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1 Receivables Contracts

1.1 Formalities. In order to create an enforceable debt obligation of the obligor to the seller: (a) is it necessary that the sales of goods or services are evidenced by a formal receivables contract; (b) are invoices alone sufficient; and (c) can a binding contract arise as a result of the behaviour of the parties?

Contracts governed by Brazilian laws providing for the sale of goods or rendering of services may be undertaken either orally or in writing. Although not required, it is advisable that any contracts are evidenced by a written agreement to facilitate its judicial enforcement.

In general, invoices alone are not sufficient to create a debt obligation. However, Brazilian law allows the provider of goods or services to issue a "duplicate" of the invoice (*duplicata*). The *duplicata* together with (i) a receipt issued by the debtor to the effect that a good or service has been received, and (ii) a protest issued in writing by a public notary stating that payment has not been received in due time, form a debt instrument that can be foreclosed in court.

In certain circumstances, the behaviour of the parties is sufficient for a receivable "contract" to be deemed to exist. Generally, these situations are based on the historic relationship between the parties or the standard market practice related to certain types of receivables.

1.2 Consumer Protections. Do your jurisdiction's laws: (a) limit rates of interest on consumer credit, loans or other kinds of receivables; (b) provide a statutory right to interest on late payments; (c) permit consumers to cancel receivables for a specified period of time; or (d) provide other noteworthy rights to consumers with respect to receivables owing by them?

Interest rates can be freely contracted when: (i) at least one of the parties is a financial institution or other institution authorised to operate by the Central Bank of Brazil, or an investment fund or club; (ii) both parties are legal entities; or (iii) the transaction is represented by a credit title or a security, or is carried out in the financial or securities market. That not being the case, there is a limit on interest rates charged that is equivalent to two times the rate charged by the government for late payment of federal taxes (SELIC) minus the consumer inflation index (IPCA).

Brazilian law provides a statutory right to interest on late payments, which corresponds to the rate charged by the government for late payment of federal taxes minus the consumer inflation index (IPCA). Such statutory rate applies unless the agreement or specific law provides otherwise. Penalties for late payments on consumer contracts are capped at 2%.

Consumers may cancel a contract within a period of seven days from its signature or receipt of the good or service, when contracting products and services outside a shop (e.g., by internet or telephone). Upon cancellation, receivables are cancelled and any amount already paid by the consumer must be promptly returned with the corresponding monetary adjustments.

1.3 Government Receivables. Where the receivables contract has been entered into with the government or a government agency, are there different requirements and laws that apply to the sale or collection of those receivables?

The sale of receivables owned by the government or a government agency is a sale of public assets and therefore is subject to specific rules, which provide that government sales must be undertaken through a public auction in accordance with a procedure detailed by Federal Law No. 14,133, dated 1 April 2021.

Furthermore, restrictions are imposed by law on the level of indebtedness by the government and its agencies. Because of that, agreements for the sale of government receivables generally avoid provisions by which the seller accepts liability for non-performance of the assigned credits. The collection of receivables owned by the government or by a government agency must be pursued by the relevant entity rather than by the purchaser, via a special collection suit available only to the benefit of public entities. The purchaser may only collect the receivable directly against the obligor if the sale was formalised prior to the commencement of such collection.

Where the receivable is owned by a private seller and the government or government agency is the obligor, then the collection must be pursued in court, subject to the following specific rules, among others: (a) the claimant will not be entitled to attach or seize any obligor's assets; (b) the final decision against the obligor will not be immediately enforceable; and (c) the judge will issue an order of payment, that will wait in line until all previous orders have been complied with (this could take years).

Since several exceptions to the rules above may apply in relation to government-originated credits, a case-by-case analysis is strongly advised.

2 Choice of Law – Receivables Contracts

2.1 No Law Specified. If the seller and the obligor do not specify a choice of law in their receivables contract, what are the main principles in your jurisdiction that will determine the governing law of the contract?

According to Article 9 of Decree-Law No. 4,657, dated 4 September 1942, an obligation is governed by the law of the place of its constitution. In the case of contracts, this is the place of signature of the contract, and if the parties are not found in the same country at the time of execution, the contract is considered formed at the place where the last person to sign the agreement signed it.

A different rule applies to contracts formally made of an offer to be accepted via a separate copy of the same instrument by the other party, in which case the law of the place of residence of the offeror prevails. Furthermore, there is jurisprudential authority to the effect that choice of law in violation of such provisions is not acceptable.

2.2 Base Case. If the seller and the obligor are both resident in your jurisdiction, and the transactions giving rise to the receivables and the payment of the receivables take place in your jurisdiction, and the seller and the obligor choose the law of your jurisdiction to govern the receivables contract, is there any reason why a court in your jurisdiction would not give effect to their choice of law?

No, Brazilian law will apply in this case.

2.3 Freedom to Choose Foreign Law of Non-Resident Seller or Obligor. If the seller is resident in your jurisdiction but the obligor is not, or if the obligor is resident in your jurisdiction but the seller is not, and the seller and the obligor choose the foreign law of the obligor/seller to govern their receivables contract, will a court in your jurisdiction give effect to the choice of foreign law? Are there any limitations to the recognition of foreign law (such as public policy or mandatory principles of law) that would typically apply in commercial relationships such as that between the seller and the obligor under the receivables contract?

As noted in our answer to question 2.1 above, to the extent that the choice of law does not violate Article 9 of Decree-Law No. 4,657/42, a judicial court in Brazil will give effect to the choice of a foreign law (arbitral tribunals in Brazil, as opposed to judicial courts, are likely to always give effect to said choice).

However, foreign laws, foreign judicial decisions and arbitral awards based on foreign laws (either rendered in Brazil or abroad) will not be enforceable in Brazil in case they violate the Brazilian national sovereignty, public policy or morality.

3 Choice of Law – Receivables Purchase Agreement

3.1 Base Case. Does your jurisdiction's law generally require the sale of receivables to be governed by the same law as the law governing the receivables themselves? If so, does that general rule apply irrespective of which law governs the receivables (i.e., your jurisdiction's laws or foreign laws)?

No. Brazilian law does not require the sale of receivables to be governed by the same law that governs the receivables.

3.2 Example 1: If (a) the seller and the obligor are located in your jurisdiction, (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of your jurisdiction to govern the receivables purchase agreement, and (e) the sale complies with the requirements of your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller, the obligor and other third parties (such as creditors or insolvency administrators of the seller and the obligor)?

Yes, provided that: (i) the receivables purchase agreement is executed in Brazil; or (ii) the agreement takes the form of a unilateral written offer made by the seller located in Brazil to be accepted via a separate copy of the same written instrument by the purchaser. The agreement shall be registered with the registry of titles and deeds of the domicile of the resident contracting parties to be effective against third parties, and the sale of the receivable shall be notified to the obligor in order to be effective against the latter.

3.3 Example 2: Assuming that the facts are the same as Example 1, but either the obligor or the purchaser or both are located outside your jurisdiction, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller), or must the foreign law requirements of the obligor's country or the purchaser's country (or both) be taken into account?

If the obligor is located outside Brazil, the answer is yes, Brazilian courts will recognise the receivables sale as effective against the seller and third parties regardless of the place of location of the obligor.

If the purchaser of the receivable is located outside Brazil, then the answer is yes, Brazilian courts will recognise the receivables sale as effective against the seller and third parties, provided that the requirements of the law applicable to the receivables sale are met.

Regarding effectiveness against third parties, please refer also to question 3.2 above.

3.4 Example 3: If (a) the seller is located in your jurisdiction but the obligor is located in another country, (b) the receivable is governed by the law of the obligor's country, (c) the seller sells the receivable to a purchaser located in a third country,

(d) the seller and the purchaser choose the law of the obligor's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the obligor's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller) without the need to comply with your jurisdiction's own sale requirements?

Yes, but only if both the receivables and the receivables purchase agreement are executed in the obligor's country. As noted in question 2.1 above, to the extent that the choice of law does not violate Article 9 of Decree-Law No. 4,657/42, a judicial court in Brazil will give effect to the choice of a foreign law.

