

Legal opinions (loan financing) Q&A: Brazil

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Country Q&A | Law stated as at 31-Jan-2021 | Brazil

This Q&A provides jurisdiction-specific commentary on *Practice note, Legal opinions in finance transactions: Cross-border*.

Legal opinions

1. Can you please provide a brief description of the kind of legal opinions that law firms in your jurisdiction usually give in relation to cross-border loan financing transactions?

Law firms in Brazil usually give due execution and enforcement legal opinions in relation to cross-border loan financing transactions. The opinions given are focused on:

- The due execution of the transaction documents by parties validly constituted and duly authorised to commit themselves under the terms of the relevant documents.
- The enforceability of the obligations undertaken by the borrower, guarantor or security provider.

(See [Question 8](#) for detail of the set of opinions usually given.)

Legal opinions are usually referred to as legal opinions or opinion letters.

No amendments are required to the following standard documents, since they correspond substantially to the models law firms issue in Brazil:

- *Standard document, Legal opinion: domestic company and foreign-law documents: Cross-border.*
- *Standard document, Legal opinion: foreign company and domestic-law documents: Cross-border.*
- *Standard document, Legal opinion: domestic company and domestic-law documents: Cross-border.*

2. When are legal opinions from lawyers authorised to practise in other jurisdictions usually requested in relation to a cross-border loan financing transaction? What matters do these legal opinions usually cover?

As a general rule, Brazilian counsel are only required to provide legal opinions where Brazilian law is adopted, or when either the lender, borrower, guarantor or security provider is Brazilian. The answers below assume this to be true or reproduce experience gathered in such situations.

In this answer, we address the following situations:

- The borrower, guarantor or security provider is incorporated in a foreign jurisdiction and the transaction documents are governed by the law of Brazil (Situation A).
- The governing law of the documents being opined on is the law of a foreign jurisdiction and the borrower, guarantor or security provider is incorporated in Brazil (Situation B).
- The borrower, guarantor or security provider is incorporated in a foreign jurisdiction, the transaction documents are governed by the same law (Situation C).
- Any other case (Situation D).

In Situation A, a non-Brazilian legal opinion would be required whenever the lender is incorporated in a country different from that of the borrower, guarantor or security provider. The legal opinion would be requested from counsel in the jurisdiction in which the parties have been incorporated.

In Situation B, typically a non-Brazilian opinion would not be required, even on the enforceability of the loan agreement, in relation to a borrower, guarantor or security provider incorporated in Brazil.

In Situation C, a non-Brazilian legal opinion would be required where the lender is incorporated in a jurisdiction that is different from that in which the borrower, guarantor and security provider have been incorporated, and should be given by counsel in that jurisdiction.

As for Situation D (when Brazilian law is adopted and the borrower, guarantor or security provider is Brazilian), non-Brazilian counsel would not be called to issue an opinion. Note also that a legal opinion is normally only required by Brazilian lenders if they exercise lending as part of their profession. Private lenders would typically have loan documents reviewed by non-Brazilian counsel but not insist on further formalities, even if a given transaction has cross-border elements.

See [Question 8](#) for amendments to [Checklist, Legal opinion letters: Cross-border](#) in relation to matters to be covered in each scenario described in the checklists (that is, local counsel opinions).

3. To which entities are opinion letters issued by a law firm in your jurisdiction usually addressed?

Legal opinion letters are usually issued to lenders and agents acting on behalf of a group of lenders.

Brazilian law firms are often required to issue opinion letters in connection with cross-border loan agreements governed by US law (frequently that of the State of New York) or English law. These agreements usually provide that opinion letters will be addressed to lenders and agents.

4. Do lenders in your jurisdiction have specific requirements for legal opinions to be given in connection with certain types of transactions?

Brazilian lenders do not normally have specific requirements for legal opinions.

Legal opinions issued by Brazilian lawyers, however, should, when informing the addressee that a transaction is legal and effective in Brazil, make qualifications related to specific requirements imposed by Brazilian law (see [Question 19](#)).

