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Brazil


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1 Overview

1.1 What are the main trends/significant developments in the lending markets in your jurisdiction?

Brazil is experiencing a challenging economic context, with increases in the basic interest rate, which was already significantly higher than that of other major economies such as the USA, China and Europe.

In this scenario, the Central Bank of Brazil expects the increase in the basic interest rate to be passed on to local credit costs and, thus, for there to be a slight moderation in the volume of loan extensions. On the other hand, the Brazilian Government is working on measures to foster consumer credit, including improvements in the guarantees framework. Yet, the Central Bank maintains its projection for growth in the volume of bank credit in 2025 but at more modest levels than in 2024.

The Central Bank also observed an increase in the volume of credit through the capital markets in 2024, with a trend of maintaining these levels in 2025. Capital markets fulfil part of the liquidity needs of the Brazilian companies – especially larger ones – offering lower spreads and longer terms compared to banking loans. The Central Bank data show that the outstanding balance of corporate debt securities issued in the domestic market (debentures and commercial notes) grew by 24.1% in 2024.

In parallel, the Brazilian Development Bank ("BNDES") has taken on a more prominent role as a key source of capital for Brazilian companies. In 2024, BNDES reached its largest credit portfolio since 2017 and reported an increase in credit demand across all sectors, with the industrial sector experiencing the highest growth.

Even so, the national economy (and mainly infrastructure) is highly dependent on foreign capital to overcome economic downturns. Thus, project finance operations searching for foreign investors are likely to take place over the next few years.

1.2 What are some significant lending transactions that have taken place in your jurisdiction in recent years?

Significant recent lending transactions that took place in Brazil in recent years include:

- A BNDES credit line for the Government of the State of São Paulo, dated December 16, 2024, in the amount of BRL 3.2 billion to finance an investment plan in mobility in the State of São Paulo, based on the expansion of highways and railways.
- A BNDES credit line for the company MCR Logística Ltda., dated October 30, 2024, in the approximate amount of BRL 3.6 billion for the acquisition of cargo vessels to be used for the transportation of goods.
- A syndicated loan granted by Banco Santander (Brasil) and Itaú Unibanco to the State of Bahia, in February 2025, in the amount of BRL 400 million to finance local projects in the Public Security sector.
- A credit line granted by BNDES to Atlas Renewable Energy, dated January 2023, in the amount of USD 210 million to finance a solar energy project in the State of Minas Gerais. This was the first dollar-indexed loan made by BNDES for a renewable energy project.
- A credit line granted by a syndicate of lenders to Klabin S.A. (pulp producer) dated October 2023, in the amount of USD 595 million, directed to ordinary business of the borrower's group. The syndicate is composed by, among others, JPMorgan, Santander, Crédit Agricole, BNP Paribas, Mizuho, MUFG, KfW, Bradesco and Export Development Canada.
- A credit line granted to Banco Daycoval (a Brazilian medium-sized bank) by a syndicate of lenders coordinated by IFC (a member of the World Bank Group), with the participation of several banks including Brazilian ones (such as Banco Itaú BBA). The US$ 460 million loan was taken by Banco Daycoval in December 2024 to stimulate credit for female entrepreneurship and micro, small, and medium enterprises ("MSMEs"), particularly in the Legal Amazon region. Banco Daycoval shall use the funds to make Brazilian loans to MSMEs. This project is IFC's first loan to a commercial bank in Brazil with a predefined allocation for the Legal Amazon region.

2 Guarantees

2.1 Can a company guarantee borrowings of one or more other members of its corporate group (see below for questions relating to fraudulent transfer/financial assistance)?

Yes, they can.

2.2 Are there enforceability or other concerns (such as director liability) if only a disproportionately small (or no) benefit to the guaranteeing/securing company can be shown?

Yes. Officers may be held liable before the guaranteeing/securing company and its shareholders for losses if benefits

to guaranteeing or securing company are disproportionately small or null. Such liability can be avoided if a guarantee or security provision is approved by shareholders. Lack of corporate benefits should not affect the ability of a creditor to enforce its rights under a guarantee agreement, as Brazilian law does not require proof of benefit for creation or enforcement of the guarantee.

In addition, lack of consideration may impair enforceability of the guarantee or security in the context of a bankruptcy proceeding against the guarantor or security provider because a bankruptcy court can set aside transactions for no consideration carried out within two years before declaration of bankruptcy.

2.3 Is lack of corporate power an issue?

Yes. In order to be valid and enforceable, the guarantee must be executed by parties that are duly authorised pursuant to the guarantor's constitutive documents.

Although the lack of corporate power may impair enforcement of guarantee, creditors have successfully argued before Brazilian courts that they could not have reasonably been expected to be aware of the lack of authority of the parties signing on behalf of the guarantors – and therefore, could not have their rights affected. This has been particularly the case where circumstances surrounding execution of the document created the appearance that corporate power of the signor did exist.

2.4 Are any governmental or other consents or filings, or other formalities (such as shareholder approval), required?

Shareholders or governmental approval is not required under Brazilian law. However, guarantor's constitutional documents may require prior approval by shareholders or the board of directors.

Regarding the formalities, a guarantee must be made in writing and identify the debt guaranteed. It must be registered at the Registry of Deeds and Documents for it to be enforceable against third parties and, if executed outside Brazil, to be admitted as evidence before Brazilian courts.

2.5 Are net worth, solvency or similar limitations imposed on the amount of a guarantee?

There is no limitation in relation to a guarantor's net worth or solvency; however, the amount of the guarantee cannot exceed the amount of the guaranteed obligation.

