NEWS FROM THE
BRAZILIAN CHAMBER OF COMMERCE
IN GREAT BRITAIN

BRAZIL BUSINESS BRIEF

SEPTEMBER 2019

NEWS FROM THE BRAZILIAN CHAMBER OF COMMERCE IN GREAT BRITAIN

CONTENTS

SÉRGIO GULLO
sergio.gullo@brazilianchamber.org.uk

MESSAGE FROM THE CHAIRMAN

Dear members,

"The truth is: the natural world is changing. And we are totally dependent on that world. It provides our food, water and air. It is the most precious thing we have, and we need to defend it"
– David Attenborough

It's impossible to disagree with the words of one of the UK's most famous naturalists and TV personalities. As you are no doubt aware, Brazil and the G7 have recently been involved in a lively debate on how to face the challenge of promoting economic growth while upholding healthy environmental, social and governance (ESG) principles.

This edition of the Brazil Business Brief contains articles by academic and specialists that provide a better understanding of how Brazil is dealing with the environmental challenges of a developing economy.

As Lavinia Hollanda sets the scene with an overview of the growing importance of sustainable investment and the opportunities in Brazil in that area, Clarissa Lins looks at the future of energy and highlights Brazil's good mix of clean energy sources, largely based on hydro and renewables, while acknowledging that the country faces a challenge in curbing deforestation and thriving in a low-carbon world.

A trio of experts – Pedro Neves, Eduardo Pereira and Fernanda Delgado – compare the regulations in Brazil for the decommissioning of oil and gas productive systems with the international market. The uncertainties and legal risks involved in the Brazilian regulatory framework make it more difficult for decommissioning initiatives to attract investment.

And talking of risks, Mark King and Diogo Gouveia have written about a relatively new concept in Brazil: litigation funding. They describe how it works, benefits provided, and the growth opportunities it offers within the Brazilian economy.

We will see Brazil changing rapidly in the months and years ahead. There is popular demand for a far-reaching anti-corruption drive. Lawmakers, politicians and entrepreneurs are helping to shape the new normal. The state is responding to the problem, and Fernanda Odilla describes how the increasing number of sanctions enforced against civil servants in Brazil is making them think twice before engaging in illicit activities. And in turn, as greater accountability becomes a reality in Brazil, the country will become more attractive for foreign investors.

The Personality of the Year Awards gala dinner is fast approaching. This edition's interview is with the Brazilian recipient of the 2019 award: José Eduardo Queiroz, managing partner at Mattos Filho. The second awardee will be Torbjorn Caesar, senior partner of Actis, a leading investor in emerging markets worldwide. The president of BNDES, Gustavo Montezano, will be our event's keynote speaker.

Yours sincerely,

Sérgio Gullo
Chairman
Brazilian Chamber of Commerce
in Great Britain

ARTICLES

SUSTAINABLE INVESTMENT OPPORTUNITIES IN BRAZIL

BY LAVINIA HOLLANDA

The term 'sustainable investment' commonly refers to a broad category of investments that are not based only on expected financial returns but also on other criteria. Forms of sustainable investment include Socially Responsible Investment (SRI), Impact Investment, and Environmental, Social and Governance (ESG) Investment – terms that might have slightly different meanings in different contexts but are often used interchangeably. What these kinds of investment have in common is that non-financial aspects – such as environmental and social impact, and corporate governance practices – are taken into consideration.

EXAMPLES OF SUSTAINABILITY CRITERIA FOR SRI

ENVIRONMENTAL	SOCIAL	GOVERNANCE
GREENHOUSE-GAS EMISSIONS / CLIMATE CHANGE	WORKPLACE SAFETY	CORPORATE POLITICAL CONTRIBUTIONS
POLLUTION OR PARTICULATE EMISSION	LABOUR RELATIONS	EXECUTIVE COMPENSATION
USE OF CLEAN TECHNOLOGY	DIVERSITY, INCLUSION AND ANTI-BIAS ISSUES	BOARD DIVERSITY AND INDEPENDENCE
DIRECT AND INDIRECT IMPACT ON LAND USE	IMPACT ON LOCAL COMMUNITIES	ANTI-CORRUPTION PRACTICES
WATER USE AND CONSERVATION	HUMAN RIGHTS	ASSOCIATIONS AND COLLABORATIONS
BIODIVERSITY AND SENSITIVE AREAS	INDIGENOUS RIGHTS	REVENUE TRANSPARENCY AND TAX

Source: Escopo Energia, adapted from The Forum for Sustainable and Responsible Investment (US SIF)

Part of the sustainable investment process is to screen out companies that do not meet certain criteria – for example a policy of not investing in companies that produce tobacco or weapons. Instead a portfolio manager could actively look for companies whose activities are more likely to be perceived as beneficial to society, such as renewable energy. Obviously this is just a first step, as embedding ESG factors into portfolio analysis requires careful consideration of many issues and is a much harder task to accomplish.

Unlike financial indicators, ESG factors are usually imprecise and hard to define, which make them much more difficult to quantify and measure. In order to allow sustainable investment practices to truly reach the mainstream financial industry, it is important to have reliable and consistent tools that allow investors to identify and select the top prospects, as well as assess risks related to ESG.

For environmental and governance aspects, there are already indicators that can help investors to assess related risks. Environmental aspects have steadily become more prominent since COP 21 and the signature of the Paris Agreement, with the global investment community paying increasing attention to companies' environmental and climate impact.

With regard to governance, companies have put in place several compliance and governance mechanisms in response to widely publicised cases of fraud, corruption and mismanagement that have had a negative impact on financial results in various different countries. Many companies have created governance committees to help board members review internal compliance rules and governance practices. Also, greater efforts have been made for governance and compliance specialists to join boards and improve policies and procedures.

On the other hand, social aspects – such as impact on local communities – still tend to receive limited consideration from investors. One possible explanation might be the lack of an available metric to assess social factors and their potential financial impact for companies. According to the report *Putting the 'S' in ESG: Measuring Human Rights Performance for Investors* from the NYU Stern Center for Business and

ARTICLES

Human Rights, none of the various rating, research and reporting services currently available to help identify corporate sustainability leaders have so far managed to capture companies' performance on labour, human rights and other social aspects.

