Trench
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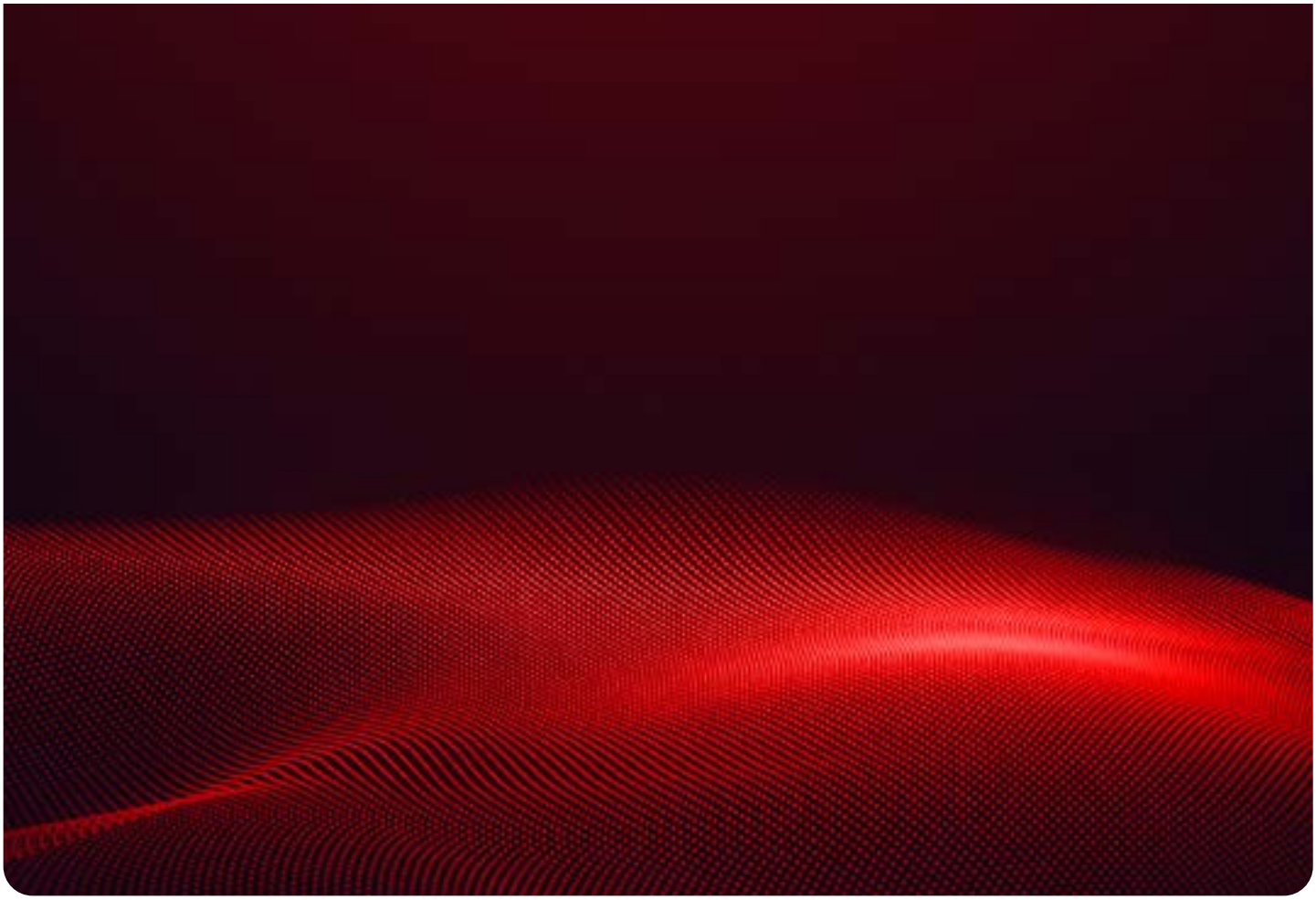
OECD GUIDE



SUMMARY

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INTRODUCTION

On 10 June 2022, the Organization for Economic Cooperation and Development (OECD) published a roadmap of the next steps for Brazil's entry as member into the international organization. This measure began after the formal invitation for the country to initiate such process, which happened in January of this year, which, in turn is the result of almost three decades of an intensified proximity between Brazil and OECD.

This is a significant development for Brazilian and multinational companies operating in the country as this points out to possible reforms in key areas in the Brazilian legal system related to economic activities, and which would bring about the conditions to help Brazil meet the requirements to be admitted as an OECD member. The topics refer to tax, environment, consumer protection and action against trade´s unfair practices, such as transnational bribe and anticompetitive conduct, all of which have relevance to the day-to-day activities of companies.

Trench Rossi Watanabe closely follows these developments and deeply knows each one of these areas, the details of their status, and the possible normative reforms and adjustments necessary to make the country comply with the standards established in conventions, resolutions and guides approved in the OECD scope. To aid economic agents in understanding the possible impacts of these changes in their activities, this guide was prepared, with synthetic and precise information in each one of these key areas.

The topics of these guide clear out Brazil´s efforts to comply with the best practices recommended by the OECD are presented for several years in some of these areas, such as in the antitrust policy. In others, there is still a much larger path to go through so that the normative and institutional picture of the country follows the organization´s guidelines, such as in certain aspects of tax policy. In both, the effects of these changes on the activities of companies operating in the country tend to be increasingly significant.

We hope this material can be useful in providing a panoramic view of these developments and contribute to assess the possible impacts in the companies´ strategic movements.

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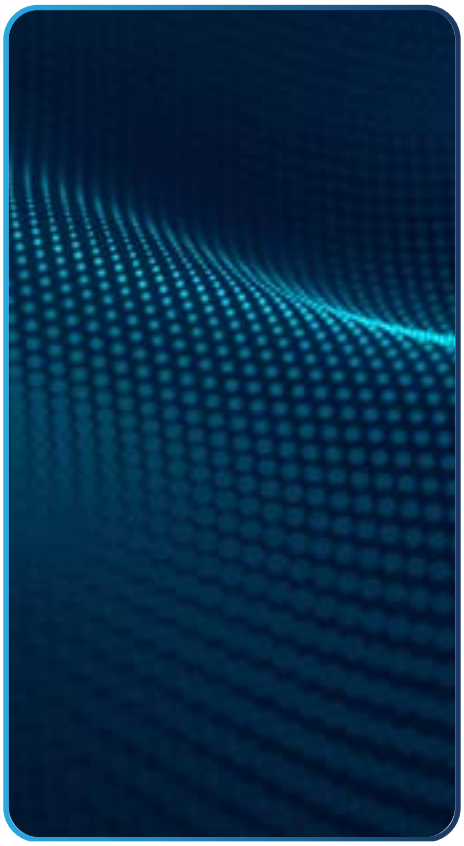
COMPLIANCE

The main topics pointed out in the roadmap:

The incorporation of the Convention on Action against Bribe of Foreign Public Employees in International Trade Transactions



The adequacy of the legal board to act against corruption at the local level

The rules on complainants´ protection

The tax non-deductibility of amounts received as bribe

The capacity of cooperation with other parties of the Convention

The capacity of the authorities, prosecutors and courts to act independently in investigating corruption cases, including those committed by foreign public employees

Convention on Action against Bribe of Foreign Public Employees in International Trade Transactions

The Convention on Action against Bribe of Foreign Public Employees in International Trade Transactions ("Convention") requires that its signatory countries implement measures to criminalize the bribe and the corruption of foreign public employees in international trade transactions, including liability of executives and companies. The Convention establishes that its signatories must punish the bribe and corruption with effective, proportional and deterrent penalties, in addition to implementing a systematic and periodic mechanism of follow-up to ensure that the Convention is being applied.

In Brazil, the Convention was ratified by Decree nº 3.678/2000 and the implementation of its rules was regulated by Law nº 10.467/2002:

Included in the Criminal Code, the crimes of active corruption (article 337-B) and influence traffic in international trade transactions (article 337-C)

Defined "foreign public employee" as the one that "even if transitorily or without remuneration, exercises the position, employment, or public duty in state entities or in diplomatic representations of a foreign country" and "equalizes to foreign public employee, who exercises the position, employment or duty in companies controlled, directly or indirectly, by the Public Authority of a foreign country in international public organizations."

There are other relevant standards related to the theme that are already adopted by Brazil, namely:

The Brazilian Anti-corruption Law (Law nº 12.846/2013), which entered into force in 2014 and establishes the civil and administrative liability of legal entities by acts of corruption, including in relation to foreign public agencies.

The Administrative Misconduct Law (Federal Law nº 8.429/1992), reformed recently by Law nº 14.230/2021, which establishes the administrative and civil liability of legal entities and individuals for acts against the public administration. Among the amendments brought by Law nº 14.230/2021, there is the express reference to another international convention, the United Nations Convention against Corruption, which provides penalties when the purpose to obtain improper advantage or benefit to itself or to an other person or entity by a public agent is proved.

