Lending to a Company in Brazil: Legal and Documentation Issues

by *Eduardo Salomão Neto*, *Luiz Roberto de Assis*, *Fabio Kupfermann Rodarte* and *Pedro Campos Ferraz*, Levy & Salomão Advogados

Practice notes | Law stated as at 01-Jun-2023 | Brazil

A Practice Note providing an overview of the key legal and documentation considerations for a loan agreement which is subject to English law or the law of a US state where a borrower, guarantor or security provider is incorporated in Brazil.

This Note is intended to be used for a loan financing where a borrower, guarantor, or security provider (an obligor) is incorporated in Brazil. While the issues to be considered in relation to an obligor when drafting a loan agreement, guarantee, or security document will be broadly similar regardless of an obligor's jurisdiction of incorporation, there will typically be jurisdiction-specific issues that will need to be considered.

It is important to identify any legal or documentation issues, specific practices, or concerns early in a loan finance transaction which involves an obligor incorporated in a jurisdiction other than the governing law of the loan financing documentation. This will then make it easier to ensure that these issues, practices, and concerns do not have a negative impact on the transaction timeline or lead to unnecessary transaction costs. Transaction-specific advice from lawyers in the appropriate jurisdiction should be taken in due course and appropriate amendments will need to be made to the documents used in the transaction.

This Note looks at the key legal and documentation issues for a corporate loan made under a loan agreement which is subject to English law or the law of a US state to an obligor incorporated in Brazil. It covers the following:

- Legal issues such as corporate authority and corporate benefit, laws of general application to lending, granting of security interests and guarantees, laws affecting the amount of interest charged, and whether the concepts of facility agent and security trustee are recognized in Brazil.
- Documentation issues such as typical contractual terms (for example, representations, undertakings (or covenants) and events of default), jurisdiction and arbitration provisions, and execution formalities.

This Note assumes the following:

- The obligor is a company incorporated in Brazil.
- The loan agreement is subject to English law or the law of a US state.

Legal Issues

Corporate Authority

As a general rule, companies incorporated in Brazil are not subject to any legal restrictions on their borrowing powers, and Brazilian law does not require approval from the shareholders or members of a borrower for a loan agreement if the loan is used for activities that fall within the borrower's corporate purposes.

However, the constitutional documents of a Brazilian company may impose a limit on amounts borrowed or specific restrictions relating to loan agreements, guarantees or security agreements. These restrictions may require approval by the shareholders or the board of directors, particularly for high-value loans or for guarantees or security for third parties' obligations.

Lack of compliance with the restrictions may impair the rights of a lender. There have, however, been court decisions in which lenders have successfully argued that they could not have reasonably been expected to be acquainted with the internal restrictions in the borrower's constitutional documents and should therefore not be affected by such non-compliance. This has been particularly the case where the circumstances surrounding the execution of a loan agreement created the appearance that the limitations did not exist or were complied with. It therefore appears that the rights of the lender are not affected in a situation where a reasonable third party would consider that an agent had authority or capacity to contract under a loan agreement.

In addition, under general corporate governance law, loans made by a Brazilian company must be made on arm's length terms. Typical examples of non-arm's length transactions include transactions which are not on market terms benefitting affiliated companies, parent companies, subsidiaries or officers or members of the lender's board of directors.

If such a transaction is entered into, holders of shares in a Brazilian corporation (*sociedade anônima*) and holders of *quotas* (the Brazilian term for the portions of the capital of a Brazilian limited company (*sociedade de responsabilidade limitada*)) are entitled to compensation for any loss and damage from the managers who enter into the transaction. A loan made by an entity to one of its officers or managers for their own benefit must in any event have the prior authorization of the general meeting of shareholders.

Corporate Benefit

Obligors are not required by Brazilian law to demonstrate to lenders that any borrowing of a loan, or provision of security or a guarantee, has a corporate benefit to the obligor. Nevertheless, an obligor may be required, under its constitutional documents, to demonstrate to its own shareholders or holders of *quotas* that a proposed loan, security or guarantee will have a corporate benefit to the company.

If an obligor fails to do so, the managers responsible for entering into a finance agreement may be liable to the company's shareholders for any loss or damage suffered, on the ground that the company failed to comply with its corporate purposes or acted exclusively for the benefit of a third party.

Lenders should not be affected by such actions, provided that the finance documents have been executed by people who are entitled to represent the obligors according to their constitutional documents.

