



The historic center of Salvador

# Brazil: Political turmoil, economic distress and important changes

FOLLOWING A RECESSION THAT STARTED AT THE END OF 2014, THE BRAZILIAN ECONOMY HAD A TERRIBLE 2015. INFLATION RATES HIT 10%, WHILE UNEMPLOYMENT REACHED 9%. TO MAKE MATTERS WORSE, AFTER MANY POPULAR DEMONSTRATIONS AND REVELATIONS OF POLITICAL SCANDALS, PRESIDENT DILMA ROUSSEFF FACED AN IMPEACHMENT PROCESS THAT RESULTED IN THE TRANSFER OF THE NATION'S HIGHEST EXECUTIVE FUNCTIONS TO VICE PRESIDENT MICHEL TEMER. BRAZIL'S LEGAL MARKET, WHICH IS ONE OF THE WORLD'S BIGGEST, HAS BEEN HEAVILY AFFECTED BY THESE POLITICAL AND ECONOMIC EVENTS, EVEN AS IT WITNESSES MANY CHANGES IN ITS OWN FIELD.

## HIGH DENSITY OF LAWYERS AND LACK OF INTERNATIONAL COMPETITION

Brazil has one of the highest densities and number of lawyers in the world, with around one lawyer for every 316 people and 900,000 law professionals in total. Despite the fact that it has one of the most complicated regulatory systems might explain the high demand for lawyers, one particular reason that stands out for such a high figure is the number of law schools. There are around 1,300 law graduation courses registered in the territory. But, despite the ebullient legal market, Brazilian institutions still favour domestic firms over foreign ones, which are only allowed to act in the country as consultants and are barred from sharing fees and equity, or entering partnerships with Brazilian lawyers. However, Brazilians who wish to access international capital markets or develop projects

**“THERE IS A WIDESPREAD CONSENSUS BETWEEN ECONOMIC ANALYSTS THAT ROUSSEFF'S CHOICES HAVE HURT THE COUNTRY'S FINANCES IN SIGNIFICANT WAYS, AS WELL AS SCARED OFF MANY FOREIGN INVESTORS”**

abroad can still call upon the listed foreign firms (the majority acting in associations with local ones) providing legal advice, mainly on English and American law. Some nationals believe that giving foreign firms increased access would pose a threat to the already highly competitive market. Others think the arrival of foreigners would actually favour the exchange of legal knowledge and management skills. The vast majority of registered lawyers operate as sole practitioners or in small office structures – usually involved exclusively in domestic matters. Some others are big, full service firms, like BMA, Pinheiro Neto, Mattos Filho or Machado Meyer, that split their practice between domestic and international work with an effective presence abroad. The south-eastern region, where the cities of São Paulo and Rio de Janeiro are located, is the wealthiest, representing 55% of the country's GDP.

Thus, it is also the region with the biggest legal presence totalling 533,828 lawyers in the area.

## THE POLITICAL SCENE

Since narrowly winning a second term in October 2014, President Dilma Rousseff saw her approval rating plummet to 13% in the first trimester of 2016. Many popular demonstrations took place during simultaneously in Brazil's major cities claiming better governance and praising “Operação Lava Jato”, the country's biggest anti-corruption operation to date led by the federal police. Since 2014, Lava Jato has taken down some of Brazil's most prominent politicians and businessmen, including at the highest levels of Petrobras, the country's biggest state company, as well as key members of the main parties, who have been accused of involvement in bribery, money laundering and misuse of public resources. The impeachment request has mainly been based on accounting irregularities, which is something that many jurists still question in terms of constitutional legality. However, there is a widespread consensus between economic analysts that ►



► Rousseff's choices have hurt the country's finances in significant ways, as well as scared off many foreign investors who now want to avoid the unstable environment featuring a lack of institutional credibility. Nonetheless, despite severe depreciations of its investment grade by the world's most prominent risk agencies, up to the end of 2015, the country still figured as Latin America's largest FDI recipient and the eighth largest in the world.

