



F/A FARROCO ABREU
GUARNIERI ZOTELLI

Guidebook COVID - 19:

legal implications
for your business.



Summary

ADMINISTRATIVE LAW	4
CUSTOMS	5
ENVIRONMENTAL	6
BANKING LAW	7
LITIGATION	8
CONTRACTS.....	9
ENERGY.....	10
REAL ESTATE PROPERTIES.....	11
SOCIAL SECURITY.....	12
DATA PROTECTION.....	13
REGULATORY	14
CORPORATE	15
LABOR	16
TAX	18

Restrictions to people's mobility are affecting all sectors of the Brazilian economy. Companies are already facing major challenges that should continue for the next few months. We have prepared this COVID-19 Guide summarizing possible actions you may wish to consider adopting to mitigate the adverse consequences of COVID-19 pandemic in your business. Brazilian authorities have been adopting several measures to assist the national economy, so the recommendations below are being constantly changed and updated ¹.

¹ Bill No. 1,179/20 refers to transitional and emergency measures to regulate private relationships during the COVID-19 pandemic. If passed into law, the provisions will affect (i) consumer relations; (ii) eviction actions of urban properties; (iii) rural lease agreements; (iv) condominium relations, with prohibition to use common areas; (v) extension of the term for holding shareholders' and other corporate meetings; (vi) postponement of the General Data Protection Law - LGPD, amongst others..



ADMINISTRATIVE LAW

Administrative contracts shall be reviewed based on the relevant bid notices, obligations and applicable laws. Impacts to contractual relationships with the Public Administration may result in readjustment of schedule, economic and financial rebalancing, contractual suspension or termination, amongst others.

F/A RECOMMENDS

- Evaluate specific contract conditions to minimize risk of penalties.
- Notify the Public Entity of the occurrence of an act of God or force majeure.
- Comply with contractual notification terms and procedures to avoid issues with inspection and control bodies (*e.g., District Attorney Office, Public Audit Tribunals*).



The Brazilian Federal Administration has implemented actions to facilitate the flow of foreign-trade products used to wage COVID-19. These include suspension of antidumping duties imposed on imports of disposable syringes and blood-collection tubes, and the possibility to have advanced registration of required Import Licenses (before the products arrive).

F/A RECOMMENDS

- Review actions to facilitate imports and exports.





ENVIRONMENTAL

Most environmental agencies (federal, state and municipal) have suspended face-to-face services and deadlines of administrative procedures. However, there is no set understanding as to how to comply with the specific conditions of environmental licenses and deadlines for renewals.

F/A RECOMMENDS

- Confirm with the local environmental agency appropriate procedures to meet the environmental obligations.
- Meet the original deadlines and environmental obligations that can be done electronically (by electronic systems and/or e-mails).
- Notify the environmental agencies if it is not possible to meet the original deadlines and/or extend validity of licenses.





BANKING LAW

The Central Bank of Brazil (*Banco Central do Brasil - Bacen*) has enacted several measures to mitigate COVID-19's adverse effects in the Brazilian economy. Supported by the National Bank for Economic and Social Development (*Banco Nacional do Desenvolvimento Econômico e Social - BNDES*) and *Caixa Econômica Federal - CEF*, Bacen's first block of measures aims at generating capital and liquidity for commercial banks. The second block directs part of the resources to the most affected Brazilian economy sectors by expanding credit lines, reducing interest rates, giving temporary waivers in restructuring of credit transactions, being active in foreign-exchange transactions to expand supply of hard currency in the domestic market, suspending amortization terms on-going loans, facilitating credit lines for the agribusiness, among several others.

F/A RECOMMENDS

- Confirm if there is language in your financial arrangement allowing for renegotiation on terms and conditions.
- Check the financial institution's conditions to renegotiate your debt.
- Check if the financial institution participates in the Emergency Employment Support Program and gauge the possibility of contracting new financing to increase your company's cash flow.
- Review events of early termination.
- Comply with collateral-reinforcement conditions.