2.6 Are there any exchange control or similar obstacles to enforcement of a guarantee?

There are no limitations on the amount that can be transferred to a foreign lender upon enforcement of a guarantee or other obstacles to such transfer, however, (i) the Central Bank of Brazil (BCB) must be informed of any guaranteed debt if the borrower is in Brazil and certain other criteria are met, and (ii) payments made from Brazil to a foreign creditor must be carried out through an institution authorised by the BCB to operate in the exchange market.

3 Collateral Security

3.1 What types of collateral are available to secure lending obligations?

The main types of collateral available are plege (*penhor*), mortgage (*hipoteca*) and fiduciary security (*alienação fiduciária, cessão fiduciária* and *propriedade fiduciária*).

Pledges create a security interest over movable property (such as rights to bank accounts, shares, receivables or equipment). Mortgages, in turn, create a security interest over real estate property.

A fiduciary security transfers the ownership of an asset to the creditor on a temporary basis (until debt is repaid), while a debtor/security provider maintains possession of the asset. There are four types of fiduciary security: (i) a fiduciary assignment of movable, tangible assets (*alienação fiduciária*); (ii) a fiduciary assignment of credit rights (*cessão fiduciária*); (iii) a fiduciary assignment of real estate property (*alienação fiduciária de imóvel*); and (iv) fiduciary ownership (*propriedade fiduciária*) of movable assets. Whilst types (i) and (ii) are restricted to transactions within Brazilian financial or capital markets (see last paragraph of this answer), types (iii) and (iv) can benefit any type of creditor in Brazil or abroad.

Credits secured by a fiduciary security are not subject to insolvency proceedings involving the debtor/security provider – this is different from credits secured by a pledge or a mortgage, which are preferred credits in an insolvency proceeding. Please see section 8 for information on insolvency proceedings.

Under current case law, fiduciary assignment over movable assets and credits has been denied to non-Brazilian creditors, based on the understanding that the security is regulated by legislation referring to Brazilian financial and capital markets alone. Nevertheless, this denial has scarce practical relevance, since the fiduciary ownership has almost the same characteristics of a fiduciary assignment and is intended to benefit all lenders, Brazilian or not, without exception – as already confirmed by Brazilian case law.

3.2 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

A general security agreement over any and all assets of the security provider is not possible because Brazilian law requires that the security agreement describes the asset or assets over which a security is created.

Nevertheless, one single security agreement can cover a set of assets of the same type or of different types (such as equity interests, receivables, accounts, inventory and equipment), provided that all assets are duly described in the agreement. This may, however, not be possible for certain kinds of security or types of assets that have specific requirements (e.g. a public deed for mortgages over real estate above a certain value).

3.3 Can collateral security be taken over real property (land), plant, machinery and equipment? Briefly, what is the procedure?

Yes. Security over real property can be created either by a mortgage or by a fiduciary assignment agreement. Security over machinery and equipment can be created either by a pledge agreement or a fiduciary assignment/ownership agreement.

Mortgages for an amount of more than BRL 45,500.00 approximately must be made by a public deed, signed by a creditor and security provider before a notary.

The pledge and fiduciary assignment/ownership over machinery and equipment can be created by a private instrument signed by creditor and security provider (and typically also by two witnesses).

Provision No. 172, issued by the National Justice Council (*Conselho Nacional de Justiça* or CNJ) on June 5, 2024, determined that, as a rule, the fiduciary assignment of real estate property must be formalised through a public deed (Judgment No. 0008242-69.2023.2.00.0000). According to this Provision, only creditors who are part of the Real Estate Financial System ("SFI") can formalise a fiduciary assignment of real estate property by private instrument instead of public deed. In practice, this could hinder the creation in favour of non-SFI creditors of fiduciary assignments over real estate property through private instruments – thus requiring execution through a public deed.

However, this Provision seems to us to be contrary to Brazilian law (in particular, Article 22, §1 and Article 38 of Law 9,514/97). After a request for measures filed by the Union, arguing the illegality of Provision No. 172, the CNJ temporarily and generally suspended it. Thus, for now, fiduciary assignments of real estate properties can be established without a public deed, even in favour of non-SFI creditors.

3.4 Can collateral security be taken over receivables? Briefly, what is the procedure? Are debtors required to be notified of the security?

Yes. Both the pledge and the fiduciary assignment/ownership over receivables are possible. The pledge and fiduciary assignment/ownership can be created by a private instrument signed by a creditor and security provider (and typically also by two witnesses).

In case of the pledge, debtors are required to be notified of the security.

In case of a fiduciary agreement, such notification tends to be contractually required, although it is not a legal requirement unless definitive ownership of the receivables is transferred as a result of security foreclosure.

3.5 Can collateral security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Yes. Both pledges and fiduciary assignment/ownership agreements over bank accounts are acceptable. The pledge and fiduciary assignment/ownership can be created by a private instrument signed by a creditor and security provider (and typically also by two witnesses).

Since these are in fact security over credit rights, banks must be notified of the security as per question 3.4.

3.6 Can collateral security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Can such security validly be granted under a New York or English law-governed document? Briefly, what is the procedure?

Yes. Both the pledge and the fiduciary assignment/ownership over shares in companies incorporated in Brazil are possible. The same applies to quotas (Brazilian term for the portions of the capital of a Brazilian limited company). The pledge and fiduciary assignment/ownership can be created by a private instrument signed by a creditor and security provider (and typically also by two witnesses).

Although Brazilian law allows for the issuance of shares of corporations in certificated form, this is not mandatory and is in practice uncommon.

A non-Brazilian law security over shares and quotas in companies incorporated in Brazil is acceptable (such as New York or England law-governed documents). Please see section 7 for an explanation on enforcement proceedings.

3.7 Can security be taken over inventory? Briefly, what is the procedure?

Yes. Both pledges and fiduciary assignment/ownership of inventory are acceptable. The pledge and fiduciary assignment/ownership can be created by a private instrument signed by a creditor and security provider (and typically also by two witnesses).

