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HOW TO BUILD A STRONG STRATEGIC NETWORK



End of Year Review



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Brazil – Corporate Law

DDSA's full-service practice, which includes M&A and corporate, labour law, litigation (in court and arbitration), insolvency, environmental law, tax law, real estate, life science, antitrust and a specialised aviation practice, provides clients with broad assistance in any corporate transaction. Many of the firm's lawyers are closely connected and have worked together for the past 20 years. This close connection allows them to provide clients with specialised advice on a tailor made and personal basis.

João Claudio De Luca Junior noted: "Our firm is experienced in corporate and M&A and we have a deep knowledge of Brazil's legal system affecting companies and foreign investments. In recent months we have been especially active in business formation, particularly for foreign clients that intend to have a local presence and do business in Brazil. In M&A, we have also been highly active in assisting foreign clients in the acquisition of Brazilian companies, also assisting companies in the Brazilian middle market in selling their assets and/or controlling ownership to foreign and Brazilian investors, as well as corporate reorganisation."

Brazil has been ranked as one of the top ten economies worldwide by the International Monetary Fund, and has a population of approximately 205 million people and a huge consumer market comparable to Italy or France. According to Mr De Luca, this market attracts foreign companies intending to expand their global presence, even during critical periods for the economy. "Foreign companies have seen this critical moment for the Brazilian economy as an opportunity to either establish their local presence, or to buy local companies in favourable conditions, especially as strategic investments," he said.

Brazil's legal system provides several bureaucratic hurdles. DDSA offers deep knowledge and expertise, and successfully helps clients to understand, demystify and overcome such hurdles. The Brazilian Central Bank's regulation on financial transaction, especially involving foreign investors, is prohibitive. Complying with it may represent a challenge; however, recent cases studies demonstrate how the firm has helped clients navigate these waters and successfully pursue their interests.

In one such case study, the firm assisted a foreign client in an international merger wherein a US company was consolidated into a Brazilian company. Guilherme Filardi explained that this project was noteworthy due to a lack of legal provision in Brazil for this type of transaction, with only a handful of precedents. This project demanded a deep knowledge in national and foreign corporate law, cross-border transactions and regulations in Brazil and abroad.

Meanwhile, the economic crisis brought an increase of insolvency work for the firm. Mr Filardi offered: "Our insolvency team has seen a high increase in the amount of work and, together with our corporate practice, has assisted several companies in serious financial situations, including the legal coordination of and assistance in the most important and critical judicial recovery of Latin America. Therefore, reorganisation, sale and purchase of assets belonging to such companies are also a highly active field."

The firm has recently seen legislation passed that affects corporate law, such as the new Brazilian Civil Procedure Code and Brazil's new anticorruption law. The first was passed earlier this year and will come into force early 2016. This new legislation may significantly impact litigation of corporate matters. What this means is that interference of the judiciary in corporate matters will increase and certain provisions of corporate documents – i.e. concerning dissolution of companies and removal of shareholders – may have to be reviewed and adapted.

In addition, Brazil's new legislation on anticorruption significantly changes the way companies involved in government official corruption are held liable for their acts, and provides for serious penalties. This new law closes significantly the gap between the Brazilian, US and UK anticorruption and anti-bribery laws.

It is still not clear how Brazil's new Civil Procedure Code will affect the way Bylaws and Shareholders' Agreements are drafted, said Mr Filardi. "We will have to watch closely how Brazilian Courts will interpret new rules affecting corporate law; however, it is clear for us that this piece of legislation will gain greater importance than in the past."

Mr De Luca concluded: "New anticorruption laws have changed the way our due diligence process works, including how corporate documents are drafted for acquisition, sale and investment of companies. This part of our work was mainly influenced in the past by foreign anticorruption laws, especially the FCPA and the UK Anti-bribery Act. However, Brazil's new legislation in the field calls attention to other aspects on how liability is imputed to

new investors, officers and directors of companies.

"Brazil has an important economy and presents a variety of interesting business opportunities. Our role is not to frighten or create obstacles to investment, but rather to promote it by informing, advising and orienting our clients on how to navigate Brazil's complex legal system and overcome any obstacles that may obstruct serious investors, multinational enterprises and entrepreneurs."

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ADVOCADOS



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