In addition, as signatory, Brazil is subject to periodic evaluations on the theme. The convention´s evaluation reports in Brazil, prepared by the OECD, details the advances and needs for improvement in the country, and probably shall be taken into consideration in the entry process of the country into the organization.

The 2014 Report expressed concern at the low level of application of sanctions related to corruption of foreign public employees in international trade transactions, as well as in relation to Law nº 12.846/2013, considering that some aspects were not clear and could be an obstacle for its application. As a result, Brazil received 39 recommendations, several of which were incorporated by means of Decree nº 8.420/15 (recently replaced by Decree nº 11.129/2022), that regulated the Law nº 12.846/2013 and brought, among other important clarifications, objective criteria for the companies to implement an effective compliance program.

In response, the country presented the report "Brazil: Follow-up of the Report and Recommendations of Phase 3," which was published in February of 2017 and analyzed by the OECD. In this document, the OECD acknowledged Brazil´s progress regarding the application of the Law and its capacity of investigate and address foreign bribery. However, it also identified gaps and key areas for improvements related to asset recovery, actions against money laundering, and the ascertainment of accounting and audit rules.

Meanwhile, in November 2019, OECD published a communication on certain measures adopted in the scope of the Legislative and Judiciary Authorities that could "compromise severely Brazil´s capacity to comply with its obligations in the Convention´s terms," such as the approval of the Authority Abuse Law (Law n 13.869/2019).

Recently, Decree nº 11.129/2022, published on 12 July 2022, revoked Decree nº 8.420/2015 and established a new regulation against corruption in the Brazilian Law.

The decree has guidelines for the administrative processes of accountability and methodology of calculation of the penalties provided in the Law. It also reinforced the role of the Union´s General Controllership (CGU) in the action against corruption of a foreign public agent, creating the obligation to the Federal Public Administration´s agencies and entities to communicate to CGU when unlawful acts involve a foreign public employee. In addition, the decree establishes parameters to assess compliance programs, which can be used to reduce the penalties value.

Such recent measures, adopted after the 2017 report, probably shall be taken into consideration in the country´s entry process to the OECD.

Proper legal board to act against corruption/bribe at the local level

There are several acts adopted since the country´s entry to the convention that cover action against corruption at the local level, namely:

Law n° 10.467/2002, which amended the Brazilian Criminal Code (Decree-Law n° 2.848) to increase the penalties for individuals involved in active and passive corruption crimes

The Law against Corruption (Law n° 12.846/2013), which defines widely the concept of corruption and ascertains the civil and administrative liability of legal entities by harmful acts against the Public Administration, made by their employees and third parties that act on their behalf

The recent Decree n° 11.129/2022, which regulates the Anticorruption Law, revoking Decree n° 8.420/2015

The New Bidding Law (Law n° 14.133/2021), which includes a new chapter into the Criminal Code on crimes against the Public Administration, including 11 crimes, such as unlawful direct contracting, violation of secrecy and other practices capable of impairing the competitive character of the bidding procedure and benefit improperly competitions in bidding (which is also part of the Anticorruption Law)

The Administrative Misconduct Law (Law n° 8.429/92), amended by Law n°14.230/21, which also provides sanctions applicable to public agents in cases of unlawful enrichment, including penalties applicable to individuals or legal entities that contribute to the unlawful acts, including corruption.

The authorities', prosecutors', and courts' capacity to perform their duties free of undue influence, according to the Convention´s 5th article

There are several acts covering action against corruption at that local level that have been adopted since the country´s entry to the convention:

Although the Police is from the Executive Authority, the Public Ministry, as provided by the Federal Constitution, does not belong to the Executive, Judiciary or Legislative Authorities. This means that the institution has administrative and financial competence and is free from interference from these authorities.

The union's public prosecutor is appointed by the republic's president, but each prosecutor/attorney-in-fact has the autonomy to conduct their own investigations and actions.

Transparency International recently forwarded to OECD's Work Group the report "Brazil: Setbacks in the Legal and Institutional Milestones Against Corruption," which states what measures regarding continuous dismantling of the structures implemented in the past years to act against corruption would be. This was a result of the restrictions to the transparency mechanisms, independency loss, increase of political interference in crucial institutions, neutralization of the country's bridles and balance systems, and reduction of civil participation spaces.

Tax non-deductibility of amounts received as bribe and proper requirements of accounting and audit:

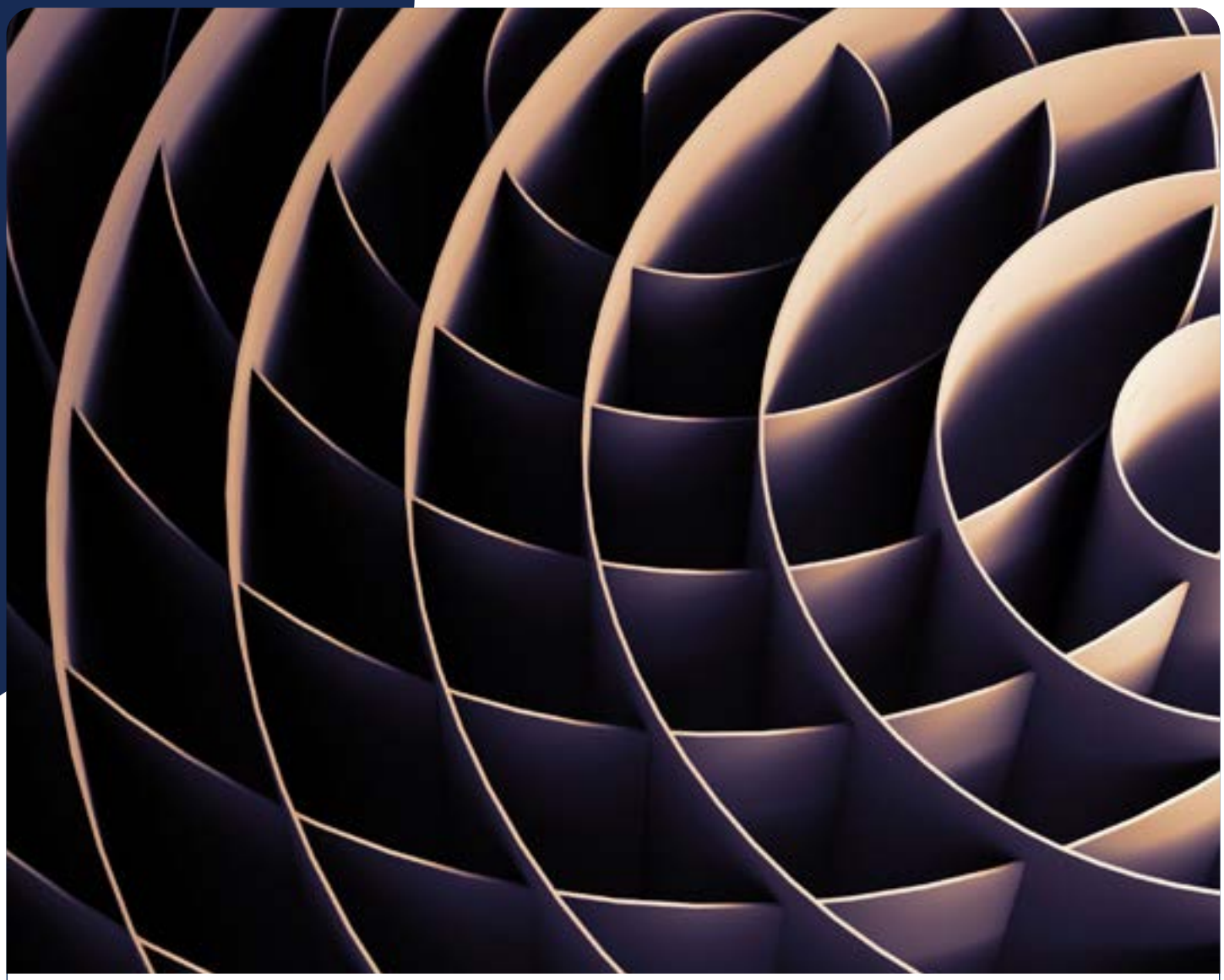
In October 2009, the Brazilian Federal Revenue (RFB) published the Interpretative Declaratory Act n° 32 (ADI 32), which provided the non-deductibility of payments aimed for the practice of unlawful acts, especially the ones forecast in the convention's article 1.

