Deutsch-Brasilianische Industrie- und Handelskammer • VOL.3 • 2025

RECHT & STEUERN

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Herausgeber:

Gefördert durch:

Bundesministerium für Wirtschaft und Energie

aufgrund eines Beschlusses des Deutschen Bundestages

AHK MERCOSUL

Deutsch-Brasilianische Industrie- und Handelskammer
Câmara de Comércio e Indústria Brasil-Alemanha

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New rules for international data transfers take effect on August 23

Companies that transfer personal data internationally must take note: the deadline to comply with Brazil's new Standard Contractual Clauses (SCCs), under ANPD Resolution No. 19/2024, ends on August 23, 2025.

Whenever personal data of Brazilian data subjects is sent abroad — whether through cloud services, foreign business partners, or intra-group transfers — this operation must comply with the Brazilian General Data Protection Law (LGPD).

Since no country or international body has yet been officially recognized by Brazil's National Data Protection Authority (ANPD) as providing an "adequate level of protection", all international transfers must rely on valid legal mechanisms, among which Standard Contractual Clauses (SCCs) are the most straightforward and practical solution.

The SCCs are pre-approved contractual templates issued by the ANPD that establish clear obligations, guarantees, and safeguards for both parties involved in the international transfer (the "exporter" and the "importer" of the data).

Unlike other mechanisms — such as Binding Corporate Rules or customized clauses, which require prior approval — adopting the SCCs does not require submission to the ANPD, making them an efficient compliance tool.

Organizations that choose to rely on the SCCs must ensure they are incorporated into agreements with foreign partners by August 23, 2025. After this date, transfers without a valid legal basis will be considered non-compliant, exposing companies to administrative sanctions such as warnings, fines, or even suspension of data processing activities.

Key compliance considerations:

- Unaltered adoption: The SCCs must be incorporated exactly as published by the ANPD. Any changes may invalidate the mechanism.
- Transparency with data subjects: The full content of the clauses must be made available to data subjects upon request, safeguarding trade secrets and industrial confidentiality.

• Online disclosure: Companies must publish clear and accessible information about the transfers, including their purpose, destination country, security measures, and data subject contact channels.

Despite similarities, the GDPR's SCCs have not yet been officially recognized as equivalent by the ANPD. Therefore, relying solely on them — without also incorporating the Brazilian SCCs — may result in non-compliance under the LGPD.

If your organization performs any type of international personal data transfer, it is important to review your current contracts and determine whether Brazil's SCCs must be adopted to ensure you are compliant.

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Corporate Liability Risks in Brazil

As with the German GmbH or AG, Brazilian limited liability companies possess their own legal personality, distinct from their shareholders. However, unlike in many jurisdictions where corporate separateness is strongly preserved, Brazilian courts frequently apply doctrines such as piercing the corporate veil *(desconsideração da personalidade jurídica)*, successor liability, and economic group liability in a broad and often unpredictable manner.

This article summarizes the main doctrines, recent trends, and practical steps for risk mitigation.

1. Piercing of the Corporate Veil

Piercing the corporate veil occurs when courts disregard a company's separate legal personality and hold shareholders, directors, or related entities personally liable. Article 50 of the Brazilian Civil Code expressly authorizes this measure in cases of abuse of legal personality, characterized by misuse of the corporate purpose *(desvio de finalidade)* or commingling of assets *(confusão patrimonial)*.

Brazilian law recognizes two main approaches: the "Major Theory" *(Teoria Maior)*, which is consistent with international standards and requires concrete evidence of fraud, abuse, or misuse of the corporate structure to the detriment of creditors; and the "Minor Theory" *(Teoria Menor)*, which adopts a more flexible stance, permitting veil piercing when the company lacks sufficient assets to satisfy its obligations, even without proof of fraud or abuse. The latter is often applied in labor, consumer, and environmental disputes.

The Superior Court of Justice ("STJ"), in decision REsp 279273/SP confirmed that mere insolvency or closure of the company does not suffice to pierce the veil. In practice, however, the Minor Theory is often extended by lower courts and applied even in civil or tax procedures. For this reason, directors, officers, and even minority shareholders may be drawn into litigation, sometimes even years after leaving the company. In these situations, it is not uncommon for courts to order the freezing of the bank accounts of third parties linked to debtor companies without prior notice, creating significant risks of judicial overreach.

2. Successor Liability

The doctrine of successor liability *(sucessão empresarial)* applies across labor, tax, and civil claims. A company acquiring another's business may be held re-

sponsible for the latter's debts, regardless of contractual disclaimers. Courts infer succession not only from formal mergers but also from practical continuity, such as assets or establishments, operating in the same location with the same employees or customers, or maintaining similar activities even without a formal transfer.

In practice, labor courts and tax authorities apply this concept expansively, sometimes extending liability to companies based merely on "indications," such as shared officers or a common address with a debtor.

3. Economic Group Liability

Under labor law, companies belonging to the same economic group, as set forth in Article 2, paragraph 2 of the Consolidated Labor Laws, may be held jointly liable for each other's obligations. Importantly, this does not require formal shareholder control.

Brazilian labor courts adopt a broad, substantive view, recognizing groups where companies share interests, coordinate projects, or present themselves under a unified brand. Once a group is established, any member may be compelled to satisfy judgments – even if uninvolved in the specific employment relationship. This can even create risks in M&A transactions, as an acquiror may be drawn directly into labor lawsuits filed years earlier against an entity linked to the acquired company.

4. Execution Fraud and Fraud against Creditors

Brazilian law protects creditors through the doctrines of execution fraud *(fraude à execução)* and fraud against creditors *(fraude contra credores)*, which allow courts to invalidate asset transfers by a debtor to a third party that frustrate debt collection.

