



# Mergers & Acquisitions

in 58 jurisdictions worldwide

# 2009

Contributing editor: Casey Cogut



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# Brazil

## Maria PQ Brandão Teixeira

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### 1 Form

How may businesses combine?

A great variety of structures may be implemented in Brazil for businesses to combine, most of which are also commonly used in other jurisdictions. In practice, such structures may also be used in combination, depending on the objectives and the demands of the parties involved and on the specific business and tax planning. In an attempt to categorise the different types of combinations possible, we would have the following:

- acquisition of existing businesses (in certain cases followed by public tender offers), including the acquisition of:
  - an existing entity;
  - shares of an existing entity, followed (or not) by a joint venture structure; and
  - assets and rights, including ‘establishments’;
- business reorganisation (usually combined with an acquisition structure), including:
  - consolidation, whereby two or more companies combine, becoming a new legal entity (this is a rarely implemented structure);
  - merger, whereby one company is merged into another and the latest shall be the only surviving company;
  - spin-off, whereby one company is divided into two or more companies, under the same control;
  - ‘drop down’ of assets and rights (which can include one or more ‘establishments’), whereby such assets and rights are contributed as capital into a newly created entity or an existing entity;
  - share merger or roll-up, whereby one corporation becomes a wholly owned subsidiary of another corporation; and
  - group of companies, whereby companies come under common control;
- joint-venture agreements supported by shareholders agreements and other types of agreements;
- contractual ‘pool of companies’ whereby companies with complementary skills and expertise enter into a contractual arrangement to develop a specific project; and
- hostile takeovers of publicly held corporations.

### 2 Statutes and regulations

What are the main laws and regulations governing business combinations?

There are three main laws and two main sets of regulations governing businesses combinations in Brazil:

- the Civil Code (Law No. 10,406, of 10 January 2002, as amended), which governs civil acts, contracts and practices in general and also specifically governs non-profit entities

(foundations, associations, cooperatives) and limited companies (the great majority of Brazilian companies are organised as limited companies);

- the Corporation Law (Law No. 6,404, of 15 December 1976, as amended) which governs privately or publicly held corporations, the ‘pool of companies’, all business reorganisation structures, shareholders agreements, hostile takeovers and tender offers;
- the Antitrust Law (Law No. 8,884, of 11 June 1994, as amended), which governs antitrust agency and filings;
- the regulations issued by the Brazilian Securities and Exchange Commission – Comissão de Valores Mobiliários (CVM), which are applicable to business combinations of publicly held corporations; and
- the regulations issued by the Central Bank of Brazil (BACEN), which are applicable to business combinations whenever one of the parties is a foreign investor in Brazil or the target Brazilian entity has previously received foreign investment.

There are also sparse regulations in tax laws, labour laws, criminal laws and others laws that are applicable to certain aspects of businesses combination. As further mentioned in question 3, such regulations must also be observed in the implementation of certain combination structures and in practice may impair a prospective project.

### 3 Governing law

What law typically governs the transaction agreements?

The Civil Code typically governs all contracts and transactions under Brazilian law, the only exception being labour contracts, which are governed by labour laws. Transaction agreements on business combinations are therefore primarily governed by the Civil Code although they must further meet requirements and provisions under the Corporation Law and the Antitrust Law, as applicable. Transactions involving publicly held corporations must also observe the regulations issued by CVM.

Additionally, all transactions must observe certain provisions under other laws, in particular tax, labour, criminal and environmental laws. In respect thereto, the following aspects must be taken into account when preparing and deciding on the best combination structure to be adopted:

- in any case of a business reorganisation and as a result of certain acquisition structures, public clearance certificates in respect of payment of taxes and social charges by the target companies are required;
- Brazilian labour laws provide for continuation of labour contracts and transfer of all past labour liabilities to the purchaser (as new

controller of the acquired business) and to the surviving company or companies (as a result of a business reorganisation);

- Brazilian tax laws provide that as a result of an acquisition or a business reorganisation structure the purchaser (as new controller of the acquired business) and the surviving company or companies (as a result of a business reorganisation) shall be fully liable for past liabilities, provided that if the seller remains in business (even in business involving different areas of activities) such liability shall only be subsidiary, and
- Brazilian environmental civil and criminal laws provide that a polluter shall be liable for the contamination of water, soil and air, and for remediation thereof, irrespective of an acquisition or reorganisation process or transaction.

