

# Brazil

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## Carbon credits are not securities

Ronald Herscovici and Mauricio Teixeira dos Santos  
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São Paulo

The Brazilian Securities Commission (CVM) has recently announced its position in connection with the so-called Certified Emission Reductions (CERs) and the investment products derived from them, as well as on the possibility of their acquisition by investment funds and the ways of financing projects to generate CERs through capital market transactions.

The communication covers the following: (i) the reasons why CERs (commonly called carbon credits) should not be considered securities; (ii) the nature of some financial products derived from carbon credits, which, depending on their characteristics, can be considered securities; and (iii) the use of structures regulated by the CVM in the secondary market or to finance projects intended to generate carbon credits.

### Carbon credits

Carbon credits are instruments issued by an entity linked to the United Nations that vouches for the non-emission of a certain quantity of greenhouse gases (which contribute to global warming). These instruments were conceived as part of the Kyoto Protocol, which took effect in 2005, by means of which greenhouse gas emission targets were established for developed countries between 2008 and 2012.

The so-called Clean Development Mechanism (CDM), a procedure created under the Kyoto Protocol to permit developing countries to participate in the joint effort to prevent global warming, allows for the certification of projects to reduce emissions by entities in those countries and for the subsequent sale of the resulting CERs generated

(according to certain methodologies and procedures). The CERs acquired can then be used by companies in developed countries to help them achieve their reduction targets.

In the CVM's view, the CDM permitted: (i) the creation of a type of asset that can be transferred; (ii) the definition of potential venues for trading these assets; and (iii) the establishment of an effective secondary market for carbon credits, with the emergence, for example, of specialised intermediaries.

Therefore, and since they are a relatively new type of financial instrument, the definition of their legal nature became essential for purposes of formulating their regulatory framework in Brazil.

### The legal nature of carbon credits

According to the CVM, carbon credits cannot be classified as securities, both because they do not have the nature of a derivative instrument and do not fit under the concept of a collective investment agreement, the two categories of securities with which they are commonly identified.

According to the CVM, carbon credits are redeemable instruments, in the sense that they can be transformed into a determined type of concrete economic advantage. In this sense, they cannot be considered to be derivatives, because they do not derive from any underlying instrument.

With respect to their classification as a collective investment agreement, carbon credits would have to be:

- (i) instruments intended for investment;
- (ii) in a collective undertaking;
- (iii) with the expectation of profits; and
- (iv) that result from the efforts of the entrepreneur or other parties rather than the investors themselves, because they are by definition passive in relation to the production of the results.

Therefore, considering that on the acquisition of CERs there is no link established between the acquirer and the economic agent that is carrying out the CDM project; and

CERs do not generate, by their very nature, financial returns and therefore do not qualify as a financial investment, the CVM took the position that carbon credits cannot be classified as securities under the category of collective investment agreements.

### Regulating carbon credits

Since carbon credits: (i) are issued as a result of a specific procedure, duly certified by entities with authority to do so; (ii) once issued are no longer linked to the entity that implemented the corresponding emission reduction project, thus becoming mutually fungible; and (iii) are offered essentially by means of private placements, investors would gain little or no benefit if the CVM held it has authority to regulate them as securities.

The issuance of carbon credits already counts with sufficient procedures for validation, certification and control, so they do not need a specific regulatory regime. Nevertheless, other products related to CERs, if they fit under the definition of securities, may be subject to regulation by the CVM.

### Acquisition of carbon credits by investment funds

Carbon credits, even though they are not characterised as securities, can be classified as financial assets and as such may be acquired by investment funds.

However, according to the CVM, carbon credits must be considered as assets issued abroad, making it necessary to satisfy one of the following requirements for their acquisition by the fund: (i) be listed for trading on an exchange or registered in a system duly authorised in the country of origin, supervised by a recognised local authority; or (ii) have their existence assured by the fund's custodial institution.