In theory, these rules require either a registered lien on the transferred asset or evidence of bad faith by the acquiror. In practice, however, courts often favor creditors even when such conditions are absent – particularly if the seller was already facing litigation. This exposes third parties acquiring assets in good faith to the risk of having their transactions challenged later.

5. Legal Developments

Recent jurisprudence from higher courts has imposed some limits on these expansive doctrines. The Supreme Federal Court ("STF"), in decision RE 1387795, ruled that companies cannot be added to enforcement proceedings solely based on presumed group membership. Similarly, the Fourth Panel of

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the Superior Labor Court *(Tribunal Superior do Trabalho)* ruled that the mere identity of shareholders or coordination among companies is insufficient to establish an economic group, which instead requires the existence of hierarchical control or effective dominance. In tax law, Article 135 of the National Tax Code establishes that the liability of directors and managers arises only when there is evidence of willful misconduct *(dolo)* or fraud, and not from the mere non-payment of taxes.

Nonetheless, these principles are inconsistently applied by lower courts, where creditor protection continues to dominate.

6. Mitigation Strategies

Although risks cannot be fully eliminated, international investors can reduce exposure through segregation of businesses into separate entities, the use of clean vehicles for acquisitions rather than assuming operations of indebted entities, and the adoption of robust compliance and governance programs. Strong internal controls and transparent practices demonstrate good faith and reduce vulnerability in litigation. Additionally, alternative dispute resolution methods, such as arbitration and mediation, can limit exposure to unpredictable court enforcement.

7. Conclusion

Brazil remains one of the most attractive emerging markets, but investors and companies must recognize that, in Brazil, “limited liability” is less absolute than in many jurisdictions. Courts broadly apply veil-piercing, successor liability, and economic group doctrines – often in combination and reinforced by aggressive enforcement tools such as "preventive" bank account freezes.

While recent higher court jurisprudence offers corrective signals, unpredictability at the trial-court level persists. Investors and companies should structure operations carefully, maintain robust governance, and continuously monitor exposures. With preparation and awareness, foreign groups can protect themselves while pursuing opportunities in Brazil’s dynamic market.

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Bestellung von im Ausland wohnhaften Vertretern gegenüber der brasilianischen Gesundheitsaufsichtsbehörde – ANVISA

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1. Gesetzliche Grundlagen für die Bestellung von im Ausland wohnhaften Geschäftsführern

Am 26. August 2021 wurde das Gesetz Nr. 14.195, das das Unternehmensumfeld in Brasilien vereinfachen und entbürokratisieren soll, verabschiedet. Unter den zahlreichen Änderungen, die durch das Gesetz Nr. 14.195/2021 eingeführt wurden, ist eine der wichtigsten die Möglichkeit, nicht in Brasilien wohnhafte Direktoren für Gesellschaften mit Sitz in Brasilien zu wählen.

Vor dem genannten Gesetz konnten sowohl brasilianische als auch ausländische nicht in Brasilien wohnhafte Personen in den Verwaltungsrat der Gesellschaft aufgenommen werden, waren aber daran gehindert, Positionen in der Geschäftsführung zu besetzen, die eine Vertretung der Gesellschaft voraussetzen.

2. Vorschriften der ANVISA hinsichtlich der Bestellung von im Ausland wohnhaften gesetzlichen Vertretern und technischen Verantwortlichen

2.1. Allgemeine Vorschriften und Definitionen

Der Beschluss RDC ANVISA Nr. 222 vom 28.12.2006 ("RDC Nr. 222/2006"), der die Verfahren für die elektronische Beantragung und Erfassung im Rahmen der ANVISA festlegt, enthält die folgenden Definitionen:

(i) Reglementierter Agent (Agente Regulado): eine natürliche oder juristische Person, die der Kontrolle und Aufsicht der ANVISA unterliegt;

(ii) Rechtlicher Verantwortlicher (Responsável Legal) (GVA): eine in der Satzung, dem Gesellschaftsvertrag oder dem Protokoll einer Gesellschafterversammlung ernannte Person, die für die Vertretung des reglementierten Agenten verantwortlich ist und

(iii) Sicherheitsbeauftragter (Gestor de Segurança): der Rechtliche Verantwortliche des reglementierten Agenten, der für die Verwaltung und Kontrolle des Passworts für den Zugang zum elektronischen Antrags- und Erfassungssystem der ANVISA verantwortlich ist/sind.

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Die derzeitig gültigen gesetzlichen Vorschriften enthalten keine Beschränkungen hinsichtlich des Wohnsitzes des GVA. Des Weiteren existiert in dem von der ANVISA selbst zur Verfügung gestellten **"Schritt für Schritt - Unternehmensregistrierung"** die Möglichkeit, andere Länder als Brasilien in den Angaben zur Adresse des entsprechenden Rechtlichen Verantwortlichen (GVA)/ Technischen Verantwortlichen (TVA) aufzunehmen.

In Anbetracht dessen und nach einer systematischen Analyse der Vorschriften der ANVISA hinsichtlich der Bestellung und Befugnisse von GVAs und TVAs kann man feststellen, dass es aus rechtlicher Sicht kein Hindernis dafür gibt, dass eine natürliche Person mit Wohnsitz im Ausland als GVA eines brasilianischen Unternehmens gegenüber der ANVISA auftritt. Für die Registrierung als GVA bei der ANVISA ist es erforderlich, dass dieser über ein CPF verfügt.

Die Rolle des Sicherheitsbeauftragten muss nicht unbedingt dem GVA zufallen. Einer Bestellung des Sicherheitsbeauftragten durch Vollmacht (vorzugsweise durch eine öffentliche Urkunde) steht grundsätzlich nichts entgegen.

