



DOING BUSINESS  
IN BRAZIL

**OIL AND GAS**

2021

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# INDEX

1. Introduction .....	3
2. Contract enforcement .....	3
3. Visas and immigration .....	4
4. Establishing a company in Brazil .....	7
5. Labor .....	9
6. Tax .....	10
7. Intellectual property, digital law and data protection .....	15
8. Oil and gas sector and pre-salt .....	17
9. Foreign investment .....	18
10. Petrobras – Brazilian national oil company .....	18
11. Regulatory law (oil and gas) .....	19

# 1. INTRODUCTION

The purpose of this guide is to present key aspects to be considered by foreign investors looking to do business in Brazil, in the oil and gas sector. According to UNCTAD, United Nations Conference on Trade and Development, Brazil is among the top 10 recipients of foreign direct investment (FDI) in the world and is the only Latin American country in that list. Inward FDI flows in Brazil amounted to over USD 1 trillion from 2010 to 2018, with an average of USD 122 billion per year, according to data from the Central Bank of Brazil.

Brazil is a federative presidential republic and a constitutional democracy. Brazil's Constitution (enacted in 1988) ensures the independence and autonomy of each government branch: the executive, legislative and judiciary.

# 2. CONTRACT ENFORCEMENT

The Brazilian Judiciary is an independent power, ruled by law, with administrative and financial autonomy granted by the Federal Constitution. Its primary function is to resolve conflicts and enforce individual, collective, and social rights. It is formed by several ruling bodies distributed among the federal and state levels. The Supreme Federal Court (STF) is the country's highest court, of eleven Justices and is ultimate body responsible for the interpretation and enforcement of the Constitution. It is followed by the Superior Court of Justice (STJ), which is responsible for making a cohesive interpretation of federal legislation, as well as the regional, state, and specialized courts.

Brazil's Judiciary has three specialized courts: Labor, Electoral, and Military, each of them with its own regional and superior courts. They are headed, respectively, by the Superior Labor Court (TST), the Superior Electoral Court (TSE), and the Superior Military Court (STM).

Brazil adopts the civil law system. The Brazilian Constitution is the backbone of all the country's legislation that safeguards the rights and duties of all of Brazil's citizens, governments, and entities and acts within Brazilian territory. Enacted in 1988, it granted Brazilians a wide range of civil rights strongly built on principles of democracy, freedom, and welfare.

For this reason, it became known as the Citizens' Constitution. Below the Constitution, Brazilian law is organized into a system of codes. Each area of law is governed by its code, such as taxation (National Tax Code), civil law (Civil Code), labor law (Consolidated Labor Laws), procedural law (Civil Procedure Code), and consumer defense (Consumer Defense Code).

Moreover, alternative methods of dispute resolution, such as arbitration and mediation, are options that have been specially promoted in Brazil since the issuance of the new Civil Procedure Code (CPC) in 2015, which implemented new rules to promote extrajudicial agreements and relieve the courts' workload.

The Mediation Law, also issued in 2015, provides for mediation as a means of resolving disputes between private parties and the self-composition of conflicts within the scope of the public administration. According to this law, mediation is a technical activity performed by an impartial third party without decision-making power, who, accepted by all parties, assists them to establish a dialog and to jointly create a consensual solution to the controversy.

In the same year, the modernization of the Brazilian Arbitration Law amplified the scope of the institution. Whenever agreed between the parties, disputes with Public Administration involving economic rights may now be settled through arbitration, such as in the infrastructure cases.

Due to public policy stimulating consensual methods, several federal and municipal legislation now provide for consensual settlement methods for dispute resolution such as dispute boards, conciliation and mediation.

### 3. VISAS AND IMMIGRATION

In Brazil the status of foreign nationals is regulated by Law n. 13.445, of 21st of November, 2017 and regulations issued by the Ministry of Justice. The Law of 2017 replaced an old regulation dated as of 1980 and significantly changed visa procedures in Brazil. The new Law, for example, replaced the former tourist, business and transit visas by a general visitor visa. The new Law also modified the process and requirements for some other types of visa, such as some work and student visas. Also, an electronic visa system was introduced.

To travel into Brazil, a foreign national must hold a passport valid for at least six months prior to its expiration date.

