2019 INVESTMENT POLICY AND REGULATORY REVIEW
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AEB</td>
<td>Brazilian Foreign Trade Association</td>
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<tr>
<td>Apex-Brazil</td>
<td>Brazilian Trade and Investment Promotion Agency</td>
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<td>BCB/BACEN</td>
<td>Central Bank of Brazil</td>
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<td>BNDES</td>
<td>Brazilian National Development Bank</td>
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<td>CA</td>
<td>Competition Authority</td>
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<td>CADE</td>
<td>The Administrative Council for Economic Defense</td>
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<td>CAMEX</td>
<td>Chamber of Foreign Trade</td>
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<td>CFIA</td>
<td>Cooperation and Facilitation Investment Agreement</td>
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<td>CMN</td>
<td>National Monetary Council</td>
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<td>CNA</td>
<td>National Federation of Agriculture and Cattle</td>
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<td>CNI</td>
<td>National Industry Federation</td>
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<td>CONFAZ</td>
<td>National Finance Policy Council</td>
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<td>Coninv</td>
<td>National Investment Committee</td>
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<td>CSR</td>
<td>Corporate Social Responsibility</td>
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<td>CVM</td>
<td>Securities and Exchange Commission</td>
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<td>DIO</td>
<td>Direct Investments Ombudsman</td>
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<td>DTAA</td>
<td>Double Taxation Avoidance Agreement</td>
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<td>FDI</td>
<td>Foreign Direct Investment</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>GDPL</td>
<td>General Data Protection Law</td>
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<td>GPPG</td>
<td>General Principle of Good Governance</td>
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<td>HHI</td>
<td>Herfindahl-Hirschman Index</td>
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<td>ICSID</td>
<td>International Centre for Settlement of Investment Disputes</td>
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<td>IIA</td>
<td>International Investment Agreement</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>INPI</td>
<td>National Institute of Industrial Property</td>
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<td>Abbreviation</td>
<td>Full Form</td>
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<tr>
<td>IPI</td>
<td>Federal Excise Tax</td>
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<td>IPRR</td>
<td>Investment Policy and Regulatory Review</td>
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<td>IPTU</td>
<td>Real Estate Property Tax</td>
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<td>ISDS</td>
<td>Investor-State Dispute Settlement</td>
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<tr>
<td>L/C</td>
<td>Letter(s) of Credit</td>
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<td>MAPA</td>
<td>Minister of Agriculture, Livestock and Food Supply</td>
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<td>MERCOSUR</td>
<td>Southern Common Market Trade Bloc</td>
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<td>MFN</td>
<td>Most-Favored-Nation</td>
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<td>NCP</td>
<td>National Contact Points</td>
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<td>NT</td>
<td>National Treatment</td>
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<td>OFDI</td>
<td>Outward Foreign Direct Investment</td>
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<tr>
<td>PIS/COFINS</td>
<td>Program of Social Integration/Contribution for the Financing of Social Security</td>
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<td>PPI</td>
<td>Investment Partnership Programs</td>
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<td>RS</td>
<td>Real (currency)</td>
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<td>SCD</td>
<td>Direct Credit Companies</td>
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<td>SCM</td>
<td>Agreement on Subsidies and Countervailing Measures</td>
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<td>SEBRAE</td>
<td>Brazilian Support Service to Small and Middle Sized Companies</td>
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<td>SELIC</td>
<td>Special Clearance and Escrow System</td>
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<td>SEP</td>
<td>Interpersonal Lending Companies</td>
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<td>SG</td>
<td>Superintendence General</td>
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<td>SMEs</td>
<td>Small and Medium Enterprises</td>
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<td>SUDAM</td>
<td>Development Agency of Amazonas</td>
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<td>SUFRAMA</td>
<td>Superintendent of the Manaus Free Trade Zone</td>
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<td>SUSEP</td>
<td>Department of Private Insurance</td>
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<td>TIP</td>
<td>Treaty with Investment Provision</td>
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<td>TRIMs</td>
<td>Agreement on Trade-Related Investment Measures</td>
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<td>TRIPS</td>
<td>Agreement on Trade-Related Aspects of Intellectual Property Rights</td>
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<tr>
<td>WTO</td>
<td>World Trade Organization</td>
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<td>ZFM</td>
<td>Manaus Free Trade Zone</td>
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This Investment Policy and Regulatory Review (IPRR) presents information on the legal and regulatory frameworks governing foreign direct investment (FDI) and competition that affect businesses and foreign investors in Brazil. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of May 31, 2019, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries (MICs): Brazil, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.

The research for preparing this IPRR was undertaken by the international law firm Baker McKenzie, under the supervision of the World Bank Group. The research was primarily based on a review of currently applicable policies, laws and regulations. In some cases, consultations with regulators were conducted to collect up to date information.

The research was guided by a standardized questionnaire, covering a limited set of topics, including foreign investment entry, establishment, protection and select competition related aspects. The questionnaire focused on de jure frameworks as generally applicable to a foreign investor, not located in any specialized or preferential regime (such as special economic zones). It primarily focused on national, economy-wide (rather than sector-specific) laws and regulations. For the purpose of the research, it was assumed that the foreign investor is a private multinational company with no equity interest or

Figure 1. Overview of Topics Covered in IPRR

Merger control
- Remedies to Limit Anticompetitive Effects of Merger
- Ease of Admin Procedures

Leniency
- Extent of Immunity on Fines and Damages
- Ease of Admin in Leniency Application

Main Policy & Legal Instruments and Institutions

Select Competition Policy Aspects

Investment Entry and Establishment

IPRR Questionnaire

Investment Protection

Investment Incentives

Prohibited and Restricted Sectors
- Equity Ceiling
- Minimum Investment Requirement
- FDI Approval
- R&D, Local Sourcing, Employment, Quantitative, Geographic, Export

Expropriation
- Transfer of Currency
- Dispute Settlement
- Fair Administrative Conduct

Source of Tax and Financial Incentives
- Accessibility of Tax and Financial Incentives

Schemes to Increase Local Sourcing and Build Capacity of Local Suppliers
- Restrictions on OFDI
- Measures on Technology

Key Institutions for Investment Policy/Rule Making, Implementation and FDI Promotion
- Key Legal Instruments
- Transparency/Consultation in Laws and Regulations
management control by the government of its home
country (that is, not state-owned enterprise).

There are aspects that this IPRR does not cover.
It is not a comprehensive review of the entire legal
and regulatory framework affecting investment.
Information presented is not exhaustive, but
illustrative of the main topics and issues covered (for
example, it does not exhaustively list all available
tax and financial incentives in the country). It does
not present recommendations on reform areas.
Notably, it does not capture de facto implementation
of laws and regulations in the country. Given these
limitations, information presented in this IPRR
should be interpreted and used keeping in view
the overall country context and realities. Further,
it contains information in summary form and is
therefore intended for general guidance only. It is not
intended to be a substitute for detailed legal research.

This IPRR is organized as follows:

- Section 2 provides an overview of the country’s
  investment policy framework, including the legal
  instruments regulating foreign investment, key
  institutions involved in investment promotion, as
  well as the country’s foreign investment promotion
  strategy; it also delineates the country’s
  international investment legal framework,
  including the country’s commitments under the
  World Trade Organization (WTO) and select
  international investment agreements (IIAs);

- Sections 3-6 cover the country’s policies and
domestic legal framework concerning different
dimensions of the lifecycle of an investment:
entry and establishment (Section 3), protection
(4), incentives (5) and linkages (6);

- Sections 7-9 explore emerging investment policy
and regulatory areas—Section 7 considers
outward FDI, Section 8 responsible investment,
and Section 9 considers recent policies on new
technologies;

- Section 10 focuses on city-specific investment
policy and regulatory measures in the largest
commercial center; and

- Section 11 covers select aspects of competition
law and policy, specifically merger control and
leniency frameworks.
A. Domestic Legal Instruments Regulating Foreign Investment

Brazil regulates foreign direct investment (FDI) in the country through its primary investment law, sector specific regulations, as well as international agreements (alongside the general legal framework that applies to all businesses).

FDI Law and Regulation

In Brazil, the primary law that regulates foreign investment and the inflow and outflow of foreign capital is the Law No. 4131/62 enacted on September 3, 1962, as amended by Law No. 4390 on August 29, 1964, known as the Foreign Capital Law (Law 4131). Pursuant to the law, FDI may be carried out by investing in an existing company or incorporating a new local company. Foreign capital is considered to be any goods, machines and equipment imported into Brazil with no initial disbursement of foreign currency, for the production of goods or services, as well as any funds brought into the country for use in economic activities — provided in both cases foreign capital belongs to companies or individuals resident, domiciled or incorporated overseas. According to Article 2 of Law 4131 and Article 5 of the Brazilian Constitution, foreign capital is afforded identical legal treatment as local capital, unless otherwise specified in law.