Die juristische Terminologie der ANVISA ist nicht vorbildhaft, daher ist eine gewisse Auslegung erforderlich, um die Vorschriften der ANVISA korrekt verstehen zu können.

Da laut Definition der Sicherheitsbeauftragte der GVT ist, der für die Verwaltung und Kontrolle des Passworts des Unternehmens zuständig ist, welches für die gesamte Beziehung desselben mit der Behörde verwendet wird, kann es sich dabei um eine Person handeln, die entweder durch die Satzung, den Gesellschaftsvertrag oder das Protokoll einer Gesellschafterversammlung, oder durch eine Vollmacht bestellt wurde. Des Weiteren gibt es aus rechtlicher Sicht kein Hindernis dafür, dass der Sicherheitsbeauftragte im Ausland wohnhaft ist.

In jedem Fall ist zu beachten, dass das ANVISA-System für den Wechsel oder die Zuordnung eines neuen Rechtlichen Verantwortlichen oder Sicherheitsbeauftragten die folgenden Informationen benötigt:

- Eintragungsnummer im Kataster der Natürlichen Personen des Finanzamts (CPF);
- Registrierung einer E-Mail für die betreffende natürliche Person, die nicht mit der für das Unternehmen registrierten E-Mail identisch sein darf.

Weiterhin geht aus den Leitlinien der ANVISA Folgendes hervor:

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(i) Es gibt keine Beschränkungen für die Anzahl der für jedes Unternehmen einzutragenden Rechtlichen Verantwortlichen und Sicherheitsbeauftragten, sodass sowohl derzeitige Geschäftsführer als auch im Ausland wohnhafte Personen gleichzeitig in ihren jeweiligen Positionen eingetragen werden können.

(ii) Nur der Rechtliche Verantwortliche und der Sicherheitsbeauftragte haben Zugang zum Antragssystem der ANVISA und zur elektronischen Terminierung von Anhörungen *(Parlatório)*.

Ferner enthält die RDC Nr. 222/2008 folgende Definitionen:

• Gesetzlicher Vertreter *(Representante Legal)* (GVT): eine natürliche oder juristische Person, die mit rechtlichen Befugnissen ausgestattet ist, Handlungen im Namen des Reglementierten Agenten vorzunehmen und die Geschäfte im Rahmen der ANVISA zu führen oder zu verwalten;

• Technischer Verantwortliche *(Responsável Técnico)* (TVA): eine natürliche Person, die rechtlich befähigt ist, die verschiedenen Arten von Produktionsprozessen und die Erbringung von Dienstleistungen in Unternehmen angemessen zu überwachen;

• Passwort-Benutzer *(Usuário de Senha)*: eine Person, die vom Sicherheitsbeauftragten ermächtigt wurde, im Namen des Reglementierten Agenten im elektronischen System der ANVISA Handlungen im Rahmen ihres jeweiligen Tätigkeitsbereichs vorzunehmen.

Es gibt keine Beschränkungen für die Anzahl der für jedes Unternehmen einzutragenden Gesetzlichen Vertretern, Technischen Verantwortlichen und Passwort-Benutzern.

2.2. Spezifische Vorschriften zur Funktion des Sicherheitsbeauftragten

In Anbetracht der Bedeutung des Sicherheitsbeauftragten in den Beziehungen des Unternehmens zur ANVISA ist es wichtig, einige der für die Ausübung seiner Funktion geltenden Vorschriften näher zu erläutern:

• Der durch Vollmacht bestellte Sicherheitsbeauftragte wird von der GVA bzw. vom Unternehmen bestellt, um das Passwort des Unternehmens bei der ANVISA festzulegen und den Passwort-Benutzern Passwörter zu erteilen. Ihm kann der Zugang entzogen werden, woraufhin der GVA bzw. das Unternehmen, zumindest einen anderen Sicherheitsbeauftragten haben muss.

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• Wenn der Sicherheitsbeauftragte die Gesellschaft nicht mehr vertritt, werden die Passwörter, die er den Passwort-Benutzern zugewiesen hat, gesperrt und der ihn ersetzende Sicherheitsbeauftragte muss sie erneut zuweisen.

• Der Zugang zum elektronischen Antrags- und Erfassungssystem erfordert eine vorherige Registrierung des Sicherheitsbeauftragten bei der elektronischen Adresse der ANVISA und ein persönliches, vertrauliches und nicht übertragbares Passwort.

• Die in die elektronische Adresse eingegebenen Daten liegen in der Verantwortung des GVA des Unternehmens, und die Nichteinhaltung der gesetzlichen Bestimmungen, Vorschriften und Normen stellt eine Ordnungswidrigkeit dar.

• Das Passwort für den Zugang zum elektronischen Antrags- und Erfassungssystem muss vom Reglementierten Agenten auf der Website der ANVISA registriert werden. Der Sicherheitsbeauftragte ist für die Verwaltung und Kontrolle dieses Passworts verantwortlich.

• Der Sicherheitsbeauftragte kann Passwort-Benutzer aktivieren oder deaktivieren, indem er neue Passwörter mit individualisierten Betriebsprofilen erstellt, die das Niveau des Zugriffs jedes einzelnen auf das elektronische Antrags- und Erfassungssystem der ANVISA festlegen.

• Das vom Sicherheitsbeauftragten verwendete Passwort ist für unbestimmte Zeit gültig.

• Der Reglementierte Agent muss die Informationen jedes registrierten Sicherheitsbeauftragten auf der Website der ANVISA auf dem neuesten Stand halten und kann jederzeit den Zugang der Sicherheitsbeauftragten zum elektronischen Antrags- und Erfassungssystem aufnehmen oder löschen.

