for Mercosur agricultural products to enter the European market. Sectors like beef, poultry, soybeans, and other commodities might experience increased exports.

Manufacturing: Various manufacturing industries in both the EU and Mercosur could benefit from streamlined trade procedures and increased market access. Machinery, electronics, textiles, and chemicals are potential sectors that could experience growth.

Technology and Digital Services: The agreement might facilitate cross-border data flows and cooperation in the technology sector. European tech companies could explore collaborations and investments in emerging tech markets within Mercosur.

Energy and Natural Resources: Mercosur countries possess significant energy and natural resources. Closer cooperation could lead to increased investment in energy projects, including renewable energy sources and mining.

Tourism and Hospitality: The agreement could lead to increased tourism flows between the regions. Easier visa processes and enhanced cooperation could benefit both the European and Mercosur tourism industries.

Financial Services: The agreement might foster greater collaboration between financial institutions in both regions, leading to increased investment, trade financing, and economic growth.

Pharmaceuticals and Healthcare: Collaborative efforts could lead to improved access to healthcare products and pharmaceuticals, benefiting both patients and companies in both regions.

Environmental and Sustainability Solutions: With the emphasis on addressing environmental concerns, industries related to sustainable practices, green technologies, and eco-friendly products could thrive.

Logistics and Transportation: The agreement could lead to increased trade volumes, creating opportunities for logistics and transportation companies to expand their services between the EU and Mercosur.

Education and Research: Closer ties could encourage academic and research collaborations, benefiting both regions' universities, researchers, and students.

Services Sector: The services industry, including consulting, legal, and professional services, could experience increased demand due to greater economic integration and cross-border activities.

It's important to note that the actual impact on these industries will depend on various factors, including how successfully the concerns raised in the article are addressed and how effectively the agreement is implemented.

Future Possibilities

Despite the challenges, the agreement between the EU and Mercosur still has possibilities to move forward in the coming months. Both parties have shown their commitment to addressing pending issues and advancing with ratification.

Recently, a working group has been established to address environmental and social matters, with the goal of finding solutions and establishing guarantees to protect the environment and labor rights. This initiative represents a positive step forward and could pave the way to overcome current objections.

Additionally, the agreement has received support from some EU member countries who believe that its implementation would be advantageous for their economies and businesses. There are business sectors in Europe that perceive opportunities in opening new markets in Mercosur countries and expanding their operations.

Conclusion

The agreement between the European Union and Mercosur faces a complex landscape, with challenges and controversies that must be overcome for its ratification. While concerns about environmental and labor standards must be adequately addressed, the agreement still holds potential to generate economic benefits and strengthen ties between both regions.

An additional aspect to consider in these discussions relates to the sovereignty of each country. However, when it comes to international agreements and

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the current necessity of more integrated behavior among countries abroad, every ounce of pride must be set aside to make room for integration for the sustainability of our planet, both economically and environmentally.

In the coming months, political will and the ability to reach satisfactory agreements will be crucial in defining the future of the treaty. Collaboration between the parties and the pursuit of equitable solutions will enable progress towards an agreement that is beneficial for both the EU and the Mercosur countries. Only time will tell if the agreement will ultimately materialize into a lasting and mutually beneficial strategic partnership.

Acquisition of Rural Properties by Foreigners in Brazil

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1. Rules for Individuals

The topic of foreign ownership of Brazilian real estate frequently arises in discussions. While the acquisition of real estate in urban areas is relatively straightforward and, in general, not subject to restrictions, the acquisition of rural property is governed by a series of laws and regulations.

The regulatory framework, largely based on Law 5.709/1971, is complex and consists of various laws and internal regulations of the competent authorities, which impose restrictions on the acquisition of rural property by foreigners. It is worth noting that the constitutionality of some provisions of the law are currently under review by the Brazilian Supreme Court - which means that the legal environment could shift at any time.

In the following, we will provide an overview of the currently applicable conditions under which foreigners - whether individuals or legal entities - can acquire rural property in Brazil.

1. Rules for Individuals

In order for foreigners to purchase or lease rural property in Brazil, they must reside in Brazil and, depending on the size of the property, request prior authorization from the Regional Superintendence of the Brazilian Institute for Colonization and Land Reform (Instituto Nacional de Colonização e Reforma Agrária – INCRA).

Foreign permanent residents do not need prior authorization for the acquisition of rural property with a size of up to 3 so called Units of Undefined Exploration. The actual size of 1 such unit varies between 5 and 100 hectares, depending on the region and the municipality where the property is located. In other words, foreigners residing in Brazil may acquire up to between 15 and 300 hectares, depending on the location of the land.

However, this exemption only applies to the first acquisition of rural property. Any subsequent purchase requires prior approval by INCRA, regardless of the individual size of the land, and even if the sum of the land owned by the foreigner does not exceed 3 Units of Undefined Exploration.

In addition, it is necessary to observe the overall limits for land owned by foreigners. The sum of rural areas owned by foreigners in a single municipality

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must not exceed 25% of its total area. Individuals of the same nationality must not own more than 10% of the area of one municipality.

If the rural property is in a border strip or vital to national security, authorization and registration will depend on prior approval by the National Defense Council.

For areas between 3 and 50 units, prior authorization by INCRA is always mandatory, and for areas greater than 20 units, an exploitation project is required. When the sum of the area owned by a natural person exceeds 50 units, it is necessary to obtain authorization by the National Congress.

2. Rules for legal entities

Foreign legal entities always require prior authorization by INCRA for the acquisition of rural properties in Brazil, regardless of the property's size. For the purpose of the restrictive measures imposed by the law, the concept of foreign legal entities includes both foreign entities with authorization to operate in Brazil and Brazilian companies under foreign control. Foreign control means foreign ownership – by foreign individuals or legal entities – of the majority of the voting rights of the company, enabling foreigners to control decisions in shareholders' meetings and appoint the majority of the officers of the company, among other matters.

Foreign legal entities and Brazilian entities under foreign control must present an exploitation project to obtain the authorization for the acquisition of rural properties. The exploitation project must relate to the implementation of agricultural, livestock, industrial, tourist or colonization projects. To secure authorization, the legal entity must present detailed project specifications, such as an investment plan and the costs of its implementation, as well as demonstrate a balanced relationship between the intended land size and the project's scope.

The acquisition of land exceeding 100 units requires authorization of the National Congress.

3. Outlook and final remarks

In accordance with Art. 15 of Law 5.709/1971, the acquisition or lease of rural property that violates the legal requirements is automatically null and void. The seller is obliged to refund the purchaser the purchase price. Notaries and officials involved in the acquisition can be held liable for any damages caused to the parties. This should in principle make them cautious and strictly adherent to the rules.

The requirement of obtaining approval by INCRA, and under certain circumstances even the Council of National Defense and/or the National Congress, can discourage foreign investors. The procedures are burdensome and complex, and no fixed timelines for the approval process exist.

Over the last decade, initiatives were started with the purpose of removing the restrictions. At present, the following two initiatives are being discussed:

On 15 December 2020, the Brazilian Senate approved Bill of Law no. 2,963/2019, which would exempt Brazilian companies under foreign control from the restrictive measures. The bill is currently being discussed at the Brazilian House of Representatives. Both the Brazilian House of Representatives and the President would have to approve the bill for it to become effective. The outcome of this highly political question remains unclear.