**RESPONSE FROM THE LEGAL MARKET**

As for the legal market, it is true that most law firms operate just as any other company does: with paid employees, a complex IT system, an established and strategic budget, an action and growth plan etc. In this sense, the economic crisis has hit the legal market as severely as any other area. Nonetheless, it is precisely during times of economic distress that the number of breaches, defaults and insolvency is at the highest which, in turn, generates a lot of litigation and a rising demand for arbitration services. It is also during times of distress that companies face the need of reconstruction, sell assets and negotiate debts, which can also generate a higher demand for Tax, Labour and Banking advice. Lawyers have increasingly become part of companies' strategic divisions and are no longer just called upon whenever a problem arises, but anytime a change is needed. Therefore, crises can actually make good opportunities to invest in more consolidated client relationships.

**"MARCO CIVIL": A NEW CIVIL RIGHTS FRAMEWORK FOR THE INTERNET**

Since 2010, the so-called Brazilian Internet Constitution has been a matter of great controversy between jurists, lawyers and non-specialists. It finally came into force on May 11 2016, after five years of discussion at Congressional level and public consultation. "Marco Civil", roughly translated as civil milestone, is essentially a set of laws that regulate all internet activity. It came about after the revelation of espionage practices carried out by the American authorities against several countries, including Brazil. According to its sup-

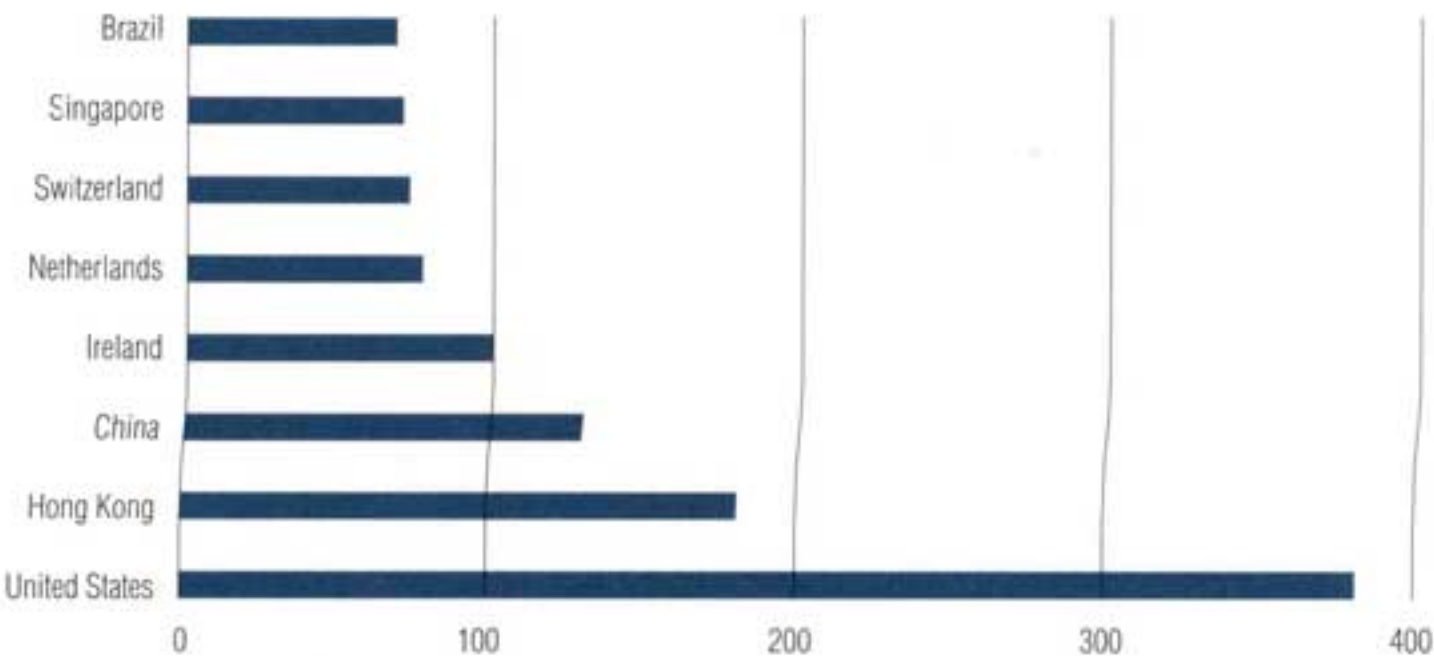
porters, the laws actually guarantee basic rights on the use of the web: privacy, security of private data, freedom of speech, the end of targeted marketing, etc. However, some of its most controversial topics include issues of neutrality. According to the new legislation, internet providers cannot offer differentiated access to particular services anymore – they must be neutral when it comes to the transfer of data, no matter its source or destination. Furthermore, concerning data storage, a lot has changed since the laws' initial drafts in order to preserve user privacy. It has been agreed that any registry of personal data by internet providers must comply with current Brazilian legislation, privacy rights and communication secrecy. Connection providers can no longer be held responsible for users' posts or comments and they may

