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Brazil - The first six months of the Lula administration and beyond

Insights and implications
for Brazil's future

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Introduction

As Brazil emerges from a historic presidential election which resulted in Luiz Inácio Lula da Silva (Lula) assuming office as the newly elected President in January 2023, the country enters a period of transition marked by challenges and opportunities. This guide aims to describe certain aspects of the first few months of the Lula administration and provide an overview of key areas that are expected to undergo significant changes and developments with respect to the business and regulatory landscape in Brazil.

This guide will delve into the potential impact of the new administration on various sectors, practice areas and transactions including the financial institutions sector, mergers and acquisitions (M&A), antitrust, ESG (Environmental, Social, and Governance), compliance, data privacy, and capital markets.

On October 2, 2022 and October 28, 2022, general elections were held in Brazil for president and other government positions. Incumbent president Jair Bolsonaro sought a second term, while former president Lula ran as a candidate for a third non-consecutive term. Lula's was previously disqualified from running in 2018 as a result of a conviction on corruption charges, but he was subsequently released from prison in 2019 and his conviction was annulled. As a result of the annulment of the conviction, he was once again eligible to hold elected office in Brazil.

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Lula came close to winning in the first round, but the difference between the two leading candidates was closer than what opinion polls had previously indicated. In the second round, Lula obtained 50.90% of the votes, and Jair Bolsonaro received 49.10%, making it the closest presidential election result in Brazil to date.

Subsequently, Brazil's Superior Electoral Court found that Jair Bolsonaro had committed abuse of power and misused communications channels. As a result, he has been banned from participating in electoral politics for a period of eight years. Jair Bolsonaro can appeal this decision to the same court and has raised the possibility of bringing the case to the Supreme Federal Court (STF).

With Lula's return to power, Brazil has experienced a shift in governance and policies. Consistent with his previous tenure as president from 2003 to 2010, Lula's re-election brings forth a renewed focus on social and economic development, as well as potential changes in regulatory frameworks to address emerging challenges. This guide aims to assist businesses, investors and stakeholders in understanding and navigating the evolving landscape that lies ahead.

What follows is an overview of the topics that will be covered in subsequent chapters. Each subsequent section will delve into the specific implications of the new administration's policies, potential reforms, and anticipated regulatory changes within their respective sectors. In examining these areas individually, the goal is to offer a comprehensive understanding of the post-election landscape in Brazil and the potential impact on businesses and the legal landscape in Brazil.

In addition to addressing the anticipated changes under Lula's new administration, this guide will also discuss certain policies and regulations that have already been implemented or gone into effect. Understanding the context of past initiatives and existing regulatory frameworks is crucial for comprehending the potential direction and impact of future developments.

It is important to note that the political and regulatory environment in Brazil is subject to change. The discussions provided herein are based on the most up-to-date available at the time of writing, but readers are encouraged to remain informed and seek professional advice to ensure compliance with the latest regulations and policies.

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By exploring the following key areas set forth as separate chapters, this guide will assist readers in gaining insight into the potential opportunities and challenges that lie ahead:

Financial Institutions

A high level discussion of Brazil's financial institutions sector, focusing on the sector's importance, challenges, regulatory environment and prospects for growth. The chapter covers how the regulatory framework fosters competition and foreign investment while recognizing challenges such as economic inequality, burdensome regulations, political and economic instability, and a complex tax system.

Mergers & Acquisitions (M&A)

A review of the M&A landscape under the new administration is impacted by specific concerns and economic indicators due to the volume of transactions. The insights present promising trends in certain economic sectors and the impact of expectations to a positive outlook for potential investment opportunities and economic growth in the country.

Capital Markets

A review of Brazil's capital markets resilience after challenges from the COVID-19 pandemic. The analysis comprehends stock exchange exhibits signs of recovery, while companies embrace going public and attracting foreign investment. Thus, the section indicates the regulatory framework and challenges to be addressed to foster investor protection and seize growth opportunities.

ESG (Environmental, Social, and Governance)

A review of international expectations and standards related to environmental commitments and social issues. The section highlights Lula's plans for the enforcement of environmental laws, international relationships, climate change, and challenges with respect to governance. The analysis also emphasizes the need for regulatory measures in sustainable finance and for purposes of attracting foreign investment.

Investigations & Compliance

An examination of the evolving compliance landscape, including the Brazilian government's investment in technology for corruption detection and investigation, proposed legislative measures, and ongoing investigations underscore the importance of robust compliance programs for businesses operating in Brazil.

Privacy & Cybersecurity

An exploration of the growing significance of data privacy protection and cybersecurity in Brazil's business landscape and the need for compliance with data protection laws. The analysis discusses the regulatory agenda of the National Data Protection Authority, underscores the urgency of strengthening cybersecurity efforts, addresses the potential impact of 5G technology adoption, and the proposal of a framework for cybersecurity and digital sovereignty.

Antitrust

An analysis on how the Lula administration aims to promote competition, address market concentration, and ensure a level playing field for businesses through anticipated changes in antitrust regulations and enforcement. The analysis also considers the need for improvements in Brazil's competition defense system and the potential impact of economic concentration.

As Brazil embarks on this new chapter of its political and economic journey, businesses and investors must remain vigilant and adaptable. This post-election guide aims to provide a roadmap to navigate the changing landscape, to understand the implications of policy shifts, and identify potential opportunities.

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Financial Institutions

Authors: Ana Laura Pongeluppi, Felipe Lacerda and Marcella Canteruccio



The financial institutions sector is a significant contributor to the Brazilian economy, made up of a well-established banking system dominated by large commercial banks. The regulatory framework in Brazil fosters foreign investment and competition, creating an environment that encourages new players to enter the market.

However, the financial institutions sector faces a number of systemic challenges for which there are no simple remedies. High economic inequality limits access to financial services for a large portion of the population, and heavy regulation can be a barrier to entry for new players. Political and economic instability, as well as a complex tax system, also present challenges for financial institutions operating in the country.

