Brazil

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1 Regulatory Framework

1.1 Are there any national laws or regulations that specifically regulate outsourcing transactions, either generally or in relation to particular types of outsourcing transactions (e.g. business process outsourcings, IT outsourcings, telecommunications outsourcings)?

The Brazilian laws that regulate outsourcing transactions are: Federal Law n. 6,019/1974 amended by Law n.13,429/2017, which states provisions about temporary work agreements and the working relations of service providers.

The temporary work agreement concerns the provision of services to third parties – a legal entity or equivalent – of any activities, including the main activity of the company, to respond to the need of transitory replacement of permanent staff or additional service demand.

Federal Law n. 13,429/17, article 4 A, also grants the provision of services to third parties for the execution of any of the activities, including those related to the core or means of the company.

Federal Law n. 6,019/1974, amended by Law n. 13,429/17, provides for the accomplishment of certain requirements without which the contract may be declared null, with recognition of the employment relationship between the worker and the recipient of the service.

In the temporary work agreement, the recipient of the service shall ensure the worker has the same rights as a permanent worker, including wage and working hours, for example.

The temporary work agreement, regarding the same employer, cannot exceed a term of 180 days, consecutive or not, which may be extended for up to 90 days, if it is proved that the same conditions of the prior contract have been kept (e.g.: replacement of a worker during sick leave). Upon termination of the temporary work agreement, the same worker may only render services to the same recipient after 90 days counted from the termination of the prior contract.

It is forbidden to hire temporary staff to replace workers on strike, as well as to perform services other than those contracted.

The service provider shall have a corporate capital compatible with the number of employees.

It is important to point out that the recipient of the service hires the service, not the worker, the reason being it cannot control his work, as this would characterise the main requirement of the employment relationship – the subordination.

The recipient of the service has subsidiary liability regarding labour obligations and social security payments related to the period of the contract.

Law prohibits the recipient of the service to hire workers that have rendered services to the company in the last 18 (eighteen) months, as an employee or independent provider, except if the partners of the contracted legal entity are retired.

The independent service provider contract is the one entered into directly between the worker – without an employment relationship – and the recipient of the service; meaning the performance of the service is the responsibility of the worker, without subordination.

1.2 Are there any additional legal or regulatory requirements for outsourcing transactions undertaken by government or public sector bodies?

Although the contracting rule in government bodies and in the public sector is the Tender (article 37, II, CF), outsourcing transactions have been allowed in some specific cases, as long as it is provided for by law and regulated by Decree (such as, Decree 2,271/97, which regulated paragraph 7 of article 10 of Decree-Law no. 200/1967).

The Federal Government issued Federal Decree no. 9,507/18, repealing Decree no. 2,271/97, thus recognising the possibility of indirect execution of services in the scope of the Direct Public Administration, Autarchies and Foundations, provided they meet the following requirements:

i) they involve decision-making or institutional positioning in the areas of planning, coordination, supervision and control;

ii) are considered strategic for the body or entity, whose outsourcing may jeopardise the control of processes, knowledge and technologies;

iii) are related to police, regulatory, public service and sanction power; and

iv) are inherent in the functional categories covered by the position plan of the body or entity, except as otherwise provided by law, or in the case the position is totally or partially extinguished under the general staff table.

The possibility of indirect execution of services understood as noncore activities is still viable, as long as the transfer of responsibility for administrative acts and decision-making, as well as those related to police and supervisory powers, are prohibited.

In relation to state-owned and subsidiary companies, there is a rule that prevents the indirect execution of services that require the contracting of professionals with attributions inherent to the positions included in their job and salary plans, except if they

contradict the administrative principles of efficiency, cost-effectiveness and reasonableness, such as in the occurrence of at least one of the following hypotheses:

i) temporary nature of the service;

ii) temporary increase in the volume of services;

iii) upgrading technology or service expertise, when it is appropriate and safe, in order to reduce cost or make such service less harmful to the environment; or

iv) impossibility of competing in the competitive market in which it operates.