With respect to the enforceability of foreign laws, foreign judicial decisions and arbitral awards based on foreign laws, please refer to question 2.3 above.

Regarding effectiveness against third parties, please also refer to question 3.2 above.

3.5 Example 4: If (a) the obligor is located in your jurisdiction but the seller is located in another country, (b) the receivable is governed by the law of the seller's country, (c) the seller and the purchaser choose the law of the seller's country to govern the receivables purchase agreement, and (d) the sale complies with the requirements of the seller's country, will a court in your jurisdiction recognise that sale as being effective against the obligor and other third parties (such as creditors or insolvency administrators of the obligor) without the need to comply with your jurisdiction's own sale requirements?

Yes, Brazilian courts will recognise the foreign sale as long as the receivables purchase agreement has been executed in the seller's country. As noted in question 2.1 above, to the extent that the choice of law does not violate Article 9 of Decree-Law No. 4,657/42, a judicial court in Brazil will give effect to the choice of a foreign law.

With respect to the enforceability of foreign laws, foreign judicial decisions and arbitral awards based on foreign laws, please refer to question 2.3 above.

Regarding effectiveness against third parties, please also refer to question 3.2 above.

3.6 Example 5: If (a) the seller is located in your jurisdiction (irrespective of the obligor's location), (b) the receivable is governed by the law of your jurisdiction, (c) the seller sells the receivable to a purchaser located in a third country, (d) the seller and the purchaser choose the law of the purchaser's country to govern the receivables purchase agreement, and (e) the sale complies with the requirements of the purchaser's country, will a court in your jurisdiction recognise that sale as being effective against the seller and other third parties (such as creditors or insolvency administrators of the seller, any obligor located in your jurisdiction and any third party creditor or insolvency administrator of any such obligor)?

Yes, Brazilian courts will recognise the receivables sale as long as the receivables purchase agreement has been executed in the purchaser's country. As noted in question 2.1 above, to the extent that the choice of law does not violate Article 9 of Decree-Law No. 4,657/42, a judicial court in Brazil will give effect to the choice of a foreign law.

With respect to the enforceability of foreign laws, foreign judicial decisions and arbitral awards based on foreign laws, please refer to question 2.3 above.

Regarding effectiveness against third parties, please also refer to question 3.2 above.

4 Asset Sales

4.1 Sale Methods Generally. In your jurisdiction what are the customary methods for a seller to sell receivables to a purchaser? What is the customary terminology – is it called a sale, transfer, assignment or something else?

The most common method is to enter into an assignment of credit rights agreement, which is normally notified to the obligor and registered with a public notary. These procedures guarantee the effectiveness of the assignment against the obligor and third parties. The customary terminology is "assignment of credit rights" (*contrato de cessão de crédito*), but market players also commonly refer to "sale of receivables" (*venda de recebíveis*).

4.2 Perfection Generally. What formalities are required generally for perfecting a sale of receivables? Are there any additional or other formalities required for the sale of receivables to be perfected against any subsequent good faith purchasers for value of the same receivables from the seller?

In general, there are no formalities for a sale of receivables to be valid between the parties (assignor and assignee).

Except if otherwise provided under the receivables contract, no approval or authorisation by the obligor is necessary to render the sale valid and enforceable. However, the sale will only be enforceable against the obligor if the latter is notified about it.

The validity and enforceability against third parties depends on the registration of the sale agreement with the registry of titles and deeds of the city of domicile of both parties.

4.3 Perfection for Promissory Notes, etc. What additional or different requirements for sale and perfection apply to sales of promissory notes, mortgage loans, consumer loans or marketable debt securities?

For promissory notes, transfer is made through endorsement – no other formalities of the kind mentioned in question 4.2 above are required. For loans, which are normally evidenced by a written agreement other than a negotiable instrument of credit, the formalities are those described in question 4.2 above. Mortgage loans also require registration before the competent Real Estate Registry Office to make the mortgage enforceable against third parties. Marketable debt securities, if properly registered with the Brazilian securities authorities and systems of clearance, can be freely sold in stock exchanges and/or over-the-counter markets.

4.4 Obligor Notification or Consent. Must the seller or the purchaser notify obligors of the sale of receivables in order for the sale to be effective against the obligors and/or creditors of the seller? Must the seller or the purchaser obtain the obligors' consent to the sale of receivables in order for the sale to be an effective sale against the obligors? Whether or not notice is required to perfect a sale, are there any benefits to giving notice – such as cutting off obligor set-off rights and other obligor defences?

Notice to the obligor is required for a sale of receivables to be effective against the obligor. The obligor's consent is not required unless otherwise provided in the receivables contract (or if the contract prohibits assignment of the receivables). Notice to the obligor cuts off set-off rights with respect to the obligor's and seller's liquid financial obligations with one another.

4.5 Notice Mechanics. If notice is to be delivered to obligors, whether at the time of sale or later, are there any requirements regarding the form the notice must take or how it must be delivered? Is there any time limit beyond which notice is ineffective – for example, can a notice of sale be delivered after the sale, and can notice be delivered after insolvency proceedings have commenced against the obligor or the seller? Does the notice apply only to specific receivables or can it apply to any and all (including future) receivables? Are there any other limitations or considerations?

There are no general statutory requirements regarding the form of the notice or how it must be delivered if the receivables agreements may be regarded as debt and the transfer as an assignment of credit rights only (*cessão de crédito*). If the credit agreement indicates a specific form of notice or if there is any legal requirement for the specific type of credit, the same should be followed. There is no time limit to give notice to obligors. A notice of sale can be delivered after the sale and after insolvency proceedings against the obligor or the seller have commenced and it will only be effective after delivery. The effect is that if a debtor pays the original creditor (seller) prior to receiving the notice, the payment will be valid and the purchaser will have no recourse against the obligor. Also, if the receivables are provided as negotiable instruments, they may be assigned without any prior notice to the obligor and will be valid against the obligor if the assignment was performed in accordance with legal requirements for that particular type of negotiable instrument.

4.6 Restrictions on Assignment – General Interpretation. Will a restriction in a receivables contract to the effect that "None of the [seller's] rights or obligations under this Agreement may be transferred or assigned without the consent of the [obligor]" be interpreted as prohibiting a transfer of receivables by the seller to the purchaser? Is the result the same if the restriction says "This Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights or obligations)? Is the result the same if the restriction says "The obligations of the [seller] under this Agreement may not be transferred or assigned by the [seller] without the consent of the [obligor]" (i.e., the restriction does not refer to rights)?

Yes, the first provision implies that the transfer of receivables may only be made with the express consent of the obligor. The result is slightly different from a provision that subjects the transfer of the agreement itself to the other party's approval. In that case, a transfer of receivables (but not of any obligations) may be done without the obligor's consent. The last provision does not prohibit the transfer of receivables by the seller to the purchaser, because it refers to a restriction to transfer the obligations of the seller and not its receivables (rights) against the obligor.

4.7 Restrictions on Assignment; Liability to Obligor. If any of the restrictions in question 4.6 are binding, or if the receivables contract explicitly prohibits an assignment of receivables or "seller's rights" under the receivables contract, are such restrictions generally enforceable in your jurisdiction? Are there exceptions to this rule (e.g., for contracts between commercial entities)? If your jurisdiction recognises restrictions on sale or assignment of receivables and the seller nevertheless sells receivables to the purchaser, will either the seller or the purchaser be liable to the obligor for breach of contract or tort, or on any other basis?

Yes, all restrictions referred in question 4.6 above are enforceable in Brazil and there are no exceptions to this rule. If the receivables are sold or assigned in breach of explicit contractual provision, in general only the seller is liable to the obligor for breach of contract and the purchaser will have no title to claim payment of the receivables from the obligor.