Similarly, while lending of money between a lender and a borrower that are related or associated companies is generally allowed, financial institutions carrying on business in Brazil cannot grant loans or advances of any kind to certain related entities or persons, unless the transaction is undertaken at arm's length and within certain limits, among other exceptions. This includes loans granted by a foreign branch of a Brazilian financial institution.

Laws of General Application Relating to Lending, Granting of Security and Guarantees

The validity of security and guarantees may depend on the satisfaction of registration, notarization, and apostille or legalization requirements. Those requirements vary depending on where the agreement was executed, the details of the security or guarantee,

and the assets covered by security (see *Execution Formalities*). The physical location of an asset over which security is granted does not affect the validity of the security.

Under the Insolvency Act (*Lei de Recuperações e Falência*), in an insolvency the court can set aside certain transactions which took place within the 90 days (or a shorter period specified by the court) before the application for a declaration of insolvency or for judicial restructuring, or the first formal claim against the debtor as a result of non-payment. Transactions may be set aside regardless of whether the debtor intended to defraud creditors or the third party to the transaction knew of the debtor's financial difficulties. Transactions which may be set aside include, among others, the granting of security for existing debts or the registration of security after the debtor became insolvent. The court can also set aside transactions for which the company received no benefit if they were carried out within two years before the declaration of insolvency.

Restriction on Interest Rates, Accrual of Default Interest, and Other Fees

There are no restrictions on the interest and fees charged by foreign lenders that lend money to Brazilian companies but do not carry on business in Brazil.

Brazilian law does not impose any specific limit on the rate of interest or the fees charged by financial institutions which are authorized by the Central Bank to carry on business in Brazil, except in the case of interest charged on bank overdrafts granted to individuals and micro-entrepreneurs (businesses who have, among other requirements, gross earned income in the previous calendar year of not more than BRL360,000).

The Superior Justice Court has, however, decided that an excessive rate may be refused on the basis of general equitable principles. In that event, the rate which is considered excessive is replaced with a market rate. What is deemed "excessive" is determined by reference to economic factors such as inflation, market default rates and monetary policy (Superior Justice Court, Special Appeal No. 407.097, 12 March 2003). The interest rates used by financial institutions authorized by the Central Bank are available on the website of the Central Bank and used as a reference as to market rates.

The maximum rate of interest in the case of a lender carrying on business in Brazil which is not a financial institution authorized by the Central Bank is the rate in force for the payment of overdue taxes owed to the National Treasury (Decree No. 22.626, from 1933). This rate can be the Selic rate (the overnight rate set by the Central Bank, currently 13.75% per year) or 12% per year under Brazilian case law. Although the Selic rate should be considered as the correct limit, there have been decisions of the Brazilian courts applying the 12% limit.

An agreement for the accrual of interest on the basis of a year of 360 days is enforceable under Brazilian law.

An agreement for the accrual of interest at a rate which is dependent on a variable rate such as SONIA is permissible in strict legal terms. The Superior Justice Court has also decided that such a rate is permissible under Brazilian law and can be enforced in the Brazilian courts when stipulated in a loan agreement, on the ground that it is not a percentage specified unilaterally by the lender or lenders but, instead, a rate fixed according to fluctuations in the international market (Superior Justice Court, Special Appeal No. 164.929 - RS, 14 December 2000 and Superior Justice Court, Special Appeal No. 1.304.732 - RS, 3 June 2015).

Is the Concept of a Facility Agent or Security Trustee Recognized?

Facility Agent

Although Brazilian law does not expressly recognize the concept of a facility agent or security trustee, an entity can legally act on behalf of a syndicate of lenders. This entity will be considered as an attorney-in-fact of the lenders, capable of acting

as their representative in relation to third parties. An agent appointed under a law other than Brazilian law would equally be recognized as having that capacity.

The powers and duties of such an agent are generally set out in the loan agreement, but there are some general rules of Brazilian law governing the activity of attorneys-in-fact which are also applicable to agents. Those rules require due care to be exercised in carrying out the mandate and impose liability for damages caused by the agent or by a party to whom the agent delegates its powers.

Security Trustee
Security can be granted by a borrower to a lender who holds the security rights and deals with them on behalf of a syndicate of lenders. In such a case, the agent who executes the security agreement acts as an authorized representative of the lenders.

Such a representative may have powers and duties set out in the loan agreement or the security document, in addition to those set out in general law (see *Facility Agent*). Irrespective of the provisions set out in the loan agreement or in a security document governed by Brazilian law, a creditor or a security trustee cannot enforce security by taking and retaining permanent possession of the asset which is subject to the security. Instead, the security trustee must sell the assets covered by the security and apply the proceeds towards satisfaction of amounts owing to the lenders and the expenses of enforcement, with any excess then being payable to the relevant obligor.

