Deutsch-Brasilianische Industrie- und Handelskammer • VOL.4 • 2025

RECHT & STEUERN

IN BRASILIEN

Pacheco Neto Sanden Teisseire Advogados

TAUIL | CHEQUER MAYER | BROWN

Sperling Advogados

SONIA MARQUES DÖBLER ADVOGADOS

Lefosse

BHERING ADVOGADOS

MACHADO ASSOCIADOS

FCR Law / Fleury, Coimbra & Rhomberg Advogados

SNA Stüssi Neves Advogados

Herausgeber:

Gefördert durch:

Bundesministerium für Wirtschaft und Energie

aufgrund eines Beschlusses des Deutschen Bundestages

AHK MERCOSUL

Deutsch-Brasilianische Industrie- und Handelskammer
Câmara de Comércio e Indústria Brasil-Alemanha

Inhalt

Luccas Mendonça
Partner
lmendonca@pnst.com.br

Priscila Santos
Partner
psantos@pnst.com.br

Pacheco Neto Sanden Teisseire Advogados*
Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4400 / 3063 6177
www.pnst.com.br

PN ST Pacheco Neto Sanden Teisseire Advogados

Mind the Gap: Gender Equality Laws in Brazil and Germany

This article develops a comparative analysis of Brazil's and Germany's legislation regarding the Gender Pay Gap. It starts with a brief overview of the concept, then proceeds to describe and compare the Transparency in Wage Structures Act (Entgelttransparenzgesetz – 2017)[1] of Germany and Lei Nº 14.611 (Lei de Igualdade Salarial – 2023)[2] of Brazil, outlining their commonalities and key differences.

1. The Gender Pay Gap Definition

The gender pay gap can be described as the disparity in earnings between men and women, which often reflects a broader inequality of the labor market:

The gender pay gap encompasses differences in men's and women's earnings, which refer to **(a)** remuneration in cash or in kind paid to an employee for the work done, together with remuneration for time not worked; **(b)** net earnings from self-employment; or **(c)** total earnings from both employment and self-employment[3].

It entails a systemic issue in how work is valued and rewarded across countries and economic sectors. One way in which the pay gap manifests is the under-representation of women in leadership, high-paying roles and strategic positions. Additionally, women often have to undertake disproportionate familial responsibilities, which results in reduced earnings and benefits compared to men who engage in full-time work.

Since the Gender Pay Gap is an issue for both developed and developing countries, we will take a look at how Brazil's and Germany's legislation approach the same challenge.

[1] Federal Republic of Germany. Transparency in Wage Structures Act (Entgelttransparenzgesetz – EntgTranspG), 30 June 2017. English translation available at: Entgelttransparenzgesetz (EntgTranspG).

[2] Brazil. Lei Nº 14.611, de 3 de julho de 2023. Dispõe sobre a igualdade salarial e de critérios remuneratórios entre mulheres e homens. Available at: L14611.

[3] Equal pay: an introductory guide / Martin Oelz, Shauna Olney, Manuela Tomei; International Labour Office, International Labour Standards Department, Conditions of Work and Equality Department - Geneva: ILO, 2013 wcms_216695.pdf.

2. Comparative Overview

The Transparency in Wage Structures Act (Entgelttransparenzgesetz – 2017) of Germany and Law Nº 14.611 (Lei de Igualdade Salarial – 2023) of Brazil both share objectives and principles to promote equal pay for women and men through enforcement, transparency and corrective measures, but they differ in their provisions.

Germany's Law prohibits direct and indirect discrimination based on gender, defining direct discrimination as paying less due to gender and indirect discrimination as neutral criteria that disadvantage one gender without a legitimate cause. Similarly, Brazil's Law mandates equal pay and remuneration criteria for identical roles or work of equal value, extending protections against discrimination based not only on sex but also on race, ethnicity, origin, or age.

The scope of the laws differs in terms of the employers and employees covered. Germany's Law applies to employees in establishments with more than 200 workers, and includes private sector, public servants, federal judges, home workers etc. In contrast, Brazil's Law targets only private legal entities, with 100 or more employees, without addressing the public sector.

Enforcement, Transparency and Evaluation Mechanisms

Enforcement mechanisms in both laws combine inspections, penalties, and corrective actions. Germany's Law encourages employers with over 500 employees to conduct internal evaluations to assess pay equality, and if discrimination is identified, employers must take corrective measures. However, the law does not specify monetary penalties for non-compliance, relying instead on legal invalidity of provisions and stating only that: In the event that an internal company evaluation procedure reveals remuneration-related discrimination based on gender, the employer shall take the necessary measures to eliminate such discrimination (Section 19).

Brazil's Law takes a more punitive approach. It imposes a fine, mandates workplace inspections, and establishes a specific channel for reporting discrimination. Additionally, if inequalities are identified in the transparency reports, employers must implement action plans with clear goals and timelines, and non-compliance with the obligation to correct the inequality entails an administrative fine of up to 3% of the employer's payroll, capped at 100 minimum wages.

Pacheco Neto Sanden Teisseire Advogados*
Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4400 / 3063 6177
www.pnst.com.br

Pacheco Neto Sanden Teisseire Advogados*
Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4400 / 3063 6177
www.pnst.com.br

Pacheco Neto Sanden Teisseire Advogados

Transparency is a mechanism used by both laws: Germany's Law grants employees the right to request information on the average monthly gross remuneration and up to two remuneration components for a comparable role. Additionally, employers with over 500 employees subject to the German Commercial Code must file reports every three to five years on gender equality and equal pay measures.

Brazil's Law mandates semi-annual transparency reports, containing anonymized data on salaries, remuneration, and the proportion of leadership roles held by women and men, along with statistics on disparities related to race, ethnicity, nationality, and age. The reports are publicly accessible via a website.

Germany's law requires Federal Governmental evaluation every four years, while Brazil's law does not explicitly mandate periodic evaluations but only mandates the semi-annual report, which provides updated labor market data to inform policy.

Key Differences

Four key differences emerge from the comparison:

Scope – Brazil emphasizes public accessibility and intersectional data (e.g., race, age), while Germany prioritizes a more focused evaluation process, addressing only gender inequality.

Corrective measures – Both laws adopt measures to remedy inequalities, but the Brazilian law is more prescriptive.

Individual oversight mechanisms – Brazil relies on an anonymous reporting channel, while Germany strengthens the individual employee's right to access information and verify pay equity on their own.

Evaluation – Germany requires periodic governmental evaluations; Brazil relies only on biannual reports, without a structured review process.

3. Conclusion

Both laws are frameworks for promoting gender pay equality, but with distinct priorities. Germany emphasizes individual rights to information and internal accountability, while Brazil prioritizes public reporting, with punitive measures.

The German law's procedures for individual disclosure and works council involvement suggest a highly regulated labor system with strong employee representation. Brazil's law, with its broader anti-discrimination scope, stricter penalties, and provision for diversity programs, aims to address a labor market with greater informality and challenges beyond pay. Together, they illustrate varied approaches to a shared goal, shaped by their respective labor markets and legal traditions, heavily influenced by their social and economic contexts.

Pacheco Neto Sanden Teisseire Advogados*
Al. Franca, 1050
10th and 11th floor
01422-002 - São Paulo - SP/Brasil
T (+55) 11 3897 4400 / 3063 6177
www.pnst.com.br

Pacheco Neto Sanden Teisseire Advogados

*Author of the publication ***So Geht's Die Limitada***

Brazil's Federal Government Establishes the Brazilian Sustainable Taxonomy

Luiz Gustavo Bezerra
Partner
T (+55) 21 2127 4231
T (+55) 11 2504 4214
lgbezerra@mayerbrown.com

Gedham Gomes
Partner
T (+55) 21 2127 4254
ggomes@mayerbrown.com

Rodrigo Demoro
Associate
T (+55) 21 2127 1623
rdemoro@mayerbrown.com

TAUIL | CHEQUER
MAYER | BROWN

On October 31, 2025, the Federal Government enacted Decree No. 12,705/2025, which officially established the Brazilian Sustainable Taxonomy (TSB) as an instrument of the Federal Executive's Ecological Transformation Plan. The publication, released on the eve of COP30, represents one of the most significant steps taken so far to align Brazil's sustainable finance framework with international best practices.