Capacity of cooperation with other parties to the convention

Brazil has already ratified three accords that forecast international cooperation in the area: the Interamerican Convention against Corruption, the United Nations Convention against Corruption, and the OECD Convention. However, the Transparency International has registered in its report "Brazil: Setbacks in the Legal and Institutional Milestones against Corruption" concerns of political interference in the federal government in relation to the Recovery of Assets and International Legal Cooperation Department (DRCI, under the Ministry of Justice), which exercises a leading role in this kind of cooperation in investigations with an international aspect. According to such report, this intervention "shows fragility in the DRCI, that can affect Brazil's posture in the international cooperation. Being a department from the Ministry of Justice, DRCI lacks institutional and operational autonomy and is subject to political pressures, which impacts the international cooperation in general, but also can impair the country's capacity in react and act against the transnational organized crime, especially the corruption and money laundering."

Solid and efficient legal and institutional boards to protect the complainant:

In the private sphere, the establishment of efficient and trustable complaint channels has gained relevance in the Brazilian legal scenario as a tool of detection, prevention and action against legal infractions and the non-compliance of policies in the work environment. This tool has gained even greater importance because the Anticorruption Law provided the implementation of complaint channels that guarantee confidentiality and anonymity and policies of nonretaliation as requirements of an efficient compliance program of companies operating in Brazil. Furthermore, Federal Decree n° 11.129/2022 began to provide the adoption of procedures/policies for the treatment of complaints, in addition to the complaints channel.



Law n° 13.964/2019 regulates complaints of irregularities to government authorities. The law provides that public employees who act as informant of irregularities can be rewarded with up to 5% of the value recovered by the state. Furthermore, it establishes the principle of nonretaliation against informants, protecting them against arbitrary dismissals and unjustified alteration of position, among other protective provisions. Meanwhile, Decree n° 10.153/2019, brings additional protection for the informant by establishing the dissociation between the identifier elements (anonymization) and the complaint made by means of a public federal channel (also available to private persons). All the measures aim to enhance the integrity of the complaint´s government channels.

Another recent provision in Decree n° 10.890/2021 establishes the CGU´s competence to protect complainants against retaliation, or mitigate its effects. In the federal scope, the CGU is liable to receive and investigate complaints related to practices of retaliation by public agents against complainants.

ENVIRONMENT

The main aspects of public policies to be evaluated as pointed out in the roadmap:

Efficient strategies to reduce/ compensate the emissions until 2050, considering the Paris Accord rules

Conservation measures of biodiversity, including the action against deforestation and environmental damage

Management of resources and waste treatment, searching for a more efficient and circular

Application of the polluter-pays principle

Integration of environmental and climate considerations in economic policies

For this purpose, we highlight the more relevant standards that Brazil has on the main themes brought by OECD among the points to be addressed by Brazil to enable its entrance according to the roadmap. We also traced considerations on points that still deserve greater attention and in which there are expectations of specific regulation.

SUSTAINABLE FINANCES

Brazil already has a National Policy of Climate Change (Federal Law nº 12.187/2009), which defines actions and measures that aim at mitigation and adaptation to climate change. It also forecasts Brazil´s voluntary commitment, taken in Copenhagen, to reduce greenhouse gas emissions between 36.1% and 38.9% in relation to the emissions projected until 2020, establishing sectorial plans of mitigation and adaptation to climate change, and aiming at the consolidation of a low carbon economy. In 2022, Brazil updated its Nationally Determined Contributions (NDC) in the scope of the Paris Accord, confirming the commitment of reducing the GEEs in 2025 by 37% below the reference levels in 2005, in 2025, and increasing its commitment of emissions cut from 43% to 50% by 2030, also in relation to 2005 levels.

Another recent and relevant standard for the theme is the National Policy of Payment for Environmental Services (PNPSA) (Federal Law n 14.119/2021), which, despite its regulation still being pending, has the purpose of stimulating the preservation of ecosystems, hybrid resources, soil, biodiversity, genetic heritage and associated traditional knowledge, valuing economically, socially and culturally the ecosystem services. In this sense, the federal government is creating specific programs, such as the Forest+ Program (Ordinance nº 288/2020), which aims at the creation of a voluntary market of native forest carbon credit based on the payment of environmental services that result in the increase and/or stock of carbon in the native forests; and the Forest+ Carbon (Ordinance nº 518/2020).

Currently, there is no specific rule ascertaining the publication and preparation of sustainability reports. What exists are the recent standards addressing the ESG theme for the financial institutions, issued by the Central Bank of Brazil (BACEN), the Securities and Exchange Commission (CVM) and the National Monetary Council (CMN), which have some specific standards for the publication of ESG information. An example is the CVM Resolution nº 59/2021, which shall enter into force on 2 January 2023, and which has improved the rules for the disclosure of information application to publicly held companies in Brazil on ESG matters.
Such resolution aims, in summary, to ensure the existence of a minimum and comparable data set provided by all publicly held companies, and not those that voluntarily choose to disclose information in other sources such as sustainability reports.

In addition, BCB Resolution nº 139/2021 provides the Social, Environmental and Climate Risks and Opportunities Report (GRSAC Report), which must be disclosed annually by certain financial institutions. There is also the CMN Resolution nº 4.945/2021, which provides the Social, Environmental and Climate Liability Policy (PRSAC) and the actions aiming at its effectivity. The PRSAC consists of a set of social, environmental and climate principles and guidelines that are to be observed by the institution when conducting its business, activities and processes,

as well as its relationship with the stakeholders (e.g., clients and users of the institution´s products and services, suppliers and investors of bonds and securities, etc.).

Another measure recently implemented by Brazil, specifically on climate matters, was the publication of Federal Decree nº 11.075/2022, which establishes the procedures for the preparation of the Mitigation of Climate Changes Sectorial Plans and institutes the National System of Greenhouse Gas Emissions Reduction. The decree traces guidelines for the creation of a regulated carbon market in Brazil, a crucial step in the course of complying with the goal of greenhouse gas emissions reduction (NDC) in compliance with the commitments taken by the country with the Paris Accord. Another crucial point brought by the decree refers to the creation of sectorial mitigation plans for climate change, by which gradual emissions reduction targets will be established, considering the specificities of the sectorial agents. It is also worth mentioning that the National System of Greenhouse Gas Emission Reduction shall serve as a single center of registry of emissions, removals, reductions and compensations of greenhouse gas and acts of trade, transfers, transactions and retirement of certified emission reduction credits.

Although the decree mentioned above is an important step toward creating the carbon market basis, several aspects still depend on regulation. In this sense, Brazil provides measures in discussion to be implemented in this sphere, such as the Bill of Law nº 528/2021 (which regulates the Brazilian Market of Emissions Reduction (MBRE)); the Bill of Law nº 4.028/2021 (which provides the general guidelines to regulate the carbon market in Brazil); and the Bill of Law nº 1.684/2022 (similar to the BL nº 528/2021, which provides the regulation of the MBRE). The projects mentioned are complementary to the theme brought by the federal decree and, in theory, will bring more legal safety in this matter by means of economic instruments that enable measures of mitigation and adaptation in the scope of the National Policy on Climate Change and of incentive and foment in relation to the regulated carbon credits market. The country also presents other measures, pending approval, such as, the Bill of Law nº 1.425/2022, which disciplines the exploitation of permanent storage activity of carbon dioxide of public interest, in geologic or temporary reservoirs, and oversees its subsequent reutilization. The project mentioned is one of Brazil´s first steps toward the regularization of Carbon Capture and Storage at the national level, meeting international tendencies and the commitments taken by the country.

BIODIVERSITY PROTECTION

Brazil has implemented several measures on the theme based on the Biodiversity Convention and the Nagoya Protocol. The Biodiversity Convention contains general commitments on the sustainable use of resources arising from biodiversity by the signatory countries and was approved by Brazil by means of Decree nº 2/1994.

Meanwhile, the Nagoya Protocol was amended, coming into force in 2014, and regulates in detail the regime of benefits repartition arising from the exploitation of genetic resources and associated traditional knowledge, ensuring means of access register and compensation for the use. Brazil is a participant member of the Parties Conference of the Biologic Diversity Convention (CBD).

Provisory Measure (MP) nº 186-16/2001 was the legislative instrument that regulated the convention, treating the theme of access and repartition of genetic resources benefits and was in force until the introduction of Law nº 13.123/2015, known as the Biodiversity Law.

According to Federal Law provisions, access to genetic resources arising from Brazilian biodiversity and Brazil´s traditional knowledge, the sending of samples to foreign investigation, and other stages related to the investigation and development of products resulting from the access, must be registered in the National System of Genetic Heritage and Associated Traditional Knowledge Management (SisGen), the electronic system instituted, and managed by the Management Council of the Genetic Heritage (CGen), an agency linked to the Ministry of Environment. In addition, Legislative Decree nº 136/2020 ratified the Nagoya Protocol and imposed the conditions aiming to ensure the coexistence of the Protocol and the Biodiversity Law.