With a new government in 2023, there has come an increased interest by investors and market players outside of Brazil regarding how Brazil's economy is faring. The difficulties faced by financial institutions are directly influenced by the post-election scenario, and uncertainty surrounding the fiscal policies of the elected government is likely to contribute to a high level economic volatility.

A number of economists believe that controlling inflation and unemployment rates while maintaining a restrictive monetary policy with high interest rates will be the Brazilian government's biggest challenges during the

second half of 2023 and beyond. Mid-sized banks may have greater difficulty during the current situation, as they will need to pay higher rates to raise funds. Fintechs, which have had a significant effect on the banking sector and have changed the way financial services are delivered and provided, will also suffer when it comes to raising new rounds of funding.

As for the impacts of foreign economies on Brazil during the recent crisis, monitoring the developments of the financial crisis that has had a significant impact on banks mainly in the United States and Europe is important given possible effects on Brazilian banks. Although the domestic scenario is challenging, Brazilian banks are generally well-capitalized and appear to be well-equipped to handle the current challenges faced by international financial institutions.

However, recent events have raised important questions regarding the oversight and regulation of financial institutions in Brazil, particularly as to whether banking regulation mechanisms need to be reviewed in light of these current global challenges.

The Brazilian Central Bank (BACEN) plays an important role in this context, but, as with other political institutions, is subject to political pressure pursuant to which politicians often try to influence its decisions for their own gain. There is currently a political battle between Lula and BACEN centered around the issue of the central bank's autonomy. BACEN has argued that its independence is necessary to ensure the stability of the country's economy, while Lula believes that BACEN should not be entirely independent and should be more accountable to the government.

BACEN has issued new rules for PIX transactions (money transfers between individuals and/or businesses) to foster competition and improve security and is continuing its work on open banking and open finance initiatives. BACEN is also expected to provide new regulatory sandbox opportunities to work with innovative models using technology that may require regulatory waivers for appropriate testing. Additionally, BACEN has introduced new consumer protection-oriented banking regulations resulting from Brazilian National Monetary Council (CMN) Resolution No. 4,949/21, which established principles and procedures for the relationship between customers and users of products and services. These new regulations have demonstrated BACEN's focus on providing increasing levels of protection for individuals and consumers in financial transactions.

All of the above are connected with BACEN's "Agenda BC#" which includes initiatives to promote inclusion, competitiveness, transparency, education, and sustainability in the financial markets. BACEN has been particularly active in supporting private sources of financing in the credit market, promoting digital platforms, simplifying procedures, and reducing red tape to ensure non-discriminatory access to the market for all those wishing to participate.



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As part of the “Agenda BC#”, we have seen new developments with respect to Environmental, Social, and Governance (ESG) matters. The CMN has introduced a number of new ESG-related rules for financial institutions operating in the country. These new regulations have been introduced across six resolutions, including, among other initiatives, the obligation to implement an operational risk management framework which incorporates social, environmental and climate risks. Institutions are also required to undertake stress testing, taking into account potential changes in climate patterns and a transition to a low-carbon economy as part of their scenario planning. The regulations apply to all institutions, regardless of their size or segment, and include requirements for the disclosure of social, environmental and climate risks and opportunities, including the management of risk governance and related procedures. The regulations also establish standards for the implementation by financial institutions of a policy focused on social, environmental, and climate aspects in their business operations, activities, and processes (PRSAC). The new rules are in force, with different deadlines set for compliance depending on the segment of each institution.

BACEN has also announced the start of a digital currency pilot project called Real Digital, which aims to reduce the cost of credit, improve returns on investments, and provide potential for new financial service providers such as fintechs, thereby democratizing access to the market and offering new services. The concept of the Brazilian central bank digital currency (CBDC) is not intended to leverage digital payments. Instead, bank deposits would continue to exist within the Brazilian CBDC, thus funds would continue to be tied to hard currency that financial institutions could continue to use as a source of funds for credit generation.

Despite the challenges mentioned, the financial institutions sector in Brazil is poised for continued growth, driven by increasing demand for financial services, technological advancements and favorable economic conditions. Brazilian banks and institutions such as BACEN and CMN continue to play a crucial role in supporting the country’s economic development, increasing financial inclusion, and promoting innovation and investor confidence. These institutions are likely to continue promoting these initiatives in the years ahead.

Mergers & Acquisitions

Authors: Lizandra Baptista and Felipe Lacerda



Brazil's M&A landscape is navigating through a challenging economic climate. Amidst Brazil's shifting economic landscape under President Luiz Inácio Lula da Silva's (Lula) administration, there are both challenges and opportunities for investors and businesses looking to engage in mergers or acquisitions.

In the first quarter of 2023, mergers and acquisitions worldwide experienced a significant decline, with a reduction of approximately 44% compared to the first quarter of the previous year. This downturn was mainly attributed to reduced number of cross border M&A transactions and a decline in domestic transactions.

Following the global trend, Latin America also experienced a decrease in M&A activity, with around 30% less deal volume and around 60% less deal value during the first three months of 2023 compared to the same period in 2022, with the technology sector being comparatively less affected by this downturn, showing resilience despite lower transaction values. Notably, companies and individuals from the United States and Canada continued to be the primary investors in Latin America.





Similarly, Brazil experienced a 16% year-on-year decline in M&A activity during the first quarter of 2023, accompanied by a decline in capital markets activity.

While there is limited confidence among market participants and consultants regarding initial public offerings (IPOs) in Brazil for the year 2023, there is a higher level of optimism surrounding M&A activities. A survey by consulting firm Maitreya revealed that more than half of the respondents believe that there will be a limited number of IPOs in Brazil, but that there will be an increase in M&A transactions during 2023. Looking ahead, prospects of decreasing official interest rates and the potential approval of reforms to the Brazilian tax laws contribute to a more positive outlook for M&A and capital markets activities.