The adoption of a sustainable taxonomy aims to address the country's key environmental and social challenges while strengthening the integrity, transparency, and credibility of the sustainable finance market. Taxonomies operate as structured classification systems that scientifically define economic activities, assets, and project categories that contribute to climate, environmental, and social objectives. By providing common terminology and standardized criteria, they help companies, financial institutions, and investors assess sustainability performance, manage risks and opportunities, and support capital allocation toward low-carbon and inclusive business models. Internationally, institutions such as the International Capital Market Association (ICMA) emphasize that taxonomies play an essential role in establishing reliable indicators to identify whether certain activities effectively contribute to a sustainable economy.

Within the Brazilian Ecological Transformation Plan, the TSB is positioned under the sustainable finance pillar launched at the 2023 UN Climate Change Conference. According to Decree No. 12,705/2025, its strategic purpose is to reduce information asymmetries and strengthen the integrity and interoperability of sustainable finance markets. From an environmental standpoint, the TSB seeks to promote climate change mitigation and adaptation, biodiversity and water conservation, pollution control, and the transition to a circular economy. From a social perspective, it incorporates objectives related to decent work, human rights, and inclusive development.

The decree defines the TSB as a federal public-policy instrument with multiple functions. These include: **(i)** directing credit lines, guarantees, and financial

incentives; **(ii)** labeling and structuring financial instruments and credit operations; **(iii)** monitoring investments according to their degree of alignment with the taxonomy; and (iv) promoting international cooperation in sustainable finance. This structure signals a future in which the TSB will increasingly inform both corporate strategy and the availability of sustainable financing in Brazil.

The TSB framework is organized around three levels of assessment. First, each activity must meaningfully contribute to at least one environmental or social objective. Second, it must not cause significant harm to any other objective, following the "do no significant harm" principle common to other taxonomies. Third, the activity must comply with minimum safeguards, which are mandatory cross-cutting requirements encompassing environmental, social, and governance standards. Minimum safeguards function as essential eligibility conditions, regardless of the technical contribution of the activity.

Moreover, activities that do not generate direct sustainability benefits but are necessary to enable mitigation, adaptation, conservation, or a just transition may be classified as "enabling activities," provided they meet the applicable thresholds and safeguard requirements. This category is particularly relevant for infrastructure, industrial value chains, and technologies that support sustainable production systems.

The decree also establishes governance arrangements for the taxonomy. The Interinstitutional Committee for the Brazilian Sustainable Taxonomy (CITSB), created under Decree No. 11,961/2024, is responsible for coordinating both development and implementation. Chaired by the Ministry of Finance and composed of 27 federal agencies, the CITSB also includes an Advisory Committee with 18 civil society organizations. Following a broad public consultation, its Working Groups produced eight sectoral technical reports, two thematic reports, and one report on minimum safeguards.

The first edition of the TSB covers eight economic sectors:

- Agriculture, forestry protection, fishing, and aquaculture
- Extractive industries
- Manufacturing
- Electricity and gas
- Water, sewage, waste, and decontamination
- Construction
- Transportation, storage, and postal services
- Social services

Tauil & Chequer Advogados
Associado a Mayer Brown
Av. Pres. Juscelino Kubitschek, 1455 - 6th floor
04543-011 - São Paulo - SP/Brasil
T (+55) 11 2504 4210
T (+55) 21 2127 4231
www.tauilchequer.com.br

Tauil & Chequer Advogados
Associado a Mayer Brown
Av. Pres. Juscelino Kubitschek, 1455 - 6th floor
04543-011 - São Paulo - SP/Brasil
T (+55) 11 2504 4210
T (+55) 21 2127 4231
www.tauilchequer.com.br

With the publication of the technical reports, a gradual implementation process is expected through regulatory adaptation by financial regulators, focusing initially on large companies and financial institutions. Over time, broader applicability is anticipated as future editions expand coverage to critical minerals, motor vehicles, and sectors related to the bioeconomy and biodiversity, while also addressing the specific needs of micro-, small-, and medium-sized enterprises.

The TSB may also generate relevant legal and practical implications for corporations. Although its primary function is to guide sustainable investments and public policies, its criteria are likely to be used by oversight institutions and other stakeholders as interpretative parameters. Activities considered inconsistent with taxonomy objectives may expose companies to additional scrutiny, influence environmental licensing debates, or even serve as grounds for liability arguments in climate and socio-environmental-related litigation. In a scenario of increasing judicialization of sustainability issues, the taxonomy may therefore become an important reference for assessing corporate behavior.

Reform of consumption taxes in Brazil: what to expect as of 2026

Daniela Ribeiro de Andrade
Partner
T (+55) 31 99921 9029
dandrade@sperling.adv.br

Arthur Pereira Muniz Barreto
Senior Associate
T (+55) 11 96323 4801
abarreto@sperling.adv.br

Sperling Advogados*
Av. 9 de Julho, 4.939, 6th floor
Torre Jardim – 01407-200
Jardim Paulista – São Paulo/SP
T (+55) 11 3704 0788
www.sperling.adv.br

We've finally made it.

After decades of seemingly endless debates, the Brazilian tax reform on consumption is just around the corner and will commence to produce its effects as of January 2026.

What does this mean for multinational enterprises operating in Brazil?

First, we note that not all the legal framework is complete. Bill of Law 108/2024, which regulates part of the reform, such as the institution of the Managing Committee *("Comitê Gestor")* of the new tax on goods and services, is still under analysis in the Brazilian Congress. Specific regulations for the already-enacted rules are also under development.

Regardless, the pillars of the tax reform and the new taxes – the tax on goods and services (IBS) and the contribution on goods and services (CBS) – are set and allow companies to prepare for the upcoming years, which will be challenging while transforming.

An important remark is that the new and the old systems will coexist between 2026 and 2032, with a probable increase in costs related to systems and tax teams in companies – the envisaged simplicity (one of the main goals of the reform) will probably begin only as of 2033. Until then, Brazil will remain one of the countries with the highest number of hours needed to comply with tax obligations.

Despite the turbulent transition, the new tax model might be perceived at the same time as an "old friend" to European countries which have long adopted the value-added tax system; as well as revolutionary – the technological basis embedded in the reform is ambitious. Below we comment on the main tax impacts of the reform to be considered now.

In 2026, Brazilian companies will have to indicate the IBS/CBS in their tax invoices. Albeit a formal obligation, it requires several adjustments to companies' management systems (ERP). Companies shall make sure to adapt their systems in due time or check the status with their external service providers – otherwise, they will be blocked from issuing tax invoices as of January 2026.

Sperling Advogados*
Av. 9 de Julho, 4.939, 6th floor
Torre Jardim – 01407-200
Jardim Paulista – São Paulo/SP
T (+55) 11 3704 0788
www.sperling.adv.br

Sperling Advogados

2026 will be a 'test' year, allowing companies to anticipate and prepare for the financial effects that will start as of 2027.

For example, distribution chains will have their prices impacted by the new taxes, which have broader calculation bases, new triggering events and new rationales. Renegotiation of contracts, price formation and other elements take time to be adapted and should be evaluated now to optimize the transition and the financial results of Brazilian subsidiaries of multinational groups.

Another relevant point of attention is the logistic structure of the Brazilian subsidiaries. It is very common that Brazilian companies are set in States where tax incentives are granted, which will gradually cease to exist and will no longer be a decision driver. Will it make sense to have a productive establishment hundreds of kilometers away from the consumer market? Today, this may be advantageous, even with logistics/freight costs, because tax incentives are very attractive – but this will end.

Deciding on this type of business strategy may take years, as well as evaluating all variables and preparing the grounds to move the businesses closer to the consumer market, for example. There is not much time for multinational groups to start and plan what the business strategy / structure will be after the tax reform, which will be fully into force in 2033.