#### **.Visitor Visa**

As mentioned above, the new Law created a new the visitor visa, replacing the former tourist, business, and transit visas. Visitor visas are applicable for the purposes of tourism, business, transit, artistic and/or sports activities. Holders of a visitor visa are not allowed to perform remunerated activities within Brazil. In general, visitor visas (such as tourism and business) allow a 90-day stay in Brazil and can be extended for a second period of 90-day, with a total of 180 days per year.

#### **.Work Permits**

Under the new Law and current regulation issued by the Ministry of Justice working in Brazil is allowed under a temporary or permanent visa. Below is a short description of some relevant situations where foreign nationals may work within the Brazilian territory pursuant to the applicable visa/work permit:

(a) *Maritime Workers on Foreign Flag Vessels or Platforms.* A temporary work visa, valid for up to two years, may be granted to maritime workers on foreign flag vessels or platforms staying within Brazilian jurisdictional waters for periods longer than 90 days. In this case, there will be no

employment relationship between the foreign national and the Brazilian company taking the services or charter of the foreign vessel, and payments to the workers need to be made abroad. It is important to note that when the vessel stays within Brazilian waters for periods longer than 90 days, depending on the length of the stay and the type of the vessel, Brazilian regulation requires that a certain percentage of the maritime workers is composed of Brazilian nationals. For example, for maritime support vessels staying from 90 to 180 days, one third of the workers need to be Brazilian nationals. From 180 days to 360 days, half of the workers need to be Brazilian, and if longer than 360 days, two thirds need to be Brazilian. Different percentages apply to drilling rigs and FPSOs and port support vessels.

(b) *Technical Assistance Services*. A visa for Technical Assistance Services is suitable for foreign technical professionals not employed by a Brazilian firm, who wish to enter Brazil to perform technical assistance services under a contract, cooperation agreement and/or technology transfer agreement, as applicable, between a foreign and a Brazilian entity. It is usually applied for engineers and project managers who need to work in Brazil on a temporary, medium term basis to service a client. Given the technical nature of the services, it is not appropriate for administrative, financial or management functions. This visa can be issued for up to one year and can be renewed for another year, subject to detailed justification for the need to continue the services without an employment relationship established in Brazil.

(c) *Technology Transfer Services*. Similarly to the technical assistance services visa described above, this visa applies for foreign professionals not employed by a Brazilian entity, but who will perform services within the Brazilian territory under a technology transfer contract entered between a Brazilian entity and the foreign entity providing the services. A special requirement is the need to submit a simplified training plan, specifying the qualifications of the foreign professional, scope of the training, number of Brazilian individuals to be trained, place of training, estimated duration, and anticipated results. The visa can be valid for up to one year and renewable for a further one year (i.e. a maximum of two years), subject to detailed justification for the need to continue the services without an employment relationship established in Brazil.

(d) *Employment Agreement with a Brazilian Entity*. Under this visa the foreign national is paid by the Brazilian employer in Brazil and the salary is subject to Brazilian income tax and social security contributions. This visa is sponsored by the local Brazilian employer and the foreign worker is not allowed to work for a different local company unless a new visa (or special authorization) is obtained. The visa can be valid for up to two years and can be renewed or converted into a permanent visa by application to the Ministry of Justice under specific circumstances. This visa requires proof of qualifications and professional experience of the foreign national to be employed in Brazil.

(e) *Director or Officer Visa*. It is possible to obtain a permanent visa for a foreign national appointed as an officer manager, director or executive with management powers, of a new or existing Brazilian company, with potential to generate jobs or income. The visa in this case will be valid for as long as the foreigner remains a director/officer. To obtain this visa, there must be a direct foreign investment in the Brazilian company of at least the following amounts:

- a. BRL 600,000 per officer, manager, director or executive, or
- b. BRL 150,000 per officer, manager, director or executive, and the commitment to generate 10 new employment positions within two years after the incorporation of the Brazilian company, or after the admission of the officer, manager, director or executive.

(f) *Investor Visa*. A foreign national investing the equivalent of at least BRL 500,000 in foreign currency as share capital into a new or existing Brazilian company may apply for a work visa. Alternatively, this visa may be granted for investments of less than BRL 500,000, but not inferior to BRL 150,000, if the project in Brazil has the purpose of innovation, or involves scientific or technologic basic or applied research, and complies with conditions determined by the Government. In all cases, it is necessary to prepare an investment plan for a 3-year period, showing that the investment is in the social interest of Brazil, by creating jobs and income in Brazil, increasing productivity, improving assimilation of technology, and providing investment of resources into specific industry sectors.