It is important to acknowledge the varying trends across different sectors in Brazil. The education sector experienced a significant decline in M&A activity during the first quarter of 2023 compared to the previous year. The number of transactions in the sector decreased by 63% during this period when compared to the prior year. Conversely, the mining industry in Brazil has seen a notable increase in M&A activity. In the first quarter of 2023, there were 14 M&A deals in the sector announced to Global Data's database. Global Data is a repository of reports covering industries tracking market activity of global mergers & acquisitions, database with a total value of USD 180.4 million. This represents a 75% increase compared to the previous quarter, highlighting the growth of opportunities within the mining industry.

In addition, the renewable energy sector in Brazil has witnessed a significant increase in merger and acquisitions activity. In 2022, there were 49 deals publicized, representing a 58% increase in the number of M&A transactions in the renewable energy sector compared to 2021. The energy sector at large experienced an 81% growth in M&A activity. According to advisory firm Redirection International, 114 deals covering the energy sector were announced in 2022. The increasing share of the renewable energy sector within the overall energy sector indicates a positive trend expected to continue. Both international and domestic groups are actively involved in M&A activities in this sector, with some looking to sell local assets while others recalibrate their portfolios. Investment funds also play a significant role in driving activity in the energy sector.

The agribusiness sector in Brazil has demonstrated a strong recovery in productivity after the COVID-19 pandemic, benefitting from decreased production costs and high commodity prices. On top of that, President Lula announced the release of a credit line worth BRL 7.6 billion from the Brazilian National Bank for Economic and Social Development (BNDES) to be used in the agricultural sector. The funds will be used for investments in sustainability, expanding storage capacity, and enhancing food security.

Despite the decline in M&A activity, companies and well-capitalized funds continued to show interest in investing and developing businesses in Brazil. Attractive asset prices, especially for foreign investors due to favorable exchange rates, contributed to an optimistic outlook for a potential increase in M&A activity in the second half of the year.

Additionally, on July 25, 2023, Ibovespa, the main stock index of Brazilian stock exchange, known as B3 (*Bolsa de Valores de São Paulo*), reached its highest level since August 2021, reflecting investor confidence in the country's economic prospects. The positive performance of the stock market is indicative of the optimism surrounding the economy, with a decreased exchange rate of the Brazilian Real against the US dollar, lower future interest rates, and a decline in unemployment. Please refer to the section of this guide regarding Capital Markets for additional information. Projections indicate a decrease in inflation and an increase in Brazilian GDP for 2023, which are positive indicators for the future trajectory of the Brazilian economy.

Overall, while facing some challenges and uncertainties, Brazil's M&A landscape remains dynamic, and the country has maintained its position as a leading player in the Latin American market, offering favorable conditions for growth in M&A transactions during the coming year.



Capital Markets

Authors: Ana Laura Pongeluppi and Felipe Lacerda

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While Brazil's capital markets have recovered from the various issues attributable to the COVID-19 pandemic, they are subject to a number of significant challenges. The Brazilian stock exchange (*Brasil, Bolsa, Balcão* - B3), has been showing signs of recovery after an exceptionally quiet last year and a half. While a number of companies are taking steps to go public and access the international markets, the Brazilian market remains relatively small compared to other emerging economies, such as Taiwan, with limited liquidity and depth.

The country's fixed-income market has been more robust than the recent equity markets, with a wide range of instruments available to investors, including government bonds, corporate debt and structured products. Brazil's capital markets are subject to a number of regulatory and legal challenges, such as high taxes and complex regulations, which could deter investment and limit market growth.

The Brazilian federal government is in the process of implementing reforms to simplify the regulatory framework applicable to capital markets transactions and attract more investment to the country. Overall, the Brazilian capital markets presented opportunities for investors, but also posed challenges that required careful consideration and attention to risk management.

Regulatory changes made in 2022 and during the first quarter of 2023, many of which have already been implemented or come into effect this year, provide a number of significant changes applicable to investors, issuers and other stakeholders. Some of the major regulatory changes are summarized as follows:

New Regulatory Framework for Public Offerings in Brazil

The distribution of securities in Brazil is conducted through public offerings, which are regulated by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*, or CVM). As of January 2, 2023, the CVM introduced significant changes by implementing a new rule known as Resolution No. 160/22. This resolution, which replaced CVM Resolutions No. 400/03 and 476/09, aims to establish a unified regime for public offerings and requires registration for all offerings subject to the new rule.

The resolution introduces a number of specific registration regimes, including ordinary registration and automatic registration. The choice of procedure depends on factors such as the issuer, the type of securities offered, and the target investors (general, qualified, or professional investors). These changes benefit all investors by providing more objective, standardized prospectuses and material fact filings tailored to the offered securities.

Notably, offerings targeting professional investors are exempt from these enhanced disclosure requirements.

Under the new rules, financial institutions or other companies acting as agents of an issuer in the distribution of securities can apply for registration as coordinators of public offerings, regardless of whether or not they are financial institutions. However, if they wish to act as coordinators in offerings subject to the automatic registration process, they must be supervised by a self-regulatory entity having a specific technical cooperation agreement with the CVM.

All public offerings must be registered with the CVM through an automatic registration process (with no regulatory review before launch) or an ordinary registration process (with prior review by the CVM). The choice between the two processes depends on factors such as the issuer's size, the type of security offered, and the targeted investors. As a result of these changes, public offerings are no longer subject to limitations on the number of potential investors that may be contacted (the previous limitation of 50 qualified institutional investors no longer applies), trading restrictions (which now only apply to the secondary market and among qualified investors), and the four-month limit for issuers to execute a new offering for the same security.

Furthermore, the CVM has issued guidelines related to a public filer's annual report and prospectus (*Formulário de Referência*, or Reference Form). The new Reference Form has been streamlined compared to prior requirements and contains fewer sections. The main changes include the exclusion of repetitive information sections and adding a section dedicated to ESG (Environmental, Social, and Governance) disclosure. This change aims to prevent companies from disclosing ESG information in multiple sections of the Reference Form.



Greenwashing

Greenwashing refers to the act of making false or exaggerated claims about the environmental benefits of a product or service. Greenwashing has become a growing concern in Brazil as companies attempt to capitalize on the increasing demand for environmentally friendly products.

