

Waiver and consent letter Q&A: Brazil

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

This Q&A provides country-specific commentary on *Practice note, Waiver and consent letter*.

Waiver and consent

1. Is it possible for a lender to relinquish rights unilaterally? If so, are there any formalities to be observed to do that, and (if there are) what are they? Is there a particular term used in your jurisdiction for such a relinquishing of rights (equating to "waiver")?

Under the Brazilian Civil Code, relinquishing of rights by a lender depends on the approval of the debtor. Such a relinquishment is known as a "remission of debt" (*remissão de dívida*) when it does not impose new conditions on the debtor or require payment of any additional fees. When the lender imposes new conditions on the borrower or requires payment of additional fees, there is a settlement (*transação*), with mutual concessions by the parties. Both remission and settlement modalities depend on the approval of the debtor.

Remission of debt and even settlement are not acceptable if the waiving creditor is insolvent or is reduced to insolvency by such transaction.

2. Would a waiver and consent given by a lender located in your jurisdiction, or given in relation to a finance document which is subject to the law of your jurisdiction, normally be restricted to specified provisions of the finance documents?

Yes, waivers are usually restricted to specified provisions of finance documents, such as a condition precedent, an event of default or a covenant.

Waiver letters typically contain clauses reaffirming the provisions of the finance documents which were not waived and limiting the waiver solely to the specified provisions mentioned therein.

3. Who would be entitled to countersign a waiver and consent letter on behalf of the borrower incorporated in your jurisdiction?

Under Brazilian law, a waiver and consent letter can be signed by the borrower's officers or managers indicated in its constitutional documents or by the borrower's attorneys in fact. In the latter case, a power of attorney granting powers to a legal representative to represent the company in connection with a specific transaction would be required. Internal corporate documents may restrict the ability of the officers or managers to issue powers of attorney.

The waiver and consent letter must also be signed by two witnesses (who do not need to be Brazilian citizens) to make it possible for the debtor to directly enforce the document before Brazilian courts. In any other cases, the document may be used to obtain a judgment against the relevant parties that can be subsequently enforced. Thus, the following wording should be added at the end of *Standard document, Waiver and consent letter: Cross-border*:

Witnesses:

1. _____
Name:
ID no.:

2. _____
Name:
ID no.:

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