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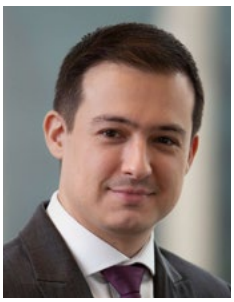
Clinical Research in Brazil: Time to Unlock Its Potential



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Brazil's new Law on Human Research (Law No. 14,874/2024) is approaching its one-year anniversary, and the landscape is one of transformation — but also of expectation. The arrival of this new regulatory framework, combined with the new clinical trial regulation published by Anvisa (RDC 945/2024), the recent congressional override of the presidential veto on the time limit for post-trial access, and the imminent regulation of the law (possibly still in 2025), reinforces and accelerates a global trend already underway in the sector.

The 8th Annual Clinical Research Report published by Anvisa confirms Brazil's growing importance as a strategic hub for clinical research. In 2024, the country hosted 836 clinical protocols (an increase compared to 2023), with 92% of them funded by international companies. Neoplasms accounted for 42% of the completed studies — with emphasis on lung, breast, and lymphoma cancers.

More importantly: the Report also indicates improved dialogue between public authorities and the sector. There has been progress in transparency, more public hearings, and greater institutional openness. The National Research Ethics Commission (in Portuguese, CONEP) reduced its backlog of pending cases by half, and the Coordination for Clinical Research in Medicines and Biological Products (in Portuguese, COPEC) has been working to standardize timelines and better integrate system stakeholders. Challenges, however, remain: ethical approval of protocols still takes an average of 71 days — well above the 45-day target — and issues such as insufficient human and financial resources and lack of integration between digital systems (like the Electronic Information System - SEI, Plataforma Brasil, and CONEP's internal workflows) deserve attention.

Despite these challenges, the market is responding positively — and vigorously. The combination of the new legal framework, the positive data from Anvisa's Report, and the recent overturning of presidential vetoes is driving a reorganization of the ecosystem. Interest in conducting research in Brazil is growing: local and foreign centers are seeking new partnerships; international companies are evaluating entry into the country; and CROs (contract research organizations — companies specializing in clinical research services) are pursuing strategic alliances with hospitals, universities, and laboratories.

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Pharmaceutical companies are also reconsidering Brazil as a priority destination for conducting studies — even revisiting decisions that had previously excluded the country from major multicenter studies.

The overturning of the vetoes, which occurred in June in the National Congress, was especially symbolic. One of the most sensitive provisions —and awaited by the industry — limited the obligation to provide post-study medication to five years from the start of its commercialization. This definition eliminates one of the main sources of legal uncertainty that discouraged research in the country and brings Brazil closer to international best practices. The message to the market was clear: there is now a more predictable and innovative-friendly environment.

Attention now turns to the regulation of the law, which is essential to ensure its full implementation. The decree to be published by the Ministry of Health — possibly still in 2025 — is expected to detail the organization of the National Research Ethics System, define standards for conducting studies, and consolidate guarantees for participants. This is a critical step to unlock the transformative potential of the new law and establish Brazil as an ethical, safe, and competitive environment for global clinical research.

This environment is also shaped by a broader legislative movement around research ethics. A recent example is PL 3062/2022, recently approved by the Chamber of Deputies, which prohibits the use of animals in testing cosmetics, perfumes, and personal hygiene products. The practice had already been limited by a sub-legal norm (CONCEA Resolution 58/2023) but now gains the force of law and broader scope. The industry's support of the measure emphasizes an important point: ethics and innovation are not opposing forces — they can move together.

The scenario is promising and shows that the goal is to establish Brazil as an international reference in clinical research — not only for its genetic diversity but also for the ethical, scientific, and operational quality of its processes.

Clinical research regulation is not being debated only in Brazil. In April 2026, a broad reform led by the Medicines and Healthcare Products Regulatory Agency (MHRA) and the Health Research Authority (HRA) will come into effect in the United Kingdom, aimed at modernizing the regulation of clinical trials with medicines. The British proposal is based on extensive public consultation and seeks to accelerate access to innovative treatments.

Among the main innovations in the British regulation are: the requirement for public registration and publication of results of all clinical trials; alignment of ethics committees with international best practices; and attention to the plans of inclusion and diversity in clinical protocols. The reform also provides clearer guidelines on informed consent, pharmacovigilance, use of real-world data, and even pilot programs using artificial intelligence for regulatory optimization.

These developments show that international regulation is advancing rapidly. It is up to the sector to keep pace and seize the opportunities this moment presents.

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Tax Aspects of Brazil´s Energy Transition

In November 2025, Brazil will host the 30th United Nations Climate Change Conference of the Parties (COP30) in Belém do Pará, a capital city located in the heart of the Amazon rainforest, reaffirming the country´s leadership role in international negotiations on climate change and global sustainability.

The event represents a strategic opportunity for Brazil to showcase its progress in fulfilling the commitments undertaken under Paris Agreement at COP21, namely reducing greenhouse gas (GHG) emissions and consolidating a sustainable development model that is based on renewable energy, adapted to climate change, and committed to the preservation of forests and biodiversity.

This agenda fundamentally relies on public policies that are designed and implemented to promote economic development and safeguard the competitiveness of the Brazilian economy and of companies operating in the country, while in harmony with environmental protection.

In this context, tax policy plays an important role in accelerating investments and creating a more favorable atmosphere for businesses committed to sustainability, through the granting of tax relief, tax credits, and special regimes. From this perspective, this article examines guidelines currently in place to support the energy transition and sustainable development.

1. Regulatory Framework of Energy Transition

Compliance with the Paris Agreement and its compromise to reduce greenhouse gas (GHG) emissions require the maintenance and expansion of a renewable-based energy matrix. In this regard, Brazil holds a prominent position as one of the world's largest producers of biofuels (ethanol and biodiesel) and clean energy (wind and solar, among others).