CVM Resolution No. 59/2022 was implemented in an effort to prevent greenwashing. This resolution regulates publicly traded companies' disclosure of information related to social, environmental, and governance (ESG) issues in its Reference Form. The rule requires companies to provide accurate and transparent information about their ESG practices and prohibits them from making misleading or false claims. Still, some companies claim to be "carbon neutral" without providing information on how they offset their emissions, while others use vague terms such as "eco-friendly" or "sustainable" in their marketing and offering materials without providing specific information on the meaning of those terms.

The main purpose of this rule is to prevent companies from using vague and unsupported claims about their environmental practices to appeal to environmentally conscious investors without providing concrete evidence to support their claims. Regulators such as the CVM play a crucial role in enforcing these rules to ensure companies provide evidence for their environmental claims and to ensure companies provide accurate and transparent information about their ESG practices.

Investment Funds

The CVM issued Resolution No. 175 on December 23, 2022 (Resolution No. 175). This resolution includes a general part applicable to all investment funds and specific rules for financial investment funds (FIF) and investment funds in credit rights (FIDC). The consolidation of these rules into a single norm is a significant achievement for the CVM, as it has resulted in the revocation of 38 regulations.

Through the new regulation for funds, the CVM aims to achieve greater efficiency in the functioning of the fund market, reduce compliance costs for participants, and ensure the protection of investors, which is a fundamental mandate of the regulatory agency.

The new regulatory framework for investment funds consolidates the general operating rules and enhances the transparency of information for investors, as well as fund governance. Then, the documents will be standardized, providing more uniformity in the disclosures, and the administration, management, and distribution will split the management fee.

The framework also introduced rules for socio-environmental funds, requiring ESG funds to demonstrate their social, environmental, and governance benefits. These funds must explain the methodology used and provide certification from a third party in this regard. Consequently, fund managers will need to hire a certifying entity and have the investment policy approved at the shareholders' meeting. These changes promote greater legal certainty in case of any problems or losses, which could encourage the emergence of more products with accessible fees. Additionally, the new framework allows for direct investment in cryptocurrency funds. Individual investors will also have the opportunity to allocate resources to investment funds in credit rights (FIDCs), which were previously exclusive to those with more than BRL 1 million in investments.

The CVM decided to postpone the implementation of the new rules for investment funds, originally scheduled to take effect on April 3, 2023. As a result, Resolution No. 175 will now be effective from October 2, 2023.

ESG

Authors: Lizandra Baptista and Ana Laura Pongeluppi



Despite Jair Bolsonaro's loss to Lula in the election held on October 29, 2022, lawmakers close to him won a majority in Congress. This means that Lula has had to reach consensus with a conservative congress to pass legislation, reducing the risks of radical policy changes. Thus, Lula's anticipated green reform may face significant political opposition. However, the return of Lula to his third mandate has been viewed by the international community as a positive development with respect to ESG initiatives in Brazil.

Lula has already taken actions to revive relationships with countries that finance forest protection efforts and to push to host an upcoming world climate summit in Brazil. His first appearance at an international event after the election, was at the U.N. climate conference held in November 2022 by the invitation of Egypt, the host country of the summit, where he made a number of comments regarding protecting the environment.



Brazil announced a bilateral working group on law enforcement and deforestation with the United States at the Summit of the Americas which took place in June 2022. The working group will be destined to achieve measurable declines in illegal deforestation within the designated rainforest region known as Brazil's Legal Amazon, as outlined by the Brazilian Government. This area is subject to specific protection and development policies. The goal is to consistently reduce illegal deforestation both within the Legal Amazon and in other parts of Brazil every year through 2028, when Brazil has committed to achieving net-zero deforestation. This would mean that the total amount of deforestation could not exceed the amount of forest that is regrown or reforested in the country.

Nonetheless, the task for environmental administration remains a significant challenge considering the need for economic development in Brazil. For the past two decades, Brazil has been concentrating its economic development on the production of commodities, such as agricultural raw materials, minerals and petroleum. The Lula administration and its policies will have to consider not only the interests of agriculture businesses, which can have outsized environmental impacts, but also the direct and indirect impacts of mining for mineral, especially metals used in renewable energy and e-mobility technologies. In addition to political and economical pressure, the Lula administration will also need to consider the collective property rights of indigenous people and local communities around the Amazon rainforest.

Despite the international pressure around preserving the rainforests and legal rights to indigenous lands, President Lula has and will continue to be under considerable pressure to limit restrictions applicable to sectors as profitable such as mining and agribusiness.

Despite environmental issues, it is expected that the implementation of a wide range of public policies promised during the Lula campaign, such as labor issues, child labor and slave labor, racism, promoting human rights and policies focused on fostering equality.

International and domestic investors have focused more on more on ESG-driven policies in deciding where to invest. In particular, the support of carbon offset projects and the implementation of diversity and equality policies inside companies will be even more of a focus during the Lula government.

A great part of the development in line with ESG goals is still dependent on regulation. With respect to environmental matters, Brazil currently has a national plan for climate change and some carbon market policies remain under review by policymakers. Voluntary green bond principles have been released, banks are required to disclose their ESG policies, and listed companies must explain why they have not adopted green policies.

Resolution No. 59, issued by the Brazilian Securities and Exchange Commission (CVM), was updated in 2022 to simplify the annual reports and public filings submitted by publicly traded companies. These new rules seek to enhance the disclosure of a company's environmental, social, and governance (ESG) activities and policies. Additionally, the Federal Accounting

Council (CFC) established the Brazilian Committee on Sustainability Pronouncements (CBPS) to collaborate with the International Sustainability Standards Board (ISSB) in standardizing information in the domestic market. This collaboration seeks to achieve uniformity in Brazilian accounting norms concerning sustainability pronouncements and align them with international standards.

The International Financial Reporting Standards (IFRS) Foundation is expected to publish two ESG standards later this year through the ISSB. These standards will establish a global framework of disclosure standards for reporting information on sustainability-related risks and opportunities, providing guidance and information to investors which can be used in their decision-making process.