It is evident that the regulation of Federal Decree no. 9,507/18 sought to incorporate a more extensive list of activities that can be outsourced, especially to the companies of the Union, whose outsourcing criterion for permanent activities lies mainly in the non-correspondence with the attributions inherent in the respective plans, positions and salaries.

1.3 Are there any additional legal or regulatory requirements for outsourcing transactions undertaken in particular industry sectors, such as for example the financial services sector?

As mentioned above, Federal Law n. 6,019/1974, amended by Law n. 13,429/17 regulates outsourcing agreements. Some sectors are also regulated by specific legislation, such as: (i) Law n. 8,987/95, paragraphs 1 to 3 of article 25 and article 175 of the Federal Constitution, regarding the concession and permission of public services; (ii) article 455 of the Labor Code, which regulates subcontracting contracts; (iii) Law n. 9,472/97, article 94, II, which regulates telecommunication services; (iv) Law n. 7,102/83, concerning security, surveillance and cash transportation services; and (v) independent service provider contracts.

1.4 Is there a requirement for an outsourcing transaction to be governed by local law? If it is not to be local law, is there any generally accepted norm relating to the choice of governing law?

Parties are free to choose the legislation applicable to the agreements; however, pursuant to the first paragraph of article 9, Law-Decree 4657/1942, obligations that take place in Brazil must be governed by Brazilian legislation, including with regard to labour matters. In this case, foreign legislation would be acceptable to the extent it does not conflict with Brazilian legislation. If both parties are Brazilian and the service will be provided in Brazil, Brazilian legislation will apply.

2 Legal Structure

2.1 What are the most common types of legal structure used for an outsourcing transaction?

The most common legal structure used for an outsourcing transaction are: (i) the execution of a services agreement with a third party; (ii) the execution of a temporary work agreement; and (iii) the execution of an independent service provider contract.

Also, some companies opt for corporate transactions such as a joint venture, partial spin-off or carve out.

By means of a joint venture, two or more parties join their business for a specific purpose and, as a general rule, share its management, results and risks. As a result, the joint venture (new company) can provide services to its shareholders as well as to third parties.

By partial spin-off or carve out, a company transfers to a third company (or to a new company) part of its assets in order to segregate specific sectors and/or services. Consequently, the third company can provide services to the original company as well as to other parties.

3 Procurement Process

3.1 What is the most common type of procurement process that is used to select a supplier?

With respect to the federal public sector, the general rule of acquisition of goods and selection of suppliers is the bidding, in which modalities are provided for in Law n. 8,666/93.

In certain contexts, the aforementioned law provides for situations in which the general rule may be waived (article 24 of Law n. 8,666/93) or non-demandable (article 25 of Law n. 8,666/93). Among the bidding modalities, the most common is the electronic auction, provided for in Law n. 10,520/2002, for the acquisition of common services and goods, in which performance and quality standards can be objectively defined by usual specifications in the market.

In connection to the private sector, the most common procurement process involves requesting fees proposals and carrying out a bidding process, which adheres to the internal compliance policies of the company.

4 Term of an Outsourcing Agreement

4.1 Does national or local law impose any maximum or minimum term for an outsourcing contract?

Article 598 of the Brazilian Civil Code establishes that a services agreement cannot have a term longer than four years, although the agreement is due to the payment of the debt of the person who renders it, or if it is destined to the execution of a certain work. Note, however, that the intention of this provision is to avoid cases of servitude and, as a general rule, private parties do not follow this limitation established in law. Hence, it is upon the parties' decision to define whether the contract will be for a determined or undetermined term, as well as the rules for its termination (i.e. term of previous notice, penalties, etc.).

With regards to temporary work agreements, please see our comments in question 1.1.

4.2 Does national or local law regulate the length of the notice period that is required to terminate an outsourcing contract?

