

CORONAVIRUS

CROSS BORDER CONSIDERATIONS RELATED TO BRAZIL

The financial impact of Coronavirus (Covid-19) on Brazil has been growing over the past weeks. The spread of the virus throughout Brazil has been progressively increasing and the impact in the coming months will almost certainly be significant, as the global markets continue to experience a period of great volatility.

In this bulletin, we provide a brief overview of the impact of Coronavirus on Brazil and describe some practical considerations and challenges for business transactions. We are dealing with and analyzing the issues touched upon in this summary and we are available to discuss any questions or concerns that you may have.

Coronavirus in Brazil

As of the date of this bulletin, Brazil has the most confirmed cases of any country in the Latin America region. The federal government has restricted entry of foreign visitors at land borders with all neighboring countries. The Brazilian Ministry of Health has recommended that anyone entering Brazil remain in self-quarantine for seven days.

Among other economic measures by both the federal government and the state governments, the federal government has proposed a stimulus package of R\$147.3 billion comprising (i) R\$83.4 billion for immediate assistance to the most economically vulnerable, (ii) R\$49.4 billion to assist small businesses maintain employees, and (iii) R\$4.5 billion for measures to combat the pandemic.

The federal government has declared, among other measures, the relaxation of labor laws to preserve employment rates and a monthly budget of R\$ 600 reais to aid informal workers. About R\$88.2 billion were allocated to a financial support plan for states and municipalities, and the Central Bank intends to inject funds into the financial system and release R\$ 1.2 trillion in liquidity into the Brazilian economy.

The federal government has also declared a state of emergency until December 31, 2020. This exempts the federal government from complying with its constitutional budget requirements and allows it to spend more on health response and economic recovery.

Selected Practical Considerations in the Brazilian Market

Companies operating in Brazil are likely to face financial challenges in the coming weeks that will need to be addressed and mitigated. It is important for

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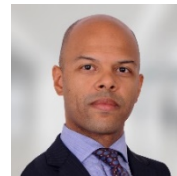
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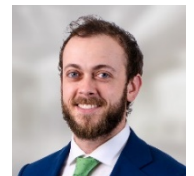
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companies to be proactive. First and foremost, the primary consideration of any company dealing with the Coronavirus pandemic should be in ensuring the health and well-being of its employees, clients, partners, and communities and understanding the role of the private sector in containing the crisis.

The following is a brief overview of practical financial considerations for companies operating in the Brazilian market.

Issues Relating to Loan Financings

Parties to loan financings should carefully consider the contractual language related to covenants (particularly financial covenants), regular reporting, and events of default, among others, to determine whether issues related to Coronavirus may trigger any breaches, defaults or accelerations. Lenders in financing agreements would be prudent to get ahead of these issues and carefully evaluate notice requirements (e.g. after knowledge of a default). Borrowers may consider requesting a waiver or consent related to certain obligations where appropriate.

In the context of Coronavirus, some countries have already announced additional public holidays, and this could occur in Brazil as well. If Brazil does announce additional public holidays, this could affect what is a "Business Day" in the relevant agreement, which may affect when a payment date or other obligation occurs.

Material Adverse Change/Effect

It is common for loan financings to contain an event of default related to a Material Adverse Change (or Effect). Whether effects of the Coronavirus will trigger a material adverse change/effect clause under an existing contract is a matter of interpretation of the relevant language in the contract and depends on the governing law of the document. Parties should carefully examine the language in the documentation and may consider applicable defenses where applicable. Some clauses will be triggered if the circumstances "might" have a material adverse change/effect, while others will require that an event does cause the material adverse change/effect. To the extent Brazilian law is relevant, it might also be important to consider the statutory rules that are hardwired into the Brazilian Civil Code.

Force Majeure Clauses

Some project development documents contain an event of default related to the occurrence of a force majeure event. Whether effects of the Coronavirus will trigger a force majeure clause under an existing contract is also a matter of interpretation of the relevant language in the contract and depends on the governing law of the document. A few issues, among others, to be considered are: specific contractual language and possible other triggering requirements, foreseeability tests, mitigation duties and consequences. Like material adverse change/effect clauses, it might also be important to consider the statutory rules that are hardwired into the Brazilian Civil Code.

Dealmaking

Coronavirus is leading to significant uncertainty in valuations and pricing. Parties in an acquisition will have to consider whether they can agree on a purchase price mechanism that gives sufficient protection and certainty for all parties to the degree possible to make a deal. Buyers and sellers may also consider various options for deal making including investing in alternate capital instruments and buying or selling stakes rather than an entire company.

This publication does not deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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Electronic Signatures

Contractual parties should consider embracing technology to address the current situation involving working remotely. Among the various technology solutions available, e-signatures are likely to play a role in closings in the near term. Companies must evaluate the legality of executing documents by electronic signatures, which depends on relevant factors such as the governing law of the document, the type of document that is to be signed, the form of electronic signature used and whether there are cross-border implications to be considered.

Data Protection and Cybersecurity

There have been cases in several countries of data security breaches and cyberattacks including phishing scams by bad actors taking advantage of the crisis. Many employees may be working remotely for the first time and companies must ensure they have the proper security systems in place and should take extra care to ensure their employees are taking the proper precautions in protecting sensitive and confidential information. A few questions, which may need to be analyzed under more than one jurisdiction, are: What types of personal data can be collected, and how? Can data be shared with group companies, and with entities outside the group such as service providers and authorities?

Get Ahead of the Curve

Companies should consider reaching out to their contract counterparties to discuss how to best manage their contractual and commercial relationships. The global market and the Brazilian market are experiencing volatile times but acting proactively may help the parties' ability to formulate solutions should any contractual issues arise.

Challenges in the Brazilian Market

The Coronavirus pandemic will continue to present significant challenges for Brazil and companies operating in Brazil including the following:

Lower expected growth and stock performance – Like in many countries, GDP growth expectations in Brazil are likely to be lower due to the economic, health, and political effects of Coronavirus. Additionally, the Brazilian stock market has taken a significant hit. We have already seen this lead to increased interest in local stock buybacks.

Affected trading partners – China is Brazil's largest trading partner and the United States is Brazil's second largest trading partner. Disruption to supply chains and travel restrictions will continue to cause difficulties in maintaining businesses including in the oil & gas, retail, and agribusiness sectors.

Currency volatility – The Brazilian Real has reached its lowest level ever against the U.S. Dollar surpassing a rate of 5 Reais to 1 U.S. Dollar. As Brazil battles the Coronavirus, currency fluctuations will affect the valuation of transactions and influence pricing negotiations. The devaluation of the Real will require companies to use more cash to meet USD debt obligations, which will challenge their liquidity positions. We have already seen increased interest in liability management transactions as well as continued increases in interest for hedging products as investors seek to protect themselves against the effects of the pandemic.

For further information, please click [here](#) to visit the Clifford Chance Coronavirus Portal.

We would be happy to speak with you about any challenges that you may be experiencing in the face of this crisis. Please do not hesitate to contact your Clifford Chance advisor if we can be of assistance.

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