Furthermore, in the case of acquisition of other types of instruments, such as certificates representing the future right to buy or sell carbon credits and other derivative or synthetic instruments created and traded in Brazil, these assets must be, according to the CVM:

“Listed for trading on a commodities and futures exchange or registered in a system for registration, custody or financial settlement (clearinghouse) duly authorised by the Brazilian Central Bank, in its respective areas of competence.”

Financing of carbon credit projects According to the CVM, the Brazilian market already has instruments able to finance projects associated with the generation of CERs, which includes the so-called private-equity investment funds. It is also possible to use non-standardised receivables investment funds and real-estate investment funds to finance or structure projects with potential to generate carbon credits.

The CVM, however, recognised that there is a constant need to analyse proposals to create new project financing mechanisms because of the continuous development of the country’s financial and capital markets.

## Capital markets

Recommended firms	
<b>Tier 1</b>	Machado Meyer Sendacz e Opice Mattos Filho Veiga Filho Marrey Jr e Quiroga Pinheiro Neto
<b>Tier 2</b>	Barbosa Müssnich & Aragão Pinheiro Guimarães Souza Cescon Avedissian Barriue e Flesch
<b>Tier 3</b>	Demarest e Almeida Lefosse Levy & Salomão Motta Fernandes Rocha TozziniFreire

## Banking

Recommended firms	
<b>Tier 1</b>	Machado Meyer Sendacz e Opice Pinheiro Guimarães Pinheiro Neto
<b>Tier 2</b>	Barbosa Müssnich & Aragão Mattos Filho Veiga Filho Marrey Jr e Quiroga Souza Cescon Avedissian Barriue e Flesch
<b>Tier 3</b>	Demarest e Almeida Levy & Salomão Motta Fernandes Rocha TozziniFreire Trench Rossi e Watanabe

The growing pains experienced by the Brazilian banking market are met with relief when compared to the sizeable losses in the US and UK. While not experiencing the total insulation from the credit crisis that some had predicted, the Brazilian market has maintained its path to maturity through timely mergers in the banking sector and its expanding influence within the region.

Announced in November 2008, Banco Itaú and Unibanco’s merger signifies the potential future for Brazilian financial institutions. The merger excites Brazilian lawyers because of its potentially positive repercussions in the region. “It’s going to be great for the market because they are going to create this one, powerful Latin-American bank,” says a partner.

The Itaú merger’s example can be extrapolated to the larger market as well, with most banks who survive the present consolidation in Brazil looking to emerge with stronger market positions. “I think the crisis will be construed by them as an opportunity to grow, especially in South America, in the space that was occupied by banks like Citibank and others,” suggests a partner.

Access to the capital market, however, has been considerably less promising. In contrast to peak levels in 2006-2007, debt and equity offerings were sparse as sceptical investors watched worldwide exchanges plummet in value. Partners now observe a cautious return to the market, with valuation no longer a knee-jerk reaction to the spectre of uncertainty.

Through the end of 2008, access to credit facilities was stringent in Brazil, with the most noticeable slowdown occurring in December and January 2009. “The crisis is a crisis not only of liquidity, but of trust,” comments one partner. This prompted the Brazilian development bank, BNDES, to approve credit lines for infrastructure projects throughout the country, movements similar to initiatives in the US stimulus package. One lawyer predicts “the greatest deals will come from BNDES” in the coming year, noting a growing departure from capital markets to bank financing for law firms.

Despite the slowdown in overall transactional activity, domestic firms retain an optimism not afforded to some of their international colleagues. “Brazilian law firms are well capitalised, so people should be able to go through six months of less activity without major difficulty,” says one lawyer.

### Machado Meyer Sendacz e Opice

No one can find anything negative to say about Machado Meyer Sendacz e Opice.

Colleagues call them smart, detail-oriented lawyers who know how to negotiate a transaction. Clients like them for their ability to execute complicated cross-border deals. “We keep on asking them to do the new work again. We don’t look around to see other professionals because they fulfil our expectations so well,” says one Machado client. “For the technical areas and legal advice, we use Machado.”