In February 2021, the Federal Supreme Court of Brazil ("STF") began reviewing the lawsuit "ADPF 342". The lawsuit was initiated in 2015 by the Brazilian Rural Society and aims to recognize the incompatibility of some provisions of Law 5.709/1972 with the Brazilian Federal Constitution. One minister of the STF already voted against the claim of the Brazilian Rural Society. Thereafter, the STF decided to adjourn the trial. In March 2023, the Federal Council of the Brazilian Bar Association filed a request to participate in this lawsuit and requested the suspension of all legal proceedings and transactions relating to the acquisition of land in Brazil by foreign capital companies. One minister voted in favor of the suspension, however, due to a tied vote, the suspension decision was not endorsed by the STF. No date has been set for a conclusive decision in this matter.

To safeguard their investments in connection with the acquisition of rural property, foreign investors should be well-informed about the prevailing laws and strictly follow the authorization procedures or consider alternative structures to acquire land in Brazil.

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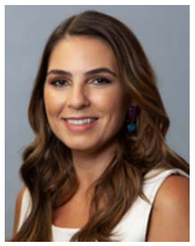

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Electronic Signature and Change in the Requirement of Extrajudicial Execution Instruments

With the development of computers, many legal doubts arose related to documents produced and/or signed with the assistance of electronic devices. The courts are under the obligation to analyze aspects increasingly more complex related to the validity of such documents, and the legislator is always trying to regulate the existing technologies accordingly.

Long before the existence of the current technology, the requirements for a transaction to be considered as valid were set as follows: (i) capacity of the parties; (ii) subject matter has to be lawful, possible, and determined or that could be determined; and (iii) respect to the form requested or not prohibited by law. Therefore, the signature of an agreement respecting the requests of the law should not raise doubts about the validity of the signature per se.

The formalities for validating a signature of an agreement are the exception, rather than the rule in Brazil. For example, to be valid, the purchase and sale of real estate must be made by means of a public deed but, as a rule, purchases and sales of other assets do not request the public form to be valid.

Although any form of conclusion of a transaction should be considered as valid, unless a specific form is established by law, the validity of digital documents and electronic signatures is frequently discussed in court.

The first relevant rule regarding electronic signature came into force in 2001, when the Brazilian Public Key Infrastructure (ICP-Brasil) was created, by means of Provisional Measure 2200-2 (MP 2200-2). ICP-Brasil was created with the objective of guaranteeing the authenticity, integrity and legal validity of electronic documents, and the digital certificate issued in accordance with the requirements of ICP-Brasil is widely adopted since then.

MP 2200-2 sets forth that declarations included in an electronic document signed with a digital certificate issued in accordance with the rules of ICP-Brasil is deemed true in relation to the signatories; however, the same law expressly sets forth that there is no restriction for the use of another mechanism for signature, other than a digital certificate issued by ICP-Brasil, provided that it is admitted by the parties as valid or accepted by then.

Therefore, the use of an electronic signature other than the one issued by ICP-Brasil should not raise questions regarding its validity, but the existence of several lawsuits on the matter show that the courts are not prepared to analyze digital instruments and the validity of different kinds of signature.

The need to regulate the use of electronic signatures was shown again in 2020, when Law 14063 was published, setting forth the rules for the use of electronic signatures in interactions with public authorities.

Although not applicable to documents signed between private parties, such law brought important definitions that can be used as inspiration for the interpretation of the kinds of electronic signature. As per Law 14063, there are three kinds of electronic signature: (i) simple, that allows the identification of the person; (ii) advanced, that uses digital certificate not issued by ICP-Brasil or other means that proves that the signature is associated with a determined person; only the signatory can operate it and it is possible to check the authenticity of the document later; and (iii) qualified, which is the one that uses the digital certificate issued by ICP-Brasil.

Thus, it is widely accepted that there are different types of electronic signature and there are not, as a rule, legal requirements to choose a particular form of signature for instruments between private parties.

In relation to the claim of obligations provided for in private instruments in court, there are two different procedures that can be adopted - one in which the existence of the obligation must be proven by the creditor, and in the end the judge will decide whether the debtor will accomplish such obligation or not; and the other, which intends to be faster, in which case the document itself is sufficient to prove the existence of the debt or obligation; therefore, from the beginning the order issued by the judge will be for the debtor to pay or fulfil the obligation.

Only private instruments detailed in article 784 of the Code of Civil Procedure are considered as extrajudicial execution instruments, that is, the document is sufficient to indicate to the judge that a debt or an obligation exists. Among the documents listed in such article of the law, the private instrument signed by the debtor and two witnesses is included. Until this year there was no specific request or any rejection in relation to the signatures of an electronically signed agreement.

In July 2023, the wording of article 784 of the Code of Civil Procedure was changed, to include the paragraph four, which provides that *"in executive doc-*

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uments electronically constituted or attested, any kind of electronic signature provided for by law is admitted, waiving the signature of witnesses when the integrity is confirmed by a signature provider".

As detailed above, currently there is no law regulating electronic signatures acceptable for private instruments, other than MP 2200-2 (which allows any type of signature accepted by the parties); therefore, the change in law has brought more arguments in relation to the validity of electronic signatures.

Additionally, the recent change has eliminated the need to have witnesses signing electronic documents when a signature platform is used. This means that the role played by witnesses in attesting the validity of the document and signatures has been replaced by the security granted by the platform, which is an important change and indicates that such platforms are reliable, in addition to being an important advance in confirming the validity of the new technologies.

Gesetz zur Gleichstellung der Geschlechter bei Löhnen, Gehältern und Vergütungskriterien

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Das Ergebnis der Analyse zur Gleichstellung der Geschlechter in 146 Ländern des Weltwirtschaftsforums in der 17. Ausgabe des Global Gender Gap Index zeigt, dass die neun führenden Nationen (Island, Norwegen, Finnland, Neuseeland, Schweden, Deutschland, Nicaragua, Namibia und Litauen) zwar mindestens 80%, aber bisher kein einziges Land die vollständige Gleichstellung der Geschlechter erreicht hat.

Laut der Studie wird es, wenn die bisherige Geschwindigkeit der Gleichstellung aus dem Zeitraum von 2006-2023 gleichbleibt, bei der politischen Teilhabe weitere 162 Jahre, bei der wirtschaftlichen Teilnahme und Teilhabe weitere 169 Jahre und beim Zugang zu Bildung weitere 16 Jahre dauern wird, bis die Geschlechtergleichstellung erreicht ist. Dabei wurde der für die Gleichstellung im Bereich Gesundheit und Lebenserwartung erforderliche Zeitraum nicht definiert.

Trotz dieses auf den ersten Blick entmutigenden Ergebnisses ist darauf hinzuweisen, dass Lateinamerika und die Karibik in puncto Gleichstellung der Geschlechter bereits mehr als 74,3% erreicht haben. Der Zeitraum bis zur (allgemeinen) Gleichstellung wird dem derzeitigen Rhythmus mit 53 Jahren veranschlagt[1].

Brasilien liegt hinter Nicaragua, Costa Rica, Jamaika, Chile, Peru, Argentinien, Kolumbien, Ecuador, Honduras und Bolivien auf Platz 57 des Allgemeinen Index der Gleichstellung der Geschlechter.[2]

Das ist der Kontext, in dem das Gesetz Nr. 14.611/2023 verabschiedet wurde, das Regelungen zur Gleichstellung der Geschlechter bei Löhnen, Gehältern und Vergütungskriterien vorsieht und den Norminhalt des im September 2022 verabschiedeten Gesetzes Nr. 14.457 verstärkt.