As of 2027, with the effective entry into force of the CBS, multinational groups will also have to deal with new triggering events when compared to the scope of current taxes on consumption. IBS will enter into force gradually in 2029.

For example, licensing intellectual property such as know-how is currently not subject to certain taxes (e.g. PIS/COFINS) but will be subject to the IBS/CBS. Since these are recoverable taxes, they will not represent a cost to the transaction itself but may influence prices practiced by the Brazilian licensee, increasing the cost to import technology. Careful analysis is recommended especially for service providers, since they will have fewer options to recover IBS/CBS credits.

Services rendered from Brazilian entities to their foreign headquarters may become more expensive as well. Currently, social contributions (PIS/COFINS) are not charged in case of services rendered to foreign parties if they result in the inflow of foreign currency into Brazil. With the tax reform, this criterion will be replaced by that of the result of the service: if the result is verified in Brazil, the activity will not be deemed as an exempt exportation for IBS/CBS

purposes. This is the criterion already used for the municipal tax on services (ISS), which significantly narrows the possibility of treating services rendered abroad as exports.

Finally, the time frame to recover and use tax credits of the current system is closing – a look to the past is necessary. PIS/COFINS credits, for example, may only be registered until December 31, 2026 to be offset with the CBS – otherwise, they will be lost. ICMS (the State VAT) credits that are not monetized will be recoverable in twenty years as of 2033 (more than a lifetime for many Brazilian companies). A full review of the tax credits should be made now to avoid losing them. This is not limited to credits that companies failed to register – it involves also credits that were not taken because of controversial law interpretations. Sometimes it may be better to register these credits – even if to debate them later with tax authorities – than to lose the opportunity to use them at all.

This is the time to redesign companies' businesses in Brazil and to assess the impacts of the tax reform. The adequate preparation will affect Brazilian companies' performance and indirectly their groups' financial results. We are getting closer to a big turning point – let us all get there ready for the next big tax journey.

Sperling Advogados*
Av. 9 de Julho, 4.939, 6th floor
Torre Jardim – 01407-200
Jardim Paulista – São Paulo/SP
T (+55) 11 3704 0788
www.sperling.adv.br

*Author of the publication ***So Geht´s Besteuerung von Unternehmen in Brasilien***

Camila de Moraes Machado
Partner
T (+55) 11 94490 9011
camila.machado@dobler.com.br

Sonia Marques Döbler Advogados*
Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
F (+55) 11 3105 5540
E smda@dobler.com.br
www.dobler.com.br

SONIA MARQUES DÖBLER ADVOGADOS

The Strategic Value of Labor Compliance in Corporate Sustainability – Best Practices and Reduction of Labor Liabilities

The consolidation of labor compliance programs is no longer a mere trend and has become a hallmark of corporate maturity. Increasingly, companies understand that legal compliance in labor relations goes beyond the simple fulfillment of regulations: it is an intelligent investment in business sustainability, capable of mitigating risks, preventing litigation, and promoting more balanced and transparent labor relations. This strategic approach strengthens internal bonds, inspires leadership, and projects an image of solidity and responsibility that resonates both within and outside the corporate environment, enhancing the company's credibility before the market and its stakeholders.

With the enactment of Law No. 13,467/2017, known as the "Labor Reform," the rules applicable to labor and employment relations introduced, at the legislative level, a setting of increased modernization and private autonomy, thereby, in theory, creating new possibilities for contracting and negotiation between the parties.

Despite these changes, Brazil remains among the countries with the highest volume of labor claims worldwide, a reality that persists even after the innovations brought by the Labor Reform of 2017.

In 2024, according to data from the Superior Labor Court (TST), more than two million new lawsuits were filed, representing a 14.1% increase compared to 2023. This elevated level of judicialization calls for preventive and structured solutions capable of offering legal certainty and predictability to employers. The implementation of a structured labor compliance program can therefore serve as a practical, high-value tool for companies seeking to combine efficiency, ethics, and sustainability in labor relations.

1. Beyond Compliance: The Evolving Role of Labor Compliance

Labor compliance can be understood as a governance and conformity management system designed to ensure that all corporate practices related to

people management (including hiring, compensation, working hours, occupational health and safety, benefits, and terminations) are fully aligned with applicable legislation, Collective Bargaining Agreements, and the principles of good faith, transparency, and fairness.

More than a regulatory control mechanism, the goal is to foster an organizational culture in which rules are clearly communicated, understood, respected, and continuously monitored. In practice, such a culture can improve the internal work environment and enhance the company's image before clients, partners, investors, and regulatory bodies.

For Human Resources professionals, adopting precise verification and record-keeping routines, aligned with legislation and internal indicators, is essential to ensuring that people-management decisions remain legally sound.

2. The New Labor Landscape

In Brazil, the dynamics of labor relations have undergone rapid and ongoing transformation. Hybrid work models, remote work, specialized outsourcing, and the increasing use of digital tools for team management have made daily labor interactions both more dispersed and more complex.

Additionally, issues related to mental health and workplace harassment have gained significant prominence. A study by the International Stress Management Association (Isma) showed that Brazil has the second-highest number of burnout cases globally. Moreover, work absences due to mental disorders such as anxiety and depression have risen sharply, increasing by 68% in 2024[1] compared to the previous year. With more than 470,000 medical leaves granted, this scenario reflects a mental health crisis affecting workers and companies alike, heightening concerns about well-being in the workplace.

As a result, labor compliance has expanded beyond strict legal matters to encompass human and behavioral dimensions of organizational management.

3. Practical Pillars of an Effective Program

Companies seeking to reduce liabilities and strengthen their governance should structure their labor compliance programs around five essential pillars:

Sonia Marques Döbler Advogados*
Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
F (+55) 11 3105 5540
E smda@dobler.com.br
www.dobler.com.br

SONIA MARQUES DÖBLER
ADVOGADOS

[1] https://site.cff.org.br/noticia/Noticias-gerais/12/03/2025/brasil-registra-maior-numero-de-afastamentos-por-ansiedade-e-depressao-em-10-anos?utm_source=chatgpt.com

Sonia Marques Döbler Advogados*
Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
F (+55) 11 3105 5540
E smda@dobler.com.br
www.dobler.com.br

SONIA MARQUES DÖBLER
ADVOGADOS

(i) Risk Assessment and Mapping – Identifying labor-related vulnerabilities is the starting point. This includes reviewing employment agreements, working hours, compensatory arrangements, benefit policies, and outsourcing conditions. It is also advisable to monitor indicators such as recurring overtime, turnover, absenteeism, health-related absences, and the most frequent claims in labor lawsuits filed against the company.

(ii) Codes of Conduct and Clear Policies – Compliance rules must be understood at all organizational levels. Ethics, conduct, and anti-harassment policies should be clear, objective, accessible, and widely disseminated.

(iii) Reliable Reporting Channels – Establishing internal reporting channels that allow anonymous submissions and protect against retaliation is essential. Ensuring confidentiality and providing meaningful follow-up to the whistleblower are equally important.

(iv) Training and Organizational Culture – Preparing leaders and managers is crucial for embedding a culture of compliance. They are responsible for translating corporate guidelines into daily practices, directly influencing behavior and engagement. Continuous training programs promote responsible decision-making, reinforce ethical values, and strengthen trust between leadership and employees.

(v) Continuous Monitoring and Auditing – Compliance must remain dynamic. Internal and external audits should verify adherence to policies, measure indicators, and develop action plans when needed. Today, digital tools enable the cross-referencing of data from eSocial, Digital RAIS, and FGTS to detect inconsistencies before they evolve into labor claims or administrative penalties during administrative inspections (conducted by the Government).

4. Compliance and ESG: Converging Priorities

The “Social” pillar of ESG (Environmental, Social and Governance) has gained significant global relevance. International investors are paying growing attention to companies’ labor practices, including working conditions, diversity, pay equity, and anti-harassment measures.

It is quite common that a company’s background of labor claims, as well as the lack of integrity policies, are considered indicators of social risk in audits and due diligence procedures. Consequently, integrating labor compliance into ESG initiatives is no longer optional, but rather a market requirement.