Companies must pay special attention and make sure that all their employees, technicians, trainees and business visitors are in compliance with the current rules. Failure to comply with migratory regulations may result in severe penalties. Fines vary from BRL 100.00 to BRL 10,000.00 for individuals, and from BRL 1,000.00 to the maximum of BRL 1,000,000.00 for corporate entities. In addition, Brazil's government has been announcing certain travel requirements and/or restrictions for individuals coming to Brazil from specific countries, in order to reduce the spread of COVID-19 in the country. Before making travel arrangement it is advisable to confirm the applicable restrictions or requirements.

### **.Mercosur citizens**

Nationals of countries which joined the Agreement on Residence for Nationals of Mercosur, namely, Argentina, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador and Peru, may apply, at a Consular Office, for a temporary residence visa. Those who already live in Brazil can go directly to the Ministry of Justice. After two years in Brazil, holders of a temporary residence visa can request residence for an indefinite period to the Federal Police.

## 4. ESTABLISHING A COMPANY IN BRAZIL

Brazilian law provides for several company types. The Eirelli, Sociedade Limitada (Limitada) and the Sociedade Anônima (S.A.) are the most commonly used. Other company types usually have limited application, especially because most of them provide for unlimited liability of their partners.

The election of the company type most appropriate to the proposed activities should consider the desired ownership structure, legal flexibility, cost and confidentiality considerations, among other factors.

### **.EIRELI (Individual Limited Liability Company)**

The EIRELI has only one owner, which can be a Brazilian or foreign legal entity or individual, whose liability is limited to the amount of the paid corporate capital. Once an individual opts to create an Eireli, he/she can run only one company of that type. The corporate capital must be at least equal to one hundred times the sum of the minimum salary applied in Brazil on the date the articles of incorporation are filled for registration, and it must be immediately paid in, in cash or any assets, provided they are susceptible of cash valuation. The company is controlled by the sole owner and may be managed by one or more administrators, being the owner or a non-owner, as appointed in the articles of incorporation.

A foreign individual may be appointed as manager, provided that he/she obtains a permanent visa (see requirements for a director or administrator visa in item 3 of this guide), and is not otherwise prevented from occupying management positions. Citizens from Mercosur countries (Argentina, Paraguay and Uruguay) and associated nations (Bolivia and Chile) who hold a 2-year Temporary Residence visa can be both owner and manager of an Eireli.

Termination and dissolution are according to Limited Liability Company's rules, wherever applicable.

### **.The Sociedade Limitada**

The *Limitada* is owned by 1 (one) or more partners which can be individuals or legal entities, of Brazilian or foreign origin. The possibility of a *Sociedade Limitada* with one single partner arose in 2019, as per Provisional Measure 881/2019, confirmed by Law n. 13.874/2019, of Economic Freedom. In light of this possibility, the EIRELI (Individual Limited Liability Company) tend not to be adopted anymore as the *Limitada* does not require a minimum corporate capital investment.

The Articles of Association of a *Limitada* must be written in Portuguese and must contain, among other information: (a) its name, which must be followed by the term "Limitada"; (b) the name of the quotaholders and their personal data; (c) the name of the company's manager(s); (d) the company's activities; (e) the main place of business (headquarters); (f) the company's capital, whether it is fully paid and, if not, the payment term, and its apportionment.

There is no minimum capital requirement and it can be increased, provided all subscribed quotas are paid in. The articles of incorporation must establish the means and deadline for payment. Any assets can be used for payment, provided they are susceptible to cash valuation.

The capital of a *Limitada* is divided into “quotas”, with no issuance of certificates of ownership. The capital represents the amount that a quotaholder contributed to the creation of the company. The capital is denominated in Brazilian currency and recorded in the Articles of Association, as amended from time-to-time to reflect any assignments and transfers of quotas, capital increases and reductions.

The quotaholders’ liability is limited to capital paid-in. When the capital has not been fully paid, the quotaholders are deemed unlimitedly and jointly liable.

The company may be represented by one or more officers, partners or non-partners, as appointed in the articles of association. The company may be represented by a non-partner, if unanimously approved by partners when capital has not been paid, and if approved by 2/3 (two thirds) when capital is fully paid.

A foreigner may be appointed as manager, provided that he/she obtains a permanent visa and is not otherwise prevented from occupying management positions. Citizens from Mercosur countries (Argentina, Paraguay and Uruguay) and associated nations (Bolivia and Chile) who hold a 2-year Temporary Residence visa can be both owner and manager of an LLC.