[1] Veröffentlicht unter https://www3.weforum.org/docs/WEF_GGGR_2023.pdf?_gl=1*1fw72mg*_up*MQ..&gclid=CjwKCAjwivemBhBhEiwAJxNWN9RN-HfxgG7ZUP_Mr8FN-JYaVCmvdSmUeQqryDwwu0OVcFJLC0-QHBoCQycQAvD_BwE, S. 22.

[2] Veröffentlicht unter https://www3.weforum.org/docs/WEF_GGGR_2023.pdf?_gl=1*1fw72mg*_up*MQ..&gclid=CjwKCAjwivemBhBhEiwAJxNWN9RN-HfxgG7ZUP_Mr8FN-JYaVCmvdSmUeQqryDwwu0OVcFJLC0-QHBoCQycQAvD_BwE, S. 11.

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Durch das Gesetz Nr. 14.611 wurde die Absätze 6 und 7 in den Artikel 461 CLT (brasilianisches Arbeitsgesetzbuch) aufgenommen. In Absatz 6 ist geregelt, dass „die Zahlung der Lohn- bzw. Gehaltsdifferenzen an diskriminierte Mitarbeiter:innen im Fall von Diskriminierung aufgrund Geschlechts, Rasse, ethnischer Zugehörigkeit, Herkunft oder Alter nicht an der Geltendmachung von Ersatz immaterieller Schäden hindert, wobei die Besonderheiten des Einzelfalls zu berücksichtigen sind“. Absatz 7 sieht für den Fall des Verstoßes gegen das Diskriminierungsverbot ein vom Arbeitsministerium zu verhängendes Verwaltungsbußgeld in Höhe des 10 (zehn) fachen des neuen Gehalts des diskriminierten Mitarbeiters bzw. der diskriminierten Mitarbeiterin vor, das im Wiederholungsfall verdoppelt wird.

Das erwähnte Gesetz sieht fünf Maßnahmen vor, um die Gleichstellung bei Löhnen bzw. Gehältern und Vergütungskriterien zwischen Frauen und Männern sicherzustellen: i – Festlegung von Mechanismen der Transparenz bei Löhnen, Gehältern und Vergütungskriterien, ii – Verstärkung der Überwachung im Kampf gegen Diskriminierung zwischen Frauen und Männern bei Löhnen, Gehältern und Vergütungskriterien, iii – Bereitstellung spezifischer Kanäle für Meldung von Diskriminierungen bei Löhnen, Gehältern und Vergütungskriterien, iv – Förderung und Implementierung von Diversitäts- und Inklusionsprogrammen im Arbeitsumfeld, die die Schulung über die Gleichstellung von Frauen und Männern im Arbeitsmarkt für Verwaltungs- und Führungskräfte sowie Mitarbeiter, einschließlich Ergebnisermittlung umfassen; v – Förderung der Schulung und Ausbildung von Frauen für den Eintritt, Verbleib und Aufstieg im Arbeitsmarkt zu gleichen Bedingungen wie Männer.

Neben den oben erwähnten Maßnahmen sind Unternehmen mit mehr als einhundert Mitarbeitern zur Veröffentlichung halbjährlicher Berichte über die Transparenz von Löhnen, Gehältern und Vergütungskriterien unter Beachtung der personenbezogenen Daten gemäß Datenschutzgesetz (LGPD) verpflichtet.

Dieser Bericht enthält unter Beachtung des Datenschutzgesetzes (LGPD) anonymisierte Daten und Informationen, die den objektiven Vergleich zwischen Löhnen, Gehältern und Vergütungen von Frauen und Männer und dem Anteil an Frauen in Führungspositionen ermöglich, sowie statistische Daten über andere Formen der Ungleichbehandlung und eine vom Arbeitsministerium zu erlassende spezifische nähere Regelung.

Unbeschadet der Verhängung der hier bereits beschriebenen Sanktionen muss das Unternehmen, wenn von der Betriebsprüfung die Ungleichbehandlung bei Löhnen, Gehältern oder Vergütungskriterien festgestellt wird, einen Aktionsplan für deren Reduzierung vorlegen und implementieren, in dem Zeile und Fristen anzugeben sind. Ferner ist die Beteiligung von Vertretern der Gewerkschaften und Mitarbeiter an den Standorten sicherzustellen.

Unabhängig von den in Artikel 461, Abs. 7 CLT vorgesehenen Sanktionen und den im vorangehenden Absatz geregelten Pflicht führt die Nichtvorlage des Berichts zur Verhängung eines Verwaltungsbußgeldes in Höhe von 3% der Löhne und Gehälter des Unternehmens, beschränkt auf 100 (einhundert) Mindestlöhne/Mindestgehälter.

Die Exekutive des Bundes hat auf einer öffentlich zugänglichen digitalen Plattform neben den in den von den Unternehmen vorzulegenden Berichten genannten Daten weitere periodisch aktualisierte Indikatoren zum Arbeitsmarkt und nach Geschlecht aufgeschlüsselten Einkünften, sowie weitere öffentliche Daten bereitgestellt, die Einfluss auf den Zugang zu Arbeitsplätzen und Einkünfte von Frauen zur Orientierung öffentlicher Politik haben.

Die Herausforderung besteht darin, sicherzustellen, dass das Gesetz von den Unternehmen eingehalten wird. Dabei ist es Aufgabe der Exekutive, ein „Protokoll zur Überwachung der Gleichstellung von Frauen und Männern bei Löhnen, Gehältern und Vergütungskriterien” gemäß Absatz 6 des erwähnten Gesetzes zu implementieren.

Es ist klar, dass nicht zu erwarten ist, dass der Staat nicht in der Lage ist, alle Unternehmen zu überprüfen oder zeitnah auf eventuelle diskriminierende Situationen zu reagieren. Außerdem kann es natürlich dazu kommen, dass Diskriminierungen in verschleierter Form erfolgen, was ihre Aufdeckung und deren Identifikation erschweren kann. Hier kommt ein anderes im Gesetz selbst vorgesehenes Werkzeug ins Spiel. Danach sind die Unternehmen zur Schaffung und Bereitstellung sogenannter „Meldekanälen“ verpflichtet, die die Mitteilung von Verstößen gegen die Gleichstellung bei Löhnen, Gehältern oder Vergütungskriterien erlauben. In diesen Meldekanälen ist sicherzustellen, dass alle Anzeigen entgegengenommen und der Sachverhalt unparteiisch und unter Sicherstellung der Anonymität des bzw. der Anzeigenden ermittelt wird.

Dieses Gesetz ist ein wichtiger Schritt zur Reduzierung der Ungleichheit bei Chancen, Löhnen, Gehältern und Vergütungskriterien zwischen Frauen und Männern und ein effizientes Werkzeug für die Bestätigung des S im ESG, der Reichweite der Agenda 2023 der UN und folglich der Aufwertung des Namens, der Reputation und der Marke des Unternehmens.

*Autor der Publikationen ***So Geht's Einstieg in Brasilien***
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Taxation of Investments Abroad by Individuals, Private Investment Companies (PICs) and Trusts" - Bill no. 4.173/2023

Is income taxation in Brazil fair and equitable? For some years now, there has been an intensified discussion of this issue in the country.

The debate began by questioning the exemption of dividends, which has been in force since 1996. As a result of this exemption, it has been observed that a significant portion of individuals' income is not taxed, generating a feeling of injustice, especially when comparing this exemption to the burden on labor income.

Other exemptions provided for in this legislation, especially those that benefit the wealthiest section of the population, have also come under discussion, such as the deferrals granted to exclusive closed funds and to the profits of offshore companies.