LITIGATION

Terms and deadlines for on-going litigation have been suspended. Yet Brazilian Courts continue to work from a distance (electronically) and lawsuits are being normally filed, including claims for urgent matters. In-person assistance is exceptional and held according to the courts' internal regulations.

Commercial Establishments Shut Down. Because of the current pandemic and public calamity, many businesses were forced to temporarily shut down. As a result, many such businesses have filed suit to have their obligations mitigated and/or suspended in light of the financial situation ensuing from the pandemic, and to challenge certain actions of the Federal Administration.

F/A RECOMMENDS

- Comply with instructions and regulations of the Brazilian Courts.
- Entertain dispute resolutions other than seeking assistance in a court of law (*e.g., negotiation, mediation*).





CONTRACTS

Contracts in general. The current pandemic is an **act of God** or a **force majeure** event because it was unpredictable and beyond control of the contracting parties. This event may cause excessive costs or economic imbalance in contractual relationships. Suppliers, service providers and other business partners may face numerous obstacles arising from the current situation stemming from the COVID-19 pandemic (e.g., breach of contractual obligations, delay in work schedules, delay or interruption of supply chain, servicing, shortage of work force). Certain contracts have specific clauses for unforeseeable circumstances, force majeure and hardship. Usually the relevant provisions contemplate deadlines and procedures for notices, dealing with possibility to suspend works, extension of deadlines and price adjustment, contract termination, amongst others.

Consumer. Consumer relations tend to favor consumers. If contracted products or services can be cancelled at supplier's convenience, the consumer will be reimbursed or delivery of services or products will be rescheduled. If cancellation is at consumer's convenience, the supplier shall review each specific case. Whenever possible supplier should negotiate the "new" terms and conditions with the consumer to avoid lawsuits and complaints in consumer-protection agencies.

Air Fare. Federal Administration's Provisional Measure No. 925/20 determined a period of twelve months for air carriers to reimburse fares and for consumers to use vouchers or credits without contractual or any other penalty.

F/A RECOMMENDS

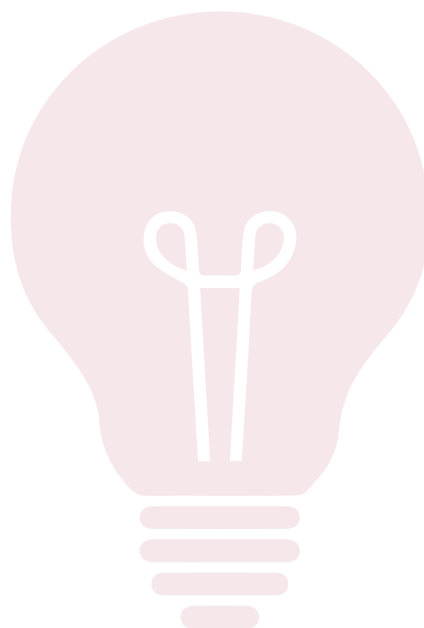
- Review contractual conditions and identify events that may be considered an act of God or force majeure and hardship.
- Meet deadlines and notification procedures.
- Document actions and measures taken to mitigate impacts arising from the COVID-19 pandemic.
- Intensify customer services.
- Align agreements and conduct with consumer-protection agencies.
- Review applicable policies and product offerings.
- Avoid increasing prices of products and services without justification.



Certain companies buy energy from Utilities Companies (Regulated Contracts - *Ambiente de Contratação Regulada* - ACR); others buy from the so-called Private Energy Market by negotiating directly with Electric Energy Generators and Traders (Private Contacts - *Ambiente de Contratação Livre* - ACL). The relevant actions depend on who provides power: ACR or ACL.

F/A RECOMMENDS

- Confirm if your activity is deemed to be “essential” and request continuity of energy supply.
- Secure through your company’s class association collective action vis-à-vis the National Electric Energy Agency (*Agência Nacional de Energia Elétrica* – ANEEL).
- Review contractual conditions and identify events that may be considered as acts of God or force majeure events and hardship.
- Negotiate to reduce the contracted energy, request to pay in installments, postpone debts.
- Avoid filing suits because most Brazilian Courts are operating under selected matters and reduced hours during the COVID-19 pandemic, and also because ACL energy agreements must resolve disputes via arbitration that is more costly.