Law 4131 sets out registration requirements for foreign investments. All foreign capital in cash or kind (including the Brazilian entity receiving the investment and the foreign investor) must be registered with the Central Bank of Brazil (BCB, Central Bank or, informally, BACEN) (using the Electronic Declaration Register on the Central bank Information System). Every inflow and outflow of foreign capital resulting from such investment (such as foreign loans, reinvestment of FDI proceeds, remittance of royalties and so forth) must also be registered with the Central Bank. Such registration is required for remittances abroad, repatriation of capital and registration of profit reinvestment. These registrations are simple online procedures for declaratory purposes and do not require any prior review or authorization by the Brazilian Central Bank (except in a few economic sectors, see Section 3 Entry and Establishment).

Registration requirements are set out by the National Monetary Council (Conselho Monetario Nacional) (CMN) and the Central Bank of Brazil. The CMN is the exchange control and foreign investment regulator that establishes the country’s foreign exchange policy, under the control and supervision of the BCB. Exchange control regulations are contained in the CMN Resolution 3,844 of March 23, 2010, as amended, CMN Resolution No. 4374/2014, as amended, and in the Circulars by the BCB 3,689 and 3,690 of December 16, 2013, as amended. They set out specific registration and other requirements on foreign investors from a foreign exchange control perspective. Further, Law No. 11,371/2006 requires registration with the BCB of foreign capital invested in the country in local currency. In addition, to invest in Brazil, it is required that the natural or legal person is registered at the general taxpayers’ register at the Brazilian Internal Revenue Service.

Sector Specific Laws

Foreign investment is also subject to sector-specific laws and regulations. These generally apply equally to both domestic and foreign investors, with a few exceptions where restrictions are placed on foreign ownership. For example, foreign investment is prohibited or restricted in sectors such as financial institutions, nuclear energy, newspapers, magazines and other publications, as well as radio and television chains, and so forth (see further Section 3 — Entry and Establishment).
Public Access to Foreign Investment Laws and Policies

Public access to foreign investment laws and policies is guaranteed by the Constitution and by Law No. 12,527, also known as the Brazilian Access to Information Law. The Brazilian Constitution generally mandates transparency and public access to all information of public interest, including all laws and regulations enacted in the country (unless secrecy is specifically mandated for any such information or law). On November 18, 2011, the Brazilian government enacted Law No. 12,527 to ensure transparency and public access to information. More specifically, Law No. 12,527 guarantees Brazilian citizens’ access to public documents of federal, state, provincial, and municipal agencies and the three branches of the government. In addition, the Law imposes a duty on public institutions to make basic information, including matters of jurisdiction, organizational structure, and budget execution, available on the Internet.

Federal laws and regulations are generally available at the Official Gazette website and the following official portals, promptly upon enactment:

- [http://www4.planalto.gov.br/legislacao/](http://www4.planalto.gov.br/legislacao/)
- [http://www.in.gov.br/web/guest/inicio](http://www.in.gov.br/web/guest/inicio)

Foreign capital laws and regulations are available at the websites of the Central Bank and the Securities and Exchange Commission (CVM), respectively:

- [http://bcb.gov.br](http://bcb.gov.br)
- [http://cvm.gov.br](http://cvm.gov.br)

Consultation with Stakeholders

Brazilian law does not mandate public or stakeholder consultations before a new bill is enacted into law. However, in practice, some regulators such as the Central Bank and Securities and Exchange Commission may conduct public hearings on pending bills as part of the multi-pronged process for passing the bills into laws.

B. International Legal Instruments Regulating Foreign Investment

Brazil has undertaken legally binding international commitments through a variety of international investment agreements (IIAs — signed at the bilateral, plurilateral and multilateral level. These commitments mainly cover entry and establishment conditions, protection, as well as the legality of specific types of incentives (see Table 1.).

Having been a member of the World Trade Organization (WTO) since January 1, 1995, Brazil has commitments under several WTO Agreements. Under the General Agreement on Trade in Services (GATS), Brazil grants rights to services suppliers from other WTO member countries. This includes services supplied through commercial presence (defined as establishment of a territorial presence), in other words through FDI. These rights are granted through commitments undertaken in “schedules”. The “schedules” list sectors being opened, the extent of market access being given in those sectors (for example, whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). Brazil has made commitments to market access and national treatment in 7 out of 12 services sectors in the WTO Classification:

- (i) Business services, (ii) Communication services, (iii) Construction and related engineering services, (iv) Distribution services, (v) Financial services (vi) Tourism and travel related services, and (vii) Transport services. In these sectors, Brazil has made partial commitments on market access for specific services in 17 sub-sectors, as well as commitments on national treatment in 17 sub-sectors (partial 4, full 13). “Partial” means that although commitments have been made, there are still limitations/reservations, which may differ in their restrictiveness. For example, they may be more restrictive by limiting the equity contribution of the foreign investor, or less restrictive by merely requiring foreign service suppliers to become a member of a union chamber.
Table 1. Brazil’s International Investment Framework

<table>
<thead>
<tr>
<th>Agreement(s) as Basis of Commitments</th>
<th>Type of Agreement</th>
<th>Investment Policy Dimensions Covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>WTO GATS Agreements</td>
<td>Multilateral</td>
<td>Entry and Establishment</td>
</tr>
<tr>
<td>WTO TRIMs Agreement</td>
<td>Multilateral</td>
<td>Entry and Establishment, Incentives</td>
</tr>
<tr>
<td>WTO SCM Agreement</td>
<td>Multilateral</td>
<td>Incentives</td>
</tr>
<tr>
<td>WTO TRIPS Agreement</td>
<td>Multilateral</td>
<td>Protection</td>
</tr>
<tr>
<td>Treaties with Investment Provisions</td>
<td>Plurilateral or Bilateral</td>
<td>May cover Entry and Establishment, Protection, Incentives</td>
</tr>
<tr>
<td>(19 signed, 13 in force)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bilateral Investment Treaties (this includes the Cooperation and Facilitation of Investment Agreements) (27 signed, 2 in force)</td>
<td>Bilateral</td>
<td>May cover Entry and Establishment, Protection, Incentives</td>
</tr>
<tr>
<td>Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)</td>
<td>Multilateral</td>
<td>Protection (Dispute settlement)</td>
</tr>
<tr>
<td>IMF Articles of Agreement (Art. VIII Acceptance)</td>
<td>Multilateral</td>
<td>Protection</td>
</tr>
<tr>
<td>Double Taxation Avoidance Agreements (32 treaties in force)</td>
<td>Bilateral</td>
<td>Taxation</td>
</tr>
</tbody>
</table>

Source: World Bank Analysis

Note: Treaties with Investment Provisions refer to treaties other than Cooperation and Facilitation of Investment Agreements, containing few to no substantive investment protection provisions.

In addition, under GATS every member is obligated to unconditionally extend to service suppliers of all other WTO members Most-Favored Nation (MFN) Treatment. However, Brazil has made reservations in that regard in two services sectors: telecommunication services and transport services. For example, Brazil maintains the right to apply differential treatment on a reciprocity basis concerning market access for telecommunication services providers.

Under the WTO Agreement on Trade Related Investment Measures (TRIMs), Brazil has committed not to apply certain investment measures that restrict or distort trade (local content requirements, trade balancing requirements, foreign exchange restrictions and export restrictions). These measures are prohibited both when the obligation for the foreign investors is mandatory and when it is tied to obtaining an advantage (that is, an incentive). Incentives are further regulated by the WTO Agreement on Subsidies and Countervailing Measures (SCM), which among others prohibits certain types of export subsidies. Under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), foreign investors’ intellectual property rights are protected. In case of a violation of any of its WTO commitments, Brazil may be sued under the WTO dispute settlement mechanism.

Brazil has further entered into obligations through international investment agreements (IIAs) — two Bilateral Investment Treaties (BITs) (this category includes the Cooperation and Facilitation of Investment Agreements) and 13 Treaties with Investment Provisions (TIPs) are currently in force. The latter category comprises treaties that include obligations commonly found in Bilateral Investment Treaties (for example, a preferential trade agreement with an investment chapter), or treaties with limited investment related provisions. Brazil’s TIPs are framework and cooperation agreements, containing few to no substantive investment protection provisions. Notably, only two Cooperation Facilitation Investment Agreements (CFIAs) are currently in force: the Brazil-Angola CFIA (signed 2015, entered into force 2017), and the Brazil-Mexico CFIA (signed 2015, entered into force 2018). Throughout the 1990s, Brazil
had signed 14 traditional-type BITs, which its National Congress refused to ratify, partially due to concerns about the constitutionality of these agreements. The concerns raised were that investor-state dispute settlement (ISDS) provisions limit states’ rights to regulate while granting entry and establishment benefits to foreign investors. In that context, Brazil in 2012 developed a new model agreement: Cooperation and Facilitation Investment Agreements. These agreements aim at fostering investment cooperation and facilitation and create mechanisms such as ombudsmen and joint committees to monitor investment relations and prevent disputes. They exclude the coverage of portfolio investments and indirect expropriation, and only provide for state-state dispute settlement (see further Box 1.). Negotiation of the first CFIA was initiated after the approval of its concept by the Ministers Council of the Foreign Trade Board (CAMEX) in 2013. Brazil has concluded negotiating such agreements with 15 countries: Angola, Chile, Colombia, Ecuador, Ethiopia, Guyana, India, Jordan, Malawi, Mexico, Morocco, Mozambique, Peru, Suriname, and the United Arab Emirates.