It is finally important to mention that foreign equity investments in Brazilian companies and foreign loans are subject to control by BACEN. Any funds entering or leaving Brazil for any such purposes must be registered with BACEN and the relevant registration must be annually updated by the Brazilian invested company. Registration is mandatory to allow capital return, payment of dividends and repayment of loans and interest. All such payments also have to be reported to BACEN by means of amendments to the original registration files on a case-by-case basis. In practice, all foreign currency exchange transactions are directly operated between the commercial banks and the local company and the banks are given authority by BACEN to confirm that the flow of funds in and out of the country meets all legal requirements. At any time BACEN may audit both the commercial bank and the local company to confirm that all transactions have indeed been legally supported and carried out. The statute of limitation for such auditing is five years.

#### 4 Filings and fees

Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees in connection with completing a business combination?

The antitrust authority, Conselho Administrativo da Defesa Econômica (CADE), must be notified of any transactions that may limit or in any way harm or adversely affect unrestricted competition, including market concentrations of goods or services, business combinations and joint ventures in general where either party, as a consequence of the transaction, increases its market share of a given relevant market to at least 20 per cent, or either party to the transaction has had a turnover in Brazil, in the previous fiscal year, equal to or greater than 400 million reais. Whenever applicable, filing becomes mandatory upon signature of the first document binding the parties and final approval by CADE must be a condition precedent for the relevant transaction to be fully valid and effective. Most filings are not governed by CADE prior to the closing of the transaction and, as a consequence, the parties will have to partially or totally unwind the combination if CADE partially or totally rules against the transaction. Very rarely, a restriction imposed by CADE results in a judicial dispute between the interested parties and CADE.

Business combinations involving specific industries or businesses such as banking and financial institutions, energy, mining, aviation, communication, health services, press, radio and television or insurance companies are subject to prior approval by regulatory agencies and in some cases approval by the president of Brazil.

There are no specific stamp taxes or other government fees as a condition for a business combination to complete. Nevertheless, all filings entail the payment of fees.

#### 5 Information to be disclosed

What information needs to be made public in a business combination? Does this depend on what type of structure is used?

As a general rule, corporate documents (such as minutes of meetings, shareholders resolutions, by-laws, articles of association and terms and conditions of business reorganisation structures, including appraisals) must be filed with the local board of trade and, therefore, automatically become public. Specifically concerning corporations, private or public, certain corporate documents (or just a summary thereof) must also be published in newspapers and, therefore, become more public than those documents only filed with the local board of trade. However, transaction documents that do not qualify as corporate documents (for example, share purchase and sale agreements or joint venture agreements) do not have to be filed with the board of trade and, therefore, do not become public unless they are voluntarily filed with the deeds and documents notary. Shareholders' agreements are filed with the target company and must be disclosed to prospective purchasers of shares.

Except as mentioned above, limited companies and privately held corporations do not have to make public any additional information regarding a business combination.

Publicly held corporations must make several public and regulatory disclosures in respect to a business combination. The following obligations are applicable to every publicly held corporation but additional obligations may be due for specific industries or businesses or as specifically provided in the company's by-laws:

- on or prior to 15 days prior to the date on which a shareholders meeting is due to convene to approve a business reorganisation, the company must report to the CVM and to the stock exchange where the shares are traded at, and publish a press release informing on the terms and conditions of such prospective business reorganisation;
- the execution of any transaction document, even subject to conditions precedent, or any decision by the controlling shareholders or the company itself aiming at a business combination, shall trigger the obligation (for the company) to immediately publish a press release disclosing the main aspects of the proposed transaction; and
- other press releases must follow such initial ones, depending on the terms of the transaction; at closing, a press release must indicate, whenever mandatory, the basic terms and conditions that will govern a tender offer for minority shareholders.

All press releases must clearly indicate the main conditions of the prospective business reorganisation or combination and appropriately give to investors any information that may be relevant to support their investment decisions.

#### 6 Disclosure of substantial shareholdings

What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination?

Shareholders of limited companies or privately held corporations have no disclosure requirements no matter how large are their holdings.