A key milestone in this process was the enactment of Law No. 14,300/2022, which created the Electric Energy Compensation System (SCEE). The law fostered decentralized generation and self-generation of energy, expanding private sector participation in the renewable energy matrix through solar and other clean energy projects.

In recent years, new statutes have also reinforced Brazil's engagement to energy transition matters. Law No. 14,902/2024 created the Green Mobility and

Innovation Program (MOVER), which combines financial and tax incentives to advance energy efficiency technologies in the automotive sector. Complementarily, Law No. 14,993/2024, known as the Future Fuel Law, sought to align the transportation matrix with decarbonization targets, integrating the guidelines established by the Brazilian authorities under the National Energy Transition Plan.

Also noteworthy is Law No. 14,948/2024, which established the legal directives for low-carbon hydrogen and for Special Regime for Low-Carbon Hydrogen Production (Rehidro). More recently, in 2025, Law No. 15,097/2025 was enacted to regulate offshore energy potential, particularly offshore wind, and Law No. 15,103/2025 launched the Energy Transition Acceleration Program (PATEN), aimed at financing private-sector sustainable projects.

However, public policies must also stimulate the shift from fossil fuels to renewables sources. For this reason, Law No. 15,042/2024 established the Brazilian Greenhouse Gas Emissions Trading System (SBCE), the country's first regulatory framework for the carbon market. Inspired by the cap-and-trade model of the European Union Emissions Trading System (EU ETS), the SBCE sets emission limits for specific sectors and allows companies to trade carbon credits, named as Brazilian Emission Allowances (CBEs). This mechanism turns GHG reductions into an economic asset, thereby promoting cleaner and more efficient practices.

Although Brazil has taken important steps toward building legal context for the energy transition, its effectiveness will ultimately depend on additional factors, such as adequate infrastructure and alignment with tax policy. The next section will address fiscal instruments that aim to support this transition.

2. Taxation and Energy Transition

Energy transition projects may benefit from the Special Incentive Regime for Infrastructure Development (REIDI), created by Law No. 11,488/2007. This tax treatment suspends the levy of PIS and COFINS contributions on imports and acquisitions of goods, services, and materials used in infrastructure works, while preserving the related tax credits. Article 28 of Law No. 14,300/2022 extended this regime to decentralized and self-generation energy projects, thereby reducing the tax burden on renewable energy investments, particularly for small producers.

For the automotive sector, the Green Mobility and Innovation Program (MOVER) of Law No. 14,902/2024 combines financial credits with tax incen-

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tives for research and development expenses to stimulate sustainable technological advancements. Taxpayers accredited under the regime may obtain financial relief, partially calculated on taxes paid in their operations, and deduct technology-related expenses in the assessment of Corporate Income Tax (IRPJ) and Social Contribution on Net Income (CSLL). The program also grants a special import regime for auto parts, reducing the Import Duty (II) rate, provided that taxpayers allocate 2% of the customs value of their imports to research, development and innovation projects.

Similar tax relief and innovation incentives were given under the Special Incentive Regime for Low-Carbon Hydrogen Production (Rehidro) of Law No. 14,948/2024, as well as in other energy transition guidelines. In addition to these instruments, the Energy Transition Acceleration Program (PATEN) of Law No. 15,103/2025 introduced a distinctive feature: companies with sustainable development project approved by the Federal Government may submit an individual tax settlement proposal to negotiate and obtain reductions in their federal tax liabilities.

Beyond these special regimes, there are measures directly aimed at reducing the tax burden on renewable energy and sustainable products. Article 8 of Law No. 13,169/2015 reduced to zero the rates of PIS and COFINS contributions on the supply and distribution of electricity resulting from credit compensation under the Electric Energy Compensation System (SCEE), particularly benefiting shared and self-generation projects. In the automotive sector, sustainable vehicles likewise benefit from reduced Tax on Manufactured Products (IPI) rates, reinforcing the use of fiscal policy as a tool to promote clean technologies.

3. Brazilian Tax Reform and Energy Transition

After the enactment of the Brazilian Tax Reform, which will introduce new consumption taxes in 2026 (IBS - Goods and Services Tax and CBS - Contribution on Goods and Services), an express provision was included to maintain a preferential tax regime for biofuels, with reduced rates to ensure that these products are taxed at a lower level than fossil fuels. At the same time, the reform also enacted the Selective Tax (IS), often referred to as a “sin tax,” designed to discourage, among other things, the consumption of goods and services harmful to the environment, including fossil-fuel vehicles, by imposing an additional tax burden.

These provisions reinforce social and political premises underlying the approval of the Tax Reform, which elevated environmental protection to the sta-

tus of a constitutional principle of the Brazilian tax system and consolidated tax policy as a tool to promote sustainability.

However, the new Tax Reform did not address the taxation of carbon credits, which has been regulated under Law No. 15,042/2024. This highlights the need for further updates, as the Carbon Market Legal Framework established rules for such transactions, including income taxation and exemption from PIS and COFINS contributions. These exemptions must still be replicated for the new consumption taxes (IBS and CBS) in order to prevent competitiveness losses in the sector.

Thus, while tax policy plays a decisive role in fostering energy transition, fiscal incentives alone are not sufficient. Long-term investments also require regulatory stability and legal certainty, as well as adequate infrastructure and coordinated action from public policies, regulatory agencies, and supervisory authorities.

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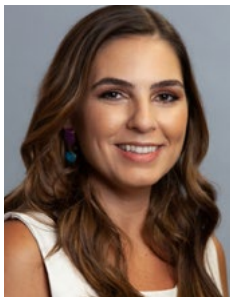

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Container Demurrage – Charges in Cases of Retention by the Federal Revenue Service

Demurrage has its origins in English maritime law in the 17th century, when charterparty contracts began to include a specific period for the loading and unloading of goods. Today, it is a recurring figure in international maritime transport contracts. When we speak of container demurrage, we are referring to the amount charged by the shipowner for the late return of the equipment, after the free time provided for in the contract or in the general terms of the bill of lading.