5. Is there any applicable rule (including any professional conduct rules) that may limit the ability of a law firm or a lawyer authorised to practise in your jurisdiction to issue a legal opinion in relation to cross-border loan financing transactions?

There are no specific rules on the ability of a lawyer or law firm to issue a legal opinion, but the general professional conduct rules imposed on lawyers also apply to the issuance of opinion letters.

The main rules governing and restricting lawyers' activities are:

- Law No. 8,906, dated July 4, 1994, that governs the legal profession in Brazil.
- The Ethics and Disciplinary Code of the Brazilian Bar Association (which also applies to foreign lawyers authorised to practise in Brazil).

Among other limitations, these rules prohibit:

- The assistance of clients or third parties in committing illegal acts (which can prevent a lawyer from issuing an opinion letter in respect of a transaction the lawyer knows has unlawful purposes, for example).
- Lawyers from the same law firm representing clients with opposing interests (not only with regard to litigation, but also to loan transactions involving different parties).

Lawyers qualified solely in Brazil from issuing any opinion on laws other than Brazilian laws.

6. Do law firms providing a legal opinion usually seek to mitigate their potential liability?

Yes. Law firms providing a legal opinion mitigate their potential liability through different and complementary approaches.

Local law opinions often state in an express clause facts that the firm assumes to be true (so-called "assumptions") and therefore will not be independently verified. Examples of these are:

- The veracity of all signatures.
- The authenticity of the original documents.
- The due execution of the opinion documents by all parties other than the represented party through duly authorised representatives.
- The validity of loan documents under the law chosen to govern them, if not Brazilian law.

Additionally, legal opinions also introduce "reservations"; that is, conditions for any positive conclusion regarding enforceability of loan documents to hold true. Typical reservations are:

- "Any final judgment obtained against the Borrower in a foreign judicial or arbitration proceeding will be enforceable in the courts of Brazil if previously recognised by the Brazilian Superior Court of Justice".
- "Brazilian courts often decide based on non-statutory equity principles or extensive construction of rules and case-law, and, as a consequence, actual court decisions different from the conclusions in this opinion cannot altogether be excluded".

For additional examples of "reservations", see [Question 19](#).

A third approach to contain liability is the introduction of a clause which states that the opinion letter is given solely for the purposes set out in the letter, and for the benefit of the addressee(s) and their respective legal advisers, and may not be relied on for any other purpose or by any other person.

Since legal opinions are issued to cover specific documents at a specific point in time (providing a snapshot of the situation at that time), it is common to add statements that the lawyers:

- Do not express opinion as to agreements, instrument, licences or other documents not specified.
- Disclaim any responsibility to advise with respect to any development, circumstance or change of any kind, including any change of law or fact which may occur after the date of the letter.

Finally, it is worth noting that liabilities may arise for Brazilian lawyers in case of professional malpractice (for example, failure to verify the capacity of the parties, or allowing their clients to sign non-valid documents) regardless of the execution of a legal opinion. Lawyers and law firms involved may be required to pay for any damages arising under the Brazilian Civil Code.

7. How is an opinion letter that a law firm in your jurisdiction may issue in relation to a facility agreement in a cross-border transaction usually structured?

The typical structure of legal opinions is as follows:

- Addressee's/addressees' identity.
- Background and description of the transaction.
- List of documents examined.
- Assumptions: a section setting out those matters that the opinion letter will assume to be true but cannot be independently verified by the opining lawyers.
- Opinions as to the content described in [Question 8](#).
- Reservations: a section detailing legal rules and other circumstances to which the opinion documents may be subject in the case of enforcement, and limiting the generality of the opinions given.
- Scope of opinion. Statements that the opinion letter:
 - does not express opinion as to documents not specified in it; and
 - disclaims any responsibility to advise with respect to any development, circumstance or change of any kind after the date of the letter.
- Disclosure and reliance: a section limiting reliance on the legal opinion by third parties, and disclosure of the legal opinion to third parties.
- Schedules: documents and other material relied on in issuing the opinion.