Even when ESG indicators are available, companies and investors still find it difficult to navigate among the various ESG ratings and identify which should be prioritised. A recent survey of sustainability professionals in different countries conducted by SustainAbility found that more than 60% of them wanted greater consistency and comparability across methodologies for ESG ratings, together with improved quality and disclosure of methodology.

It is likely that ESG factors will continue to become increasingly important for investors. The NYU report identified three major trends that point in that direction: (1) a change in investor profile, with a rising proportion of young people and women in the investor pool, (2) a rapidly changing environment, and evidence of the long-term effects of ESG factors, and (3) regulatory measures or voluntary assessment of ESG as a result of investor pressure Indeed, total sustainable investments in Europe, US, Japan, Canada and Australia/New Zealand rose from USD 22.8 trillion in 2016 to USD 30.7 trillion in 2018, a 34% increase, according to the Global Sustainable Investment Review 2018.

BRAZIL HAS BEEN ONE OF THE EARLY ADOPTERS OF SUSTAINABLE INVESTMENT DISCLOSURE, MAINLY THROUGH VOLUNTARY MECHANISMS THAT HAD AN INITIAL FOCUS ON GOVERNANCE

Recent industry movements corroborate this view and indicate that the financial industry is making efforts to improve accounting and reporting standards for ESG. Credit rating agencies in particular are increasingly making efforts to improve transparency and integrate EDG factors into their credit risk assessments. Three major agencies have taken steps in this direction in the last twelve months: both Fitch Ratings and Standard & Poor's have announced that they would publish information showing how ESG factors are influencing their credit ratings decisions, while Moody's has announced the acquisition of Vigeo Eiris, a European provider of ESG ratings and research that has offices in several different countries.

In parallel with the growing voluntary adoption of ESG investment principles, more than two-thirds or the world's 50 biggest economies have adopted some form of regulation mandating company disclosure on sustainability issues, according to the United Nations Principles for Responsible Investing (UNPRI).

Brazil has been one of the early adopters of sustainable investment disclosure, mainly through voluntary mechanisms that had an initial focus on governance. The recent history of sustainable investment in the country began in the year 2000, when the Brazilian stock exchange B3 (then Bovespa) created different listing segments according to governance practices. Novo Mercado, the segment with the highest governance standards, is for companies that voluntarily adopt additional corporate governance practices beyond those required by Brazilian legislation. In 2017 an enhanced Novo Mercado Regulation, with improved governance requirements, was approved by B3 and by the Brazilian Securities Commission CVM.

Later, in 2009, the Brazilian National Monetary Council (CMN) issued a resolution (CMN Resolution 3792/2009) requiring pension funds to disclose in the investment policies whether the relevant fund took into account social and environmental aspects in its investment decision. Also, the same resolution incentivised pension funds to have greater allocation of equities listed in the B3 segments of better governance – the higher the governance standard, the higher the permitted maximum allocation (up to 70% in the Novo Mercado segment).

Other B3 stock exchange initiatives to encourage companies to voluntarily report on sustainability issues have included (1) Report or Explain for Sustainability (2011), requiring companies to disclose whether they publish sustainability reports (and if not, explain why), and (2) the Carbon Efficient Index (ICO2, 2011), a market index composed of companies in the IBrX-50 index that have agreed to adopt transparent practices with respect to their greenhouse-gas emissions, among other initiatives.

Brazil is currently the world's fourth-largest market for funds, with about US$1.23 trillion assets under management and more than 600 listed companies. Unlike some countries where the release of sustainability or integrated reports by publicly traded companies is mandatory, to date there is no regulation in Brazil requiring companies to report on ESG practices. However, more than 75% of companies listed in the Ibovespa index now publish sustainability reports, and there is growing interest in sustainable investment within the Brazilian investment community.

BRAZIL IS CURRENTLY THE WORLD'S FOURTH-LARGEST MARKET FOR FUNDS, WITH ABOUT US$1.23 TRILLION ASSETS UNDER MANAGEMENT AND MORE THAN 600 LISTED COMPANIES

There is still a long journey ahead for ESG, both in Brazil and elsewhere. But Brazil is likely to follow the clear international trend of increasing investor concern about the potential impact of ESG issues on companies' performance, so in all likelihood the country will offer plenty of opportunities for companies, investors and ESG raters.

ARTICLES

DECOMMISSIONING OF OIL AND GAS PRODUCTION SYSTEMS IN BRAZIL

BY FERNANDA DELGADO, EDUARDO G. PEREIRA AND PEDRO NEVES

Given the maturation of some basins and the advanced age of some production facilities, the decommissioning of oil and gas production systems in Brazil has become an important topic. It is useful to observe the decommissioning process in other countries, and to note what practices were implemented in those cases to reduce costs and uncertainties. It is also necessary to understand what regulatory mechanisms already exist in the Brazilian legislation. Finally, the socioeconomic impacts of decommissioning must also be measured qualitatively and quantitatively, as a basis for deciding whether or not to adopt an industrial model for this segment.

In Brazil, the decommissioning of oil platforms faces difficulties inherent to an activity that concerns multiple scopes of regulation but does not have many specific norms to guide it. The uncertainties and legal risks involved in the Brazilian regulatory framework make it more difficult for decommissioning initiatives to attract investment.

Decommissioning in Brazil is oriented largely by ANP[1] Resolution 27/2006, as well as Resolution 46/2016. Resolution 27/2006 sought to regulate the decommissioning process by requiring concessionaires to provide a Facilities Deactivation Programme (FDP) in the event of the production phase coming to an end or the termination of the concession contract. In accordance with the Technical Regulation attached to the FDP, this process may include the entire production system or only a portion of it. Upon decommissioning, it is the concessionaire's responsibility to remove assets that are not subject to reversion or alienation, and to ensure the environmental recovery of the area.

Specifically regarding maritime installations, Resolution 27/2006 established that these should always be removed from the concession area, unless otherwise specified or by the decision of the Maritime Authority or competent environmental agency. In addition, the deactivation has to meet the well-abandonment requirements and the specific criteria established by the ANP regarding the material that can be kept on site.

Furthermore, Resolution 46/2016 approved the Operational Safety Regime for Petroleum and Natural Gas Well Integrity, repealing and replacing Ordinance 25/2002. This measure establishes responsibilities for concessionaires regarding the operation of the wells. This includes the abandonment process, where companies must ensure proper sealing and protection of wells to prevent leaks, fractures and similar situations.

