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# Inhalt

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# Capital Contribution in Limited Liability Companies with Crypto Assets: Feasibility and Challenges in Brazil

Currently, according to the Federal Revenue Service, Brazil has approximately 3 million cryptocurrency investors, including 2.992 million individual investors and 25,000 corporate investors[i]. Following the trend of previous years, it is estimated that by the end of 2025, the crypto asset market in the country will reach a revenue of US$ 2 billion[ii].

With the rise of digital markets, the discussion about their applicability as a means of payment and investment is gaining momentum and becoming essential for the economic landscape. In the business sector, this trend is no different. The payment of corporate transactions and the contribution of capital to business entities through cryptocurrencies are emerging as a viable alternative, although they still face regulatory and practical challenges.

Considering this reality, in 2020, the Commercial Registry of the State of São Paulo conducted a public consultation with the Ministry of Economy to clarify doubts related to the use of cryptocurrencies (or digital/virtual currencies). Due to the relevance of the topic, SEI Official Letter No. 4,081/2020[iii] was issued at the time, addressing the following points: (i) the legal nature of cryptocurrencies; (ii) the absence of legal prohibition on capital contribution with cryptocurrencies; and (iii) the formalities that Commercial Registries must observe to register corporate acts involving these assets.

Regarding the legal nature of cryptocurrencies, different definitions help determine the most appropriate answer. The Central Bank of Brazil (BCB) and the Securities and Exchange Commission (CVM) have already issued opinions

[i] BRAZIL. Federal Revenue Service. Open Data and General Information Report. January 15, 2025. Available in: https://www.gov.br/receitafederal/pt-br/assuntos/orientacao-tributaria/declaracoes-edemonstrativos/criptoativos/arquivos/criptoativos_dados_abertos_20250115.pdf;

[ii] Statista – Cryptocurrencies – Brazil. January 17, 2025. Available in: https://www.statista.com/outlook/fmo/digital-assets/cryptocurrencies/brazil;

[iii] BRAZIL. SEI Official Letter No. 4,081/2020. December 01. Available in: https://www.gov.br/empresas-e-negocios/pt-br/drei/legislacao/arquivos/OfcioCircular4081criptomoedas.pdf/view;

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on the subject, emphasizing that so-called electronic currencies, regulated by Law 12,865/2013[iv] should not be confused with virtual currencies, as per BCB Statement No. 25,306/2014[v]. For the Federal Revenue Service, according to Normative Instruction RFB No. 1,888, in its Article 5, item I, crypto assets are defined as any digital representation of value denominated in its own unit of account, whose price may be expressed in local or foreign sovereign currency, transacted electronically using cryptography and distributed ledger technologies[vi]. Such assets can be used as an investment vehicle, as means of transferring value, or accessing services but do not constitute legal tender. From this perspective, cryptocurrencies are classified as financial assets and must be declared in the income tax under the "other assets" category.

Hence, there is no doubt that cryptocurrencies are considered incorporeal assets, capable of pecuniary evaluation and fully negotiable, and can be used in corporate transactions and capital contributions.

Concerning the potential legal prohibition on the use of cryptocurrencies, both the Civil Code and the Corporate Law (Law No. 6,404/1976) set forth clear provisions in their respective articles 997, item III, and 7:

*Article 997. A company is constituted through a written contract, private or public, which, in addition to the clauses stipulated by the parties, shall include:*

*III - the company's capital, expressed in current currency, which may include any type of assets susceptible to pecuniary evaluation;*

*Article 7. The share capital may be formed with contributions in money or any type of assets susceptible to monetary evaluation.*

Thus, considering that the asset to be contributed is subject to pecuniary evaluation (for limited liability companies) or monetary evaluation (for corporations), there is no legal impediment to using cryptocurrencies.

Furthermore, the relevance of the Economic Freedom Law (Law 13,874/2019[vii]) is emphasized, which, in its Articles 3 and 4, reinforces private autonomy in

[iv] BRAZIL. Law 12,865. October 09, 2013. Available in: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12865.htm;

[v] BRAZIL. BCB Statement No. 25,306. February 19, 2014. Available in: https://www.bcb.gov.br/estabilidadefinanceira/exibenormativo?tipo=comunicado&numero=25306;

[vi] BRAZIL. Normative Instruction RFB No. 1,888. May 03, 2019. Available in: http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=100592;

[vii] BRAZIL. Economic Freedom Law. No. 13,874. September 20, 2019. Available in: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/l13874.htm;

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the interpretation of business and economic law, while also aiming to prevent regulatory abuse that could limit the free formation of business entities or economic activities.

Regarding the last question posed by the Commercial Registry of the State of São Paulo, the Ministry of Economy determined that the same rules applicable to the contribution of capital with movable assets should be observed, according to the respective corporate type. Thus, the responsibility of the Commercial Registries is limited to examining compliance with the legal formalities of the act subject to filing.

However, although it is legally possible to use crypto assets in corporate transactions, practical challenges still need to be overcome for the market to adopt this practice securely and efficiently. The volatility of cryptocurrencies and the constant market instability represent significant obstacles to valuing the amounts involved in such transactions, such as the capital contribution of a company.