In this scenario, in 2021 the Federal Government presented Bill 2.337, which brought with it the taxation of dividends, accompanied by a reduction in the rates of taxation of corporate profits, the inclusion of taxation of exclusive funds in the “come-cotas” system, and several other specific changes to the legislation, such as the extinction of interest on equity.

The bill suffered a lot of criticism, both because it had been drawn up by the Federal Revenue Service, with an excessively revenue-raising bias, and because it was felt that the issues dealt with were little discussed with civil society, since it was sought to be fast-tracked through Congress, with no room for further debate and improvement. In the end, after the presentation of several substitutes with changes on the bill and a few unsuccessful attempts at approval, it was decided not to go ahead with it, and the issue was not addressed until the government elected in 2022 took office in January of this year.

Since the presidential campaign, the reform of income taxation was presented by the ticket that would be elected as an important issue, both to help reduce the fiscal crisis the country is experiencing and to promote greater social justice and equality.

The new administration began with a strong emphasis on reforming taxes on consumption, which culminated in the House approving PEC 45/2019. However, from the outset, the urgent need for an income tax reform was also on the agenda.

The main items on this agenda, in the government's view, would be the immediate taxation (without the current deferral) of profits earned by offshore companies and of income from exclusive closed-end funds. The taxation of dividends appeared in the debate as necessary, but as something that still needed to be analyzed more thoroughly and in-depth, especially after the failed attempt to tax it through Bill 2.337/21.

In this context, Provisional Measure 1,171/2023 was published in May 2023, as the first stage of the income tax reform. This measure, in addition to updating the IRPF table, proposed changes to the taxation of income applied abroad by residents in Brazil. After a few months of discussion, however, the measure was not converted into law on time, and an agreement was reached for its provisions to be resubmitted in the form of a Bill of Law, which was presented by the Executive to Parliament on 29.08 last, under number 4.173/2023.

Following what had already been proposed by the Provisional Measure, Bill 4.173/23 establishes an "anti-differential" rule for income earned by individuals through Private Investment Companies (“PIC”), known as "offshores". Its aim is to equalize the taxation of income earned directly abroad by individuals, with that levied on income earned through the incorporation of offshores.

This is because, according to the rules currently in force, when a Brazilian individual makes financial investments directly abroad, their income is taxed in Brazil as soon as it is earned, with the taxpayer paying the tax monthly, allowing the tax paid abroad to be offset.

However, if the same individual sets up an offshore company, and this entity becomes the owner of the investments, the profits made abroad are not taxed immediately in Brazil, but only when they are distributed to the controlling individual in the country. This is called "deferral" of taxation on offshore profits. As pointed out by the Federal Government in the Explanatory Memorandum of Bill 4.173/2023, "the tax deferral on the taxation of profits of controlled entities abroad can extend throughout the life of the individual, or even after their death, creating a situation of serious tax injustice and acting as a mechanism for income concentration, by exempting high-income taxpayers, who are the holders of investments abroad."

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According to the proposed rules, profits made by offshore companies as of January 1, 2024 will be taxed at the same rates as those applicable to individuals at the end of each year, regardless of their actual distribution to individuals. It should be noted, however, that in order for the offshore company to be subject to this "automatic" taxation of profits, it must meet at least one of two criteria: (i) be incorporated in a favored tax jurisdiction ("tax haven"), or have a privileged tax regime, or (ii) have an active income of less than 60% (sixty percent) of the total income, according to the definitions of active and total income included in the bill.

As a novelty in relation to the Provisional Measure, and in response to the criticisms made during the debates, the Bill, in its article 8, introduced the option for the individual to treat the offshore as "transparent" for tax purposes. Once this option has been made, the individual will declare and tax the assets and rights held by the PIC as if they were held directly by them. This "transparency" option seeks to prevent any gains from offshore companies, resulting from the market valuation of assets, from being taxed before they are realized.

The bill also changed the form of taxation and the rates applicable to income from financial investments earned by individuals abroad (which will be the same applicable to offshore companies). The tax is no longer payable monthly, but only on the Annual Adjustment Statement, and the rates are now 0% for income of up to R$ 6,000, 15% for income between R$ 6,000.01 and R$ 50,000 and 22.5% for income above R$ 50,001.

A positive novelty in the bill compared to the Provisional Measure was the permission to offset losses and gains incurred abroad in the financial investments of individuals. This rule can also be used by offshore companies that opt for the "transparency" regime and is yet another measure that provides neutrality.

Among the changes for individuals, the bill proposes the repeal, as of January 1, 2024, of the rules exempting exchange rate variations obtained on non-interest-bearing deposits and those calculated on assets acquired abroad with income originally earned in foreign currency. It also proposes the abolition of the exemption for capital gains obtained on the sale of foreign currency in kind and those obtained on the sale of assets abroad acquired as a non-resident.

Finally, the bill maintained the MP's proposal to deal, for the first time, with an issue that had not yet been regulated by Brazilian tax legislation and remains unregulated by civil law: trusts. The choice made by the rule was to consider the trust, for tax purposes, as a "transparent" company. Thus, the assets transferred by the settlor to the trustee continue to be considered as if they were owned by the settlor, and taxable by him. They must therefore be declared in their DIPF, as well as the income and gains derived from these assets. The trust's assets and rights, according to the MP, will only pass to the beneficiaries when the settlor dies or when there is an effective distribution of the funds.

In order to cushion the impact of the new rules, the bill provided for the possibility of individuals updating the value of assets held abroad, including trusts, already declared in their Annual Adjustment Statement, until December 31, 2022, with taxation of the difference at a rate of 10%.

Unlike the proposal presented in 2021, the issues dealt with in Provisional Measure 1.171 and now in Bill 4.173/2023 have been the subject of in-depth debate between the Federal Government, civil society, and the Parliament, which has already allowed for the inclusion of various improvements between the wordings of the two documents.

The fact is that a consensus has been reached in Brazil today that it is necessary to reform some of the loopholes in income tax legislation to make the system fairer and more isonomic. Therefore, we believe that this is an inexorable movement, so that if the changes commented on are not approved in Bill 4.173, they will certainly come back later, in other bills.

In the same vein as seeking to correct inequities in income taxation, on the date that Bill 4.173/2023 was sent, the Executive Branch also issued Provisional Measure No. 1.184/2023, changing the rules for taxing investment funds, with the aim of applying the same taxation applicable to open-end funds, to income from closed-end investment funds, in order to promote equality between them. This is the third attempt to tax closed-end funds, which have been dubbed the funds of the "super rich", following failed proposals by the two previous governments.

Other issues, such as the taxation of dividends, should also be addressed soon, either because of the sense of injustice generated in society by the exemption, or because of the need to tax these and other exempt incomes as a way of bolstering the federal government's cash flow in times of fiscal crisis.

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The Use of Competitors' Trademarks as Google Ads Keywords

Using competitors' trademarks as Google Ads keywords is a controversial practice in the legal field. It's a digital marketing strategy that involves selecting terms related to a competitor's trademark so that the company's ad appears in search results when a user types those terms. For example, suppose a cosmetics company uses a competitor's trademark as a keyword. In that case, its ad can be displayed when someone searches for that trademark, indicating a sponsored result.

But is this practice considered unfair competition? The answer is complex because it depends on the interpretation of legal concepts and the analysis of each specific case. Brazilian courts have not yet reached a unanimous understanding of the legality of this practice. In Brazil, there are favorable and unfavorable court decisions regarding using competitors' trademarks as Google Ads keywords.