Article 599 of the Brazilian Civil Code establishes that if the services agreement does not foresee the length of the notice period, the following terms must be observed: (i) eight days' notice, if the remuneration was determined for a period of one month or more; (ii) four days' notice, if the remuneration was determined for a period of a week or fortnight; and (iii) one day before, if the term of the agreement is a minimum of seven days. Besides the fact the Brazilian Civil Code sets forth those terms, the parties usually establish a notice period of at least 30 to 90 days in the case of contracts signed for an undetermined term (which is formalised by means of the delivery of a written notice to the other party or as

determined in the contract). However, pursuant to the sole paragraph of article 473 of the Brazilian Civil Code, if one of the parties invested significantly in order to enable the provision of the services, the term of the agreement may be enforced for a minimum period proportional to the investments carried out by the investor. In the hypothesis of termination with just cause, notice period and payment of indemnifications are not required.

5 Charging

5.1 What are the most common charging methods used in outsourcing transactions?

Although there are many different charging methods used for outsourcing transactions in Brazil, the most common are: (i) a fixed amount paid in whole or in instalments (as established in the agreement, e.g. on a monthly basis, a retainer fee plus final fees, etc.); and (ii) a variable amount, calculated in accordance with hours worked or specific actions carried out.

5.2 What other key terms are used in relation to costs in outsourcing transactions?

Other key terms used in outsourcing transactions may vary according to the industry in which the parties operate, nature of the services that are being hired, risks and amount involved, among others. The most common key terms connected to costs are as follows:

- the services covered by the agreement and the additional costs for the provision of uncovered services/expenses;
- which party shall be responsible for the costs for the implementation of the services;
- which party shall be responsible for the collection of each tax applicable to the provision of the services;
- determination of the index and frequency of correction of the price of the agreement; and
- pecuniary fine in the event of delay in performing the payment or any other breach to the agreement.

6 Transfer of Assets

6.1 What formalities are required to transfer, lease or license assets on an outsourcing transaction?

The parties must stipulate in an agreement if the assets will be transferred, leased or licensed in outsourcing transactions by means of a proper agreement (e.g. Sales Agreement, Lease Agreement, License Agreement).

In the case of the transfer of movable properties, as per the Brazilian Civil Code, no formality shall take place (the transfer will be completed by the delivery of the movable property); however, it is recommended to formalise the transfer by means of the execution of an agreement in which all terms and conditions will be determined.

In the case of a transfer of quotas/shares, a Share Purchase Agreement must take place. In the case of a limited liability company, the transfer of the quotas will be made by means of the execution of the amendment to the company's articles of association. In the case of a corporate, the transfer of the shares will take place by means of the execution of the Share's Register Book and the Share's Transfer Register Book.

In case of immovable properties, transfer shall be made by means of a public instrument, which must be filed with the applicable title to land in the Real Estate's Registry.

Rural lands are also subject to update the "Certificate of the Registration of Rural Property" issued by the National Institute of Colonization and Agricultural Reform ("INCRA").

With regards to intellectual property assets, it is necessary to proceed with the draft and signature of a formal agreement (of whichever nature: Transfer; Lease; License) involving the asset.

6.2 What are the formalities for the transfer of land?

Please see our comments under question 6.1 related to immovable properties.

6.3 What post-completion matters must be attended to?

Please see our comments under question 6.1.

If the assets constitute rights protected under the Brazilian Industrial Property Law (Law n. 9.279/1996) and the parties want to produce effect to third parties, the referred Agreement needs to be recorded before the Brazilian Patent and Trademark Office.

6.4 How is the transfer registered?

Please see our comments under question 6.1.

With regards to intellectual property assets, the transfer will take place by means of an independent procedure and needs to be presented before the Brazilian Patent and Trademark Office, such presentation must include the agreement and other related and necessary documents.