5. Conclusion

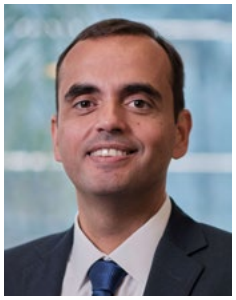
Labor compliance has evolved from a legal requirement into a sophisticated management and sustainability practice capable of aligning ethics, efficiency, and people-focused values within a unified corporate purpose. More than a set of rules, it reflects the maturity of companies that recognize integrity and transparency as essential pillars of competitiveness and long-term viability.

Its implementation goes far beyond adherence to legislation. It serves as a strategic instrument to mitigate risks, reinforce organizational culture, and safeguard both financial and reputational assets. Companies that invest in leadership development, employee awareness, and the continuous review of practices transform compliance into a sustainable differentiator, cultivating labor relations that are more ethical, stable, and aligned with the principles of sound governance.

*Author of the publication ***So geht's M&A in Brasilien***

Sonia Marques Döbler Advogados*
Rua Dona Maria Paula, 123
19th floor - Edifício Main Offices
01319-001 - São Paulo - SP/Brasil
T (+55) 11 3105 7823
F (+55) 11 3105 5540
E smda@dobler.com.br
www.dobler.com.br

SONIA MARQUES DÖBLER
ADVOGADOS



Marcelo Ribeiro
Partner
T (+55) 11 3025 3211
marcelo.ribeiro@lefosse.com

Lefosse Advogados
R. Iguatemi, 151 – 14th floor
01451-011 - Itaim Bibi
São Paulo – SP | Brasil
T (+55) 11 3024 6100
www.lefosse.com

Lefosse

EncroChat and the legality of evidence: European lessons for international criminal cooperation

Introduction

This article examines a Spanish Supreme Court judgment published on October 16, as well as a German precedent cited therein. Both address the validity of using communications intercepted from the EncroChat server and are of particular interest to scholars of the legality of evidence, both for their revisiting of cases from other jurisdictions, including the European Court of Human Rights, and for the transnational use of evidence under EU instruments. In addition to revisiting the courts' reasoning, this article explores potential lessons for Brazilian law. Can the underlying rationale be adopted? What are the points of attention?

The recent Spanish case

The Spanish Supreme Court issued Judgment No. 854/2025, deciding appeals filed by several defendants convicted for international drug trafficking by a criminal organization. The challenged investigation involved surveillance, searches and seizures of large quantities of illegal substances, weapons and documents, and the incorporation, via a European Investigation Order (EIO), of communications extracted from the EncroChat server intercepted by French authorities. The EIO, grounded in Directive 2014/41/EU, creates a mutual recognition regime for obtaining and transferring evidence among Member States, focusing on admissibility and legality while ensuring fundamental rights and proportionality. A key distinction is between transmission of already-collected evidence and execution of new measures. In transmission cases, the issuing State does not reassess the regularity of collection in the executing State; control focuses on the necessity and proportionality of transmitting the material, as would apply in an analogous domestic situation.

Applying this logic, the Spanish Supreme Court treated the EncroChat data as "fortuitous findings" under article 579 bis of the LECrim. Its review covered the transmission's compatibility with domestic law, not the French collection, absent proof of suppression of safeguards or serious violations of the suspects' rights. The court affirmed the convictions, recognizing that mutual recognition entails a rebuttable presumption that Member States respect

fundamental rights, which can be overcome if the collection or transmission aimed to circumvent guarantees of the issuing State (forum shopping). Failures in cross-border notification do not automatically nullify the evidence; invalidation requires showing the omission was intended to prevent control by the notified State and caused actual prejudice or lowered the protection level that State would adopt. Consistent with ECHR (European Court of Human Rights) jurisprudence, overall fairness is the key criterion. Non-access to "raw data" may be offset by safeguards, such as transparency regarding used extracts, the possibility of expert scrutiny and effective adversarial challenge, and disclosure of material evidence, not only what favors the prosecution. In the case at hand, the EncroChat communications mainly corroborated an already advanced investigation.

Lefosse Advogados
R. Iguatemi, 151 – 14th floor
01451-011 - Itaim Bibi
São Paulo – SP | Brasil
T (+55) 11 3024 6100
www.lefosse.com

The German judgment

The Bundesgerichtshof (BGH, 5 StR 457/21, 2.3.2022) affirmed a conviction by the Hamburg Regional Court for drug trafficking, admitting communications obtained from EncroChat and shared by France under an EIO. When the executing State (France) already holds lawfully collected evidence under its own law, the requesting State need not re-assess legality under its domestic law. Proportionality was satisfied because the data concerned planning and execution of serious crimes, lessening intrusion into the core of private life; the gravity of the offenses and the lack of feasible alternative techniques also weighed in. Proportionality is judged at the time the evidence is used in German proceedings, not by retrofitting French measures into hypothetical German standards at the time of collection. Allegations of forum shopping, unreasonable "bulk collection," or notification defects were rejected. Notification rules primarily protect the sovereignty of the notified State and external use, not internal valuation of evidence. Absent indications of fraud, the interest in suppressing serious crime and ascertaining the truth prevails.

Questions about extraction techniques, chain of custody, and reliability were addressed by emphasizing that messages may trigger investigative steps, corroborate other evidence, contribute to circumstantial proof, and only exceptionally constitute standalone proof, depending on custody, integrity, incorporation, and adversarial possibilities. Courts may impose additional safeguards, admit independent expert assessments, or exclude material if minimum conditions for effective contradiction are lacking.

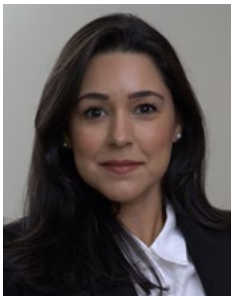
Lefosse Advogados
R. Iguatemi, 151 – 14th floor
01451-011 - Itaim Bibi
São Paulo – SP | Brasil
T (+55) 11 3024 6100
www.lefosse.com

Lefosse

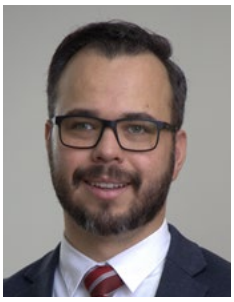
Possible lessons

While European regulatory premises, including Directive 2014/41/EU, are not directly applicable in Brazil, useful common ground emerges for transnational evidence and international cooperation. States should act through formal, controllable mechanisms (spontaneous transmission or reasoned requests), grounded in verifiable legal and factual bases. Good-faith, avoidance of dysfunctional or antisocial procedural behavior, and vigilance against forum shopping are essential. Defense rights require special attention: meaningful adversarial scrutiny of legality and relevance, despite data volume challenges; robust chain of custody; and reliable linkage between communications and investigated subjects. Finally, concerns about "bulk collection" were addressed without ignoring its risks. In any prospective Brazilian use via cooperation, authorities should demonstrate why such collection and, especially, its processing and use across jurisdictions, do not consist to a fishing expedition.

Key Issues in Life Science Patent Prosecution in Brazil



Rebeca Rocha
Specialist
rebeca.rocha@bhering.adv.br



Marcelo Baptista
Specialist
marcelo.baptista@bhering.adv.br

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

The assessment of patentability in the Life Sciences field poses particular challenges, as examination practices and legal interpretations vary across jurisdictions. In Brazil, the Brazilian Patent and Trademark Office (BPTO) generally adopts a more restrictive approach to subject matters related to pharmaceutical and biotechnological matters, when compared to other major patent offices.

Consequently, certain subject matters are expressly excluded from patent protection under Brazilian Industrial Property Law (BIPL - Law No. 9,279/1996), whilst even patentable subject matters often require highly specific claim drafting to comply with the Office's standards of clarity, precision and support.

This article highlights key aspects of these examination practices and discusses how Applicants can effectively navigate the BPTO's procedural and substantive requirements. While the focus of this article lies on patent prosecution aspects, reference to complementary IP mechanisms aims to provide a broader practical context for Applicants. By outlining the Office's current interpretation of critical issues, this overview aims to provide a clearer understanding of the practical aspects involved in navigating life science protection in Brazil.