The Legal Framework for Cryptocurrencies (Law 14,478/2022[viii]) and Decree No. 11,563/2023[ix] assigned to the Central Bank of Brazil the role of regulator of the crypto market. Since then, the institution has been working to expand its regulatory role. In 2024, a public consultation was conducted to map the sector's operations and gather input from stakeholders, aiming to develop adjusted and technically efficient regulatory norms. The Central Bank emphasizes that the regulatory process is complex and will proceed in phases over the coming years, always in dialogue with the market.

Aspects such as the depreciation of cryptocurrencies for partners/shareholders who contribute their participation with these assets remain unanswered. Authors like Lara Helena Luiza Zambão, in her work "As criptomoedas como forma de integralização do capital social da sociedade anônima e a responsabilidade patrimonial do sócio em eventual execução judicial" (2019), argue that if the high price fluctuation of cryptocurrencies reduces a company's share capital, partners should compensate for the quota value to maintain the company's fully preserved capital.

[viii] BRAZIL. Legal Framework for Cryptocurrencies - Law No. 14,478. December 21, 2022. Available in: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2022/lei/l14478.htm;

[ix] BRAZIL. Decree No. 11,563. June 13, 2023. Available in: https://www.planalto.gov.br/ccivil_03/_ato2023-2026/2023/decreto/d11563.htm.

Given this scenario, it is essential to highlight that this is an expanding market with constant challenges and regulatory gaps that have not yet been fully addressed. For investors and entrepreneurs, staying informed about crypto market regulations is essential.

The corporate team at Stüssi-Neves Advogados continues to monitor the new regulations introduced by the Central Bank of Brazil and is available to clarify any questions on the subject.

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# The Mental Health Crisis And Its Reflections On The Labor Market: Impacts And Challenges For Companies With The New Regulatory Standard 01 ("NR-1")

Brazil has experienced a significant increase in the number of work absences due to mental disorders such as anxiety and depression in 2024. The figures are revealing: compared to the previous year, the increase in absences was 68%. With more than 470,000 medical leaves granted in 2024, this reality reflects a mental health crisis within the corporate environment, raising concerns about employee well-being in the workplace. Burnout (which has been recognized as an occupational disease by the World Health Organization (WHO) since January 2022), anxiety, and depression have become increasingly common in professional settings.

Therefore, investing in the mental health of employees is not only a legal obligation but also a corporate decision that can serve as a competitive advantage in the current market. Companies that recognize the importance of their employees' psychological well-being build not only a more structured and resilient workforce but also a solid and innovative organizational culture. In a scenario where stress and pressure are often underestimated, adopting preventive practices and ensuring necessary emotional support is an effective way to avoid talent loss and decreased productivity. Therefore, psychological well-being should be viewed as a valuable asset that can enhance institutional performance, reduce absenteeism rates, and ultimately strengthen the company's reputation in the market and society.

## LABOR LEGISLATION

From a legal perspective, the company's responsibility regarding the mental health of its employees is very clear. Labor legislation establishes that employers have the duty to ensure the physical and psychological integrity of their employees (Articles 157, 158, and 200 of the Brazilian Consolidation of Labor Laws – CLT). Thus, ensuring a healthy workplace is not only a recommended practice but a legal requirement aimed at protecting employees' rights and, in turn, preventing new labor claims against the company.

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**REGULATORY STANDARD NO. 1 (NR-1)**

With the recent update to Regulatory Standard No. 1 (NR-1) from the Brazilian Ministry of Labor and Employment, which will come into effect on May 26, 2026, companies will face a more stringent scenario in terms of inspection and compliance with rules related to mental health in the workplace. Audits will start from May 26, 2026.

NR-1 establishes that companies must "identify, assess, and control psychosocial risks, including work-related stress, organizational violence, and other factors that may harm the mental health of workers" (item 1.7.1 of NR-1).

An important tool for adapting to the new NR-1 guidelines is the development of a comprehensive Risk Management Program (Brazilian acronym – PGR), which, in addition to risks arising from physical, chemical, biological agents, accidents, and ergonomic factors, must also address psychosocial risks related to work. The effective and correct implementation of the PGR is a significant differentiator.

**NON-COMPLIANCE WITH NR-1**

Failure to comply with NR-1 may result in several sanctions for companies, which will be applied based on the severity of the violation and its impact on employee safety and health. The main sanctions are:

**1. Administrative Fines**

The Brazilian Ministry of Labor and Employment, through the Regional Superintendence of Labor and Employment (SRTE), may impose fines on companies that fail to comply with the requirements of NR-1. The fine amount will vary according to the severity of the violation and may be classified as light, medium, severe, or very severe (Article 223 of the CLT). The fine amount can reach up to R$7,000.00 and may double in case of recurrence.

**2. Civil and Labor Liability**

Breach of obligations related to workplace safety and health may lead to labor lawsuits filed by employees who feel harmed, potentially resulting in compensation for moral and/or material damages, depending on what is claimed in the lawsuit, especially in cases of occupational diseases (including mental disorders) that are proven to have been triggered by work activities.

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**3. Criminal Liability**

Although NR-1 itself does not foresee the application of criminal sanctions, depending on the specific situation, the company may be criminally liable if non-compliance with safety and health regulations leads to serious workplace accidents or occupational diseases that qualify as a criminal offense.

**4. Labor Claims**

Disregard for workplace health and safety guidelines, including the management of psychosocial risks, may also lead to individual labor claims filed by an employee or collective actions initiated by the Labor Public Prosecutor, which may result in compensation for moral and/or material damages (in the first case) or compensation for collective moral damages (in the second case).