The procedures for setting up and maintaining an EIRELI and a *Limitada* do not require the initial and periodical publication of its corporate documents and accounts, which avoids significant expenses. This is one of the reasons why *Limitadas* are chosen rather than corporations (S.As).

## **.The Corporation (“Sociedade Anônima”)**

A corporation is formed by either public or private capital. The shares can be traded in the market, or not, in case of a closed capital corporation. The shareholders may be Brazilian or foreign individuals or legal entities. Brazilian law allows for a wholly owned subsidiary in the form of a corporation, which is a corporation with only one shareholder. The capital is divided into shares, with no minimum capital requirement, but shareholders must pay in at least 10% of the issuance price of the shares subscribed in cash. The bylaws establish whether the shares will have an even value or not, and the deadline for payment.

Any assets can be used for payment, provided they are susceptible to cash valuation.

The liability of the shareholders is limited to subscribed and paid shares.

The control is defined by shareholders with voting rights. The controlling shareholder owns a majority portion of the voting capital.

The corporation bylaws shall regulate the corporate management, which can be performed by a Board of Directors (“Conselho de Administração”) and by an Executive Committee (“Diretoria”), or solely by an Executive Committee.

The chair of the Executive Committee, whether a shareholder or not, must reside in Brazil; The members of the Board of Directors may reside abroad, provided they appoint a representative resident in Brazil.



## 5. LABOR

The Consolidation of Labor Laws (“CLT”) was issued in 1943 and remains the main piece of legislation governing employment contracts in Brazil. In 2017, the law was updated by the National Congress in order to better reflect modern-day working relations. These updates went into effect in November of the same year. One of the biggest goals of this reform is to increase the number of people employed under the CLT regime, which is to say “formal” or “registered employees”.

Another purpose of the reform is to reduce the number of judicial disputes related to employment relationships. In Brazil, those are decided by specialized state labor courts (“Justiça do Trabalho”).

All workers under the CLT regime, including foreigners, must hold a work booklet (“Carteira de Trabalho”), in which the employment terms must be recorded by the employer.

Another set of rules working relationship apply to public servants. Rural and domestic workers also have their own set of regulations.

Outsourcing companies’ activities (“*terceirização*”) is a legal practice in Brazil and it has undergone important changes in 2017. In March of 2018, the government sanctioned a new law, the “Outsourcing Law” (Law n. 13.429/2017), allowing unlimited outsourcing for businesses, including their core activity (“*atividade fim*”). Before that, only non-core activities (“*atividades meio*”) were allowed to be outsourced, such as maintenance, cleaning or security.

### .The CLT

CLT rules apply to employees engaged any sort of activity (industrial, office or other). Registered employees are entitled to benefits such as minimum wage, maximum working hours, overtime pay, paid leave and holidays. Employers must keep official records or cards containing detailed information about each employee. Each year they must file returns listing all their employees to the local office of the Ministry of Economy, including reporting the number of foreigners and apprentices, if any. Companies are allowed to employ foreign workers up to a limit of 1/3 of their total staff.

One of the changes brought by the labor reform of 2017 is the possibility for intermittent work, or part-time work. For this type of work, there must be a written contract and the employee cannot earn less per hour than other hired employees. He or she is also free to work for other employers as well. .

The new rules also foresee regulation for home office arrangements. One of the most important changes is that collective agreements between unions, employees and companies are placed above the terms of the law, meaning that issues such as vacation conditions, length of daily work hours or lunch breaks may be decided on a case-by-case basis, as long as those terms respect certain limits established by the CLT.

Another change brought by reform of 2017 is the possibility to end a labor contract on common grounds: the employer does not have to pay a heavy fine and allows the employee to have access to the Guarantee Fund for Continuing Service (FGTS), the worker severance which could only be withdrawn in limited circumstances such as dismissal of employment, to buy residential properties or in case of retirement.

## **.Labor Rights**

The Federal Constitution and CLT provide for a series of minimum rights that remain untouched by reforms and must be granted by the employer to its employees throughout the employment relationship. Some of these minimum benefits are: Minimum Wage; Maximum Hours/Overtime Pay; Paid Leave; Paid Holidays; Christmas Bonus (“13th Salary”); Paid Maternity Leave and other benefits.