Shareholders of publicly held corporations have the following disclosure requirements (which may be additional to other requirements under the by-laws or special industries regulations, as the case may be):

- Any individual or legal entity holding 5 per cent or more of any class or type of shares of a publicly held company must disclose to CVM and to the stock exchange where the shares are traded

at complete and detailed personal or corporate data, as applicable, the purpose of such shareholding, the aggregate amount of shares and other securities (including option rights, debentures and others) directly and indirectly held and any agreement (usually shareholders' agreements) governing the right to vote or the right to purchase and sell shares.

- Such information must be repeated at any time the same individual or legal entity acquires an additional 5 per cent interest in one type or class of shares of the company, including, therefore, in the case of combinations.
- Any individual or legal entity controlling (or acquiring the control of) a publicly held corporation must make a tender offer to acquire shares held by minority shareholders (usually common shares, but also preferred shares if so provided under the by-laws of the target company) whenever there is a change of control or the controlling shareholder, directly or through a group of related persons or individuals, acquires (not by means of a tender offer) shares representing more than one-third of the free-float of shares of each type or class, or the controlling shareholder, directly or through a group of related persons or individuals, holding more than 50 per cent of the shares of any type and class, acquire, severally or jointly, more than 10 per cent of the same type and class of shares within a certain 12 month period, and CVM decides that such acquisition has been intended to limit the liquidity of the relevant shares.

## 7 Duties of directors and controlling shareholders

What duties do the directors or managers of a company owe to the company's shareholders, creditors and other stakeholders in connection with a business combination? Do controlling shareholders have similar duties?

As a general comment, it is important to note that good corporate governance principles, setting out strict and objective duties owed by controlling shareholders, directors and managers of legal entities in general, permeate Brazilian laws and regulations (applicable to all companies, including limited companies and privately held corporations) and serve as inspiration of the main rules set forth by CVM and by the São Paulo Stock Exchange (BM&FBOVESPA), applicable to publicly held corporations.

Based on both the Civil Code and the Corporation Law, but also reiterated by CVM and by BM&FBOVESPA, the directors and managers of all companies are subject to the following duties in connection with any and all business of the company they work at (including, without limitation, in connection with any business combination):

- they must act with skill, transparency and care, and must be diligent;
- they owe fiduciary duties to the company at which they are managers or directors and, therefore, must act with independence vis-à-vis their own interests and the interests of the shareholders that elected them;
- they must abstain from voting and participating on decisions in the case of conflict of interest and must disclose to their colleagues directors and managers, and also to shareholders, the extent of their conflict;
- any contractual arrangement with any of the directors or managers, or any affiliates/related parties thereto must provide for arm's length conditions;
- they shall be held liable and shall indemnify third parties (including the other directors, managers, stakeholders, employees and the company itself) for any losses resulting from acts performed intentionally, or not, outside their scope of authority or from acts

performed in breach of their authority or of the law; and regarding publicly held companies:

- they must keep confidential any information that has not yet been disclosed to the public and that may influence the value of the company's securities;
- they may not trade with shares of publicly held companies they work at prior to publication of a mandatory press release or while important information of which they are aware is not yet made public (insider trading is punishable with administrative and civil penalties, including working impediment, and, furthermore, is deemed a crime);
- they must disclose, when they are elected, the amount of securities (not only shares, but also options, debentures and other securities) of the company and related companies they hold and, while they are in office, any change of such holdings for more or for less, as they occur; and
- they must immediately report to the stock exchange where the securities of the company are traded at and cause a press release to be published regarding any fact of the company that may influence on the investors' decisions to invest.

Shareholders have similar duties as the directors and managers, *mutatis mutandis*. In particular, shareholders have the specific duty of acting and voting in good faith and in the best interests of the company, and not in their own interests.

## 8 Approval and appraisal rights

What approval rights do shareholders have over business combinations? Do shareholders have appraisal or similar rights in business combinations?

Regarding business combinations, the Civil Code and the Corporation Law differently rule on the approval rights of the shareholders in limited companies and in the corporations and, additionally, the Corporation Law and the rulings of the CVM provide for specific approval rights applicable to the publicly held corporations.