REAL ESTATE PROPERTIES

Extrajudicial services (e.g., notaries, property and title & deeds registrations and documents) and the city halls are working with certain limitations and on reduced hours. Many city halls throughout the country have suspended terms and deadlines for issuing and/or renewing licenses, permits and certificates.

Suspension of activities - leasing. Authorities have determined shopping malls interrupt their activities (including temporarily closing stores) to restrict or stop people gatherings. As a result, Courts have granted preliminary injunctions ordering temporary suspension of payments relative to minimum monthly rentals and promotion and advertisement funds.

F/A RECOMMENDS

- Confirm with local city halls the relevant procedures to meet environmental obligations.
- Meet the original deadlines and environmental obligations that can be met from a distance (by electronic systems and/or e-mails).
- Notify municipalities if you cannot meet obligations and/or extend validity of licenses.
- Review lease agreements to confirm if you are entitled to request for rebalancing or suspension of contractual obligations.
- Negotiate and carefully review if you are entitled to demand (including in court) adjustment of rental payments commensurately with the period of time during which you cannot use the property due to the Federal Administration's decree of public calamity.





The Brazilian Federal Administration also has been adopting several actions in Social Security to help companies cope with adverse economic impacts resulting from the COVID-19 pandemic.

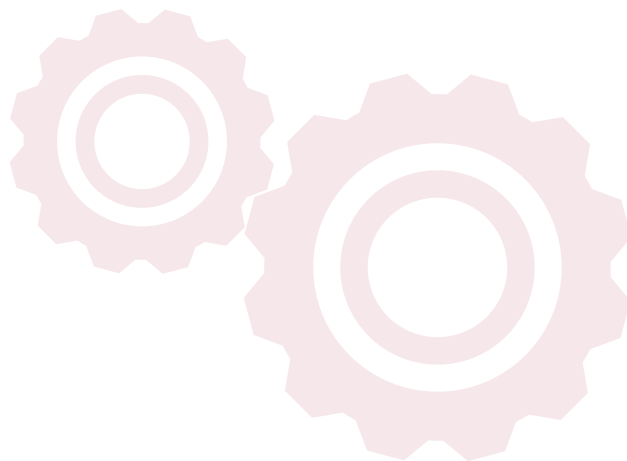
S System Contribution. The Ministry of Economy reduced contributions to the S System (SEBRAE, SESC, SENAC, SESI, SENAI, among others) of up to 50% in next 3 months.

Federal Debt. The National Treasury Attorney's Office (*Procuradoria-Geral da Fazenda Nacional - PGFN*) has suspended certain collection acts and encouraged debt negotiation resulting from the COVID-19 pandemic.

Social Security contributions. If employees are prevented from working, it is possible to argue that the employer company should be excused from paying Social Security contributions.

F/A RECOMMENDS

- Assess if you can renegotiate debts.
- Assess if you can adhere to paying dues in installments.
- Consider pros and cons of filing suit to suspend paying taxes.





DATA PROTECTION

Brazilian companies have agreed to and encouraged employees to work from home in an attempt to contain the COVID-19 pandemic. However, lack of adequate policies as to working from home may expose your company to certain risks. Sensitive data and information are now being accessed outside the corporate environment; this increases companies' exposure to risks of leakage of confidential information and personal data.

Sensitive Data. Companies are required by law to share sensitive data (health) with government authorities to identify people who might have been infected by COVID-19. The sole purpose of this is to prevent spreading the virus.

F/A RECOMMENDS

- Send notices and communications to employees to reinforce the applicable policies referring to confidential information and data protection.
- Instruct employees to follow the internal procedures for preserving confidentiality of communications and personal data.
- Update and implement policies on security information and working from home.
- Implement a data protection program to comply with the General Data Protection Law (*Lei Geral de Proteção de Dados – LGPD*).