Brazil is also promoting its CFIA approach in plurilateral and multilateral institutions such as MERCOSUR and the WTO. In 2017, the four MERCOSUR member states Argentina, Brazil, Paraguay and Uruguay signed the Intra-MERCOSUR Investment Facilitation Protocol. It focuses on dispute prevention and establishes an ombudsman mechanism, based on elements from Brazil’s CFIA model. Brazil is also strongly engaged in driving discussions on investment facilitation at the WTO. Following a call for structured discussions made by 70 WTO members (including Brazil) in December 2017, at the beginning of 2018 it submitted a draft proposal for a potential agreement on investment facilitation to WTO’s General Council. The proposal includes articles

Box 1. Brazil’s Cooperation and Facilitation Investment Agreements (CFIAs)

The underlying idea of CFIAs is that states need to cooperate and maintain organized dialogue with investors to foster sustained investments. CFIAs thus focus on stimulating and supporting mutual investments, adopting the paradigm of investment facilitation. Their main features are the following:

- **Scope of the agreements**: The scope is generally limited to FDI and does not, as many traditional BITs, cover portfolio investment. Some CFIAs, such as the Angola CFIA, subject all definitions to domestic law.

- **Substantive protection guarantees**: CFIAs offer some of the protection guarantees generally contained in traditional BITs: national treatment, most-favored nation treatment, transfer of funds, protection from strife, as well as protection from expropriation. In some treaties, such as the Angola CFIA, most-favored nation treatment is extended to the pre-establishment phase. However, fair and equitable treatment is generally not provided, and protection from expropriation is limited to direct expropriation, not including indirect expropriation.

- **Institutional governance, dispute prevention and settlement**: Two mechanisms are created under each CFIA: (i) an Ombudsman or Focal Point, and (ii) a Joint Committee for state-state cooperation and dispute prevention. An Ombudsman or Focal Point is a centralized mechanism which receives investor queries and specific grievances against other State agencies. Through coordination with other governmental entities, the Ombudsman or Focal Point seeks to find solutions to the issues faced by foreign investors. Within the Joint Committee for state-state cooperation and dispute prevention, representatives of investors and governments involved can raise grievances and try to find a solution. The Focal Points or Ombudsmen are closely involved in the dispute prevention process and must report to the Committees. CFIAs also provide for state-state arbitration, but don’t include investor-State dispute settlement (ISDS).

- **Corporate Social Responsibility**: CFIAs include best-effort obligations for investors to carry out the highest possible level of contributions to sustainable development of the host State and the local community.
that aim to improve the transparency, predictability, and efficiency of regulatory and administrative frameworks related to investment policies and measures. It further emphasizes that issues such as investment protection or dispute settlement are not foreseen under current WTO dispute rules, and that market access, as well as government procurement, should fall outside the ambit of an investment facilitation accord.

Brazil is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention), facilitating the enforcement of arbitral awards. Yet, as described above, Brazil does not include investor-State arbitration in its IIAs.

Acceptance of Art. VIII of the IMF Articles Agreement requires Brazil to maintain current account convertibility, enabling investors to transfer certain payments related to their investments. Brazil is also party to 32 Double Taxation Avoidance Agreements (DTAAs) that are in force, influencing its ability to tax foreign investors and investments.

C. Key Institutions for Investment Promotion

Brazil has centralized national-level investment promotion agencies charged with investment promotion functions for all economic sectors. There are sub-national or regional development agencies that also generally target and promote investments in their respective regions.

National Level Institutions

The Brazilian Trade and Investment Promotion Agency (Agência Brasileira de Exportação e Investimento) (Apex-Brazil) has the mandate to promote Brazilian products and services abroad, and to attract foreign investment to strategic sectors of the Brazilian economy. It was created in 2003 and is an independent government agency affiliated with the Ministry of Foreign Affairs. Apex-Brazil is composed of three boards:

- Governing Council, with the participation of the Minister of Foreign Relations, the
- Business Board comprising Directors; and
- Executive Board comprising the President.

Apex-Brazil is not tasked with any regulatory functions, such as granting FDI approvals. Its main functions are to develop the competitiveness of Brazilian companies, promote the internationalization of their businesses and provide investment facilitation services to investors. As part of its facilitation services, Apex-Brazil prepares analysis covering industry sectors and markets, economic trends, general guidelines on legal and fiscal matters, and provides information on market and sector intelligence including input costs, suitable locations and talent pool availability. Apex-Brazil also acts as liaison between potential investors, key suppliers and regulatory and local authorities to promote and facilitate investments in Brazil.

The Brazilian Board of Foreign Trade and Investments (CAMEX), created in 1995, has the mandate to formulate, coordinate and implement foreign trade policy and to promote international trade, investments and international competitiveness of Brazil. It was previously affiliated with the Ministry of Industry, Trade and Services but is now housed under the Ministry of Economy. CAMEX is an agency of the Governing Council which is responsible for directly advising the President in the formulation of governmental policies. CAMEX acts at 2 levels — the Council of Ministers (chaired by the President of Brazil, and comprised of the Minister of Foreign Relations, the Minister of Finance, the Minister of Agriculture, Livestock and Food Supply, the Minister of Economy) and
the Executive Secretariat. It is responsible for setting the main objectives and procedures for the implementation of national foreign trade policy, coordination and orientation of trade divisions and public entities, and simplification of procedures and controls on imports and exports.

In 2016, CAMEX created the National Investment Committee (Coninv) to formulate proposals for public policies, guidelines and actions related to foreign direct investments in Brazil and Brazilian direct investments abroad. Its functions include monitoring the implementation by competent agencies, of the investment decisions taken by CAMEX and coordinating the actions and harmonizing the performance of various agencies in the area of investment. In 2019, Decree No. 9885 restructured the Coninv at CAMEX. Coninv is chaired by the Ministry of Economy and comprises the Ministry of Foreign Affairs, the Federal Revenue Authority of the Ministry of Economy, the Ministry of Agriculture, Livestock and Supply, the Secretariat of the Investment Partnership Program of the Civil House, the Ministry of Infrastructure, the Ministry of Defense, and the Civil House of the Presidency of the Republic. The Committee’s Presidency may invite the CEO of the Brazilian Agency for the Promotion of Exports and Investments (APEX-Brasil) to participate in the Committee’s meetings, without the right to vote.

In April 2019, the Executive Secretariat of CAMEX launched the Direct Investments Ombudsman (DIO), a “single window” for investors. It is responsible for receiving requests and inquiries about investments, to be answered jointly with the public agency responsible for the subject matter (at the federal, state and municipal levels) involved in each case. This new structure provides facilitation to investors — by a single government body, in charge of responding to investor queries within fixed time periods.

Sub-National Investment Promotion Agencies

Some states and regions within the Federation have set up investment promotion agencies or units to assist investors who seek to invest within their states or regions. For instance, São Paolo has established the Investe São Paolo Investment Promotion Agency. The national level agencies generally coordinate with the sub-national investment promotion agencies.

D. Foreign Investment Promotion Strategy

There is no single, national consolidated FDI promotion strategy that is publicly available. Different agencies and trade chambers are tasked with promoting expansion of Brazil’s market share and competitiveness in the international market, and with attracting foreign investment (including investments in the technology, infrastructure, services and economic development of poor regions). The strategic direction varies by sector and agency in-charge.
3. INVESTMENT ENTRY AND ESTABLISHMENT

Market Entry and Sectoral Limitations

The Brazilian Constitution strictly prohibits both domestic and foreign investment in certain business activities which are reserved for the public sector (Prohibited Sectors) and restricts foreign investment in certain business activities and sectors via conditions or equity caps (Restricted Sectors). Certain sector-specific laws may also impose prohibitions or restrictions on FDI in the relevant sector. There is no centralized “negative list” itemizing the Prohibited or Restricted Sectors. Apart from the Prohibited and Restricted Sectors, the general position is that 100% foreign equity is permitted in a sector. Brazil’s Foreign Capital Law (Law 4131) does not add any express prohibitions or restrictions in any particular sectors or business activities.

