

Mergers and Acquisitions Compliance in Brazil: An Overview

Brazil's economic and social climate is like no other. It is big, fast and incredibly lucrative. But, this global player is not yet a global leader. Investors looking to capitalize on the Latin American tiger must keep in mind that Brazil's laws and regulations are still catching up. In fact, Brazil is currently in the bottom 60 of 187 countries ranked by the World Bank for "ease of doing business." The potential pitfalls facing dealmakers are well-illustrated in the [M&A](#) context. In a transaction involving both Brazilian and foreign parties, Brazilian law will govern whenever the business is developing on Brazilian soil. To ensure compliance, dealmakers should be aware of certain key laws and regulations. This article sheds some light on the unique aspects of M&A transactions – the Brazilian way.



Contracts and business practices in general are governed by the Civil Code, which also governs the "Limitadas," or limited companies. The Corporation Law, on the other hand, governs privately and publicly held corporations, all business reorganization structures, shareholders' agreements and tender offers.

When it comes to funds, regulations by the Brazilian Securities and Exchange Commission and the Central Bank of Brazil may apply. The former must be observed when publicly held corporations merge, while the latter apply whenever the M&A transaction involves a non-Brazilian party or when the Brazilian entity involved has already received foreign investment prior to the transaction. Funds become subject to the Central Bank's registration if they are of foreign origin, either in the form of equity investments or loans. The Central Bank also has the authority to order audits of the commercial banks through which the exchange transactions occur and of the Brazilian entity to ensure that compliance with its regulations of foreign funds are observed.

Brazil's labor laws, tax laws, criminal laws and laws directed at specific sectors and industries may impose additional requirements depending on the nature of the transaction.

Businesses may join forces through the acquisition of another business already in Brazil or by reorganization. Acquisitions can be accomplished by acquiring an existing business entity, the shares of an existing entity, or its assets and rights. A business reorganization may include consolidation (two companies combine), merger (one company merges into another that "survives"), spin-off (a single company divides its operations but control remains under one common entity), "drop-down" of assets and rights (one company's assets and rights are used to establish a new or existing entity), share merger or roll-up (one corporation becomes a wholly owned subsidiary of another corporation), or grouping of companies (different companies come under same control).

One point is critical to anyone contemplating entering into an M&A transaction in Brazil. The acquiring company will be primarily liable for any of the target company's liabilities with one exception. Where the target company continues to operate post-acquisition, the acquiring company may only be secondarily liable.

After the M&A transaction is complete, certain aspects of carrying on business are very important to keep in mind. Consider the need to comply with Brazil's labor laws. Brazilian legislation aims to prevent any interruption of labor contracts during the M&A process. The laws provide that the company that ends up in control will be responsible for all labor contracts of the former company. In addition, there cannot be any change in the rights and benefits of the employees affected by the transaction. In fact, after the transaction is complete, the rights and benefits of all employees must be equal and matching those of the company with the higher standard of benefits before the transaction took place.

Another area of law that significantly impacts M&A transactions is taxation. Brazil has one of the highest tax rates in the world, choosing the correct tax structure in accordance with your company's goals and objectives is essential. On a positive note, tax reform is at the forefront of President Rousseff's agenda. But for now, those considering entering into a M&A transaction in Brazil should know that capital gains and revenues generated by the transaction may be taxed up to 34% after relevant income and social charges are applied. Furthermore, non-residents, either individual or companies, may be subject to up to 25% on certain capital

gains, depending on where the company or individual keeps residence and whether the country of residence is considered a “tax haven” by Brazilian legislation.

Despite complex rules and regulations, investors are finding that the growth potential Brazil offers is worth the time and effort. Numbers recently released by the Brazilian Institute of Geography and Statistics showed a higher than expected growth in retail sales in the month of May, a 6.2% jump from last year. This was a larger increase than expected, and the second in a mere three months. So, even though Brazil’s laws and regulations are still “catching up,” the size of its market continues supporting growth and attracting companies and investors.

In light of the differences in laws and regulations between countries, consulting with international attorneys skilled in the latest legal and business trends is a prerequisite to getting through a complex M&A transaction. To avoid any potential pitfalls without missing out on the opportunities presented by the growing Brazilian market, consult an experienced attorney to structure your M&A transaction.

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