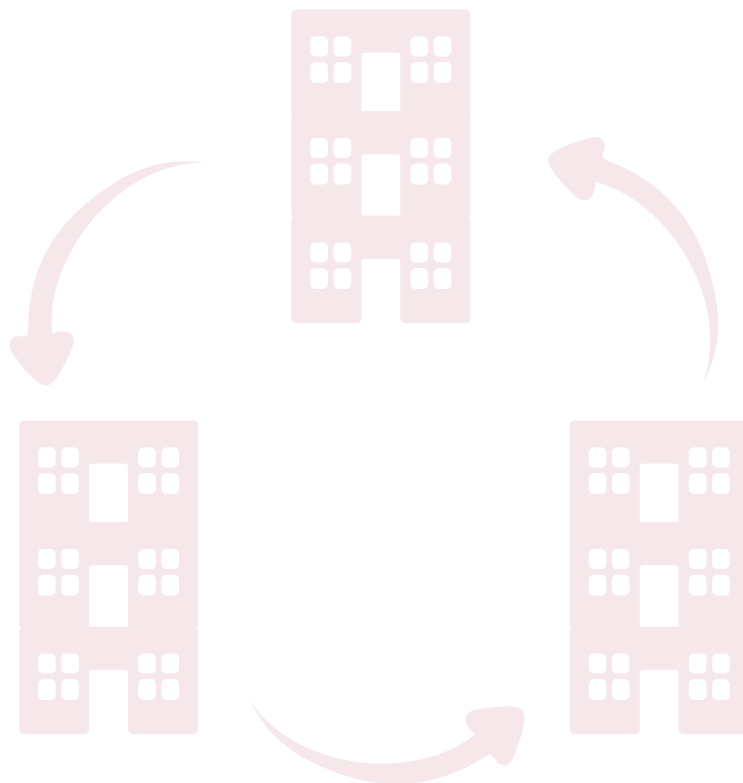


REGULATORY

Regulatory agencies have restricted people's access to their facilities and face-to-face meetings. Certain regulatory agencies have also suspended administrative terms and deadlines while others have maintained electronic services.

F/A RECOMMENDS

- Pay close attention to resolutions, ordinances, communications and like communication from regulatory agencies to confirm working hours and administrative terms and deadlines.
- Meet original deadlines and regulatory obligations that can be do so electronically (*e.g., by electronic systems and/or e-mails*).
- Notify the regulatory bodies if you cannot meet the original deadlines and/or extend validity of licenses.





CORPORATE

Because of the current COVID-19 pandemic and resulting restriction to the population mobility, companies should consider creating risk management mechanisms for their activities.

Commercial Registries. Most State Commercial Registries have suspended their face-to-face services and the only electronic tool still available is to register company organization. Corporate acts signed after February 16, 2020 will have the standard 30-day term within which to be effective counted from the date the Commercial Registries resume operations.

Equity Holders/Shareholders' Meetings and Annual Shareholders' Meetings (Assembleia Geral Ordinária - AGO). A limited-liability companies and corporations with fiscal year ending between December 31, 2019 and March 31, 2020 may exceptionally hold equity holders' meetings within seven months from fiscal year end.

Management bodies. Terms of office of managers/officers, members of the audit committee and statutory committees have been extended until the General Shareholders' Meeting or Board of Directors' Meeting take place, as applicable.

Board of Directors. Regardless of amendment to By-laws, the Board of Directors or Officers, as the case may be, can declare dividends. The Board of Directors may also adopt resolutions on urgent matters falling within the competence of Shareholders' Meetings.

Publicly-held corporations. Terms and deadlines contemplated in the Brazilian Corporation Law and by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários - CVM*) may also be extended CVM.

Remote Voting. Provisional Measure No. 931/20 authorizes equity holders to remotely participate and vote in meetings.

F/A RECOMMENDS

- Create or empower a committee to decide emergency situations related to the COVID-19 pandemic.
- Adapt risk management policies to include contingency operations arising from the COVID-19 pandemic.
- Confirm with the State Commercial Registries which will be the working hours and procedures for legal entities to meet their obligations.
- Review and create mechanisms to enable the company's management to work from a distance (e.g., *board and shareholders' meetings*).

