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A silver lining on the horizon: Brazil and its new legal milestones every investor needs to know

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Doing business in Brazil requires comprehensive knowledge of the economic, social and especially the legal environment. Investors and companies should be aware in particular of new laws on important issues recently passed by the Brazilian legislator, considered milestone legislation in their respective areas of law. With this article, we want to provide the reader with a short overview on these new laws that are expected to have an impact on investors and companies doing business in Brazil.

Overview on the economic situation in Brazil

After years of economic growth and social development, Brazil is finding itself right now in an economic and political crisis, facing not only declining rates of economic growth, but contraction in 2015, a weak national currency, increasing inflation and interest rates, shrinking private consumption and a rising unemployment rate. The country and its government are further being challenged by the uncovered corruption

scandals involving public oil company Petrobras and several construction companies.

Still, companies continue to invest in Brazil and our Chamber receives numerous inquiries to assist German companies in launching their business activities in Brazil while only very few companies are considering quitting their activities.

This scenario can be explained by two factors.

On one hand, regardless of its current situation, Brazil is a nation with immense potential for foreign investors. Brazil is the largest economy in Latin America and ranks as the seventh-largest economy worldwide. The country has vast natural resources and a large and diversified economy. With its over 200 million inhabitants, it has the world's fifth-largest population representing nearly 3% of global consumers.

On the other hand, as Albert Einstein once said, in the middle of difficulty lies opportunity. M&A transactions are expected to grow and

offer opportunities for German companies to enter the market and establish local presence, which in turn can improve competitiveness regarding participation in public tenders as well as regarding the fulfillment of local content requirements for several industries, including the automotive industry and gas & oil business.

Brazil needs investments especially in infrastructure, the health and education sector. Further, the energy sector and renewable energy sources, environmental technologies, agricultural and food industries as well as services in the information and communication technology have a particular growth potential.

Overview of recent legal milestones

Changes in the Brazilian Code of Civil Procedure (Código de Processo Civil) and the Brazilian Arbitration Act

Brazil's current judicial system is very bureaucratic and emphasizes procedure, making judgments very slow, uncertain and costly and

consequently creates uncertainty and hesitation among investors when it comes to enforcing claims in court. Guided by the awareness that an inefficient procedural system leads to a lack of real effectiveness of the legal system, the new Code of Civil Procedure, Law n. 13.105/2015 comes into effect on March 17, 2016, after one year of *vacatio legis*, revoking the current Code of Civil Procedure, Law n.5.869/1973.

The new law is expected to provide a cohesive and systematic legal framework with adequate procedural rules including new mechanisms for enforcing material rights. Simplified defense rules, unification of appeal time limits and changes in the method of calculating filing dates and other deadlines are designed to accelerate and simplify court proceedings.

Alternative methods of dispute resolution such as arbitration, conciliation and mediation have been given special focus.

The new Code of Civil Procedure determines the judge's obligation to promote conciliation →

hearings. In addition, the courts shall establish centers for consensual dispute resolution.

The Brazilian Arbitration Law was also subject to amendments. Especially, the scope of applicability to direct and indirect administration was widened and courts were enabled to issue provisional measures before the initiation of arbitration proceedings.

Furthermore, at the end of 2015, the Brazilian Mediation Law comes into effect, regulating judicial and extrajudicial mediation proceedings. The benefits of alternative dispute resolutions under moving and complex markets are obvious: speed, flexibility, confidentiality, and expertise. The German Brazilian Chamber of Commerce offers alternative dispute resolution through the Eurochamber's Mediation and Arbitration Chamber (CAE). Further information is available on our website, www.ahkbrasil.com.

Labor law and outsourcing

One major challenge foreign investors are facing in Brazil is the employee-protecting labor law and respective jurisprudence. Further detriments in the context of Brazilian labor law are high non-wage labor costs and risks in outsourcing due to joint liability for claims of employees hired by the contracted third party. A proposed bill, Law 4.330, is expected to bring more certainty in outsourcing contracts and increase competitiveness but it also faces resistance by unions who fear negative impacts on workers' rights and working conditions.