All these positives converge to give Machado Meyer a notoriety that permeates into markets abroad, a notoriety rewarded with consistent representations of high-profile investment banks and financing agencies. In June 2008, Machado represented Morgan Stanley and Citibank as joint book runners and lead managers on a \$1 billion bond issuance by BNDES. Bonds placed in a Cayman Islands SPV were issued to replace an existing, maturing issuance for the Brazilian development bank. The existing bonds were amended and swapped for the new before the maturity date and later publicly listed in Luxembourg. Nei Schilling Zelmanovits led the transaction for Machado Meyer.

In capital markets work, Machado Meyer advised Banco Bradesco BBI and Banco UBS Pactual on the first debt issue of the year. An estimated R\$610 million (\$315 million) in notes were issued by Banco Bradesco in order to pay for a simultaneous, shorter term promissory note offering equalling R\$690 million. Leading the Machado Meyer team on the transaction were Daniel de Miranda Facó and Carlos Motta.

### Leading lawyers

Daniel de Miranda Facó  
Carlos José Rolim de Mello  
José Roberto Opice  
Nei Schilling Zelmanovits

### Pinheiro Neto

Pinheiro Neto’s banking and capital markets practices exemplify the firm’s long-standing relationships with foreign and domestic institutional clients. Loyal corporate clients return to the firm because of its international reach and high regard within the Brazilian legal community. “We’ve worked with Pinheiro Neto since the beginning of capital markets in Brazil, since 2004. It’s always been a very nice experience,” reports one client. “I have nothing negative to say about them: they have a lot of creativity and knowledge of the market.”

Issuer side representations make up a large part of the firm’s recent activity, often for multinational corporations accessing the Bovespa since its creation in early 2008. A \$500 million debt offering for Braskem saw the firm acting for the petrochemical concern

and negotiating with a syndicate of purchasers that included ABN Amro, Calyon and Citigroup. Pinheiro Neto also advised returning client Agrícola in primary and secondary follow-on offerings worth R\$269 million (\$139 million). Both transactions were completed in June 2008.

#### Leading lawyers

Bruno Balduccini  
Fernando Alves Meira  
José Luiz Homem de Mello

### **Mattos Filho Veiga Filho Marrey Jr e Quiroga**

Mattos Filho maintains its commanding presence in the capital markets despite a tough year in the practice. The firm is well regarded by peers and clients for its talent in sculpting creative transactions with an international focus. As testament to the multinational platform Mattos Filho looks to bolster in the coming years, the firm opened a New York office in February 2008. The move stands out as a counter-point to the rash of US firms opening offices throughout Brazil in the last year.

Mattos Filho had two important issuer-side representations this year, both for multinational miner Companhia Vale do Rio Doce (Vale). The firm's preferred status with Vale saw them as Brazilian counsel in the offering of R\$19 billion (\$9.8 billion) in common and preferred shares to an underwriting syndicate of 17 foreign and domestic banks. The firm also advised Vale's shareholders in the placement of R\$7.9 billion in preferred shares issued by Valepar, Vale's controlling shareholder.

#### Leading lawyers

Luiz Octavio Duarte Lopes  
Carlos Barbosa Mello  
Roberto Quiroga Mosquera  
José Eduardo Carneiro Queiroz  
Sergio Spinelli Silva

### **Pinheiro Guimarães**

Pinheiro Guimarães stands as proof that the boutique model still works. After moving into the first tier of the *IFLR1000's* banking rankings in 2008, the firm again appears beside larger rivals Machado Meyer and Pinheiro Neto. Colleagues affirm Pinheiro Guimarães' ability to consistently punch above its weight in the banking sector, thanks in no small part to the talents of Francisco José Pinheiro Guimarães and Plínio Pinheiro Guimarães.