3.8 Can a company grant a security interest in order to secure its obligations (i) as a borrower under a credit facility, and (ii) as a guarantor of the obligations of other borrowers and/or guarantors of obligations under a credit facility (see below for questions relating to the giving of guarantees and financial assistance)?

Yes, they can.

3.9 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets?

Stamp Duty
This is not applicable in Brazil.

Notarisation of signatures
Notarisation of the signatures is required for certain security agreements that are subject to registration before Brazilian Real Estate Registry Offices. This is the case for fiduciary assignments of real estate and pledge agreements over agricultural machinery, harvest, and industrial machinery. Notary's fees amount to approximately USD 2.50 for acknowledgment of each signature collected in Brazil. Fees with notarisation of signatures collected outside Brazil will depend on the place of signature.

Legalisation or apostille
After notarisation of signatures collected outside Brazil by a notary licensed under the law of the place of signing, a notary's signature must be authenticated/legalised by a consular official of Brazil or (if the agreement was signed in a country that is party the Hague Convention on the Abolition of Requirement of Legalisation for Foreign Public Documents) be apostilled. Legalisation and apostille fees depend on the country of signature.

Notary deed
As per question 3.3, mortgages for an amount of more than approximately BRL 45,500.00 must be made by a public deed. In addition, as per question 3.3, a Provision of CNJ required the creation of fiduciary assignments of real estate property in favour of non-SFI creditors by public deed, but this Provision is currently suspended.

Notary's fees must not exceed the equivalent of approximately USD 11,000.00 per real property mortgaged/fiduciarily assigned for drafting a public deed in the State of São Paulo (where most Brazilian cross-border loan finance transactions are signed). Different fees apply in other federal States.

Registration at Real Estate Registry Office

Deeds of mortgages and fiduciary assignment of real estate properties are perfected by registration at the Real Estate Registry Office where mortgaged/assigned real estate is/are located. Pledges over agricultural machinery, harvest, and industrial machinery must also be registered before the Real Estate Registry Office of the place where the pledged assets are located.

Registration fees with Real Estate Registry Offices are based on the value of the secured assets or underlying loans and, in the State of São Paulo, are capped at the equivalent to approximately:

- USD 40,000.00 for pledges or fiduciary assignments.
- USD 40,000.00 per real property mortgaged.

Translation and registration of foreign documents

Documents in a language other than Portuguese (including security agreements) must be translated into Portuguese by a sworn translator and registered at a Brazilian Registry of Deeds and Documents in order for them to have legal effect in relation to third parties and be admissible as evidence before courts in Brazil.

Fees incurred with sworn translations are approximately USD 20 per page of the security document, the value of which depends on the translator engaged.

Fees in connection with registration of the translated security document with the Registry of Deeds and Documents are calculated based on the value of the secured assets or underlying loans and, in the State of São Paulo, are capped at the equivalent of approximately USD 4,400.00.

Registration at Registry of Deeds and Documents

Fiduciary ownership agreements must be registered at the Registry of Deeds and Documents with jurisdiction over the obligor's main office or domicile. By contrast, fiduciary assignments of movable, tangible assets or credit rights do not require registration (as confirmed by Brazilian case law), although registration of such agreements at the Registry of Deeds and Documents is advisable in view of the risk of discrepant court decisions.

Pledge agreements must be registered at the Registry of Deeds and Documents of: (a) domicile of the parties, where this is the same location for all parties; or (b) domicile of one of the obligors, if the parties are domiciled in different locations.

Again, registration fees are calculated based on the value of the secured assets or underlying loans and, in the State of São Paulo, are capped at the equivalent to approximately USD 4,400.00.

Other registers

In the case of fiduciary ownership over vehicles, registration is required with the traffic authority where the vehicle is registered, resulting in fees of approximately USD 50.

Additional registration requirements apply to security over a few specific assets (such as shares and rights against financial institutions), but these typically do not result in significant fees.

3.10 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

These requirements can be expensive, as explained in question 3.9 above.

Registration proceedings are typically post-closing covenants in financial transactions involving Brazilian security providers, as these can be bureaucratic and take time, especially when it comes to records in hinterland locations where registrar officers are not used for international transactions.

3.11 Are any regulatory or similar consents required with respect to the creation of security?

As a rule, no. However, authorisation from regulatory authorities may be needed in specific scenarios. For example, public service concession contracts may require prior authorisation of the regulatory authority with respect to the creation of security interests by the concessionaire.

3.12 If the borrowings to be secured are under a revolving credit facility, are there any special priority or other concerns?

No, there are not.

3.13 Are there particular documentary or execution requirements (notarisation, execution under power of attorney, counterparts, deeds)?

As a rule, security agreements can be signed in counterparts, however, this does not apply to mortgages, which must be created through public deeds (please see question 3.3 about pending discussion on the possibility of creation of fiduciary assignments of real estate property in favour of non-SFI creditors through private instruments). A public deed requires the signature of the parties and a public notary on the same copy of the document.

As for other documentary requirements, please see question 3.9.

4 Financial Assistance

4.1 Are there prohibitions or restrictions on the ability of a company to guarantee and/or give security to support borrowings incurred to finance or refinance the direct or indirect acquisition of: (a) shares of the company; (b) shares of any company that directly or indirectly owns shares in the company; or (c) shares in a sister subsidiary?

There are no such prohibitions or restrictions in Brazilian law.

A company's constitutional documents may include restrictions on the company's ability to provide guarantee or security to obligations of third parties, or may require prior authorisation from the board of directors or a general meeting of shareholders for the granting of guarantees or security.

5 Syndicated Lending/Agency/Trustee/Transfers

5.1 Will your jurisdiction recognise the role of an agent or trustee and allow the agent or trustee (rather than each lender acting separately) to enforce the loan documentation and collateral security and to apply the proceeds from the collateral to the claims of all the lenders?