In general terms, the Civil Code provides as follows in respect to limited companies:

- consolidations, mergers and spin-offs are subject to approval by shareholders representing at least three-quarters of the capital of the company (limited companies only have common shares, with full voting rights);
- other types of business reorganisation and other types of businesses combinations (as listed in question 1 and except for the acquisition of shares as mentioned below) are subject to approval by the majority of the shareholders attending the meeting called therefor;
- the acquisition of shares by third parties depend on the approval by shareholders representing at least three-quarters of the capital of the company;
- the contribution of assets and goods to the company do not depend on appraisals;
- a business reorganisation depends on appraisals that confirm the value of the shares of the target companies at either net book value or at fair market value, as it may be determined by the shareholders; and
- shareholders dissenting from a decision approving a consolidation, a merger, a spin-off or the acquisition of shares by third parties may withdraw from the company and receive payment of their shares at net book value unless the articles of association provide otherwise.

Under the Corporation Law, the approval rights over business combinations are as follows:

- consolidations, mergers, spin-offs, mergers of shares and the formation of group of companies are subject to approval by shareholders representing at least half of the outstanding shares of the company with voting rights;
- other types of business reorganisation and other types of business combinations (as listed in question 1 and except for hostile takeovers and acquisitions of shares) are subject to approval by the majority of the shareholders attending the meeting called therefore, or to the approval by the board of directors, as the case may be, according to the relevant by-laws;
- acquisition of shares by third parties do not depend on the approval by the other shareholders except for existing restrictions under any shareholders agreements (in which case only signatories of the shareholders agreement shall be bound to such restrictions);
- the contribution of assets and goods to the company depends on appraisals;
- a business reorganisation depends on appraisals in order to confirm the value of the shares of all companies involved at either net book value or at fair market value, as it may be determined by the shareholders (except in connection with certain types of reorganisation involving publicly held corporations, where it is mandatory the valuation at fair market value or, in the case of corporations with large free float, based on the trading value of the shares);
- dissenting shareholders in the case of consolidation, merger, spin-offs or the formation of a group of companies may withdraw from the company subject to certain limitations and shall receive payment of their shares valued at net book value except as otherwise provided under the relevant by-laws, in which case the minimum value shall be the net book value unless the valuation is based on the economic value of the company; and
- minority shareholders holding common shares in publicly held corporations have the additional right of a mandatory tender offer whereby the shareholder acquiring control must offer to purchase the shares of such minority shareholders for at least 80 per cent of the price, per share, paid for acquisition of control (shareholders holding preferred shares shall also be entitled to sell their shares in the tender offer if such right is guaranteed under the by-laws).

## 9 Hostile transactions

What are the special considerations for unsolicited (hostile) transactions?

Business combinations have never occurred in Brazil by means of a hostile takeover. Nevertheless, the Corporation Law and the regulations by CVM expressly rule on the matter under the general title of 'unsolicited tender offer'.

According to the law and the applicable regulations by CVM, an unsolicited tender offer shall observe the following guidelines:

- a bank must guarantee the offer and the obligations undertaken by the offering shareholder;
- the offer may provide for the exchange of shares, upon prior approval by CVM; and
- the offer may focus on the purchase of all shares or on the purchase of only as many shares as necessary for the offering party to achieve control.

## 10 Break-up fees – frustration of additional bidders

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company's ability to protect deals from third-party bidders?

As a general rule, break-up fees are permitted but must be limited to the total value of the main obligation. Penalties may be established in relation to either the total or the partial breach of the obligation but whenever the penalty refers to the breach of the obligation as a whole, it is deemed as an alternative for the obligation itself. For practical reasons very rarely the parties establish break-up fees or penalties in a private transaction involving a business combination. However, even if the agreement is silent, any party may seek indemnity from the other party in the case of a breach, based on Civil Code provisions.

Protections from third-party bidders in private transactions are therefore typically obtained by exclusivity or lock-out provisions addressed in preliminary agreements (as, for example, letters of intent or non-disclosure agreement).

Break-up fees are generally not a concern in respect to tender offers since any tender offer is an irrevocable obligation on the part of the offering party. Publicly held companies, notwithstanding, have other specific concerns as follows.

In any case of a tender offer, a third-party not related to the offering party of the original tender offer may launch a 'competing tender offer' at a price at least 5 per cent higher than the price offered at the original tender offer.

Whenever a competing tender offer is launched, the original offering party, and the competing third-party may each raise their price in a bid format, always with a minimum increase equal to at least 5 per cent of the latest price.