Brazilian legal opinions usually list the documents examined, qualifications and assumptions in the body of the document, rather than in schedules. However, this is not a legal requirement and so no changes are necessary to:

- *Standard document, Legal opinion: domestic company and foreign-law documents: Cross-border.*
- *Standard document, Legal opinion: foreign company and domestic-law documents: Cross-border.*
- *Standard document, Legal opinion: domestic company and domestic-law documents: Cross-border.*

8. What set of opinions would a law firm in your jurisdiction be prepared to give in relation to a facility agreement in a cross-border transaction?

A law firm in Brazil should be prepared to give the opinions described in the table below in relation to a facility agreement in a cross-border transaction.

Opinions to be given by lawyer authorised to practise in the relevant jurisdiction	Domestic law obligors (including borrowers, guarantors and security providers) and domestic law documents	Domestic law obligors (including borrowers, guarantors and security providers) and foreign law documents	Foreign law obligors (including borrowers, guarantors and security providers) and domestic law documents
Status and incorporation	Yes	Yes	No
Corporate capacity	Yes	Yes	No
Authorisation	Yes	Yes	No
Signing/Due execution	Yes	Yes	No
Legal validity	Yes	As the legality and validity of the obligations will be determined by the law by which the relevant agreement is expressed to be governed, the opinion given on foreign law documents cannot deal with legality and validity as it would if the agreement were governed by the law of the jurisdiction in which the opinion provider is authorised to practise. The opinion usually given in this scenario should instead confirm validity based on the fact that the agreement does not violate the basic guiding principles of Brazilian law.	Yes
Conflicts	Yes	Yes	<ul style="list-style-type: none"> • Yes regarding Brazilian law. • No regarding constitutional documents.
Consents	Yes	Yes	Yes
Registrations or filings	Yes	Yes	Yes
Valid security interest	Yes	No	Yes
Documentary taxes	Yes	Yes	Yes

Deduction or withholding	Yes	Yes	Yes, in relation to money transfers out of Brazil (for example, disbursement of principal).
<i>Pari passu</i>	A <i>pari passu</i> ranking opinion may be requested. If given, it will be subject to a number of appropriate insolvency qualifications.	A <i>pari passu</i> ranking opinion may be requested. If given, it will be subject to a number of appropriate insolvency qualifications.	No
Immunity	Yes	Yes	No
Enforcement of foreign judgments	Yes	Yes	Yes
Adverse consequences/ qualifications to do business	Yes	Yes	Yes
Validity of governing law	Yes	Yes	Yes
Submission to jurisdiction	Yes, although not usually given in the context of a purely domestic transaction.	Yes	Yes

No amendments are necessary to:

- *Standard document, Legal opinion: domestic company and foreign-law documents: Cross-border: paragraph 5.*
- *Standard document, Legal opinion: foreign company and domestic-law documents: Cross-border: paragraph 5.*
- *Standard document, Legal opinion: domestic company and domestic-law documents: Cross-border: paragraph 5.*

9. Does the expression "in good standing" have any meaning in relation to an entity incorporated in your jurisdiction? If so, please explain briefly what that meaning is.

The expression "in good standing" has no legal meaning under Brazilian law.

However, parties to a transaction (whether Brazilian or non-Brazilian) usually require Brazilian borrowers, guarantors or security providers to issue a certificate of good standing before the execution of transaction documents. The certificate is issued by a local companies' registrar and contains updated corporate records:

- Attesting to the valid existence of a business entity.
- Listing its managers, members and branches.

10. Does your law firm have a procedure for issuing legal opinions?

Parties to a transaction usually require that legal opinions be prepared and left in agreed form before the documents to which they refer ("opinion documents") are executed. Sometimes, especially in transactions involving several jurisdictions, parties also require the opinion letter to be executed before the date of signing.

To avoid the issuance of opinion letters before the signed opinion documents have been duly analysed by our firm, we usually deliver a signed opinion letter by email to the addressees to be held in escrow by them until we have received and reviewed properly executed opinion documents. After that, the opinion can be released to those addressees by means of a telephone call or further email from us.

This procedure allows us to comply with deadlines without releasing our opinion before opinion documents have been duly received and reviewed. It is also generally adopted by other law firms in Brazil.

As to form, our legal opinions for financial transactions follow models approved by the partners within our specialist banking team, and are also executed by those partners after their review.

