

TOZZINIFREIRE

A D V O G A D O S

TOZZINIFREIRE SURVEY

PROSPECTS
FOR THE BRAZILIAN
LEGAL AND ECONOMIC
ENVIRONMENT IN

2017

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WHAT TO EXPECT IN 2017

The third edition of *TozziniFreire Survey – Prospects for the Brazilian legal and economic environment in 2017*

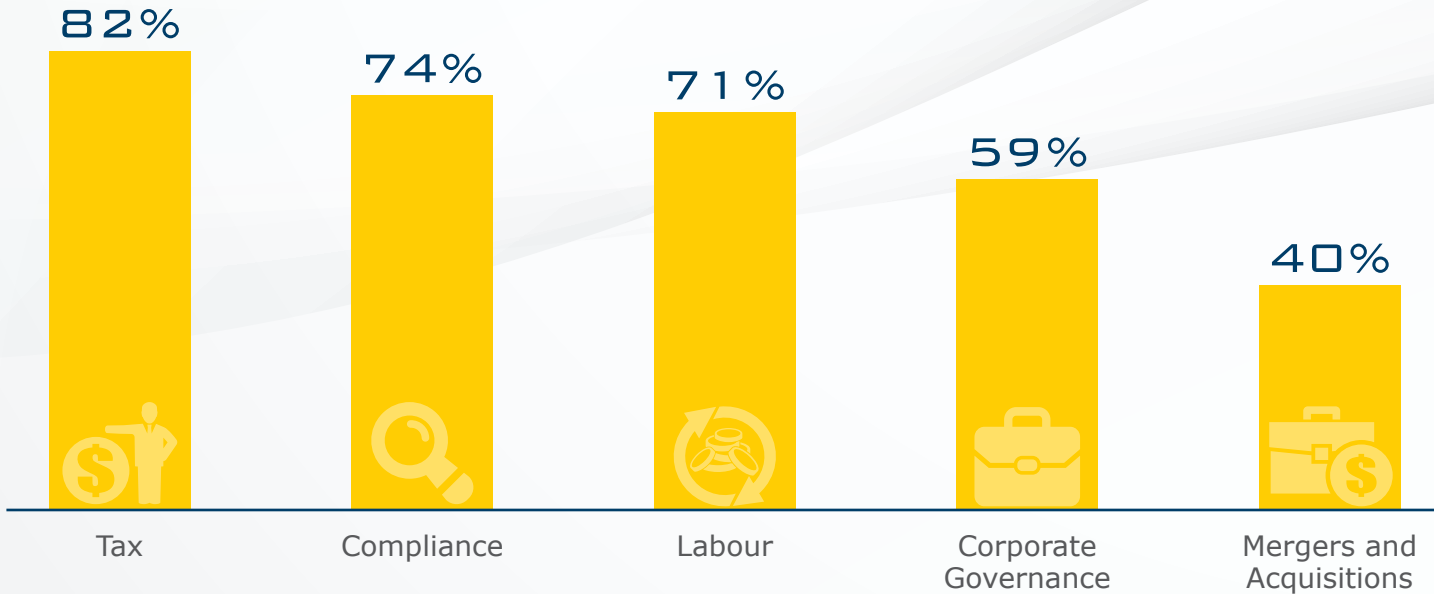
(Pesquisa TozziniFreire - Perspectivas para o ambiente jurídico e econômico brasileiro em 2017) brings positive news for next year. An example of this is the fact that more than half of the participating companies have an eye on merger and acquisition opportunities. The data also show that companies will be more concerned with compliance, competition and corporate governance, which are three important indicators of their level of maturity.

The prospects of a tax adjustment and a labor and social security reform may have been vital for placing tax and labor matters first and third, respectively, on the list of top priorities of companies for 2017. These and other findings are part of this survey, which gathered the opinions of 130 executives of publicly- and closely-held, private and state-owned, Brazilian and multinational corporations from different industries, including the financial, infrastructure, retail, logistics and information technology sectors.

Devised by TozziniFreire Advogados, this is the survey's third consecutive edition. The survey was carried out in partnership with Latin Finance magazine and the European consultancy firm Management & Excellence (M&E), with the support of the Brazilian Association of Publicly-held Corporations (Abrasca). The survey's purpose was to point out the legal trends for next year in 10 areas, as shown in detail in the following pages.