> IT IS INTERESTING TO NOTE THAT THE CONCESSION CONTRACTS FOR OIL AND GAS BLOCKS, ORGANISED IN ROUNDS BY THE ANP SINCE 1998, STATE THE ACTIONS THAT SHOULD BE ADOPTED BY THE CONCESSIONAIRES FOR THE DEACTIVATION AND ABANDONMENT OF BLOCKS, AS WELL AS THE REVERSION AND REMOVAL OF PROPERTY

It is interesting to note that the concession contracts for oil and gas blocks, organised in rounds by the ANP since 1998, state the actions that should be adopted by the concessionaires for the deactivation and abandonment of blocks, as well as the reversion and removal of property. The contracts state that the deactivation will be regulated by the applicable rules when this process is initiated, and must be guided by the FDP presented to the ANP before the end of the concession. In addition, since 2002, it has been necessary for concessionaires to present some guarantee during the deactivation, such as insurance, a letter of credit or a provisioning fund. As for the assets, the contract states the concessionaire's responsibility for their reversion to the Brazilian government when applicable, or removal when unusable.

In Brazil, although decommissioning obligations are clearly imposed on the licensee under the licensing regime, it is difficult to predict the results of such a system. This is because the first licensing round occurred in late 1990s and most operations are still at too early a stage to properly assess the decommissioning risks and costs. Under the Production Sharing Agreement regime, decommissioning is also imposed under the licensee's obligations, but the contracts are still too 'fresh' to be able to gauge the outcome of a decommissioning obligation.

It is difficult, therefore, to analyse the degree of success of the decommissioning regulations in Brazil so far. However, based on international experience, it is positive that the decommissioning costs are required to be secured via provision funds. It is also encouraging to see broader stakeholder debate on all the relevant stages related to decommissioning

1. Brazil's National Petroleum, Natural Gas and Biofuels Agency

ARTICLES

planning. The Brazilian authorities should consider undertaking wider analyses regarding different international experiences and best practices in the oil and gas industry. They should also make use of the findings from other experiences in order to avoid a painful exercise in the future whenever Brazil's installations require decommissioning.

In addition, it is unclear if Brazil has enough demand to sustain a decommissioning industry in the country. In fact, the demand for decommissioning in Brazil is small and local. Moreover, decommissioning has not yet had a significantly positive socioeconomic impact for the Brazilian population. That is no reason, however, for decommissioning not to be thoroughly addressed by regulators.

Actually, Brazil's entire regulatory framework for decommissioning needs to be updated. Benchmarking international examples has already proved successful in other countries, and in Brazil it could be used as a guideline. Ideas that could be adopted in Brazil include: the obligation for an exploration company to present its decommissioning project for an oilfield as soon as it submits its exploration project; establishing (with clarity and uniformity) the metrics to be used to assess socioeconomic and environmental impacts; the creation of mechanisms for integration among regulators, making clear the responsibilities and attributions of each one of them; proposing a standard methodology for predicting process costs (both qualitatively and quantitatively); and promoting studies carried out by academic institutions that allow the country to position itself in the international market with updated and innovative practices.

> THE BRAZILIAN AUTHORITIES SHOULD CONSIDER UNDERTAKING WIDER ANALYSES REGARDING DIFFERENT INTERNATIONAL EXPERIENCES AND BEST PRACTICES IN THE OIL AND GAS INDUSTRY.

Although the use of examples from other countries such as the United States and the United Kingdom has already improved the legislation and decommissioning plans in Brazil, it is important to remember that each country is different in terms of its infrastructure, socioeconomic impacts and even its geology. Moreover, the US and the UK are already implementing alternatives for the future of installations that will remain offshore. The UK is implementing multiple projects for transforming mature production systems in the North Sea into wind-power plants that can feed newer units or even bring the produced energy onshore to be used elsewhere. This is an intelligent use for old platforms but it is not yet being considered in the Brazilian market.

In summary, demand for the decommissioning of oil and gas production facilities has so far been limited in Brazil, the regulatory framework remains undefined, and there is still no convergence in the decision-making methodology about what should be done. Perhaps most importantly, it is very clear that if a decommissioning industry did develop, a small number of companies would be likely to dominate the market. In order for decommissioning to really get off the ground in Brazil, it will be necessary to think about the process as a whole.

ENERGY TRANSITION: WHAT IS AT STAKE?

BY CLARISSA LINS

Energy transition is at the heart of any debate about the future of energy. The question facing all the key players in energy relates to the need, in the long term, to reconcile growing demand with lower carbon emissions. In addition, global energy systems must also address the need to provide reliable energy for all, at affordable and competitive prices. This is the dual challenge that the energy industry needs to meet over the coming years.

Energy is a key element to economic growth and social progress, as it enables access to power, heat, transportation, well-being and a modern lifestyle. In fact, there is a strong correlation between countries with high standards of living, as measured by the Human Development Index (HDI), and per capita energy consumption. This explains why developing economies are expected to represent the bulk of the projected growth in the demand for energy, at least until the middle of this century.

The energy industry has undergone periodic transitions, as illustrated by the shifts from wood to coal to oil. Now, in the 21st century, the industry is being shaped by climate change. Energy use is responsible for almost

ARTICLES

three-quarters of carbon emissions,[1] as fossil fuels provide more than 80% of global energy needs.[2] In order to deliver the Paris Agreement, the energy mix must shift dramatically in the direction of less carbon-intensive and more renewable sources.

There are at least four drivers which might influence the speed of the energy transition: public policy, technology innovation, pressure from financial stakeholders, and energy companies' corporate strategies.

Public policies can either be applied at the federal level – such as greenhouse gas emission reduction targets – and/or at the local level. Even though national leaders have been slow to send strong signals to the international community, this has not been the case at the city and state levels, as a growing number of mayors and governors are implementing renewable-energy standards and low-carbon regulations.[3] These guidelines often go hand in hand with more restrictive rules on air pollution, amid growing health costs imposed on urban populations. So the pressure on policymakers can only be expected to increase as citizens push for a better quality of life in densely populated cities.