7 Employment Law

7.1 When are employees transferred by operation of law?

The Brazilian legal system allows the transference of the employment contract to a legal entity different from the one that executed the original employment agreement, in specific circumstances, as long as it does not cause any damage to the employment relationship, such as: (i) companies belonging to the same economic group or branches of the same company (article 2 of the Labor Code); and (ii) succession of companies, supporting the successor in completing the employment agreement (article 448-A of the Labor Code).

7.2 On what terms would a transfer by operation of law take place?

The transference of the employment agreement, in the hypothesis allowed by law, cannot cause any damage to the employee.

7.3 What employee information should the parties provide to each other?

The recipient of the service has subsidiary liability regarding the labour rights and social security payments related to the period of the contract. In this regard, the recipient of the service is subsidiary responsible for the labour obligations related to the period that the

worker rendered services on its behalf. It is therefore recommended that the recipient of the service monitors the fulfilment of all the legal and contractual obligations of the service provider with their employees on a monthly basis.

The Federal Supreme Court stated a notion of general repercussion in the case of not automatically transferring to the public entity – recipient of the service – the joint or subsidiary liability for the non-observance of labour, fiscal and commercials rights.

7.4 Is a customer/supplier allowed to dismiss an employee for a reason connected to the outsourcing?

The employment agreement may only be terminated, with or without just cause, for reasons related with the performance of the provision service contract by the employer, meaning the providing service company with which the employee has an employment relationship. The recipient of the services does not have an employment relationship with the workers, although has subsidiary liability for eventual non-compliance of the employment agreement. The recipient of the services has a relationship exclusively with the providing service company, and it is the providing service company that has a relationship with with the respective employees.

7.5 Is a supplier allowed to harmonise the employment terms of a transferring employee with those of its existing workforce?

In provision service contracts, there is no transference of employees to the recipient of the services, because there is no similarity between the conditions of the work contract and the conditions of the employment agreement.

However, Federal Law n. 6,019/1974, amended by Federal Law n. 13,429/2017, states that the recipient of the services, although they do not have an employment relationship with the temporary worker, shall grant remuneration and benefits equivalent to the remuneration of employees in the same professional sector.

7.6 Are there any pensions considerations?

In terms of public pensions, the Brazilian Federal government has a specific retirement and disability programme funded by both companies and employees, via payment of Social Security contributions.

In this regard, most of employees' remuneration paid through local sources is subject to the Social Security contribution on Payroll, due by the company (employer) at a general rate of 20%, plus the so-called "third parties' contributions", which vary from approximately 6-9%, depending on the company's activities.

Furthermore, employees themselves must contribute. In general, employers must discount (withhold at source) a percentage of up to 11% from employees' compensations (limited to a pre-determined maximum amount), which is reverted to the government pension scheme.

7.7 Are there any offshore outsourcing considerations?

In terms of offshore outsourcing services, parties should consider the heavy tax burden that may be levied on such transactions, which may reach up to approximately 40% of the amount of the service fees paid by the Brazilian entity to the party located abroad (depending on the nature of the service being imported into Brazil and the particular aspects of the deal). Also, specific rules may be applicable, e.g.: (i) Brazilian transfer pricing rules (in case of deals executed between related parties or involving certain jurisdictions); (ii) provisions brought by treaties to avoid double taxation; (iii) increase of income tax rates for payments made to tax jurisdictions considered tax havens; and (iv) other international tax considerations.

8 Data Protection Issues and Information Security

8.1 What are the most material legal or regulatory requirements and issues concerning data security and data protection that may arise on an outsourcing transaction?

As of February 2020, any outsourcing transaction will need to comply with the Brazilian Data Protection Law ("LGPD"). This law applies to any kind of treatment of personal data (including treatment by foreign companies, since the law can have extraterritorial effect) and requires a legal basis for processing data. Concerning LGPD, controllers and processors must take all related security, technical and administrative measures to protect personal data, and may be held liable for any damage that might affect data subjects.