The firm is regarded for having developed strong ties to foreign and domestic investment banks, particularly Citigroup. This year

proved no exception. Pinheiro Guimarães resented Calyon, Citigroup Global Markets, and Santander Investment Securities as the lead arrangers and bookrunners for a \$775 million syndicated loan to Braskem, Brazil's largest petrochemical company. Francisco José Pinheiro Guimarães and Ivie Moura Alves negotiated the deal to closing in October 2008 despite renewed turbulence in the market following Lehman Brothers' collapse in September.

Aside from lending work, the firm has established itself as underwriters' counsel to its stable of banking clients. In July 2008, Pinheiro Guimarães acted as counsel for BB Banco de Investimento, Banco Bradesco BBI and Caixa Econômica Federal for an underwriting syndicate formed around the R\$6 billion (\$3 billion) bond offering by BNDES, Brazil's development bank. The issuance included non-convertible and unsecured debt, funding BNDES' investment arm, BNDES Participacoes.

"We use them mostly for capital markets transactions, and more recently to structure loan deals," says one client. "We hire Pinheiro Guimarães when we need a boutique-style firm capable of dealing with big and complex deals."

#### Leading lawyers

Ivie Moura Alves  
Francisco José Pinheiro Guimarães  
Plínio Pinheiro Guimarães

### **Barbosa Müssnich & Aragão**

The banking and capital markets team at Barbosa, Müssnich & Aragão has steadily built itself to equal the firm's sophisticated M&A practice. Camila Goldberg Cavalcanti is consistently recommended by peers for her work in transactions like the R\$6.8 billion (\$3.5 billion) financing agreement reached with BNDES for clients Energia Sustentável do Brasil and Suez Energy South America Participações. But beyond that, clients see a continuing quality in the junior staff at the firm as well. "They have a lot of good associates," says one client. "I've worked with three or four there and each one has been very good."

BMA lawyers secured R\$670 million in financing for Obrascon Huarte Lain Brasil (OHL) in connection with toll road construction in the state of São Paulo. The deal consisted of OHL issuing banking credit certificates secured by toll concession agreements with Banco Bradesco, Banco do Brasil and Banco Santander.

"I find them to be aggressive and innovative. For sophisticated corporate work, I like BMA," notes one client of the firm. "That's

why we use them. I found the other firms in Brazil to be non-responsive."

#### Leading lawyers

Paulo Cezar Aragão  
Camila Goldberg Cavalcanti  
Pedro Lanna Ribeiro

### **Other ranked firms**

**Demarest e Almeida** is one of the oldest firms in Brazil and has built itself into a true full-service firm. The banking and capital markets practices enjoy a mid-market presence that has benefited in a year when large deals were almost nonexistent in the market. Antônio Aires and José Diaz are the two lawyers whose names are most commonly referenced by peers, and whose work has secured a shared base of corporate clients and financial institutions between the practices.

Demarest advised Banco Santander and Deutsche Bank in the creation of a \$350 million secured bridge facility for Arcos Dorados. The transaction refinanced an existing facility set in place to finance Arcos' acquisition of McDonald's restaurant assets throughout Latin America. Aires closed the transaction for Demarest in November 2008.

In July 2008, Aires and Diaz collaborated in the representation of Banco BVA. The two structured a short-term, \$100 million note facility for the Latin American bank to issue notes with maturities ranging from seven days to two years.

*Leading lawyers:* Antônio Aires and José Setti Diaz

**Levy & Salomão** saw a shift in its banking and capital markets practices this year toward a trend of issuer and borrower representations. The firm is still visible in the mid-market transactions that have characterized its placement in years past, and its smaller size has allowed for an easier adaptation to changes in the market than its larger competitors. Luiz Roberto de Assis is the clear leader for the firm's banking practice, with Ana Cecília Manente heading up much of the firm's capital markets work.