**CONCLUSION**

Managing the mental health crisis in the corporate environment is an increasing challenge. Statistics call for collaborative actions aimed at preserving employees' integrity while ensuring the maintenance of productive activity, which is severely harmed in the long term by frequent employee absences due to illness.

Therefore, it is essential that business owners carefully observe the legal obligations brought by the new Regulatory Standard (NR-1) and adopt practices that foster a safe and healthy work environment, thus protecting both their employees and the company, as well as its management, from potential litigation and losses. To this end, among other measures, it is of the utmost importance to maintain an effective PGR and up-to-date occupational health documentation.

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# Non-Resident Foreigner Acting as Director/Officer of a Company in Brazil

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**Introduction**

The growth of the global economy and the internationalization of business have led an increasing number of companies to consider appointing foreign directors to their subsidiaries and branches in other countries.

In Brazil, not long ago, the legislation began to allow non-resident foreigners to act as statutory directors or officers of local companies.

However, despite the legal permission, this option brings a series of practical challenges that can make the day-to-day operational management of the company difficult, or even impossible.

In this article, we present for discussion some of the main legal aspects that make this position viable, as well as the practical difficulties commonly faced. Finally, a critical analysis of the situation will be presented, with recommendations to mitigate risks and increase the effectiveness of business management.

**1. Legal Basis for the Action of a Non-Resident Foreign Officer**

Brazilian legislation, especially the Corporations Law (Law No. 6.404/76) and the Civil Code (Law No. 10.406/02), do not prevent a non-resident foreigner from being appointed as an officer of a company in Brazil, whether it is a limited liability company or a corporation. However, the legislation imposes specific requirements that must be observed.

The non-resident foreigner must grant a power of attorney to a legal representative, who is resident in Brazil, with specific powers to receive legal summons on his/her behalf.

This power of attorney must be valid for three years after the end of the foreign officer's term of office, which ensures that the attorney still has the powers granted, even after the end of the term of office of his/her non-resident grantor.

The appointment of the attorney must be duly registered with the competent Commercial Registry, accompanied by the relevant documentation, including the power of attorney and sworn translation of foreign documents.

This legal framework reflects Brazil's openness to foreign capital and management, but it is also a reflection of the need to ensure that the company

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has a legal representative within the national territory, for purposes of judicial and administrative communication, a fact that can commonly expose the attorney to certain liabilities, even if indirectly.

**2. Practical Difficulties Faced by Non-Resident Foreign Officers**

Although the role of non-resident foreign officers is legally accepted, the practice has shown a series of significant obstacles that affect the effective management of the company. Some of the main challenges are highlighted below:

**2.1. Opening and Operation of Bank Accounts**

Opening corporate bank accounts in Brazil is a procedure that often requires the physical presence of the officer. Commercial banks usually require items such as:

(i) In-person signatures to open the account;

(ii) Presentation of an identity document with photo;

(iii) Registration of a Brazilian cell phone number for security authentication, such as tokens or transaction validation;

(iv) Proof of residential address in Brazil.

In the absence of these elements, the company may face significant obstacles to carrying out even the simplest basic operations such as paying suppliers, payroll and receiving revenue.

**2.2. Issuance and Maintenance of Digital Certificates (e-CPF and e-CNPJ)**

Digital certification is essential for carrying out various formal acts in Brazil, such as signing electronic documents, submitting tax obligations, and accessing Federal Revenue systems.

From the very first days of a company's existence, digital certificates have been necessary, for example, to obtain its first registrations and the simplest licenses.

For a non-resident foreign officer, the procedure for obtaining his/her digital certificate and also for obtaining the company's digital certificate usually requires personal appearance at a location indicated by the Brazilian certifying authority.

The maintenance and renewal of these certificates may also require physical presence. In some cases, certifying authorities refuse to issue certificates to foreigners without a regular CPF and who do not have an address in Brazil.

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Such requirements may make it impossible for the foreign officer to directly participate in formal acts of the company.

**2.3. Administrative Registrations, Licenses and Document Requirements**

It is common for registrations with government agencies, suppliers and financial institutions to require a copy of the officer's identity document (ID, driver's license or passport with a certified translation), a copy of proof of residence (usually a water, electricity or telephone bill) and physical presence for document authentication.

In addition, certain medium and large private companies in Brazil also require very rigorous registrations of their suppliers, often requiring a KYC with the officer's personal data and documents, leading to a detailed list of personal documents.

These requirements become significant barriers when the officer does not reside in Brazil and does not have tax domicile or proof of address in the country.

**3. Risks and Implications of Appointing a Non-Resident Officer**

The appointment of a non-resident officer may negatively affect some issues such as:

(i) Operational delays: due to the inability of the officer to sign documents in a timely manner;

(ii) Tax complications: due to not being able to access the Federal Revenue Service's digital systems or sign required electronic declarations;

(iii) Weakness in legal representation: especially in legal disputes or administrative processes that require presence or a quick response;

(iv) Negative perception among partners and clients: due to the apparent lack of effective command in the country.

**4. Practical Recommendation: Appointment of a Resident Officer**

In view of the difficulties presented, it is highly recommended that companies choose to appoint, in addition to the non-resident foreign officer, an officer or director resident in Brazil.