THE MOST RECENT IEA PUBLICATION ON ENERGY INVESTMENTS MAKES CLEAR THE IMPORTANCE OF THE POWER SECTOR, WHICH RECEIVED ALMOST 43% OF TOTAL GLOBAL INVESTMENTS IN 2018 (USD 775 BILLION), SURPASSING THE INVESTMENTS IN OIL AND GAS SUPPLY FOR THE THIRD CONSECUTIVE YEAR

As far as technology is concerned, the significant recent advances in renewable energies illustrate that these sources are economically competitive and rely less and less on subsidies. While solar PV costs fell more than 90% between 2008 and 2018,[4] other renewable technologies have also been able to compete with fossil fuel-based sources, as shown by the levelised cost of electricity. According to this metric, solar and wind generation are already globally competitive with fossil-fuel power generation given, for example, the 74% reduction in the average cost of levelised solar electricity generation between 2010 and 2018.[5]

The most recent IEA publication on energy investments makes clear the importance of the power sector, which received almost 43% of total global investments in 2018 (USD 775 billion), surpassing the investments in oil and gas supply for the third consecutive year.[6] Therefore electricity as a whole – generation, transmission, storage, distribution – is attracting the attention of investors as the new source of growth in the energy landscape.

The major decisions about where to allocate resources rest mostly with the financial community, which is a key player when it comes to long-term thinking. As climate change affects the risk profile of energy companies, financial stakeholders are increasingly aiming at influencing the portfolio they support. In this context, some of them call for divesting shares from pure fossil fuel companies, while others seek to influence the strategy and disclosure of companies in which they have already invested.[7] Central bankers are also engaged in fostering transparency around climate risks, as they understand that those risks might pose a threat to the stability of the whole financial system.[8]

In this context, energy companies are compelled to react and adapt their corporate strategies – especially those in the oil and gas sector, as they are more directly exposed to these mounting pressures. On one hand, the European-based companies are taking the lead with regard to portfolio decisions, allocating increasing (although still limited) resources to lower-carbon sources, be they natural gas or even renewables such as solar or wind. Recent announcements also indicate that some of these companies will even diversify into the power sector, mainly through M&A operations targeted towards charging and trading electricity companies.

On the other hand, the oil and gas companies headquartered in the US are positioning themselves as energy providers based on their ability to thrive in their core businesses despite allocating R&D spending to curb down greenhouse-gas emissions and test innovative technologies. Additionally, the great majority of the energy players are committed to diminishing the carbon intensity of their operations, as well as to greater transparency regarding climate risks.

BRAZIL FACES A PECULIAR SITUATION, AS ITS ENERGY MIX IS ALREADY LARGELY BASED ON RENEWABLE SOURCES AND ENERGY IS NOT THE COUNTRY'S LARGEST CONTRIBUTION TO CLIMATE CHANGE – DEFORESTATION IS. SO THE ENERGY TRANSITION EQUATION STEMS FROM BRAZIL'S ABILITY TO DEPLOY ITS VAST ENERGY RESOURCES IN A COMPETITIVE MANNER, BENEFITTING FROM THE DIVERSITY OF SOURCES.

The energy transition is a continuous driver of changes. While the direction is obvious, the speed of implementation will be determined by a variety of factors, including the ones listed above. Each energy system has to find its own path, being fully transparent to the community it serves regarding the costs and benefits involved.

Brazil faces a peculiar situation, as its energy mix is already largely based on renewable sources and energy is not the country's largest contribution to climate change – deforestation is. So the energy transition equation stems from Brazil's ability to deploy its vast energy resources in a competitive manner, benefitting from the diversity of sources. The country has all the elements needed to thrive in a low-carbon world, reconciling its diverse energy mix with its natural assets – including forests.

1. IEA. CO2 emissions from fuel combustion. 2017
2. IEA. World Energy Outlook. 2018
3. C40. Focused Acceleration: A Strategic Approach to Climate Action in Cities in the 2030. 2017
4. BNEF. Future trends in the energy transition. 2019
5. IRENA. Renewable Power Generation Costs in 2018. 2019
6. IEA. World Energy Investment. 2019
7. Arabella Advisors. The Global Fossil Fuel Divestment and Clean Energy Investment Movement. 2018
8. TCFD. Recommendations of the Task Force on Climate-related Financial Disclosures. 2017; Central Banks and Supervisors NGFS. A call for action: Climate change as a source of financial risk. 2019

ARTICLES

MAKING THE MOST OF YOUR CLAIMS AND YOUR PROFITS

BY MARK KING AND DIOGO GOUVEIA

Litigation funding is a relatively new concept in Brazil but is quickly becoming a valuable tool for businesses who are looking to pursue their claims and manage their litigation risk. Its benefits mean there is every reason to believe it will become a common sight on the Brazilian litigation landscape. Harbour Litigation Funding outlines these benefits below and explains why your business should be considering it as part of practical risk management.

Your business certainly has a *raison d'être* – perhaps to make a great pizza, provide the most personalised tailoring service, develop the highest-rated social app, or construct an astonishing bridge. What your business certainly doesn't aim to do is embroil itself in legal disputes with trading partners, directors or shareholders, or even government entities. Such legal disputes can cause massive disruption, exhausting valuable capital that could otherwise be used to grow your business or pay dividends to shareholders.

If you do get bogged down in such a dispute, management and staff will probably spend a significant amount of their time trying to sort it out rather than implementing the next stage of your business plan or performing the core functions of your business, thereby potentially causing delays to project deadlines or lower quality product delivery.

Cash reserves and cash-flow can be stretched as your business has to pay for the costs of its core operations in addition to the costs of your instructed legal team and other disbursements like court or arbitration fees and expert reports. This is a tough pill to swallow if your cash-flow needs prevent your business from progressing with the claim and increasing its potential value. This is especially true in times of economic recession, when many companies are strapped for cash.

Faced with such challenges, litigation funding can be an effective solution for managing disputes in the best interests of your company. It will not be a panacea but it can at least ease some of the pressures that litigation presents.

Litigation funding is financing from a third party to cover the costs of legal disputes, be it litigation through domestic courts or arbitration, including the costs of disbursements such as experts and other fees. The financing is non-recourse, meaning the third-party funder only recovers its funding and a pre-agreed success fee if the claim is successful. If the claim is not successful, the funder assumes the risk and the claimant does not have to repay the funder the amount of funding it received.