**LABOR**

The Ministry of Health has recommended the following to prevent and contain COVID-19 contamination: (i) reduce commuting time; (ii) encourage at-distance (electronic) meetings and avoid/postpone travels; (iii) work from home; and (iv) adopt alternative working hours to avoid crowds in public transportation. Provisional Measures (MP) No. 927 and 936 set forth measures for companies to deal with the current state of calamity and maintain work and business activities. We stress the following:

Working from Home. During the public calamity, employers shall strive to adopt and encourage employees, interns and apprentices to accept “teleworking” (i.e., working from home), regardless of amendments to their employment agreements. Employers shall notify employees about any changes to teleworking within forty-eight hours. If working from home is not contemplated in the currently existing employment agreements, employers shall review them within 30 days to include certain (new) obligations including responsibility to supply and maintain equipment and infrastructure, and policies on reimbursement of expenses.

Reduction or Interruption of Operations. MP No. 927 has made available certain tools to employers with reduced and interrupted operations. These include anticipation of individual and collective vacations, non-religious holidays, offset of “worked-hours bank” for stands (“Bank”) till periods.

Offset. Employers who have the Bank system can interrupt their activities and offset the positive balance in up to 18 months after the end of the current state of public calamity. Employers and employees can agree to extend up to 2 hours per day to make up for standstill time, provided the total number of daily hours do not exceed 10.

Severance (FGTS). Monthly FGTS payments relative to March, April and May have been postponed to July/2020 and can be paid in 6 monthly payments (starting in July) with no interest, fines or other charges.

Temporary Suspension of Employment Agreements. Employment Agreements may be suspended for a maximum period of 60 days and can be done twice for 30-day each. During suspension employees will be prevented from working; breach of this rule will subject employer to pay past-due compensation plus penalties.

Employers with annual gross revenues greater than R\$4.8 million in 2019 can suspend employment agreements by paying a monthly amount equal to 30% of the employee’s salary. This payment is mandatory and of an indemnification nature. It must be contemplated in an agreement the parties will execute. Employees need to receive the agreement at least 2 days before becoming effective.

During temporary suspension employees continue entitled to all contractual employment benefits (e.g., medical assistance, meal voucher).

Employment agreements will be fully reestablished within 2 days from the earlier to occur of (i) end of the current calamity status, (ii) agreed date, or (iii) early end of suspension period.

Proportional Reduction of Working Hours. It is possible for employer and employee to agree to proportionately reduce working hours and salary for 90 days. The reduced salary will be made up by the Federal Administration via payment of so-called Emergency Benefit. The parties can agree on other optional compensatory monthly aids that will not be deemed to be salary.

Employment agreements will be fully reestablished within 2 days from the earlier to occur of (i) end of the current calamity status, (ii) agreed date, or (iii) early end of suspension period.

F/A RECOMMENDS

- Review employment agreements to expressly include possibility of working from home and agree on employee's functions and activities, responsibilities for acquiring and maintaining technological equipment and infrastructure, policies on expense reimbursements.
- Review company policies, particularly those related to working from home and confidential information.
- Review HR (human resource) policies relative to worked hours (Bank - see above), reduced working hours and salaries, anticipated vacations, compensation, suspension of employment agreements, among others.
- Pay close attention to MP No. 936/2020's provisions relative to meeting requirements of temporary suspension of Employment Agreements and proportional reduction of working hours and compensation.



Federal, State and Municipal administrations have been enacting fiscal and tax provisions aimed at minimizing the COVID-19 effects. One can also submit to the Judiciary requests to extend terms and deadlines to pay federal taxes relative to States that declared public calamity.

SIMPLES - Federal. Payments referring to March, April and May were postponed until October, November and December, respectively.

SIMPLES - State and Municipal. Payments referring to March, April and May were postponed until July, August and September, respectively.

Collection and Installment Plans. The following has been suspended for 90 days to favor taxpayers: cancellation of programs where debts are paid in installments due to taxpayers' default, collection of overdue tax liabilities, and administrative procedures against third parties.