4.8 Identification. Must the sale document specifically identify each of the receivables to be sold? If so, what specific information is required (e.g., obligor name, invoice number, invoice date, payment date, etc.)? Do the receivables being sold have to share objective characteristics? Alternatively, if the seller sells *all* of its receivables to the purchaser, is this sufficient identification of receivables? Finally, if the seller sells *all* of its receivables *other than* receivables owing by one or more specifically identified obligors, is this sufficient identification of receivables?

There is no statutory provision as to what type of information is necessary on each receivable for the sale to be valid; however, the sale document shall include sufficient information so that the receivables sold can be properly identified. Simply stating that the seller sells all of its receivables, or all of the receivables owed by a certain obligor, is not sufficient identification of the receivables. Usually, it is common to indicate in respect to each receivable: the obligor's name and taxpayer registration number; the date of execution of the receivables contract; and the invoice number and payment date. Assignment of future receivables usually makes reference to the commercial agreement that will give rise to the future receivables. Sale of real estate receivables shall also contain a reference to the relevant real estate.

Different kinds of receivables – sharing or not objective characteristics – can be sold under the same sale contract.

4.9 Recharacterisation Risk. If the parties describe their transaction in the relevant documents as an outright sale and explicitly state their intention that it be treated as an outright sale, will this description and statement of intent automatically be respected or is there a risk that the transaction could be characterised by a court as a loan with (or without) security? If recharacterisation risk exists, what characteristics of the transaction might prevent the transfer from being

treated as an outright sale? Among other things, to what extent may the seller retain any of the following without jeopardising treatment as an outright sale: (a) credit risk; (b) interest rate risk; (c) control of collections of receivables; (d) a right of repurchase/ redemption; (e) a right to the residual profits within the purchaser; or (f) any other term?

Brazilian law does not, as a rule, apply a substance-over-form approach in transaction analysis and as a result the parties are free to negotiate the terms of the sale without jeopardising perfection. However, if the economic characteristics of the transaction completely deprive the sale from having effect, the transaction may be considered "simulated" and thus void, notwithstanding the description of the transaction in the relevant documents as an outright sale. Law 13,874, dated 20 September 2019, reinforced the will of the parties in respect of the interpretation of an executed agreement and established that contractual review by courts should be limited and exceptional. Ultimately, the question is one of fact and should be determined on a case-by-case basis.

4.10 Continuous Sales of Receivables. Can the seller agree in an enforceable manner to continuous sales of receivables (i.e., sales of receivables as and when they arise)? Would such an agreement survive and continue to transfer receivables to the purchaser following the seller's insolvency?

Yes. The seller can agree in an enforceable manner to continuous sales of receivables. This is common in Brazil.

Pursuant to the Brazilian bankruptcy law, bilateral agreements do not automatically terminate due to insolvency. The judicial administrator may continue the sales of receivables if the performance of such obligations will reduce the amount due by the seller (the insolvent counterparty), or avoid its increase, and it is authorised by the creditors committee.

4.11 Future Receivables. Can the seller commit in an enforceable manner to sell receivables to the purchaser that come into existence after the date of the receivables purchase agreement (e.g., "future flow" securitisation)? If so, how must the sale of future receivables be structured to be valid and enforceable? Is there a distinction between future receivables that arise prior to *versus* after the seller's insolvency?

The seller can commit to sell receivables that come into existence after the date of the receivables purchase agreement in an enforceable manner. In fact, this has been recognised by the Brazilian Securities Commission (*Comissão de Valores Mobiliários* – CVM), whose regulations have permitted since 2006 the securitisation of receivables that will come into existence after the date of the receivables sale contract, through a specific type of receivables investment fund (*fundo de investimento em direitos creditórios* – FIDC).

With respect to the identification of future receivables in order to structure the sale in a valid and enforceable manner, please refer to question 4.8 above.

This analysis is altered after the insolvency of the seller is declared, since the administrator is vested with the power to terminate any agreement in case continuing to perform such agreement is not profitable for the bankrupt estate. As a result, in the case of bankruptcy there is discretionary room for a decision regarding the continued validity of the assignment agreement.

4.12 Related Security. Must any additional formalities be fulfilled in order for the related security to be transferred concurrently with the sale of receivables? If not all related security can be enforceably transferred, what methods are customarily adopted to provide the purchaser the benefits of such related security?

Except if provided otherwise in the agreement, the assignment of a credit includes the related security. As a rule, if there is no prohibition to the sale of the receivables, there shall be no prohibition in transferring the related security. However, it is necessary to notify the guarantor so that he/she/it is aware of the sale of the receivables and that he/she/it is now liable towards the assignee. It may also be necessary to take specific measures to document and register the assignment of the security depending on the nature of the security (e.g., if the collateral is a mortgage of a real estate, assignment must be registered at the relevant real estate registry).

4.13 Set-Off; Liability to Obligor. Assuming that a receivables contract does not contain a provision whereby the obligor waives its right to set-off against amounts it owes to the seller, do the obligor's set-off rights terminate upon its receipt of notice of a sale? At any other time? If a receivables contract does not waive set-off but the obligor's set-off rights are terminated due to notice or some other action, will either the seller or the purchaser be liable to the obligor for damages caused by such termination?

In this situation, the obligor's set-off rights towards the seller terminate upon receipt of notice of a sale. Neither the seller nor the purchaser is liable to the obligor for the damages caused by such termination.

4.14 Profit Extraction. What methods are typically used in your jurisdiction to extract residual profits from the purchaser?

There are no specific or more common methods for profits extraction used in Brazil. Since the credit assignment agreements can be freely negotiated between the seller and purchaser, different methods can be designed. A simple way of extracting profits from the purchaser would be to link the price due to the seller to the positive variation of the future compensation earned by the purchaser (when variable).

5 Security Issues

5.1 Back-up Security. Is it customary in your jurisdiction to take a "back-up" security interest over the seller's ownership interest in the receivables and the related security, in the event that an outright sale is deemed by a court (for whatever reason) not to have occurred and have been perfected (see question 4.9 above)?

This is not a regular feature in most transactions, but it can be negotiated between the parties. An alternative commonly used in Brazil as a means for the creation of back-up security is the assignment by a seller to the purchaser of a greater number of credits than the final value to be securitised, so that the excess works as extra collateral.

5.2 Seller Security. If it is customary to take back-up security, what are the formalities for the seller granting a security interest in receivables and related security under the laws of your jurisdiction, and for such security interest to be perfected?

A written clause in the agreement assigning the credits is recommended.

5.3 Purchaser Security. If the purchaser grants security over all of its assets (including purchased receivables) in favour of the providers of its funding, what formalities must the purchaser comply with in your jurisdiction to grant and perfect a security interest in purchased receivables governed by the laws of your jurisdiction and the related security?

If the security takes the form of a pledge, perfection will require a written agreement registered with a registry of titles and deeds of the place of residence of the pledgor, together with notification to the obligor of pledged receivables. In the case of the purchaser's assets including real estate or real estate-related receivables, registration of the lien with the competent real estate registry is also required.

Alternatively, the security might take the form of transfer of fiduciary ownership of the receivables. In this case, the purchaser recovers ownership upon payment of the debt. Here again, the lien is perfected through its registration with the registry of titles and deeds of the place of residence of the debtor or guarantor.

Liens over certain financial instruments and securities must be registered with an entity authorised for such purposes by the Central Bank of Brazil or the CVM, regardless of the nature of the debt they secure. For such classes of assets, the lien is perfected solely upon its registration with the authorised entity and no other registration (e.g., with a registry of titles and deeds) is required.

5.4 Recognition. If the purchaser grants a security interest in receivables governed by the laws of your jurisdiction, and that security interest is valid and perfected under the laws of the purchaser's jurisdiction, will the security be treated as valid and perfected in your jurisdiction or must additional steps be taken in your jurisdiction?

Brazilian law provides that the applicable law with regard to security interest *in rem* is the law of the domicile of the person in possession of the relevant asset. This rule is more easily adaptable to material assets. As to receivables, given that they are rights, the most sensible view is to consider that they are kept in the place where the creditor benefitted by the pledge is resident. As a result, the terms of the collateral should follow the law of the country of such creditor. If they do not, the validity of the collateral might be impaired.