The holders of traditional knowledge, protected by CDB and by the Biodiversity Law, are also protected by the Brazilian legislation. Brazil is a signatory to the Convention nº 169 of the Work International Organization (OIT) on Tribal Native People, which was ratified by Federal Decree nº 5.051/2004 (subsequently amended by Federal Decree nº 10.088/2019) and has relevant provisions on the treatment to be used with the native and tribal communities that, according to the interpretation given to the theme by the Federal Supreme Court (STF), also includes quilombola communities. Decree nº 6.040/2007 also institutes the National Policy of Sustainable Development of Traditional People and Communities, and Decree nº 8.750/2016 institutes the National Council of Traditional People and Communities, which has as duty to monitor the compliance of international conventions ratified by the Brazilian government and the other rules related to the traditional people and communities' rights, among others. This council also participates in CGEN's meetings.

Furthermore, the National Policy of Payment for Environmental Services (Law nº 14.119/2021) also has the purpose of stimulating the preservation of ecosystems, hybrid resources, soil, biodiversity, genetic heritage and associated traditional knowledge, valuing economically, socially and culturally the ecosystem services. Such policy is enabled by means of a priced economic instrument that is materialized by the payment and benefits to any person or community that, through their actions, maintain, recover or improve the ecosystem's environmental conditions. The law prioritizes the support to small producers, natives, quilombolas, and traditional communities in the conservation of areas of native vegetation.

Measures to be implemented: Notwithstanding the fact that the Biodiversity Law has withdrawn obstacles for the scientific research and has facilitated the access to genetic resources by the industry, it was prepared without the due participation of the native people and the traditional communities, what can be considered a violation to articles 6 and 7 of the OIT's Convention 169, in addition to having provisions that may impair the rights of these people in the benefits distribution. In addition, until this moment, biopiracy is not characterized as a crime – the conduct is merely an administrative infringement, as provided by Decree nº 8.772/2016, and just punished with a fine. The National Congress is expected to prepare a specific criminal type for this violation, allowing for triple liability in this matter. Lastly, the ratification of the Escazú Accord, executed in 2019 in Peru is still pending. Its purpose is to ensure the access rights to environmental information, public participation in the processes of environmental decision-making, and access to justice, especially for traditional people.

IMPROVEMENT AND CONSERVATION OF HYDRIC RESOURCES

Regarding the measures (legislative, infralegal, institutional) that have already been adopted by the country in fulfillment of the OECD´s requirements, Brazil has a National Policy of Hydric Resources (Federal Law nº 9.433/97), which is based on the idea that water is a public asset and a limited natural resource with economic value. The use of hydric resources is therefore subject to prior authorization of the environment authorities, which also implies payment for the use of water. The resources derived from these payments are used to promote the rational use of water and finance the programs contemplated in the Hydric Resources Plans.

In the federal scope, the Waters National Agency (ANA) monitors the National Policy of Hydric Resources, which is responsible for the control and management of use of the federal waters (superficial waters – union´s lakes and rivers). At the state level, the government can create their own agencies of water and policies of hydric resources to grant the right of use of waters from rivers and waters sources under their jurisdiction (subterraneous waters in general and superficial waters of state domain). Some states, such as São Paulo, Rio de Janeiro and Rio Grande do Sul, have their own standards on Hydric Resources, which are aligned with the principles and structures of the Federal Policy.

In addition, the Brazilian government recently approved Federal Law nº 14.026/2020, which amended the regulatory milestone of basic sanitation (Federal Law nº 11.445/2007) to incentivize the participation of the private sector in the area of basic sanitation, an activity still dominated by state companies and autarchies and that have extreme relevance in hybrid resources management. Among other themes, there was also the restructuring and expansion of ANA´s competence, which was renamed as the National Agency of Water and Sanitation and given authority to implement and standardize the regulation of basic sanitation services and the sector´s monitoring. The quality standards to be issued by ANA must be aligned with the environmental standards issued by the Ministry of Environment.

In the past years, due mainly to the low levels of rain, a greater concern has been seen with regard to the decrease of hydric reservations in several regions in Brazil. Therefore, the multiple uses of water has become an important matter to public policies and has impacted all the economic sectors, mainly agriculture and industry. The use of substantial portions of water requires the preparation of a detailed plan and additional investments by companies.

MANAGEMENT OF WASTE AND OTHER MATERIALS

In 2010, the National Policy of Solid Waste (PNRS), instituted by means of Federal Law nº 12.305/2010 and currently regulated by Federal Decree nº 10.936/2022, was implemented in Brazil. Among other aspects, the PNRS provides the implementation of reverse logistics systems being an obligation of manufacturers, importers, traders, and distributors of certain products, such as agricultural defensives and batteries, tires, lubricant oils, fluorescent lamps, electric and electronic equipment, in addition to packages in general. Furthermore, the PNRS provides in its 9th article that in the management and administration of solid waste, the following order of priority must be observed: not generation, reduction, reuse, recycling, treatment of solid waste, and final disposition environmentally adequate to waste.

Federal Decree nº 10.936/2022 corroborates the provisions of the PNRS and reaffirms the priority order to the management and administration of solid waste. With regard to energy recovery (defined by the PNRS as one of the environmentally adequate final destination forms) it has been established that the federal financial institutions can create special lines of financing for activities related to the management and administration of solid waste, including the energy recovery and exploitation. In addition to the legislation mentioned, there is also the recent Federal Decree nº 11.044/2022, which institutes the Recycling Credit Certificate – Recicla+. Such certificate consists of the evidence of restitution to the mass productive cycle equivalent of products or packages subject to reverse logistics, which can be acquired by manufacturers, importers, distributors and traders. Despite being voluntary and with some regulations still pending, the decree signifies an important development to the formalization of recycling credits in the country.

Brazil also counts pending measures of approval/implementation that can be useful for the for the country's fulfillment of the requirements for entry into the OECD. An example is the expected publication of federal decrees that, in theory, will bring goals of specific recovery to each type of package materials in general, subject to reverse logistics (e.g., plastic, paper). While there is not a specific regulation published for each material, a general goal (established in 2015) is adopted as a rule for all materials. In other words, some items are more recycled than others.

Some Bill of Laws deserve to be highlighted and can be useful for the country's entry into the OECD. One highlight is Bill of Law nº 3.967/2021 (in process at the Federal Senate), which institutes the National Policy of Circular Economy and the Economically Circular Product Seal. By the proposal, the seal aims to stimulate production practices and sustainable consumption and discourage the consumption of goods that do not meet the principles of circular economy.

Lastly, another measure pending approval that deserves to be highlighted is Bill of Law nº 3.899/2012 (in process at the House of Representatives), which institutes the National Policy of Incentive to Sustainable Production and Consumption. This project also forecasts the creation of a seal to stimulate sustainable production and consumption practices.

Polluter-pays principle application

According to the polluter-pays principle, the polluter agent must bear the social and economic costs arising from the pollution it generates. The central idea is that the polluter agent internalizes the costs arising from pollution, in a way to prevent society or the public authority from bearing such costs.

The Brazilian legal order already incorporates the polluter-pays principle as one of the Environment Law pillars, especially, as regards environmental accountability in the civil sphere. The Environment National Policy ascertains the imposition to the polluter regarding the obligation to recover and/or indemnify for damages caused (art. 4th, VII, Federal Law nº 6.938/1991), and defines "polluter" as one that is directly or indirectly responsible for the degrading activity. In this sense, legislation of the state of São Paulo – considered as advanced and a reference to other states with contaminated areas – also includes in the list of polluters the one that, directly or indirectly, benefits from the contamination, and provides the possibility of disregard of the legal personality when this is an obstacle for the identification and remedial of the contaminated area.

Despite the fact the polluter-pays principle is already incorporated in Brazilian environmental legislation and being widely accepted by courts, a major monitoring by the environmental and competent authorities (such as the Public Ministry) would increase its practical application in Brazil. The omission in the monitoring or late monitoring of polluter agents hampers the remediation or compensation for the environmental damages caused from the polluters, an aspect that can be taken into consideration by the OECD during its process of evaluation regarding the country's entry.

CONSUMER

The main aspects related to the policies to foment the consumers well-being according to the roadmap:

Protection in the electronic trade and economy digitalization context

The structuring of efficient mechanisms to solve disputes

Enabling authorities to act against abusive practices

The increase of consumers engagement in sustainable economy

A good number of the consumers demands made by the OECD has already been implemented by Brazil by means of the consumer legislation in force, especially the Consumer Defense Code (Law nº 8.078/90 or "CDC"), Federal Decrees nº 7.962/2013 (E-commerce), 2.181/1997 (National System of Consumer Defense), and 11.034/2022 (Consumer´s Service Decree – "SAC") and MJSP Ordinance nº 618/2019 (recall).