This measure has an important practical aspect, which will ensure gains and agility in many aspects, such as ensuring greater agility in operational management, facilitating compliance with bureaucratic requirements, providing greater legal and tax security and even avoiding interruptions in sensitive company activities.

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**5. Conclusion**

Brazilian legislation allows, without major formal restrictions, the appointment of a non-resident foreign officer or statutory director. However, the practical and operational difficulties are significant and, often, insurmountable without the support of a local representative.

The requirement of physical presence for banking operations, the bureaucracy to obtain digital certificates and the need for local documents are factors that compromise the efficiency of remote management.

Therefore, the safest and most efficient solution is the joint appointment of a director resident in Brazil, thus ensuring business continuity, tax compliance and compliance with legal and commercial obligations.

This measure not only mitigates risks, but also strengthens corporate governance and conveys greater confidence to the stakeholders of the foreign company that has its operations in Brazil.

# Mercosur's latest developments with impacts on Brazil

On the 28th of June 2019, after more than twenty years of negotiations, Mercosur (Argentina, Brazil, Paraguay and Uruguay) and the EU agreed finally on the terms of a Free Trade Agreement.

The Mercosur-European Union Agreement has been a significant development in international trade, offering opportunities for Brazil to diversify its exports and attract investments. Since 2022, negotiations have progressed, with a focus on strengthening economic ties between the two blocks.

By 2023, the four Mercosur's founding members achieved a combined GDP of approximately $3 trillion, making it one of the world's largest economic blocks.

In 2024, Mercosur and the EU finalized that historic Trade Agreement, aiming at strengthening economic ties and promoting sustainable development by implementing provisions for environmental protection and labor rights and focusing on strengthening regional integration and promoting sustainable growth. This deal includes measures to combat deforestation, preserve natural resources, and meet the Paris Agreement on climate change.

The Agreement prioritizes sustainable development, with the EU investing €1.8 billion in Mercosur countries to support a green and digital transition. This investment aims at a balance between economic growth and environmental protection.

Mercosur continues to work on regional integration, focusing on free trade, labor mobility, and financial integration. However, challenges persist, including internal divisions and tensions with external partners.

The benefits for exporters that the EU-Mercosur Agreement has to offer are in general 1.tariff reductions on European exports, 2.increased market access due to easier access to Mercosur markets through regulatory cooperation, meaning a closer collaboration in setting standards as well as through protection of geographical indications, 3.trade facilitation by reducing trade barriers and increasing cooperation and 4.investment opportunities through liberalization of services and investment. These 4 elements which promote export growth will help exporters increase their competitiveness and expand their presence in the Mercosur market.

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The idea is that a more defined economic environment and advancements in strategic sectors like technology, agriculture, and renewable energy will increase mergers and acquisitions and expand businesses and participation in international trade in 2025. The development of strategic plans in order to focus on innovation, talent retention, and digital transformation to stay competitive is essential to navigate the evolving business landscape.

Moreover, it is important to seek expert advice, for instance leverage consultancy services for financial management, tax planning, and regulatory compliance in order to adapt to changing market conditions.

Let us have a closer look at the key aspects of the Agreement which are the tariff reduction, market access, sustainable development and geographical indications and their impact on Brazil:

The EU will eliminate 100% of its tariffs on Mercosur goods within 10 years, benefiting Brazilian exports like chemicals, machinery, and medical equipment.

Mercosur will gradually liberalize its market over 30 years, with some sectors like automotive and textiles facing longer adjustment periods.

The Agreement includes commitments to environmental protection, labor rights, and sustainable trade practices and protects 37 Brazilian geographical indications in the EU, such as for example "Cachaça" and "Vale dos Vinhedos" wines.

Regarding the implications for European Companies in Brazil, the European companies can benefit from reduced tariffs and increased market access in Brazil and other Mercosur countries. Moreover, the Agreement fosters collaboration in technology and innovation, allowing European companies to integrate solutions with Brazilian industries. With the Agreement covering one-fifth of the global economy, European companies can tap into new markets and opportunities.

Looking into the future, Mercosur will face challenges, such as managing Argentina-Brazil tensions, navigating China's influence in the region, and addressing environmental concerns related to trade agreements.

Moreover, Mercosur industries, like automotive, may face challenges due to increased EU imports, affecting production and employment. But at the same time Mercosur countries can identify niche opportunities and develop policy proposals to mitigate negative effects and capitalize on the Agreement.

On the one hand, Brazil's bureaucratic processes can be slow and cumbersome, deterring foreign investors. Brazil has high production costs, including labor costs, which can make it challenging for businesses to operate profitably. And last, but not least, Brazil's infrastructure, such as transportation networks, can be underdeveloped, increasing costs and complexity for businesses. At the same time Brazil's regulatory environment can be unpredictable, posing risks for foreign investors. Finally, Brazil faces a shortage of skilled labor, which can hinder business growth and innovation. Brazil's economy can be volatile, with fluctuations in GDP growth and inflation posing risks for businesses.

Brazil's high interest rates can increase borrowing costs for businesses and reduce investment attractiveness. Brazil's economy is influenced by global economic trends, including changes in commodity prices and trade policies. Changes in regulations and policies can pose risks for businesses operating in Brazil. Brazil faces competition from other emerging markets, which can affect its attractiveness to foreign investors.