## **.Offshore work**

Offshore work is regulated by Law 5,811, from 1972. This law is clearly outdated as it has been established in a context of a monopoly of the oil extraction activity. According to this law, offshore workers are those who work directly in exploration and production activities. The offshore regime is subject to a series of allowances and specific rules provided in this law. General allowances include hazard, night shift, interval, journey hours, overtime, which may double and more the total final remuneration. In general offshore workers are also entitled to health and dental aid, life insurance and funeral aid, mobilization allowance, food and transportation vouchers. In general, companies negotiate with Unions so the details of the rights and benefits are stated in a Collective Labor Agreements (CLA). The CLA may also include Profit and Results Sharing rules, flexible working hours, bank of hours, among other rules and benefits.

# **6. TAX**

## **6.1. General Aspects**

The Brazilian Constitution allocates taxing power between the federal government, the states and the municipalities. This taxing authority includes taxes, improvement fees, contributions, fees and compulsory loans.

## **6. 2. Main Brazilian Taxes**

### **6.2.1. Corporate Income Tax (IRPJ)**

IRPJ is a federal tax levied at a 15% rate. An additional surtax of 10% on annual taxable income exceeding BRL 240,000.00 (BRL 20,000.00 per month) may be charged.

### **6.2.2. Social Contribution on Profits (CSLL)**

CSLL is also a federal tax levied at the rate of 9% on the so-called “adjusted result” (similar to the taxable income).

### **6.2.3. Profit Participation Program Contribution (PIS) and Social Security Financing Contribution (COFINS)**

PIS and COFINS are federal social contributions levied on a company’s gross income. Such taxes are imposed under two systems: cumulative and non-cumulative.

Under the cumulative system, PIS and COFINS are levied at the rates of 0.65% and 3% respectively. Under the non-cumulative system, the PIS and COFINS burden corresponds to 1.65% and 7.6%, respectively, but it is possible to subtract the PIS and COFINS credits granted to the taxpayer.

### **6.2.4. Import Tax (II)**

II is a federal tax levied on the import of goods and is imposed upon customs clearance of the imported goods. Import tax is calculated over the customs value of the imported good. The rate may vary according to the fiscal classification of the product.

### **6.2.5. Tax on Manufactured Products (IPI)**

IPI is a value-added tax imposed on each phase of the manufacturing process. The fiscal classification of a good allows the identification of the applicable IPI rate and the IPI basis is the price of the manufactured good.

### **6.2.6. Profit Participation Program Contribution-Imports (PIS-Imports) and Social Security Financing Contribution-Imports (COFINS-Imports)**

“PIS-Imports” and “COFINS-Imports” are levied on: (i) entry of foreign goods into the Brazilian territory or (ii) payment, credit, delivery, use or remittance of funds to foreign-based persons in consideration for services rendered.

In importation of goods, the general tax rates of the “PIS-Imports” and “COFINS-Imports” are 2.1% and 9.65% and the tax basis is value for customs purposes adopted as the tax basis for the import tax.

In importation of services: the tax rates are 1.65% and 7.6% and the tax basis is the amount paid, credited, delivered, used or remitted abroad.



Currently, Repetro-Sped has 04 (four) modalities:

- a) special customs regime of temporary admission of goods destined to the activities of exploration, development and production of oil and natural gas, for economic use with exemption of the proportional payment of taxes on imports (II, IPI, PIS-Imports and COFINS-Imports);
- b) special customs regimen of temporary admission of goods destined to the activities of exploration, development and production of oil and natural gas, for economic use with proportional payment of the taxes incident in the importation (II, IPI, PIS-Imports and COFINS-Imports);
- c) special tax regime of definitive importation of goods destined to the activities of exploration, development and production of oil and natural gas, with total suspension of the taxes on importation (II, IPI, PIS-Imports and COFINS-Imports); and
- d) special industrialization tax regime, which allows the authorized company to import or purchase in the domestic market, with suspension of payment of federal taxes (II, IPI, PIS-Imports and COFINS-Imports), raw materials, intermediate products and packaging materials to be used fully in the industrialization process of final product destined to the activities of exploration, development and production of oil, natural gas and other fluid hydrocarbons (Repetro-Industrialization).

In relation to ICMS, its calculation basis has been reduced so that the tax burden is equivalent to 3% (three percent), being prohibited the appropriation of the corresponding credit, in import operations and acquisition in the domestic market of permanent goods or merchandise, destined to the activities of exploration, development and production of oil, natural gas and other fluid hydrocarbons, under the Repetro-Sped.