The most obvious benefit of litigation funding is to remove the burden of paying for your claim, whether your business is impecunious or your cash reserves would be better spent on profitable endeavours. Though in Brazil your lawyers can agree to act on a success fee – quota litis – this is available only in limited circumstances where your business is facing financial difficulties, providing a solution only to the first of our scenarios. Litigation funding will give you freedom to choose how to spend your cash whatever your financial position. Your lawyers too will benefit; knowing their ongoing costs are fully paid for on a monthly basis will keep them motivated and focused on your claim.

There is also the option to monetise your claim. By selling a part of the financial benefit of a potential award to a funder, your business can go from a position of financial paralysis, unable both to pursue its claim and a core business project, to retaining a financial interest in any eventual award whilst simultaneously raising the cash needed to invest in the new venture.

> THE MOST OBVIOUS BENEFIT OF LITIGATION FUNDING IS TO REMOVE THE BURDEN OF PAYING FOR YOUR CLAIM, WHETHER YOUR BUSINESS IS IMPECUNIOUS OR YOUR CASH RESERVES WOULD BE BETTER SPENT ON PROFITABLE ENDEAVOURS.

If you choose to explore litigation funding, the funder will in turn want to carry out an in-depth due diligence exercise on your legal dispute to determine its value, both absolute and relative to the costs of funding; whether it has a strong legal and factual foundation; and whether there are good prospects of payment/enforcement of any award by/against the opposing party. Whilst this will require your management's involvement in fact finding and engagement with insurers, lawyers and experts, this exercise will ensure your business understands from the outset the strength and commercial viability of its claim, starting you off in the best possible position. A funder will be keen to maximise its investment and will not shy away from granting your business financial access to the lawyers and experts most likely to do justice to your claim.

Another benefit of funding is the change to the opposing party's outlook towards the legal dispute. They may realise there is some strength to your claim, and that they will not be able to use tactics and other delaying strategies to make you desist from fighting until the end. That, in turn, may bring them to the settlement table sooner than they might have done otherwise.

For these reasons, more and more businesses are taking heed and beginning to explore how litigation funding can help in their particular circumstances, growing savvier and more commercial about how they approach litigation. Freed from the financial stress that comes with legal disputes, your business can get on with what it does best.

ARTICLES

HALFWAY TO ACCOUNTABILITY: SLOW PROGRESS IN PUNISHING CIVIL SERVANTS' MISCONDUCT

BY FERNANDA ODILLA

KING'S College LONDON

Bureaucratic corruption is just as problematic as political corruption – not only because it affects state capacity and the state's ability to deliver public services effectively and efficiently, but also because it often ties into larger-scale political corruption and potentially elevates the costs of doing business in certain countries.

So far, however, bureaucratic corruption around the world has tended to attract less attention than corruption scandals involving politicians – and that is especially the case in Brazil.

Apart from general figures regarding sanctions enforced against civil servants in various parts of the world, we know very little about who is punished and how those countries' disciplinary systems work.

As in many other countries, it is often suggested that federal civil servants in Brazil have 'jobs for life' and are very unlikely to be dismissed.

At first glance, however, this notion would appear to be contradicted by statistics regarding the administrative punishments meted out to Brazilian government workers suspected of misconduct since 2003.

Among civil servants in the administrative sphere, there has been a significant increase in the number of sanctions resulting in the expulsion of those found guilty of misconduct.

Between 2003 and 2014, the number of civil servants working for the Brazilian federal executive increased by 18% (from 485,980 to 572,434). And the number of disciplinary procedures resulting in dismissal increased at a much faster rate, from 268 in 2003 to 548 in 2014 – a rise of 104%. These figures cover only the ministries, governmental bodies, foundations and regulatory agencies in the federal executive.

In comparison, here in the United Kingdom between 2010 and 2018, the total number of civil servants (including those in the judiciary) decreased from 527,480 to 430,080. Though number of British civil servants dismissed either for misconduct or incompetence also decreased in that period, from 2,490 to 2,220, they continued to represent a higher percentage of the total than in Brazil.

EXPLORING THE QUALITY AND EFFICIENCY OF INTERNAL CONTROLS

Brazilian civil servants are guaranteed the right to defend themselves against charges of misconduct. Defendants can also file petitions in court to review any perceived issue during the administrative procedure, and they can appeal against the final sanction.

Between 2003 and 2014, 67% of the penalties imposed on civil servants in the Brazilian federal executive were for acts of corruption; the other penalties were mostly for absence without leave, lack of care or dedication, or the accumulation of positions in the public or private sector – offences that, if proved, can also result in dismissal.

BETWEEN 2003 AND 2014, 67% OF THE PENALTIES IMPOSED ON CIVIL SERVANTS IN THE BRAZILIAN FEDERAL EXECUTIVE WERE FOR ACTS OF CORRUPTION

The fact that a total of 3,444 penalties were imposed on Brazilian civil servants suspected of acts of corruption during the period might at first glance support the claim that the battle against corruption is being fought in a determined and effective manner.

Nevertheless, the increase in sanctions, especially the corruption-related penalties, may in fact hide certain issues regarding the quality and efficiency of the internal controls within the Brazilian federal civil service.

While the official story focuses only on the increasing number of sanctions, an in-depth analysis of certain characteristics of Brazilian government agencies, and of the individual civil servants who were punished for acts of corruption and other serious offences between January 2003 and November 2014, reveals a more complex picture.

For example, there are huge differences in enforcement culture (willingness to investigate and/or sanction civil servants) between different parts of the Brazilian government, and as a result there is a striking unevenness in the distribution of those sanctions across the various ministries and other government bodies.

In fact, just a few parts of the government account for the majority of the penalties administered. The Ministry of Social Security and the Ministry of Justice, for example, together accounted for 41.1% of the total number of sanctions imposed between January 2003 and November 2014, when combining penalties for corruption and other offences, although together they accounted for only 12.63% of the total number of federal civil servants.

Although overall a greater number of sanctions are imposed for corrup-

ARTICLES

tion than for other serious offences, the data also illustrate that the proportion of penalties that are corruption-related varies greatly between governmental bodies and relates to certain specific individual characteristics of civil servants.

