

## HFW LITIGATION

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# NEW BRAZILIAN LAW ON INTEREST AND MONETARY CORRECTION IS A WELCOME DEVELOPMENT FOR ANYONE INVOLVED IN BRAZILIAN DISPUTES.

As anyone involved in Brazilian disputes will know, the accrual of interest and use of monetary correction on Brazilian claims has the capacity to significantly increase the claimed amount.

The new Brazilian Federal law 14.905/2024, which was enacted on 1 July 2024, and which will take effect sixty days from that date (i.e. by 1 September 2024), provides much awaited change and clarity on this.

### What is 'monetary correction'?

- 'Monetary correction' is used to adjust the claimed sum when the purchasing power of the Brazilian Real is devalued because of inflation. It is usually applied from the date of loss, the date of breach of contract, or the date when the lawsuit was filed. The applicable rate ordered by the court varies, however it generally corresponds to the prevailing official inflation rate, which at the time of writing is about 4% per year.
- Interest, on the other hand, is applied to the claimed sum to compensate the claimant because it is left 'out-of-pocket'. It can be applied from the date of issue of proceedings until the judgment is paid, however, it usually applies from the date on which formal proceedings are served. The parties are free to agree the applicable rate. Where contracts are silent on the point it can lead to inconsistency, as courts differ in the rates applied, for example some apply the Brazilian Central Bank-issued standard interest rate (**SELIC**) (currently 10.5% per year), whereas others apply a flat rate of 1% per month.

The rates in question can be significant. Interest and monetary correction currently accrue on the principal amount of the claim at a combined rate of between 14.5% and 16% annually, which when combined with the time taken to obtain the judgment or arbitration award make Brazil a claimant friendly jurisdiction.

### What are the key changes?

The three key points to note:

- the index used for monetary correction is the IPCA, one of the most widely recognised inflation indexes, and is issued by the Brazilian Statistics and Geography Institute (IBGE in the Portuguese acronym);
- the interest rate applied is the Brazilian Central Bank-issued SELIC rate, which is the country's main interest rate and is Brazil's equivalent of rates issued by the Federal Reserve in the US and the Bank of England in the UK; and
- the new law also provides that the monetary correction rate should be subtracted from the SELIC rate for the purposes of ascertaining the net rate applicable to a given period. If the result is negative, then the adjustment will be 0 % during that period.

The first two points provide certainty regarding the applicable rates and apply where contracts are silent on the point. The third point has the potential to significantly change the position on the rate to be applied and sums accrued.

By way of example, under the new rules, assuming an IPCA of 4% per year and SELIC of 10.5% per year, interest and monetary correction would accrue at a combined rate of 6.5% per year, being 10.5% minus 4%. This is significantly lower than the current combined rate of up to 16% per year.

## What does this mean for litigants?

At this stage, although there is some uncertainty regarding the application of the legislation, it is safe to assume that, at least from 1 September 2024, claims already accruing interest and monetary correction will be adjusted by reference to the new rules.

This change makes Brazil a fairer jurisdiction in which to resolve disputes by litigation and arbitration, but the possibility of still obtaining a relatively high rate for monetary correction and interest leading to an increase in sums awarded means that Brazil remains an attractive jurisdiction in which to bring claims.

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