Set-Off

Rights of set-off are provided by the Brazilian Civil Code. Article 369 of the Civil Code also permits the inclusion of a contractual right of set-off in connection with net, overdue and fungible debts. It is standard practice to include a contractual right of set-off in favor of the lender in a loan agreement governed by Brazilian law.

An agreement by a borrower not to set off any amounts due to it by a lender against amounts due from it to the lender is enforceable by the lender under Brazilian law.

Unlawful or Illegal Purpose of Loan

A lender's rights are generally not affected if a borrower applies the borrowed funds, directly or indirectly, to any act or activity prohibited by Brazilian law, such as using the amounts borrowed to buy illegal drugs or weapons without proper licenses.

If a lender knowingly profits from an illegal activity (for example, by agreeing an interest rate otherwise than at arm's length, aiming to share in the illegal profits), the loan agreement will be void. Those who deliberately participated in the financing of the illegal activities will also be subject to administrative and criminal liability.

Documentation Issues

Finance Documentation: Mandatory Clauses and Layout

There are no mandatory requirements relating to the layout or contents of a loan agreement between two companies or other legal entities, apart from the description of the parties, the principal amount of the loan and the interest rate. There is also no need for a promissory note for repayment purposes.

Guarantees (*fianças*) must be made in writing and identify the debt guaranteed. Security agreements must be made in writing and describe:

- The parties.
- The principal amount of the secured debt.
- The payment deadline(s).
- The interest rate (if any) and the assets over which the security is granted.

Additionally, mortgages (*hipotecas*) of real estate for an amount of more than approximately BRL36,000 must be created in writing by a public deed. Public deeds require the signature of a public notary and must be drawn up in Portuguese. They must contain:

- The date and place of signing.
- Certification of the identity and capacity of the parties.
- The name, nationality, matrimonial status, profession, domicile, and residence of the parties.
- A clear declaration of the will of the parties.
- Certification of compliance with the legal and tax requirements applicable to the act.
- A declaration that the writing was read in the presence of or by the parties.
- The signature of the parties and of the other persons attending the meeting, together with the signature of the notary or their legal substitute.

Every document in a language other than Portuguese (including loans, guarantees, and security agreements) must be translated into Portuguese by a sworn translator and registered at a Brazilian Registry of Deeds and Documents in order for it to have legal effect in relation to third parties and be admissible as evidence before courts in Brazil. Additionally, other registration procedures may apply in relation to particular forms of security (see *Execution Formalities*).

Conditions Precedent

A loan agreement may be binding from the moment of signature in relation to its general clauses (relating to, for example, an obligation to appoint representatives, or to form committees). However, the lender will not be obliged to disburse any amount under the loan agreement unless all the drawdown conditions (if any) have been satisfied.

The conditions precedent in a loan agreement governed by Brazilian law are typically much less numerous than those in an agreement governed by the law of a common-law jurisdiction. They may include:

- Correctness of the representations and warranties at the time of disbursement.
- Absence of an event of default or potential event of default.
- Carrying out of corporate acts and obtaining of authorizations required for the loan.
- Delivery of legal opinions from relevant advisers.
- Delivery of copies of financial statements of the borrower for the most recently ended financial year.
- Execution, translation, and registration of security agreements in connection with the loan.

- Evidence of delivery of relevant information on the transaction to the Central Bank Information System to enable remittance of principal, interest, and other loan amounts.

Repayment and Voluntary Prepayment

There are no legal restrictions relating to the repayment of a loan by instalments. As a general rule, a loan must be repaid on the agreed date or dates, but early repayment may be made if agreed by the parties. However, borrowers have the right to make early repayment without the consent of the lender in each of the following circumstances (irrespective of the governing law of the agreement):

- If the loan is secured by a mortgage of real estate or pledge of movable property, in which case the lender can require that the minimum payment must be not less than 25% of the initial amount of the loan (whether or not the lender is a financial institution). (For information on mortgages and pledges, see *Execution formalities*.)
- If the Brazilian Consumer Code is applicable to a loan.