Since its origin, demurrage has served the function of compensating the owner for the additional time during which the equipment (formerly the vessel, today the container) remains immobilized. However, although widely used in commercial practice, its legal nature and the limits of its collection continue to be the subject of intense debate in Brazilian rules and case law.

Traditionally, there is discussion as to whether demurrage should be considered a penalty clause, requiring express contractual stipulation and limitation of amounts, or whether it should function as genuine compensation for the unavailability of the container, without the need to prove actual damages.

On one side, carriers argue that demurrage constitutes objective compensation arising from contractual breach: it is enough that the containers are not returned within the agreed period for the right to payment to arise, without the need to prove losses. On the other side, importers argue that the charge is in fact a penalty clause, dependent on specific agreement, proportionality, and limitation. Under Brazilian law, a penalty clause must be expressly stipulated, cannot exceed the value of the principal obligation, and may be reviewed by the court if deemed manifestly excessive.

Most Brazilian courts understood that demurrage has the nature of compensation, and that delays in the release of containers — even those resulting from actions of authorities — are not unforeseeable events and therefore cannot be used as an exemption from the liability of the contracting party.

However, a decision of the São Paulo Court of Justice (TJSP) in November 2022, which became final at the end of 2024[1], held that the retention of containers by the Federal Revenue Service constitutes an unforeseeable event and therefore cannot "generate expenses for the consignee, especially when dealing with a merchant or small company that would inevitably be unable to bear the amounts charged."

The TJSP recognized that the containers were not returned on time not due to negligence or default by the importer, but as a result of customs retention ordered by the Federal Revenue Service. It was further proven in the case that the defendant company sought release of the equipment through a writ of mandamus, which was denied at first instance, with relief only granted on appeal.

In such circumstances, the court held that it would not be reasonable to impose on the consignee the economic burden of a delay caused by a state act, beyond its will and impossible to avoid. The ruling therefore dismissed the demurrage claim and declared the collection action brought by the carrier unfounded. The Superior Court of Justice held that there was no nullity in the TJSP decision and upheld it, with the judgment thus becoming final and unappealable.

The decision represents a significant innovation, even though the prevailing view of Brazilian courts has been that demurrage arises automatically from the failure to return the container, even if the delay is due to bureaucratic obstacles in customs clearance. This judgment, however, signals that retention by customs authorities may constitute just cause sufficient to exempt the contracting party from liability, akin to force majeure or an act of God. As a result, it opens space for a more balanced interpretation of the transport contract, recognizing that high costs should not be imposed on the importer when the unavailability of the equipment results from a state act, particularly when the contracting party has taken all possible measures to avoid or reduce the delay.

The decision is also noteworthy for its mention to the excessive burden imposed on small and medium-sized importers, who are rarely able to bear charges that can exceed hundreds of thousands of dollars, as in the case at

[1] Appeal No. 1017296-83.2020.8.26.0562, Appellant: FENIX COMERCIO DE ROUPAS EIRELI, Appellee: ZIM INTEGRATED SHIPPING SERVICES LTD, adjudicated by the 16th Chamber of Private Law of the São Paulo Court of Justice.

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issue. Imposing on such importers full responsibility for late return of containers in cases of customs retention would mean transferring the entire risk of the activity to one party, contrary to the contractual logic of balance.

Equally important is the fact that the judgment reignites the debate on the function of demurrage. While on the one hand the institute is justified as an instrument to ensure the circulation of containers and to prevent them from remaining indefinitely in the hands of importers, on the other hand, it cannot be applied blindly in situations where unavailability arises from factors beyond the control of the contracting party.

In conclusion, the decision from the TJSP mentioned above stands out for relativizing the automatic enforceability of demurrage, reaffirming that the institute cannot be dissociated from the factual circumstances of the case. By recognizing just cause arising from customs retention, the court points toward a more equitable application of demurrage, balancing the interests of shipowners and importers and ensuring greater consistency with contractual principles of justice and good faith.

Recognition of Foreign Arbitral Awards in Brazil: A Pro-Enforcement Jurisdiction Comes of Age

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Brazil has emerged as a reliable jurisdiction in Latin America for recognizing foreign arbitral awards. Following a 2004 constitutional amendment that centralized this function at the Superior Court of Justice (STJ), practice has converged around a narrow, treaty-conform review.

The legal scaffolding is straightforward and stable. The Federal Constitution assigns the STJ competence to recognize foreign decisions. The Code of Civil Procedure (CPC) sets the procedural frame. The STJ's Internal Rules detail the steps. Finally, the Brazilian Arbitration Law works in tandem with the 1958 New York Convention, in force in Brazil since 2002. Together, these instruments channel the Court's review to formal regularity and public-policy compatibility, not a re-trial on the merits.

Experience now matches doctrine. A 2025 study by FGV Justiça and CONIMA, covering two decades of decisions, reports an overall success rate of roughly 87.7% for applications to recognize foreign arbitral awards before the STJ. Denials cluster around a few recurrent issues, such as missing or weak proof of the arbitration agreement, inadequate evidence that respondents were notified and had a chance to present a defense, and awards that were suspended or set aside at the seat. For businesses and counsel, the practical message is clear: when the paperwork is complete and due process is well documented, recognition typically follows.

The procedure is largely digital and predictable. The applicant files at the STJ with the award (original or certified copy), the arbitration agreement, proof of service and opportunity to be heard, evidence that the award is binding or effective at the seat and sworn translations. Because Brazil has been applying the Apostille Convention since 2016, apostilled documents generally suffice for authentication. After the respondent is summoned and the Federal Prosecutor's Office is heard, the STJ may grant full or partial recognition, and the case then moves to the Federal Court of first instance for enforcement.