On the other hand, Brazil`s strength is a large domestic market of over 210 million inhabitants, offering a significant consumer base for businesses. Brazil is also rich in natural resources, making it an attractive destination for investors in sectors like agriculture, mining, and energy.

Moreover, Brazil's strategic geographic location provides access to other South American countries, facilitating regional trade and investment.

Brazil has a diversified economy, reducing its vulnerability to international crises and offering opportunities for investment in various sectors. The Brazilian government offers tax breaks, low-cost financing, and other incentives to attract foreign direct investment (FDI). Brazil has a very solid experience in alternative dispute resolutions since its law from 1996. European investors, trading companies and exporters can benefit from the European Chamber of Arbitration and/or other institutions functioning in the country over the last 20 years.

Brazil is a leader in renewable energy, offering opportunities for investment in wind, solar, and bioenergy. Brazil's startup ecosystem is growing, with opportunities for investment in fintech, health tech, and ed-tech. Brazil's infrastructure projects, such as port modernization, offer opportunities for investment and partnership. Brazil is a major player in agriculture and agribusiness, offering opportunities for investment in precision agriculture and bio inputs. Brazil's membership in Mercosur provides access to a larger market and enhances its position as a base for regional expansion.

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In a world which seems to be becoming more and more complex and unpredictable with economic uncertainties, geopolitical tensions and increasing business challenges, the Mercosur-EU Agreement has the potential to transform the economic landscape of both regions, promoting sustainable development and economic growth. European companies can surely benefit from increased market access and partnership opportunities in Brazil and other Mercosur countries.

To come into force, effectively and in its entirety, the Agreement still depends on the approval by the Council of the EU and by the European Parliament, as well as the individual ratification by the parliament of each of the 27 Member States of the EU, which can be a complex and time-consuming process. The Agreement also needs to be approved by the national parliaments of each of the four Mercosur Member States.

In the European Council, it needs to be approved by a qualified majority of 55% of the Member States and by countries representing at least 65% of the EU's population. Countries like France, which are resisting the Agreement, would have to work together with other countries to bar the approval by the Council.

The Agreement covers not only economic and trade aspects, but also political aspects and aspects of cooperation between the blocks, such as investments. In this regard, the process of approval and ratification of the Agreement is divided into two parts: the first concerns economic and trade aspects and comes into force immediately after approval by the Council of the EU and the European Parliament. All the rest of the Agreement needs to be approved by the national parliaments of each of the Member States to come into force.

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# External Work Regime: The Employer's Burden to Demonstrate the Lack of Working Time Control

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The Labor Code provides specific exceptions to the general rules on working hours. Among these exceptions are employees who perform external activities incompatible with their working hours. For such classification to be valid, this condition must be expressly recorded in the employee's Work and Social Security Card ("CTPS") and the company's employment records.

Depending on the circumstances of the specific case, it is common for companies to hire certain categories of employees as external workers without controlling working hours. Frequent examples are salespeople, sales representatives, and drivers.

As a practical consequence, because the rules on working hours do not cover them, such employees are not entitled, for example, to receive overtime pay[1], meal and rest breaks[2], inter-hours breaks[3] and night work premiums[4].

A significant development on this topic has recently emerged. In a decision published on April 8th, 2025, the Brazilian Superior Labor Court ("TST") issued a binding precedent (RRAg - 0000113-77.2023.5.05.0035 - Theme 73), establishing that the burden of proving the impossibility of controlling the employee's working hours lies with the employer. As a binding precedent, this ruling must be followed by lower courts.

[1] According to labor law, the working day must be 8 hours and the work week must be 44 days. Employees may work 2 hours of overtime per day if they are paid an additional 50% of the hourly rate. Different provisions may be included in the collective bargaining agreement.

[2] According to labor law, the meal and rest breaks are 15 minutes for working hours exceeding 4 hours and 1 hour for working hours exceeding 6 hours. Different provisions may be included in the collective bargaining agreement.

[3] According to labor law, a minimum interval of 11 hours must be respected between one workday and another. Different provisions may be included in the collective bargaining agreement.

[4] According to labor law, night work is work performed between 10 p.m. on one day and 5 a.m. on the next day. Night work must be paid for with an additional 20%. Different provisions may be included in the collective bargaining agreement.

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In other words, if an employee who the company hired as an external worker without working hours controls files a labor lawsuit against the company, the employer will be responsible for proving that it was never actually possible to control the employee's working hours. Otherwise, the company must pay the employee for any overtime work.

The exception no longer applies once the employer has the means to control an employee's working hours. It is important to note that it's not necessarily effective control of working hours by the employer to disqualify the exception - the mere possibility of exercising such control is sufficient to render it inapplicable.

Demonstrating the absence of working hours has become a significant challenge for companies, especially in the face of technological advances and the expansion of means of communication, which allow frequent contact with employees, even when working externally.

According to prevailing case law, the following examples may constitute control of working hours: (i) frequent contacts via WhatsApp or other messaging platforms, which allow the company to identify the times when employees are working; (ii) the use of systems or reports which, even if not specifically designed for working hours record, allow the employer to know the start and end times of the working day; (iii) activity reports made in advance by an employee's supervisor; (iv) the installation of trackers/GPS on work equipment used by employees, such as computers, cars, tablets, cell phones; (v) requirement for daily presence at the company's premises, even if the employee spends most of their working hours working outside; and (vi) the requirement for employees to check-in at places visited during working hours.