Although hostile takeovers are not usual in Brazil, companies that have recently gone public have included in their by-laws provisions aiming at creating barriers against possible third-parties interested in acquiring their control (the 'poison pills', most commonly providing in the by-laws that the ownership of shares at a minimum threshold triggers the obligations of a tender offer). However, it is important to note that as a result of the recent credit crisis the poison pills have been lately challenged by prospective investors interested in independently acquiring shares and holding significant equity participation without having to make a tender offer. The matter is now being discussed at court but preliminary decisions have already determined that the effect of the poison pills must be limited and may not be used to impair business transactions. Moreover, court decisions have recently decided that provisions in the by-laws establishing the poison pills may be changed by decision of a certain number of shareholders and that any provision determining that the shareholders have no authority to change the by-laws in that respect is null and void.

## 11 Government influence

Other than through relevant competition (antitrust) regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations including for reasons of national security?

Besides those rulings that subject companies of specific industries to agencies' prior approvals, as described in question 4, there are certain other restrictions that are based on national security reasons that constitute an obstacle for business combinations involving foreign investments in Brazil. Examples of these restrictions are as follows:

- the acquisition of lands in the boundaries zones directly by foreign individual or entities or by Brazilian companies held by

- foreign investors (individuals or entities) is subject to prior approval by the Brazilian National Security Council (CSN); and
- no more than 30 per cent of Brazilian entities that publish newspapers or hold radio or television concessions may be owned by foreign investors.

## 12 Conditional offers

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

Any tender offer must comply with rules under the Corporation Law and under regulations by CVM. According to such regulations, tender offers may be mandatory or voluntary, as follows:

- mandatory tender offers:
  - for cancellation of listing;
  - owing to increase of equity participation, by controlling shareholders; and
  - owing to change of control; and
- voluntary tender offers:
  - for purchase of shares of a publicly held corporation;
  - for acquisition of control of a publicly held corporation ('hostile takeover'); and
  - to compete with another tender offer (as mentioned in question 10).

Tender offers may provide for:

- payment in cash;
- payment in kind, in which case the payment will be made in securities issued or to be issued by a public held corporation with shares admitted to trading at the stock exchange;
- mixed payment – partially in cash and partially in kind; or
- alternative payment, in which case the shareholders receiving the offer may choose whether they want payment in cash or in kind.

Tender offers that are proposed by the company or by the controlling shareholder or, still, by a person related to the controlling shareholder, must be supported by an appraisal issued by an expert (chosen based on certain guidelines under the law). Valuation must also meet certain criteria and requirements provided under the law, taking into account recent value of the shares as traded in the stock exchange, net book value, economic value or others.

As tender offers are always guaranteed by a financial institute, financing is never conditional. In other kinds or business combinations, that do not involve a tender offer, closing may be subject to the financing being successfully obtained.

## 13 Minority squeeze-out

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

The Civil Code provides for one possible situation where a shareholder may be squeezed out: so long as it is permitted under the articles of association, the majority of shareholders, representing the majority of the capital of the company, may exclude a defaulting shareholder from the company. The defaulting shareholder shall be entitled to defend his actions at a shareholders' meeting, and the process shall take one month approximately.

Brazilian Corporation Law, in turn, also provides for one specific situation where minority shareholders may be squeezed out: when, as a result of a tender offer, the free float is reduced to less than 5 per cent of the total outstanding shares of the company, in which case the

shareholders' meeting of the company may approve the redemption of such shares for the price first offered in the tender offer, and the corresponding price shall be deposited in a bank account on behalf of the redeemed shareholders. The process shall take one month approximately.

## 14 Cross-border transactions

How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?

Cross-border transactions (ie, transactions involving Brazilian and foreign parties) are commonly structured by having the foreign party establishing (or purchasing) a Brazilian legal entity, or shares of a Brazilian legal entity, or forming a business 'pool of companies' with Brazilian parties or, still, entering into a joint-venture agreement with a Brazilian party.

Brazilian law shall govern business combinations involving only Brazilian entities (including Brazilian entities held by foreign investors), or Brazilian entities and foreign entities, whenever the business is to be developed in Brazil.

## 15 Waiting or notification periods

Other than competition laws, what are the relevant waiting or notification periods for completing business combinations? Are companies in specific industries subject to additional regulations and statutes?