The bill proposal was passed by the Chamber of Deputies in the National Congress and directed to the Senate for approval. According to Brazil's current labor legislation (the so-called Consolidação das Leis Trabalhistas), outsourcing is only permitted to fulfill non-core activities, like

security, janitor and cleaning services, while core-activities cannot be outsourced. The new law allows outsourcing in any field of work and would apply to private companies, freelancers and agricultural producers.

Nonetheless, even under the new law, the contracting company has to implement appropriate supervisory measures to make sure the contractor meets its labor, tax and social security related obligations in order to avoid joint liability and limit his responsibility to a subsidiary liability.

Anti-corruption law

Mismanagement in the Brazilian economy gained international attention by the Petrobras' massive corruption scandal. This scandal, popularly known as "Petrolão", not only had negative consequences on the image of Petrobras, but is also a setback for Brazil as a business location.

Corruption in general bears several threats to an economy because it derogates competition, increases market prices and leads to a lack of confidence in the market. Considered a milestone legal framework, the Brazilian Anti-corruption Law entered into force on January 29, 2014.

The law establishes strict civil and administrative liability of legal entities for acts of corruption against national or foreign public authorities. For sanctions to be applicable, no proof of negligence or willful (in) action is necessary. Further, the company is liable even if it does not benefit from the illicit acts determined by the law. Parent companies, subsidiaries, other affiliates and consortiums are jointly liable for payment of fines. The personal liability of individuals arising from criminal or civil law is not eliminated by the provisions of this law.

Penalties range from (a) publication of the condemnatory decision in the local press, (b) applicable fines in the amount of up to 20% of gross revenue, never being lower though, than the advantage obtained, up to the amount of BRL 60,000,000, (c) partial suspension or interdiction of activities, (d) loss of assets, (e) compulsory dissolution of the legal entity and (f) a ban on participating in public tenders and receiving incentives, subsidies and grants from public entities for the duration of one to five years.

Companies in violation of the law may enter into a leniency agreement at any time up to the completion of the investigative process if meeting certain requirements of cooperation, in order to reduce the sanctions that may be imposed.

It is further important to mention that the new anti-corruption law encourages the effective implementation of compliance programs, with application of codes of ethic and conduct and the existence of mechanisms and internal procedures of integrity, auditing and incentives to report irregularities. The existence of these mechanisms will be taken into account by the government when applying the administrative sanctions.

Internet law

Another fundamental new legislation provides an extensive set of rules to organize internet use in Brazil. The so-called "Marco Civil da Internet" entered into force in June 2014 and establishes key principles, rights and duties. Freedom of speech, privacy and data protection, network neutrality as well as network stability, safety and functionality and preservation of the participative nature of the web are some of the key principles established by the law. According to the network neutrality principle, internet service providers have to treat all data on the internet

equally irrespectively of content, user, site, application, service and so on.

Personal data as well as access and connection records may only be communicated, collected, used, stored and processed with the express consent of the internet user or in exceptional cases as determined by the law. The internet law also provides the right to be forgotten, the right for internet users to have their personal data deleted at the end of contractual relations. The Brazilian law applies to any collection, storage and processing of personal data or communications if at least one of these acts take place in Brazil or one of the terminals is located in Brazil. Foreign companies have to comply with the law if the corporate group has a local entity in Brazil or if services are offered to the Brazilian public.

In any case, the use of the internet in Brazil shall promote the right of access to the internet for all, the access to information, knowledge and participation in cultural life and public issues. It shall further promote innovation and dissemination of new technologies, new use and access models as well as open technical standards that allow communication, accessibility and interoperability between applications and databases.

For additional information on economic and legal aspects of doing business in Brazil, the AHK São Paulo provides a broad range of publications and studies. ←

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Editor's note:

For further information please go to www.ahkbrasil.com. The author wishes to say thank you to Sebastian Rünz, LL.M. (Toronto), a German trainee lawyer who currently works at the German Chamber of Commerce in São Paulo.