only withdraw online content by judicial warrant. When it comes to targeted marketing, online companies will not be able to make use of user's private data in commercial strategies, unless specified by contract and for a maximum period of six months.

**A NEW CIVIL PROCEDURE CODE APPROVED**

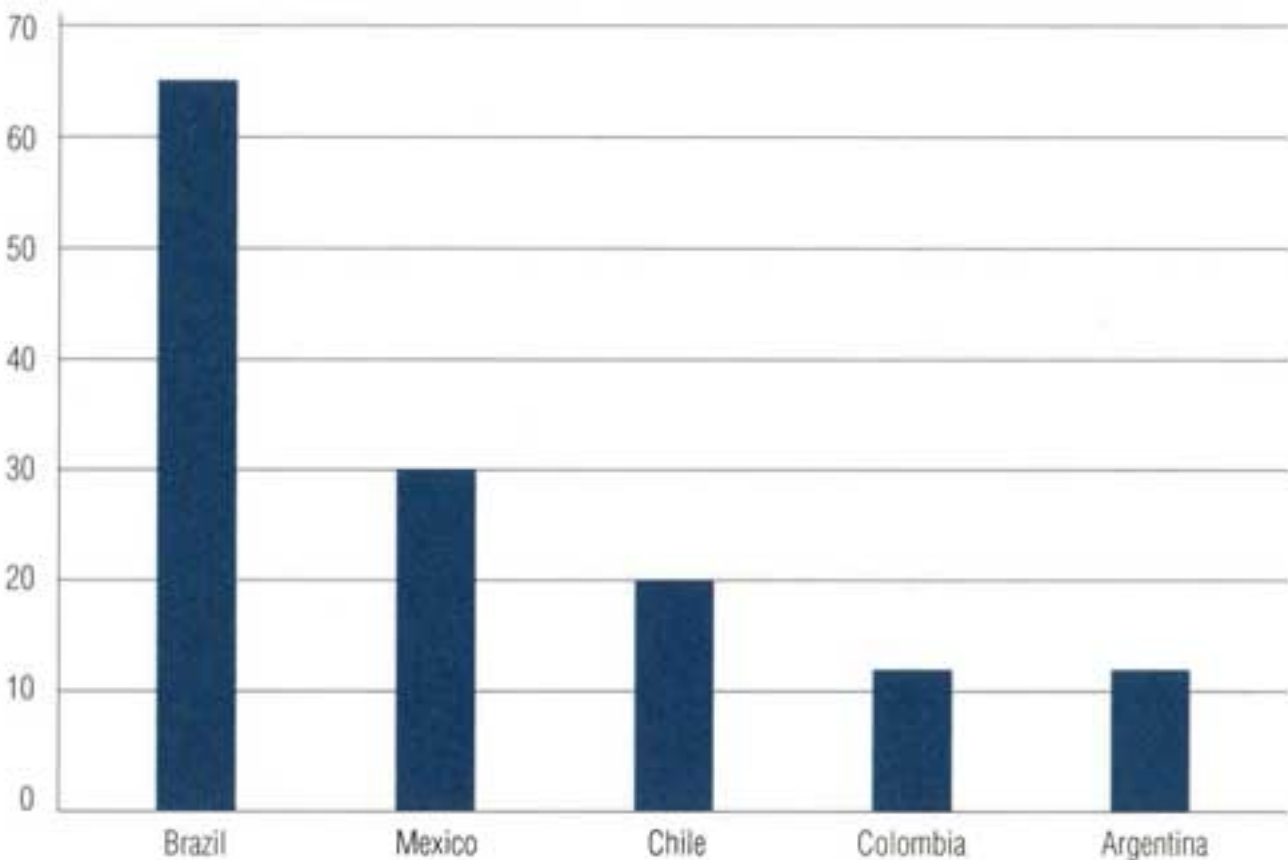
Following national changes in Digital Law, the approval on May 18, 2016 of the New Civil Procedure Code marked the end of five years of extensive discussions on how to modernize the Brazilian judicial system. One of its main goals is to speed up the process of litigation and of matters related to international law. It affects mainly the influence of national courts on international jurisdiction, choice of forum in contracts and recognition of foreign