5.5 Additional Formalities. What additional or different requirements apply to security interests in or connected to insurance policies, promissory notes, mortgage loans, consumer loans or marketable debt securities?

As general rule, no relevant change applies.

5.6 Trusts. Does your jurisdiction recognise trusts? If not, is there a mechanism whereby collections received by the seller in respect of sold receivables can be held or be deemed to be held separate and apart from the seller's own assets (so that they are not part of the seller's insolvency estate) until turned over to the purchaser?

Brazil does not recognise trusts. However, an agreement may be executed in order to obligate the seller to keep collections received as a depositary, being responsible for the safeguarding and maintenance of such assets, for the benefit of the purchaser.

5.7 Bank Accounts. Does your jurisdiction recognise escrow accounts? Can security be taken over a bank account located in your jurisdiction? If so, what is the typical method? Would courts in your jurisdiction recognise a foreign law grant of security taken over a bank account located in your jurisdiction?

Brazil recognises escrow accounts. Security can be taken over a bank account located in Brazil. Typically, security over bank accounts takes the form of a pledge over, or of a transfer of fiduciary ownership of, the credit rights owned by the account holder against the bank.

As mentioned in question 5.4 above, the applicable law with regard to *in rem* collateral is the law of the domicile of the person in possession of the asset. As a result, collateral over credit rights from a bank account located in Brazil shall follow Brazilian law if the accountholder is in Brazil.

5.8 Enforcement over Bank Accounts. If security over a bank account is possible and the secured party enforces that security, does the secured party control all cash flowing into the bank account from enforcement forward until the secured party is repaid in full, or are there limitations? If there are limitations, what are they?

The general rule is the absence of limitations. Exceptions are enforcement limited by insolvency laws or similar procedures.

5.9 Use of Cash Bank Accounts. If security over a bank account is possible, can the owner of the account have access to the funds in the account prior to enforcement without affecting the security?

The security can be structured to allow – or not allow – the owner of the account to have access to the totality or part of the funds prior to enforcement.

6 Insolvency Laws

6.1 Stay of Action. If, after a sale of receivables that is otherwise perfected, the seller becomes subject to an insolvency proceeding, will your jurisdiction's insolvency laws automatically prohibit the purchaser from collecting, transferring or otherwise exercising ownership rights over the purchased receivables (a "stay of action")? If so, what generally is the length of that stay of action? Does the insolvency official have

the ability to stay collection and enforcement actions until he determines that the sale is perfected? Would the answer be different if the purchaser is deemed to only be a secured party rather than the owner of the receivables?

Brazilian bankruptcy law does not provide for an automatic stay. Notwithstanding, the insolvency official, any creditor or the Public Prosecutor's Office may file a lawsuit seeking to undo the sale of receivables (the so-called "revocation suit"). The plaintiff must prove that the aim of the contracting parties was to defraud creditors (i.e., collusion between the seller and debtor regarding the original debt or between the seller and purchaser regarding the sale of the receivable) as well as that seller's bankruptcy estate has suffered a loss or damage as a result.

Brazilian bankruptcy law, however, protects *bona fide* investors in the case of credits subsequently securitised through the issue of bonds representing them, setting forth that the validity of the transfer shall not be impaired in case this would damage their rights.

If a purchaser is deemed to be only a secured party rather than the owner of the receivables, then it will not be able to pursue the receivable against the original obligor or exercise any ownership right over the purchased receivable. The receivable will be part of the seller's estate; the purchaser may only collect and enforce the rights it may hold against the seller and in the context of the relevant insolvency proceeding. The sole exception is if the security interest held by purchaser is a contractual encumbrance called "*alienação fiduciária em garantia*", which transfers to the purchaser the fiduciary ownership of the receivable.

6.2 Insolvency Official's Powers. If there is no stay of action, under what circumstances, if any, does the insolvency official have the power to prohibit the purchaser's exercise of its ownership rights over the receivables (by means of injunction, stay order or other action)?

In debtor-in-possession restructuring proceedings (*recuperação judicial*), the insolvency official is not vested with the power to stop the agreements executed by the seller from having legal effect. In bankruptcy/liquidation proceedings (*falência*): (a) if the sale has been agreed upon but not yet performed by the seller, the insolvency official may elect whether to perform it depending on how such performance may affect the estate's level of assets and liabilities/indebtedness; and (b) if the sale has been fully performed by the seller, the adequate means to prohibit the purchaser's exercise of rights over the receivable is to file a revocation suit (see question 6.1 above).

6.3 Suspect Period (Clawback). Under what facts or circumstances could the insolvency official rescind or reverse transactions that took place during a "suspect" or "preference" period before the commencement of the seller's insolvency proceedings? What are the lengths of the "suspect" or "preference" periods in your jurisdiction for (a) transactions between unrelated parties, and (b) transactions between related parties? If the purchaser is majority-owned or controlled by the seller or an affiliate of the seller, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period? If a parent company of the seller guarantee's the performance by the seller of its obligations under contracts with the purchaser, does that render sales by the seller to the purchaser "related party transactions" for purposes of determining the length of the suspect period?

Under Brazilian law, the "suspect" period is referred to as "*termo legal*" (literally, "legal term"). It is established by the bankruptcy judge in the bankruptcy decree and can retroact up to 90 days before the date of the bankruptcy request, of the judicial reorganisation request, or of the first formal complaint for unpaid debts, as the case may be.

The following acts do not produce effects before the bankruptcy estate if they occur within such legal term (suspect period), irrespective of the existence of a fraudulent purpose or the contracting party's awareness about the seller's financial distress: (a) payment of debts before maturity; (b) payment of matured and enforceable debts in any form other than in the one provided in the relevant contract; and (c) formalisation of new *in rem* securities in respect of existing debts.

In addition, gratuitous acts (for no consideration) and waivers to inheritance or legacy within two years before the bankruptcy decree do not produce effects before the bankruptcy estate.

There is no difference set forth by law regarding transactions between related and unrelated parties for such purpose.

6.4 Substantive Consolidation. Under what facts or circumstances, if any, could the insolvency official consolidate the assets and liabilities of the purchaser with those of the seller or its affiliates in the insolvency proceeding? If the purchaser is owned by the seller or by an affiliate of the seller, does that affect the consolidation analysis?

In debtor-in-possession restructuring proceedings, the insolvency official is not vested with the power to consolidate the seller's assets and liabilities with those of the purchaser. If the purchaser is owed by the seller or by an affiliate of the seller, then the seller and/or such affiliate and purchaser may elect to jointly file for restructuring and ask the court to grant their substantive consolidation if certain conditions are met showing a great degree of coordination between both entities (e.g., cross-collaterals, centralised management, joint activity on the market). If the purchaser is owned by an affiliate of the seller, then the purchaser's and seller's assets and liabilities may only be consolidated if the three entities file for insolvency together, i.e., no consolidation involving the seller can take place if it is not a petitioner.

In bankruptcy/liquidation proceedings, there is no statutory provision on substantive consolidation. Such consolidation may take place if the insolvency official asks the court to lift the corporate veil of the seller (or seller's affiliate) so as to reach the purchaser's assets on the grounds that both entities are not truly independent entities and should be treated as one and the same (e.g., if their assets are commingled).

6.5 Effect of Insolvency on Receivables Sales. If insolvency proceedings are commenced against the seller in your jurisdiction, what effect do those proceedings have on (a) sales of receivables that would otherwise occur after the commencement of such proceedings, or (b) sales of receivables that only come into existence after the commencement of such proceedings?

In debtor-in-possession restructuring proceedings, the seller will continue to conduct its business as a going concern and therefore post-filing transactions are not affected by the filing.

In bankruptcy/liquidation proceedings, in respect of (a) and (b), at the very moment insolvency is decreed, the management of seller's assets are transferred to the insolvency official. It will be up to the insolvency official, upon authorisation of the creditors' committee, to decide whether to conclude and perform the sales agreement.