IFRS S2 Climate-related Disclosures is used in conjunction with IFRS S1, and requires the disclosure of material information about climate-related risks and opportunities to meet investor information requirements. It fully incorporates the recommendations of the Financial Stability Board Task Force on Climate-related Financial Disclosures (TCFD). Moreover, IFRS S2 mandates the disclosure of material information about climate-related physical and transition risks and opportunities, focusing on industry-specific disclosures. To assist companies in identifying related risks, opportunities, and disclosures, IFRS S2 provides illustrative guidance for industry-specific metrics based on the Sustainability Accounting Standards Board (SASB) Standards.



Considering Lula's approach to increase green and sustainable regulation, more ESG related bonds are expected to be issued than what has been prevalent in other Latin America's countries. In addition to green and social bonds, sustainability-linked bonds (SLBs) are a newer option to expand the sustainable finance market. Although the ESG agenda is not a recent development, transactions characterized as green bonds, social bonds, sustainable bonds, and SLBs have emerged more recently and gained significant traction since 2018. The Brazilian National Treasury, in collaboration with the World Bank and the Inter-American Development Bank, is set to launch a financing framework that had been previously delayed during former president Jair Bolsonaro's administration. In 2021, B3 exemplified this trend by issuing a SLB which encompasses the creation of a diversity index for the Brazilian market and an increase in female representation in leadership positions within the company. B3 aims to achieve a target of 35% of women in leadership roles (managers, superintendents, and directors) in listed companies by 2026. The baseline representation in 2020 stood at 27.2%.

These new rules could improve the ESG scenario in Brazil and abroad. However, Lula will still face harsh challenges in implementing regulation, such as overturning some of Jair Bolsonaro's deregulation and developing key principles and policies to be applied to sustainable and green finance. Despite some slight shifts, such as the launch of the first program in Latin America to fund infrastructure projects with the sale of green bonds, Brazil does

not yet have the necessary regulations and guidelines regarding green or sustainable finance, similar to what currently exists in the EU. That is, the growth of green financial businesses in Brazil will be subject to the development and implementation of appropriate regulatory frameworks.

Regardless of which measures are ultimately undertaken, Lula will have to help improve Brazil's underperforming economy by attracting foreign investors who take into account ESG matters in making investment decisions. In particular, considering that the economy remains based primarily on commodities, it is very likely that Lula may have to move his efforts to increase sustainability in the commodities sector in an effort to attract more foreign investment.

Although companies are increasingly issuing sustainable-linked debt, such as bonds in which ESG goals are integrated into the company's own goals, there are still gaps in oversight and standardization. As a result of a lack of stricter regulation surrounding ESG practices, Brazil may be viewed as not being environmentally friendly, which could affect levels of foreign investment.

Despite the promises, the Lula administration will need to dedicate a significant amount of time and resources to fostering ESG in Brazil. An increased focus on ESG can lead to increased opportunities for Brazilian companies and the Brazilian economy.

Learn more:

- We have launched the [Hogan Lovells ESG Academy](#), a video and podcast series that breaks down key issues behind critical ESG topics that impact every organization. In brief 10-15-minute episodes, our lawyers from across geographies, sectors, and practices deliver concise content that empowers in-house counsel to understand and communicate key legal and commercial issues. We've opened with a 15-minute high-level overview of the forces shaping ESG issues and how organizations can productively think about them -- and then we'll be following up every few weeks with a series of podcasts that present a deeper dive into these issues. Visit hoganlovells.com/esgacademy to obtain full details of topics covered, but they range from energy transition to sustainable finance and far beyond. Let me know if you'd like to be added to the distribution list, or you can find them at hoganlovells.com/esgacademy or the Apple or Android podcast stores.
- We've also created [ESG Global Vision](#), an interactive online guide to ESG laws and regulations around the world. We're continually adding and refreshing content, but there is quite a bit there for you to reference already.
- This has been live at hoganlovells.com/esg for a while and has been very well-received by clients: our attached guide to key ESG trends and how businesses can prepare to respond to the rapidly increasing demands for stronger ESG performance from consumers, investors, and regulators.





The re-election of Lula, despite his arrest for corruption some years before, is an unexpected and intriguing development in Brazil with respect to the investigations and compliance fields. Numerous major corruption scandals, such as Operation Car Wash (Lava Jato), tarnished the previous Lula administration. Yet, the Brazilian population chose to vote for him rather than former president Jair Bolsonaro, who also has been accused of several crimes, particularly involving the COVID-19 pandemic.

This demonstrates how corruption is disseminated and, in some respects, tolerated in Brazil more than some other jurisdictions. It also highlights that companies must be mindful of compliance risks and take appropriate measures to operate safely in the largest economy in South America.

The Brazilian compliance community was skeptical that the new Lula government would take the necessary steps to continue to fight corruption. However, some measures taken by the new administration demonstrate that compliance and investigations will hopefully continue to be a key initiative and a hot topic in Brazil.

Investigations & Compliance

Author: Mariana Vasques Matos

A new head of the Office of the Comptroller General in Brazil (CGU), Vinicius Marques de Carvalho, took office on January 3, 2023. Mr. Carvalho, who was previously the Chair of the Brazilian Competition Authority (CADE), expressed his willingness to continue to address matters of corruption. Under his leadership, CGU has a new structure managed by the Secretary of Private Integrity for the purpose of centralizing all activities related to promoting integrity in the private sector. Three available tools for addressing anticorruption and integrity matters include: (i) entering into leniency agreements; (ii) holding private entities accountable; and (iii) promoting and assessing private sector integrity. Among other strategic goals, CGU intends to standardize transparency practices within the government. This involves providing public access to government information and data, promoting accountability, and fostering openness in government practices. Additionally, CGU launched an initiative in June 2023 to connect controllerships from different states and capitals across the country. The main objective of this initiative is to promote and standardize the implementation of the Anti-Corruption Law (Law No. 12.846/2013) at all levels of the government. The focus is on fostering integrity within the private sector by facilitating the exchange of knowledge, sharing best practices, and developing integrated strategies to combat corruption and uphold ethical standards.