Yes. Brazilian law expressly recognises the role of a collateral agent, who is permitted to enforce the collateral security in his own name but for the benefit of the lenders and to apply the proceeds from the collateral to the claims of all the lenders, with any excess being payable to the relevant obligor or security provider.

5.2 If an agent or trustee is not recognised in your jurisdiction, is an alternative mechanism available to achieve the effect referred to above, which would allow one party to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

Not applicable. Please see question 5.1.

5.3 Assume a loan is made to a company organised under the laws of your jurisdiction and guaranteed by a guarantor organised under the laws of your jurisdiction. If such loan is transferred by Lender A to Lender B, are there any special requirements necessary to make the loan and guarantee enforceable by Lender B?

If the transfer is made by a Brazilian law-governed assignment agreement, it must indicate the place of signing, be dated and describe the parties and rights assigned. The borrower and any other obligor must be notified of the transfer in order to prevent a valid payment to the original creditor.

If the loan and/or guarantee has been filed with any public registry in Brazil, the document providing for the transfer must be filed with the relevant registries, within the margin of original filings.

In the case of loans made by foreign lenders, the transfer of the credit to Lender B must be informed in the System of Information of the BCB.

6 Withholding, Stamp and Other Taxes; Notarial and Other Costs

6.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Yes. A withholding income tax (known as "IRRF") is levied on payments of interest, charges and commissions to foreign (or non-Brazilian-resident) lenders, with the rate generally set at 15%, but is increased to 25% if the lender is resident or domiciled in a tax haven jurisdiction. This withholding tax may be reduced or eliminated under double-taxation treaties that Brazil has entered with other jurisdictions.

IRRF is also charged on payments of interest, charges and commissions made by legal entities resident or domiciled in Brazil to creditors (individuals and legal entities) resident or domiciled in Brazil (but not applicable to local financial institutions) at rates varying from 22.5% to 15% according to the amount of time elapsed between the date of loan disbursement and payment by the debtor.

The same applies to proceeds of a claim under a guarantee or proceeds of enforcing security with respect to the interest component.

6.2 What tax incentives or other incentives are provided preferentially to foreign lenders? What taxes apply to foreign lenders with respect to their loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Interests, charges and commissions paid to foreign lenders in relation to loans destined to finance Brazilian exports are currently subject to a 0% IRRF rate.

The same 0% tax rate applies to interest arising from external loans contracted through the issuance of securities in the international market by specific entities to raise funds for the implementation of investment projects in infrastructure, considered as priorities as regulated by the federal Executive Branch. A 25% rate will apply when the beneficiary is in a tax haven jurisdiction or benefits from a privileged tax regime and a 30% rate will apply in case the beneficiary is a related party.

Furthermore, all inbound or outbound foreign currency exchange transactions related to foreign loans are currently subject to Tax on Financial Transactions ("IOF") at 0%. No other taxes apply specifically to foreign lenders for the purposes of effectiveness or registration.

A non-tax related incentive provided to foreign lenders is that, except as otherwise agreed by the lender, if a borrower undergoes court supervised judicial recovery procedures, the corresponding obligation will be indexed to changes in the exchange rate, whatever other decisions of general meeting of creditors may be.

6.3 Will any income of a foreign lender become taxable in your jurisdiction solely because of a loan to, or guarantee and/or grant of, security from a company in your jurisdiction?

No, except for taxes on interest, charges and commissions explained in question 6.1.

6.4 Will there be any other significant costs that would be incurred by foreign lenders in the grant of such loan/guarantee/security, such as notarial fees, etc.?

Due to the consumption tax reform instituted by Complementary Law 214 of 2025, loans will be taxed starting in 2026 by the new dual value added tax ("VAT"), composed of the Goods and Services Tax ("IBS") and the Contribution on Goods and Services ("CBS"). The VAT, the rate of which is still to be set by ordinary law, will be gradually implemented until 2032. When obtaining financing from a creditor residing abroad, the VAT will be due by the borrower residing in Brazil. The non-resident creditor will be jointly liable for the taxes due.

The VAT calculation base on loans will be the banking spread, which will be estimated by the Tax Authorities. If the

borrower is a taxpayer subject to the regular VAT regime and has the right to appropriate VAT credits on loans (e.g., a manufacturer subject to the regular regime), the international loan will be subject to a 0% rate and no VAT credits will be appropriated by the borrower (although the general VAT rate has not yet been set, in certain operations Complementary Law 214 of 2025 determines that the rate will be 0%). If the borrower does not have the right to appropriate credits (e.g., a financial institution domiciled in Brazil), the VAT will be due.

Please see questions 3.9 and 3.10 for information on notarial, registration and other fees applicable to loan, guarantee and security agreements. Under finance documents involving Brazilian parties, such costs are usually required to be paid by the borrower, guarantor or security provider.

6.5 Are there any adverse consequences for a company that is a borrower (such as under thin capitalisation principles) if some or all of the lenders are organised under the laws of a jurisdiction other than your own? Please disregard withholding tax concerns for the purposes of this question.

Adverse consequences are felt when the borrower and lender are related parties or when the lender is located in a tax haven jurisdiction or benefits from a privileged tax regime.

Thin capitalisation rules impose certain limits for tax deductibility of debt interest, for the purposes of the calculation of corporate taxes under the real profit regime, owed by Brazilian companies to (i) related parties overseas, or (ii) any parties overseas located in tax haven jurisdictions or benefitted by privileged tax regimes. Such limits are determined with reference on the level of indebtedness of the Brazilian entity *vis-à-vis* its net worth or equity interest held by foreign-resident shareholders in its net worth.