In this sense, it is possible to highlight: (i) the regulation of electronic trade (E-commerce); (ii) the prohibition of abusive practices by suppliers, with the implementation of an exemplificative list of these practices by CDC; (iii) the creation of agencies responsible for the monitoring of compliance with the consumer legislation in force, where the consumer can also raise complaints regarding their rights by means of the Consumer Protection and Defense Foundations (PROCONS); (iv) the regulation of a service to the consumer in the scope of services suppliers regulated by the Federal Public Authority; and (v) the regulation of the recall procedure.

In relation to the E-commerce, on 15 March 2013, Federal Decree nº 7.962 was published, by means of which aspects of electronic trade in Brazil are regulated by the imposition of several obligations to suppliers that use electronic means to trade products and services. The decree provides, for example, that the supplier must: (i) provide clear information regarding the products and services offered; (ii) facilitate assistance to the consumer; (iii) promote respect to the "regret right" as provided by article 49 of CDC, according to which the consumer can give up on the contracting in a seven-day term, counted from the product´s receipt; (iv) expose in its electronic website in a transparent way information regarding the company, such as corporate name, address and contact data.

Violations can generate sanctions from the consumer protection agency, including the suspension of the supplier´s website.

With regard to the named "abusive practices," according to the CDC, the acts practiced by the suppliers before, during or after the provision of services or the sale of products that put the consumer in manifested disadvantage in relation to the suppliers or that allow the unilateral amendment of agreements, among others, are considered abusive. In this sense, article 51 of the CDC brings an exemplificative list of practices considered abusive that, if they are included in agreements, are considered void by operation of law.

These provisions are monitored by the PROCONS, structured by the federative states, as well as the Municipal PROCONS, where the consumer can go to claim their rights – without taking the judicial route. In addition, in the federal scope, by means of Federal Decree nº 2.181/1997, the National System of Consumer Defense was instituted, which is composed of the Consumer National Secretariat (SENACON), whose operation focuses on the planning, preparation, coordination and execution of the National Policy of Consumer Relations. It is important to mention that as with the PROCONS, the consumer can also go to SENACON to raise their demands.

Federal Decree nº 11.034/2022 was recently amended and now provides new guidelines regarding the Consumer Service (SAC) in the scope of services suppliers regulated by the Federal Public Authority, such as those related to the health, transport, telecommunications and banking, among others. This decree defines quality parameters of the services provided to consumers, such as: (i) the effectiveness of problems resolution; and the (ii) implementation of a tool to evaluate such effectiveness.

In relation to the measures taken to protect consumer health and safety, CDC provides that consumers can bring lawsuits for damages resulting from defects and errors existing in products or services. In addition, suppliers are obliged to inform the consumers of the potential risks to health and safety posed by products and services. If such risks are identified subsequently, the suppliers shall inform the authorities and the own consumers by means of a recall procedure, as provided for in MJSP Ordinance nº 618/2019.

Despite the adoption of these measures, for the country to be considered suitable to enter the OECD, it is still necessary to implement engagement policies and incentivize suppliers for sustainable consumption practices, in addition to promoting educational initiatives regarding consumers' rights and market best practices regarding transparency in the relations.

TAX

The OECD recommendations for the entry of Brazil as a Member-State in the tax area are wide-ranging, such as:

Elimination of double taxation of income and capital, in consonance with the OECD Tax Convention

Active participation in matters of tax assistance, including the effective exchange of information based on international

Commitment with the provision of data to the Committee on Fiscal Affairs (CFA) of the OECD for the preparation of tax statistics and publication of tax policies, as well as the publication of the International Survey on Revenue Administration (ISORA)

Addressing of Base Erosion and Profit Shifting (BEPS) according to the board established in the OECD scope

Elimination of double taxation or the absence of a global taxation on income, by the guarantee of the arm's length principle, as established by OECD standards on transfer pricing

TAXATION OF DIGITAL ECONOMY

The OECD recommendation to the taxation of digital economy (international trade of intangible property and services) turns to neutrality of indirect taxation and the taxation at the destination.

Hardly any measures in relation to the taxation of digital economy have been adopted by Brazil to meet the OECD´s requirements, except the attempt to establish the CBS – unification of PIS and COFINS tributes, which is still being processed without any advance.

In fact, even if the OECD´s recommendations are directed to the operations between the countries, Brazilian internal legislation needs to be coherent, adopting the neutrality principle of tribute incident on digital operations and allowing, in practice, that the taxation occur at the destination location.

Thus, Brazil should look for a way to tax digital operations with goods and services that: (i) ensures taxation at the destination; (ii) involves a single tribute, effectively neutral to the supplier/provider, i.e., reaches only the final destination; (iii) does not generate too much costs as regards compliance with accessory obligations and monitoring; (iv) is coherent with the standards applicable to international operations; and (v) is not considered one of the pillars of business or corporate decisions.

However, the reality in Brazil is still far from the one proposed by the OECD. Even if the relevant discussion on taxation of software is overcome and the STF´s recent decision has brought a certain legal security, Brazil still does not have a single tax on digital goods and services.

Brazilian taxation on digital economy is still imposed at three levels: Federal (by means of PIS/COFINS), State (ICMS) and Municipal (ISS). It is cascaded, non-cumulative in practice, does not ensure neutrality, generates high compliance costs, and provides for taxation at the origin rather than at the destination. In addition, the different ICMS and ISS legislations are often a crucial factor to strategic decision-making for business implementation.

In international transactions, Brazil adopts the source criteria for payments made to non-residents, and even though this conduct implies a "tax in the destination," the adoption of this measure ends up taxing the income and not the consumption, in addition to acting against the OECD´s guidelines regarding income taxation. The import of digital services is, however, subject to a high tax burden (in all levels).

Thus, it is possible to affirm that the country still needs to adopt several measures to be on terms with the parameters established by the organization. The impacts of such measures, when approved, shall obviously depend on their features. Generally, however, we can mention: (i) non-residents that supply digital services can begin to be obliged to have a tax registry in Brazil (CNPJ); (ii) possible attribution of liability to the financial institution that intermediates the payments; and (iii) a change in the tax of local operations.

ECONOMIC TAX TRANSPARENCY AND INFORMATION EXCHANGE

Brazil has already adhered to important international initiatives regarding the tax and financial transparency and information exchange, and it has structured internal mechanisms for the implementation of these initiatives. In this scope, we highlight the following:

- Inclusion of a single paragraph in article 199 of the National Tax Code to provide that the "Union´s Public Treasury, as established in treaties, accords or covenants, can exchange information with foreign States in the interest of collection and monitoring of taxes"

- Signature of the OECD´s Declaration on Automatic Exchange of Information in Tax Matters, as a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes

- Adherence to the OECD´s Convention on Mutual Administrative Assistance in Tax Matters

- Signature of the Multilateral Competent Authority Agreement regarding automatic exchange of CbC Reports - MCAA/CbC and the internal institution of the accessory obligation "Country-to-Country Statement" (RFB Normative Instruction nº 1.681/2016)

- Signature of the Multilateral Competent Authority Agreement regarding automatic exchange of Financial Information - MCAA/CRS and the internal institution of the accessory obligation "e-Financial" (RFB Normative Instructions nº 1.571/2015 and 1.680/2016)

- Adoption of the BEPS Action 14 (Base Erosion and Profit Shifting) related to the Mutual Procedure Agreements ("MAP" - IN nº 1.846/2018) - This is a mechanism that allows the taxpayers and authorities to request from other jurisdictions information regarding disputes in the interpretation of international treaties.

This way, according to OECD´s Transparency Forum monitoring, Brazil is already considered a jurisdiction that contributes significantly for transparency initiatives (http://www.oecd.org/tax/transparency/country-monitoring/). To enter the OECD, new formal commitments must be taken, especially for the cooperation with CFA and ISORA.

According to the Monitoring Annual Plans disclosed by Brazil´s Federal Revenue, the tax authorities are already, in practice, executing the collection and sharing of tax and financial information with several jurisdictions in the scope of multilateral agreements signed by the country. Such initiatives tend to be significantly increased with Brazil´s entry to the OECD.

The arm's length principle and the transfer pricing standards in Brazil´s entry to the OECD: An important development in the context of the BEPS Project

One of the main tools adopted by the states to suppress practices that distort the competition – especially the allocation of incomes in jurisdictions where the tax burden is most favorable – consists in the application of transfer pricing standards.

In fact, the BEPS Project, released in 2013 by the OECD, has as one of its main pillars the review of transfer pricing in the countries in order to avoid practices that result in income of multinational groups being under-taxed or non-taxed worldwide. Throughout the years, with the development and growth of large multinational groups, it has became possible for companies within the same economic group to allocate profits to low-tax or non-taxed jurisdictions without a business correspondence.

