

The New Brazilian Economic Freedom Act

In January 2019, Jair Bolsonaro took office as the new president of Brazil. The Bolsonaro administration has indicated that changes to the Brazilian legal framework will be a strategic priority in the rebuilding of Brazil's economy in the wake of the system-wide corruption investigations that resulted in the bankruptcy or near-insolvency of several key Brazilian companies, particularly in the construction and oil & gas services sectors. To achieve its desired goals, the Brazilian federal government is pushing a legislative agenda to improve the business environment, foster competitiveness and bolster the interest of foreign investors.

As the largest economy in Latin America, Brazil has always been on the radar of international investors, especially in the last decade. Despite a recent history of economic recession and corruption scandals, the country is implementing a number of changes to improve legal certainty and attract or retain investments. In this regard, on September 20 2019, Brazilian Provisional Measure No. 881, also known as the Brazilian Economic Freedom Act (the **Act**), became Law No. 13,874/2019. The Act aims to improve the business environment and reduce bureaucracy, and is part of a broader legislative scheme to revamp the economy.

The summary below sets forth the main changes brought about by the Act that we believe are relevant to our international clients and to foreign investors.

Investment Funds

The Act provides a number of regulatory changes in order to bring the structure of local investment funds closer to international standards. One of the most notable changes is the possibility of limiting a quotaholder's liability to the value of their interest in the fund (similar to the liability of quotaholders in Brazilian limited liability companies). Prior to the Act, quotaholders' liability was generally uncapped, limited only by the proportion of their holdings with respect to the other quotaholders of the fund in question, with few exceptions such as with respect to real estate funds (where liability was limited to a quotaholder's interest in the fund). After the enactment of the Act, a fund's organizational documents may provide limited liability for investors so that they would not have to disburse additional money if the fund underperforms or requires additional capital. These regulatory changes are expected to improve the legal environment for Brazilian and international investors, stimulating the use of local investment vehicles and thus increasing investments in Brazil.

Equality among Contractual Parties

The Act included new provisions in the Brazilian Civil Code reinforcing the concept of *pacta sunt servanda* (i.e., the agreement between the parties is binding) in private agreements and stipulating that parties to civil and commercial contracts will now be considered equals under most circumstances (e.g., that both parties know the terms and understand the agreements they are entering into), unless specifically provided by applicable law, such as consumer laws pursuant to which consumers will continue to be considered the weaker party for purposes of contractual arrangements. In effect, Brazilian courts are now expected to adhere to the actual contractual terms when deciding disputes, even if that results in an apparent disadvantage to the party in a seemingly weaker position. This is expected to increase legal certainty in business relations as parties can have more assurance that their contractual agreements will not be disregarded by Brazilian courts.

Single-Member Limited Liability Companies

Brazilian limited liability companies (or *sociedades limitadas*) formerly required at least two quotaholders in order to be formed and maintained, and in the case of single member LLCs (or *Empresas Individuais de Responsabilidade Limitada*, **EIRELI**), a minimum corporate capital equivalent to 100 times the federal minimum wage (approx. USD 25,000 at the current exchange rate) is required. Under the Act, *Brazilian sociedades limitadas* may now be formed and maintained with a single quotaholder (who can be an individual or a legal entity), without the need of complying with the minimum capital requirements of an EIRELI.



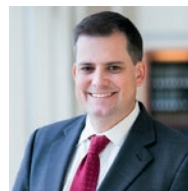
Piercing of the Corporate Veil

For courts to pierce the corporate veil, the Brazilian Civil Code requires the existence of an abuse of the legal form, which is characterized by “asset confusion” (*confusão patrimonial*) or the “misuse of the corporate purpose” (*desvio de finalidade*). Before the Act, these concepts were not defined by statute and, therefore, were subject to court interpretation. “Misuse of corporate purpose” is now limited to the use of the legal entity for purposes of harming creditors or for the commission of unlawful acts of any nature. “Asset confusion” has now been defined to be the lack of actual separation between the assets of the company and the assets of shareholders. This occurs where company assets are regularly used to satisfy the obligations of the shareholders or managers and vice-versa, there is a transfer of assets and liabilities without adequate consideration (with the exception of proportionally insignificant amounts) and under any other circumstances that demonstrate a lack of autonomy of corporate property.

Final thoughts

Additional statutory revisions are expected to be approved in the coming months in line with this new, more business-friendly legislative agenda being pushed by the current government. A major overhaul of the Brazilian tax code is also underway, and additional legislative initiatives are being proposed to further reduce the costs of doing business in Brazil. There have also been recent amendments to provisions of Brazilian labor and social security laws. The impact generated by these changes has been significant, with a substantial increase in the number of capital markets and M&A transactions in recent months and increased interest by international investors in Brazilian assets. We expect that future business-friendly legislative initiatives will continue to provide an economic environment conducive to increasing levels of foreign capital markets investments in transactions originating from Brazil.

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