If a lender is a foreign-resident shareholder not located in a tax haven jurisdiction nor benefitting from a privileged tax regime, interest paid or credited by the Brazilian entity will only be deductible for purposes of corporate taxes if it refers to debt that does not exceed twice the value of the equity interest of that foreign shareholder in the Brazilian entity's net worth (individual limit). The sum of debts of the Brazilian entity with all related parties overseas, verified upon accrual of interest, must also not exceed twice the sum of equity stakes of all foreign related parties in the Brazilian entity's net worth (global limit).

If the related lender overseas has no equity stake in the Brazilian entity and is not located in a tax haven jurisdiction nor benefits from a privileged tax regime, the debt should not exceed twice the net worth of the Brazilian entity (individual limit). The sum of debts with all related parties overseas that have no equity stake in the Brazilian entity, verified upon interest accrual, must also not exceed twice the Brazilian entity's net worth (global limit).

Interest relating to the amount of indebtedness exceeding the above limits (verified when interest is accrued) constitutes a non-deductible expense for corporate tax purposes.

Indebtedness with parties located in tax haven jurisdictions or benefitting from privileged tax regimes are subject to different limits and rules. If a lender is a foreign resident located in a tax haven jurisdiction or benefits from a privileged tax regime, debt interest paid or credited by the Brazilian entity will only be deductible for purposes of corporate taxes when the total value of the sum of debts with all entities located in tax havens or benefitted by privileged tax regimes does not exceed 30% of the Brazilian entity's net worth. Should the debt exceed such limit, interest relating to the excess amount will be a non-deductible expense for purposes of corporate taxes.

The above-mentioned limits do not apply to Brazilian financial institutions on on-lending operations (when a Brazilian financial institution obtains an international loan and on-lends the funds to a final borrower), as regulated by Brazilian Tax Authorities.

Additionally, interest paid to parties located in tax haven jurisdictions or benefitting from privileged tax regimes will only de deductible when (i) the actual beneficiary (beneficial owner) of the offshore entity is identified, (ii) there is proof of the operational capacity of the individual or offshore entity to carry out the operation, and (iii) there is documentary evidence of the transaction. Proof of operational capacity is not needed when the operation was not carried out with the sole or main purpose of tax savings and the recipient of the interest is a wholly-owned subsidiary, branch, or agency of the remitting legal entity domiciled in Brazil which taxes profits of its offshore subsidiaries, branches or agencies in Brazil on an annual basis.

In addition to the above limitations, Brazilian transfer pricing rules also establish a tax deductibility limit for debt interest on controlled transactions, based on the arm's length principle.

Finally, general conditions for tax deductibility of expenses must also be met, i.e. the expense should be necessary for and usual in company's business activities and corporate purposes, pursuant to tax legislation.

7 Judicial Enforcement

7.1 Will the courts in your jurisdiction recognise a governing law in a contract that is the law of another jurisdiction (a "foreign governing law")? Will courts in your jurisdiction enforce a contract that has a foreign governing law?

Foreign governing law clauses should be recognised and are enforceable by Brazilian courts provided that: (i) the agreement has been executed by all parties or their appointed attorneys-in-fact in the country of the law chosen to govern it; (ii) in the case of counterparts being signed in different countries, the last signature has been made in the country of the designated governing law; or (iii) the offeror (in case of agreements formalised by an offer accepted through a separate copy of the same instrument by the other party) resides in the country of the law chosen to govern the agreement.

In any case, foreign laws are not enforceable in Brazil if they violate Brazilian national sovereignty, public policy or morality.

However, a foreign governing law clause in an agreement that creates an *in rem* right (such as a pledge or mortgage) over assets located in Brazil will not be enforced by Brazilian courts, because such rights must be governed by Brazilian law, according to Brazilian conflict of law rules.

7.2 Will the courts in your jurisdiction recognise and enforce a judgment given against a company in New York courts or English courts (a "foreign judgment") without re-examination of the merits of the case?

Yes, provided that the foreign judgment is recognised by the Brazilian Superior Court of Justice ("STJ"), such recognition only occurring if the foreign judgment: (i) fulfils all formalities required for its enforceability under the laws of the country where it was granted; (ii) is issued by a competent court after proper service of process (whereby service of process instituted against a Brazilian resident party must be effected in

accordance with Brazilian law); (iii) is final and therefore not subject to appeals; (iv) is authenticated by a Brazilian consulate in the country where the same was issued or, if the judgment was issued in a jurisdiction that adopted the Hague convention abolishing legalisation for foreign public documents, is apostilled; (v) is accompanied by a sworn translation of the same into Portuguese; and (vi) is not contrary to Brazilian national sovereignty, public policy and morality.

7.3 Assuming a company is in payment default under a loan agreement or a guarantee agreement and has no legal defence to payment, approximately how long would it take for a foreign lender to (a) assuming the answer to question 7.1 is yes, file a suit against the company in a court in your jurisdiction, obtain a judgment, and enforce the judgment against the assets of the company, and (b) assuming the answer to question 7.2 is yes, enforce a foreign judgment in a court in your jurisdiction against the assets of the company?

It is hard to predict how long court proceedings will take to reach a final and unappealable ruling. The progress of court proceedings varies significantly depending on several practical and organisational factors (e.g., the number of pending cases and appeals in a given State or Federal Court, problems with reduced number of personnel, either judges or court clerks, and so on).

In scenario (a), if the contract (i) is directly enforceable in court in accordance with the requirements of the laws of the place of its execution, and (ii) indicates Brazil as the place of fulfilment of the obligation, it may be directly subject to enforcement proceedings. However, if the contract is not directly enforceable in court, the relevant court proceedings may take at least two to three years to be completed and in some cases even more than 10 years. Also, some court rulings might be subject to provisional enforcement while pending adjudication of appeals that do not operate as *supersedeas*.