It emerged, for example, that male civil servants are punished more often for corruption than females, and that those who have been in their posts for more than five years are more likely to be punished for corruption-related acts than more recent appointees. The analysis also suggests that holding a special position or earning a bonus increases the odds of being sanctioned for corruption. Working for specific bodies such as the Traffic Police (*Polícia Rodoviária Federal*) or the National Social Benefits Institute (INSS) also significantly increases the chances of being punished for corruption.

There is also evidence that corruption cases are more likely to reduce the overall efficiency of an already overloaded disciplinary system.

In 2014, sanctions related to corruption took, on average, 948.4 days to be enforced, which was more than three times longer than the sanctions meted out in 2003. And sanctions for other offences were taking an average of 625.9 days to be enforced, which was more than twice as long as in 2003.

Corruption cases not only tend to involve slow investigations but there is also a higher chance, compared with accusations of other forms of misconduct, that the civil servants will ultimately be reinstated to their positions.

Finally, how disciplinary investigations within the federal executive are conducted depends to a large degree on the role of external actors responsible for horizontal accountability, such as the Federal Prosecution Service (MPF) and the Federal Court of Accounts (TCU). In addition, it is noticeable that civil society has little participation in monitoring, reporting, and advocating for taking a part in the Brazilian disciplinary system.

Many civil servants working for internal affairs units openly say they do not feel comfortable investigating their own peers and do not feel prepared to carry out administrative disciplinary procedures, especially those involving corruption allegations.

RAISING ACCOUNTABILITY IN BRAZIL

One of the most pressing questions for Brazil is whether a more efficient government with higher ethical standards and more effective punitive measures will help make the country more attractive to foreign investors.

The answer to that question is not straightforward, however.

It is clear that anti-corruption activities at the federal level have been stepped up, so in that way the state is responding to the problem. It is reasonable now to expect that civil servants will think twice about requesting or accepting a bribe, for example.

But despite some improvements, the bureaucratic investigative and punitive system within the Brazilian federal executive has not addressed its main failing: it is still significantly weakened by the self-protective behaviour of civil servants who openly say they do not feel comfortable in the role of overseeing their peers and recommending penalties against them.

In short, Brazil is strengthening its accountability mechanisms and governance institutions – but only slowly. The challenge for the country is to continue and extend this effort. The gains made so far have been of great value but the underlying impediments when it comes to overseeing civil servants and punishing acts of corruption remain significant.

INTERVIEW

JOSÉ EDUARDO CARNEIRO QUEIROZ MANAGING PARTNER OF MATTOS FILHO

BY IEDA GOMES
BRAZIL BUSINESS BRIEF

José Eduardo Carneiro Queiroz has been the managing partner of Brazilian legal firm Mattos Filho since 2015. Mattos Filho has had a strong international strategy under his leadership, opening an office in London in October 2016 and currently occupying top spot in the ranking of Brazilian legal firms compiled by the British guide Chambers and Partners. Mr Queiroz was recently named Law Firm Leader of the Year by the British publication Latin Lawyer.

Congratulations on your nomination for the 'Personality of the Year Award' from the Brazilian Chamber of Commerce. What does the award mean to you personally, and to Mattos Filho?

First and foremost, I think the award is recognition of the efforts and investments made by Mattos Filho and all its partners in opening an office in London and thereby introducing the firm to a very important business community. I must add that, in our success in this endeavour, the contribution of our London resident partner, Rodrigo Ferreira, has been key.

Personally, I'm very happy with the award. It's one of the greatest honours I've received in my professional life, and recognition of the work I've had the privilege to do while serving as managing partner of Mattos Filho.

What are the current main activities of Mattos Filho in the United Kingdom?

Our office in the United Kingdom focuses on two main areas: working with Brazilian clients who have come to the UK/Europe, so as to help them in the process of establishing their businesses here and find the best way of doing so from a legal perspective; and fostering the relationships we have with law firms and clients in the UK and elsewhere in Europe.

Mattos Filho has an active role in advising companies and investors on a wide range of subjects. In what areas has most foreign investment in Brazil been concentrated during the last year?

There has been a lot of interest in infrastructure. New concessions have been offered to investors and very ambitious privatisation programs, at federal and state level, have been announced. Commodities continue to be another focus of attention, especially in the oil & gas and agribusiness sectors.

There are very few British financial companies currently operating in Brazil. Why is that, and what needs to be done to generate more interest?

The Brazilian financial sector is concentrated in a few major institutions and has been heavily dependent on state-owned institutions during the last decade. But there is a new component with the entrance into the market of fintechs and light-structure financial institutions. Those institutions are providing coverage in areas that were underbanked. With this development, and a much more stable economy from a macroeconomic perspective, I hope to see British financial companies investing to a greater extent in the Brazilian market.

THE IMPLEMENTATION OF A FREE-TRADE AGREEMENT TAKES AT LEAST A COUPLE OF YEARS. ON THE BRAZILIAN SIDE, I THINK WE CAN GET APPROVAL FROM CONGRESS WITHIN ONE YEAR. THERE IS A COMMON UNDERSTANDING THAT OUR ECONOMY NEEDS TO BE MORE OPEN IF IT IS TO GROW TO ITS FULL POTENTIAL

Your company is committed to the United Nations Global Compact and Sustainable Development Goals. How much progress do you think these UN initiatives have made within Brazilian companies, and what needs to be done to encourage further progress?

Brazilian companies have made some progress, but more needs to be done. If you look at which companies in Brazil are particularly active with regard to this initiative, you'll see that a considerable portion of them are international companies. We should promote more the initiatives and openly invite companies to join.

What is the timeline and process for the implementation of the recent Mercosur-European Union trade agreement? What benefits will the agreement have for Brazil and for European countries?

The implementation of a free-trade agreement takes at least a couple of years. On the Brazilian side, I think we can get approval from Congress within one year. There is a common understanding that our economy needs to be more open if it is to grow to its full potential. The trade agreement will open up very significant markets to Brazil and to the European countries. If it is negotiated well, both sides will benefit.

You advise Brazilian companies that are interested in investing in the United Kingdom. Are they concerned about Brexit?

There is a degree of uncertainty about how the process is going to unfold, and that certainly concerns investors. But it doesn't change the long-term perspective regarding investment. The UK will continue to be a very important economy and a hub for key sectors such as finance and insurance.

Will the reform of Brazil's social security system be a game changer for the economy, or will more still need to be done on financial and tax reform?