Brazil's refusal grounds mirror Article V of the New York Convention and Article 38 of the Arbitration Law. They include an invalid arbitration agreement, a

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lack of proper notice or opportunity to be heard, excess of authority or procedural irregularities, an award that is not yet binding or that has been suspended or set aside at the seat, non-arbitrability, and violation of Brazilian public policy. The STJ applies these grounds narrowly and resists attempts to dress merits arguments as public policy objections. The approach aligns Brazil with pro-enforcement jurisdictions worldwide, giving parties high predictability.

Recent decisions underscore that approach. In *Guangxi Liugong v. BHMaquinas* (HDE 4189/EX, 3 Aug. 2022), the STJ recognized a CIETAC award from China notwithstanding objections that, in substance, asked the Court to revisit the tribunal's reasoning. The STJ declined to do so, emphasizing that recognition is strictly limited to treaty-based grounds and does not entail a merits review. The case is a useful illustration for in-house teams planning asset-tracing and enforcement: disputes over how arbitrators weighed the evidence will not carry the day at the recognition stage.

The Court has also clarified service expectations in arbitral matters. Reflecting the structure of the Arbitration Law, the STJ's August 2025 Jurisprudence Bulletin notes that service consistent with the parties' agreement -- or otherwise capable of proving unequivocal notice -- may suffice, even without a traditional letter rogatory, so long as due process is not impaired. For counsel, this favors assembling a robust notice trail (courier receipts, institutional dispatch logs, delivery confirmations, and relevant correspondence) rather than relying on a single formality.

Set-aside at the seat remains the most visible red flag. Consistent with Article V(1)(e) of the New York Convention, the STJ will refuse recognition of an award annulled where it was rendered, and applicants should therefore document the seat-court status up front. In practice, certificates or docket extracts showing that no set-aside action is pending, or that any such action was dismissed, can be outcome-determinative. This is one of the principal explanatory variables in the FGV/CONIMA dataset and a recurring theme in counsel's war stories.

All of this helps explain why Brazil is now attractive from a strategy standpoint. First, centralized jurisdiction at the STJ reduces regional variance and encourages consistent doctrine. Second, courts apply the Convention's refusal grounds in a disciplined way, which increases predictability for cross-border transactions. Third, once recognition is granted, the matter proceeds as a judicial title in the Federal Court, with access to contemporary enforcement tools, which is important for creditors assessing recovery timelines and costs.

In short, the pipeline from award to execution is clear and comparatively swift when formalities are in order.

Two practical points merit emphasis for companies operating between foreign countries and Brazil. First, start early on document hygiene in order to secure certified copies, apostilles, and sworn translations in parallel, and prepare a short chronology that ties each notice event to a procedural milestone. Secondly, monitor the seat from the beginning, because if there is a pending set-aside action, the STJ will expect a precise update and if the action was dismissed, attach the order. In a jurisdiction that has chosen predictability, these details are not box-ticking, they are the levers that turn a favorable award into recoverable value.

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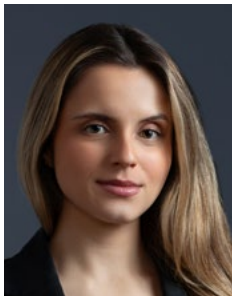

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Infrastructure Financing Instruments under Provisional Measure No. 1,303/2025

The tax regime applicable to financial investments and virtual assets in Brazil has undergone significant changes that directly affect infrastructure financing instruments, such as *debêntures incentivadas* (tax-incentivized infrastructure debentures) and Infrastructure Private Equity Funds (FIP-IE), following the enactment of Provisional Measure No. 1,303/2025 (MP 1,303) on June 11, 2025. The measure, which amends provisions of Law No. 12,431/2011, is set to take effect on January 1, 2026, if approved by Congress.

***Debêntures incentivadas* (Tax-incentivized Infrastructure Debentures)**

Debêntures incentivadas are debt securities issued by companies to finance projects deemed a priority by the government, benefiting from a zero income tax rate on earnings received by individuals. This feature has been key to attracting retail investors and consolidating them as one of the main sources of private financing for Brazilian infrastructure over the past decade.

MP 1,303 maintained the zero income tax rate on earnings received by Brazilian resident individuals from *debêntures incentivadas* issued and fully subscribed by December 31, 2025, but established a 5% rate for those issued after that date. In cases of renegotiation that modifies the maturity of originally exempt securities, MP 1,303 imposes a 5% income tax rate on earnings accrued after the renegotiation. In addition, earnings from *debêntures incentivadas* paid to nonresident investors will no longer be tax-exempt and will be subject to a 17.5% rate (or 25% if the investor is domiciled in a tax haven jurisdiction).

Infrastructure Private Equity Funds (FIP-IE)

FIP-IEs are private equity funds focused exclusively on infrastructure projects, allowing investors to acquire equity interests in companies in the sector instead of debt instruments. From a tax perspective, prior to MP 1,303, FIP-IEs benefited from a favorable regime for individuals and nonresidents, designed to channel long-term capital into infrastructure.

MP 1,303 also modified the tax treatment of FIP-IEs. Earnings obtained upon redemption or liquidation of fund shares are now subject to a 17.5% tax as a general rule. For individuals, the zero rate remains applicable to shares issued and subscribed by December 31, 2025, with a 5% rate applying to those

issued after that date. For nonresident investors, the exemption provided for in Law No. 11,312/2006 has been preserved, reinforcing the attractiveness of foreign capital in infrastructure funds.