In scenario (b), the foreign award must be recognised by STJ before being enforced; the recognition may vary from a few months, when the request to court is consensual, to a couple of years if a defeated party submits a motion opposing to recognition.

7.4 With respect to enforcing collateral security, are there any significant restrictions that may impact the timing and value of enforcement, such as (a) a requirement for a public auction, or (b) regulatory consents?

The measures established by Law will depend on the type of collateral security to be enforced. For instance:

- Enforcement of a mortgage depends on the filing of court proceedings in which a debtor will be served to pay the debt plus interest, fees, and legal costs. If payment is not made, the creditor can either (i) request a public or private auction to sell the real estate, or (ii) adjudicate real estate. Real estate value should either be (i) determined by an appraisal carried out by a court-appointed expert, or (ii) previously established by the parties.
- In case of fiduciary assignment of a real estate property, the creditor can either (i) arrange an out-of-court public auction within the relevant Real Estate Registry Office, or (ii) file enforcement proceedings in court to collect the debt, in which case the procedure will be similar to the one summarised above.
- In case of fiduciary assignment or ownership of movable property, however, after notifying the debtor of the delay or breach by registered letter, the creditor can sell the asset to a third party without need of auctions or appraisals, unless provided otherwise in the relevant contract.

Pledges can be enforced out of court if the agreement contains an express provision to that effect or in case of express authorisation and related power of attorney granted by debtor. If these requirements are not met, foreclosure of the pledge must be carried out in court enforcement proceedings.

Court proceedings might be needed to obtain a search and seizure order if debtor refuses to amicably return the asset to the creditor.

7.5 Do restrictions apply to foreign lenders in the event of (a) filing suit against a company in your jurisdiction, or (b) foreclosure on collateral security?

A plaintiff who is incorporated or resides outside Brazil during the course of a judicial litigation in Brazil must provide a bond to guarantee court costs and defendant's legal fees whenever the plaintiff owns no real property in Brazil that may ensure the payment of such costs. The bond is not required for foreclosure proceedings based on an extrajudicial title, for the enforcement of court decisions, for the filing of counterclaims and if an international treaty so releases.

STJ has also waived this bond requirement for: (i) plaintiffs who, although being incorporated outside Brazil, have appointed agencies, subsidiaries, or branches in Brazil; and (ii) enforcement of foreign awards through the recognition proceeding before STJ.

No specific restrictions apply to foreign lenders in the event of foreclosure on collateral security except that, based on Brazilian case-law, a foreign creditor may be prevented from enforcing a fiduciary assignment agreement over movable property and credits. As detailed in question 3.1, the same restriction does not apply to enforcement of fiduciary ownership agreements or fiduciary assignments over real estate.

7.6 Do the bankruptcy, reorganisation or similar laws in your jurisdiction provide for any kind of moratorium on enforcement of lender claims? If so, does the moratorium apply to the enforcement of collateral security?

Where a bankruptcy procedure has started, lender claims against the borrower are subject to an order of priority defined by the Brazilian Bankruptcy Act. The commencement of a bankruptcy proceeding prevents the mortgagee and pledgee from enforcing their respective security interests. Secured creditors will be paid to the extent that the bankruptcy listed assets are enough to satisfy the preferred creditors, according to the order of priority described in question 8.2.

In the event of judicial or extrajudicial recovery procedures (as defined in question 8.1), lender claims against the borrower (including secured claims) are subject to the payment terms stated in the recovery plan and must be enforced in accordance with this plan.

The enforcement of fiduciary assignment/ownership security agreements, however, is not affected by bankruptcy or recovery procedures.

For additional information on the ability of lenders to enforce its rights during bankruptcy and recovery proceedings, please see section 8.

7.7 Will the courts in your jurisdiction recognise and enforce an arbitral award given against the company without re-examination of the merits?

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 recognised by STJ. Such recognition 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.

The arbitration award rendered abroad will be recognised in Brazil if: (i) the arbitration clause is valid under the law chosen by the parties, or if no law is chosen, under the laws of the country in which the arbitration award was issued; (ii) the defendant was notified of the designation of the arbitrators or of the beginning of the arbitration procedure, being subsequently given a fair chance to present his defence; (iii) the arbitration award does not exceed the limits of the arbitration; (iv) the arbitration proceedings follows the terms of the arbitration clause; (v) the arbitration award is binding upon the parties and remains valid and effective in the country in which it has been issued; and (vi) the award is not contrary to public policy in Brazil or the fundamental principles of Brazilian law (which address basic social, moral and economic values). Awards rendered without proper service of process, in violation of Brazilian sovereignty, or by an arbitrator who did not act impartially, would be examples of awards which are contrary to fundamental principles of Brazilian law.

8 Bankruptcy Proceedings

8.1 How does a bankruptcy proceeding in respect of a company affect the ability of a lender to enforce its rights as a secured party over the collateral security?

The main types of procedures available for companies in financial difficulties are: (i) out-of-court reorganisation; (ii) judicial reorganisation; and (iii) bankruptcy.

Out-of-court reorganisation is a private settlement between the debtor and its creditors and which, despite the name, must be submitted to court to be ratified in order to become enforceable. Debtor and creditors settle the conditions for payment of the debts, and the reorganisation plan is submitted to court for homologation. Creditors may file challenges to the plan, but there are no specific legal provisions related to credit claims (*habilitação de crédito*) for out-of-court reorganisation.

Upon filing of a request for **judicial reorganisation** and consequent acceptance of it by the court, certain creditors are refrained from enforcing their rights. Brazilian Bankruptcy Act provides for a stay period of up to 180 days, and which may be exceptionally extended for the same period once, provided that the debtor has not contributed to the delay. During the stay period, creditors cannot bring or continue any legal or foreclosure proceedings against the debtor, except for certain types of claims, such as those having a fiduciary assignment/ownership to the underlying asset.