11. What kind of due diligence does your law firm carry out before issuing an opinion letter in relation to a cross-border loan financing transaction?

First, it is necessary to check the borrower, guarantor or security provider's constitutional documents to confirm whether:

- The officers executing the loan documents have proper authority.
- Any specific authorisation is required before the entity enters into the opinion documents (for example, a shareholder resolution authorising the execution of security agreements over the entity's assets may be necessary).
- There are any other restrictions that may apply to the execution of the opinion documents.

It is then necessary to check the status of the Brazilian company with the Commercial Registry Office of the federal state where the company is incorporated, to verify whether the company and its corporate documents have been duly registered and the company is therefore validly incorporated under Brazilian laws.

The firm issuing the opinion letter must then search possible insolvency proceedings against the borrower, guarantor or security provider, because any transaction with a company that is known to be insolvent can be declared

ineffective, even if sufficient consideration is tendered (*Article 159, Law No. 10,406, of January 10, 2002*). It is therefore important to:

- Obtain negative insolvency proceedings certificates from the registries of the place where the debtor is headquartered.
- Search press news to check for any published financial statements showing a negative net worth (as the transaction can also be declared ineffective if the fact of insolvency is public knowledge).

Where the firm is required to give an opinion on security agreements over registrable assets such as shares, real estate or vehicles, the due diligence must encompass a review of the respective ownership registries (share registry books, real estate or vehicle registrar records), which will confirm who the owners are and show whether any security has been previously constituted over the same assets.

These measures apply independently of the law governing the loan documents, whenever the borrower, guarantor or security provider is incorporated and active in Brazil. They are not required if the parties are neither incorporated nor active in Brazil.

The actual loan documents also need to be analysed. The analysis will be undertaken on one of two levels of detail, depending on the law governing the agreement:

- In-depth level encompassing compliance with all Brazilian laws, in the case of loan documents governed by Brazilian law.
- Standard analysis of clauses of loan documents to ascertain that they are not in breach of the general principles of Brazilian law, in the case of loan documents governed by non-Brazilian law.

12. Would an opinion letter usually be signed at the end of the document after all the relevant schedules or immediately before the schedules?

An opinion letter is usually signed immediately before the schedules, but there are no rules preventing the signature after the schedules or even at the beginning of the letter.

13. Is it necessary, before giving a legal opinion in relation to a company incorporated in your jurisdiction in connection with a cross-border loan financing transaction, to obtain and examine copies (or originals) of the company's constitutional documents or resolutions of directors or shareholders?

Yes, opining lawyers must obtain and examine copies or originals of the company's constitutional documents and resolutions of directors or shareholders (when applicable), which must be registered with the Commercial Registry Office.

Examination of these documents will enable the opining lawyer to attest that:

- The company is validly constituted under the laws of Brazil and enjoys full powers to carry on its business as it currently does.
- The company was validly authorised to borrow, grant guarantee or security and commit itself according to the loan documents.
- The signature by the company of the loan documents and performance of the resulting obligations are not contrary to and do not breach any provision of its corporate documents.

Standard documents, Legal opinion: domestic company and foreign-law documents: Cross-border: Schedule 1 and *Legal opinion: domestic company and domestic-law documents: Cross-border: Schedule 1* should be amended as follows:

3. A [certified] copy of the [certificate of incorporation (and any certificate of incorporation on change of name)] and [memorandum and] [articles of association OR bye-laws OR [OTHER RELEVANT DOCUMENT]] of [the OR each] [Borrower OR Guarantor OR Security Provider] registered with the Commercial Registry of the state of [STATE], on [DATE], under number [NUMBER].

4. A [certified] copy of the minutes of a meeting of the [board of directors OR [[RELEVANT MANAGING BODY] OR [COMMITTEE]] of [the OR each] [Borrower OR Guarantor OR Security Provider] held on [DATE], approving the transactions contemplated by the Documents to which it is a party and authorising the execution of the Documents to which it is a party registered with the Commercial Registry of the state of [STATE], on [DATE], under number [NUMBER].