Luiz Roberto de Assis represented multinational drink-maker AmBev in its R\$300 million (\$154 million) exchange offer in September, during the height of the financial crisis. Another prominent representation for Assis came in the negotiation of a \$1.6 billion senior secured facility for the Rank Group, a New Zealand investment company.

In capital markets work, Ana Cecília Manente is representing private investor Dirk Adamski in the incorporations and IPO preparations for mining companies Minas do Brasil Participações and Steel do Brasil Participações.

*Leading lawyers:* Luiz Roberto de Assis and Ana Cecília Manente

**TozziniFreire** partners Antonio Felix de Araujo Cintra and Ana Carolina de Salles Freire lead the corporate practices of banking and capital markets for the firm. The two bring established relationships with not only Brazilian banks, but with domestic utilities and state agencies.

TozziniFreire helped create MTN programmes for two domestic banks in the last year. Ana Carolina de Salles Freire advised Banco Sofisa on its \$1 billion programme, while Antonio Felix de Araujo Cintra advised Banco Itaú on its \$2 billion note plan. Other work includes the R\$600 million debt offering by steel producer Usinas Siderúrgicas de Minas Gerais (Usiminas), and the \$120 million note offering by Elektro Eletricidade e Serviços.

*Leading lawyers:* Antonio Felix de Araujo Cintra and Ana Carolina de Salles Freire

**Lefosse** maintains a lower profile than others servicing the middle-market in Brazil, which might come as a surprise for a firm associated with UK firm Linklaters. Since their relationships began in 2001, the Lefosse-Linklaters team has focused mainly on the capital markets, representing a variety of Brazilian and Latin American banks. However, this focus could be in jeopardy, as the loss of David Fenwick to rival Proskauer Rose leaves the firm without one of its most prominent and prolific partners.

In June 2008, Lefosse restructured a line of maturing bonds held by BNDES. In the face of an approaching maturity date, the firm created and issued new notes through an SPV, allowing BNDES to use the proceeds to repurchase the original, maturing \$1 billion in bonds.

Lefosse also advised Banco Itaú in the structuring of a \$2 billion MTN programme. The transaction's significance lies in its timeliness, with the offerings coming to market during the worst of the financial crisis in October 2008.

As an extension of Baker & McKenzie in Brazil, **Trench Rossi e Watanabe** has built its reputation in the banking mid-market. The relationship between the two allows Trench Rossi to draw upon the larger network of Baker & McKenzie offices worldwide, while Baker has its own certified domestic lawyers in Brazil. Don't be surprised if this type of arrangement gains traction in the near future with other firms in the market.

The arrangement doesn't have clients complaining. "They had a big part in structuring the transaction and that helped make it smooth. I think how they handled their counterpart lawyers was very well done," says a client. "There were two different investor

groups they were working with, and they managed their slightly different interests very well."

Nazir Takieddine and José Augusto Martins are recommended by past borrower and lender clients of the firm for their ability to efficiently navigate transactions.

*Leading lawyers:* José Augusto Martins and Nazir Takieddine

## Mergers and acquisitions

Recommended firms	
<b>Tier 1</b>	
Machado Meyer Sendacz e Opice Mattos Filho Veiga Filho Marrey Jr e Quiroga Pinheiro Neto	
<b>Tier 2</b>	
Barbosa Müssnich & Aragão Demarest e Almeida Souza Cescon Avedissian Barriue e Flesch TozziniFreire	
<b>Tier 3</b>	
Levy & Salomão Motta Fernandes Rocha Pinheiro Guimarães Trench Rossi e Watanabe Ulhôa Canto Rezende e Guerra Veirano	

Fallout from the economic downturn has been slower in Brazil in comparison to larger foreign markets. However, like the surge in IPOs before it, Brazilian M&A activity has been tempered in the wake of the credit crisis. "It was supposed to be a record-breaking year, until October, when almost every single deal came to a halt. People just didn't know what was going to happen," recalls one partner.