Market Perception

The amendments have caused concern in the market, given the importance of *debêntures incentivadas* as a financing tool for infrastructure projects. The end of the exemption for individuals is expected to increase borrowing costs and reduce demand among retail investors, who have played a central role in the expansion of this instrument in recent years. On the other hand, from the government's perspective, the changes aim to harmonize tax treatment, correct distortions, and increase revenue, while partially preserving benefits for issuances carried out until 2025.

The new fiscal arrangement, however, points to a trend of favoring equity instruments over debt. While *debêntures incentivadas* will now be subject to taxation, the full exemption remains restricted to foreign capital invested in FIP-IEs, which may signal an intention to attract investors willing to take on equity participation in projects — the so-called smart money.

Outlook

MP 1,303 is expected to face intense debate in Congress, particularly given pressure from legislators linked to the infrastructure sector and the capital markets, who fear a potential reduction in fundraising volumes. Although the government has signaled its commitment to maintaining the measure's main provisions, adjustments during the legislative process cannot be ruled out, especially to mitigate the impact on retail investors and preserve the attractiveness of *debêntures incentivadas*. Until legislative approval is defined, a scenario of regulatory uncertainty persists, which may affect issuances planned for the second half of 2025.

Conclusion

The changes introduced by MP 1,303 partially reshape the landscape of infrastructure financing in Brazil. By eliminating tax exemptions, the government seeks to increase revenue and promote greater uniformity in investment taxation. However, this move may raise the cost of long-term capital, potentially harming the financing of strategic infrastructure sectors that depend on robust and continuous investment. If MP 1,303 is converted into law, Brazil's infrastructure financing environment will be marked by greater challenges to enable long-term investments, requiring structured and innovative solutions to meet the sector's needs.

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Recent changes in the Brazilian Trademark Law

Since late 2024, the Brazilian Patent and Trademark Office (BPTO) has been implementing a series of significant changes to trademark procedures and examination parameters. These initiatives include new prosecution rules, fee adjustments, and revised guidelines, all of which reveal a clear effort to modernize the Brazilian trademark system. The main developments are outlined below.

To begin with, on November 27, 2024, the BPTO updated its Trademark Guidelines by introducing a new interpretation of item VII, article 124, of the Brazilian Industrial Property Law (Law No. 9,279/96 – BIPL). This provision prohibits the registration of signs and expressions used solely as means of advertising (slogans). Under the new interpretation, however, the prohibition applies only when two conditions are met simultaneously: **(i)** the sign has an advertising nature, and **(ii)** it lacks distinctive character. As a result, slogans that also perform the essential function of a trademark, namely, identifying the origin of goods or services, are now registrable. In practice, when a sign combines distinctive elements with advertising ones, or when, in its entirety, it presents both advertising nature and distinctiveness, it may be accepted for registration.

In the following year, on June 3, 2025, the BPTO issued Ordinance No. 15/2025, which created an administrative procedure for the recognition of secondary meaning. Until then, such recognition could only be sought through court proceedings. According to the Ordinance, applicants must demonstrate continuous use of the mark for at least three years and prove that Brazilian consumers associate the mark exclusively with their goods or services. The regulation will come into force on November 28, 2025, and from that date a 12-month window will be open for applicants with pending trademark applications, or registrants facing nullity actions based on lack of distinctiveness, to request recognition of secondary meaning.

Subsequently, on July 29, 2025, the BPTO published Ordinance No. 25/2025, revising the parameters for market and image surveys submitted as evidence in requests for recognition of famous status of a mark. While any form of evidence remains admissible, the BPTO emphasized a preference for nationwide surveys. Importantly, it also set a minimum recognition threshold: a mark must achieve at least 61% recognition of the total sample, after deducting the

margin of error, to be deemed broadly known. If results fall between 61% and 71%, additional robust evidence will still be required. Conversely, recognition above 71% will be considered sufficient to meet the requirement.

In addition, between August 7 and December 7, 2025, the BPTO will implement Phase I of a pilot project for fast-track examination of trademark applications, regulated by Ordinances No. 27, 28, and 29/2025. A total of 1,200 requests will be admitted, with a minimum of 100 requests per modality. Eligible cases include: **(i)** applications subject to opposition based on the right of precedence established in paragraph 1, article 129, of the BIPL; **(ii)** applications connected to ongoing judicial proceedings before Federal or State Courts, excluding writs of mandamus; and **(iii)** applications related to products or services derived from patents prioritized by the BPTO.

Furthermore, as of September 20, 2025, a new procedure will apply to both national trademark applications and International Registrations designating Brazil under the Madrid Protocol. Under the current system, once an application is allowed, applicants must pay the fee for the first 10-year protection period and the issuance of the registration certificate. Failure to pay results in permanent shelving. Under the new system, however, no final payment will be required, and registration will be automatically granted after allowance. On the other hand, the filing fee will be substantially increased, balancing administrative simplification with cost adjustments.

Finally, on December 20, 2025, the BPTO will launch a simplified opposition procedure, named *Opposition 2.0*, designed to speed up proceedings and reduce costs. This new mechanism will apply exclusively to oppositions based on item XIX, article 124, of the BIPL, which prohibits the registration of signs conflicting with earlier marks. The main differences from the regular opposition procedure are: **(i)** no written arguments or supporting evidence may be submitted; and **(ii)** the opponent may rely on up to five prior registrations per class. Consequently, although *Opposition 2.0* offers a faster and more cost-effective solution, it will be restricted to straightforward cases based solely on prior rights, without room for complex legal argumentation.

Taken together, these developments reflect the BPTO's intention to modernize Brazil's trademark system, by adopting measures that seek to balance efficiency, accessibility, and legal certainty. They also align domestic practice with international trends, while reinforcing the role of trademarks in fostering innovation, entrepreneurship, and competitiveness in the Brazilian market.

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Stand September 2025

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