#### **6.4. Double Taxation Treaties**

Brazil has signed and ratified double taxation treaties with the following jurisdictions: Argentina, Austria, Belgium, Canada, Chile, China, the Czech Republic, Slovakia, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Holland, Mexico, Norway, Peru, the Philippines, Portugal, Spain, South Africa, South Korea, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

## 6.5. Summary – Main Brazilian Taxes

The following table summarizes the main Brazilian taxes, describing the basis of calculation and respective rates:

<b>Tax</b>	<b>Basis of Calculation</b>	<b>Rate</b>
Corporate Income Tax (IRPJ)	Actual profits, estimated profits or profits determined by tax authorities	15% on the income below R\$240,000 per year; 10% on the income in excess of this threshold
Social Contribution on Profits (CSLL)	Adjusted net profit	9% to corporations
Profit Participation Program Contribution (PIS)	Gross revenues	1.65% under the non-cumulative regime and 0.65% under the cumulative regime
Social Security Financing Contribution (COFINS)	Gross revenues	7.6% under the non-cumulative regime and 3% under the cumulative regime
Import Tax (II)	Value of the imported product	Variable according to the imported product
Tax on Manufactured Products (IPI)	Sales price of the industrialized product	Variable per product classification
Profit Participation Program Contribution-Imports (PIS-Imports)	Value of the imported product; Amount paid, credited, delivered, used or remitted abroad	2.1%, in case of goods; 1.65% in case of services
Social Security Financing Contribution-Imports (COFINS-Imports)	Value of the imported product; Amount paid, credited, delivered, used or remitted abroad	9.65%, in case of goods; 7.6% in case of services
Tax on Financial Transactions (IOF)	Credit, foreign exchange, insurance and securities transactions	Variable per type of transaction
Social Security Contribution on Payroll ("INSS")	Payroll and Salaries	8% to 11% for beneficiaries; Approximately 25% for companies
Tax on Distribution of Goods and Services (ICMS)	Value of the transaction	4% to 25%
Tax on Services (ISS)	Service price	2% to 5%



## **.Enforcement**

The IP infringements are crimes included in the Brazilian Criminal Code and in the IP Act. The Industrial Property Act foresees penalties for breaches to the industrial property laws, including fines and imprisonment. Besides the criminal aspects, protection against IP infringements can be also obtained in the civil courts. Rio de Janeiro has specialized IP courts, which can be accessed if they are competent to decide on the matter. Among other remedies, in case of evidence of IP infringement, it is possible to obtain a court order for the Brazilian Customs to stop illegal imported or exported goods to reach the market (for example, in case of false, modified or counterfeited trademarks).

## **.Digital Law and Data Protection**

Digital law is the set of rules, applications, knowledge and regulation of legal relations carried out in the digital environment. The main legislation of those matters are Law n. 12.965/2014 - Civil Rights Framework for the Internet (MCI) that states main rules on the use of internet in Brazil and Law n. 13.709/2018 - Brazilian General Data Protection Law – (LGPD).

LGPD brings a set of principles and rules, with a user centric perspective, related mainly to the commercial use, protection and international transfer of personal data in Brazil. This legislation came into force on 18 September 2020. It resembles GDPR – General Data Protection Rules of European Union and aims to lead the country to a new level of commercial agreements, with the adequate personal data protection legislation.

Among companies' duties, personal data will have to be processed under prescribed legal basis, respecting purpose, transparency and other principles on the use of personal data. According to article 9 of LGPD, data subjects are entitled to facilitated access to the information on the processing of their data. Also, article 18 of LGPD that states data subject's rights, provides that personal data holders can request correction, portability and elimination of their data as well as other type of requests.

Therefore, LGPD provides at article 41 that controllers (article 5, VI) will have to determine a responsible to be the controllers' interface with data subjects and ANPD – Data Protection National Authority, that is the supervisory government authority, entitled to apply the foresee administrative penalties, according to article 52 of LGPD.



## 8. OIL AND GAS SECTOR AND PRE-SALT

Brazil, with its current proven reserves of approximately 15 billion barrels of oil equivalent (boe), occupies the 21st position in the world ranking of countries with larger reserves of oil and gas. According to a study by the National Institute of Oil and Gas of State of University of Rio de Janeiro, the Brazilian pre-salt may contain about 176 billion boe. If proven and produced, Brazil will be part of the select club of the main producers in the world, going from 10th to 5th position among the largest world producers of oil and gas, with an estimated production of more than 7.5 million barrels/day in 2030.