6.6 Effect of Limited Recourse Provisions. If a debtor's contract contains a limited recourse provision (see question 7.4 below), can the debtor nevertheless be declared insolvent on the grounds that it cannot pay its debts as they become due?

There is no statutory provision or known court precedent on the interplay between limited recourse provisions and insolvency filings. To the extent that such provision is valid and enforceable (see question 7.4 below), the debtor should not be declared insolvent if it pays its debts in the amount corresponding to the limit set forth in the contract.

7 Special Rules

7.1 Securitisation Law. Is there a special securitisation law (and/or special provisions in other laws) in your jurisdiction establishing a legal framework for securitisation transactions? If so, what are the basics? Is there a regulatory authority responsible for regulating securitisation transactions in your jurisdiction? Does your jurisdiction define what type of transaction constitutes a securitisation?

Brazil has laws and regulations specifically providing for securitisation transactions.

Resolution CVM No. 175, dated 23 December 2022, regulates several types of investment funds, including FIDCs and real estate investment funds (*fundos de investimento imobiliário* – FIIs), which may be used as conduit entities for securitisation purposes.

Brazilian law provides for other types of securitisation structures. The securitisation of real estate receivables, for instance, can be undertaken through a "real estate credit securitisation company" (*companhia securitizadora de créditos imobiliários*), under Federal Law No. 9,514, dated 20 November 1997. The securitisation of financial receivables is undertaken through a "financial credit securitisation company" (*companhia securitizadora de créditos financeiros*), under Resolution No. 2,686, dated 26 January 2000, from the Brazilian National Monetary Council. In addition, Federal Law 14,430, dated 3 August 2022, sets forth general rules applicable to the securitisation of receivables, and the issuance of Receivables Certificates (*certificados de recebíveis*). Receivables Certificates are defined as a nominative credit security issued by a securitisation company that are freely negotiable and constitute a promise to pay, whereas securitisation operations are defined as the acquisition of receivables to support the issuance of Receivables Certificates or other bonds and securities to investors, the payment of which is primarily contingent upon the receipt of resources from such receivables or other assets, rights and guarantees that back it up.

The above-mentioned law principally extended the possibility for securitisation companies to securitise any type of receivables (previously, Receivables Certificates could only be backed by real estate receivables, financial receivables, or agribusiness receivables), and provided that any operation carried out by a securitisation company may benefit from the institution of a fiduciary regime. Receivables subject to a fiduciary regime constitute a separate asset held by the securitisation companies and cannot be seized by creditors other than the holders of the respective Receivables Certificates.

Additionally, Resolution CVM No. 60, dated 23 December 2021, sets for the requirements and obligations of securitisation companies, as well as the requirements for the public issuance of receivables certificates. Furthermore, Resolutions Nos 5,118, dated 1 February 2024, 5,121, dated 1 March 2024, and 5,163, dated 22 August 2024, from the Brazilian National Monetary Council, provide specifically for the backing of Agribusiness Receivables Certificates (*certificados de recebíveis do agronegócio* – CRAs), Real Estate Receivables Certificates (*certificados de recebíveis imobiliários* –CRIs) and Agribusiness Credit Rights Certificates (*certificados de direitos creditórios do agronegócio* – CDCAs).

The regulatory surveillance over securitisation in Brazil is partially performed by the Central Bank of Brazil, with regard to activities performed by financial institutions, and partially by the CVM, with regard to the public offering of securities, the trading of marketable securities in stock exchanges and/or over-the-counter markets and to the securitisation through FIDCs, FIIs and securitisation companies.

7.2 Securitisation Entities. Does your jurisdiction have laws specifically providing for establishment of special purpose entities for securitisation? If so, what does the law provide as to: (a) requirements for establishment and management of such an entity; (b) legal attributes and benefits of the entity; and (c) any specific requirements as to the status of directors or shareholders?

Brazil has laws and regulations specifically providing for the establishment of special purpose entities for securitisation purposes.

Securitisation companies are regulated by Federal Law No. 14,430, dated 3 August 2022 and by Resolution CVM No. 60, dated 23 December 2021. They must be incorporated as Brazilian corporations (*sociedade por ações*) and registered before the CVM. The requirements for the establishment of these corporations do not differ from the ones applicable to any other Brazilian corporation. Shareholders can be of any nationality but non-Brazilian residents must appoint a local attorney. Management can be divided into two layers: an optional non-executive supervisory board (*conselho de administração*) with a minimum of three individuals, resident or not in Brazil, dismissible at any time by the shareholders; and the executive directors (*diretoria*), which consists of at least one individual, resident or not in Brazil.

FIDCs and FII funds, which are investment vehicles that take the legal form of a joint ownership (condominium), may also be used for securitisation purposes. These are vehicles without legal personality. The formation of such funds requires an administrator, licensed and domiciled in Brazil (typically, a financial institution or broker-dealer, with a few other possibilities). Generally, any person or entity can be an investor in an FII or FIDC, pursuant to the provisions of Resolution CVM No. 175, dated 23 December 2022; however, quotas of FIDCs that hold non-standardised receivables are only available to Professional Investors.

According to Resolution CVM No. 30, dated 11 May 2021, professional Investors are: financial institutions and other institutions authorised to operate by the Central Bank of Brazil; insurance companies and capitalisation companies; open and closed supplementary pension entities; individuals or legal entities with financial investments surpassing R$10,000,000 and who, in addition, certify in writing their

status as a professional investor by their own term; investment funds; investment clubs provided that they have the portfolio managed by a securities portfolio manager authorised by the CVM; investment agents, securities portfolio managers, securities analysts, and securities advisors authorised by the CVM, in relation to their own resources; and non-resident investors.

7.3 Location and form of Securitisation Entities. Is it typical to establish the special purpose entity in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the special purpose entity in your jurisdiction? If offshore, where are special purpose entities typically located for securitisations in your jurisdiction? What are the forms that the special purpose entity would normally take in your jurisdiction and how would such entity usually be owned?

Securitisation entities are typically established in Brazil. *Companhias securitizadoras* established pursuant to the relevant Brazilian legislation benefit from certain advantages, such as the possibility to establish an earmarked assets regime (*patrimônio de afetação*), pursuant to which, in an insolvency scenario, the assets linked to a given series of securities cannot be seized for satisfaction of other debts from the securitisation entity. *Companhias securitizadoras* must be organised as corporations and they are owned by their shareholders.

7.4 Limited-Recourse Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) limiting the recourse of parties to that agreement to the available assets of the relevant debtor, and providing that to the extent of any shortfall the debt of the relevant debtor is extinguished?

Assuming the contract's choice of law is valid, courts in Brazil will give effect to such provision. However, courts in Brazil may limit the reach of this type of contractual provision in the case of fraud perpetrated against creditors.

7.5 Non-Petition Clause. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) prohibiting the parties from: (a) taking legal action against the purchaser or another person; or (b) commencing an insolvency proceeding against the purchaser or another person?

No. According to the Brazilian Constitution, no restriction or prohibition can limit one's right to file any claim, petition or suit before any Brazilian court. This is a non-disposable right and will certainly prevail against the non-petition clause, even if such clause is grandfathered by a foreign law governing the relevant agreement.

7.6 Priority of Payments "Waterfall". Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) distributing payments to parties in a certain order specified in the contract?

Yes. Waterfall provisions are legal and common in securitisations in Brazil.

7.7 Independent Director. Will a court in your jurisdiction give effect to a contractual provision in an agreement (even if that agreement's governing law is the law of another country) or a provision in a party's organisational documents prohibiting the directors from taking specified actions (including commencing an insolvency proceeding) without the affirmative vote of an independent director?

Ordinarily, a Brazilian court will give effect to contractual provisions or provisions in a party's organisational documents prohibiting the directors from taking specified actions without some other level of corporate approval (i.e., the affirmative vote of an independent director; or approval by the shareholders), as long as the relevant action is not a duty of the directors under the law.