The reform of the social security system is very important not only for the adjustment it will provide in years to come, but also as an indication of commitment and consensus regarding the need for significant reforms. More needs to be done, but we are seeing an unprecedented agreement on the need for change, and that in itself makes reforms more likely to happen. And as those reforms are implemented, the economy will react and the business environment will improve.

> MORE NEEDS TO BE DONE, BUT WE ARE SEEING AN UNPRECEDENTED AGREEMENT ON THE NEED FOR CHANGE, AND THAT IN ITSELF MAKES REFORMS MORE LIKELY TO HAPPEN. AND AS THOSE REFORMS ARE IMPLEMENTED, THE ECONOMY WILL REACT AND THE BUSINESS ENVIRONMENT WILL IMPROVE

You have obviously been very successful both in Brazil and abroad. What would be your advice for young Brazilian professionals hoping to embark on international careers?

They should be aware that it requires a long-term commitment in terms of time and energy. The key is simply to get involved in the international community and do a good job.

Looking ahead, what would be your advice for British companies interested in investing in Brazil?

Despite the challenges we are facing, Brazil is a country of great opportunity. A lot needs to be done and we are very aware that a significant portion of the necessary investment will have to come from abroad. British companies investing now in the country need to understand the local business environment and the risks associated with it – but they can also be sure that there is incredible potential. It's a huge market, with a very Western-style business environment and a business infrastructure similar to what you would find in the most advanced economies.

BRAZIL ECONOMIC DATA

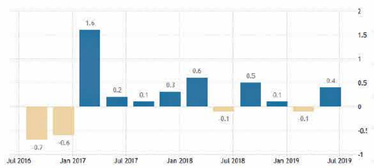
QUICK FACTS

GEOGRAPHY	5th Largest Country in the World
POPULATION	209 Million Inhabitants
ECONOMY WEIGHT	World's 9th Largest Economy
OVERALL GDP	2,055,506 million US$
FOREIGN INVESTMENT INFLOW	88.3 billion US$
TOTAL EXPORTS	218 billion US$
TOTAL IMPORTS	151 billion US$

SOURCES: IBGE, World Bank and WTEx (2019)

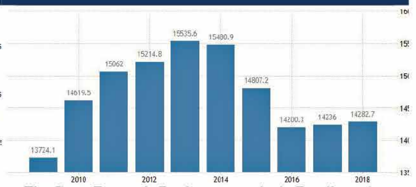
BRAZILIAN ECONOMIC DATA

GDP GROWTH RATE



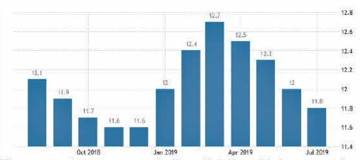
The Brazilian economy advanced 0.4 percent on quarter in the three months to June 2019, after a downwardly revised 0.1 percent contraction in the prior period and above market expectations of a 0.2 percent expansion. Growth was mainly boosted by industrial and services activities while agricultural output declined.

GDP GROWTH PER CAPITA PPP



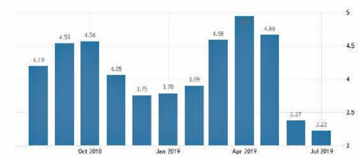
The Gross Domestic Product per capita in Brazil was last recorded at 14282.70 US dollars in 2018, when adjusted by purchasing power parity (PPP). The GDP per Capita, in Brazil, when adjusted by Purchasing Power Parity is equivalent to 80 percent of the world's average.

UNEMPLOYMENT RATE



The unemployment rate in Brazil fell to 11.8 percent in the three months to July 2019 from 12.5 percent in the February to April period, below market consensus of 11.9 percent. The number of unemployed declined by 4.6 percent while employment rose by 1.3 percent.

INFLATION RATE



The annual inflation rate in Brazil fell to 3.22 percent in July 2019 from 3.37 percent in the previous month and below market expectations of 3.28 percent. It was the lowest inflation rate since May last year, as prices slowed mostly for transport and housing.

INTEREST RATE

The Central Bank of Brazil voted unanimously to lower its key Selic rate by 50bps to a record low of 6 percent during its July meeting, while markets had forecast a smaller 25bps cut. The Committee signalled further easing, underscoring that recent data indicate weaker economic activity from previous quarters; a decelerating global economy and slower domestic inflation.

BALANCE OF TRADE

Brazil's trade surplus widened to USD 3.28 billion in August 2019 from USD 2.77 billion in the corresponding month of the previous year and slightly above market consensus of USD 3.20 billion. Exports declined 12.5 percent over a year earlier and imports dropped at a faster 17.1 percent..

GOVERNMENT DEBT TO GDP

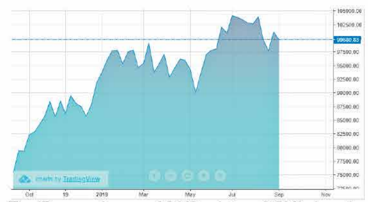
Brazil recorded a government debt equivalent to 77.22 percent of the country's Gross Domestic Product in 2018. Government Debt to GDP in Brazil averaged 58.45% from 2006 until 2017.

CURRENCY

The USDBRL decreased 0.0012 or 0.03% to 4.1666 on Wednesday September 4 from 4.1678 in the previous trading session. Historically, the Brazilian Real reached an all time high of 4.25 in September of 2015 and a record low of 0.01 in January of 1993.

BRAZILIAN MARKET DATA

STOCK MARKET



The iBovespa increased 8669 points or 9.52% since the beginning of 2019, according to trading on a contract for difference (CFD) that tracks this benchmark index from Brazil. Historically, the Brazil Stock Market (BOVESPA) reached an all time high of 105817.06 in July of 2019.

BRAZIL GOVERNMENT BOND 10Y

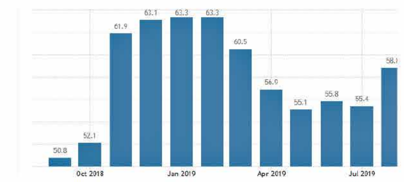
Brazil 10Y Bond Yield was 7.38 percent on Tuesday September 3, according to over-the-counter interbank yield quotes for this government bond maturity. Historically, the Brazil Government Bond 10Y reached an all time high of 17.91 in October of 2008 and a record low of 0.12 in December of 2017.