Brazilian legislation does not precisely and expressly regulate this practice. However, some legal provisions can be applied, such as Article 195 of the Industrial Property Law, which defines unfair competition acts, and Article 6 of the Consumer Protection Code, which establishes the protection of consumers against deceptive or abusive advertising as one of their fundamental rights.

Although Brazilian case law is not uniform, some relevant precedents can guide legal practitioners. In general, courts have adopted two criteria to assess the legality of using competitors' trademarks as Google Ads keywords: the confusion criterion and the dilution criterion.

The confusion criterion involves analyzing whether there is a risk of confusion or undue association between the brands involved, considering factors such as the similarity of the products or services, the distinctiveness of the brands, consumer awareness, and the presentation of the ads. If using the competitor's trademark as a keyword generates confusion or deception among consumers, it constitutes a trademark and consumer rights violation, constituting unfair competition.

On the other hand, the dilution criterion involves assessing whether there is harm to the distinctive capacity or economic value of the other party's trademark, regardless of confusion. If using the competitor's trademark as a Google Ads keyword diminishes the distinctive strength or prestige of the other party's trademark, it constitutes a violation of trademark rights, constituting unfair competition.

The application of these criteria depends on the specific analysis of each case, considering its factual peculiarities. Moreover, it is necessary to observe the constitutional principles of freedom of initiative, free competition, and free expression, as well as the ethical and legal limits of advertising.

Given this divergence, recently, on July 24, 2023, Google instituted a new Policy to regulate the use of registered trademarks in Google Ads advertisements to ensure respect for the rights of trademark owners. The new Policy establishes objective criteria for determining whether the platform should restrict the use of the registered trademark in ads.

The first criterion for determining whether a registered trademark should be restricted is the assessment of where the registered trademark is used in the ad. Using the registered trademark as a keyword and its use in the second-level domain or the ad's display URL will not be restricted.

Regarding the criterion of how the registered trademark is used, the use will be restricted if the registered trademark is used in an ad by a direct competitor or if the ad is using the registered trademark in a confusing, deceptive, or false manner, especially in ads by direct competitors.

On the other hand, using the trademark as a keyword will not be restricted in three (3) situations: 1) if the landing page of the advertisement is mainly dedicated to the sale of products or services compatible with the trademark, provided that clear commercial information is made available, such as prices and rates, and that it is indicated that the advertiser is a reseller. 2) if the main purpose of the ad's landing page is to provide detailed information about products or services related to the brand. 3) with the descriptive use of the trademark with its ordinary meaning.

According to Google's new Policy, owners of registered trademarks who believe their rights are being violated can file complaints with the platform. In case of incorrect restrictions, advertisers have the option to contest them. However, it is important to note that future trademark restrictions may be

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maintained if the advertiser creates new ads that violate the policies, regardless of any changes to their account.

In conclusion, using competitors' trademarks as Google Ads keywords is a practice that can be considered legal or illegal, depending on the circumstances of each case. Therefore, it is essential for companies that use or intend to use this digital marketing strategy to be aware of the risks and legal consequences that may arise from this practice. Conducting a prior analysis of the chosen keywords is recommended, avoiding those that may cause confusion or undue association with another's trademark. It is also advisable to constantly monitor the results of the ads and whether there are any complaints or legal actions by competitors.

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Changes in Consumption Taxation: Chamber of Deputies Approves PEC 45/2019

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There is no more prominent topic on the current tax agenda than the approval of a Constitutional Amendment Bill (PEC) 45/2019 by the Chamber of Deputies, which occurred in early July of this year.

The project, which has now moved on to the analysis and vote in the Federal Senate in early August, initiates the Brazilian Tax Reform by focusing on consumption-related taxes.

In addition to consumption-related charges, the text also amends constitutional provisions regarding the incidence of ITCMD, the State Tax on donations and inheritance, IPVA, the State Tax on motor vehicles, and finally, IPTU, the Municipal Tax on urban properties. Regarding income taxation, PEC 45/2019 merely instructs the Executive Branch to send a new legislative proposal to Congress within one hundred and eighty (180) days to regulate the topic, as the Federal Government's intention is to restructure the Brazilian tax system in stages, starting with consumption.

Although the text can still be altered in the Federal Senate, it is already possible to outline a prognosis for Brazilian consumption taxation. Below, we highlight the main topics approved in the Chamber of Deputies:

The New Brazilian Consumption Taxes: Dual VAT (CBS and IBS) and Selective Tax

The current consumption taxation in Brazil consists of five (5) taxes, with jurisdiction distributed among the Federal Union, States, Municipalities, and the Federal District. They are: at the federal level, the Tax on Industrialized Products (IPI), the Contribution to PIS and COFINS; at the state level, the Tax on Circulation of Goods and Services (ICMS); and at the municipal level, the Tax on Services of Any Nature (ISS).

PEC 45/2019 proposes to abolish these five (5) taxes and consolidate consumption taxation into a dual Value Added Tax (VAT), implemented by the creation of the **Contribution on Goods and Services (CBS)** and the **Tax on**

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Goods and Services (IBS). In addition to CBS and IBS, the law establishes a **Selective Tax ("Sin Tax")**, whose purpose is non-revenue-driven, to be imposed on the "production, sale, or importation of goods and services harmful to health or the environment," in other words, on operations to be specified in complementary legislation.

In this way, the current federal consumption taxes (IPI, PIS, and COFINS) will be merged and replaced by the **Contribution on Goods and Services (CBS)**, collected by the Federal Union, while ICMS and ISS will be integrated into the **Tax on Goods and Services (IBS)**, under the responsibility of the **Federal Council for the Tax on Goods and Services**, an entity created by the proposal of PEC 45/2019 and which will have parity representation from the States, the Federal District, and the Municipalities.

Based on the new constitutional tax principles of **simplicity** and **transparency**, the CBS and IBS will be due at the destination of the consumption transaction; they will be subject to the non-cumulative regime, with extensive deduction of credits from the amount collected in the previous stage of the chain and, finally, they will not constitute the basis for calculating the amount to be paid for the same taxes, following global VAT taxation guidelines.

In practice, PEC 45/2019 aims for the separation between CBS and IBS to have only revenue and operational ramifications, in order to maintain the distribution of tax-related activities of inspection, collection, and enforcement inherent to the Brazilian federal model. This is because both taxes will apply to the same taxable events, calculation basis, and will form a single total rate, which has not yet been confirmed, and will be subject to the same taxation and credit rules.

So much so that PEC 45/2019 foresees joint action by the Federal Council, IBS, and the Federal Union, responsible for CBS, so that laws, tax information, regulations, and collection and inspection procedures will be integrated for the mentioned taxes.

These provisions significantly change the Brazilian taxation on consumption because the system in force until then allowed for the adoption of individual calculation basis and legislation for each tax, a context that is one of the factors contributing to the increase in tax residues paid in the production chain, as well as tax disputes and litigations.

However, these changes will not have immediate effects because the implementation of CBS and IBS will be carried out in stages over a period of eight (8) years.

Transition Period for CBS and IBS

If confirmed by the Federal Senate, the text approved by the Chamber of Deputies specifies that the transition should occur between the years 2026 and 2033, after which CBS and IBS will be permanently instituted.

During the transitional phase, the tax burden will consist of temporary rates for CBS and IBS, which will increase proportionally as IPI, PIS, COFINS, ICMS, and ISS levied on consumption are reduced until their extinction.