In respect to actions performed by the directors without the required approval, the company would have recourse against the directors but the Brazilian courts could moderate the effect of the contractual provision to preserve good faith third parties contracting with the company.

7.8 Location of Purchaser. Is it typical to establish the purchaser in your jurisdiction or offshore? If in your jurisdiction, what are the advantages to locating the purchaser in your jurisdiction? If offshore, where are purchasers typically located for securitisations in your jurisdiction?

Purchasers can be established in Brazil or abroad, and both cases are common. If located abroad, the purchaser must be enrolled with the National Taxpayers' Registry of Legal Entities (*Cadastro Nacional da Pessoa Jurídica*), and investments in the securitised assets in an amount equal to or greater than R$100,000 must be informed to the Central Bank of Brazil. The advantages and disadvantages mainly encompass tax aspects and establishing the purchaser in a low-tax jurisdiction (as defined by Brazilian law) may be disadvantageous as Brazilian withholding taxes (WHT) on payments made from Brazil to such jurisdiction (if applicable) may be levied at higher rates.

8 Regulatory Issues

8.1 Required Authorisations, etc. Assuming that the purchaser does no other business in your jurisdiction, will its purchase and ownership or its collection and enforcement of receivables result in its being required to qualify to do business or to obtain any licence or its being subject to regulation as a financial institution in your jurisdiction? Does the answer to the preceding question change if the purchaser does business with more than one seller in your jurisdiction?

The purchase, ownership, collection and enforcement of receivables do not require or cause the interested party to do business in Brazil to obtain any licence or to be subject to regulation as a financial institution in Brazil. The answer is the same where the purchaser does business with other sellers in Brazil.

8.2 Servicing. Does the seller require any licences, etc., in order to continue to enforce and collect receivables following their sale to the purchaser, including to appear before a court? Does a third-party replacement servicer require any licences, etc., in order to enforce and collect sold receivables?

To enforce the collection of sold receivables, the seller or the

replacement servicer will need to be empowered to act on behalf of the purchaser. Ordinarily, a contractual provision is included in the sale agreement for that purpose.

Where there is pending litigation, once the obligor has been served the initial summons for the collection and enforcement of the receivables, the replacement of the original claimant (either the seller, the purchaser or any third party such as a replacement servicer) by a new claimant will be subject to the obligor's consent.

8.3 Data Protection. Does your jurisdiction have laws restricting the use or dissemination of data about or provided by obligors? If so, do these laws apply only to consumer obligors or also to enterprises?

The use of consumer debtor information is restricted by general rules protecting intimacy, private life and data protection contained in the Brazilian Constitution as well as banking laws and regulations to the extent that the purchaser is professionally engaged in factoring or similar credit purchase activities. Such rules are not normally construed as restricting the use of obligor information, but only its unauthorised dissemination. In general, it is lawful to send credit protection agencies information on non-performing contracts or loans. The publication of information on non-compliant obligors, on the other hand, violates the rule.

The breadth of the mentioned rules would justify their application not only to the benefit of consumer obligors, but also to enterprises.

In addition, the Brazilian General Data Protection Law (*lei geral de proteção de dados* – LGPD) – Law No. 13,709 – was enacted on 14 August 2018, and as from its effective date (15 August 2020), is applicable to the processing of personal data, performed or used to offer goods or services in Brazil. Exceptions are made for the processing of personal data by an individual exclusively for private and non-economic purposes and for other specific cases listed in Article 4 of such law (e.g., journalistic and artistic purposes).

The LGPD defines the processing of personal data as "any activity carried out with personal data, such as those that refer to collection, production, receipt, classification, use, access, reproduction, transmission, distribution, processing, filing, storage, erasure, analysis or control of the information, modification, communication, transfer, dissemination or extraction".

According to the LGPD, consent is only one of the legal bases for processing personal data. Other legal bases include: the compliance with a legal or regulatory obligation by the controller; the protection of credit; the legitimate interests of the controller or of a third party; the execution of a contract; and the regular exercise of rights in judicial and administrative or arbitration proceedings, among other hypotheses outlined in the LGPD.

Both consumer obligors and enterprises are subject to the LGPD.

8.4 Consumer Protection. If the obligors are consumers, will the purchaser (including a bank acting as purchaser) be required to comply with any consumer protection law of your jurisdiction? Briefly, what is required?

Not in general, provided that: (i) the purchaser acquired only the receivables (as opposed to being assigned the receivables contract, including obligations towards the obligor); and (ii) the receivables contract does not infringe any law. The sale of the receivables does not change the nature of the same. In view of that, some specific rules to the protection of consumers may affect the receivables (irrespectively of who the purchaser is). An example is the rule that allows prepayment at the initiative of the debtor, against proportional reduction of interest.

8.5 Currency Restrictions. Does your jurisdiction have laws restricting the exchange of your jurisdiction's currency for other currencies or the making of payments in your jurisdiction's currency to persons outside the country?

There are presently no important restrictions on the exchange of Brazilian currency or on payments using Brazilian currency to foreigners. In practical terms, the unavailability of accounts in Brazilian currency outside the country is the major obstacle to making payments in Reais outside the country.

8.6 Risk Retention. Does your jurisdiction have laws or regulations relating to "risk retention"? How are securitisation transactions in your jurisdiction usually structured to satisfy those risk retention requirements?

Co-obligation undertaken by the seller is regulated by the Brazilian Civil Code and is the most common form of risk retention. Also common is a contractual arrangement pursuant to which the seller undertakes to repurchase or replace sold receivables in certain circumstances.

8.7 Regulatory Developments. Have there been any regulatory developments in your jurisdiction which are likely to have a material impact on securitisation transactions in your jurisdiction?

The enactment of Law No. 14,430 in August 2022 has the potential to expand the securitisation market in Brazil, as it permits the securitisation of any kind of receivables through securitisation companies, as explained in question 7.1 above.

Resolution CVM No. 175, dated 23 December 2022, also has such potential as it modernises the investment fund regulation in Brazil, including the regulation applicable to certain types of investment funds used as vehicles for securitisation transactions, as mentioned in question 7.2 above.

9 Taxation

9.1 Withholding Taxes. Will any part of payments on receivables by the obligors to the seller or the purchaser be subject to withholding taxes in your jurisdiction? Does the answer depend on the nature of the receivables, whether they bear interest, their term to maturity, or where the seller or the purchaser is located? In the case of a sale of trade receivables at a discount, is there a risk that the discount will be recharacterised in whole or in part as interest? In the case of a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, is there a risk that the deferred purchase price will be recharacterised in whole or in part as interest? If withholding taxes might apply, what are the typical methods for eliminating or reducing withholding taxes?

Payments of receivables can be subject to WHT in Brazil, depending on the nature of the receivables/payments and on

the condition/residence of the obligor, of the purchaser, and of the seller. In view of the complexity of Brazilian tax legislation, each transaction should be carefully analysed by a local tax expert.

In the case of a sale of trade receivables at a discount, the discount will be treated as: (i) a financial expense/loss (not necessarily interest) to the seller, generally deductible for corporate income tax purposes if the seller is a Brazilian legal entity taxed under the real profit regime and the loss meets certain legal requirements; and (ii) a financial revenue (not necessarily interest) to the purchaser. If the purchaser is a Brazilian legal entity, this revenue would usually be taxable on a *pro rata* (accrual) basis as from the date of purchase of the receivables until their maturity, for purposes of Brazilian corporate taxes on profits and revenues (*Imposto de Renda da Pessoa Jurídica* – IRPJ, *Contribuição Social sobre o Lucro Líquido* – CSLL, *Programa de Integração Social* – PIS, and *Contribuição para o Financiamento da Seguridade Social* – COFINS).

Brazilian tax legislation usually refers separately to "interest" and "discounts" (as diverse figures), although both are equally taxed as financial and operational revenues or expenses, as the case may be.