8.2 Are there independent legal and/or regulatory requirements concerning information security?

Concerning the private sector, LGPD does not specifically cover information security issues but establishes that any processing of personal data must observe certain standards of information security. In this sense, as provided above, controllers and processors must take all related security, technical and administrative measures to protect personal data from unauthorised accesses and/or from accidental or unlawful destruction, loss, alteration, communication or any type of inappropriate or unlawful processing.

On the other hand, regarding information security in the public sector, the Presidential Decree No. 9.637/18 establishes the governance of information security within the federal public administration.

9 Tax Issues

9.1 What are the tax issues on transferring the outsourced business – either on entering into or terminating the contract?

Different tax issues may arise depending on the legal structure adopted by the parties for the outsourcing (i.e., on the type of agreement executed by the parties – services agreements, carve-out operations within a group structure, joint venture arrangements, etc.).

In general, if the outsourcing foresees the transfer of assets, this may trigger income tax and VAT issues. Particularly regarding income tax, it may levy upon the potential capital gain earned by the party in said transference (i.e., if the transference of the assets is made via a sales agreement with capital gain to the seller). In case of free lease of the assets, or regular rent, no adverse income tax consequences should arise. With regards to VAT, depending on the nature and singular circumstances of the transfer of assets (e.g., State in which

they are located and to where they will be transferred), both the Excise Tax ("IPI") and State Value-Added Tax ("ICMS") may levy (these taxes are further explained below). Broadly speaking, ICMS should not levy on said transactions (indeed it does not levy in the transfer of fixed assets due to express provisions in some Brazilian States' legislation, such as São Paulo), but there is a chance of it being charged depending on the States in which the parties are located. Lastly, also in case of selling, free lease or rent, no service tax ("ISS") should levy on the transaction.

9.2 Is there any VAT leakage on the supply of services under the outsourcing contract?

Broadly speaking, there should be no VAT leakage (VAT cascading) under outsourcing contracts. Naturally, this will, once again, depend on the format of the transaction (format of the outsourced arrangements and nature of the parties' activities) and its accurate description. Simply put, Brazilian VAT legislation (at both federal and state levels) were conceived so as to prevent this phenomenon.

VAT in Brazil is basically divided into two different taxes:

The Excise Tax ("IPI"), which is a Federal tax levied on imports and on sales of imported and manufactured products at rates that may vary according to the tariff code of the product. This tax works in a non-cumulative system in which credits related to the payment of the tax in previous transactions (e.g. imports, purchase of inputs, etc.) may be offset against debts of the tax connected with future transactions, hence the prevention of tax leakage. Very detailed rules are applicable to industrial outsourcing transactions, in which tax suspension may occur.

The other VAT is the so-called State VAT ("ICMS"), which is a State tax levied on sales of goods, on interstate and intermunicipal transportation services and telecommunication services, as well as on the importation of goods. Similarly to the IPI, this tax works in a non-cumulative system in which credits related to payment of the tax in previous transactions (e.g. imports, purchase of inputs, etc.) may be offset against debts of the tax connected with future transactions. ICMS rates vary depending on the tariff code of the product and local (State) legislation.

9.3 What other tax issues may arise?

Regardless of the choice of structure to the outsourcing, tax compliance aspects must always be taken into account, such as (i) legal obligations/liabilities related to the withholding and payment of employees' income tax and social security contributions (in case of transfer of employees), and (ii) tax liabilities in case of a corporate or contractual joint venture.

Moreover, depending on the nature of the services being rendered under the agreement and the form in which the agreement is legally structured, service tax ("ISS") may be levied upon such provision. The ISS is a municipal tax levied on services, at rates varying from 2% to 5%, depending on the municipality where the provider is located (or where the service is deemed to be provided, for some specific cases), as well as on the type of service rendered.