In a **bankruptcy** scenario, the court can set aside certain transactions which take place up to 90 days from (a) the bankruptcy request, (b) the judicial recovery request, or (c) the first protest against the debtor due to failure of payment ("Suspect Period"). Transactions which may be set aside include, among others, the granting of security for existing debts or 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 declaration of insolvency.

Please also see question 7.6.

8.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g., tax debts, employees' claims) with respect to the security?

If a debtor is undergoing a reorganisation (either judicial or out-of-court), the claims must observe the order determined by the reorganisation plan approved by the creditors and the court.

Claims (matured or not) existing at the time of a request for **judicial reorganisation** are subject to such procedure except claims: by tax authorities; by lessors, owners or committed sellers of real estate, or owners under a sale agreement with a title retention clause; by creditors guaranteed by fiduciary security; and by creditors who entered into a loan agreement with a borrower who is undergoing a judicial reorganisation procedure, which agreement is conditioned on authorisation from the judge conducting the reorganisation procedure. However, even though these claims are not subject to the reorganisation, the creditors cannot sell or remove assets which are deemed as essential by judicial ruling for debtor's activities during the stay period.

In a **bankruptcy** scenario, claims are ranked in the following decreasing order of priority:

- Labour claims in general (limited to a maximum amount of 150 times the minimum Brazilian wage per creditor) and labour claims related to indemnification for workplace accidents.
- Secured claims (limited to the value of the security).
- Tax claims (except for tax fines).
- Unsecured claims.
- Contractual fines and monetary fines arising from a breach of criminal or administrative statutes, a category that includes monetary penalties for default under any financial agreements (including loan agreements) but not default interest.
- Subordinated debts, such as those created by specific debt subordination agreements between creditor and debtor.
- Interest accrued after the bankruptcy procedure has commenced.

The following claims are excluded from the priority list above and therefore are paid without subordination to the above listed claims: claims secured by fiduciary assignment/ownership, up to the value of such security; and claims for loans extended after the start of the judicial reorganisation procedure of the now bankrupt debtor (a type of finance referred to as "debtor in possession", granted as an incentive to economic recovery of the enterprise).

8.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The Brazilian Bankruptcy Act does not apply to (a) government-controlled entities, and (b) financial institutions, credit cooperatives, credit consortiums, supplementary pension entities, healthcare plan operator companies, insurance and capitalisation companies.

Entities referred to under letter (b) above are subject to special insolvency procedures provided for in specific laws, which in general terms provide for a ranking of claims that is similar to that of the Brazilian Bankruptcy Act (question 8.2). Under current case law, however, bankruptcy proceedings may apply under certain circumstances to the entities that are otherwise excluded therefrom (e.g. if bankruptcy crimes have been committed).

8.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of a company in an enforcement?

As a rule, seizure and expropriation of a debtor's assets depend on the filing of court proceedings. There are some exceptions to that rule, for instance, in the case of a debt secured by fiduciary assignment/ownership (see answer to question 7.4); however, even in these cases a court proceeding is necessary if the debtor/guarantor/security provider refuses to deliver its assets to the creditor.

9 Jurisdiction and Waiver of Immunity

9.1 Is a party's submission to a foreign jurisdiction legally binding and enforceable under the laws of your jurisdiction?

As a rule, a party's submission to a foreign jurisdiction is legally binding and enforceable under Brazilian law, provided that a choice of jurisdiction clause must be stipulated in writing and refer to a specific matter, and the court chosen by the parties must be related to the residence or domicile of one of the parties or to the place of the obligation.

There are the following exceptions to such rule: (a) a choice of jurisdiction clauses can be disregarded by Brazilian courts if the sole object of the clause is to make it difficult or impossible for one party to take proceedings; and (b) in certain situations, 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 lender is incorporated, or in proceedings arising from contracts entered into by Brazilian Public Administration entities).

Additionally, the Consumer Code may apply to financial agreements in some situations (for example, where there is major and clear disparity between the economic situation of the parties), in which specific cases (and based on Brazilian case-law) and one-sided jurisdiction clauses would generally not be enforceable. An example of a one-sided jurisdiction clause is a clause permitting a lender to commence proceedings in any jurisdiction but restricting a borrower to one specific jurisdiction if it wishes to commence legal proceedings.

9.2 Is a party's waiver of sovereign immunity legally binding and enforceable under the laws of your jurisdiction?

Brazilian law does not provide for a party's sovereign immunity, which therefore does not need to be waived.

Please note that neither the law or a contract can exclude the right of a party to seek its rights before a judicial court (or arbitral chamber, when so provided for in relevant agreements).

10 Licensing

10.1 What are the licensing and other eligibility requirements in your jurisdiction for lenders to a company in your jurisdiction, if any? Are these licensing and eligibility requirements different for a "foreign" lender (i.e., a lender that is not located in your jurisdiction)? In connection with any such requirements, is a distinction made under the laws of your jurisdiction between a lender that is a bank *versus* a lender that is a non-bank? If there are such requirements in your jurisdiction, what are the consequences for a lender that has not satisfied such requirements but has nonetheless made a loan to a company in your jurisdiction? What are the licensing and other eligibility requirements in your jurisdiction for an agent under a syndicated facility for lenders to a company in your jurisdiction?

A financial institution licence is required for lenders in Brazil that engage in financial intermediation, meaning the raising of funds from third parties followed by lending with interest charged on the amount lent, made on a regular basis and for profit.

Individuals and non-financial institutions in Brazil may extend loans to third parties without a licence as long as they do not commit financial intermediation (for example, if they lend only their own funds); however, these loans are subject to interest limits set forth by usury laws unless any of the following exceptions applies.