On the other hand, the following practices may help mitigate the risk of the employment relationship being characterized as subject to working hours control: (a) granting the employee flexibility in setting their own schedule; (b) ensuring there is no direct supervision—either in person or remotely—of the employee's activities while working outside; (c) limiting interactions to occasional phone calls and messages, even if on a daily basis, with other people in the company; and (d) allowing the employee autonomy to organize their work activities, even if this requires prior coordination with a supervisor.

The above recommendations regarding the practices that companies should or should not adopt are just examples and can vary greatly depending on the context, the nature of the activities carried out and the work routine of the employees.

For this reason, it is advisable for companies to assess, in coordination with their legal department, the practices and routines adopted in classifying employees as external workers not subject to working hours control. This assessment should include the implementation of preventive measures to mitigate potential future labor liabilities.

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# Import Tariffs in Brazil – Current Situation and Outlook

A new wave of protectionism, significantly amplified by the United States' trade policies under the Trump Administration, marks the current global economic environment, particularly with the imposition of US tariffs, which have been especially targeted at China. These actions have prompted a reorganization of supply chains and redirected trade flows, as goods originally destined for the US seek alternative markets. Amid this shift, Brazil emerges as a potential destination, and understanding its import framework becomes strategic.

Although Brazil's import tariff structure is complex and multilayered, it is designed within the framework of Mercosur and aligned with national industrial policy. The core rationale behind Brazil's Import Tax (II) is the protection of the domestic industry and the generation of public revenue. This tax forms part of a broader tariff framework governed by Mercosur's Common External Tariff (TEC), which determines rates based on the classification of goods under the 8-digit Mercosur Common Nomenclature (NCM). Essential goods such as medicines and inputs for agricultural production benefit from lower tariffs, while finished consumer goods or items with significant local competition may face rates as high as 35%. For sectors of interest to German exports, TEC rates generally vary from 0% to 14% for industrial machinery and from 0% to 16% for medical equipment.

Beyond the Import Tax, imported goods are also subject to several indirect levies: the Tax on Industrialized Products (IPI), Social Contributions for PIS and COFINS, and the State Value-Added Tax (ICMS), which will be replaced as Selective Tax, Contribution on Goods and Services and Tax on Goods and Services respectively as the recently approved Tax Reform is being implemented.

However, a crucial distinction lies in the tax treatment of these charges: IPI, PIS/COFINS (when under the non-cumulative regime), and ICMS are generally creditable for corporate taxpayers, meaning the amounts paid can be offset against future tax liabilities. The Import Tax (II), in contrast, is not creditable and thus represents the main non-recoverable tax cost that directly influences the final price of imported goods.

To ensure responsiveness to economic and industrial shifts, Brazil employs several mechanisms that offer flexibility within its tariff framework. Among these is the Ex-Tarifário regime, which provides temporary reductions (often to 0% or 2%) on tariffs for capital goods (BK), IT and telecom equipment (BIT), and components not produced locally. The regime not only reduces investment costs but fosters the modernization of Brazil's industrial base, creating ideal conditions for technologically advanced companies, such as those from Germany's precision engineering and machinery sectors, to expand operations.

Brazil's tariff policy also reflects its historic protectionist stance, which, although once criticized, is now evolving toward a more open and cooperative model. Compared to its regional peers, Brazil has traditionally imposed some of the world's highest average import tariffs. Yet, the country's recent actions demonstrate a strategic pivot: recognizing that long-term economic growth and innovation require international engagement, not isolation.

This transformation is most visible in Brazil's recent participation in major international trade agreements. The EU-Mercosur Agreement is a landmark development. It foresees the elimination of over 90% of tariffs on both sides, with 80% of EU tariffs on industrial goods eliminated immediately upon the agreement's enforcement. Brazil will, in turn, benefit from enhanced market access for agribusiness, machinery, and automotive components, sectors where German investment and expertise are particularly robust.

The agreement also introduces modern rules of origin, including self-certification procedures that simplify customs compliance, a significant benefit for companies operating across multiple jurisdictions.

In December 2023, the Mercosur–Singapore Free Trade Agreement was signed, reinforcing the bloc's strategy of diversifying trade partnerships beyond traditional Western markets. Singapore committed to eliminating all import tariffs on Mercosur products, while Mercosur will phase out tariffs on 95.8% of Singaporean goods over 15 years.

Another notable development is the evolution of local content and industrial development programs. Brazil's current MOVER Program, tailored to the automotive sector, offers fiscal benefits not based on rigid local content thresholds, but rather on R&D and sustainability commitments. Under a special import regime, companies can import auto parts without domestic equivalents duty-free, provided they invest a minimum of 2% of the import value into R&D activities within Brazil. This model is consistent with Germany's

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high standards for innovation, offering a natural synergy between policy and business objectives.

These trends shows that Brazil is increasingly aligning itself with global trade norms, embracing innovation, and signaling openness to foreign investment, especially in high-value sectors. For German companies that value precision, reliability, and long-term strategy, Brazil offers not just a market, but a platform for regional leadership.

Brazil's trade and tariff policy is undergoing a transformative shift, from protectionism to strategic openness. While historically complex, the import system is adapting to the realities of global trade through streamlined tariff instruments, investment incentives, and international agreements. The country's commitment to Mercosur's harmonization goals and recent landmark deals with the European Union and Singapore signal a clear trajectory toward deeper integration into the global economy.