Strategic acquisitions spurred by distressed scenarios have dominated the market ever since. But signs of life in the capital markets and the growing presence of private equity, offer domestic firms hope that the hurdles of valuation and uncertainty have passed.

The trend of purely domestic transactions was rooted in the consolidation of several industries as the financial downturn concentrated capital-intensive industries left overgrown from the boom years. Mid-market banks have been a favourite example of lawyers who predicted a flurry of M&A work in the sector for some time. Fuelled by IPOs in 2006-2007, the financial sector swelled, particularly in the mid-market. Now, one financial crisis later, the first mergers have begun to appear. "They thought the good days would never end. It's shopping season, basically," comments one partner.

The merger of Banco Itaú and Unibanco is the most prominent to occur in the wake of

the credit crisis. Following 15 months of negotiations that began before the full effects of the recession became evident, the all-stock transaction resulted in what is now the largest financial institution based in Latin America. The Itaú-Unibanco merger, while symptomatic of difficult market conditions, reveals a shift still underway in Brazil, one that consolidates influence in a market quickly growing more sophisticated in the absence of foreign competitors.

Brazil's government has also urged several other mergers in the financial sector as a result of worsening conditions for mid-sized banks. Banco do Brasil, the country's state-owned bank, had its investments authority expanded at the height of the financial crisis, leading to it acquiring a minority stake in Banco Votorantim and a controlling stake in Nossa Caixa in early 2009.

Similarly, beef and ethanol companies have undergone significant consolidation in the past year as well. A depreciating Brazilian real has left beef companies with billions in US-denominated debt and suspended acquisitions announced during the purgatory of boom and bust cycles.

The melancholy permeating the worldwide financial markets, however, has not penetrated as deeply in Brazil as in other jurisdictions. "Even in the streets the mood is much better than in Europe and the US. Much better," says one partner. The traditionally slow months of January and February have yielded a more settled market. Private-equity funds, once almost exclusively concerned with real-estate transactions, are beginning to broaden their portfolios and seek opportunities in sectors like ethanol. Lawyers here see it as only the beginning of a growing private-equity presence in the country, one aided by a lack of sophisticated domestic funds. "Brazil is clearly their priority right now. They definitely see Brazil as having great potential compared to other Bric countries," says a partner.

### Machado Meyer Sendacz e Opice

Machado Meyer defines itself by its M&A work. The firm has maintained a top-tier ranking for the past five years and is lauded by clients and peers alike for the quality of its representations. "The firm has a good reputation and they always do a good job," notes one peer.

"We have other choices of professionals to work with us, but since the beginning we were very well served and fulfilled by their work," says a client. "We get along well. They understand our needs, and they are technical and institutional in their behaviour."

Specialising in complex cross-border transactions, Machado Meyer has built an impressive stable of multinational clients. The firm advised Man Latin America in its €1.18 billion (\$2.4 billion) stock acquisition of Volkswagen Caminhões e Ônibus Indústria e Comércio de Veículos Comerciais. The strategic acquisition of Volkswagen's truck and bus divisions in Brazil, completed in March 2009, allowed the Man Group to expand its transportation holdings against its German rival.

Machado also represented Banco Votorantim as 50% of the bank was acquired by the government-owned Banco do Brasil. The R\$4.2 billion (\$2.1 billion) stake was divided into 33 billion voting shares in Votorantim and 7.4 billion newly issued preferred shares. The Votorantim transaction was the first government stake to be purchased in a private institution following Banco do Brasil's expansion of authority in October 2008.

#### Leading lawyers

Carlos José Rolim de Mello  
José Roberto Opice  
Moshe Sendacz  
Nei Schilling Zelmanovits

### **Mattos Filho Veiga Filho Marrey Jr e Quiroga**

A testament to any firm's quality is the client base it commands during the lean years of a downturn. By that metric, it's no surprise that Mattos Filho appears again as a top-tier firm. Clients like Citigroup, Mineração e Metálicos (MMX), and the futures exchange BM&F denote the firm's complex capabilities, which include partners like Moacir Zilbovicius and Carlos Barbosa Mello. "Mattos Filho is my favourite firm apart from ourselves," says one competitor.