Biological materials

Biological materials, when found in nature or isolated therefrom, are not considered inventions, according to Article 10 (IX)[1] of the BIPL. They are only liable to protection if they have human-induced modification(s) in their genetic composition or chemical structure/composition that can distinguish them from their counterpart found in nature.

In this connection, the current acceptable format for claiming proteins and nucleic acids is by their amino acid or nucleotide sequence through their corresponding SEQ ID NO.

[1] **Article 10 of the BIPL -** The following are not considered to be inventions or utility models: (…) **IX -** natural living beings, in whole or in part, and biological material, including the genome or germ plasm of any natural living being, when found in nature or isolated therefrom, and natural biological processes.

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

The characterization of a biological sequence based on the percentage of identity or by its mechanism of action/function and/or binding properties is considered very broad and unclear, since it allegedly could include in its scope sequences that are not supported by the description of the application, or sequences that do not meet the patentability requirements.

Notwithstanding the above, it is possible to consider alternative strategies to safeguard the know-how and technical data associated with biological materials. Processes for obtaining, manipulating, or characterizing such materials, as well as related experimental data, may be protected as trade secrets, provided that confidentiality is effectively maintained.

Cells, Stem cells and Host Cells

Natural living beings, in whole or in part, such as cells, are excluded from patentability even if modified/recombinant ones, being possible to seek protection only for transgenic microorganisms, such as bacteria, archaea, fungi, unicellular algae (not classified in the Plantae kingdom) and protozoa, as per the provisions of Article 10 (IX) or Article 18 (III)[2] of the BIPL.

Stem cells *per se*, whether obtained from animals or genetically modified, are not patentable, in light of Article 10 (IX) or Article 18 (III)[3], respectively. Methods for production, culture, and related uses may be patentable, provided they are not related to therapeutic or surgical methods. In addition, compositions and purification processes involving stem cells are also patentable.

[2] **Article 18 of the BIPL** - The following are not patentable: (…)
III - living beings, in whole or in part, except transgenic micro-organisms meeting the three patentability requirements - novelty, inventive activity and industrial application – provided for in article 8 and which are not mere discoveries;
Sole Paragraph - For the purposes of this law, transgenic micro-organisms are organisms, except the whole or part of plants or animals, that exhibit, due to direct human intervention in their genetic composition, a characteristic that cannot normally be attained by the species under natural conditions.

[3] While Article 10(IX) excludes natural biological materials (even if isolated) from the concept of 'invention', Article 18(III) renders unpatentable living beings as a category, except for transgenic microorganisms that meet the requirements of novelty, inventive step, and industrial application. Thus, Article 10 operates as a conceptual exclusion, whereas Article 18 defines substantive unpatentability.

Host cells are usually objected to by the BPTO for being considered broad claims and thus encompassing plant or animal cells, which are not patentable, as commented above. On the other hand, the definition of the host cells as being microbial host cells is accepted, since the Guidelines for Examinations establish that transgenic microorganisms are patentable. In this case, the microbial host cell should be defined by an expression vector or by a nucleic acid sequence.

Expression Vector

A vector is a DNA molecule used as a vehicle for transferring exogenous genetic material to other cells.

According to the Guidelines for Patent Examination in force, a vector must be defined by its SEQ ID or biological material deposit number. Naturally occurring SEQ IDs may be protected if they are operatively linked to a heterologous promoter and a terminator.

Hybridoma

Hybridomas are considered transgenic organisms, since they result from the fusion of two cell types, a myeloma with a B lymphocyte. As such, they are liable to patent protection.

Claims seeking protection for hybridomas must include the biological material deposit number and the application must have the biological material deposit number before filing.

Antibody

Antibodies are proteins that bind specifically to substances known as antigens and include polyclonal and monoclonal antibodies. Therefore, they must be analyzed as proteins.

Polyclonal antibodies are not regarded as inventions, for being considered as biological material isolated from nature. On the other hand, monoclonal antibodies are patentable and must be defined by the hybridoma which produces them, or by their specific amino acid sequence (SEQ ID NO), or by the amino acid sequence of their CDRs.

Claims characterizing the antibody by the protein to which it binds, by its affinity, or the percentage of homology/identity are objected for failing to clearly and precisely define the claimed subject matter.

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

BHERING
ADVOGADOS

Methods applied to the human or animal body

According to the provisions of Article 10 (VIII)[4], diagnostic, therapeutic, and operating or surgical methods applied to the human or animal body are not considered inventions and, consequently, are not patentable in Brazil. However, depending on the nature of the method and its technical features, certain related claims may still be eligible for protection if they fall outside the scope of this prohibition.

Diagnostic Methods

Method of diagnostic claims are only liable to protection if they do not include an invasive step into the human and/or animal body nor allow the conclusion of the clinical state of a patient. Accordingly, *in vitro* or *ex vivo* methods are potentially acceptable in Brazil, according to the current Guidelines for Patent Examination.

Operating or surgical techniques

Specifically, every method that requires an operative step, or an invasive step to the human or animal body, is considered an operating method, with reference to what Article 10 (VIII) establishes not to be an invention. Similarly, methods that define the insertion or implantation of devices by surgical means are also not considered an invention.

Therapeutic Methods

It should be noted that claims characterized by dosage, administration route/application and posology are also considered to be therapeutic methods, being unpatentable in view of Article 10 (VIII).

Some examples of claims considered as a method of treatment are provided below:

i. Use of substance X characterized in that it is for the treatment of medical condition Y.

ii. Substance X, characterized in that it is for use in a therapeutic method.

iii. Substance X, characterized in that it is for use in the treatment of medical condition Y.

[4] **Article 10 of the BIPL** - The following are not considered to be inventions or utility models: (…) **VIII** - operating or surgical techniques and therapeutic or diagnostic methods, for use on the human or animal body; (…)

A common practice to circumvent this prohibition is to reframe such claims into the Swiss-type format ("Use of compound X characterized in that it is for the manufacture of a medicament for treating disease Y"), which is the potentially accepted format for claiming medical uses in Brazil.

Complementary protection

Although methods applied to the human or animal body may not be patentable under Article 10 (VIII) of the BIPL, alternative forms of protection may still be considered depending on the nature of the innovation. Software, digital platforms and diagnostic databases can be safeguarded through copyright, trade secret protection, and confidentiality agreements. Likewise, trademarks and trade dress may protect the identity and market distinction of diagnostic and medical products or services.

New medical uses

New medical uses refer to patent claims that are directed to novel and non-obvious uses of a known compound to treat or prevent a different disease from that for which the compound was already used in the state of the art.

The currently acceptable format for pursuing medical uses in Brazil is the Swiss-type format ("Use of compound X for the manufacture of a medicament for treating disease Y"). In this case, the Swiss-type claims should specify the disease to be treated. Medical use claims that refer to disorders, syndromes, symptoms, mechanisms of action are not accepted for rendering imprecision and lack of clarity to the subject matter to be protected.

In addition, passages referring to therapeutic features, e.g., dosage regimen, administration route/application, posology, group of patients, are usually considered by the Brazilian Examiners as lacking clarity, besides referring to a therapeutic method, which as such is not affordable with patent protection in Brazil.

Compound/Composition for use (EPC 2000 format)

According to the BPTO's current Guidelines for Patent Examination (Resolutions No. 169/2016 and 208/2017):

- The most precise form to claim a chemical compound is by defining the compound in terms of its chemical structure (general formula), nomenclature (as per IUPAC rules) or by another name that may define it unequivocally; and

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

Bhering Advogados
Av. Doutor Cardoso de Melo, 900
9th floor - 04548-003
São Paulo - SP/Brasil
T (+55) 11 3040-1870
F (+55) 11 3040-1877
E bhe-sp@bheringadvogados.com.br
www.bheringadvogados.com.br

- The correct manner of claiming a composition is by the (qualitative and/or quantitative) definition of its components.