Amid global trade tensions, Brazil stands out as a reliable destination for companies seeking new opportunities in Latin America. By offering growing consumer market and an increasingly modern trade infrastructure, Brazil is well-positioned to serve as a competitive alternative in global supply chains.

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# The Role of the Insurance, Reinsurance, and Private Pension Sector in the Development of the Brazilian Carbon Market

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The enactment of Law No. 15,042 in December 2024, establishing the Brazilian Greenhouse Gas Emissions Trading System (SBCE), represents a significant milestone in the legal and regulatory structuring of the national carbon market, aligning Brazil with the cap-and-trade frameworks adopted by jurisdictions such as Mexico and member states of the European Union.

In general terms, the SBCE establishes maximum carbon dioxide emission limits, requiring entities that exceed those limits to either reduce their emissions or acquire Brazilian Emission Allowances (CBE) and/or Verified Emission Reduction or Removal Certificates (CRVE). The primary objective is to promote the reduction and mitigation of greenhouse gas emissions through an economic instrument designed to incentivize sustainable behavior and address market failures, such as environmental externalities — a particularly relevant concern in large countries like Brazil. Additionally, the system reinforces the international commitments undertaken by the country in combating climate change.

However, the insurance market was caught off guard by the inclusion of Article 56 in the new law, which mandates that insurers, open private pension entities, capitalization companies, and local reinsurers (collectively referred to as "Supervised Entities") must invest at least 0.5% per year of their technical reserves and provisions in environmental assets or in shares of investment funds linked to such assets. This investment must comply with the guidelines set forth in National Monetary Council Resolution No. 4,993/2022, which establishes criteria for the allocation of resources by Supervised Entities.

It is worth noting that the wording of Article 56 of Law No. 15,042/2024 underwent significant revisions during its passage through the National Congress. Ultimately, the nature of the investment was changed from voluntary to mandatory, and the minimum percentage was reduced from 1% to 0.5%.

Although the applicability of Article 56 remains subject to future regulation, the insurance, reinsurance, and private pension sectors have responded with concern. The National Confederation of Insurers (CNSeg) has filed a lawsuit alleging multiple violations of the Federal Constitution and Complementary Law No. 109/2001, which governs the private pension system.

The sector's concern arises from the requirement to invest technical reserves and provisions in low-liquidity assets.

The constitutionality of the provision is also under debate, as it conflicts with Article 9, §2 of Complementary Law No. 109/2001, which prohibits the imposition of mandatory investments or minimum investment thresholds for the technical reserves and provisions of pension entities. Beyond the legal conflict, it is argued that such a change could not be enacted through an ordinary law, as exemplified by Law No. 15,042/2024.

CNSeg further contends that Article 56 is materially unconstitutional, as it violates the principles of freedom, free enterprise and competition, proportionality and reasonableness, equality, the polluter-pays principle, and legal certainty.

Finally, the lawsuit challenges the feasibility of complying with the requirement set forth in Article 56, arguing that, despite the absence of official data, specialized consulting firms estimate the carbon market currently moves approximately R$1 billion, whereas 0.5% of the technical reserves and provisions of Supervised Entities would amount to R$9 billion — indicating that there would not be sufficient carbon credits available to satisfy the investment requirement established by Article 56 of Law No. 15,042/2024.

It is well understood that the transition to a more sustainable economy requires the involvement of multiple sectors. However, it is essential — and, above all, ethical — that such participation occurs within the boundaries established by the Federal Constitution and the applicable legal and regulatory framework governing economic activities.

Regarding technical reserves and provisions, it is important to emphasize that their establishment is mandatory for Supervised Entities pursuant to Article 84 of Decree-Law No. 73/1966. Their purpose is to guarantee the obligations assumed by Supervised Entities toward policyholders, reinsurers, beneficiaries, and participants in insurance, reinsurance, pension, and capitalization products.

In this context, the wording of Article 56 raises not only questions regarding its proportionality, reasonableness, and compatibility with the constitutional principles and legal provisions cited in the lawsuit, but also concerns about

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preserving the solvency capacity of the insurance, reinsurance, and private pension sectors — which relies on the ease of access to, and high liquidity of the assets in which the resources of technical reserves and provisions are invested to fulfill their obligations.

Moreover, with the enactment of Complementary Law No. 213/2025, which regulates the operations of cooperative insurance companies and mutual property protection operations, imposing the burden of Article 56 solely on Supervised Entities — and not on the administrators of mutual property protection operations — would create an unjustifiable asymmetry.

It is important to emphasize that the sector's reaction to Article 56 of Law No. 15,042 does not represent a refusal to contribute to the environmental agenda, but rather a defensive response to legal uncertainty and the social risks arising from the measure.

The arguments presented by insurance entities should not be construed as an obstacle to the advancement of the environmental agenda. In this regard, the sector's efforts in developing sustainable policies and products are noteworthy — including the provisions of CNSP Resolution No. 473/2024, which establishes guidelines for classifying insurance and pension products as sustainable ("green insurance"), as well as the obligations set forth in Circular No. 666/2022 concerning the development and implementation of sustainability risk management policies and the disclosure of reports by Supervised Entities.