Prompted mainly by this phenomenon, the action plan published in October 2015 resulting from the BEPS Project contains three items directly related to transfer pricing practices in the countries. These items review current practices, with the purpose of adding consistency among the allocation of taxable income between the countries where the companies of the same economic group are located and the entity where creation of value is actually effective, including, but not limited to, intangibles and the capital structure of companies.

Thus, the transfer pricing standards establish criteria to be applied in transactions executed between related/linked parties abroad, in order to establish a "fair price" (the well-known "arm's length price") that reflects the reality of the market´s conditions, thus turning such operations comparable to those performed between independent parties in similar situations.

Since the Law nº 9.430/1996 was enacted, Brazil has established its own transfer pricing rules, which differ — to a large extent — from those adopted by most states that follow the guidelines fixed by the OECD.

While the Brazilian standards have as their main purpose the ascertainment of minimum taxable income and maximum deductible expenses for Income Tax and Social Contribution on Net Profit, the "parameter price," the OECD standards encompass a more complete analysis of the operations made, based on the functions developed, assets used and risks taken by the parties that perform the operations subject to control. Also called "benchmark analysis," this is a comparative analysis of similar transactions between independent companies.

The incompatibility between the transfer standards adopted by Brazil and OECD member countries can generate double taxation or lack of taxation of income/profit, depending on the specific case. Thus, the current legislation on the matter constitutes one of the main obstacles for the country´s entry to the OECD.

A task force between Brazil´s Federal Revenue (RFB) and the OECD was formed to address this matter, even as there is still heavy discussion within the business sector regarding the real effects of the forecast changes.

In February 2018, RFB and OECD representatives (with the support of the British government) gathered to develop a joint project that aims to assess the main similarities and differences between the transference prices standards adopted by Brazil and the guidelines established by OECD, as well as to define strategies for a future alignment.

Based on the analysis conducted, the joint report "Transfer Pricing in Brazil: Towards Convergence with the OECD Standard" containing the main conclusions of the aforementioned project was published in December 2019. The study points out that the Brazilian standards: (i) are insufficient to control certain transactions (on intangibles and intragroup financial transactions, for example); (ii) may lead to double taxation or non-taxation at all; and (iii) may cause uncertainty for international transactions.

In parallel, in January 2022, when the invitation letter sent to Brazil by the OECD was formalized, the need to adopt the arm´s length principle (ALP) according to the standard established at OECD´s scope was again expressed as a prerequisite. As part of the previous works evolution, in June 2022, the Interamerican Bank of Development (BID) and the RFB, with the participation of the OECD and private entities representatives, promoted a seminar to present the general lines of the transfer pricing legislation project.

Such project brings the "arm's length principle" as the pillar for new standards on transfer prices. Also presented the structure of the new legislation, with a general part (primarily principle-based) and a special part (detailing the concepts set forth in the general part). Some members of the private sector were able to comment on the project during the seminar.

In a recent presentation to the public, RFB disclosed the main aspects that will be proposed in its own legislation, among which are as follows:

- Selection of the most appropriate method, introducing in Brazil methods acknowledged by the OECD
- nclusion of intangibles and royalties in the transfer pricing legislation, which shall eliminate the old limits established by the well-known Ordinance no 436, as of 1958, for payment of royalties - The new legislation shall allow the deductibility (or require the taxation) of payments ascertainable through analysis of risks, functions and rights allocated to the parties in the transaction with intangibles, including technology and intellectual property transfer. This amendment shall be aligned with the exchange rate flexibility applicable to royalties by 10 January 2023.
- Taxation of profits or losses involved in an economic evaluation of the business model changes, such as the distribution to commercial representation alterations or the manufacture to distribution, among others
- Establishment of the possibility, if not the obligation in some situations, of adopting the Transfer Pricing Accords with Brazil's Federal Revenue (the so-called Advance Pricing Agreements) internationally

The draft bill of law being prepared by the Federal Revenue Service, the dates for the next steps, and the estimated publication of the new legislation that complies with OECD principles have not yet been released, but the studies are well advanced within the federal government. It is estimated that taxpayers will have access to the draft of the new legislation proposed later this semester.

According to the Federal Revenue Service and the OECD, the implementation must occur by the end of 2023.

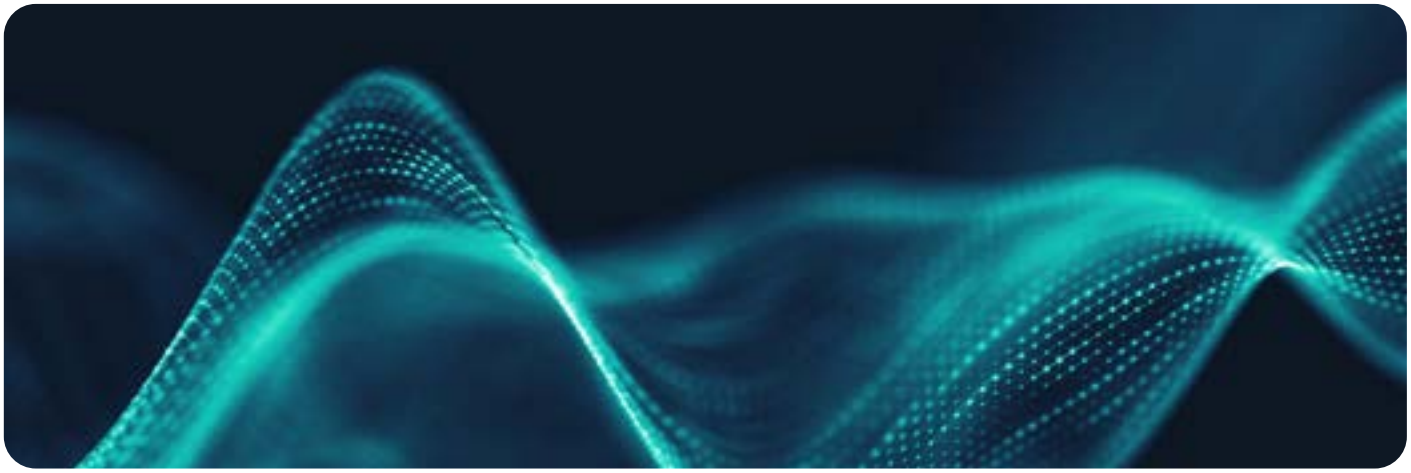
In general, the incompatibility between the transfer pricing standards adopted in Brazil and in OECD member countries, generates some inefficiencies that under certain circumstances can turn foreign investments away from the country in fear of double taxation. Exceptions can be applied in the sense that, depending on the specific situation, the new legislation can be negative if analyzed in isolation.

In any case, the legislative reforms present themselves as a no-turning-back path, and necessary not only for Brazil to join the OECD but also for greater participation of Brazil in the international context.

Once the legislation on transfer pricing in Brazil is amended, the greater part of the actions related to the BEPS Project shall have been taken. Also necessary are two important steps related to the respective implementation of Pillar 1 and Pillar 2: i) the global standardization on the principles for taxing the digital economy; and ii) a minimum income tax level in the countries.

Brazil participates actively in the discussions on these measures, which along with the amendment of the transfer pricing legislation, are essential to Brazil's integration as member of the OECD.

ANTITRUST



OECD recommendations in the antitrust area for Brazil´s entry as a member state:

Facilitate international cooperation in investigations and procedures that involve the application of antitrust standards

Ensure the effective application of antitrust standards by establishing and operating proper legal devices, sanctions, processes, policies and institutions

Proactively identify, evaluate and review existing and proposed public policies whose purposes can be reached with less restriction to competition, and ensure that people or agencies with competition expertise participate in the assessment process

In the antitrust area, Brazil already has, for decades, a remarkably close relationship with the OECD through the entity´s Committee of Competition. Representatives of the Brazilian competing authorities have been participating in meetings since 1998, and the country has become a permanent member of this committee even before it was formally invited in 2019 to enter as a member state.

The Administrative Council of Economic Defense (CADE) also refers to OECD´s reports in several of its analysis and decisions. There have been three peer review processes made by OECD on the Brazilian policy of antitrust — in 2005, 2010 and 2019. Among these, the most important was in 2010, in which several legislative and institutional changes were recommended, notably regarding: i) the correction of inefficiencies arising from the structure then in force, which had the competence divided between three distinct agencies – one in the Ministry of Finance, another in the Ministry of Justice and CADE ; and ii) the reform of the mergers control system, which then was a posteriori (e.g., after the companies concluded the operation).

In 2011, Law nº 12.529 — the current Antitrust Law (LDC) in force in the country — was enacted, incorporating several of the recommendations in the OECD report. Based on this law, CADE, as an independent autarchy, began to centralize the functions of investigation and final decision of these cases.