Clients roundly agree. "We like Mattos Filho because we understand they are hard workers and they have a very good and consistent way of doing business," says one client of the firm. "We use them in M&A transactions and also in corporate finance deals. They are not the kind of lawyers that are too aggressive. They're very diplomatic. They are taking care of our interests but in a polite way. It's almost a British way."

Mattos Filho advised the Brazilian commodities and futures exchange BM&F in its \$22.6 billion merger with the São Paulo stock exchange, the Bovespa. The merger created the largest trading platform in Latin America and the third-largest worldwide.

In the mining sector, Mattos Filho represented MMX in its sale of its IronX spinoff to Anglo American, worth an estimated \$5.5 billion. The transaction gave Anglo American a

controlling share of MMX following Anglo's 49% acquisition previously, and was the first to address change of control for a company listed on the recently-merged Bovespa.

#### Leading lawyers

Rodrigo Nascimento  
João Ricardo de Azevedo Ribeiro  
Sergio Spinelli Silva  
Moacir Zilbovicius

### **Pinheiro Neto**

Pinheiro Neto sets a high standard for M&A in the Brazilian market. The firm has appeared in the *IFLR1000*'s top tier for the practice area since 2004, possessing an impressive international client base and talents like Alexandre Bertoldi and José Luiz Homem de Mello. "I have worked with Alex Bertoldi in the past and he is a very good lawyer," says a client. "They have a great crew of people."

Pinheiro Neto's success is derived in large part from its ability to adapt to the market. From agriculture to financial institutions, utilities to real estate, the firm has maintained a consistent, high-profile presence despite any fluctuations in the market.

In August 2008, Pinheiro Neto advised Abyara on the sale of its real-estate brokerage to BR Brokers. Because of extreme volatility in the real-estate sector, the final sale price was negotiated to operate on the basis of a formula that allowed market fluctuations to determine the future value of the brokerage.

In its representation of Tyson Foods, Pinheiro Neto also helped the US meat and poultry processor to enter the Brazilian market. Pinheiro Neto negotiated the acquisitions of Brazilian producers Macedo Agroindustrial, Avícola Itaiópolis and Frangobrás for an undisclosed amount.

"We consistently use them for deals in Brazil," says a client. "Over the past ten years we have used them in eight or nine deals. They know our company very well and we get along with their lawyers well – with Carlos Lima in particular."

#### Leading lawyers

Alexandre Bertoldi  
Carlos Alberto Moreira Lima  
Fernando Alves Meira

### **Barbosa Müssnich & Aragão**

Barbosa Müssnich & Aragão is quickly becoming one of the most highly-regarded firms for public M&A in Brazil. A strong corporate team in capital markets and banking furthers the credibility established under

name partners Paulo Cezar Aragão, Plínio Simões Barbosa and Francisco Müssnich.

"We've had good results with them on a couple things. When we had complex issues of tax or corporate law, they were able to help us devise a structure or a process to avoid or handle the problem," says a client. "And we find them to be aggressive, yet we find they come up to the line and get you what you need done but don't cross the line. They're very diligent."

BMA acted in one of the largest and most complex mergers to occur in the Brazilian market last year – the merger of the country's stock exchange, the Bovespa, with the commodities and futures exchange BM&F. Representing Bovespa, BMA helped integrate the two exchanges into the Novo Mercado, the third-largest public securities platform worldwide. The estimated value of the transaction was \$22.6 billion as of closing in May 2008.

In June 2008, BMA lawyers also advised the petrochemical company Ultra in its acquisition of the União Terminais port facilities from Unipar, estimated at \$483 million in value.