As such, compounds/compositions characterized solely by their uses/applications (such as claims in the EPC2000 format) are usually not accepted by the BPTO for lacking clarity and precision, contravening the provisions of Article 25[5] of the BIPL.

However, pursuant to the same Patent Examination Guidelines, the features related to the uses/applications of compositions may be supplemental characteristics to the qualitative and/or quantitative definitions of the composition, but cannot confer novelty and inventive activity to the claims. On the other hand, the Guidelines are silent on these supplemental characteristics regarding compound claims.

Conclusion

In summary, prosecuting life science patent applications in Brazil requires a precise understanding of the Brazilian IP Law and BPTO's examination practices. Success largely depends on clear and well-supported claim drafting, aligned with local standards of clarity, support, and enablement. Beyond patents, life sciences innovations may also be protected through other mechanisms supporting a comprehensive IP protection strategy in Brazil.

Given the complexity of the field, early engagement with professionals specialized in biotechnology and pharmaceutical patents is strongly recommended to ensure effective protection and compliance with Brazilian patent law.

[5] **Article 25 -** The claims must be based on the specification, characterizing the particularities of the application and defining clearly and precisely the subject matter to be protected.

Brazilian Regulation of Virtual Assets

Mirella da Costa Andreola
Partner
maa@machadoassociados.com.br

Machado Associados
Av. Brigadeiro Faria Lima, 1656 – 11th floor - 01451-918
São Paulo - SP/Brasil
T (+55) 11 3819 4855
F (+55) 11 3819 5322
www.machadoassociados.com.br

The creation of a regulatory framework for virtual assets in Brazil took shape in 2022, with Law No. 14,478, which, for the first time, introduced structural definitions for the sector. The law established the concept of a cryptoasset as a digital representation of value that can be transferred or stored electronically, and defined virtual asset service providers as entities responsible for trading, custody, transfer, or intermediation of such assets.

In the following year, Decree No. 11,563 assigned to the Central Bank of Brazil the competence to regulate the activities of virtual asset service providers, establishing a regulated and secure environment aligned with the risks and potential of this market.

The regulation was developed progressively: after the enactment of the law and the formal assignment of the Central Bank as the regulatory authority, technical studies, market dialogues, and public consultations contributed to shaping the final regulatory framework. The result is a comprehensive set of rules that organizes authorized institutions and defines responsibilities, limitations, and minimum operational requirements.

According to the rationale presented by the rapporteur of Resolution BCB No. 520, which regulates the establishment and operation of virtual asset service provider companies, the Central Bank sought to balance incentives for technological innovation and new business models in the virtual asset sector with consumer protection, risk mitigation, anti-money laundering measures, and a regulatory structure capable of accommodating new institutions and types of virtual assets.

Based on this approach, one of the central elements of the regulation is the classification of virtual asset service provider companies. These institutions must fall into one of three categories: **(i)** virtual asset intermediaries, responsible for executing transactions on behalf of third parties; **(ii)** custodians, responsible for safeguarding, controlling, and reconciling clients' virtual asset positions; or **(iii)** virtual asset brokers, which integrate both intermediation and custody activities. All of these institutions must be incorporated as corporations or limited liability companies, maintain their headquarters and management in Brazil, and comply with governance, internal controls, and risk management requirements.

Machado Associados
Av. Brigadeiro Faria Lima, 1656 –
11th floor - 01451-918
São Paulo - SP/Brasil
T (+55) 11 3819 4855
F (+55) 11 3819 5322
www.machadoassociados.com.br

The regulator also established clear restrictions on the range of activities permitted. These include prohibitions on offering credit to clients, except in determined situations, raising funds from the public—except through the issuance of shares—and participating in the capital of financial institutions or other entities authorized by the Central Bank. These restrictions help preserve the separation between activities inherent to the virtual asset market and those typical of the traditional financial system, safeguarding the integrity of the regulatory architecture.

Another important aspect concerns the transition period for authorization. Companies already operating in the market have until October 29, 2026, to request authorization from the Central Bank and may continue operating while their request is being analyzed, provided that the request is submitted within the established deadline. Companies not engaged in proven activity by the effective date of the regulation—February 2, 2026—must obtain prior authorization before commencing operations.

The regulation also addresses foreign companies operating in Brazil. These entities must transfer their clients and users to locally established virtual asset service providers or eligible institutions (banks, foreign exchange brokers, or securities and brokerage firms) within the same transitional period. After the transition, they will no longer be allowed to operate directly in the Brazilian market without proper authorization, reinforcing the need for a local institutional presence. Thus, operating in Brazil without establishing a local entity will no longer be permitted.

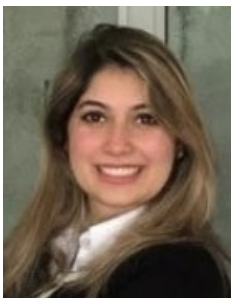
Additionally, the rules require institutions to provide broad transparency regarding the assets they offer, including technological and operational risks, technical documentation, information on network forks, vulnerabilities, validation mechanisms, and potential impacts on clients. Institutions must also disclose criteria for listing, suspending, and delisting assets, as well as information on operational failures, relevant incidents, and measures adopted to protect users.

By consolidating this regulatory framework, Brazil advances toward a safer, more transparent, and more reliable virtual asset market. The regulation provides clarity to institutions regarding their responsibilities, strengthens consumer protection, and reduces competitive asymmetries. For the sector, it represents a significant step toward maturity, encouraging responsible innovation and integrating virtual asset activities more effectively into the regulated national financial system environment.

Recent Developments on External Work and Time Control in Brazil

Larissa Gude
Senior Attorney
larissa.gude@fcrlaw.com.br

Vanessa Almeida
Attorney
vanessa.almeida@fcrlaw.com.br



Natalia Paixão
Attorney
natalia.paixao@fcrlaw.com.br

FCR Law – Fleury, Coimbra & Rhomberg Advogados*
Rua do Rocio, 350 - 10th floor
04552-000 - São Paulo - SP/Brasil
T (+55) 11 3294 1600 / 3063 6177
www.fcrlaw.com.br

In recent years, external work has gained renewed relevance in Brazilian labor law as digital communication tools have reshaped the interaction between companies and employees who perform their duties outside the employer's premises. This evolution has led labor courts to reassess the traditional understanding of when external activities are incompatible with working-hours control.

These developments have intensified the discussion on the legal limits of external work and led to important recent decisions by the Superior Labor Court (TST), which have redefined the criteria applied in disputes involving working-hours control and the burden of proof.

Legal Framework of External Working Hours

Brazilian labor law requires companies with more than twenty employees to implement working-hours control[1], with three statutory exceptions[2], including external work.

External work is recognized when employees perform their duties predominantly outside the employer's premises and the nature of their activities makes standard working hours incompatible with how the work is performed[3]. The law further requires a formal record of this classification in both the employee's personnel file and the Digital Employment Card.

A typical example is the sales employee who spends the workday visiting numerous clients along irregular routes and schedules that prevent real-time working-hours control.

Once all legal conditions are met, employees covered by this exception are not entitled to overtime pay, even if they work beyond eight hours a day or forty-four hours a week.

[1] Article 74, Paragraph 2 of Decree-Law No. 5,452/1943.
[2] Article 62, Items I, II and III of Decree-Law No. 5,452/1943.
[3] Article 62, Item I, of Decree-Law No. 5,452/1943.

FCR Law – Fleury, Coimbra & Rhomberg Advogados*
Rua do Rocio, 350 - 10th floor
04552-000 - São Paulo - SP/Brasil
T (+55) 11 3294 1600 / 3063 6177
www.fcrlaw.com.br

FCR Law / Fleury, Coimbra & Rhomberg Advogados

Technological Transformation and Its Impact on External Work

External work has been reshaped by telematic tools and digital technologies. Electronic reports, corporate systems, instant-information tools and especially geolocation became part of the daily operations. Although originally introduced for administrative or logistical purposes, these tools ultimately revealed, even unintentionally, that employers could indirectly become aware of employees' working-hours routines.