As mentioned in question 9.2 below, regulatory rules aligned with the International Financial Reporting Standards (IFRS) provide guidelines as to how a securitisation transaction should be treated for accounting purposes, with potential tax repercussions as well. A general guideline is that transactions' economic essence prevails over their legal form for accounting purposes in Brazil.

For tax purposes, the seller would normally treat the transaction as an assignment of receivables at a loss (discount), while the purchaser would recognise the acquisition of the receivables and tax the respective gain (value of the discount plus any amount earned in excess of the receivables' cost of acquisition) along the term of the securitisation, on an accrual basis (see further comments in question 9.2 below).

In principle, this would also apply to a sale of trade receivables where a portion of the purchase price is payable upon collection of the receivable, the difference being that such portion of the purchase price would remain as a credit of the seller against the purchaser (and as a debt of the purchaser with the seller) until the purchaser pays it to the seller upon collection of the receivable. However, if, in essence, the transaction is considered to be a loan and related amounts are considered to be interest in substance, there could be a risk that such amounts be recharacterised in whole or in part as interest. This analysis should be made carefully on a case-by-case basis by local tax and accounting counsel.

A tax on credit transactions (IOF/Credit) may also be charged on assignments of receivables if the seller is by any means co-obliged therefor (e.g., right of recourse of the purchaser against the seller in the case of default of the obligor), except if the purchaser is a non-Brazilian resident. Assignments of receivables with co-obligation of the seller are treated as credit/loan transactions. IOF/Credit is currently charged at a rate of 0.0041% per day if the co-obliged seller is a legal entity and 0.0082% per day if the co-obliged seller is an individual (natural person), plus an additional 0.38% rate on the value of the credit transaction. Total IOF/Credit is limited to 1.88% if the co-obliged seller is a legal entity or 3.37% if he/she is an individual (natural person), whenever the transaction has a defined principal amount. The borrower/co-obliged seller is the taxpayer, but the lender/purchaser is the party liable for retaining and collecting the IOF/Credit.

Payments of income on receivables by an obligor resident in Brazil to the seller or the purchaser would generally be subject to Brazilian WHT, except only if (i) the obligor is a natural person and the payments are made to a seller or purchaser domiciled in Brazil, (ii) there is a specific tax exemption or reduction granted by an applicable law or treaty for the payment in question, or (iii) the obligor is a Brazilian legal entity making payments to a seller or purchaser domiciled in Brazil and the law does not impose a WHT obligation for that specific type of payment. Moreover, if the obligor is resident or domiciled in Brazil and the seller or purchaser are resident or domiciled outside of Brazil, a tax credit for the Brazilian WHT paid may be available in the seller's or purchaser's country, under an applicable tax treaty or reciprocity of tax treatments between Brazil and the country where the seller or purchaser are domiciled. This analysis should be made carefully on a case-by-case basis by local tax counsel.

9.2 Seller Tax Accounting. Does your jurisdiction require that a specific accounting policy is adopted for tax purposes by the seller or purchaser in the context of a securitisation?

There are regulatory rules providing guidelines as to how a securitisation transaction should be treated for accounting purposes, with potential tax repercussions as well. As a general guideline aligned with IFRS, the transaction's economic essence is required to prevail over its legal form for accounting purposes in Brazil. This general guideline (prevalence of economic substance over legal form) is also frequently applied for tax purposes by Brazilian taxing authorities and courts.

For tax purposes, the seller would normally treat the transaction as an assignment of receivables at a loss (discount), while the purchaser would recognise the acquisition of the receivables and tax the respective gain (value of the discount plus any amount earned in excess of the receivables' cost of acquisition) along the term of the securitisation, on an accrual basis.

Notwithstanding, if a seller legal entity substantially retains all the risks and benefits arising from the ownership of a financial asset or retains substantial control over such asset, it may have to continue to book/recognise the asset for accounting purposes.

In addition, certain receivables and payables classified as financial assets or liabilities should be periodically evaluated at fair market value for accounting purposes. Gains and losses deriving from fair market valuation are usually neutral for tax purposes while there is no realisation of the asset (e.g., disposition or liquidation by any means), provided that certain conditions and controls are complied with pursuant to the tax legislation.

All accounting and tax effects of a securitisation transaction should be analysed carefully on a case-by-case basis by local accounting and tax specialists.

9.3 Stamp Duty, etc. Does your jurisdiction impose stamp duty or other transfer or documentary taxes on sales of receivables?

There are no stamp duty or documentary taxes on the sale of receivables, but there may be a tax on the transfer (IOF/Securities) in case the receivable is classified as a bond or security, as defined by Brazilian legislation, and there is no exemption granted for transfers of that specific bond/security. IOF/Securities is due by the acquirer (purchaser) of the bond/security, but certain institutions that take part in such transactions are liable for charging and collecting the tax. Actual rates depend on the type of bond/security negotiated, parties negotiating them, and other variables. Current rates are lower than their legal limit, but the Federal Government is allowed

to increase the applicable rate at any time up to a maximum of 1.5% per day on the amount of the transaction. Currently, a 0% rate applies to transactions involving variable income investment instruments; certain agribusiness instruments, debentures, CRIs, and financial bills, among others. Transactions of most institutions authorised to operate by the Brazilian Central Bank and portfolios of investment funds also currently benefit from a 0% rate.

It may also be necessary or convenient to register certain sales of receivables with public registries in Brazil so that they are enforceable against third parties. Registration duties or fees are usually imposed on such registrations.

9.4 Value-Added Taxes. Does your jurisdiction impose value-added tax, sales tax or other similar taxes on sales of goods or services, on sales of receivables or on fees for collection agent services?

Sales of goods and certain services are subject to the Brazilian Sales Tax (value-added state tax or *Imposto sobre Circulação de Mercadorias e Serviços* – ICMS), the rates of which may vary according to each Brazilian State and to the goods or services sold. Services that are not subject to ICMS and are expressly listed by the tax legislation are subject to Municipal Service Tax (*Imposto sobre Serviços* – ISS) at rates that may vary between 2% and 5%, depending on the municipality and on the service being rendered. Sales of goods and services are also usually subject to social contributions on gross revenues (PIS and COFINS), the rates of which depend upon several variables. Sales of manufactured products are also subject to Manufactured Products Tax (*Imposto sobre Produtos Industrializados* – IPI), a non-cumulative tax the rates of which vary according to the tax classification of the product and may differ according to the product's essentiality.

Sales of receivables are currently not subject to value-added tax (VAT), sales tax or other similar taxes on the sale of goods or services, apart from the potential IOF/Securities mentioned in question 9.3 above, in the case of the receivable being classified as a bond or security, as defined by Brazilian legislation (or the potential IOF/Credit mentioned in question 9.1 above, where the sale is made with the co-obligation of the seller and the purchaser is domiciled in Brazil). PIS and COFINS may be levied on the sale depending on the regime of taxation and other variables.

Fees paid by a Brazilian party to a provider of collection services resident or domiciled in Brazil are subject to the ISS, which is due by the service provider at a tax rate of up to 5%, depending on the municipality where the services are rendered/performed. In certain cases, ISS is due to (and the applicable rate dependent on) the municipality where the party hiring or intermediating the service is located, who may also be liable for withholding and collecting ISS. PIS and COFINS would also be levied on the gross collection service fees in cases where the service provider is a Brazilian company.

ISS is not levied on services exported to non-Brazilian residents by Brazilian service providers, provided that the "results" of the service are verified outside of Brazil. However, current legislation and court decisions are unclear as to the situations in which service "results" are deemed to take place outside Brazil, and this matter is often subject to disputes in Brazilian courts. PIS and COFINS are not levied on revenues from services exported by parties resident or domiciled in Brazil to parties resident or domiciled outside of Brazil, provided that the payment represents an inflow of foreign currency into the country.

Where the collection agent is an individual (natural person) resident in Brazil, fees received from the purchaser or the seller (if a Brazilian legal entity) would be subject to Brazilian WHT at rates of up to 27.5% (WHT will not be affected by the consumption tax reform). The purchaser or the seller, as the paying source, would be liable for withholding and collecting this tax.