Installment Plans. The National Treasury Attorney-General's Office (*Procuradoria Geral da Fazenda Nacional -PGFN*) has implemented installment plans for federal tax and social security debts.

IOF - Credit. The Federal Administration has reduced to zero the IOF (financial tax) on credit transactions contracted between April 3 and July 3, 2020.

II and IPI. II (Import Tax) and IPI (Federal Excise Tax) for products used to contain COVID-19 (such as gloves, masks, ethyl alcohol, respirators) have been reduced.

Individual Income Tax - IRPF. The Brazilian Federal Revenue has postponed the deadline for income tax returns to June 30, 2020.

Social Contributions. Payments of the following social contributions related to March and April 2020 have been postponed to August and October 2020: (i) social security contributions imposed on the payroll (INSS), and (ii) contributions to PIS/PASEP and COFINS imposed on gross revenues.

Ancillary Obligations. The Federal Revenue of Brazil has postponed deadlines for the following ancillary obligations: (i) DCTF from April, May and June 2020 were postponed to the 15th business day of July, and (ii) EFD- Contributions from April, May and June were postponed to the 10th business day of July.

Federal CND. Federal CNDs (good standing or tax clearance certificate) have had their validity terms extended for 90 days.

State of São Paulo - Protest. The Secretary and the Attorneys' Office of the State of São Paulo (*Procuradoria Geral do Estado de São Paulo*) have suspended debt protests for 90 days.

State of Espírito Santo - EFD ICMS/IPI and Administrative Tax Discussion. A Espírito Santo State Treasury Office (*Secretaria do Estado da Fazenda do Espírito Santo*) has (i) extended the deadline for sending and rectifying EFD from February and March to April 6 and May 6, respectively, and (ii) suspended the deadline for filing objections and administrative appeals for SIMPLES.

State of Rio de Janeiro - Installment Plan. Payment of plan installments and validity of tax clearance certificates have been extended for 60 days.

State of Rio de Janeiro - Delivery of DUB-ICMS and CND. The DUB-ICMS delivery deadline has been extended to April 30, 2020 and CNDs issued from April 23, 2020 will be valid for 90 days counted from issuance date.

State of Rio de Janeiro - Administrative Tax Discussions. Validity of tax certificates issued by PGE/RJ and with maturity dates as of March 21, 2020 have been extended for an additional 30 days.

State of Alagoas - Ancillary obligations and Administrative Tax Discussions. The State of Alagoas has (i) extended for 90 days the deadline for sending and rectifying EFD, GIA-ST, DeSTDA and other obligations with in-person deliveries; (ii) suspended the deadlines for filing objections and administrative appeals for 90 days, and (iii) suspended cancellation of installment plans in case of delay/lack of payment for 90 days counted from March 18, 2020.

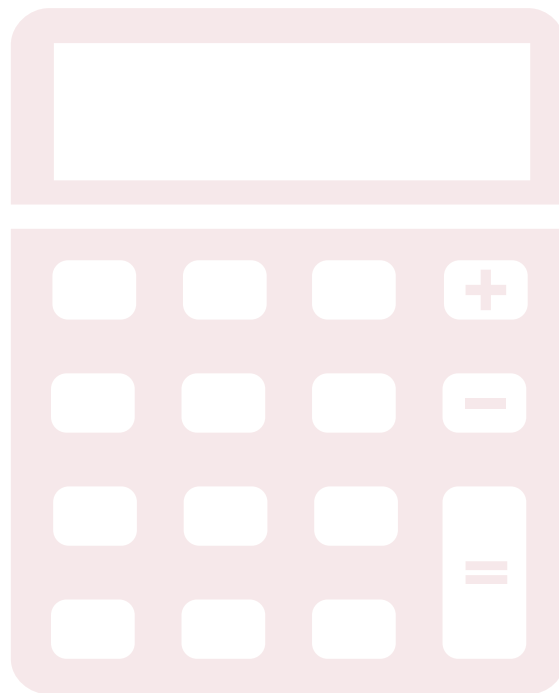
State of Maranhão - Ancillary Obligations. The deadline to send Dief and EFD related to February/2020 competence was extended to March 31, 2020.