This shift influenced Labor Court decisions, especially regarding the shifting of the burden of proof. The central debate increasingly focused on who must prove whether monitoring working hours was possible: the employee claiming overtime despite performing external work or the employer asserting that the role did not allow for any form of direct or indirect working-hours control.

The Paradigmatic Case and TST Theme[4] 73

A landmark case from the Regional Labor Court of the State of Bahia was brought before the TST as a representative case for nationwide uniformization[5].

The plaintiff, a sales executive, claimed to work long hours. Although performing many activities at a distributor's premises, the company argued he was an external employee with no possibility of working-hours control.

In the first and second instances, the courts concluded that his activities were incompatible with working hours monitoring. The witnesses did not confirm any form of supervision and contradicted the plaintiff's own testimony, which reinforced the external-work classification. The Regional Labor Court also stated that it was the plaintiff's burden to prove that his routine was monitored, and he failed in doing so.

When the case reached the TST, the large number of similar appeals and the inconsistent interpretations among Regional Courts led to its selection as the leading case for Theme 73. The Court held that the employer bears the burden of proving the impossibility of controlling the working hours of employees performing external work, since this is a fact that prevents overtime entitlement.

[4] A "Theme" *("Tema")* is a standardized legal issue selected by TST for uniformizing the interpretation of labor law in cases that involve repetitive questions or conflicting decisions among Regional Labor Courts. Once a Theme is defined, the precedent established by the TST serves as binding guidance for Regional Labor Courts on that specific matter.

[5] Case No. 0000113-77.2023.5.05.0035.

This decision consolidated an understanding long-applied by the TST, although inconsistently enforced by first and second-instance courts.

Practical Effects of Theme 73 and Evidentiary Challenges

Assigning the burden of proof to the employer created a complex evidentiary requirement.

Employers must now demonstrate that no direct or indirect means allow for monitoring employees' working hours. In practice, this requires proving the absence of any feasible means of time monitoring in an environment where digital communication tools and mobile connectivity are widely used.

Recent second-instance courts decisions show a clear trend: the mere allegation that an employee performs external work is not sufficient. Courts have focused on whether the employer had access to tools capable of enabling time control, even if such tools were not originally intended for this purpose.

Applications with check-in and check-out features, electronic visit logs, time-stamped systems, structured WhatsApp reports and predefined routes have been treated as indications of the possibility of monitoring.

On the other hand, some decisions have examined elements such as generic WhatsApp communication, vehicle mileage logs and order-management systems without time correlation and still concluded that they do not indicate working-hours control.

Emerging Debate and the Significance of TST Theme 300

Despite Theme 73, the discussion on external work continues to evolve. A new debate at the TST gave rise to Theme 300.

This topic examines two key questions: whether collective bargaining provisions that exclude the obligation to control working hours for external employees remain valid under the statutory exception, and whether the mere possibility of indirect monitoring is enough to invalidate both the collective provision and the legal classification.

The discussion occurs within a broader context shaped by the Supreme Court's understanding that collective bargaining provisions may prevail over statutory rules if non-negotiable rights are preserved. In this scenario, Theme 300 may define how far collective autonomy can regulate external work.

Depending on the outcome, Theme 300 may substantially reshape the current evidentiary framework, at least when a collective instrument regulates the matter. If the TST validates collective provisions even when indirect mon-

FCR Law – Fleury, Coimbra & Rhomberg Advogados*
Rua do Rocio, 350 - 10th floor
04552-000 - São Paulo - SP/Brasil
T (+55) 11 3294 1600 / 3063 6177
www.fcrlaw.com.br

FCR Law – Fleury, Coimbra & Rhomberg Advogados*
Rua do Rocio, 350 - 10th floor
04552-000 - São Paulo - SP/Brasil
T (+55) 11 3294 1600 / 3063 6177
www.fcrlaw.com.br

itoring tools exist, the burden of proof may partially return to the employee and collective instruments may offer clearer and more predictable parameters for identifying when external work is genuinely incompatible with working-hours control.

If the TST decides that mere indirect monitoring capability nullifies such provisions, Theme 300 may extend the approach of Theme 73, reinforcing employer responsibility and narrowing the practical scope of the external-work exception.

There is still no scheduled date for judgment, but its implications will likely define the next chapter of this debate and influence how companies' structure and document external work going forward.

Conclusion

Theme 73 has been widely criticized for shifting the standard set by law. While the legislation refers to external activities that are incompatible with working-hours control, the precedent adopted by the TST requires employers to prove the impossibility of monitoring working hours.

This change has been seen by many scholars as a substantial intensification of the employer's burden of proof. For these critics, the new interpretation risks rendering the statutory exception for external work practically inapplicable.

Another concern is the interaction between Theme 73 and digital connectivity. Smartphones, geolocation tools, corporate applications and messaging platforms do not automatically imply working-hours control. The mere possibility of exchanging information remotely cannot be equated with actual supervision, otherwise any digital contact would undermine the rationale of the legal exception.

In this scenario, Theme 300 may offer an opportunity to reestablish greater legal certainty for employers with external employees. If the TST confirms the validity of collective bargaining provisions that exclude external workers from working-hours control and clarifies the relevance of indirect monitoring capabilities, the resulting framework could provide more objective parameters for identifying when external activities are genuinely incompatible with time control. Such an outcome could realign the jurisprudential system while strengthening collective bargaining and offer clearer guidance to both employers and employees.

Until this issue is resolved, companies are encouraged to conduct a structured internal assessment of how external work is performed. This includes a careful examination of the activities carried out, the communication dynamics involved and the technological tools used in daily operations, to determine whether any of these tools generate traces that may inadvertently be interpreted as indirect working-hours monitoring.

This preventive assessment helps reduce inconsistencies between operational practices and the legal classification applied to external workers. It also strengthens risk management and mitigates the possibility of an improper classification considering the current jurisprudential landscape.

FCR Law – Fleury, Coimbra & Rhomberg Advogados*
Rua do Rocio, 350 - 10th floor
04552-000 - São Paulo - SP/Brasil
T (+55) 11 3294 1600 / 3063 6177
www.fcrlaw.com.br

*Author of the publications ***So Geht's Compliance in Brasilien,*** ***So Geht's Investieren in Brasilien*** *and* ***So Geht's Streitbeilegung in Brasilien***

Patrícia Giacomin Pádua
Partner
T (+55) 11 3093 6624
C (+55) 11 98353 1324
patricia.padua@snasp.com.br

Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
F (+55) 11 3097 9130
www.snasp.com.br

Aktuelle Änderungen bei den Einkommen- und Körperschaftsteuern (einschließlich der Besteuerung von Dividenden, die an nicht in Brasilien ansässige natürliche oder juristische Personen ausgeschüttet werden)

Am 26.11.2025 wurde das Gesetz Nr. 15.270/2025 ausgefertigt, welches die Einkommensteuer natürlicher Personen erheblich verändern wird. Dem Gesetz liegt der viel diskutierte Gesetzesentwurf Nr. 1.087/2025 des brasilianischen Senats zugrunde. Durch die neuen Bestimmungen werden der Steuerfreibetrag und die Steuerabzugsbeträge der Einkommensteuer (IRPF) erhöht. Im Gegenzug wird die Besteuerung für natürliche Personen mit hohen Einkommen und Dividenden eingeführt. Das Gesetz tritt am 1.Januar 2026 in Kraft.

1. Senkung der Einkommensteuer (IRPF)

Durch das neue Gesetz wird der Einkommensteuersatz für Steuerpflichtige mit einem monatlichen Einkommen bis 5.000,00 BRL (60.000,00 BRL pro Jahr) auf null gesenkt. Vorgesehen ist auch eine teilweise Senkung für Steuerzahler, die zwischen 5.000,01 und 7.350,00 BRL pro Monat (zwischen 60.000,01 und 88.200,00 BRL pro Jahr) verdienen.

Die Senkung wird als Maßnahme sozialer Gerechtigkeit dargestellt, die zu einer besseren Einkommensverteilung beitragen soll.