In the case of collection services rendered to a Brazilian party by a non-Brazilian party, payments remitted abroad in consideration for the services would be subject to:

(i) ISS at a rate of up to 5%, depending on the municipality where the hirer or intermediary of the service is located; ISS is due by the foreign service provider (taxpayer) but must be retained and collected by the Brazilian hirer or intermediary of the service;

(ii) WHT at a rate of 25%, which is also due by the foreign service provider (taxpayer), but must be retained and collected by the Brazilian paying source. If a double taxation treaty based on the OECD model is in effect between Brazil and the country where the non-Brazilian service provider is domiciled, it may be possible to challenge Brazilian WHT based on Article 7 of the treaty and judicial and administrative decisions. In other cases, a tax credit for the Brazilian WHT paid may be available in the country where the service provider is located under an applicable tax treaty or if there is reciprocity of tax treatments between Brazil and such country (WHT will not be affected by the consumption tax reform);

(iii) PIS and COFINS levied at a combined rate of 9.25%, which are due and must be collected by the Brazilian hirer (taxpayer and party liable for the tax collection); and

(iv) tax on foreign currency exchange transactions (IOF/FX) at a rate of 0.38%; this tax is due by the purchaser of foreign currency in remittances made from Brazil overseas, but the party liable for retaining and collecting it is the Brazilian financial institution that closes the foreign currency exchange transaction (IOF/FX will not be affected by the consumption tax reform).

Due to the form of calculating these latter taxes, their total effective tax burden is higher than the sum of the taxes' statutory fixed rates and can also vary depending on whether or not the financial burdens of WHT and ISS are transferred to the Brazilian hirer under its agreement with the service provider domiciled outside of Brazil.

Consumption tax reform

Dual VAT will be phased in from 2026 to 2032 and fully implemented in 2033.

In 2023, Brazil approved a constitutional consumption tax reform and in 2025 approved a complementary law regulating the matter. PIS, COFINS, and IPI will be replaced by the Contribution on Goods and Services (*Contribuição sobre Bens e Serviços* – CBS), while ICMS and ISS will be replaced by the Tax on Goods and Services (*Imposto sobre Bens e Serviços* – IBS). CBA and IBS are non-cumulative taxes that will function as a dual VAT. The new dual VAT's tax rates are yet to be set by ordinary laws.

The dual VAT will be levied on transactions with any kind of assets (tangible and intangible assets, including rights) and services (definition of service is residual: anything that is not a transaction involving an asset will be deemed a service for the purposes of the law).

Sales of goods and services, including collection services, will be subject to the dual VAT's general regime. The dual VAT will be levied on each operation and the acquirer, when subject to the general regime, will credit the dual VAT paid on acquisitions to offset against dual VAT due on its own operations.

When services are exported to non-Brazilian residents by Brazilian service providers and said service is consumed overseas, the operation will be immune to the dual VAT.

When services are rendered to a Brazilian party by a non-Brazilian party, the transaction will be treated as an imported service and taxed by the dual VAT (WHT and IOF/FX would also be due, as mentioned above). The dual VAT tax rates on imported services will be the same rates applied to equal services supplied within Brazil. The taxpayer will be the service acquirer, or the recipient in case the acquirer is a non-Brazilian resident, and the non-Brazilian supplier will be jointly liable for the payment of the dual VAT.

Securitisation of receivables will be subject to the specific financial services regime.

When the purchaser of receivables is a Brazilian resident, the purchaser will be the taxpayer. The dual VAT's tax base will be the discount applied on the acquisition of the receivables from the seller minus deductions of (i) fundraising financial expenses, (ii) securitisation expenses, and (iii) losses incurred on the receipt/recovery of credits or on their assignment and granting of discounts, as long as agreed at market value. The seller of receivables, when also a taxpayer of the dual VAT subject to the general regime, may appropriate credits of the dual VAT on the sale of receivables, in relation to the discount applied, when said discount exceeds the future interest/yield curve of the interbank deposit (DI) rate, for the period of anticipation.

When the purchaser of receivables is a non-Brazilian resident and the seller is a Brazilian resident, the seller will be the taxpayer, but the purchaser will be jointly liable for the dual VAT. The tax base will be the purchaser's revenue minus a reduction factor to account for a presumed margin, to be provided for in the regulation. If the seller is a taxpayer subject to the regular regime of the dual VAT and is entitled to appropriate dual VAT credits on local securitisation of receivables, the securitisation transaction will be subject to a 0% rate and no dual VAT credits will be appropriated by the seller (although the general rate of the dual VAT has not yet been set, in certain cases Complementary Law No. 214/2025 determines that the rate will be 0%). If the seller is not entitled to appropriate dual VAT credits (e.g., a financial institution domiciled in Brazil), the dual VAT will be levied on the transaction.

9.5 Purchaser Liability. If the seller is required to pay value-added tax, stamp duty or other taxes upon the sale of receivables (or on the sale of goods or services that give rise to the receivables) and the seller does not pay, then will the taxing authority be able to make claims for the unpaid tax against the purchaser or against the sold receivables or collections?

Pursuant to the legislation currently in force, Brazilian tax authorities cannot charge the purchaser for any unpaid taxes due and payable by the seller, unless there is a legal provision expressly attributing/extending the tax liability to the purchaser. If, however, the seller had unpaid tax debts/liabilities and was insolvent when the receivables were sold, then the transaction could be invalidated as a fraud against creditors. If the receivables were sold when the seller had unpaid tax debts already registered as overdue collectible/executable tax debts and the seller did not reserve other assets to cover the tax liabilities, then the sale could be presumed as a fraud against tax foreclosure, possibly resulting in heavier fines, unavailability of assets, and criminal implications to the individuals involved.

9.6 Doing Business. Assuming that the purchaser conducts no other business in your jurisdiction, would the purchaser's purchase of the receivables, its appointment of the seller as its servicer and collection agent, or its enforcement of the receivables against the obligors, make it liable to tax in your jurisdiction?

The mere ownership of the receivables, their acquisition by means of an agreement executed outside of Brazil, and the appointment of a collection agent does not render the purchaser resident or domiciled outside of Brazil subject to Brazilian corporate taxation.

On the other hand, Brazilian tax law provides that the maintenance of an agent or representative in Brazil with powers to negotiate contracts and bind their foreign principal can be characterised as a permanent establishment and therefore may subject the foreign entity's local income to Brazilian corporate taxation, for which the agent is liable. In view of this, the maintenance of an agent or representative in Brazil that purchases receivables contractually binding the foreign entity may trigger Brazilian corporate taxation of the foreign entity's income under the same rules applicable to local entities (the actual tax burden may depend on particular circumstances). In certain cases, the taxable income of the foreign entity can be arbitrated for Brazilian tax purposes.

Even if not considered "doing business" in Brazil, the purchaser may be subject to Brazilian taxation on specific situations/transactions (i.e., taxes withheld at source such as WHT, tax on foreign currency exchange transactions (IOF/FX), etc.).

Our considerations above do not include Brazilian taxation potentially applicable to payments made by the purchaser to potential investors under any securities or debt instruments issued by the purchaser in order to fund the acquisition of the receivables.

9.7 Taxable Income. If a purchaser located in your jurisdiction receives debt relief as the result of a limited recourse clause (see question 7.4 above), is that debt relief liable to tax in your jurisdiction?

A debt relief (debt forgiveness) granted to the benefit of a legal entity debtor resident or domiciled in Brazil would be treated as taxable income for the debtor that received the debt relief, and would be subject to IRPJ and CSLL, and maybe also social contributions on gross revenues (PIS and COFINS). For individuals resident in Brazil, debt relief would generally be non-taxable for income tax purposes. Some Brazilian States also charge the Gifts Tax (*Imposto de Transmissão Causa Mortis e Doação* – ITCMD) on forgiven debt.

Note

The information above is a general overview and not an exhaustive explanation on the matters discussed therein. It does not constitute legal advice, which should be sought specifically with regard to any matter on a case-by-case basis.

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