State of Santa Catarina - Principal and Ancillary Obligations. The State of Santa Catarina has extended deadlines for delivery of ancillary obligations and payment of ICMS (state VAT) for companies that have been prevented operating (for taxable events counted as of March/2020).

State of Ceará - Tax Discussion and Ancillary Obligations. There have been suspended for 60 days: (i) administrative procedure deadlines, (ii) past-due tax debts as collectable, (iii) collection of tax debts (CDAs), and (iv) filing of tax execution procedures in court. The deadlines for RET transmission and delivery of EFD have also been extended for 60 days, and the deadline to deliver documentation related to FDI was postponed until August 15.

F/A RECOMMENDS

- Review extensions and suspensions of tax obligations.
- Assess chances of adhering to extraordinary transactions of debt collections.
- Review convenience to file action to suspend administrative terms and acts to collect tax debts.
- Review convenience to file action to suspend payment of taxes during public calamity.
- Review convenience to file actions favored by courts aiming at obtaining tax credits and/or refunds (*e.g., exclusion of ICMS and ISS from PIS/COFINS's base*).



ADMINISTRATIVE LAW

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

CUSTOMS

José Maurício C. Abreu
jmabreu@farrocoabreu.com.br

Valéria Zotelli
vzotelli@farrocoabreu.com.br

ENVIRONMENTAL

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

BANKING LAW

Bruno H. Guarnieri
bguarnieri@farrocoabreu.com.br

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

LITIGATION

Antonio Farroco
afarroco@farrocoabreu.com.br

Renato Habara
rhabara@farrocoabreu.com.br

Ana Paula Martins de Oliveira
aoliveira@farrocoabreu.com.br

CONTRACTS

Antonio Farroco
afarroco@farrocoabreu.com.br

Vanessa Machado Silveira
vsilveira@farrocoabreu.com.br

Isabella Leonel Chiari
ichiari@farrocoabreu.com.br

Jessica Gazolini de Moraes Chaves
jchaves@farrocoabreu.com.br

ENERGY

Antonio Farroco
afarroco@farrocoabreu.com.br

Bruno H. Guarnieri
bguarnieri@farrocoabreu.com.br

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

SOCIAL SECURITY

Renato Habara
rhabara@farrocoabreu.com.br

Ana Paula Martins de Oliveira
aoliveira@farrocoabreu.com.br

DATA PROTECTION

Bruno H. Guarnieri
bguarnieri@farrocoabreu.com.br

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

REGULATORY

Bruno H. Guarnieri
bguarnieri@farrocoabreu.com.br

Isabela Amorim Diniz Ferreira
iferreira@farrocoabreu.com.br

Natalia B. M. Magri
nmagri@farrocoabreu.com.br

CORPORATE

Antonio Farroco
afarroco@farrocoabreu.com.br

Bruno H. Guarnieri
bguarnieri@farrocoabreu.com.br

Bruna Marques Pelegrini
Bpelegrini@farrocoabreu.com.br

Victoria Almeida E Silva
vsilva@farrocoabreu.com.br

LABOR

Renato Habara
rhabara@farrocoabreu.com.br

Ana Paula Martins de Oliveira
aoliveira@farrocoabreu.com.br

TAX

José Maurício C. Abreu
jmabreu@farrocoabreu.com.br

Valéria Zotelli
vzotelli@farrocoabreu.com.br

José Dumont Neto
jdumont@farrocoabreu.com.br

Ana Paula Rodrigues de Lima
alima@farrocoabreu.com.br

Marcella de Paula Gardim
mgardim@farrocoabreu.com.br

Rafaela Calçada da Cruz
rcruz@farrocoabreu.com.br

Thiago Botelho Somera
tsomera@farrocoabreu.com.br

Victor da Silva Rico Nunes
vnunes@farrocoabreu.com.br



F/A FARROCO ABREU
GUARNIERI ZOTELLI