On a final note, parties should be aware that current administration of the Brazilian federal government is committed to implementing significant tax reforms in the country, which include (but are not limited to) changes in our VAT and in Social Security contribution rules.

10 Service Levels

10.1 What is the usual approach with regard to service levels and service credits?

In the Brazilian market, it is common to include mechanisms by which the contractor shall be allowed to demand corrections, withhold payments due under the agreement, and suspend or even terminate the agreement if the supplier fails to meet the performance standards set in the service levels.

11 Customer Remedies

11.1 What remedies are available to the customer under general law if the supplier breaches the contract?

Under Brazilian law, the customer can claim damages against any part of the supply chain. According to the Consumer Protection Code, the costumer has two options: (a) claim compensation for damages; or (b) request for specific performance to rectify the breach.

The customer can seek the remedies administratively (using consumer protection bodies) or judicially.

11.2 What additional protections could be included in the contract documentation to protect the customer?

Usually, the following dispositions are included in outsourcing agreements in order to protect the customer: (i) possibility of subjecting the supplier to a pecuniary fine, and suspension or termination of the agreement in the event of breach; (ii) obligation for the supplier to hold the customer exempt from any liability arising from the provision of the services and to indemnify the customer for any damage caused; (iii) inexistence of a legal relation between the customer and the employees dispatched by the supplier, aiming to avoid any subsidiary labour liability (this disposition may be disregarded by labour courts); and (iv) confidentiality clause; among others.

11.3 What are the typical warranties and/or indemnities that are included in an outsourcing contract?

It is common in outsourced agreements to set forth: (i) indemnification for any damage caused to any of the parties; (ii) penalties for breaches of the clauses; and (iii) fee retainer until the compliance of the terms and conditions of the contract; etc.

12 Insurance

12.1 What types of insurance should be considered in order to cover the risks involved in an outsourcing transaction?

Insurance policies connected to the provision of outsourced services are usually negotiated and hired in accordance with the potential liabilities and risks arising from the specific nature of the services to be provided (e.g. civil liability insurance, applicable to any damages caused by the supplier to the customer during the provision of the services).

13 Termination

13.1 How can a party to an outsourcing agreement terminate the agreement without giving rise to a claim for damages from the terminated party?

As mentioned in question 4.2 above, the rules for the termination of Services Agreements executed by private parties will depend on what has been established in the agreement.

Usually, agreements executed by a determined term foresee that early termination is not allowed, and in the case of early termination, the offender shall pay to the other party a penalty plus the amount due up to the end of the agreement. Also, please see our comment in question 4.2 regarding the sole paragraph of article 473 of the Brazilian Civil Code.

Agreements executed with an undetermined term usually foresee a period of previous notice that, if duly followed, will not cause the payment of penalties.

Some agreements also establish that both parties may terminate the agreement without giving rise to a claim for damages by means of the execution of a termination agreement.

It is worth mentioning that in the event of termination for material breach, the terminating party must present strong evidence of the failure. Also, if the termination for material breach is motivated by the service provider, the contractor may retain the outstanding payments for indemnification of any damages or guarantee of payment of the employees' labour rights that may be fired due to the termination of the contract. It is recommended to have a contractual provision in this regard.

13.2 Can the parties exclude or agree additional termination rights?

Yes. The parties are free to set forth additional termination provisions. However, if such provision is found to be unenforceable, it may be declared null by the Court of competent jurisdiction, if requested by any of the parties involved.

13.3 Are there any mandatory local laws that might override the termination rights that one might expect to see in an outsourcing contract?

No, there are no local laws that might override the termination rights commonly seen in outsourcing contracts. Notwithstanding, as stated in question 13.2, if any condition or provision is deemed unenforceable, it may be declared invalid.

14 Intellectual Property

14.1 How are the intellectual property rights of each party protected in an outsourcing transaction?

In general, the rights belonging to each party of the transaction are established in a formal agreement, which would ideally express such ownership of rights in this sense.

