

## **The Brazilian business environment and its opportunities in 2019**

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Infrastructure, agribusiness and technology will be the prominent sectors to invest in Brazil in 2019. This is the local market expectation for this year and, in particular, the expectation of the Brazilian legal services market, if measures such as the approval of the social security and taxation reforms by the National Congress, public works concessions and privatizations are carried-out, and investments debureaucratization measures are actually implemented, as already publicly mentioned by members of the new Government.

With the Country's prospects of regaining competitiveness, due to the greater economic and political stability that may result from the implementation of such changes, we believe that the demand for legal assistance in the areas of Corporate Law, Mergers and Acquisitions, Capital Markets, Tax Law, Digital Law, Infrastructure and Compliance will naturally be increased.

The structuring of national and cross boarder deals, corporate reorganizations, and modeling of proposals, pricing and projects to be presented in bids require the qualified assistance by experts in Corporate Law, Mergers and Acquisitions and Tax Law, who assist with the design of tax-efficient corporate, contractual and collateral arrangements. Furthermore, such transactions often require the assistance of specialists in the Capital Markets and Infrastructure areas, who support companies in complying with the relevant regulations and rules of Procurement Law, as well as in the definition, negotiation and implementation of projects and funding alternatives.

Moreover, due to the recently sanctioned regulation for the protection of personal data in Brazil and to the demand for legal assistance by companies aiming to adjust to the digitization trend, professional support in the Digital Law area has become fundamental, as in Compliance affairs, which have become a perennial concern of organizations of all sizes and their management, not only from a reactive perspective, yet mainly in their prevention approach.

In the area of Infrastructure, as announced by the new Government, the goal is to auction public works involving several highways, airports, ports and some railroads at the beginning of the presidential term (based on a tender package already prepared by the previous Government), expanding the initiative to the electric power and oil and gas sectors, which should unlock business and development opportunities for the Country.

To that end, there is a promise publicly made by the Government consisting in debureaucratizing proceedings for foreign investment and private investment by Brazilian companies in the infrastructure sector - the bottleneck to the economic growth - as well as modeling concession bids in a manner that would allow greater capital return, while fostering regulatory predictability.

With the involvement of large Brazilian groups in the Lava Jato probe, much of the investment in the infrastructure sector is expected to come from foreign groups and from medium-sized Brazilian groups that have been filling the void left by the large groups.

Until recently, the National Bank for Economic and Social Development of Brazil (local acronym "BNDES") was the major financier of infrastructure projects as it made available credit lines subject to the "TJLP" interest rate, a long-term interest rate based on the inflation target disclosed by the Central Bank of Brazil (local acronym "BACEN") (therefore, influenced by political factors), which, in practice, was much lower than private bank's market interest rates, turning it into a heavily subsidized rate.

As of January 1st, 2018, the BNDES started adopting the new TLP rate while granting same types of loans to successful bidders of auctions occurred thereafter. Such rate was established as equivalent to the TJLP, but will progressively converge, in five (5) years, to the rate of a Brazilian Sovereign Note (NTN-B), based on the Country's official inflation rate expressed by the Broad National Consumer Index (IPCA). As the TLP rate is, in practice, closer to private bank's market interest rates, the new Government expects that the participation of said banks in financing public works projects will increase, decreasing the overdependence of the sector on the BNDES. In addition, the fiscal "tightening" and the need for repayment by the BNDES to the Brazilian National Treasury should reduce the disbursement frequency by such public bank.

The Government's intention to delegate to BACEN the power to allow foreign investment in the banking sector may also increase private financing for infrastructure.

Also, the incentive to raise funds through infrastructure debentures with income tax exemptions, now applicable to the income received from national and foreign individuals (holder of the debentures), as announced, may be extended to national legal entities.

In the agribusiness sector, in addition to the export of commodities, in which Brazil already occupies a prominent position, with the intention to change regulations concerning land demarcation and the planting of certain crops signaled by the new Government, and with the indication of a member of the ruralist group of the Brazilian National Congress to lead the Ministry of Agriculture, Livestock and Food Supply, our understanding is that the demands of producers and exporters may receive more attention from the Government, which may increase the appeal of the sector for investment, making the assistance by legal experts with business acumen and familiarity with the peculiarities of this sector crucial for enabling business opportunities for entrepreneurs, investors and service providers involved in the supply chain.

In the technology sector, agritechs, especially as a result of the agribusiness scenario above mentioned, as well as medtechs and fintechs - the latter due to the recent debureaucratization brought by Presidential Decree no.

9,544/2018 - may emerge as companies that will access an important window of opportunity for growth and investments this year. For that matter, a multidisciplinary assistance by qualified legal professionals can be a game changer for both the founders and venture investors of Brazilian startups to secure legal certainty of the deal and of the investment round within the required time frame, the implementation of corporate governance standards, a sound due diligence process, and compliance with local applicable regulations, specially the local General Law of Personal Data Protection (in Portuguese "Lei Geral de Proteção de Dados" or the local acronym "LGPD"), recently enacted.

Along this lines, in the area of Digital Law, the demand for specialized legal advice is in fact no longer exclusive to technology companies, but common to all organizations, in view of the increasing use of artificial intelligence, the storage of information in clouds and the increasing sharing of personal data, which recently gave rise to the updating of the Brazilian legislation for the protection of personal data, as mentioned above.

With the LGPD, whose text is very similar to The European Union General Data Protection Regulation, Brazil has joined a group of more than one hundred (100) countries that have specific legislation for the protection of personal data. Until August 2020, when the LGPD Law comes into force, companies will run against the clock to adapt to the requirements regarding the handling of personal data (among other conduits, collection, access, evaluation, classification, use, sharing, processing, storage, modification and disposal). Anyone who does not adapt will be prevented from sharing data with the regulated countries (regarding the protection of personal data) and, if they violate the LGPD rules individually or jointly, they may be subject to administrative sanctions and legal action.

Among other initiatives, companies should appoint a Data Protection Officer, identify and classify the types and volume of data used, develop/improve their compliance rules, privacy policies and terms of use, promote training of employees and accurately select their business partners. The year 2019 will be a milestone for behavior change and the creation of a new culture in the processing of personal data.

**Rayes e Fagundes Advogados Associados** is at your disposal to provide further clarification about the topics mentioned in this article, as well as to assist you with structuring and implementing projects and opportunities involving Brazil. You may contact Ms. Fabiana Rodrigues da Fonseca (+55 (11) 3050-2173; [ffonseca@rfaa.com.br](mailto:ffonseca@rfaa.com.br)) and Mr. Paulo Fernando Talarico (+55 (11) 3050-2169; [ptalarico@rfaa.com.br](mailto:ptalarico@rfaa.com.br)), partners to the firm in charge of our Corporate Legal and M&A practices. We invite you to also check our website <http://www.rfaa.com.br/en/>.