5. A [certified] copy of the minutes of a meeting of the [quotaholders] OR [SHAREHOLDERS] OR [BOARD OF DIRECTORS] OR [[RELEVANT MANAGING BODY] OR [COMMITTEE]] of [the OR each] [Borrower OR Guarantor OR Security Provider] held on [DATE], which appointed the current officers of [the OR each] [Borrower OR Guarantor OR Security Provider] registered with the Commercial Registry of the state of [STATE], on [DATE], under number [NUMBER].

6. A [certified] copy of the minutes of a meeting of the general shareholders' meeting of [the OR each] [Borrower OR Guarantor OR Security Provider] held on [DATE], which appointed the members of the Board of Directors ("Conselho de Administração"), of [the OR each] [Borrower OR Guarantor OR Security Provider] registered with the Commercial Registry of the state of [STATE], on [DATE], under number [NUMBER]. [TO BE INCLUDED ONLY WHEN THE COMPANY HAS A BOARD OF DIRECTORS.]

7. A power of attorney dated [DATE] by which the [Borrower OR Guarantor OR Security Provider] appointed attorneys-in-fact to execute and deliver the opinion documents on its behalf. [TO BE INCLUDED WHEN DOCUMENTS ARE TO BE EXECUTED BY ATTORNEYS-IN-FACT ACTING ON BEHALF OF THE DOMESTIC COMPANY.]

14. What searches, including those of public registries, and enquiries need to be carried out in your jurisdiction in relation to a facility agreement when issuing a legal opinion?

The searches and enquiries that need to be carried out depend on the opinions being given, and vary from transaction to transaction. For example, when the firm issuing the opinion letter is required to give an opinion on the non-existence of bankruptcy or insolvency procedures against the debtor, the firm must obtain negative insolvency proceedings certificates from the courts of the place where debtor is headquartered. Additionally, a search for financial information in the public domain is normally undertaken to prevent the transaction from being declared ineffective (see [Question 11](#)).

Registered corporate documents indicated in [Question 13](#) are usually provided to the issuing lawyer by the borrower, guarantor or security provider, and therefore searches are not required. When relevant documents are not provided to the law firm, they can be searched through the Commercial Registry Office website of the state where the company is incorporated. However, relevant documents are not always available through those websites, especially for companies which are not incorporated in São Paulo.

As explained in [Question 11](#), additional searches may be required when the law firm must give an opinion on the ownership and non-existence of liens over registrable assets being granted as security.

No amendments are necessary to:

- *Standard document, Legal opinion: domestic company and foreign-law documents: Cross-border: Schedule 2.*
- *Standard document, Legal opinion: foreign company and domestic-law documents: Cross-border: Schedule 2.*
- *Standard document, Legal opinion: domestic company and domestic-law documents: Cross-border: Schedule 2.*

15. What term would you use, in English, to denote any tax levied in your jurisdiction on documents?

While registration fees and charges may be payable to registrars, these are not actually taxes since they are not paid to the government.

We normally state in our opinion that there are no documentary taxes. This term is better than stamp duty, since its meaning is wider, covering documents to which no "stamp" is required.

16. Can all matters which are normally covered in an opinion letter issued by lawyers in your jurisdiction and relating to a facility agreement be confirmed as at the time when the opinion letter is issued (with the aid of, for example, last-minute checks at public registries or similar)?

All opinions must be valid at the date of the issuance of the opinion letter. To ensure that the opinions remain valid at the date of signature, the opinion letter usually contains an express assumption to the effect that there are no other arrangements, corporate acts, decisions of the company or its shareholders which modify or supersede the corporate documents analysed and listed in the opinion. This practice renders confirmation of the documents at the time of signing of the opinion unnecessary.

17. What mechanisms can be used in your jurisdiction to enable an opinion letter to be issued/delivered/released at a precise time (such as the time immediately preceding the advance of a loan to a borrower) so as to give the addressee(s) of the opinion letter, located in another jurisdiction, the best protection?

An opinion can be executed at a future date and delivered to the lenders to be held in escrow until the date of signing of the loan documents (see [Question 10](#)).

