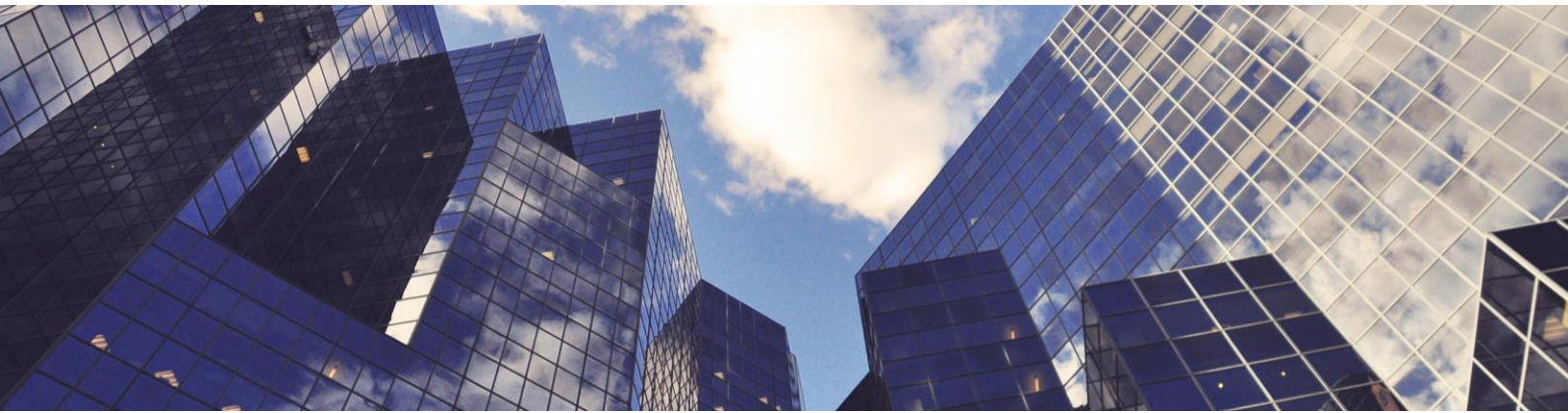


Provisional Measure on the Business Environment in Brazil



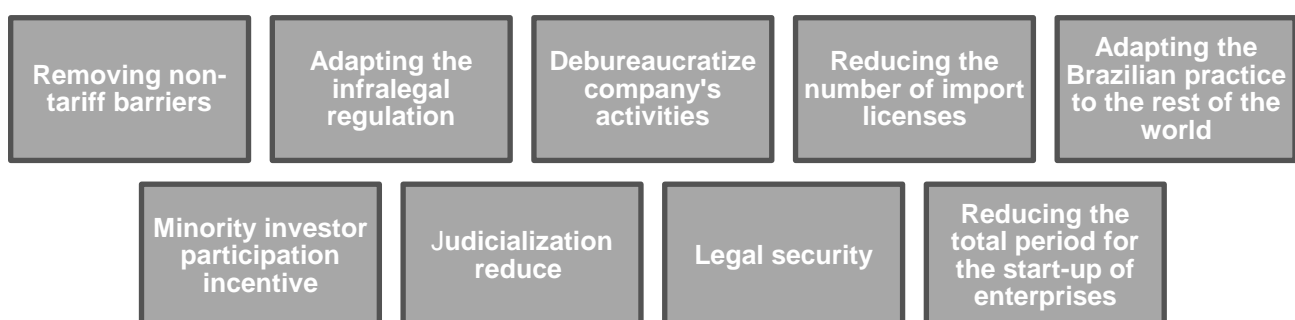
The Government presented last week a Provisional Measure to update and modernize the business environment in Brazil to accelerate the recovery of the economy and include the country in a best position in the World Bank's Doing Business ranking.

The intention of Provisional Measure n. 1.040/2021 (the Provisional Measure on the Business Environment) is to facilitate and debureaucratize the business environment in Brazil to increase competitiveness to the economic scenario. The Provisional Measure arises, among other objectives, to attract direct foreign investments through a better institutional environment.

The main changes proposed by the Provisional Measure on the Business Environment:

To foster the Brazilian business environment, the Provisional Measure proposes important legislative changes for opening a company in Brazil, protection for minority shareholders, cutting the bureaucracy for foreign trade operations, unification of procedures, and changes in commercial legislation to include corporate governance practices.

We highlight the following proposals:



- Creation of a one-stop electronic foreign trade window for forwarding documents, information, collection of fees and data by importers, exporters, and to foreign trade agents;
- Prohibition of the requirement for an import license or authorization due to the appearance of the goods when not provided in the specific normative act, removing non-tariff barriers and cheapening products;
- Adaptation of the infralegal regulation of Foreign Trade to the Brazilian Economic Freedom Law, reducing the number of import licenses that are unnecessary in the process;
- Creation of a new integrated system of foreign trade, elaborated from data shared by the Federal Public Administration, to simplify and debureaucratize the company's activities;
- Extinction of market reserve in long-distance shipping to speed up the import process;
- Uniformization of the National Register of Legal Entities for the formalization of the company, eliminating the need to have the fiscal register in municipal, state, and federal agencies, to reduce the term for the opening of companies;
- Elimination of the previous address analysis for the opening of companies, adapting the Brazilian practice to the rest of the world;
- Automatization of the registration of the company name, through digital previous checking, eliminating procedures;
- Implementation of medium-risk companies in Brazil through national risk classification, to simplify procedures and adjust the Brazilian reality to world practices;
- Expansion of the powers of the companies' General Meetings, guaranteeing the possibility of deliberating on significant amounts of sales and contributions, in addition to entering into transactions with related parties, which encourages the participation of minority investors;
- Change in the deadline for calling the first General Meeting to 30 days, in line with the minority investor participation incentive;
- Mandatory participation of independent directors on the Board of Directors of publicly-held companies, in line with the World Bank's dictates;
- Prohibition of the accumulation of positions in large publicly-held companies, following common Corporate Governance practices;
- Creation of the Integrated System of Asset Recovery (SIRA) to speed up the location of asset data and debt collection by the Federal Government, to reduce the judicialization of debts;
- Adoption of administrative measures for collection of debts by the Professional Councils, such as inclusion in defaulters' registers, to reduce judicialization;

- Consolidation of pacified jurisprudence as to complex statutes of limitation, conferring legal security to contracts and facilitate their execution;
- Acceleration in the connections of electricity in less complex works, establishing a fatal deadline of 5 days for issuing the authorization for connection of electricity, making it faster to obtain electricity for new enterprises;
- Allows the Brazilian Agency of Electric Energy to delimit maximum deadline for obtaining electricity, reducing the total period for the start-up of the enterprise.

With these changes to speed up bureaucratic procedures and make it easier to create a company, we expect to see considerable economic growth. Moreover, the economic team has great expectations in the sense of the attraction of greater foreign investment in Brazil after the adoption of such measures.

The permanent economic leverage and legal security for business depend, however, on the analysis and approval of the text of the Provisional Measure by Congress.

Considerations about the legislative process of the Provisional Measure

A Provisional Measure is a legislative instrument of the Executive Power to change the legislation in case of relevance and urgency, but with some constitutional restrictions to its scope. After issuing a Provisional Measure, the Government must submit the instrument to the Congress appreciation, in where the new legislation can be changed. If the measure is not approved by Congress in 120 days, it will expire and its effects will be null.

With the coronavirus pandemic, some procedural rules to the appreciation of the Provisional Measures were changed.

Now, the analysis of the Joint Committee of the Congress is made directly in the Plenary of the House of Representatives. The appointed rapporteur gives an opinion on the constitutional requirements of the Provisional Measure and on the amendments received, through an report to be submitted to the Plenary of the House.

After consideration by the House of Representatives, the Senate will act as a reviewer of the approved report and will examine the plenary amendments that were submitted.











If the Senate approves the text approved by the House of Representatives as it is, the Senate will send the text to the President for sanction. On the other hand, if any merit change is implemented by the Senate, the matter returns to the House of Representatives, which will analyze whether or not to maintain the Senate's amendments, and, after the due analysis, will sent the Provisional Measure for presidential sanction.

Authors: Bárbara Teles, partner at MJAB, e Felipe Guimarães, trainee at MJAB

About the firm

MJ Alves e Burle Advogados e Consultores – Advocacy Brasil (MJAB) is the first Brazilian law firm specialized in Advocacy. The firm advocates for organizations and companies on governmental matters in Brazilian Congress and Administration.

Awards and Recognition

 <p>Americas Tax Policy Team of the Year</p> <p>Shortlisted 2017-2020</p>	 <p>Tax 2017-2020</p> <p>Marcos Joaquim Gonçalves Alves</p>	 <p>Government Relations 2017-2021</p> <p>Marcos Joaquim Gonçalves Alves Fernanda Burle Leandro Modesto Coimbra</p>	 <p>Tax – Brasília 2021</p> <p>Marcos Joaquim Gonçalves Alves Alan Flores Viana Gabriella Alencar Ribeiro</p>	 <p>Latin Lawyer National 2020</p>
 <p>Government Relations Leading Firm 2019-2021</p> <p>Marcos Joaquim Gonçalves Alves Fernanda Burle, Leandro Modesto Bárbara Teles, Bruna Cardoso</p>	 <p>Civil and Commercial Litigation 2019-2020</p> <p>Marcos Joaquim Gonçalves Alves Alan Flores Viana</p>	 <p>General Corporate Tax 2019-2021</p> <p>Tax Controversy 2020-2021</p> <p>Highly Regarded Tax Controversy 2017-2021</p> <p>Marcos Joaquim Gonçalves Alves</p>	 <p>Litigation 2019-2020</p> <p>Marcos Joaquim Gonçalves Alves Alan Flores Viana</p>	 <p>Tax Administrative Law</p> <p>Marcos Joaquim Gonçalves Alves 2017-2021 Fernanda Burle 2020-2021</p>

SHIS QI 9,
cj20, casa 3-5
71625-200
Brasília – DF
+55 61 3771-8000

Av. Oscar Niemeyer, 2000,
bloco 1, sala 1401
20220-297
Rio de Janeiro – RJ
+55 21 3956-8300

Avenida de Berna, nº 56, 6 B
Avenidas Novas
1050 043
Lisboa – Portugal
+351 934 493 936