TOP FOREIGN DIRECT INVESTMENT RECIPIENTS IN THE WORLD  
\$ billion / 2015



Source: United Nations Conference on Trade and Development (UNCTAD)

TOP FOREIGN DIRECT INVESTMENT RECIPIENTS IN LATIN AMERICA  
\$ billion / 2015



Source: United Nations Conference on Trade and Development (UNCTAD)



courts and judgments. For instance, Brazilian courts now have jurisdiction over disputes that involve alimony and marital assets. Parties are now free to choose a Brazilian court to decide upon their disputes even if no factors relating to Brazil are present. Moreover, if an international contract contains a choice of forum provision, the proceedings before a Brazilian court may be stayed, unless the subject relies solely on Brazilian jurisdiction. The new code even states that any rule, unlike before, can be subject to contrary provision contained in international treaties and bilateral agreements in force in Brazil. As a matter of fact, significant doubts used to arise concerning how Brazilian courts were to deal with requests from foreign ones. The goal now is to govern international judicial cooperation through treaties to which Brazil has committed and, in their absence, by international reciprocity principles. The formalities related to foreign documents and direct assistance have also been reduced. Last but not least, the new code states that foreign interlocutory judgments, such as urgent relief via letter rogatory, may be deemed enforceable in order to allow for a quicker judicial process.

THE RISE IN ARBITRATION PROCEDURES

Regarding Brazil's attempts to approach international legal standards, the choice for opening the arbitration procedures debate in the Senate in 2012 was related to the rise in the use of arbitration clauses in contracts. Finally, on May 26, 2015, with the aim

of consolidating practices that have become recurrent in the legal world, amendments to the 20-year-old arbitration laws were enacted. Some of the major changes include the creation of an "Arbitral Letter," an instrument of cooperation between arbitral tribunals and courts; the inclusion of a provision

to deal with interlocutory reliefs, which gives arbitrators the power to grant, modify or revoke measures; the possibility to appoint someone who is not on the list of an institution or chamber as arbitrator (subject to approval); and a provision allowing arbitrators to issue partial arbitral awards. ■