Furthermore, it is worth highlighting the insurance, reinsurance, and private pension sectors' support for the issuance of green bonds, as well as the proposal to create a social catastrophe insurance program which provides immediate assistance to populations affected by rain and floods. The sector is also actively participating in the 30th United Nations Climate Change Conference (COP 30), scheduled for November this year, and has recently published Public Consultation Notice No. 1/2025, which addresses a draft resolution by the National Council of Private Insurance aimed at establishing guidelines related to environmental, social, and climate issues applicable to rural insurance.

The expectation is that the development of the carbon market will proceed in a transparent, technical, gradual, and reasonable manner, in compliance with the Federal Constitution and applicable legislation, aiming at the safe and consistent integration of the insurance, reinsurance, and private pension sectors with the promotion of decarbonization, climate change mitigation, climate risk management, and ecosystem preservation.

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# Brazilian Civil Code Reform Proposal: Digital Civil Law

At the beginning of this year, a bill was submitted to the Brazilian Federal Senate proposing amendments to the Civil Code. Here we will approach specifically the inclusion of a chapter dedicated to Digital Civil Law. This is still a legislative proposal, subject to debate and potential modifications, and it may or may not be approved. Nonetheless, it represents a significant step toward modernizing the Brazilian legal framework to better reflect the complexities and demands of the digital economy.

If approved, this new chapter would establish a comprehensive set of rules to govern rights, obligations, and responsibilities within the digital environment. This potential legal development is particularly relevant for technology companies and businesses operating digitally in Brazil, as it seeks to provide legal certainty comparable to that of the physical world. The proposal builds on the foundations of existing legislation such as the Brazilian General Data Protection Law (LGPD) and the Internet Bill of Rights (Marco Civil da Internet), but it expands the scope beyond data protection and internet use, offering a structured framework for civil relationships in digital spaces.

A central point under discussion in the bill is the formal recognition of digital contracts. If the proposal is approved, agreements executed via emails, applications, platforms, or even through automated smart contracts would have the same legal validity as traditional written contracts set forth at the law. This provision seeks to offer greater security and clarity for commercial relationships that increasingly rely on digital transactions. Smart contracts, in particular, would become fully recognized legal instruments, subject to principles of transparency, security, and auditability. Their automatic execution would be required to include mechanisms that handle errors and allow human intervention when necessary, ensuring compliance with fundamental legal principles.

The bill also introduces proposed regulations targeting large digital platforms. According to the draft, platforms with more than ten million users in Brazil would be classified as entities of systemic relevance and, as such, would be subject to stricter obligations. These would include conducting annual risk assessments related to the dissemination of harmful content, misinformation, threats to public safety, and risks to democratic processes. Additionally, they would be required to undergo independent audits to verify compliance with requirements related to transparency, user rights, and content moderation.

One of the most innovative and globally pioneering aspects of the bill is the proposed protection of neuro-rights. This provision seeks to safeguard individuals from unauthorized access to mental data and prohibits the manipulation of cognitive processes through neurotechnologies. Technologies capable of interfacing with the human brain, whether for health, commercial, or technological purposes, would be prohibited from being used coercively or commercially without the user's explicit and informed consent. If enacted, this rule would add a sophisticated and unprecedented layer of protection, especially relevant for companies developing artificial intelligence, wearable devices, and neurological technologies.

The proposal also gives formal legal recognition to digital identity. If approved, digital identification issued by the Brazilian government would be considered valid for all legal purposes within digital environments. This would facilitate remote procedures such as company registrations, contract signings, and notarial acts, all of which could be executed entirely online through the e-Notariado platform, a secure system operated by Brazilian notaries that would guarantee the same legal effects as traditional, physical processes. This measure aims to reduce bureaucracy and increase legal certainty for both Brazilian and foreign entities.

Another significant innovation introduced by the bill is the regulation of digital inheritance. Digital assets such as cryptocurrencies, NFTs, cloud storage accounts, email, and social media profiles would be formally recognized as part of a person's estate. Individuals would be allowed to determine, through wills or contracts, how their digital assets and presence should be handled after death. In the absence of specific instructions, heirs would have the right to request the deletion of accounts, their conversion into memorial pages, or access to digital assets of economic value.

The draft legislation also reinforces the protection of personal data by introducing new rights and obligations that would complement the LGPD. Among them are the right to request the deletion of personal data, the right to request the de-indexation of personal information from search engines, and the obligation for platforms to implement accessible and transparent procedures to handle these requests. Additionally, the proposal strengthens transparency obligations related to algorithmic processes, requiring companies to in-

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form users whenever automated decisions have significant impacts on their rights or economic interests.

More than a response to technological advances, this legislative proposal represents a clear statement that digital interactions are no longer peripheral but central to legal and civil life. Should the bill be approved, companies operating in Brazil will need to revisit their contractual models, compliance programs, risk management procedures, and even succession planning to adapt to the new requirements brought by this potential legal innovation.

If enacted, the Digital Civil Law chapter would place Brazil at the forefront of global discussions on digital rights and responsibilities. While aligning with international standards such as the European General Data Protection Regulation (GDPR), the Brazilian proposal goes further in certain respects, particularly with the introduction of neuro-rights. This bold step, if confirmed, may influence future legal frameworks worldwide and would position Brazil as a leader in the development of comprehensive digital legislation.cy obligations related to algorithmic processes, requiring companies to inform users whenever automated decisions have significant impacts on their rights or economic interests.

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