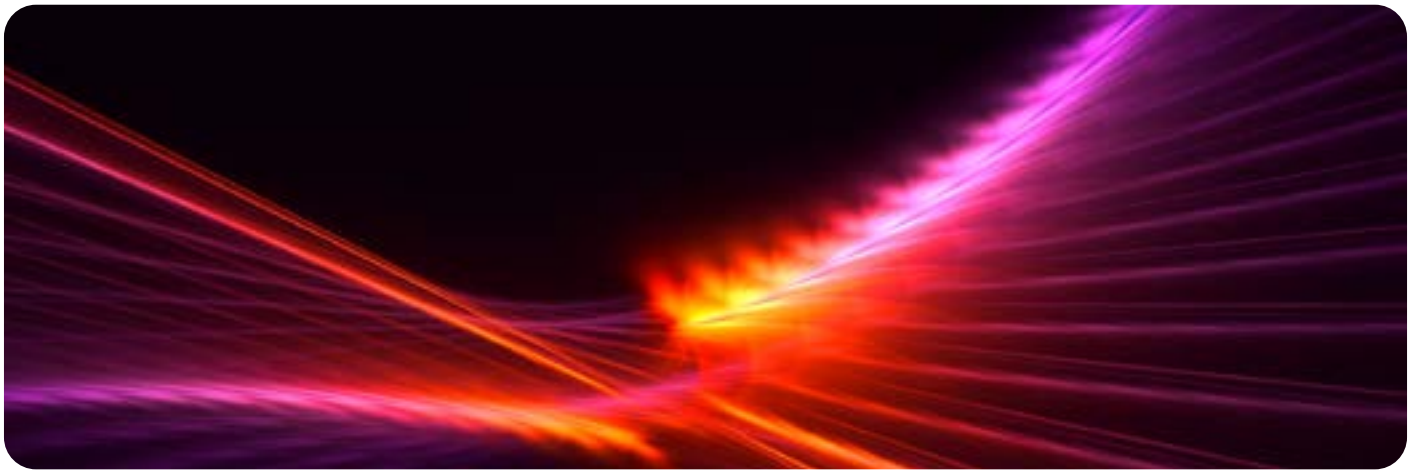
Another notable change was the implementation of a prior approval regime for economic concentration transactions (such as mergers, acquisitions and certain types of business agreements).

The new LDC also detailed the competencies of SEAE, an agency of the Ministry of Economy, to assess and recommend changes in public policies under the responsibility of other agencies, notably sectorial regulatory agencies, and subnational entities, in order to avoid unjustifiable restrictions to competition in markets, which is an activity known as “competition advocacy.”

In the last report (2019), the OECD acknowledged several advances resulting from the new LDC. In any event, it identified possible points of improvement, such as: i) implementation of a more transparent appointment system for CADE´s executives; ii) a greater allocation of resources for the investigation of practices adopted by the companies with market power that may be anti-competitive (known as “abuses of dominant position”); iii) adjustments in the standards on accords made with companies investigated to suspend processes to increase the dissuasion to antitrust practices; and iv) issuance of more guidelines on substantive criteria of competing standards application to complement the several documents on procedural aspects already existing, and with that increase legal safety and predictability.

The reaction to some of these recommendations can already be observed in CADE´s activities . Examples would be the publication of two important guides (on cartel in bidding and probatory standard in leniency accords), as well as the establishment of a specific unit to investigate abuses of dominant position. There is also the discussion on a possible fines dosimetry guidelines, as well as studies to a guide on vertical integrations. This picture reveals Brazil’s high level of compliance with the OECD´s antitrust recommendations. However, it is possible that during the country evaluation procedure, as foreseen by the roadmap, additional points for improvement may be identified.

BANKING & CAPITAL MARKETS



The OCDE currently has 26 legal instruments (such as conventions, recommendations and guidelines) related to the Capital Markets and the banking regulation. **Of those, Brazil has joined 17.**

The **nine** legal instruments to which Brazil is still pending adherence:

- **Council´s Decision that adopts the Code of Liberalization of Current Invisible Operations, dated 12 December 1961:** This establishes recommendations for the cross-border provision of services, such as consulting, legal and architectural services. It applies to operations in which no goods are involved and may be executed by residents or non-residents, whether legal entities or individuals. For example, it defends the non-use of different treatments among residents and non-residents, national and foreigners, as well as the non-differentiation of treatment between the signatory countries (in other words, the use of the standard "most favored nation"). In addition, it provides that the transactions and transfers may be carried out:
a) between authorized agents, such as banks (national and foreign) and brokers; b) in compliance with international agreements in force; and c) in compliance with the monetary national rules in force between the parties involved. Finally, it establishes rights, such as the benefit of liberalization and non-discrimination measures.

- **Council´s Decision that adopts the Code of Liberalization of Capital Movement, dated of 12 December 1961:** This establishes recommendations for the regulation of international financial flow. It aims at the progressive removal of unjustified barriers to financial operations by non-residents in the country. Examples are the acquisition prohibition of agricultural land by non-residents, limitations related to the construction sector, and money market operations, among others.

- **Council´s Resolution on the Draft Convention on the Protection of Foreign Property, dated 12 October 1967:** This establishes guidelines for the fair and equitable treatment of foreign assets, and it cannot impair the administration, maintenance, use, possession or disposition of such assets by unreasonable or discriminatory measures. It also acknowledges the freedom principle to transfer the current income and the results of the liquidation of such property to a foreigner.

- **Council´s Recommendation of Principles for the Private Sector Participation in Infrastructure, dated 20 March 2007:** This sets out guidelines to establish a clear, predictable and legitimate institutional structure to manage public-private partnerships. For that, recommended are the minimization of bureaucracy, the clear delimitation of responsibilities, and the final users´ involvement in the project´s delimitation and subsequently in monitoring the service´s quality;

- **Council´s Recommendation on the OECD Definition of Foreign Direct Investment, dated 22 May 2008:** This establishes guidelines for the state members to align, within one year after the full implementation, statistical methodology with the definition of "foreign investment" brought by the recommendation.

- **Declaration on Sovereign Wealth Funds and the Beneficiaries Countries Policies, dated of 5 June 2008:** This establishes that the countries receiving investments from sovereign wealth funds should not build protective barriers to foreign investments, nor discriminate among the investors in similar circumstances. In addition, this restriction is allowed only in cases of national security. However, it requests that these safeguards be transparent, predictable and proportional to the national security risks identified.

- **Council´s Recommendation on Guidelines for Recipients Countries Investment Policies relating to National Security, dated 25 May 2009:** This establishes that the investment policies related to national security must be guided by the non-discrimination, transparence, results predictability, proportionality of measures, and accountability of the application authorities principles.

- **Council´s Recommendation on Policies Framework for Investment, dated 13 May 2015:** This recommends that adhering countries use the Policy Framework for Investment to facilitate communication and coherence across the governments as a self-evaluation tool, knowledge and experiences sharing, and as a reliable source of international best practices.

- **Council´s Recommendation on Blockchain and Other Distributed Ledger Technologies, dated 10 June 2022:** This establishes guidelines for an ethical and responsible approach in relation to blockchain innovation, to ensure that its application comply with laws, including international ones.

On the other hand, the other 17 legal instruments of the OECD to which Brazil has already formally adhered, as listed below, have had effects on different and relevant aspects of the Brazilian Capital Markets and financial system. This results from the proper adequacy that must exist between the legislation and the public policies of these sectors to the OECD provisions in matters such as sustainable economic growth, scientific and technological development, financial stability, capital flow and consumer protection.

1. **Declaration on International Investments and Multinational Companies, dated June 21, 1976:** This establishes recommendations and encourages international cooperation between the companies, mainly by raising matters related to international investments. Thus, multinational and national companies are subjected to the same expectations in relation to their conduct whenever the recommendations are relevant to both. The OECD recommendations encompass, for example: a) contributions to the economic, environmental and social progress, aiming to achieve sustainable development; b) respect for the internationally recognized human rights that are affected by their activities; and c) incentives for local capacity building through close cooperation with the local community, including commercial interests, as well as the development of the company´s activities in the domestic and foreign markets, according to the need of solid business practices. This was implemented in Brazil as of 15 August 1995 through Constitutional Amendment nº 6 , which eliminated the differentiation between foreign and national stock companies as provided in article 171 of the Federal Constitution 1988.

2. **Council´s Decision on Incentives and Disincentives to International Investment, dated 17 May 1984:** This establishes procedural complements to the aforementioned declaration, acknowledging that the adhering countries can be affected by the measures of such Declaration, and highlighting the need to reinforce international cooperation in international investments and multinational companies. Through this decision, there was an incentive to have the measures be as transparent as possible, so their scale and purpose can be easily established, as well as the providing for consultation and revision of procedures review, to turn the cooperation between the acceding countries more efficient. Finally, it established that the adhering countries could be called upon to participate in studies on tendencies and effects of incentives and disincentives to Foreign Direct Investment (FDI) and provide information on their policies. In Brazil, it was implemented by Decree nº 698 as of 8 December 1992.