Prohibited and Restricted Sectors

Table 2 lists the Prohibited and Restricted Sectors based on the Brazilian Constitution and certain sector specific regulations.

A foreign investor is not generally required to form a joint venture in order to establish a business in Brazil, but certain Restricted Sectors (such as aviation, broadcasting) mandate a threshold percentage of Brazilian participation. In such sectors, a foreign investor must by default form a joint venture with a local partner in order to meet the Brazilian participation requirements. Similarly, as a general rule mergers and acquisitions by foreign investors are not restricted in Brazil, but the Brazilian entity and the foreign investor are required to notify the Central Bank if a corporate act modifies the

<table>
<thead>
<tr>
<th>Prohibited Sectors</th>
<th>Scope</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nuclear Energy</td>
<td>Exploring, exploiting, processing, industrializing, and selling radioactive minerals and their byproducts, with only a few exceptions in relation to radioisotopes in certain circumstances</td>
</tr>
<tr>
<td>Health Care</td>
<td>Direct or indirect participation of foreign companies or foreign capital in health care in the country, except that FDI is permitted in legal entities carrying out certain activities in Brazil, such as running hospitals, clinics and laboratories; production and distribution of medicines and other health products; research and services related to human genetics; clinical analysis, diagnostic imaging and analysis of anatomical pathology; and family planning (as per Law 13097/2015)</td>
</tr>
<tr>
<td>Post and Telegraph</td>
<td>Postal Services</td>
</tr>
<tr>
<td>Aerospace</td>
<td>Launch and orbital positioning of satellites, vehicles, aircraft and related activities, which does not include the production or commercialization of such assets</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Restricted Sectors</th>
<th>Restrictions on Foreign Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Journalism, Broadcasting</td>
<td>Up to 30% foreign equity permitted in journalism and broadcasting of sounds and images with sounds</td>
</tr>
<tr>
<td>Mining</td>
<td>Up to 49% in activities involving national security areas or within 150 km of the country’s borders</td>
</tr>
<tr>
<td>Telecommunications</td>
<td>Up to 49% foreign equity permitted in telecom service provider companies</td>
</tr>
<tr>
<td>Financial Institutions</td>
<td>Foreign equity subject to national interest review</td>
</tr>
</tbody>
</table>

Source: Analysis by Baker McKenzie based on country’s laws and regulations.
Note: The table is based on a review of 32 specific sectors identified for the purpose of this research. The list of sectors is therefore not exhaustive.²
local company’s foreign equity structure. The local participation requirements in the Restricted Sectors must be complied with. Further, prior authorizations may be required from regulators in certain sectors (such as broadcasting and financial institutions) for any merger or acquisition activity by a foreign investor in that sector.

**Forms of Establishment**

Foreign investors can freely invest in and generally hold any type of shares in a Brazilian company (for example, ordinary shares and preference shares), provided that a legal representative residing and domiciled in Brazil is appointed (and registered with the Brazilian federal tax authority) with powers to handle local matters and manage its assets in Brazil. Apart from the Prohibited and Restricted Sectors, there is no statutory prohibition against the establishment of a wholly foreign-owned subsidiary, subject to obtaining the necessary regulatory approvals to carry on its business activities in Brazil.

No special restrictions apply regarding the legal forms of companies that foreign investors can establish or invest in the country. A foreign investor can carry on business in Brazil through one of three structures: (i) limited liability company (sociedade limitada) (which is the most common corporate model in Brazil), (ii) individual limited enterprise, or (iii) joint stock company or corporation (sociedade anonima). Brazilian law also permits foreign investors to set up a branch office of a foreign company in Brazil, subject to specific governmental authorizations.

**Restrictions on Non-Equity Contract Based Investments**

Pursuant to the foreign exchange control rules, all technology transfer agreements involving intangible assets such as patents and trademarks are subject to registration with the National Institute of Industrial Property (INPI). This registration approval may be granted or denied depending on the availability of the technology in Brazil or the necessity of services to be rendered in Brazil. In case of agreements involving the payment of royalties to a foreign investor, the registration of such an agreement would also require proof of validity of the underlying IP rights in Brazil (such as a registered and valid patent or trademark in Brazil).

**Minimum Investment Requirements**

As a general rule, foreign investors are not subject to any minimum investment requirements, except in certain regulated sectors. A special case arises when an entity receiving FDI hires an expatriate to become a general manager or director of the Brazilian entity. Under such circumstances, the minimum capital required is (a) 600,000 Brazilian reais (R$) per individual or (b) R$150,000 per individual combined with an obligation to generate at least 10 new jobs within a 2-year period from the incorporation of the Brazilian entity or arrival of the foreign individual in Brazil.

**Quantitative Limits**

There are generally no mandatory quantitative limits on the number of foreign service providers, enterprises or market players that can operate in a given sector.

**Restrictions on Expatriate Appointments**

Pursuant to the Brazilian Labor Code, a company must hire two Brazilian employees for each foreign employee. This so-called ‘two-thirds rule’ is mandatory not only relative to the total number of employees, but also to the corresponding payroll (that is, two-thirds of the payroll must be directed to Brazilian employees).

While no overarching restrictions are generally placed on foreign investors with respect to the appointment of expatriates to the boards of local companies or key managerial positions, certain sector-specific laws may impose some restrictions. For example, companies in the mining sector pursuing activities within a frontier zone (area within 150 kilometres of Brazil’s frontier with other countries) are required to ensure that (i) at least two-thirds of the company’s employees are Brazilians and (ii) the majority of the members of the management are Brazilians with predominating management powers over the company. For entities
operating in the insurance and private pension sector, the appointment of a foreign citizen must be ratified by the Department of Private Insurance (SUSEP). Similarly, with respect to financial institutions and other companies authorized to operate in Brazil by BCB or the CVM, the appointment of a foreign citizen must be approved by BCB and/or CVM, as applicable. Expatriates appointed as managers of financial institutions and related entities are subject to a number of approvals from BCB and/or the CVM. They are required to obtain work permits and reside in Brazil, among other conditions (specifically, to be registered at the BACEN cadastre system Unicad and/or with the CVM, as well as with the Brazilian Revenue Authority).

Foreign Investment Approval

Foreign investors do not require any FDI license, approval or authorization from a regulatory body, but all foreign investments are required to be registered with the Central Bank online electronic registry. The registry is called RDE-IED (Registro Declaratorio Electronico de Investimentos Externos Diretos) and is available at its website. As part of this process, the Brazilian entity receiving the foreign investment in cash or kind and the foreign investor must first obtain a National Registry of Legal Entities or Individual Taxpayer Registry identification number by registering the relevant data about the parties and the contemplated investment. Following this step, the Brazilian investee is able to obtain a specific investor-investee registration number from the RDE-IED that is used for all financial transactions between the investee and the foreign investor through authorized banks. The Brazilian investee must register the foreign investment within 30 days of the date foreign capital (including loan proceeds) enters Brazil or within 90 days of customs clearance of asset capital contributions. The foreign capital to be registered include the original investment, subsequent additional investments and potential reinvestment of profits. The aggregate registered amount forms the basis of repatriation and computation of capital gain taxes. The registration grants the foreign investor the right to remit dividends, interest and repatriate original capital.

Other specific regulatory approvals may be required for FDI in certain regulated sectors such as telecommunications, mining, insurance and financial institutions.
Protection Against Expropriation

Investments in Brazil are generally protected against expropriation under the Brazilian Constitution and the Law of Expropriation for Public Utility, Decree Law 3,365 of June 21, 1941 (Decree Law 3365). The Brazilian Constitution grants equal rights and treatment to foreigners and nationals alike and assures them an inviolable right of property. Article 5 of the Constitution embodies the due process clause requiring the law to establish the procedure of expropriation for public use or need, or for social interest, against just and prior compensation in money, with few exceptions set forth in the Constitution. The provision applies equally to nationals and non-nationals. The principle of equal treatment is also enshrined in Article 2 of Law 4131 that expressly states that foreign capital invested in Brazil shall receive the same legal treatment granted to national capital in equal conditions.

Decree Law 3,365 requires that an expropriation be preceded by the following conditions: (i) a decree declaring the property of public interest; (ii) a unilateral evaluation made by the State of the property; (iii) a compensation proposal made by the government; and (iv) timely deposit of the compensation amount. The Law does not establish any kind of special or different treatment for foreign investors. Brazil’s standard for indemnification for expropriation are generally consistent with international standards. However, parties often dispute fair market value for the expropriated property and such disputes submitted to Brazilian courts take many years to reach final settlement. In August 2019, Brazil enacted a new law to allow for expropriation related disputes to be submitted to mediation or arbitration for faster dispute resolution and to define adequate compensation.