As of August 2024, usury laws do not apply to several credit transactions, including loans: (i) made between legal entities; (ii) represented by credit instruments or securities; (iii) contracted with (a) financial institutions and other institutions authorized to operate by the Central Bank of Brazil (such as payment institutions), (b) investment funds or clubs, (c) leasing companies and simple credit companies (a type of entity dedicated to carrying out credit operations, exclusively with its own resources, to individual microentrepreneurs, microenterprises and small businesses), and (d) civil society organisations of public interest that are dedicated to granting credit; or (iv) carried out in the financial, capital, or securities markets.

Whenever a financial institution licence is required (i.e. when there is financial intermediation), making loans without such a licence will subject the entity and its responsible individuals to administrative and criminal liabilities.

There are no licensing or other eligibility requirements in Brazil for the making of loans by foreign lenders regardless of whether they are financial institutions or not, since Brazilian laws and regulation do not apply to activities of entities that are located outside the country.

The making of loans to Brazilian Public Entities depends on regulatory procedures set forth in the Fiscal Responsibility Act, established to control the public sector's indebtedness.

No licensing or eligibility requirements apply for an agent under a syndicated facility for lenders.

11 ESG Trends

11.1 Do you see environmental, social and governance (ESG) or sustainability-related debt products in your jurisdiction? If yes, please describe recent documentation trends and the types of debt products (e.g., green bonds, sustainability-linked loans, etc.).

Yes. Examples of ESG-related debt products are:

1. Green Bonds ("GLOBAL 2031 ESG") – Issuance by the Brazil's National Treasury of dollar sustainable bonds in the amount of USD 2 billion. The funds raised must be allocated in actions that boost sustainability and contribute to climate change mitigation, to conservation of natural resources, and to social development.
2. Brazil's National Climate Change Fund – A programme created by Law No. 12,114/2009 and regulated by Decree No. 9,578/2018, that aims to finance projects to mitigate climate change. Loans granted within the programme have special conditions, including lower interest rates

and extended deadlines. In February 2024, Inter-American Development Bank announced that it would support the Brazil's National Climate Change Fund with a USD 2 billion line of credit and technical assistance.

3. Infrastructure and incentivised bonds – Law No. 12,431/2011 and Law No. 14,801/2024 provide for specific rules for certain issues of bonds with tax benefits. The resources raised from the emissions shall be used to finance development and infrastructure ventures. As a rule, the issue of these bonds depend on prior authorisation from the ministry with responsibility for the specific area of the emission (for example, energy or transport). However, this ministerial authorisation is waived for projects considered priority. Among the priority projects are those offering substantial environmental or social benefits.
4. IS Investment Funds – In 2021, the Brazilian Association of Financial and Capital Markets ("ANBIMA") established specific rules for funds focused on sustainable investments and ESG issues, which are identified by the suffix "IS". Furthermore, in 2022, the Brazilian Securities and Exchange Commission ("CVM") established additional requirements to be met by funds labelled as "green", "sustainable", "IS", "ESG", among other terms associated with sustainable investments. Such requirements are intended to prevent "greenwashing" practices. These funds must, for example, establish in their organisational documents: what environmental, social or governance benefits are expected and how the investment policy seeks to generate them; what methodologies are followed to qualify the fund according to its name; and the form, content and frequency of publishing reports on the environmental, social and governance results achieved by the investment policy.

Also, regarding documentation trends, on October 29, 2024, CVM issued Resolutions 217 and 218, establishing new obligations for publicly traded companies in Brazil to disclose financial information related to sustainability. The rules, applicable as of January 2026, require the disclosure of information on sustainability and climate change-related risks and opportunities when they may impact cash flow, access to financing, or the cost of capital.

11.2 Are there any ESG-related disclosure or diligence requirements in connection with debt transactions in your jurisdiction? If yes, please describe recent trends and any impact on loan documentation and process.

In addition to the requirements related to the products detailed in question 11.1 above, BCB and National Monetary Council ("CMN") provide for certain ESG-related requirements to be complied with by financial institutions operating in Brazil. They are:

1. A duty to establish a risk management structure that allows identifying, measuring, evaluating, reporting, controlling and mitigating social, environmental and climate risks.
2. A duty to establish a Social, Environmental and Climate Responsibility Policy and to implement actions to ensure its effectiveness.
3. Restrictions on the making of agricultural credit operations with borrowers that do not comply with social, environmental and climate obligations. For example, in certain cases where there is no environmental registration of the borrower's rural properties.
4. A duty to disclose a Report on Social, Environmental and Climate Risks and Opportunities, including detailed information on these three topics.

The above standards reflect what the BCB has called its "sustainable agenda", dedicated to the allocation of resources aimed at developing a sustainable economy. The duties established by BCB and CMN may impact the content of finance documents by imposing social, environmental and climate obligations over the borrowers during the term of the loans. They may also require financial institutions to strengthen client's due diligence procedures, with the need to verify environmental records, for example.

12 Other Matters

12.1 Are there any other material considerations that should be taken into account by lenders when participating in financings in your jurisdiction?

No, there are not.

Luiz Roberto de Assis' practice is focused upon the structuring and negotiation of international lending and financial transactions. He has participated in innumerable foreign financing transactions involving capital markets financing, single-bank finance, syndicated loans, club deals, project finance and structured finance. He has also negotiated many international aircraft leases and export finance contracts.
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- participating in debt renegotiations;
- providing legal advice on foreign investment in Brazil and Brazilian investment abroad;
- structuring domestic and international lending agreements, including single-bank loans, syndicated loans, club deals, project finance and trade finance facilities;
- negotiating leasing agreements, including aircrafts;
- obtaining government licences and concessions;
- structuring consortia and special purpose entities;
- drafting and negotiating financial and operating agreements;
- structuring financing transaction guarantees and securities; and
- providing legal counsel on the structure and negotiating foreign credit before international organisations.

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