OVERVIEW

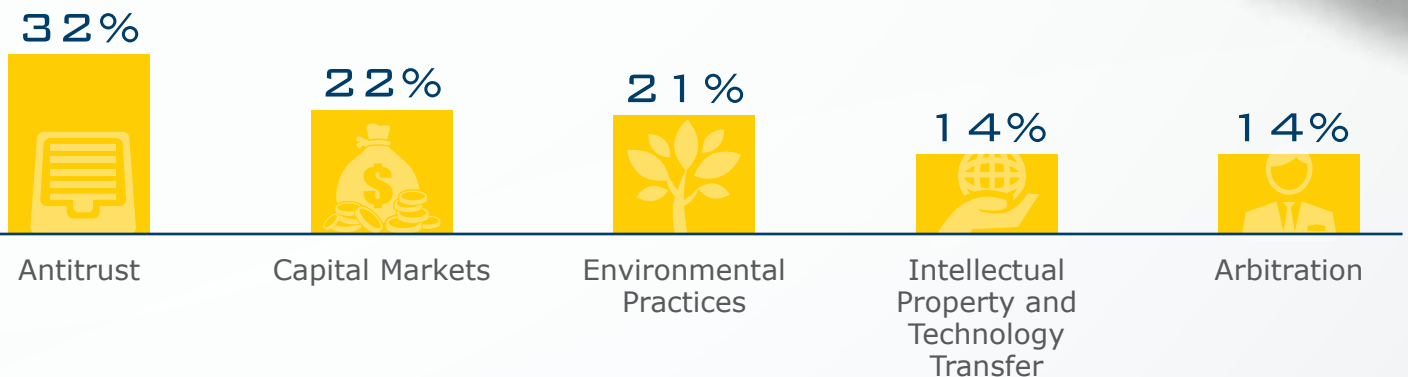
Compliance, tax and labor matters are the three most important issues for most participants.



THE IMPORTANCE OF

Compliance with tax obligations was, once more, pointed out as a priority issue for 82% of the companies surveyed by **TozziniFreire Survey – Prospects for the Brazilian legal and economic environment in 2017**. This is not a surprise, but shows the importance of having companies increasingly concerned with tax compliance in conjunction with other areas such as corporate governance and technology. The technology area has been essential for companies to comply with their tax obligations. In fact, when it comes to this issue, Brazil is by far the country with the most advanced computerized controls in the world. Companies are required to send every month

their tax and accounting records through the Public Digital Bookkeeping System - SPED (with several Statements) and, since 2015, to send their Tax and Accounting Bookkeeping Statement (ECF), which replaced the former Statement of Economic and Financial Information of Corporate Entities (DIPJ). The ECF is much more complex and detailed than its predecessor, demanding more attention from taxpayers in order to avoid making mistakes. According to Ana Cláudia Utumi, a tax partner in TozziniFreire, an important finding of the survey was that, differently from what one may think, most of the companies do not believe in international influence when it comes to tax matters. "However, the Brazil-



TAX COMPLIANCE

ian tax authorities have never been so active on the international front and so integrated with other tax administrations.”

She explains that “This activity and integration have come about through OECD, especially through the initiatives of the Tax Transparency Forum, which as from 2017 will allow for automatic exchange of information between most countries, and through the initiatives of BEPS – Base Erosion and Profit Shifting; of G20, which has led several international discussions on tax matters; of the United Nations Tax Committee; of the Inter-American Center of Tax Administrations, among others.”

“It is important to look at what is going on in tax matters outside Brazil in order to under-

stand the trends and make decisions today. “This is so because what is done today will be subject to inspection/fines in 3-4 years; the administrative proceeding will also take around 3-4 years; and, if the taxpayer has to go to court, there will be another 6-8 years of litigation. In other words, what is done now may be easily disputed in 5, 10 or 15 years!” she says.

It is essential to understand where taxation is going when making decisions that entail tax saving today, so that these decisions have a greater chance of being accepted by judgment bodies in the future. “This prospective analysis should undoubtedly be made by the tax compliance area of any company today.

BRAZIL AFTER CARWASH OPERATION (LAVA-JATO)

TozziniFreire Survey – *Prospects for the Brazilian legal and economic environment in 2017* found

that compliance will be the priority issue for 74% of Brazilian companies next year.

According to Shin Jae Kim, head of the compliance and investigation area of TozziniFreire, this information certainly proves that coming into force of the Clean Company Act (Lei da Empresa Limpa) and the practical results of corruption-fighting operations, such as Lava Jato and Zelotes, have already showed positive results.

“This helps society to overcome its lack of trust in the enforcement of laws in Brazil and, consequently, helps corporations to expedite the adoption of internal control mechanisms,” she explains.