3 **Council´s Recommendation on measures of Members-State related to the National Treatment of Foreign Companies in OECD´s Members-State and based on the Considerations of Public Order and Security, dated 16 July 1986**

4 **Council´s Recommendation on exceptions to the National Treatment and measures related to the National Treatment, regarding the Services Sector, dated 10 July 1987:** This brings the same guidelines as the item below regarding the elimination or flexibility of exceptions to the national treatment present in the services sector.

5 **Council´s Recommendation on Exceptions of the Members-State to the National Treatment and measures related to the National Treatment regarding the Services Sector, dated 22 February 1989:** This establishes guidelines for the services sector, in order to eliminate or lighten the exceptions to the national treatment present in the sector, especially in interest areas and those that exclude, totally or substantially, the foreign-controlled companies from the private sectors or activities or that have restrictive and significant effects in several sectors. It is possible to highlight, for example, the discriminatory system in the assessment of the taxable profit of companies established under foreign control – it mentions, also, the security and sea transportation areas as examples.

6 **Council´s Recommendation on exceptions to the National Treatment, in the Official Assistance and Allowance category, dated 11 April 1989:** This establishes guidelines to eliminate or enlighten the exceptions to the national treatment present in the concession of official assistance and allowance. It mentions, for example, the allowance limitations for the publication or distribution of books to foreign companies and the limitation of tax incentives in a certain sector. It is possible to highlight the care in ensuring that there are no distortion effects, i.e., impacts that affect, significantly, the capacity of the foreign-controlled companies to compete, on equal terms, with the local companies.

7 **Council´s Recommendation on exceptions to the National Treatment and correlated measures to the Access to the Local Banking Credit and Capital Markets, dated 1 December 1989:** This establishes guidelines that aim to eliminate or lighten the exceptions to the national treatment regarding access to local banking credit and the capital markets. An exception is the need of prior authorization for a loan in national currency to be used for financing of fixed assets of foreign-controlled companies. Approved in Brazil through the Constitutional Amendment nº 6, of 15 August 1995, which eliminated the differentiation between companies of foreign and national capital, provided in article 171 of the Federal Constitution 1988.

8 **Council´s Decision on Conflicting Demands that are being imposed to the Multinational Companies, dated 5 June 1991:** This establishes the possibility of requesting consultations by the member states on any problem arising from the imposition of conflicting standards to multinationals operating in the national territory. Thus, the country in which such demand exists shall cooperate in good faith to eliminate the conflict in the earlier stage.

9 **Third review of the Decision given by the Council in relation to the National Treatment, dated 12 December 1991:** This ascertains the obligation of notification by the members state, within 60 days after the instrument´s adoption, of all the measures that constitute exceptions to the National Treatment or related to it. Some of the exceptions are: (i) the prohibition of divestiture of agricultural lands by foreign legal entities or subsidiaries of foreign entities; (ii) the restriction of access to the privatization program to foreign investors where more than 25% of the capital is the state´s property; and (iii) operations of freight transport reserved only to national ships.

10 **Council´s Decision on OECD´s guidelines to Multinational Companies, dated of June 27, 2000:** This has the scope of establishing recommendations by the governments to multinational companies, which can be voluntary or regulated by the national legislation or international accords. For example, it mentions: (i) mandatory compliance with the national laws, to the internationally recognized human rights, the incentive to local capacity building and the encouragement of human capital formation; (ii) the cooperation by the governments to eliminate the existence of conflicting requirements for multinationals to operate in the country; and (iii) the incentive of using international dispute resolution mechanisms, such as arbitration, to solve legal matters that arise between the host countries and the multinationals.

11 **Council´s Recommendation on a Political Structure to the Efficient and Effective Financial Regulation, dated 26 November 2009:** This establishes the guidelines of an efficient and effective financial regulation, among which we can mention: (i) transparency; (ii) vigilance; and (iii) the formulation of clear political purposes to rule the political structure that address the market´s failures and most evident socioeconomic needs. In addition, starting from the political objective at the macro level, recommends to define objectives at the micro level, meaning more specific, sensitive to the different parties present in the financial market.

12 **Council´s Recommendation on Principles for the Financial Consumer Protection in High Level, dated 17 July 2012:** This defines as principles to be considered and implemented by the public agencies: (i) a legal, regulatory and supervision structure that reflects the national and global markets' demands and diversity, supported by the ease of access of consumers´ organizations in the formulation of those policies; (ii) the existence of inspection agencies explicitly responsible for the financial consumer´s protection (which can cooperate with other inspection authorities of financial services); (iii) the equitable and fair treatment of consumers; (iv) the disclosure and transparency of information on financial products to the consumers; (v) the promotion of financial education and conscientization, through several channels and with focus on several life´s stages; and (vi) the adoption of a commercial posture responsible for the financial services providers and authorized agents, among others.

13 **Council´s Recommendation on Principles of Corporate Governance, dated 16 November 2015:** This establishes recommendations to use the legislative and regulatory instruments, jointly with legal non-bonding elements as corporate governance codes. The careful and clear distribution of competences between the bodies and agencies to avoid the overlapping of responsibilities and policies is recommended, as well as a deeper analysis in cases of delegation of the inspection responsibility to non-public agencies. In addition, it is possible to highlight that the regulatory, inspection and application responsibilities are attributed to agencies that are operationally independent. This is implemented by laws, such as Law nº 8.429, as of 2 June 1992; Law nº 8.666 as of 21 June 1993; Law nº 12.846, as of 1 August 2013; and Law nº 13.303, as of 30 June 2016 ("State Companies Law").

14 **Council´s Recommendation on Consumer´s Protection, regarding the Credit to the Consumer, dated 2 July 2019:** This establishes the guidelines to implement a legal, regulatory and supervision structure for the consumer´s protection in relation to consumer credit. To this extent, it supports the constant updating of legal instruments in force, aiming to avoid gaps, the establishing of one or more inspection agencies, such as PROCON in Brazil, and the implementation of mechanisms that ensure the transparency of information, including technical terms, at all stages of relationship with the customer. This is incorporated by Law nº 14.181, as of 1 July 2021, which amended Laws nº 8.078, as of 11 September 1990, and nº 10.741, as of 1 October 2003, to improve the discipline of credit to the consumer and dispose on the prevention and over-indebtedness treatment, and Law nº. 9.492, as of 10 September 1997.

15 **Council´s Recommendation on Financial Alphabetization, date of 28 October 2020:** This has as main scope the presentation of strategies to project, implement and assess financial alphabetization policies to the relevant public authorities and interested parties; and to develop healthy, open and competitive financial markets. These strategies are, for example, the legal acknowledgement, the identification of an agency/coordinator council, and the implementation of individual programs (such as financial inclusion, entrepreneurship and policies of gender equality) created based on the nation´s priorities and purposes, and considering, by means of quantitative and qualitative data collection, the levels of the population´s financial alphabetization, the issues arising from it and the most affected groups.

16 **Council´s Recommendation on Corporate Guidelines of Public Companies, dated 22 October 2021:** This establishes guidelines of corporate governance of public companies, such as the simplification and standardization of legal forms under which the public administration acts; the abstention by the state to intervene in the management of those acting only as shareholders; as well respecting independency of the management agencies. In addition, it also recommends the definition and implementation of plans to the public companies with financial goals, capital structure purposes and risk tolerance levels. Lastly, it defends that public companies cannot be exempt from the application of general laws, codes and tax regulations, including bankruptcy procedures. It is approved by the State Companies Law, which made mandatory the existence of corporate governance standards in the state companies internal ruling.

17 **Council´s Recommendation on Quality Direct Foreign Investment for the Sustainable Development, dated 10 June 2022:** This establishes guidelines to implement public policies (whether regulatory, laws, international accords, among others) in the sustainable development area and foreign investment, in a way to identify the impacts of large investment projects under the sustainable development and the implementation policies related to it. It defends an active participation of the community and public entities – ministries, unions, private sector – to build these policies. For example, a greater awareness of the public and interested parties regarding these impacts is recommended, as well as an effort in the business relations between foreign investors and national societies, to ensure more efficient and transparent relations for sustainable development purposes.

Brazil´s relationship with the OECD over the years

2007

May 16

Brazil became an active key partner of the organization following the resolution of the OECD Council (at ministerial level) to fortify cooperation with Brazil, China, India, Indonesia and South Africa, by means of a program with greater engagement, which defined these countries as OECD´s "key partners."

2022

January 25

The OECD Council decided to open discussions with Brazil regarding its entry.

2022

June 10

The 38 Members of the OECD adopted the roadmap to Brazil´s ascension to the OECD Convention, establishing the terms, conditions and process for its ascension.

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