14.2 Are know-how, trade secrets and other business critical confidential information protected by local law?

Yes, the Brazilian Industrial Property Law provides protection of know-how, trade secrets and confidential information, and this protection is executed by means of, mostly, unfair competition.

14.3 Are there any implied rights for the supplier to continue to use licensed IP rights post-termination and can these be excluded from the agreement?

Ideally, a Licence Agreement would need to be restrictive in the sense of limiting such licence to the period in which the provision of services – for instance – in fact occurs, so that there is no possibility for the supplier to continue using the IP rights post-termination. In this sense, any provision that entails otherwise could, yes, be excluded from the agreement.

14.4 To what extent can the customer gain access to the supplier's know-how post-termination and what use can it make of it?

In Brazil, know-how is not susceptible to licensing; any agreement involving the transfer of know-how is, essentially, an assignment agreement. In this context, therefore, and considering such assignment in fact occurs, the customer would have gained access to the supplier's know-how post-termination; however, the use to be made of it could be restricted by the terms duly expressed in the referred assignment agreement. On the other hand, if it is not a know-how assignment agreement, any kind of confidential information accessed by means of a contractual agreement should be protected and its use be restricted, even after the termination of the contract.

15 Liability

15.1 To what extent can a party limit or exclude liability under national law?

In Brazil, the parties are free to negotiate and set forth the liability preferences in Services Agreements signed by private parties, such as limits, exclusions, parties responsible for each liability, among others.

However, some liabilities cannot be excluded pursuant to Brazilian law, such as discrimination, fraud, environmental damages and others.

As mentioned in question 13.1, as per the Brazilian Civil Code, the offender must indemnify the offended party by any damage caused.

15.2 Are the parties free to agree a financial cap on liability?

Brazilian law does not restrict setting forth a financial cap on liability. However, it is important for the financial cap to be reasonable considering the nature of the transaction, the liability amount and the nature of the applicable liabilities. If the cap is considered excessive or insignificant, the cap may be reviewed in case of judicial dispute.

16 Dispute Resolution

16.1 What are the main methods of dispute resolution used?

The main method of dispute resolution used in Brazil is still traditional Court litigation. As Brazilian law often governs domestic commercial and consumer transactions, disputes are often submitted under the Brazilian Civil Procedural Code default rules to the court where the defendant is located. Over the past years, arbitration has gained more space in domestic disputes, besides its former use on cross-border transactions, especially considering that judicial procedures can be notably lengthy. Nevertheless, the use of arbitration for smaller disputes is still limited due to the high cost for Brazilian standards. Alternative dispute resolution methods ("ADR") such as mediation or dispute boards are still unusual in the practice of commercial disputes considering a cultural resistance of Brazilian parties to show availability to settle on new-born disputes. ADR provisions are usually found on multi-tiered clauses as a pre-step for engaging in litigation or arbitration.

17 Good Faith

17.1 Is there any overriding requirement for a customer and supplier to act in good faith and to act fairly according to some objective test of fairness or reasonableness under general law?

Pursuant to the Brazilian Civil Code, all parties involved in the negotiations of an agreement or transaction are obligated to act in accordance with principles of probity and good faith during all times.

Provisional Measure 881 ("MP 881"), published on April 30, 2019, named as the "MP of Economic Liberty" brought some amendments to the Brazilian legislation. With regard to agreements, MP 881 changed some articles of the Brazilian Civil Code and determined that in private agreements, the principle of the minimum intervention of the State will prevail and revisions to the agreements by externals shall be exceptional.

In general, MP 881 reinforces the power of the free enterprise and the liberty to the parties to negotiate the terms and conditions of their agreements and that court decisions will not be able to review the clauses of the agreements except in strict and necessary cases. Nevertheless, we highlight that MP 881 is valid for 60 days and can be postponed for a further 60 days. If the MP is not converted into law during this period, it will lose its effects.

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