Representations and Warranties

Typical representations given by a borrower, guarantor or other obligor incorporated in Brazil are the following:

- It is a company duly incorporated and validly existing under the laws of Brazil and has powers to conduct its business as presently conducted and to own its properties and other assets.
- It has full power and capacity to enter into and perform its obligations under each finance document and all necessary corporate, governmental, and other action has been taken to authorise the execution and performance of the same.
- Its obligations under each finance document constitute the legal, valid, and binding obligations of the obligor enforceable in accordance with their respective terms.
- The execution, delivery, performance, and discharge by any obligor of its obligations and liabilities under the finance documents do not and will not:
    - contravene laws, regulations, judgments, and orders;
    - conflict with or result in any breach of other instruments; or
    - contravene its constitutional documents.
- All licenses, consents, exemptions, filings, registrations, payment of taxes, notarizations, and authorizations necessary for the proper conduct of the obligor’s business and activities and the performance and discharge of its obligations under each finance document have been obtained or effected and are in full force and effect.
- All documents, certificates, and financial and other information provided by or on behalf of the borrower and any other obligor are true and accurate and do not omit anything, and all such documents are genuine and are executed by duly authorised officers.
- It is not in breach or default under any instrument to which it is a party or which is binding on it or on any of its assets.

- It has not taken any action and no legal proceedings have been started against it for winding up, dissolution, reorganization, insolvency, or enforcement of any encumbrance over its assets.
- Since the last accounting date there has been no material adverse change in any of the business, financial condition, and undertakings of each obligor.
- No material action, litigation, or administrative proceeding has been commenced or is pending against any obligor.
- There are no taxes which may be imposed on the lenders by virtue of the execution, delivery, or performance of the finance documents.
- Its obligations under the finance documents rank and will rank at least *pari passu* with all its unsecured obligations except for obligations mandatorily preferred by applicable laws.
- It is and has been in compliance with all applicable labour and environmental laws and there are no circumstances that could at any time prevent or interfere with this compliance.
- The proceeds of the loans have been and will be used only for the purposes described in the finance documents and in accordance with the requirements and conditions of those documents.
- The security documents are (or when executed and delivered by the parties will be) effective to create legal, valid, and enforceable security interests over all of the security assets purported to be covered by them.
- All necessary or appropriate recordings and filings have been (or prior to the date specified by the parties will be) made in all necessary or appropriate public offices and all other necessary action has been taken so that each security document creates a perfected security interest, and all necessary consents to the creation, perfection and enforcement of the security interests have been obtained from each of the relevant parties.

Undertakings

There are no specific restrictions on the types, duration, or geographical scope of undertakings which can be given by a borrower to a lender in a loan agreement. A clause imposing excessively onerous obligations on the borrower in the context of the particular agreement (for example, a covenant requiring a borrower to maintain certain financial ratios after full repayment of the loan) is not enforceable under Brazilian law.

Breach by the obligor of a negative pledge clause may accelerate the debt and make the obligor liable to the lender for damages, but does not affect the rights of a third party, whether or not the third party was aware of the clause.

Events of Default

Events of default typically included in loan agreements governed by Brazilian law do not vary significantly from those usually provided for in in an agreement governed by the law of a common-law jurisdiction. Those include, for example:

- Cross default.
- Breach of laws, decrees, and regulations.
- False, incorrect, or outdated representations.
- Failure to comply with covenants, undertakings, and other obligations under the loan agreement or security documents.

- Revocation of licenses or authorizations to conduct business.
- Breach of negative pledge clauses.
- Commencement of material actions or proceedings against the obligors which may impair their activities.
- Merger, spin-off, corporate reorganizations, or change of control.
- Change in financial condition, business condition or prospects which has a material adverse effect on the obligor's ability to perform its obligations.

Brazilian law does not limit the events which can be categorized in a loan agreement as events of default. An event of default which is determined at the discretion of the lender, however, is void under Brazilian law, irrespective of the governing law of the agreement. For example, a provision which would enable the lender to require early repayment simply because it needs cash in the short term, regardless of any material adverse change or any another factor affecting the borrower's integrity or financial condition, would be void if enforcement action under the agreement would be against a debtor in Brazil.

A provision entitling a lender to early repayment in certain circumstances without the need for the lender to make a demand is enforceable.

There are no laws in Brazil affecting the right of a borrower to remedy an event of default or a lender to waive an event of default, except in the case of insolvency events of default, the effects of which are determined by law. The right of a borrower to remedy an event of default and of a lender to waive an event of default are typically expressly provided for in the loan agreement.