Restrictions on Inflow and Outflow of Funds

Brazil’s foreign exchange regime is generally liberal, and few restrictions or approval requirements apply to the inflow of funds to Brazil or repatriation of proceeds from Brazil. Pursuant to Law 4,131, foreign capital may be freely invested in Brazil and enjoys the same treatment as local capital. Inbound capital investment may be transferred to Brazil through any authorized bank dealing in foreign exchange without any approval from the Central Bank. However, this law requires all inbound foreign capital (in cash and kind) and all reinvestments to be registered with the Central Bank Information System to enable remittance of profits and interest on foreign loans as well as repatriation of capital investment. Foreign loan agreements must be documented by a formal contract stipulating the interest rate. While no prior approval from the Central Bank is required for foreign currency loans, the Central Bank may refuse to accept loans on which interest is charged over and above the prevailing rate in the country of origin.

There is no restriction on the remittance of profits or interests or on the repatriation of capital to foreign investors outside Brazil (net of applicable taxes and subject to other standard compliances), provided the foreign investments are duly registered with the Central Bank. Tax free capital repatriation is permitted up to the amount of inbound foreign capital registered with the Central Bank, and any surplus amount is subject to capital gain tax. There is no minimum period of investment. Remittance for technology transfers, including patents and trademarks, requires the Central Bank’s prior approval. For payments related to patents, trademark license and other agreements involving transfer of technology, that are due by a Brazilian subsidiary to its foreign parent, there are remittance limits (such as, for patents between 1-5% and for trademarks up to 1%, of the net revenues of the product manufactured or sold).

The Central Bank is the main agency responsible for managing control over foreign capital inflows and outflows from Brazil, including setting forth the administrative rules and regulations for registering foreign capital and monitoring
remittances. Law 4,131, CMN Resolution 3,691 and BCB Circular 3,691 stipulate requirements and processes for cross border transfer of funds. However, they don’t prescribe specific time-lines for processing transfers.

According to Article 28 of Law 4,131, in the event of a serious balance of payment deficit the National Monetary Council may impose restrictions on the convertibility of national currency into foreign currency and limit remittances for a defined period. Remittances of royalties may also be limited.

Dispute Settlement

Foreign investors can resort to Brazilian Domestic Courts to resolve their disputes, but generally do not have access to investor-state arbitration. Brazil is not a party to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States of 1965 and has not ratified any Bilateral Investment Treaty, which provides for investor-state dispute settlement mechanism through international arbitration. It is worth noting that article 1, § 1 of the Brazilian Arbitration Act (Law No. 9,307/96 as amended by Law No. 13,129/15) allows Brazilian public entities to settle their disputes, to discuss disposable economic rights by arbitration. Therefore, the foreign investor can resort to commercial arbitration — either domestic or international — whenever it has entered into an agreement with a Brazilian public entity containing a valid arbitration covenant. Commercial arbitration is solely allowed to discuss matters when Brazilian public entities are acting as private parties in commercial agreements, not when they are exercising powers and prerogatives of a State.

For investors which are located in a country that has signed an Cooperation and Facilitation of Investment Agreement (CFIA) with Brazil, disputes in connection with it shall be settled by international arbitration between States. CFIAs do not provide for investor-state arbitration. This means that the investor depends on its own State to initiate an arbitration proceeding against the host State, which shall occur solely if the parties fail to solve their dispute amicably. CFIAs provide for an ombudsman mechanism, which are focal points designated by each party to facilitate compliance with commitments and to encourage dialogue and negotiations between investors and the host State (see further Section 2.B. — Brazil’s International Investment Framework).

Article 5 of the Brazilian Constitution ensures due process of law, applicable to all judicial, arbitration and administrative proceedings. Accordingly, a court, arbitral panel or public agency is required to respect the foreign investor’s right to raise arguments, present full defense and produce evidence to prove its allegations prior to a final decision. Additionally, the Brazilian legal system mandates that all decisions issued by an authority be subject to a reconsideration before a higher authority. The same provision is also found in Law No. 9,784/1999, which regulates public administrative procedures involving the Federal Public Administration. Article 2 ensures the due process of law and the right to appeal to a superior authority in all procedures involving public entities.
5. INVESTMENT INCENTIVES

Brazil provides a framework of tax incentives at the federal, state and municipality levels to promote investments in the country’s strategic sectors and designated regions. Incentives are listed in a number of laws, decrees and official announcements. These incentives are made available to both domestic and foreign investors. Some examples of tax and financial incentives are noted below:

- **Tax incentives may be granted in Brazil’s free trade zone covering the city of Manaus and surrounding territory within the State of Amazonas, located in Northern Brazil in the Amazon Basin (Manaus Free Trade Zone — ZFM).** Authorities within the ZFM (Superintendência da Zona Franca de Manaus — SUFRAMA) have discretion to grant tax incentives to companies intending to locate their operations in the area.

  Provisional Measure No 2,199/2001 provides for Corporate Income Tax incentives applicable to legal entities established in the Amazon area, which includes the ZFM. This law grants 75% Income Tax reduction for a 10-year period for companies located within the jurisdiction of the Development Agency of Amazonas (SUDAM) with relevant projects for the establishment, improvement, modernization and diversification of manufacturing activities. The reduction is applicable to the so-called “lucro da exploração” which means that it will only apply on income resulting from the incentivized activity. The amount of tax reduction shall not be distributed to shareholders and will constitute capital reserve that can only be used for purposes of loss absorption or increase of capital.

  Additionally, those companies may enjoy other tax incentives, including: (i) import duty reduction; (ii) exemption from federal excise tax if local purchases of raw materials and upon sale of manufactured products; (iii) presumed credit of State Value Added Tax (ICMS); (iv) exemptions from contributions to social integration programs and social security on imports (PIS/COFINS); and (vi) reduced rates of PIS/COFINS and presumed credit of 5.6% upon resale of products and acquisition of raw materials.

- **Brazilian law provides certain incentives related to accelerated depreciation, aiming to increase investments in certain targeted sectors or activities.** The Income Tax Regulations (Decree 9,580/2018) recently consolidated activities that can enjoy accelerated depreciation (article 324 to 329). Some activities listed in the Income Tax Regulations are:
  - Equipment for research and development and technological innovation;
  - Equipment for rural activities;
  - Vehicles, wagons and locomotives designated to fixed assets.

- **Incentives may be related to the State Value Added Tax (ICMS), which is the main VAT in Brazil and is levied on sales of goods.** Most of the ICMS incentives are applicable to essential products such as medicines and food products included in the “basic monthly food basket” (essential food supplies). According to article 155, §2º, XII, “g” of Federal Constitution and Complementary Law No 24/1975, ICMS incentives should be granted through Interstate Agreements, after due approval by the National Finance Policy Council (CONFAZ), to be valid. However, certain tax incentives granted unilaterally by some States until 2017 have been validated by CONFAZ after the enactment of Complementary Law No. 160/2017.

- **Tax incentives are further available for certain strategic sectors, such as the “REPORTO” regime for the port sector.** The REPORTO is provided by Law No. 11,033/04, enacted with the purpose of reducing the costs incurred by the companies authorized to
operate Port Terminals. The current legislation provides that the REPORTO incentives apply until December 31, 2020. This incentive regime applies to the entities that perform port-related activities, for example, port operator, concessionaire, dredging companies, and so on. The beneficiaries of REPORTO are entitled to import or to acquire in the local market the fixed assets listed in the Annexes I and II of Decree No. 6,582/08 with suspension of the federal taxes. The assets must be utilized in the activities listed by Article 14 of the referred Law, such as the loading, discharge, storage and handling of cargo in the port areas.

The following federal taxes are exempted upon the import/local acquisition:

- Import Tax (II), limited to the goods that do not have a similar good in Brazil;
- Federal Excise Tax (IPI); and
- Social Contributions (PIS/COFINS).

Furthermore, the State VAT (ICMS) legislation of the State of São Paulo also provides that the outflows within the State and the importation of goods performed by REPORTO beneficiaries are exempted from ICMS.

- **Law No. 11,196/05 establishes tax benefits for companies that invest in research & development in technology innovation.**

- **Investments may benefit from real estate incentives related to the Real Estate Property Tax (IPTU), a tax under municipal competence.** The real estate tax incentives may vary according to the legislation of each municipality (currently Brazil has more than 5,500 municipalities). As a rule, the IPTU incentives are implemented to stimulate the establishment of companies and the development of specific areas within each municipality.

- **A number of tax incentives are available to exporting companies.** For example, REPES was created to increase technological innovation. This is a form of incentive directed to legal entities that predominantly carry out activities of software development or provision of information technology services and that, at the time of their option by the regime, assume an export commitment equal to or greater than 50% of its annual gross revenue from the sale of goods and services. In case of purchase or importation of new goods destined to the development of software and information technology services in Brazil, the Regime suspends (in specific situations and according to defined conditions) the requirement to pay PIS/COFINS, PIS/COFINS-Import and Federal Excise Tax (IPI). Another example is REINTEGRA, created by Law No. 12,546/11 and regulated by Decree No. 7,633/11. This incentive aims to partially or fully refund the remaining tax residue from the production of exported goods.