Shin also mentions important changes for state-owned and mixed capital companies. “The Ministry of Transparency, Inspection and Control has played an important role in the dissemination of compliance in state-owned and mixed capital companies. This body has recently issued an integrity guide focused on these organizations.”

Governments are also striving to provide more transparency in deals with the private sector. “Suppliers of the Government of São Paulo, for instance, are required to have compliance programs. Implementation of and Improvements to these programs at companies such as Cesp, Emae and Sabesp are scheduled for January 2017.”

GOVERNANCE IN JOINT-STOCK COMPANIES (S.A.)

In line with the increasing concern of companies and of the market in general with corporate governance matters, *TozziniFreire Survey – Prospects for the Brazilian legal and economic environment in 2017* showed that corporate governance is a priority issue for 59% of participants.

According to Oduvaldo Lara Júnior, a corporate partner in TozziniFreire, governance results in more efficient controls, contributes toward risk mitigation and, as a consequence, increases the level of transparency, a mandatory item for companies intending to attract new investments.

The same reason led the Brazilian Securities Commission (CVM), jointly with entities representing the market, to foster and support the development of a specific corporate governance code.

“More than a prevention and fighting mechanism, organizations are realizing that corporate governance gives them a competitive edge,” he says.

The survey has confirmed the opinion of Oduvaldo Lara Júnior, since 86% of participants believe corporate governance is an effective means of minimizing risks.

Oduvaldo also mentions that corporate governance will have a heavier weight in merger and acquisition transactions in 2017 and in the search for different capital and financing options. “Companies which have effective models that can also combat corruption (which include governance and efficient compliance programs) tend naturally to become more attractive to investors and are better equipped to search for new funds.”



FAIRER LABOR RELATIONS

Over 80% of participants reported difficulties in labor relations and disputes. The most common complaints refer to “protectionism of the Judiciary,” “lack of flexibility” and “legal insecurity.”

André Fittipaldi, labor partner in TozziniFreire, mentions that this problem has been pointed out by companies for several years.

“Brazilian labor law is outdated and, in fact, paternalist. Labor courts, in turn, have incorporated this protectionism, usually adopting stands in favor of employees, even when there is no specific legal provision on the matter,” he says.

According to Fittipaldi, maintaining this scenario in labor relations greatly damages Brazil’s competitiveness. “Many companies end up by choosing to set up their businesses in other countries.”

In Fittipaldi’s view, it is of the utmost impor-

tance to analyze a possible labor reform, an issue which, particularly after the impeachment of President Dilma, is beginning to be raised by businessmen and congressmen who defend a more flexible labor law. “I believe that this will result in a more harmonious relation, capable of maintaining protections which are important for workers while at the same time lightening the burden for corporations, favoring growth and, obviously, creating more jobs,” he explains.

In view of Brazil’s current political scenario, however, Fittipaldi feels it is unlikely that any substantial change in labor rights will be approved in the next few years. “However, this “reform” may come from the Judiciary itself, through the STF, which in recent months has been signaling the need to review some of the consolidated stands adopted by labor courts,” he says.

A MORE OPTIMISTIC SCENARIO FOR THE CAPITAL MARKET

Fund raising via capital market has been included in the plans of approximately 40% of the surveyed companies, double the total number found in the previous edition of the survey.

“In early 2017, this figure could be even greater, since the market has been increasingly optimistic with respect to the country’s economic and political stability,” says Alexei Bonamin, a partner in the capital market area of TozziniFreire.

Bonamin believes that since the beginning of the fourth quarter of 2016 there has been a movement toward resumption of public offerings, including IPOs. “I believe that in

2017 there will be an increase in IPOs and papers with tax incentive (no income tax), particularly Agribusiness Receivables Certificates (CRAs),” he explains.

According to Bonamin, infrastructure debentures are also expected to take off next year, triggered by the Investment Partnership Program (PPI), as well as by renewal and termination of current concessions.

Bonamin finally mentions that the new rules on Equity Investment Funds (FIPs) issued by the Brazilian Securities Commission (CVM) were well received by the private equity industry. “These rules make room for new investments in Brazil.”

RESUMPTION OF MERGERS AND ACQUISITIONS

After having suffered successive economic crises, the M&A market is expected to grow consistently in 2017.

TozziniFreire Survey – Prospects for the Brazilian legal and economic environment in 2017 has found signs indicating that M&As will increase in 2017. According to the survey, around 53% of participants intend to take part in M&As in the next 12 months, a rate 13% higher than that found in the previous edition.