SOME OF BRAZIL'S LARGEST LAW FIRMS  
Law firms listed in alphabetical order

Firm	Number of partners	Total Number of Lawyers	Number of Offices
Azevedo Sette Advogados	33	225	7
BMA Advogados	57	295	3
Demarest Advogados	62	277	4
Machado Meyer, Sendasz e Opice Advogados	53	350	6
Marcelo Tostes Advogados	20	180	6
Mattos Filho, Veiga Filho, Marrey Jr. & Quiroga Advogados	72	421	4
Nelson Wilians & Advogados	60	1560	45
Pinheiro Neto Advogados	86	394	3
Siqueira Castro Advogados	73	853	20
Souza Cescon, Barrieu & Flesch Advogados	35	203	5
Tauil & Chequer Advogados	34	162	3
TozziniFreire Advogados	80	470	6
Trench, Rossi e Watanabe Advogados	59	229	4
Veirano Advogados	51	236	4



Colorfully painted homes in Salvador





**CELSON COSTA**  
Managing Partner,  
**MACHADO MEYER**

## **“If Brazil is able to make the necessary adjustments it can realize its potential and achieve lasting stability”**

Celso Costa, Managing Partner at Machado Meyer Sendacz Opice Advogados, one of the major law firms in Brazil. He looks back on what has been a hectic year for the country and gives his interpretation of the early signs of recovery.

**“WE UNDERSTAND THE IMPORTANCE OF PROVIDING HIGH-VALUE SERVICES TO CLIENTS TO FULLY SUPPORT THEIR ACTIVITIES AND NEEDS”**

**Leaders League.** What are the reasons behind the country's difficult current situation and what is your mid-term prognosis?

**Celso Costa.** The political and economic challenges we are currently facing not only reflect our internal politics, but also echo foreign aspects of a globalized world. From a domestic perspective, the issue relates mainly to the gap between the government's earnings and spending up to the end of last year. At the same time, countries all over the world have seen growth rates slow down. For instance, a few months ago we received information from Merrill Lynch Bank of America stating that around 25% of fixed-income global assets were being invested in negative return securities, such as German, Japanese and Swedish bonds. This is an indication that experienced investors are actually predicting a difficult time for the international economy.

The Brazilian economy depends heavily on the global markets, and it is also deeply affected by the way its export ratings develop. Let us take China for example, one of our country's biggest trading partners. China has seen a deceleration in its economic growth, which has significantly - and negatively - influenced the Brazilian trade balance.

Due to both the international and the domestic factors, the Brazilian growth rate started to slow down and the government had to start financing its own public debt through higher interest rates and austerity measures. This action led to more troubled times, and the economy entered a vicious cycle. How long we will remain in this cycle really depends on how successfully the government can reduce public spending and reformulate the budget. It is a very intricate situation as one of the biggest obstacles to a country's growth - debt - is still very much present in the Brazilian economy.

I believe things will start to get better from now on, though, especially as the acting government has so far shown encouraging signs of budget adjustment. Currency devaluation, such as the one we are currently facing, is usually good for Brazilian industry, as it provides us with more competitiveness in the international markets. Furthermore, despite the crisis, Brazil is still one of the most interesting investment destinations. If the country is able to make the necessary adjustments it can realize its potential and achieve lasting stability.”

**Leaders League.** How does Machado Meyer deal with times like these?

**C.C.** It is part of our strategic plan to foster the development of counter cyclical practices. On the top of that, we highly value a light and agile structure, while closely monitoring our revenues and understanding the financial difficulties our clients might be facing. Within this context, we adopted several actions back in 2014 focusing on enhancing our efficiency in general. When this crisis hit, Machado Meyer had already done its homework, thanks to this ever-present policy.

Nevertheless, we pay just as much attention to our operational practices and the changes they face during troubled economic times. For instance, we noticed a demand rise in litigation, labour, antitrust, compliance, and even in our M&A practices. We accelerated our investments in such practices.