The opinion will typically bear the date of the signing of the loan documents; that is, a date after its own actual execution. Counsel will provide the escrow holders with written instructions as to when the opinion can be delivered and used (normally upon signing of the loan documents).

This mechanism is not a problem, since the confirmation to the escrow holder that it can use the opinion would amount to a restatement of its meaning (and consequently of its date) at the time the confirmation is issued, therefore rendering the date of the opinion correct.

The opinion will however contain an express assumption to the effect that there are no other arrangements, corporate acts, decisions of the company or its shareholders which modify or supersede the corporate documents analysed and listed in the opinion (see [Question 16](#)). As a result, the escrow procedure described here will not afford additional protection to the addressees with regard to the updating of documents opined on, if this occurs between the point when the opinion letter is put into escrow and when it is released.

18. Is it possible under the law of your jurisdiction for there to be any irregularity or deficiency in the internal procedures of a borrower, guarantor or security provider, in relation to the approving

and signing of the document(s) being opined on, which may affect the rights of the lender(s), where the irregularity or deficiency is typically something which will fall within an exception to the matters confirmed by the legal opinion?

This is possible. The most common examples of cases in which this might happen would be:

- The forgery of signatures, since local opinions often state in an express clause an "assumption" that the veracity of all signatures and the authenticity of the originals are factual matters not covered by the contents of the opinion (see [Question 6](#)).
- Changes in documents or authorisation procedures for signature after the powers are verified and the legal opinion is executed and delivered in escrow (see [Question 10](#) and [Question 17](#)).

These risks which are not covered by the opinion can, however, be mitigated in the following ways:

- Regarding the veracity of the signatures, the addressees of an opinion may request that the signatures be notarised, to decrease the risks of their not being genuine. The notarisation works as a declaration by a public officer that the signature on the document is that of the signer identified therein.
- Regarding changes in documents or authorisation procedures, risks are mitigated by the execution by the officers of the borrower, guarantor or security provider of regularity and incumbency certificates confirming the validity of the company's constitution, the lack of changes to main corporate documents and the retention of their own signing powers.

19. What set of assumptions and qualifications are usually included in an opinion letter issued by lawyers in your jurisdiction in connection with a cross-border loan financing transaction?

Typical assumptions are:

- The veracity of all signatures, the conformity to the originals of all documents supplied to the opining lawyers as copies, and the authenticity of the originals of those documents.
- The absence of any other arrangements between the parties to the documents examined in relation to the issuance of the opinion which modify or supersede any of their terms.
- The absence of any other corporate acts or decisions of the borrower, guarantor or security provider or their shareholders which modify or supersede the decisions evidenced by the corporate actions examined and listed in the legal opinion.
- The due execution of the opinion documents by all parties to them, other than the borrower, guarantor or security provider through duly authorised representatives.

- The opinion documents' validity under and conformity with the law chosen to govern them, if this is not Brazilian law.

Typical qualifications relate to:

- The enforceability of the transaction documents.
- Limitations arising from insolvency law.
- Special requirements applicable to foreign documents.
- Security agreements and guarantees.
- Taxes that may be due.
- Information on payments to the Central Bank of Brazil.

In the case of legal opinions issued by lawyers in Brazil, a number of qualifications should be added to:

- *Standard documents, Legal opinion: domestic company and foreign-law documents: Cross-border: Schedule 3 and Schedule 4.*
- *Standard document, Legal opinion: foreign company and domestic-law documents: Cross-border: Schedule 3 and Schedule 4.*
- *Standard document, Legal opinion: domestic company and domestic-law documents: Cross-border: Schedule 3 and Schedule 4.*

They are as follows:

- Remittance of funds abroad for the performance by a Brazilian borrower of its payment obligations under the terms of the loan agreement is subject to the registration of the schedule of payments in the electronic data system of the Central Bank of Brazil (ROF); and payments made in non-compliance with the terms of the ROF are subject to special authorisation from the Central Bank of Brazil.
- Documents in a foreign language must be translated into Portuguese by a sworn translator to ensure their admission before courts in Brazil (*Article 192, sole paragraph, Law No. 13,105, of March 16, 2015*). In addition to being translated, foreign documents must:
 - have the parties' signatures notarised by a notary public licensed as such under the law of the place of signing; the signature of the notary public must be authenticated by a consular official of Brazil (*Articles 1 and 2, Hague Convention, enacted by Presidential Decree No. 8,660, of January 29, 2016*), or (if the document is covered by the Hague Convention abolishing legalisation for foreign public documents), be apostilled; and
 - be registered together with their sworn translation with one of the multiple registrars of deeds and documents in Brazil (*Article 129, 6th, Law No. 6,015, of December 31, 1973*).