2. In Brasilien ausgeschüttete Gewinne und Dividenden

Um den Steuerausfall aufgrund der vorgenannten Erhöhung des Steuerfreibetrages und der abzugsfähigen Beträge zu kompensieren, werden ab dem Kalenderjahr 2026 Gewinne und Dividenden versteuert. Die Steuer, von der kein Abzug zulässig ist, wird in Höhe von 10% auf den Gesamtbetrag der an **in Brasilien ansässige natürliche Personen** gezahlten, gutgeschriebenen, verwendeten oder übergebenen Gewinne und Dividenden **von mehr als 50.000,00 BRL pro Monat** Quellensteuer erhoben.

Wird der Betrag an **nicht in Brasilien ansässige Personen** gezahlt, gutgeschrieben, verwendet oder übergeben, fällt **unabhängig von der Höhe** und davon, ob es sich um **natürliche oder juristische Personen** handelt, eine Einkommensteuer bzw. Körperschaftsteuer in Höhe von 10% an. Hiervon ausgenommen sind Ausschüttungen an ausländische Staaten mit vereinbarter gegenseitiger Gleichbehandlung, Staatsfonds und Sozialversicherungsträger.

Gewinne und Dividenden aus den bis einschließlich des Veranlagungsjahrs **2025** erwirtschafteten Ergebnissen sind **von der Steuer befreit**, solange der Beschluss über ihre Ausschüttung **bis zum 31/12/2025** gefasst wird. Der Nachweis dafür muss in einem Protokoll der Gesellschafterversammlung oder einem gleichwertigen Gesellschaftsdokument festgehalten sein, das in eindeutiger Form belegt, dass die Entscheidung, die Gewinne auszuschütten, bis zum Ende 2025 gefällt wurde. Die Auszahlung muss im Laufe der drei folgenden Geschäftsjahre vorgenommen werden, d.h. bis 2028.

Auf Ausschüttungen zwischen nationalen juristischen Personen fällt diese Steuer ebenso wenig an wie auf Ausschüttungen unter 50.000,00 BRL pro Monat an natürliche Personen.

3. IRPFM („Steuer auf hohe Einkommen“)

Ab dem Veranlagungsjahr 2026 unterliegen natürliche Personen mit jährlichen Einkünften von mehr als **600.000,00 BRL** der Steuer auf hohe Einkommen (IRPFM). Der Steuersatz beträgt linear progressiv 0% bis 10% für Einkommen von 600.000,00 BRL bis 1.199.999,99 BRL und 10% fix für Einkommen ab 1.200.000,00 BRL.

Die Steuer erfasst nahezu sämtliche Einkünfte, einschließlich exklusiv oder definitiv besteuerter sowie steuerfreier Einkünfte. Abzugsfähig sind ausschließlich Kapitalgewinne, exklusiv an der Quelle besteuerte kumulierte Einkünfte (RRA), Schenkungen als Vorwegnahme der Erbfolge oder Erbschaften, Erträge aus Sparguthaben und steuerbegünstigten Titeln (wie LH, LCI, CRI, LIG, LCD, CDA, WA, CDCA, LCA, CRA), steuerfreie Wertpapiererträge, bestimmte Entschädigungen und Sozialversicherungsleistungen sowie bis 31.12.2025 erwirtschaftete Gewinne, sofern die Bedingungen zur Beschlussfassung und Auszahlung eingehalten wurden.

Die IRPFM wird in der Jahressteuererklärung konsolidiert, was je nach erklärtem Gesamteinkommen zu Erstattungen oder Nachzahlungen führen kann.

Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
F (+55) 11 3097 9130
www.snasp.com.br

Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
F (+55) 11 3097 9130
www.snasp.com.br

4. Reduzierung der IRPFM

Übersteigt die Summe der effektiven Besteuerungssätze der Unternehmensgewinne und des IRPFM-Satzes die Summe der nominalen Sätze von Körperschaftsteuer (IRPJ) und Sozialabgabe auf den Nettogewinn (CSLL) (45% für Finanzinstitute, 40% für Versicherungen und 34% für sonstige juristische Personen), wird die IRPFM reduziert. Die Reduzierung wird auf die Gewinne und Dividenden berechnet, die die juristische Person an die der IRPFM-Pflicht unterliegende natürliche Person auszahlt. Die Berechnungsmethode hängt von spezifischen Regelungen im Einzelfall ab.

Für im Ausland Ansässige kann, falls die Summe der effektiven Steuerlast des Unternehmens und der 10%igen Steuer den nominalen Satz (34%, 40% oder 45%) übersteigt, ein Steuerkredit oder eine Erstattung beantragt werden.

5. Wichtige Aspekte

• Die vorgesehene Steuerbefreiung für Gewinne, deren Ausschüttung bis zum 31.12.2025 beschlossen wird, kann zur vorgezogenen Durchführung von Gesellschafterversammlungen und zur Reduzierung zukünftiger Gewinne führen.

• Möglich ist, dass das Ergebnis des Geschäftsjahres 2025 bis zum erforderlichen Beschlussdatum (31.12.2025) noch nicht genehmigt und festgestellt ist, wodurch Dividenden aus 2025 steuerpflichtig werden könnten, was bereits zu Diskussionen führt.

• Zinsen auf Eigenkapital (JCP) könnten trotz bestehender Berechnungsgrenzen verstärkt eingesetzt werden, um steuerpflichtige Dividendenzahlungen zu reduzieren.

• Da Dividendenausschüttungen an juristische Personen steuerfrei sind, könnte die Beteiligung über Holdinggesellschaften zulasten direkter Beteiligungen natürlicher Personen zunehmen.

• Weil die Freigrenze von 50.000,00 BRL pro Unternehmen und Empfänger gilt, könnte es zu gesellschaftsrechtlichen Umstrukturierungen mit Beteiligungen an unterschiedlichen Unternehmen kommen, um die individuelle Freigrenze zu erhalten.

• Von der IRPFM-Reduzierung dürften vor allem Gesellschafter von Unternehmen profitieren, die eine Besteuerung nach dem Realgewinn vornehmen, da sie IRPJ und CSLL nahe den Höchstsätzen zahlen. Gesellschafter von Unternehmen im System des pauschalierten Gewinns und Gesellschafter von

Kleinst- und Kleinunternehmen werden voraussichtlich keinen Vorteil haben, da sie diese Schwellen nicht erreichen. Dies dürfte zu einer Neubewertung der Wahl des Steuerregimes führen.

Die Änderungen, die ab dem Veranlagungsjahr 2026 gelten – einschließlich solcher Gewinnverwendungen, deren Ausschüttung nicht bis zum 31.12.2025 beschlossen wurde –, erfordern eine kurzfristige Analyse im jeweiligen Einzelfall, um eine mögliche Erhöhung der Steuerlast zu minimieren.

*Author of the publications ***So Geht's Einstieg in Brasilien***
and ***So Geht's Arbeitsrecht in Brasilien***

Stüssi-Neves Advogados*
Rua Henrique Monteiro, 90 -
10th floor - 05423-020
São Paulo - SP/Brasil
T (+55) 11 3093 6600
F (+55) 11 3097 9130
www.snasp.com.br

Stand Dezember 2025

Alle Inhalte dieses Newsletters obliegen der Verantwortung der jeweiligen Autoren und wurden von diesen sorgfältig recherchiert.

Für die Richtigkeit und Vollständigkeit der Inhalte übernimmt die Deutsch-Brasilianische Industrie- und Handelskammer keine Gewähr.

Die hierin enthaltenen Informationen dienen ausschließlich allgemeinen Informationszwecken. Sie stellen keine Rechtsberatung dar und ersetzen keine individuelle rechtliche Prüfung. Bei weiteren Fragen wenden Sie sich bitte an die Autoren.

Deutsch-Brasilianische Industrie- und Handelskammer São Paulo

Rua Verbo Divino, 1488 - 3. Stock
04719-904 São Paulo - SP - Brasilien
T (0055 11) 5187-5216
E juridico@ahkbrasil.com

www.ahkbrasil.com