The area that significantly suffered in the process was the equity capital market. Still, we believe this happened across the board and was not particular to Machado Meyer. Out of the six equity transactions conducted last year in Brazil, our firm was an adviser on four of them. This means that, despite a market deceleration, we are still very well positioned. In the medium term, if the government is able to lower interest rates, the



stock and private equity markets will be able to gain strength again.

The debt capital markets practice, on the other hand, has been very active. Although this segment in particular is already highly competitive, Machado Meyer has been able to stand out due to our pioneering investments in internal process optimization when dealing with standardized contracts and due diligence procedures.

**Leaders League. What about more general changes to the legal market? Do you see trends from abroad affecting the legal landscape in Brazil?**

C.C. Machado Meyer pays a lot of attention to what happens to law firms in the international market, especially in England and the US. Our current view on the legal market evolution, which we draw from news and conversations, after the necessary adjustments to the Brazilian culture, is what guides our main strategy as a firm. We always try to incorporate international trends into our four-year strategy cycles, analysing how they can affect and interact with the Brazilian legal scenario. We believe the legal market has many options – traditional counselling and mass litigation among them – but our strategy is to focus on complex and high responsibility work, including transactions and litigations that observe those requisites, in which our clients see the most relevant value. We shaped our working model to fit this ambition.

**Leaders League. In this context, how is Machado Meyer positioned?**

C.C. We understand that we are part of a very select group of firms that provide high quality services for complex matters and transactions. Analysing the current scenario in Brazil, politically, economically and legally speaking, we believe that as time goes on it will become more complicated to enter this highly specialized market, as the competition becomes even more qualified. The best-ranked firms, which usually are the ones prepared to render top-notch services, will on each occasion compete harder among themselves and will take part in the most significant value-added work. The “up-and-coming group” will face aggressive market and price competition and will have to fight to get the remaining transactions.

Our strategic plan aims at strengthening our position within this leading group. We believe that in order to achieve this goal, we need to focus on maintaining highly trained professional, as well as the efficiency and agi-

lity of our structure.

Machado Meyer is not focused on developing a typical full-service structure. It is true that we have almost all practices across the board and, thus, we are prepared to assist different needs of our clients. Machado Meyer aims at building a platform that is prepared to handle complex and high responsibility work, one recognized by clients for its capability to provide top legal solutions. All our practices are committed to providing services with excellence, effectiveness and empathy to what the client is experiencing regardless of the transaction, litigation, issue or challenge they might be facing.

**Leaders League. What specific sectors and industries do you expect to fuel growth in the new Brazilian economy?**

C.C. In the current scenario, distressed assets, M&As and debt restructuring seem to be keeping the economy going, with constant opportunities rising in these sectors.

Nonetheless, infrastructure has always been a pillar of the Brazilian economy and that should continue as the economy starts to pick up again. The new President has also signalled in this direction with his first Provisional Measure, which is intended to stimulate the growth of investment partnerships in federal concessions, the so-called PPI. According to this Provisional Measure, the goal is to expand the Brazilian infrastructure with quality and at reasonable prices. If this Provisional Measure becomes law, this could be an excellent opportunity for local and foreign investors.

**Leaders League. What is your view on the recent activity in lateral hiring? Could that be symptomatic of an important change in the market?**

C.C. As mentioned, we consider that the competition between high quality services firms should grow in the coming years, making it even more difficult for new and established practices to obtain market share and win new clients. Lateral hiring could be an interesting alternative in this race, as extremely prepared and experienced professionals take on new challenges. Therefore, lateral hiring could be viewed more as a consequence of an ongoing market transformation, then the cause of this change.

A cultural adjustment is always necessary in the case of a lateral hiring, but it can be identified even before the hiring terms and conditions are finalized and should be addressed in the first months of a new addition to a team. ♦

**“MACHADO MEYER AIMS AT BUILDING A PLATFORM THAT IS PREPARED TO HANDLE COMPLEX AND HIGH RESPONSIBILITY WORKS”**