In this context, in the year 2026, CBS will be levied at a temporary rate of nine-tenths of a percent (0.9%), and IBS at one-tenth of a percent (0.1%), respectively, while the current Brazilian taxation system will continue in parallel. In 2027, PIS and COFINS are abolished and replaced by CBS, and IPI will have its rate reduced to zero (except for products manufactured in the Manaus Free Trade Zone). From then on, from 2029 to 2033, the tax burden of ICMS and ISS will gradually be reduced at a rate of 1/10 per year until it is replaced by IBS. In 2033, IPI, ICMS, and ISS are definitively abolished, and consumption taxation is concentrated in CBS, IBS, and the Selective Tax.

Although PEC 45/2019 establishes a transition schedule, the proposal does not specify the final rates to be applied for CBS and IBS, which is one of the points pending definition after the reform's approval. Let's move on to them.

Tax Burden and Special Regimes: Points to Define

The main aspect of debate regarding PEC 45/2019 is the final and total rate for the imposition of CBS and IBS, which must be subject to subsequent definition in a complementary law and by resolution of the Federal Senate. It is expected that the percentage will be settled at twenty-five percent (25%), but the Ministry of the Treasury has presented scenarios with the tax burden reaching twenty-seven percent (27%), which would elevate Brazil to one of the highest VAT rates in the world.

Other provisions that depend on regulation concern special tax regimes outlined in PEC 45/2019.

According to the approved text, three (3) consumption tax brackets will be introduced: standard rate, reduced rate by 40% (favored regime), and zero rate (exemption). Initially, the reduced tax burden can only be enjoyed by the sectors of education, health, medicines, basic menstrual health and personal hygiene products, public transportation, agricultural inputs and products, ar-

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tistic, journalistic, and sports activities, goods and services related to national security and sovereignty, and products in the basic food basket.

On the other hand, PEC 45/2019 does not eliminate the other special regimes existing in the Brazilian tax system. On the contrary, many will continue in force, such as the Simples Nacional, which provides a single collection regime for micro and small businesses, encompassing all tax obligations (not just consumption taxes) in a single requirement.

Considering that taxpayers eligible for Simples Nacional may choose to maintain this regime in parallel with the advent of CBS and IBS, there is much debate about the true scope of the new rules and the need for subsequent laws and regulations to harmonize all available tax treatments in the country.

However, the preservation of special regimes is not the only controversy in the approved text of PEC 45/2019.

Controversies

The text approved by the Chamber of Deputies is not unanimous, and certain topics are already facing resistance from civil society and jurists: (i) the taxation and cumulativeness of the **Selective Tax ("Sin Tax")**; (ii) the competencies of the **Federal Council**; and (iii) the preservation of the current complexity and tax burden in consumption taxation.

Indeed, there are controversies regarding the incidence of the **Selective Tax ("Sin Tax")**, as PEC 45/2019 does not delve into the operations that will be subject to the collection of the Selective Tax, to be the subject of subsequent regulation. Furthermore, its materiality goes against the neutrality intended by the dual VAT, as the tax is integrated into the calculation basis of IBS and CBS, in what is called "taxing within" the taxes.

The approved project also does not delineate all the competencies of the Federal Council for IBS, to be included in a subsequent complementary law. The grant of the responsibilities for tax collection, inspection, and enforcement to the entity could result in the creation of a "fourth power," parallel to the Executive, Legislative, and Judicial branches, as its functions will not be strictly based on the Federal Constitution.

Another issue arises from the consequences of the tax reform, especially whether the adoption of the Dual VAT will maintain the complexity and the existing tax burden, with mere substitution rather than reduction of taxes.

This is because, in addition to CBS, IBS, and the Selective Tax, the Chamber of Deputies approved the temporary collection until December 31, 2043, of a **contribution on raw and semi-processed products**. This levy replaces the taxes that are required to finance state funds related to ICMS tax incentives, which exist, for example, in the states of Rio de Janeiro, Goiás, and Mato Grosso. According to the substitute wording of PEC 45/2019, the contribution will be due in favor of the state of origin, and given the lack of detailed information in the norm, it is argued that the contribution could have significant impacts on the tax burden on consumption.

Because it encompasses complex issues, PEC 45/2019 raises questions from society and experts, which deserve to be discussed and clarified before the definitive approval of the new model of consumption taxation.

Critiques

As previously pointed out, a possible increase in the tax burden resulting from the changes in PEC 45/2019 has been raised. Among the sectors potentially impacted by the imposition of a dual VAT is the service providers, with studies suggesting that the creation of CBS and IBS could exacerbate the tax burden, on average, by thirty percent (30%) more than the current one.

Not less important than an increase in tax burdens is the fact that the implementation of the dual VAT will occur over a long transition period of eight (8) years, during which the Brazilian consumption taxation could be composed of up to ten (10) different taxes! It should be noted that Brazil is already the country that leads in terms of time and money spent by companies to comply with tax obligations, which is why the lengthy journey of changes may have the opposite effect desired by PEC 45/2019, favoring litigation and the complexity of tax practices.

This is because most of the changes in PEC 45/2019 are expected to be implemented through the issuance of subsequent regulations, which encourages the feeling that the approval of the tax reform is a "blank check" signed by society. An example of this is the case of the structure of the Federal Council for IBS, a parity organization representing states, municipalities, and the Federal District, whose responsibilities for tax collection, inspection, and enforcement will only be fully defined in a complementary law. Without the param-

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eters of operation being disclosed in the legislative process, the limits of the Council's tax competence are unknown, not to mention whether the entity will be successful in reconciling the individual interests of each of the entities and maintaining harmony in tax collection.

With so many uncertainties, the new model of consumption taxation proposed in PEC 45/2019 has possible sensitive implications for the federal pact. The federative form of the Brazilian State is a constitutional cornerstone, which, in the tax system, is instrumentalized by the division of competencies among the Federal Union, States, Municipalities, and the Federal District. If before the reform there was autonomy for the entities to establish the treatment of their taxes, it is certain that the intention, to some extent, to unify consumption taxation may mitigate their tax capacity.

These and other doubts will need to be further explored in the next steps for the approval of the Consumption Tax Reform.

Next Steps

The effectiveness of PEC 45/2019 and the introduction of the consumption tax reform still depend on the approval, in two (2) rounds, by the Federal Senate, and finally, enactment by the National Congress. The process will follow the work plan released by the Federal Senate, with public hearings scheduled for August and September that are expected to culminate in the project's vote, scheduled for October 4, 2023.

It is expected that the deliberation stage in the Federal Senate will allow for broad debate, with the participation of civil society in the legislative process. This is because the success of models adopted internationally does not necessarily mean that their reproduction will have the same result in the national political and tax structure, with complexities and peculiarities inherent to Brazil.

The Tax Reform can only benefit from this interactivity because it is certain that fairer, simpler, and more efficient taxation has long been awaited by the Brazilian business environment.

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The new framework for Technology Transfer Agreements in Brazil

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The landscape of technology transfer agreements in Brazil has undergone substantial transformations to address longstanding needs for innovation and economic progress. These changes, a result of both fresh legislation and the deliberations of the Brazilian Patent and Trademark Office taken place on December 2022, aim to alleviate unnecessary burdens faced by companies striving to advance scientific and technical knowledge within the country.

In this context, the General Coordination of Technology Contracts at the Brazilian Patent and Trademark Office unveiled, on August 1, 2023, the application of Ordinances No. 26 and 27, dated July 07, 2023. These ordinances bring about significant modifications in the procedural aspects governing the assessment of technology transfer agreements presented for registration.