Financial incentives may also be available depending on the nature and scope of the investments:

- **The Brazilian National Development Bank offers financing (FINAME) for the acquisition of new machinery and equipment manufactured in Brazil (Decree No. 55,275/1964 and Decree No. 59,170/1966).** In order to be financed through FINAME, the machine or equipment must observe certain limitations on imported content.

- **Special lines of credit sponsored by government entities may be granted by banks in Brazil in different states of the federation with lower interest rates (for example, BNDES loans and programs for production and export of goods).** São Paulo Inova is an example of an incentive program in which the State of São Paulo makes available special lines of credit for companies with profits up to a certain amount (for example, up to R$300 million) that invest in technology projects. It also includes an investment fund directed at start-ups and innovation companies with profits between certain amounts (for example, R$3.6 million to R$5.8 million).

- **On December 11, 2018, Law 13,755 introduced the “Rota 2030” program, which provides the following main tax incentives**
for a five-year period with the aim to support technological development, innovation, environmental protection and quality in the automotive industry in Brazil:

- A 1% or 2% reduction of the IPI (VAT) on vehicles that meet certain requirements related to energy efficiency and other performance indicators;

- An additional corporate income tax deduction for R&D expenditure, equal to 34% of 30%-45% of R&D expenditure incurred in Brazil (ROTA 2030); and

- An exemption from import duty for imported parts and components (where no national equivalent is available) to be used in the manufacturing of automotive products.

Law 13,755 also extends certain existing tax reliefs related to the IPI for the automotive industry for businesses located in the North, Northeast and Mid-west regions of Brazil.

- Under the Information Technology Law (Lei da Informática), hardware and automation companies investing in Information and Technology Research and Development may be granted Excise Tax reduction. In order to be eligible for the benefit, the product’s NCM/SH (harmonized codes) must be listed on the qualifying products, provided by Decree No. 5.906/2006. The benefit is valid until 2029, covering all Information Technology hardware and automation goods produced in Brazil. It ranges from 70% of Excise Tax reduction for industrial plants located at south and southeast regions to 85% Excise Tax reduction for the other regions (north, northeast and mid-west).

There is no centralized database of all incentives offered to investors in Brazil. Federal tax incentives are available on the official portal of the Brazilian Federal Revenue Authority.

Eligibility Criteria and Approval Process

The granting of tax and financial incentives to foreign (and domestic) investors is contingent upon the satisfaction of certain criteria. If the incentive is provided in a published law/legislation, the eligibility criteria are often laid out in the same law/legislation. The approval process for receiving tax/financial incentives is not automatic. Applicants are required to apply to the relevant regulatory agency with the necessary details proving that they are eligible for the incentive they applied for.
6. INVESTMENT LINKAGES

For the purpose of this section, research was focused on availability of incentive schemes to increase local sourcing, technology transfer, and measures to improve information exchange between foreign investors and domestic suppliers. In Brazil, certain incentives are provided to increase local sourcing. For example, payments for transfer of technology remitted to non-resident beneficiaries are subject to a significant tax burden. The aim of the government is to incentivize the local development of technology within Brazil. Generally, many tax incentives granted in Brazil aim to encourage investors to buy from local suppliers rather than import, and imported goods can be subject to a significant tax burden upon importation into Brazil.

7. OUTWARD FOREIGN DIRECT INVESTMENT

For this section, research was focused on whether there are any legal instruments specifically covering outward investment and if there are, whether they impose any restrictions on outward investment. Brazil does not place any overarching restrictions on outward foreign direct investment (OFDI) and there is no omnibus legislation on OFDI in Brazil. Certain sectors may be subject to restrictions. Notably, the example, Brazilian financial institutions must obtain prior approval by BCB to open branches abroad or invest in foreign financial institutions, in accordance with CMN Resolution 2,723 of 2000, as amended, and BACEN Circular 3,689 of 2013, as amended. Similarly, pension funds (enidades fechadas de previdência privada) are also subject to limitations with respect to the amount of their investment abroad, as established by the CVM. Notably, the Direct Investment Ombudsman also helps domestic investors investing abroad.
8. RESPONSIBLE INVESTMENT

For this section, research was focused on whether there are any measures within the country’s investment legislation that are specifically targeted to ensure responsible investment. Being a signatory to the OECD Guidelines for Multinational Enterprises (Guidelines), Brazil has in 2003 established National Contact Points (NCPs) to assist with ensuring compliance with the requirements of responsible business conduct and to help settle disagreements concerning compliance with the Guidelines. The Guidelines provide a global framework for responsible business conduct covering all areas of business responsibility including disclosure, human rights, employment and industrial relations, environment, anti-corruption, competition, and taxation. Countries adhering to the Guidelines are required to set up National Contact Points. The National Contact Point of Brazil was established in 2003, and its structure was changed in 2019 by Decree No. 9,874 / 2019. It is located at the Executive Secretariat of the Foreign Trade Council of Ministry of Economy. The main functions of the National Contact Point are (i) to raise awareness of the Guidelines and (ii) to handle specific instances, providing a non-judicial dispute resolution mechanism concerning the company’s alleged failure to observe the Guidelines. More than 250 “cases” have already been raised with NCPs in the past 10 years. Most of them deal with labor relations, the environment and human rights violations.

Furthermore, general laws aimed at preserving the environment and ensuring that products produced comply with national and international standards also affect foreign investors. For example, the Brazilian laws and regulations regarding environment preservation (Article 170 of CF 88), public health protection, and so on apply equally to local and foreign investors.

As mentioned in Section 2.B., Brazil has undertaken international efforts to promote responsible investment as part of its CFIA approach, both on a bilateral basis and in multilateral fora. For example, its CFIAS signed in 2018 with Ethiopia, Guyana and Suriname each contain provisions on CSR, transparency, measures to combat corruption and illegality, as well as on investment and environment, labor affairs and health. In its draft proposal for a potential agreement on investment facilitation, submitted to WTO’s General Council in 2018 (JOB/GC/169), Brazil also explicitly refers to voluntary principles of corporate social responsibility that investors should strive to achieve.
This section considers Brazil’s recent policy measures on new technologies (that may affect both domestic and foreign investors). Globally, policy measures on new technologies tend to focus on the enabling (sectoral) regulatory framework, as well as on incentives, digital standards, and clusters. At the same time, countries have taken measures that highlight their changing approaches to national security. Other emerging policies that, though not directly related to investment, as a matter of fact impact investments, are data localization requirements as well as rules and regulations concerning the treatment and use of digitized information.

Brazil has taken several measures focusing on the development of new technologies:

- **On 26 April 2018, the Brazilian National Monetary Council issued Resolution No. 4,656 (Resolution), providing for the setup and operation of two new types of financial institutions (fintech institutions) specialized in lending through electronic platforms: direct credit companies (SCDs) and interpersonal lending companies (SEPs).** The objective of this new regulation is to provide greater legal certainty to the activities of lending fintechs and technology-intensive entities that operate in the credit market. The Resolution and Decree No. 9,544 of 2018, state that it is in the Brazilian Government’s interest for foreign investors to hold up to 100% of equity interest in SCDs and SEPs. This recent policy has the potential to unlock foreign investments in credit fintechs.

- **In June 2019, the Brazilian government issued a new Decree implementing the country’s National Plan for Internet of Things (IoT) and published it in the Official Gazette.** The National Plan aims to promote the development and implementation of IoT in various fields in the country while relying on free competition and circulation of data, subject to security and privacy guidelines. Among other things, it establishes strategic areas where investments are to be made available and developments are to be fostered. While the Decree does not expressly refer to foreign investment, it targets priority areas for investment in IoT technology.

- **In August 2018, Brazil passed its first comprehensive data protection regulation, the General Data Protection Law (Lei Geral de Proteção de Dados) (GDPL).** Like the EU’s General Data Protection Regulation, Brazil’s GDPL imposes new rules regarding the collection, use, processing, and storage of personal data in electronic and physical form and creates the Brazilian National Data Protection Authority to enforce the law, extending the compliance period to August 2020. Also similar to the GDPR, the GDPL the will have extraterritorial application, that is, the duty of compliance will exceed the geographical limits of Brazil. Any foreign company that has at least a branch in Brazil, or offers services to the Brazilian market and collects and treats personal data of data subjects located in the country, regardless of the nationality, will be subject to the new law.
The State of São Paulo is one of the main destinations of foreign investment. São Paulo is known as the most important financial center of Brazil, housing headquarters of major corporations and financial institutions, as well as B3 (the Brazilian Stock Exchange). According to BCB’s report on FDI (published in 2018), in 2015 FDI was distributed as follows: State of São Paulo (39% of FDI), followed by Rio de Janeiro (14%), Minas Gerais (12%), the South region (15%), the Northeast region (9%), the Centre-West region (4%) and the North Region (5%). Because FDI rules are mostly federal laws and regulations, investors are generally not affected by subnational/state laws regarding FDI, except for specific terms and conditions that may be established by certain States or the Federal government for the participation in public bids and competitions.