The initiation of an insolvency procedure (*processo de falência*) of a borrower automatically constitutes an event of default under Brazilian law. In addition, the commencement of either of the two restructuring procedures provided for under the Insolvency Act (*Lei de Recuperações e Falência*) before an insolvency procedure is started typically constitutes an event of default. These are:

- Judicial restructuring (*Recuperação Judicial*). Under this procedure a court-appointed administrator oversees the conduct of the business of the debtor. The debtor presents a restructuring plan to the court, and the plan is then voted on by creditors at a meeting. Judicial restructuring does not affect debts which are the subject of fiduciary security (see *Execution Formalities*) or are tax credits or advances made by banks on foreign exchange contracts with advance payment of the Brazilian currency and deferred delivery of the foreign currency (*adiantamento sobre contrato de câmbio*).
- Extra-judicial restructuring (*Recuperação Extrajudicial*). Under this procedure, the debtor comes to an agreement with its creditors out of court. The debtor may then submit the agreement to the court for formal approval (*homologação*). Extra-judicial restructuring is not available in relation to tax claims or claims which are excluded from the judicial restructuring procedure. Claims relating to workplace accidents can be the subject of an extra-judicial restructuring procedure if there has been prior negotiation between the debtor and the trade union formed by workers in the particular industry.

Special insolvency procedures applicable to financial institutions and certain other institutions (such as securities brokers and dealers and payment institutions) are normally events of default under loan agreements where such institutions are obligors. These are:

- Intervention (*Intervenção*). Under this procedure the institution's regular activities are suspended for a maximum period of 12 months in order to prevent the escalation of financial difficulties. The senior managers of the financial institution

are removed and an officer appointed by the Central Bank attempts to arrange the institution’s recovery as a going concern.

- Temporary Special Administration (*Regime de Administração Especial Temporária*). This is a less restrictive form of intervention by the Central Bank, in which a board of officers is appointed by the Central Bank to continue running the entity's business, normally with the aim of recovery as a going concern.
- Extra-judicial liquidation (*Liquidação Extrajudicial*). Under this procedure the Central Bank appoints a liquidator to establish the value of the creditors' claims and sell the assets (with the Central Bank’s authorization) through public auction. The rules generally applicable to insolvency proceedings (*processos de falência*) provided by the Insolvency Act apply in this case.

Loan Transfers

A lender may transfer its outstanding rights under a loan agreement under Brazilian law. The borrower must be notified of the transfer in order to prevent a valid payment to the original lender by the borrower.

If the transferor is a financial institution authorized by the Central Bank but the transferee is not, the transfer must also satisfy the following regulatory requirements:

- The consideration for the transfer must be paid immediately upon the transfer.
- Information relating to the transfer must be maintained at the disposal of the Central Bank and disclosed in the transferor's financial statements.
- There must be no recourse against the transferor in case of default by borrower.
- There must be no repurchase of the transferred claims by the transferor.

If a transfer is made by a financial institution authorized by the Central Bank to a credit securitization company, the last two restrictions mentioned above do not apply. However, the repurchase of the transferred loan is only permitted if payment is immediate.

Similarly, if a transfer is made by a financial institution authorized by the Central Bank to a credit securitization investment fund, the last two restrictions mentioned above do not apply. The transferor, and entities related to it, may not invest in the investment fund, except by purchasing units that are subordinated to the other investors' rights in the event of redemption, so that it has the economic effect of a guarantee.

The rights of a lender under a loan agreement can be divided up between more than one assignee.

Jurisdiction Clause

A clause permitting a lender to commence proceedings in any jurisdiction but restricting the borrower to one specific jurisdiction if it wishes to commence legal proceedings is enforceable under Brazilian law. However, choice of jurisdiction clauses can be disregarded by the Brazilian courts if the sole object of the clause is to make it difficult or impossible for one of the parties to start proceedings.

In certain situations, the Brazilian courts will assume jurisdiction regardless of the provisions of a loan agreement (for example, in proceedings involving real estate situated in Brazil, irrespective of the jurisdiction where the lender is incorporated, or in proceedings arising from contracts entered into by Brazilian Public Administration entities).

Additionally, the Consumer Code may apply to loan agreements in some situations (for example, where there is major and clear disparity between the income and assets of the respective parties), in which case a one-sided clause would generally not be enforceable (for example, Special Appeal No. 1.691.814, 25 June 2019).

Arbitration

Arbitration is occasionally agreed on in loan agreements which are governed by Brazilian law.