Brazil's authorities have also invested in technology to tackle corruption in more efficient manner. CGU, for example, uses a tool called "Alice" to identify compliance issues across hundreds of public procurement processes. Brazil's Federal Court of Accounts (TCU), uses reactive and proactive technological tools to detect fraud through different processes, including data mining, matching, and analysis. Brazil's Federal Prosecutor's Office (MPF) and state prosecutors also apply technology in their investigations. The software referred to as "Radar" is used to trace the profile of investigated parties by combining more than 300 databases. "Radar" was developed by MPF and is shared with local prosecutor's offices in the different Brazilian states as part of cooperating agreements on technology entered into between these entities.

Another significant development relates to the future entrance into force of the new Brazilian Public Procurement law in December 2023. This law, among several other provisions, establishes that the winner of any bid over a certain threshold amount must implement an integrity program.

The Brazilian Congress is also considering additional measures to support the fight against corruption. The Brazilian House of Representatives is discussing Legislative Bill No. 379/2007, which would increase penalties related to passive and active corruption

when the violation occurs in activities related to health, education, alimentation, pharmaceuticals, basic sanitation, water supply, and control of solid residues. Additionally, this bill provides more stringent rules regarding penalties related to unlawful enrichment and fines for acts against public administration in connection with the Law of Administrative Improbability.

Investigations launched under the previous governments have been continued by the current administration, such as those undertaken to investigate the misuse of public funds to restrain the COVID-19 pandemic's effects. For instance, the recent "Last Acts" investigation (*Últimos Atos*) gave rise to dawn raids conducted in April 2023.

Considering the developments discussed above, among many others, it remains clear that the Brazilian federal government is focused on combating corruption amid an increasingly complex regulatory environment. Implementing a robust and effective compliance program is becoming even more critical and fundamental to companies and individual doing business in the Brazilian market.

Another significant development relates to the future entry into force of the new Brazilian Public Procurement law in December 2023. This law, among several other provisions, establishes that the winner of any bid over a certain threshold amount, which was not specified by the cited law, must implement an integrity program.



Data privacy protection and cybersecurity have become increasingly critical in Brazil's business environment. The proliferation of digital technologies and the growing number of Brazilians accessing high-speed internet necessitate robust measures to safeguard individuals' privacy rights and secure their information against cyber threats. Companies must emphasize data privacy and cybersecurity, especially given the country's changing political landscape under the current president's leadership.

Privacy & Cybersecurity

Authors: Lizandra Baptista and Julio Alves

This chapter provides insights into the current data privacy and cybersecurity considerations for businesses operating in Brazil. Additionally, it addresses the potential impact of Brazil's connection to the global landscape and the need for strong security measures in an increasingly digitalized society.

Compliance with relevant data protection laws and regulations, such as the Brazilian General Data Protection Law (LGPD), remains essential for businesses operating in Brazil. Given the changing digital world and greater reliance on digital technology, more stringent and updated legislation may be required to handle developing concerns and in order to better protect users' rights.



The regulatory agenda of the Brazilian National Data Protection Authority (ANPD) approved for the years 2023 and 2024 has been developed through public consultations, incorporating inputs from various sectors of society. It is important to note that this agenda is not influenced by President Lula or his government; instead, it serves as an independent planning instrument for the ANPD's prioritized regulatory actions. Substantial progress has been made with respect to implementing the agenda since 2023, particularly with respect to enforcement as the Lula government must strike a balance between user freedom and the necessary protection of individuals rights in the digital realm.

Enforcement efforts have commenced with the release of rules with respect to the imposition of sanctions for violations related to data privacy matters. The new rules set out criteria and parameters for both monetary and non-monetary sanctions, as well as methods for calculating fine amounts. By establishing such guidelines, ANPD aimed to enforce data protection regulations while upholding due process and the right to a fair hearing for all parties involved.

Given that businesses need to safeguard their data and information systems, one key aspect businesses should be aware of when securing their users' data is the growing number of Brazilians accessing high-speed internet and engaging in online activities. As businesses focus on managing remote and hybrid employees, operationalizing years of digital transformation and navigating an unpredictable

global economy, cyber-related attacks have become more sophisticated, unrelenting, and damaging.

With the expiration of the framework developed and implemented by the Brazilian government to address cybersecurity challenges and protect the country's cyberspace from cyber threats and attacks in 2023, there is an opportunity to reassess the current arrangements and strengthen cybersecurity efforts in Brazil. Such strategy is referred to as National Cybersecurity Strategy (*Estratégia Nacional de Segurança Cibernética, or E-Ciber*), and includes legal frameworks, incident response plans, international cooperation measures, and research to strengthen cybersecurity measures. A new E-Ciber is expected to be published in 2024 and should be applicable for a period of four years.