If no specific industries (as mentioned in question 4 above) are involved, there shall not be any waiting or notification periods for completing business combinations other than as determined by anti-trust law. Where specific industries must file for prior approvals, the waiting period will vary depending on the relevant agency in charge of the approval.

## 16 Tax issues

What are the basic tax issues involved in business combinations?

As a general rule, any revenues received by legal entities (including revenues that have originated from combinations) are subject to PIS and COFINS taxes at a combined rate that varies from 3.65 per cent to 9.25 per cent

Capital gains resulting from the disposition of shares, assets, 'establishments' or other rights, for a value exceeding the book value of such shares, assets and rights, shall be included in the company's taxable results and the relevant taxation (including income tax and social charges known as CSLL, PIS and COFINS) may add to 34 per cent.

Capital gains earned by non-residents (individuals or legal entities) resulting from the sale of shares or assets located in Brazil (even if the transaction is completed abroad and no funds flow into Brazil) are taxed in Brazil at the rate of 15 per cent unless the beneficiary is domiciled in a tax haven, as defined by Brazilian law, in which case that tax will be levied at the rate of 25 per cent.

Brazil is a party to the following treaties on double taxation, which may affect any such taxes: Argentina, Austria, Belgium, Canada, the Czech Republic, the Slovak Republic, Chile, China, Denmark, Equator, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Norway, Philippines, Portugal, South Africa, Spain, Sweden and Ukraine.

Under certain circumstances a business reorganisation or a combination may cause the forfeiture of accrued tax losses, as follows:

- as a result of a consolidation, the accrued tax losses of the

### Update and trends

The recent credit crisis has significantly changed the short-term M&A perspective in Brazil but has not caused business to halt. Although there has been, since September 2008, a significant reduction of M&A transactions, there are opportunities that are being explored by potential purchasers. In particular, there are good local companies that have successfully conducted business until now and are in search of an investor. Since September 2008 the government has cut taxes (especially excise tax – IPI) and has announced public support and financing for investments in infrastructure and civil

construction, in particular low-cost housing, the car industry, clean energy, agribusiness and exportation in general. Assuming that these measures will indeed be maintained by the government, M&A transactions will certainly be necessary and much used to make viable the investments needed for all such priority areas.

Besides those areas given priority by the government, two other areas shall continue to grow and require M&A support – the education area and the medical and health area. Brazil has a need for education and health investments and development.

- original companies, which are dissolved, are forfeited;
- as a result of a merger, the accrued tax losses of the merged company, which is dissolved, are forfeited;
- as a result of a spin-off, the accrued tax losses of the company that undergoes the spin-off are forfeited in the proportion of the assets and rights that have been spun-off and such losses cannot be transferred to the company that has received such spun-off assets and rights; and
- if, as a result of a combination process, concurrently occur the change of control and the change of business field of a legal entity, all accrued tax losses of the company are forfeited.

Business reorganisation events also trigger the obligation, by the target companies (sometimes only one of them), to file an additional income tax return, which may anticipate income tax payments.

Whenever a ‘drop-down’ structure or a sale of assets involves either the contribution or the sale of inventory, ICMS – imposto sobre circulação de serviços e mercadorias – will be triggered and due at a variable rate, which may be 18 per cent. ICMS is a value-added tax.

### 17 Labour and employee benefits

What is the basic regulatory framework governing labour and employee benefits in a business combination?

Neither employees nor unions have any right to approve, to challenge or to impair any business combination.

Whenever two existing entities combine into one company, the rights and benefits of the existing employees of the two original companies must be equalised to the higher standard so that those

employees that originally enjoyed fewer benefits will be entitled to more benefits than they had prior to the reorganisation.

As mentioned in question 3, Brazilian laws provide that the purchaser or surviving entity shall succeed the seller or the dissolved entity for all purposes, including labour issues.

### 18 Restructuring, bankruptcy or receivership

What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

Brazilian Bankruptcy Law (Law No. 11,101, dated 9 February 2005) provides for the only exceptions to the general rule whereby the purchaser or the surviving entity shall succeed the seller or the dissolved entity for all purposes. Under such law, the judge in charge of the restructuring or the bankruptcy process may authorise the sale of assets or the sale of part of the business as a going concern and exclude from such sale past tax liabilities and, in some cases, also past labour liabilities.

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