An arbitration award rendered in Brazil, or by an arbitral tribunal with its seat in Brazil, is automatically enforceable, but an award rendered abroad is only enforceable in Brazil if the award has been recognized by the Superior Justice Court. This procedure is not a re-examination of the merits of the case, but instead an analysis of the validity of the arbitration agreement and its process. To be recognized in Brazil, the award must not be contrary to public policy in Brazil or the fundamental principles of Brazilian law (which address basic social, moral, and economic values). For example, awards rendered without proper service of process, in violation of Brazilian sovereignty, or by an arbitrator who did not act impartially, are contrary to the fundamental principles of Brazilian law.

Execution Formalities

There are no particular signing, witnessing, or notarization requirements for loan agreements. Nevertheless, the notarization of signatures is advisable as proof of the authorship and identity of each signatory, since it involves having an impartial third party (a public agent) to certify the authenticity of the signatures appended to the document.

Mortgages of real estate for an amount of more than approximately BRL36,000 must be created in writing by a public deed (see *Finance Documentation: Mandatory Clauses and Layout*). Fiduciary ownership security, fiduciary assignment security, pledges of movable property, and guarantees must be signed by the parties and by two witnesses. The witnesses do not need to be Brazilian citizens or residents. (For an explanation of fiduciary ownership security and fiduciary assignment security, see *Registration of Mortgages, Fiduciary Ownership Security and Fiduciary Assignment Security*.)

It may be helpful for an agreement signed outside Brazil to be notarized by a public notary licensed under the law of the place of signing, and for the notary's signature to be authenticated by a consular official of Brazil or (if the agreement was signed in a country covered by the Hague Convention) to be apostilled. Notarization may not be needed if the document is not subject to registration at a Real Estate Registry Office in Brazil.

Registration of Mortgages, Fiduciary Ownership Security and Fiduciary Assignment Security

Mortgages are perfected by registration at the Real Estate Registry Office for the place where the real estate is located.

Fiduciary ownership security (*propriedade fiduciária*) and fiduciary assignment security (*alienação fiduciária*) over real estate are both perfected by registration at the Real Estate Registry Office for the place where the property is located. Fiduciary ownership security is a transfer of ownership as security for a debt in favor of a financial institution. The debtor retains possession of the asset, but ownership is transferred to the creditor until the debt is repaid. Fiduciary assignment security, which is governed by Law No. 4,728/65 (Capital Market Act), is a slightly different form of security, available only to financial and capital market institutions, also involving transfer of ownership of assets to the creditor. Under current case law, fiduciary assignment security

cannot benefit non-Brazilian creditors, unless its subject is real estate. Notarization of the signatures on fiduciary security of both types is required for the completion of registration the security.

The Civil Code requires fiduciary ownership security over movable property to be registered at the Registry of Deeds and Documents for the principal office of the debtor or, in the case of fiduciary ownership security over vehicles, to be registered at the relevant vehicle registration authority. By contrast, fiduciary assignment security does not require registration (as indicated by Brazilian case law, such as Superior Justice Court, Appeal No. 1.444.873, 10 May 2018). However, the registration of any fiduciary assignment security at the Registry of Deeds and Documents is advisable in view of the risk of a court decision different from the conclusion above, in order to ensure the enforceability of the security.

Registration of Pledges

Pledge agreements (*contratos de penhor*) create a security interest over movable property (for example, rights over bank accounts, shares or *quotas*, receivables, or equipment) and must, as a general rule, be registered at the local Registry of Deeds and Documents. Agricultural pledges (over agricultural machinery and harvested produce, for example) and industrial and commercial pledges (over industrial machinery, for example) must be registered at the Real Estate Registry Office for the place where the relevant assets are located.

Registration of Security Over Shares, Securities, and Certain Other Assets

Additional registration requirements apply to security over some specific assets. Security (including pledges, fiduciary ownership security, and fiduciary assignment security) over shares issued by Brazilian companies, for example, must be registered in the company’s share register (Law No. 6,404/76). Security over securities or financial assets (as defined by regulation, and including creditors' rights against financial institutions) have to be registered with the registrar or central depositories authorized by the Central Bank or the Brazilian Securities Exchange Commission (*Comissão de Valores Mobiliários*) (Law No. 12,810/13).

Exceptions to the Requirement for Registration

Registration of security or a guarantee is not required if both the following conditions are satisfied:

- The security or guarantee is not governed by Brazilian law.
- It is unlikely that the security or guarantee will be enforced in Brazil (typically because the assets to which the security relates or over which enforcement may take place are not located in Brazil).

END OF DOCUMENT