Local governmental authorities may establish incentives and specific contractual provisions and requirements (for example, under concession agreements and public bids) when retaining foreign services or accepting foreign investment participation. São Paulo Inova is an example of an incentive program where the State of São Paulo makes available special lines of credit for companies with profits up to certain amount (for example, up to R$300 million) that invest in technology projects and an investment fund directed toward startups and innovation companies with profits between certain amounts (for example, R$3.6 million to R$5.8 million). Further, São Paulo has established its own investment promotion agency — Investe São Paolo.
For the purpose of this section, research was focused on merger control and leniency frameworks in the country.

The primary law governing competition in Brazil is Law 12,529/2011 (Competition Law). The law structures the Brazilian System for Protection of Competition and sets forth preventive measures and sanctions for violations against the economic order, which are acts defined as having any of the following effects:

- To limit, restrain or in any way injure free competition or free initiative;
- To control the relevant market of goods or services;
- To arbitrarily increase profits; and
- To exercise a dominant position abusively.

The Administrative Council for Economic Defense (Conselho Administrativo de Defesa Economica) (CADE), established in 1962, is the main body in-charge of implementing competition law and policy in the country.

A. Merger Control

Brazil’s merger control rules are provided in the Competition Law and several Resolutions issued by CADE. Resolution No. 2/2012 provides the rules of merger review procedure. Resolution No. 17/2016 details the rules on notification of associative agreements. Further, CADE has issued guidelines on specific topics, such as on the assessment of horizontal mergers (2016) and remedies (2018).

The Competition Law adopts a pre-merger control system, requiring CADE’s approval before a merger is implemented. CADE is composed of two bodies: (i) CADE’s Superintendence General (SG), which is the first body to analyze a merger filing and can only approve it unconditionally or refer it to CADE Tribunal, and (ii) CADE’s Tribunal, which only reviews a notification in case of a referral from the SG or in case of an appeal (which can be submitted by the third party qualified as such in the notification or by a Commissioner from CADE Tribunal). CADE Tribunal can approve the transaction unconditionally, approve it subject to conditions or block it. Although this decision cannot be appealed within the administration, the parties can file a motion for clarification if any aspects of the decision are unclear. All administrative decisions can be appealed at the judicial level.

Merger notification thresholds are based on annual turnover in Brazil. If the economic group of the foreign investor did not accrue any revenues in Brazil in the year prior to the transaction, then no merger notification would be required. This assessment should consider both the foreign investor and its economic group pursuant to the following definition set forth by CADE Resolution No. 2/2012:

- All companies under common control of the foreign investor;
- All companies in which any of the companies identified above holds directly or indirectly participation of at least 20% of the capital or voting share.

If the foreign investor economic group reaches the revenue thresholds in Brazil, then the requirement to notify in Brazil would depend on the target economic group’s gross revenues. The revenue thresholds are as follows:

- The economic group of one party must have registered gross revenues equal or greater than R$750,000,000 in the previous fiscal year in Brazil; and
- The other economic group involved must have registered gross revenues equal or greater than R$75,000,000, in Brazil in the previous fiscal year.
Per CADE Resolution No. 2/2012, under the Brazilian merger control regime the following “acts of concentration” trigger a notification:

- Consolidation of two or more previously independent companies;
- The incorporation of one or more companies by other companies;
- Direct or indirect acquisition of joint or sole control: there is no specific regulation regarding the shareholding required to trigger control (either sole or joint). CADE will typically assess how the functioning of the management and decision bodies of the target with regards to competition related issues will be affected as a result of the transaction in order to reach a conclusion. Shareholding acquisitions by the sole controller do not require a merger control notification;
- Acquisition of minority shareholding: if the acquisition is equal to or in excess of 20% and if the acquirer and target are not vertically and/or horizontally related (and equal to or in excess of 5% if otherwise); and
- Joint ventures, consortia and collaborative agreements (provided they produce effects in Brazil and meet the turnover threshold), unless established for the purpose of participating in public bids).

Pre-notification Meetings

Pre-notification contacts are only available in ordinary procedures. CADE does not engage in pre-notification meetings to discuss fast-track procedure cases. However, CADE may engage in pre-notification discussions for non-fast-track cases as explained in CADE handbook adopted in 2017.

Fast Track Procedure and Information Requests

CADE’s Resolution No. 2/2016 establishes a fast-track procedure available for the following cases:

- Lack of horizontal or vertical overlaps resulting from the transaction;
- Combined market share below 20% in horizontal mergers;
- For transactions resulting in vertical overlaps, market shares involved (either in the upstream or downstream markets) are below 30%;
- Lack of causal link (less than 50% of horizontal overlap and a Herfindahl-Hirschman Index (HHI) variation below 200);
- Other cases deemed simple enough to excuse a detailed analysis.

A fast-track notification requires less information from the parties, and decisions are shorter and take less time to be issued. The information required from the parties generally includes a description of the overlaps and the structure of the supply (including market shares for the year prior to the transaction), in addition to some corporate information. Decisions issued in fast-track procedure are usually much shorter than in ordinary track cases. It also takes CADE substantially less time to review a fast-track case — the average time for approval is 13 days from submission (or from when CADE deems the notification complete). The regulation sets out a maximum review period of 30 days in fast track cases.

There is no limitation on submitting multiple information requests to merging parties during the merger review procedure. CADE does not have the ability to “stop the clock” after the review has started. If CADE understands the filing form is incomplete, however, it may request the parties to re-file presenting a list of additional information, in which case the deadline for approval would count as of the date the parties re-file.

Remedies

CADE’s Resolution No. 2/2016 provides that the parties can propose commitments from the moment of the filing of the notification up until 30 days after the Superintendence General’s decision challenging the transaction before the CADE Tribunal. CADE may impose behavioural and/or structural restrictions to the clearance of the transaction. CADE’s Antitrust Remedies Guidelines establish, however, that structural remedies are preferred to behavioural remedies.
File Access and Third Party Intervention

The parties have access to the decision and to the case files and are allowed to present their arguments to the Tribunal, but CADE protects the confidentiality of certain type of information. Confidential information could be responses to the market test, which the respondent requested confidentiality of the information presented, quantitative data of market studies based on these data, or information shared from foreign authorities, among others. CADE assigns separate confidential case files to each party that presents confidential information in a procedure. CADE’s Internal Rules set forth that confidentiality can be granted to the following type of information: (i) turnover of the parties, (ii) data and value of the transaction, (iii) transaction agreements and their translation, (iv) annual reports/financial statements (if not publicly available), (v) the parties’ quantity of sales (volume and value) (vi) main clients/suppliers; (vii) commercial strategies; (viii) production capacity; and (ix) production costs (provided that none are publicly available).

Third parties may request to participate as an interested third party, in which case they may submit documents and information to CADE to influence its decision. The third party has a 15-day period counting from the publication of the notification notice to file a request. It is up to the Superintendence General to decide whether to admit the third party, based on its potential contributions to the proceeding in light of the defence of the collective interests. The main procedural prerogative of the interested third party is the right to appeal the Superintendence General’s clearance decision.

Substantive Assessment

The Competition Law prohibits mergers that imply the elimination of competition in a substantial part of a relevant market, that may create or reinforce a dominant position, or that may result in market domination. In addition, the Competition Law recognizes efficiencies’ defense. According to CADE’s Analysis of Horizontal Mergers Guidelines, CADE usually divides the competition assessment into the following steps:

- Definition of the relevant markets;
- Analysis of the levels of concentration in relation to the relevant markets previously identified;
- Assessment of probability of exercise of market power acquired or increased as a result of the transaction (in this step CADE analyzes possibility of entry and rivalry, for example);
- Analysis of countervailing buyer power;
- Balancing of efficiencies and negative effects to competition.

CADE’s standards in relation to the review of the above factors vary from one case to another, but CADE will typically not approve a transaction based only on efficiency arguments. CADE’s jurisdiction is limited to competition law matters.

Penalties and Appeals

In case of mandatory notification, if the transaction is implemented before CADE’s approval, the authority may impose fines ranging from R$60,000 to R$60,000,000 and the acts performed before clearance may be declared null and void, as per CADE Guidelines for the Analysis of Previous Consummation of Merger Transactions. Companies can be fined for not implementing remedies ordered by CADE. This will vary according to the contractual sanctions for non-compliance in the remedy agreement entered between the parties and CADE, and typically includes imposition of daily fines among other penalties. Decisions from CADE may be challenged in the courts.