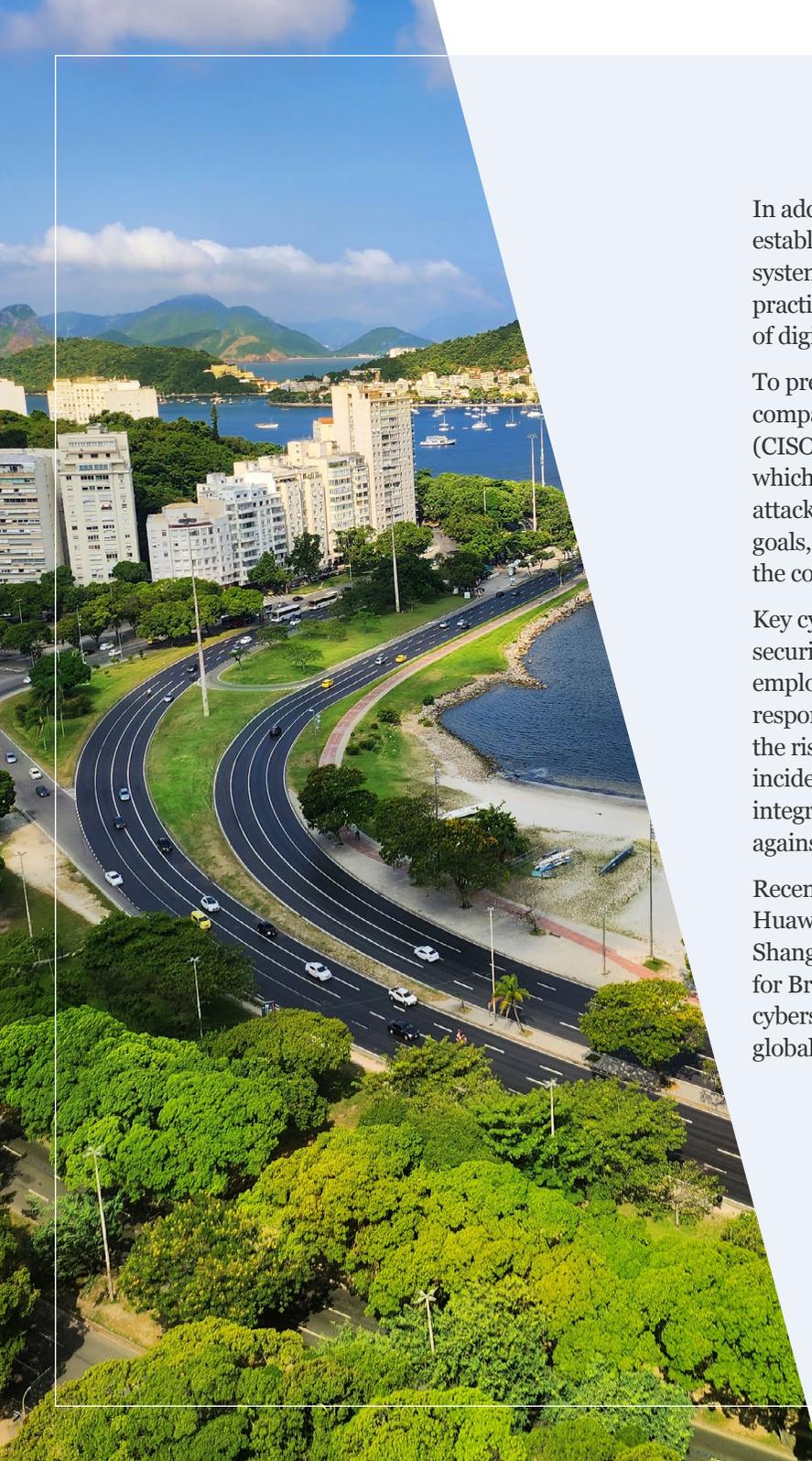
Recent research conducted by the Technology and Society Center of *Fundação Getúlio Vargas'* Law School of Rio de Janeiro¹, demonstrated that there is an urgent need to focus on establishing a cybersecurity and digital sovereignty framework in Brazil. The study highlights that Brazil experienced 103.16 billion attempted cyber-attacks in 2022 alone. The study suggests and proposes the creation of a national cybersecurity agency, assisted by a multisectoral cybersecurity committee and a national cybersecurity network, as detailed below.

1. Source: Paper "Cibersegurança: Uma Visão Sistêmica Rumo a Uma Proposta de Marco Regulatório Para um Brasil Digitalmente Soberano" available at <https://cyberbrics.info/ciberseguranca-uma-visao-sistemica-rumo-a-uma-proposta-de-marco-regulatorio-para-um-brasil-digitalmente-soberano/>. See also: <https://www.cnnbrasil.com.br/economia/brasil-precisa-com-urgencia-de-marco-de-ciberseguranca-e-soberania-digital-diz-fgv/> (only in Portuguese).

The proposed framework for cybersecurity and digital sovereignty in Brazil aims to protect the country's digital systems, infrastructure, and data while upholding fundamental rights. It emphasizes the importance of education, cooperation, and innovation in ensuring cybersecurity. The framework includes measures such as establishing cybersecurity standards, incident response protocols, and promoting national and international cooperation. It aims to strike a balance between security and individual rights while fostering economic and technological development.

Furthermore, the study proposes the development, implementation, and periodic updates of a framework in Brazil aimed at addressing cybersecurity challenges and safeguarding digital sovereignty. This strategy should encompass measures to protect digital systems, access digital infrastructures, critical infrastructures, databases, and applications within Brazil. It should also address education and capacity development, risk management, incident response, national and international cooperation, as well as defining roles and responsibilities.





In addition, the study recommended the establishment of a certification program for digital systems, networks, and data to enhance cybersecurity practices and ensure the integrity and reliability of digital infrastructure.

To prevent and counter cyber-related assaults, a company and its chief information security officer (CISO) must first understand the landscape in which the business operates and who their potential attackers may be, including such potential attackers' goals, strategies, and how they intend to target the company.

Key cybersecurity measures, such as network security, data encryption, access control management, employee awareness and training, and incident response plans, should be adopted to mitigate the risks posed by cyber threats and to deal with incidents. This will help ensure the confidentiality, integrity, and availability of sensitive data and protect against unauthorized access, disruption or theft.

Recent developments, such as Lula's visit to the Huawei Research and Development Center in Shanghai, China, have potential implications for Brazil's adoption of 5G technology and its cybersecurity landscape. Huawei, one of the leading global technology and communications companies,

has a significant presence in Brazil and has and continues to participate in the implementation of 5G technology in partnership with all communication operators in the country. The visit highlighted the importance of strengthening cooperation between Brazilian and Chinese businesses and explored initiatives for direct transactions in Chinese currency. Additionally, discussions with Huawei executives shed light on the company's involvement in various sectors in Brazil, including 5G, telemedicine, education, and connectivity.

As Brazil remains connected to the global landscape and embraces emerging technologies, businesses and the Brazilian government must be mindful of the associated risks and vulnerabilities. The advent of 5G networks and the widespread availability of high-speed broadband, even in remote areas, bring new opportunities and challenges.