In connection with formal aspects of the analysis, the Brazilian Patent and Trademark Office declared the:

- Elimination of the requirement for notarization and apostille/legalization by the Consulate for digitally signed foreign documents;
- Recognition of digitally signed documents without the need for ICP-Brazil authentication;
- Abolishment of the obligation for two witnesses to sign domestically executed contracts;
- Removal of the obligation to send the Articles of Incorporation along with petitions filed in connection with the registration of agreements or requests for registration of technology transfer agreements;
- Removal of the obligation for the parties to initial all pages of agreements submitted for registration; and
- Elimination of the obligation of submission of licensee's official form named "Ficha Cadastro".

Concerning aspects of the technical examination, the aforementioned Ordinances promoted the following modifications:

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1) Acceptance, in the Certificates of Registration, of the declared value of contracts involving only trademark applications; and

2) Acceptance of licensing of non-patented technology (which will be registered in the category of Technology Supply).

These advancements resonate with the resolutions of the Contracts Department of the Brazilian Patent and Trademark Office, which were endorsed during the December 28, 2022 meeting and subsequently published in Official Gazette No. 2716 on January 14, 2023. The minutes of this meeting emphasize the alignment of the Brazilian Patent and Trademark Office's protocols with internationally recognized best practices, particularly those aimed at fostering technological innovation through effective public policies.

The acceptance of contracts involving the licensing of non-patented technology is admissible in Brazilian Law as an atypical contract (Articles 425 and 104, of the Brazilian Civil Code), according to Opinion No. 00031/2021/CGPI/PFE-INPI/PGF/AGU, of the Specialized Federal Prosecutor's Office of the Brazilian Patent and Trademark Office. This form of licensing, as outlined in the Brazilian Patent and Trademark Office's deliberations, not only establishes a secure institutional, legal, and business framework but also fosters the growth of such contracts between domestic and international companies, enhances opportunities for industrial and intellectual property rights commercialization, and nurtures innovation within Brazil.

The flexibilizations indicated above are reflective of the enactment of Federal Law No. 14,286/21, which eliminated the requirement for registering technology transfer contracts for the purpose of the remittance of royalty payments abroad. However, the registration of technology transfer agreements remains mandatory for tax deductibility purposes.

Moreover, a noteworthy development is the removal of the previous cap on deductible royalties for technology transfer, a limitation rooted in Ordinance 436/58, now superseded by Law 14,596/23. This new law, enacted on June 15, 2023, brought to life a fresh set of transfer pricing regulations in Brazil aligned with international practices. Hence, instead of resorting to the old Ordinance 436/58, established at a time of stringent economic regulations, companies are now encouraged to base their terms and conditions on comparable transactions conducted between unrelated entities.

In essence, the application of the Arm's Length Principle is now in effect, demanding that transactions mirror a functional evaluation of similar market conditions. While these enhanced flexibility and transactional freedom are welcoming and beneficial, they also place companies in a position of greater responsibility, which should exercise caution and engage in comprehensive studies on industry practices and standard fair market prices.

Finally, it must be emphasized that, although the rules will become mandatory as of January 1, 2024, there is an option period for 2023, which must be made between September 1st and 31st.

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Law No. 14,599/2023 – Law amending carrier and cargo insurance policies published

Law No. 14,599/2023 is the result of the approval of MP No. 1153/2022, which brings important changes to the insurance structure

On June 20, 2023, **Law No. 14,599/2023** was published, which, among other changes regarding traffic regulations and administrative matters, introduces important changes to cargo transport insurance in Brazil.

The rule sanctioned by the president of Brazil amends article 13 of Law No. 11,442/2007 ("Road Freight Transportation Law"), which provides for the contracting of insurance by shippers and carriers.

The sanction stems from the Draft Conversion Bill No. 10/2023, which resulted from the approval of Provisional Measure No. 1153/2022 ("MP 1153"), drafted in the previous legislative term, and that also affected the transport insurance market.

Therefore, below are the main changes provided for by the legal text sanctioned to cargo and carriers' liability insurance, especially regarding (i) the changes in mandatory insurance and (ii) the maintenance of the possibility of cargo owners as policyholders of carriers' liability insurance (in Brazil, carriers' liability insurance might be retained directly by carriers or by cargo owners as policyholders with the carriers as the insured).

Every item below includes a reference to the article of Law No. 11,442/2007 (amended regulation), displayed in parentheses.

I. Contracting the RCTR-C by policy – upheld (art. 13, main section)

Considered a subject of wide resonance in the transport insurance market, the possibility of cargo owners intermediating the Road Cargo Carriers' Liability Insurance (in the Portuguese acronym "RCTR-C") was upheld in the new regulation.

To this effect, Law No. 14,599/2023 changes the provisions originally provided for in MP 1153 (replaced by Law No. 14,599/2023), which established that retaining RCTR-C was exclusive to carriers. On the other hand, the new regulation mirrors provisions previously contained in both Decree-Law No. 73/1966 and Decree No. 61,867/1967, stating that contracting carriers' civil liability insurance coverage is mandatory and not exclusive to carriers.

II. Amendment to mandatory insurance policies (art. 13, items I, II and III, and paragraph 8)

The regulation states that it is mandatory for carriers to contract civil liability insurance policies for road cargo carriers (RCTR-C), as well as for cargo disappearance ("RC-DC"), and for vehicles used in cargo transportation in the event of damages caused to third parties ("RCV").

This is a new development regarding civil liability insurance policies of carriers involved in cargo disappearance (RC-DC) as well as regarding vehicle liability for third-party damages (RCV), which were formerly optional and now compulsory.

In addition, Law No. 14,599/2023 establishes that the national cargo insurance retained by the cargo owner for the transported goods is now optional – an important change regarding the provisions provided for in both Decree-Law No. 73/1966 and Decree No. 61,867/1967, which previously established that cargo owners should retain mandatory insurance for the transportation of goods within Brazil.

However, we highlight that the implicit repeal of Decree-Law No. 73/66 regarding mandatory insurance policies, may be subject to questioning, considering the interpretation that Decree-Law No. 73/66 holds the status of supplementary law and, therefore, cannot be changed by an ordinary law, which is hierarchically inferior (in Brazil, supplementary laws are federal statutes passed by supermajority voting requirement on issues or topics previously established in the Federal Constitution, whilst ordinary laws are federal statutes regarding topics of non-Constitutional matters, which have a simpler voting requirement – therefore, considering the voting requirements, an ordinary law might not revoke a supplementary law).

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III. Amendment to risk management plans (art. 13, first paragraph)

Risk management plans ("PGR") are a set of accident and theft prevention measures for cargo transportation, currently associated with clauses waiving recovery rights ("DDR") by cargo insurers.

Prior to this new regulation, the market of cargo insurance had as practice that meeting PGR requirements was a condition so that cargo insurers waive the right to recovery against carriers in the event of cargo disappearance.

In this context, the sanctioned regulation establishes that Carriers' Liability Insurance Policies for cargo damage (RCTR-C), disappearance and theft (former RCF-DC), must be linked to a PGR executed by common agreement between carriers and insurers.

Thus, the PGR will be associated with the carriers' civil liability insurance, unlike the previous market practice, which linked it to the DDR waivers attached to the cargo insurance policies.