The translations, notarisations, authentications, apostilling and registrations are subject to fees.

- The borrower is currently obliged to pay by virtue of a loan agreement withholding income tax on interest, charges and commissions owed by the borrower to a non- Brazilian lender and a tax on financial transactions (*Imposto sobre Operações de Crédito, Câmbio e Seguro ou relativas a Títulos ou Valores Mobiliários*) (IOF) on principal, interest, charges, commissions and any other payment made under the loan agreement through the Brazilian foreign exchange market.
- Enforcement may be limited by bankruptcy, insolvency, liquidation, reorganisation and other laws of general application relating to or affecting the rights of creditors.
- Brazilian law requires that an agreement be executed by both parties in the place of the law chosen to govern the agreement, or, in case of counterparts being signed in different countries, the last signature should be made in the country of the designated governing law; if these provisions are not observed, the law chosen to govern the transaction may not be valid in Brazil (*Article 9, Decree-Law No. 4,657, of September 4, 1942*).
- No statements are made regarding conformity of any documents or licences with procedural and licensing requirements applying to imports.
- In the case of proceedings instituted in Brazil, certain court costs and deposits to guarantee judgment might be due.
- Any final judgment obtained against the borrower, guarantor or security provider in foreign judicial or arbitration proceedings will be enforceable in the courts of Brazil if previously recognised by the Brazilian Superior Court of Justice, such recognition only occurring if:
 - the judgment fulfils all formalities required for its enforceability under the laws of the country where the same was issued;
 - the service of process instituted against a Brazilian resident party is effected in accordance with Brazilian law;
 - the judgment was issued by a competent court after due service of process on the parties to the action;
 - the judgment is not subject to appeal;
 - the judgment was authenticated by a Brazilian consulate in the country where the same was issued or, if the judgment was issued in a jurisdiction that adopted the Hague convention abolishing the legalisation for foreign public documents, the judgment is apostilled;
 - the judgment is accompanied by a sworn translation in Portuguese; and
 - the judgment is not against Brazilian national sovereignty, public policy or morality.
- An arbitration award made by an arbitration court will only be recognised by the courts of Brazil if:
 - the arbitration clause is valid under the law chosen by the parties, or, if no law is chosen, under the laws of the country in which the arbitration award was issued;
 - the defendant was notified of the designation of the arbitrators or of the beginning of the arbitration procedure, being subsequently given a fair chance to present a defence;
 - the arbitration award does not exceed the limits of the arbitration;
 - the arbitration proceedings follow the terms of the arbitration clause; and

- the arbitration award is binding on the parties and remains valid and effective in the country in which it has been issued.
- Brazilian courts often decide based on non-statutory equity principles or extensive construction of rules and case law, and therefore actual court decisions different from the conclusions in the opinion cannot altogether be excluded.

20. Consider the scenario in which your firm is requested to issue a legal opinion in relation to a cross-border loan financing transaction in which either:

- Any of the parties is incorporated in England and Wales and the transaction documents are governed by the law of your jurisdiction.
- Any of the parties is incorporated in your jurisdiction and the governing law of the transaction documents is English law.

What adjustments (if any) would you make to your firm's usual sets of assumptions and qualifications in a legal opinion, as a result of the United Kingdom having left the European Union (Brexit), with respect to:

- Loan agreements entered into, or to be entered into, during the transition period with a final repayment date before the end of the transition period.
- Loan agreements entered into, or to be entered into, during the transition period with a final repayment date after the end of the transition period.

No adjustments are required as a result of the UK leaving the European Union.

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