Publicity and Deadlines for Merger Decisions

A summary of a decision is published in the Official Journal, and a public version of the decision is included in CADE’s website. The published decisions only include public aspects. Confidential information from the parties, confidential responses to the market test, as well as any analytics prepared by CADE based on confidential information are omitted from the public version of a decision. Confidential market shares will typically be presented in ranges in the public version of the decision, in order to protect
the confidentiality of the information but also allow publicity of the level of concentration involved.

The overall deadline for merger decisions is 240 calendar days, but de facto decisions for an ordinary track case are issued faster. The 240 days may be extended for 90 calendar days by a justified decision of CADE or for 60 calendar days upon request by the parties, resulting in a total maximum review period of 330 days. As stated in CADE 2018 Yearbook, it currently takes an average of 96 calendar days for an ordinary track case to be approved, although cases that are reviewed by CADE Tribunal may take substantially longer. The SG is the body that receives the notification and initially conducts the market test. The SG may either approve the transaction unconditionally or challenge it before the CADE Tribunal—if it forms the view that there are competition concerns that need to be addressed. In any case that is unconditionally approved by the SG, the parties should wait additional 15 calendar days following approval to close the transaction, as during this period the approval may be appealed by third parties accepted in the procedure or by CADE Tribunal. Appeals are rare. So far, less than 1% of all cases have been appealed. Decisions issued by CADE Tribunal are not subject to appeals at the administrative level.

Per CADE Resolution No. 2/2012, the maximum review period is 30 days in fast track cases, and according to CADE 2018 Yearbook it takes an average of 13 days for a fast-track case to be approved.

B. Leniency Program

The leniency program in Brazil is governed by CADE Resolution No. 21/2018 as well as Antitrust Leniency Program Guidelines published by CADE.

Per CADE’s Antitrust Leniency Program Guidelines, firms or individuals seeking to report anticompetitive conduct to CADE may enter into full immunity, partial immunity, or settlement agreements with CADE. The requirements for execution of these types of agreements and the resulting benefits granted to applicants vary depending on the level of knowledge CADE has on the reported conduct and the procedural stage of the relevant investigation. Under CADE’s leniency program, third-parties harmed by the conduct can bring damage claims against signatories of immunity/settlement agreements. The leniency program also provides the opportunity for leniency plus.

Full immunity is available to the first firm/individual that applies for immunity if CADE has no prior knowledge of the reported conduct by that time. If the CADE Tribunal confirms the fulfillment of the immunity agreement, companies/individuals will be granted full antitrust immunity and individuals will be granted full criminal immunity (legal entities cannot be held criminally liable for participation in anticompetitive practices in Brazil). Lack of “prior knowledge” is understood to mean that, at the time of application, there is no ongoing administrative proceeding with reasonable evidence of anticompetitive practices that is the subject of the leniency application.

Partial immunity is available to the first firm/individual that applies for immunity if CADE has prior knowledge of the reported conduct by that time but has not enough evidence to support the conviction of the applicant. If the CADE Tribunal confirms the fulfillment of the immunity agreement, companies/individuals will be granted partial antitrust immunity (that is, a fine reduction ranging from one to two thirds of the applicable antitrust fine). Also, individuals will be granted full criminal immunity.

Settlement agreements are available to all companies/individuals that do not qualify for a leniency agreement (cease-and-desist commitment). Applicants may receive a reduction up to 50% of the applicant antitrust fine (to be set depending on the procedural stage when the company/individual applied for a settlement and the quality of the provided cooperation). No criminal immunity is available to individuals who enter into settlement agreements with CADE. Once the CADE Tribunal approves the agreement, the investigation will be suspended in relation to the applicant until the decision on the merits of the investigation is issued. On this occasion, the Tribunal shall confirm the fulfillment of the agreement and definitely terminate the case in relation to the applicant.
The final leniency decision is subject to confirmation by the competition authority — more specifically, by the CADE Tribunal. The fulfilment of immunity and settlement agreements is subject to confirmation by the CADE Tribunal at the time it is ruling on the merits of the antitrust investigation.

If applicants fail to comply with the terms of the immunity/settlement agreement, they will be subject to the applicable penalties for involvement in anticompetitive conducts. The merits of the final decision on the fulfilment of the leniency agreement cannot be appealed at the CADE level — there are only appeals available to amend omissions, vagueness, inconsistencies and errors of the Tribunal decision. This decision may be challenged in court, though a court deposit/bank bond of the fine will be required — if the CADE decision is upheld in court, this amount should be brought to present value using the Special Clearance and Escrow System (SELIC) interest date.

Marker System and Confidentiality

Per CADE’s Antitrust Leniency Program Guidelines, an applicant is required to identify itself at the time the marker request is placed, but all information is kept confidential. A marker request may be submitted via telephone, in person, or in writing. CADE does not require the marker request to be accompanied by all relevant information and evidence on the cartel. They should be presented at a later stage of the negotiation process (for example, phase of submission of evidentiary information and documents). CADE is required to return documents and evidence to the applicant in the event of rejection or withdrawal of the proposal. In addition, CADE must keep all information confidential and must not use it to open an investigation into the reported facts.

The identity of the leniency applicant will not be publicly disclosed if a decision is rendered on the merits of the investigation that resulted from the leniency application. The defendants in the administrative proceeding are given access to the leniency documents (including to the identity of the applicant) to exercise procedural rights of defence, but they are required to keep this information confidential. CADE’s regulations determine that the leniency statement and its addendums shall not be disclosed even after a final decision is rendered by the CADE Tribunal. However, they can be disclosed to third parties upon a court order. Also, the leniency statement can be accessed by prosecutors without a court order if they acted in the agreement as intervening third-parties (which is mandatory in full/partial immunity agreements).

Cooperation with other competition authorities

Cooperation with foreign competition authorities may take place upon a waiver from the leniency applicant — which may either be partial (that is, cover formal) or full (cover both formal and substantive issues).
1 The WTO services sectoral classification list (W/120) is a comprehensive list of services sectors and sub-sectors covered under the GATS. It was compiled by the WTO in July 1991 and its purpose was to facilitate the Uruguay Round negotiations, ensuring cross-country comparability and consistency of the commitments undertaken. The 160 sub-sectors are defined as aggregate of the more detailed categories contained in the United Nations provisional Central Product Classification (CPC). The list can be accessed under the following link: [http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc](http://www.wto.org/english/tratop_e/serv_e/mtn_gns_w_120_e.doc).

Services are categorized into 12 sectors:

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services
12. Other services not included elsewhere
For the purpose of this research, 32 sectors have been identified. This is not an exhaustive list of all sectors of the economy.

<table>
<thead>
<tr>
<th>Primary:</th>
<th>Services:</th>
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<tbody>
<tr>
<td>1. Agriculture, Hunting, Forestry, and Fishing</td>
<td>18. Electricity, Gas, and Water</td>
</tr>
<tr>
<td><strong>Manufacturing:</strong></td>
<td>20. Construction</td>
</tr>
<tr>
<td>3. Agroprocessing, Food Products, and Beverages</td>
<td>21. Wholesale and Retail Trade</td>
</tr>
<tr>
<td>4. Textiles, Apparel, and Leather</td>
<td>22. Hotels and Restaurants</td>
</tr>
<tr>
<td>5. Chemicals and Chemical Products</td>
<td>23. Other Travel and Tourism-related Services</td>
</tr>
<tr>
<td>8. Pharmaceuticals, Biotechnology, and Medical Devices</td>
<td>26. Computer and Software Services</td>
</tr>
<tr>
<td>9. Metals and Metal Products</td>
<td>27. Financial Services including Insurance</td>
</tr>
<tr>
<td>11. Wood and Wood Products (other than Furniture)</td>
<td>29. Business Services</td>
</tr>
<tr>
<td>12. Furniture</td>
<td>30. Professional, Scientific and Technical Services (Engineering, Architecture, etc.)</td>
</tr>
<tr>
<td>13. Paper and Paper Products</td>
<td>31. Health Services</td>
</tr>
<tr>
<td>14. Printing and Publishing</td>
<td>32. Media and Entertainment</td>
</tr>
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This Investment Policy and Regulatory Review presents information on the legal and regulatory frameworks governing foreign direct investment and competition that affect businesses and foreign investors. Since legal and regulatory frameworks are constantly evolving, a cut-off date was set for the research. This country review therefore covers information available as of May 31, 2019, unless otherwise indicated in the review. IPRRs are available for the following middle-income countries: Brazíl, China, India, Indonesia, Malaysia, Mexico, Nigeria, Thailand, Turkey, and Vietnam.