Maria Beatriz Bueno N. Kowalewski, a corporate partner in TozziniFreire, believes that such information is likely to be confirmed.

“Corporate governance and good compliance practices are already part of the new reality

of M&A transactions carried out in Brazil. The adoption of compliance programs by many companies has given foreign investors—particularly private equity funds—more security in their decisions to invest in local companies.” She further says that: “Other aspects, such as competitive foreign exchange and opportunities to buy assets from companies involved in Lava Jato or under judicial reorganization also justify the expectations concerning the future of M&As.”

According to Kowalewski, the infrastructure, health and information technology (the latter buoyed by the rapid advance of startups) industries are expected to be the main targets of mergers and acquisitions in 2017.

SMOOTH COMPETITION

Antitrust is a priority issue for 32% of the companies surveyed by TozziniFreire Survey – Prospects for the Brazilian legal and economic environment in 2017. In addition, 75% of these companies intend to increase in-house training to improve competitive practices.

According to Marcelo Calliari, a partner in the competition law area of TozziniFreire, both data are highly significant and reflect corporations' efforts to improve procedures and better manage their relations with governments, competitors and other stakeholders. "More and more individuals and/or companies are cooperating voluntarily with the Administrative Council for Economic Defense (Cade) to report in-company and third-party

irregularities. As I see it, this is a positive cultural change closely related to in-company training," he explains.

Partner Marcio de Carvalho Silveira Bueno mentions that evolution of corporate integrity programs has also greatly contributed to build and maintain a healthy competition environment.

"Together with training, compliance programs help companies to identify more easily improper practices, including those adopted in the past, and to be more careful when doing business," he explains.

BRAZIL, AN EXAMPLE TO BE FOLLOWED

Marcelo Calliari reveals that he was sought by representatives of CNDC, the Argentinian equivalent of Cade, to discuss their plans to change competition rules in such country. "Although it still has a long way to go in this matter, Brazil is viewed as a reference in Latin America in terms of antitrust."



STARTUPS PROTECTED

This is the most important issue for around 15% of the surveyed companies. Intellectual property has gone beyond traditional business models, playing a significant role in the development of startups. According to partner Marcela Waksman Ejnisman, intellectual protection of intangible assets inherent to the startup business model is essential to support the growth of these companies and make them more attractive to

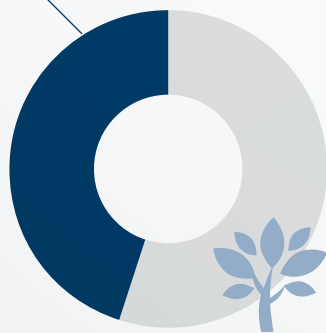
possible investors.

In the words of Ejnisman, the first step is to seek a specialist on the matter. "This professional is qualified to determine whether the expression, product or service you are developing needs specific protection, registration or has already been protected by third parties, thus avoiding that the company spend time and funds on an item already registered or patented."

MORE HIGHLIGHTS

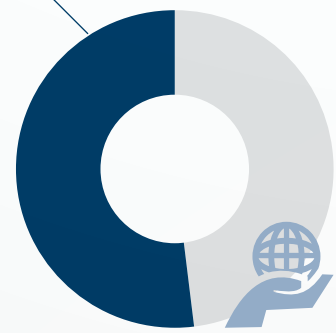
45%

of participants intend to increase investments in the environmental area.



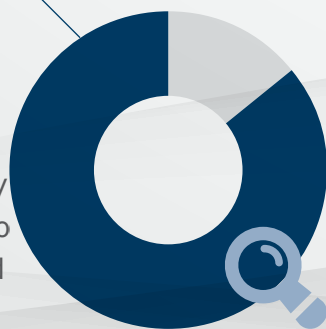
52%

of participants have included transfer of intellectual property rights in their agenda.



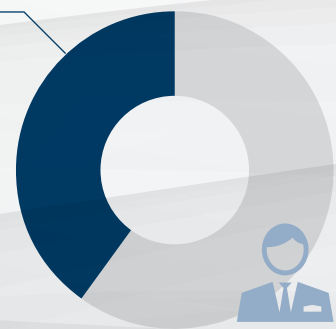
86%

of participants feel that it is important to have appropriate risk management mechanisms, as they allow the company to identify, manage and control risks.



Around **40%**

of participants intend to resort to arbitration and mediation as alternative means of dispute resolution.



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