The month of January 2020 recorded a production record for both oil (3.168 million barrels per day) and natural gas (138.753 million cubic meters per day).

Despite the abundant oil and gas reserves, only 7% of the area of Brazilian sedimentary basins is currently under concessions and being explored. Most of the territory has not yet been studied, which indicates immense possibilities. According to the National Petroleum Agency (ANP), at the end of 2018, 792 areas were under contracts: 335 blocks in the exploration phase, 84 fields in production development and 373 fields in the production stage.

Considered one of the greatest deepwater discoveries in recent decades, the pre-salt brought major technological advances and regulatory chances to the Oil and Gas sector in Brazil. The pre-salt is a set of large reservoirs of oil and gas found below the layer of salt rock, in an area that extends from the states of Santa Catarina to Espírito Santo. These reservoirs are below an underwater salt layer, which can be up to 5 kilometers. Since 2015, the pre-salt has already represented more than half of the oil production in Brazil. The main pre-salt producing fields are located in the Santos Basin, in the states of Rio de Janeiro and São Paulo.

The new opening of the oil market in Brazil, with the divestments of Petrobras especially in refining, distribution and transportation, as well as the holding of bidding rounds for exploratory blocks, bring optimistic expectations to the sector.

Brazil stands out in the oil industry worldwide in terms of investments in technology. It is in 5th place in the ranking of countries that most allocate resources to research, development and innovation (RD&I) with US\$ 1.38 billion invested by the Brazilian Oil and Gas sector.

Of the blocks under exploration, 146 are located offshore, 188 onshore. At the end of 2018 of the 335 exploratory blocks under concession, Petrobras had a stake in 133, of which 40 were exclusive concessions and another 93 in partnerships.

In relation to fields in the production phase (373 in total), 99 are offshore and 274 onshore. Petrobras is the only contractor in 285 fields and a consortium operator in 13 other fields.

Major players are present in Brazil such as Shell, BP, Total, Equinor, Eneva, Sinopec, among other local and international oil operators.

The potential arising from the diversification of players, with Petrobras' focus on the pre-salt extraction activity, stimulates the entry of new investors.

The transformation in the energy matrix with major investments in power generation from renewable sources, whether due to environmental pressure or to reduce dependence on fossil and finite fuels, puts pressure on investments for the exploration of existing oil reserves.

A New Gas Law has been debated in the Brazilian Congress for more than 7 years, but is not yet finally approved. This new regulatory framework aims to create a competitive and unbundled gas market in Brazil. Among other measures, the new law intends to create easier conditions for new players to entry in the gas sector, by permitting companies to operate via authorization rather than a concession regime, and creating rules of infrastructure sharing.

## 9. FOREIGN INVESTMENT

The Government of Brazil is making a coordinated effort to support international investors throughout the different stages of their business projects.

Importantly, since 1995, Brazilian law considers that companies incorporated in the country are national companies, regardless of national or foreign control. The United Nations defines foreign direct investment (FDI) as a permanent ownership interest in companies in a country, held by a non-resident investor (an individual or legal entity) residing, domiciled, or with headquarters abroad. In Brazil, there are two types of transactions recognized as FDI: equity capital and intercompany loans.

Investors are required to register all inflows of foreign capital into Brazil with the Brazilian Central Bank (BCB), which can only be done online through the e-registration tool RDE-IED (Electronic Declaration Registry) – part of the Brazilian Central Bank’s Computerized Information System (SISBACEN). Foreign investments may be in currency and/or assets/equipment. The registration permits the foreign investor to remit dividends and interest abroad and to eventually repatriate the investment.

In addition, to invest in Brazil, it is required that the natural or legal person obtains a general taxpayers’ registration number from the Brazilian Internal Revenue Service.

## 10. PETROBRAS – BRAZILIAN NATIONAL OIL COMPANY

Petrobras is the Brazilian state-owned oil company operating currently over 90% of the exploration and production in the country. Petrobras’ business plan for the period 2021-2025 foresees an investment for the five-year period of US\$ 40-50 billion, with a focus on the pre-salt activities (70%).