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Recent developments, such as Lula's visit to the Huawei Research and Development Center in Shanghai, China, have potential implications for Brazil's adoption of 5G technology and its cybersecurity landscape.

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To effectively address these risks, thorough risk assessments, due diligence and continuous privacy and security training should be conducted when adopting emerging technologies. It is essential to implement appropriate safeguards to protect personal data and mitigate cybersecurity risks (e.g., foster awareness of cyber-related attacks targeting companies and the potential damage to their employees, customers, and partners). Staying informed about industry best practices and regulatory developments related to emerging technologies will contribute to maintaining robust data protection and cybersecurity practices.

As Brazil enters a new phase under Lula's leadership and the ever-expanding integration of technologies, data privacy protection and cybersecurity remain important factors and concerns for companies of all sectors as well as the government. Compliance with existing data protection laws, such as the LGPD, is crucial, and each entity (including governments, companies, and individuals) plays a crucial role in ensuring compliance with data protection laws and adapting to the evolving digital landscape and, by working together, they can ensure effective regulation, foster innovation, protect privacy rights, and create a safer digital environment for everyone.

The visit to Huawei by Lula and his delegation highlights the significance of 5G technology in Brazil and the need for an initiative-taking approach to ensure cybersecurity and data privacy in its implementation. This is a step taken by Brazil to strengthen its cybersecurity posture, ensure privacy, and protect the rights of its citizens in an ever-changing digital landscape.

The urgency highlighted in the study mentioned above regarding the establishment of a cybersecurity and digital sovereignty framework further emphasizes the need for initiative-taking measures to address cyber threats and protect the well-being of Brazilians in the digital realm. We expect that the government's approach should seek to strike a balance between user freedom and necessary protection, ensuring that the Internet is a secure and integrated part of the real world.



Antitrust

Author: Rafael Scatamacchia



Law No. 12,529/11 (Brazil's Antitrust Law) is the primary antitrust regulation in Brazil. Among other things, it sets forth the structure of the “Brazilian Competition Defense System” and regulates how the Brazilian Antitrust Authority (CADE) reviews merger filings, punishes anticompetitive conduct, and promotes competition in Brazil.

Under the current government, CADE remains an independent and powerful governmental agency with investigative, prosecutorial, and adjudicative powers over all of Brazil's territory, markets, and companies to prevent any abuse of economic power and ensure free competition.

CADE constantly interacts with local and foreign enforcers and organizations in different settings to ensure their work converges for the purpose of more effective competition enforcement. These interactions can occur in various forms but, in

general, they aim at promoting the exchange of best practices, technical cooperation, data sharing on competition matters. CADE plays an active role in international competition forums, such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Conference on Trade and Development, the International Competition Network (ICN) and the Latin American Strategic Alliance for Competition.

Bilateral cooperation encompasses exchanging information, experiences and best practices on competition law and policy. CADE has entered into a Memoranda of Understanding (MOU) with foreign agencies and international bodies as a framework for bilateral cooperation. By way of example, CADE has executed international cooperation agreements with the US Department of Justice, the European Commission, Argentina, Canada, Chile, China, Colombia, Ecuador, France, Japan, Korea, Peru, Portugal, and Russia, among other countries, as well with the World Bank Group and the Inter-American Development Bank.

Due to the impact of the COVID-19 pandemic, there was a significant reduction in the number of transactions reviewed by CADE compared to previous years. However, this number has increased since the beginning of 2023, causing the number of proceedings at CADE to go up around 10% from the pandemic levels.

CADE conditionally cleared this year Nestlé Brasil's EUR 223 million acquisition of Chocolates Garoto after over two decades². CADE approved the transaction considering that new competitors had entered the market in the past years and Nestlé offered a range of commitments to secure approval, including

a promise not to acquire any other companies that hold a 5% share or more in the national chocolate market for a period of five years.

CADE is concerned with transactions involving the acquisitions of innovative businesses (e.g., start-ups) which do not meet the relevant thresholds for submission. Under relevant Brazilian law, CADE can request that parties to these acquisition transactions submit these transactions for review within one year of their completion. In past years, CADE has asked several companies operating in the digital markets to provide a detailed list of mergers, acquisitions, and other transactions in which they took part over the previous years. The information collected can be used either to request the companies to submit certain transactions to CADE for regulatory review prior to the one-year deadline, or to allow CADE to analyze market trends to improve CADE's enforcement tools for future cases.

Concerning anticompetitive investigations, CADE has launched a number of new probes targeting tech companies. One investigation involving this market relates to whether Google and Meta abused their dominance through smear campaigns against a government bill seeking to combat fake news online.

With respect to other initiatives, CADE has issued two important reports this year to increase transparency and reduce legal uncertainty on relevant topics related to its activities, as follows:

- 1) "Monitoring Antitrust Remedies: an analysis of CADE's jurisprudence": This report consolidates and reviews how CADE has used antitrust remedies from 2016 to 2021. It also discusses best practices and procedures used to design, apply, and monitor antitrust remedies imposed by CADE; and
- 2) "Telecom Markets: Telephone, Internet Access, and Infrastructure": This report analyses 142 merger transactions and 18 antitrust investigations regarding the telecom market from 2000 to 2022 and identifies concepts and criteria used by CADE in its assessments.

Conversely, companies will need to deal with the uncertainty created by a potential significant change in CADE's composition. The current leadership of CADE adopts an orthodox approach to competition and distances itself from the most recent North American and European movements aiming to expand competition policy, but Lula will be able to appoint four new members to CADE's Tribunal. These appointments are subject to approval by the Brazilian senate.

With new developments regarding CADE's main functions and composition, combined with its historical importance to Brazil's economy, antitrust will continue to be a hot topic in the years to come.

2. Nestlé acquired Chocolates Garoto in 2002; however, CADE blocked the transaction two years later—in February 2004—since it would result in a concentration of more than 58% of the Brazilian chocolate market.

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