On the other hand, Law No. 14,599/2023 also establishes that cargo owners may require security measures in addition to those provided for in the PGR linked to the carrier's liability insurance. However, the law mandates that costs associated with its implementation must be settled by contractors, not by carriers. Moreover, the owners of goods may require a copy of the liability insurance policy from carriers, with details regarding the retained coverage conditions, premium and risk management (paragraph 9).

The new regulation imposes a change in relation to the wording of MP 1153, which formerly provided for restrictions on linking PGR to cargo insurance policies retained by cargo owners when an equivalent carriers' liability insurance coverage was already retained by carriers (for instance, if carriers' liability insurance had theft coverage and cargo insurance also provided coverage for theft).

IV. Single policy for civil liability insurance coverages (art. 13, paragraph 5)

The new law states that the carriers' liability insurance for road transport carriers (RCTR-C) and cargo disappearance (RC-DC) must be retained through a single policy, linked to the National Register of Road Cargo Carriers ("RNTRC").

The provision prevails over the former ruling of CNSP Resolution No. 219/2010 (RCTR-C insurance), which considered the use of a single policy as optional (art. 3).

This provision does not impair the contracting of additional coverage linked to both the RCTR-C and RC-DC insurance types, according to paragraph 2 of article 13 *(the insurance coverage established in items I, II and III of the main section of this article does not exclude nor preclude the optional contracting by carriers of additional coverage for any losses or damages caused to the cargo transported not encompassed in the above mentioned insurance coverages)*.

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V. Restriction on recoveries involving subcontracting of TACs (art. 13, paragraph 2)

One of the features introduced by Provisional Measure 1153, and upheld by Law No. 14,599/2023, was the protection to Independent Cargo Carriers ("TAC" – individual drivers who own a cargo vehicle and provide freight services), when transportation services are subcontracted.

According to the published text, whenever the TAC is subcontracted, both the RCTR-C and RC-DC insurance types will have to be contracted by the contracting party of the service that issues the bill of transport, in which event the TAC will be considered its representative, and subrogation of the insurance company against the carrier will be prohibited.

VI. Ban on freight discount from insurance fees involving TACs (art. 13-B)

Finally, the newly sanctioned regulation also protects TACs by forbidding shippers, carriers and transport cooperatives to discount the amounts referring to administrative and insurance fees from freight, under penalty of having to reimburse TACs double the amount of the contracted freight.

The regulation under discussion entered into force on June 20, 2023, and its full text can be accessed in this link (in Portuguese).

Demarest's Insurance, Reinsurance, Health and Private Pension team is monitoring the potential impacts of the sanctioned regulation on the insurance contracted by cargo owners and carriers, and is available to provide any clarifications on the subject.

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The 10 years of the Brazilian Clean Company Act and the impacts for foreign companies doing business in Brazil

Over the past decade, Law n. 12,846/2013 (the "Brazilian Clean Company Act") has emerged as a critical tool in the country's fight against corruption and other illegal acts against the public administration. Enacted in 2013, this landmark legislation has not only transformed the landscape of governance and accountability in Brazil, but has also served as a model for other nations dealing with similar challenges, especially in the Latin American Region. This article discusses the ten-year journey of the Brazilian Clean Company Act, highlighting its achievements, challenges, and the lessons it offers to the global community, with a focus on its implications for foreign companies doing business in Brazil.

Key perception of main improvements and challenges

The first and main achievement of the Brazilian Clean Company Act was to contribute to a **cultural shift** by demonstrating that corruption is not acceptable and will be met with severe consequences. In this regard, the law introduced incentives for companies to cooperate and to implement effective compliance programs (e.g., up to 4% reduction in applicable fines if the company proves to have an effective compliance program), thereby sharing the burden of creating an ethical business environment in Brazil with the private sector.

There is no doubt that the Act positioned Brazil in the forefront of anti-corruption enforcement in the Latin American Region. Compliance became a key topic in companies' agendas, although some may argue that such incentives are still insufficient and that companies have not allocated enough resources to their compliance functions. The implementation of **effective compliance programs**, in light with local legal requirements, has enabled companies to prevent, identify and address illegal conduct, as well to collaborate with authorities if necessary and to limit companies' liabilities.

Another important tool introduced by the Brazilian Anticorruption Law were **plea-bargain agreements** ("acordos de leniência" in Portuguese), that allowed government entities to work together with companies to unravel complex networks of corruption. In this regard, we have seen over the past ten years that authorities, such as the General Comptroller's Office (*Controladoria Geral da União* – "CGU") and the Federal Prosecutor's Office (*Ministério Público Federal* – "MPF"), have become more equipped and mature to investigate and prosecute complicated corruption related cases.

Additionally, **cooperation and communication between authorities** has grown exponentially over the years – proof of that are the many cooperation agreements signed between authorities on corruption matters. Cooperation with the Brazilian Antitrust Authority (*Conselho Administrativo de Defesa Econômica* - CADE) and the Federal Revenue Services (*Receita Federal Brasileira* – RFB) have also intensified and are increasingly important, as illegalities concerning corruption are often related to or stem from tax fraud and anticompetitive conducts. Most importantly, **cooperation has also intensified among international authorities**, such as with US Department of Justice – DOJ and Swiss authorities in multijurisdictional cases. International cooperation has enabled access to relevant evidence, including financial information, and given Brazilian authorities the ability to uncover complex It has also enabled companies to negotiate a joint settle resolution agreement, thereby compensating penalties paid in other jurisdictions provided that they relate to the same set of wrongdoings. This cooperation has also developed the capacity of local authorities to prosecute complex cases through "on job" training.

Legislative Developments concerning the Brazilian Anticorruption Law

In the wake of the Brazilian Anticorruption Law's enactment, several related rulings have also been passed.

Most recently, on July 18, Federal Decree n. 11,129/2022 ("Decree") was enacted, replacing former Decree 8,420/2015. Such Decree regulates the Brazilian Clean Company Act and brings several innovations to the Brazilian anticorruption landscape. One of the key highlights of the Decree is the review of criteria for the evaluation of compliance programs such as the destination of resources, training initiatives, risk management, treatment of hotline reports and third-party due diligence.

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Additionally, on July 22, 2022, the CGU approved Ruling n. 19/2022, that introduced a novel plea-bargain sanctioning tool – the request for an anticipated or "early" trial for violations of the Brazilian Clean Company Act. The new ruling innovated to the extent that it provided for new and important benefits to entities that wish to terminate proceedings in advance by means of an agreement with the authorities.

Moreover, on December 9, 2022, CGU and AGU released the joint Ruling n. 36/2022, which discusses specific criteria and methodology that will be applied by the authorities to reduce in up to 2/3 the applicable fines in leniency agreements executed based on the Brazilian Clean Company Act.

Finally, on August 1st, 2023, the Brazilian federal government has started discussing the passing of an ordinance that, if approved, will allow for settlement agreements (*termo de compromisso*) with respect to conduct that violates the Act when committed against the foreign public administration.

Conclusions

The Brazilian Clean Company Act has clearly reshaped the country's anticorruption framework and, most importantly, its approach to governance, transparency, and accountability. It has certainly enhanced public trust in Brazilian companies and stakeholders' confidence in the Brazilian market. While challenges remain, the Act's accomplishments and lessons deriving from the vast body of case law offer valuable insights to foreign companies doing business in Brazil. Above all, our experience shows that Brazilian authorities remain active and will continue to apply their best efforts to fight corruption and to promote an ethical environment for business practices. For companies operating in Brazil, this implies investments in improving their compliance program, in training local employees and executives, in investigating alleged violations so as to prevent not only potential legal liability, but also as a means to protect its reputation.

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