Petrobras procurement of goods and services is organized under Law n. 13.303/2016, primarily through public bids. Foreign suppliers can register in Petrobras supplier list for goods and services (currently around 60 different services are available for foreign companies). The benefits are: easy access to all public bids through a restricted area in the Petronect (Petrobras procurement) system; receipt of notifications by email on the bids and pre-qualification process and mitigation of the risk of not being qualified when winning a bid. It is highly recommended that the process is coordinated by a Portuguese spoken person, as the bulk of information and communication with Petrobras is in Portuguese.

It is possible to check the CFM (Materials Supply Conditions) and the standard drafts contracts and bid notices related to a specific product or service on Petronect's page. This helps to be prepared before the bid is launched, having access to the terms and conditions, duties and obligations, civil liability and other relevant aspects that will be the basis for the proposed price.

Some bids are restricted to pre-qualified suppliers. Pre-qualifying for high-technology goods and services items is also possible through the Petronect system.

The bid notices may be challenged up to 5 working days before the bid on the basis of non-compliance with the legislation (lack of clarity, missing information, favoring of participants, restriction of competitiveness, etc.). The bids processes are organized through Petronect system and Petrobras selects one proposal only (the most advantageous one according to the stipulated criteria). The winner is called to negotiate with Petrobras. If the price proposed is up to Petrobras budget for this bid, winner goes to the next phase of qualification – if the supplier is already listed in the vendors list this phase is skipped, except if the bid notice requires additional specific items.

At the sole appeal phase, competitors may challenge Petrobras' decisions and each other's proposals. After that, Petrobras awards the bid and approves the result (or cancels - if no bidder price is equal or inferior to the stipulated budget and for other specific reasons).

Decree 9.355/2018, in its Article 1, paragraph 7, provides that contracting of goods and services carried out by consortia operated by Petrobras is subject to the private regime of private companies, in which case a public bid procedure is not required. Therefore, Petrobras also runs private bids for projects in consortium with other private oil companies.

## 11. REGULATORY LAW (OIL AND GAS)

The Petroleum Law (Law n. 9478/1997) instituted the end of Petrobras' monopoly and, consequently, the opening of the market for activities of research, exploration, production and refining of oil and natural gas. These activities continued to be a monopoly of the Federal Government, but they can now be exercised by private companies, through concession, authorization or, contracted under the production sharing regime, always subject to regulation and inspection by the National Agency for Petroleum, Natural Gas and Biofuels (ANP).

Production sharing regime applies to exploration and production of all pre-salt areas, while oil and gas activities in the other areas are conducted under a concession regime.

The National Agency for Petroleum, Natural Gas and Biofuels (ANP) is a federal agency responsible for regulating the oil and natural gas and biofuels market in Brazil. Linked to the Ministry of Mines and Energy, it is a special federal agency that executes national policy for the sector, with a focus on guaranteeing fuel supply and defending consumer interests. Among other duties, the ANP promotes geological and geophysical studies to expand knowledge about Brazilian oil and gas reserves; saves and organizes the data collected in these studies; suggests to the government the areas to be auctioned; promotes bidding rounds and signs concession contracts on behalf of the government. ANP is also in charge of conducting bidding rounds offering production sharing contracts (for pre-salt areas) or concession contracts for other areas.

Brazil has a local content policy for the oil and gas sector, operating as contractual obligations of the oil companies, included in production sharing contracts and concession contracts, to acquire certain percentages of Brazilian equipment and services in the exploration and development phases of a project. The percentages vary depending on the bidding round where the contract was awarded. The Brazilian Government has been revising its local content policy in order to simplify the operationalization of the rules, reduce some percentages, and create possibilities for new commitments for past infringements of the minimum requirements in lieu of the payment of penalties.

ANP is also responsible for authorizing companies to build, operate and expand refineries and processing and storage facilities for natural gas and liquid products. The Agency also regulates the transport, handling and sale of natural gas, oil and oil products and the distribution of compressed natural gas (CNG) and liquefied natural gas (LNG).

Today, the sector is undergoing a new opening, the regulatory improvement promoted by the ANP, changes in legislation for the sector and the creation of programs at the federal level to stimulate investments and the entry of new agents at all stages of the production chain. From this window of opportunities that the country is experiencing, the ANP has been intensifying actions in order to encourage and unlock investments, such as bidding rounds, permanent offer of areas and Improvement of controls.

*This report was elaborated by Mota Advogados.  
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