BRAZILIAN BUSINESS DATA

BUSINESS CONFIDENCE

The Industrial Entrepreneur Confidence Index in Brazil increased to 59.4 in August 2019 from 57.4 in the previous month, driven by an improvement in expectations over the next six months regarding the country's economic situation (62.2 from 59.6 in July) and the company's situation (64.3 from 63.4). Also, the gauge measuring the current economic situation rose to 50.7 from 45.4 in the prior month, and the company's current situation went up to 51.2 from 47.8. A

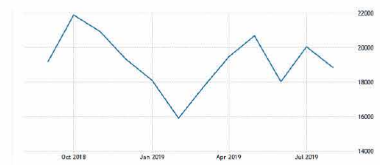
SMALL BUSINESS SENTIMENT



Small Business Sentiment in Brazil increased to 58.80 in August from 55.40 in July of 2019. Small Business Sentiment in Brazil averaged 51.83 from 2010 until 2019, reaching an all time high of 65.40 in January of 2010 and a record low of 34.50 in October of 2015.

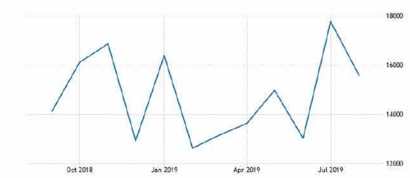
BRAZILIAN TRADE DATA

EXPORTS



Exports from Brazil fell 12.5 percent year-on-year to USD 18.85 billion in July 2019, mainly due to lower sales of primary goods (-1.9 percent) and industrial goods (-21.5 percent), of which manufactured products (-29 percent) namely passenger vehicles (-47.7 percent); cargo vehicles (-34.6 percent); engine parts and aviation turbines (-23.7 percent); planes (-23.6 percent) and parts (-21 percent).

IMPORTS



Imports to Brazil went down 17.1 percent over a year earlier to USD 15.57 billion in August 2019, due to lower purchases of intermediate (-6.2 percent), capital (-37.8 percent) and consumption goods (-11 percent). In addition exports of fuels & lubricants decreased 36.9 percent.

SOURCE: WWW.TRADINGECONOMICS.COM | MINISTÉRIO DO DESENVOLVIMENTO, INDÚSTRIA E COMÉRCIO EXTERIOR

EDITORIAL

BRAZIL BUSINESS BRIEF, SEPTEMBER 2019

NEWS FROM THE
BRAZILIAN CHAMBER OF COMMERCE
IN GREAT BRITAIN

EDITOR
LENA BERALDO

EDITORIAL COUNCIL
IEDA GOMES & ANTHONY PEREIRA

GRAPHIC DESIGN
NENI ALMEIDA · NENIALMEIDA.COM

PROOFREADING
MICHAEL MARSDEN · MICHAELMARSDEN.CO.UK

OUR GUEST WRITERS AND COLLABORATORS IN THIS EDITION

IEDA GOMES

Ieda Gomes is a councillor at the Brazilian Chamber. She is the managing director of Energix Strategy Ltd, an energy and gas consultancy company. Ieda is also a senior advisor at FGV Energia and visiting fellow at the Oxford Institute for Energy Studies.

ieda.gomes2@gmail.com

MARK KING

is a Senior Director of Litigation Funding at Harbour Litigation Funding. He supports the Chief Investment Officer in identifying and sourcing new funding opportunities, particularly from Brazil, and manages some of the most complex cases in the Harbour portfolio.

mark.king@harbourlf.com

DIOGO GOUVEIA

is an Associate Director of Litigation Funding at Harbour Litigation Funding. He is responsible for the preparation of funding documents and ongoing management of cases, particularly those focused on Brazil. He is fluent in Portuguese.

diogo.gouveia@harbourlf.com

FERNANDA ODILLA

Fernanda Odilla Vasconcellos de Figueiredo is a PhD candidate at the Brazil Institute at King's College London, having earlier completed an MA in Criminology and Criminal Justice. She works as a multimedia producer on the Brazilian desk at the BBC in London".

feodilla@gmail.com

LAVINIA HOLLANDA

works in the energy sector in Brazil as managing director of Escopo Energia, a boutique energy advisory firm, and as a board member at Eneva. Her previous positions include head of research at the centre for energy studies at the Fundação Getulio Vargas.

lavinia@escopoenergia.com.br

FERNANDA DELGADO

is the head of research into oil, gas and biofuels at FGV Energia, covering subjects such as decommissioning, downstream, electric vehicles and unconventionals. She has worked in Brazil and abroad for companies including Deloitte, Vale S.A., Gama Filho University, and Royal Shipping Services.

fernanda.delgado2@fgv.br

EDUARDO G PEREIRA

has been in the oil and gas industry for more than ten years and is an international expert on joint operating agreements. He is a professor of natural resources and energy law as a part-time, adjunct and/or visiting scholar in a number of academic institutions around the world.

eduardogpereira.com

PEDRO NEVES

is a researcher at FGV Energia, focusing on the decommissioning of offshore oil and gas installations. He is also doing a Master's degree at Fluminense Federal University (UFF), studying the decision-making methodologies that affect the environmental impacts of decommissioning.

pedro.goncalves@fgv.br

CLARISSA LINS

Clarissa is the founding partner of Catavento, a consultancy on strategy and sustainability. Her principal areas of expertise are energy transition and climate change. She is a fellow at the Energy and Infrastructure Center of CEBRI and a member of the Global Future Council on Advanced Energy Technologies at the WEF.

clarissa.lins@catavento.biz

CATHY BREMNER

Cathy works in the London office of B3, the Brazilian Stock Exchange, where she is responsible for EMEA clients and business development, as well as advising major financial institutions about the Brazilian markets. She has a BA in Spanish, Portuguese and Brazilian Studies from King's College London and an MSc from UCL.

cathy.bremner@b3.com.br

THE BRAZILIAN CHAMBER OF COMMERCE IN GREAT BRITAIN
PRESENTS THE

GALA DINNER
PERSONALITY OF THE YEAR AWARDS 2019

16 OCTOBER 2019
THE LONDON MARRIOTT HOTEL GROSVENOR SQUARE
7.00PM

Brazilian Chamber
of Commerce in Great Britain

BRAZILIANCHAMBER.ORG.UK