#### Leading lawyers

Paulo Cezar Aragão  
Plínio Simões Barbosa  
Francisco Müssnich

### **Demarest e Almeida**

As one of the oldest firms in Brazil, Demarest e Almeida has built its reputation through maintaining long-term client relationships. Subsequently, strong client feedback proved a significant factor in the firm moving into the second tier for M&A this year.

A burgeoning private equity practice doesn't hurt either. "We've worked with Demarest e Almeida for a long time, maybe ten years or more," says a client. "They measure the risks correctly, and the other important issues that should be observed. They are very interested in the business itself – not just the legal aspects, but the business viewpoint – to provide the best experience for us."

Demarest lawyers advised Monsanto in its acquisition of Aly Participações from Votorantim Novos Negócios and Votorantim Industrial for \$290 million. The all-stock transaction provided Monsanto with control over Aly subsidiaries Canavialis and Alellyx, and stakes in the sugarcane industry.

Demarest also represented General Electric's Brazilian subsidiary in the sale of its lighting business to the multinational Saratoga Lighting Holdings for an undisclosed amount. The transaction was negotiat-

ed to a close during worsening economic conditions in September 2008.

#### Leading lawyers

José Setti Diaz  
Paulo Rocha

### Souza Cescon Avedissian Barriou e Flesch

Souza Cescon's corporate group appears again in the second tier in M&A, as it rounds out the practice from its already renowned project finance platform. Name partners Maria Cristina Cescon Avedissian and Marcos Rafael Flesch maintain leadership within the group since its formation less than a decade ago, while Gyedre Oliveira receives praise from peers for her knowledge and creativity in transactions.

In August 2008, Marcos Flesch, Joaquim Oliveira and Gyedre Oliveira served as counsel to the Brazilian corporate software company Datasul in its merger with rival Totvs. The transaction included the reorganisation of both businesses and the integration of their shareholder bases, creating the ninth-largest enterprise-resource planning software producer in the world.

In the same month, the firm advised ArcelorMittal in its \$817 million acquisition of all outstanding stock for London Mining South America. An overlap from Souza Cescon's project finance practice, the acquisition saw Guilherme Forbes act as lead counsel to Arcelor Mittal.

Other work included the firm's representation of Votorantim Novos Negócios. Maria Cristina Cescon Avedissian advised Votorantim and negotiated the \$290 million sale of subsidiary sugar manufacturer Aly Participações to Monsanto.

#### Leading lawyers

Maria Cristina Cescon Avedissian  
Marcos Rafael Flesch  
Gyedre Oliveira

### Other ranked firms

**Pinheiro Guimarães'** strength in the banking sector bolsters the firm's M&A practice, with many financial institution clients returning for carryover work. Despite its boutique nature, Pinheiro Guimarães hosts a healthy stable of clients like Citigroup who offer the firm exposure in cross-border and other complex transactions that set the firm apart in the market. The stars of the firm's banking practice, namely Francisco José Pinheiro Guimarães and Plinio Guimarães, also act in the majority of its M&A transactions.

In January 2009, Pinheiro Guimarães acted for banking clients Citigroup and Brazil's Banco de Investimento. The firm advised Citigroup on its \$75 million acquisition of Brazilian brokerage Intra Corretora de Câmbio e Valores. And days later, the firm closed Banco de Investimento's R\$5.86 billion (\$3 billion) takeover of the domestic telecoms outfit Telemar Norte Leste.

**Trench Rossi e Watanabe** is a seasoned player in the M&A market, finding success this year in representing foreign entrants into Brazilian industrial sectors.

The firm advised Archer Daniels Midland in acquiring stakes in domestic biofuel producers Central Cabrera Energética Açúcar e Álcool and Bela Vista Bio Etanol Participações in 2008. The 49% acquisition of Cabrera and 80% of Bela Vista marks Archer Daniels Midland's official launch as a biofuel developer in Brazil.

In October 2008, Trench Rossi lawyers also advised the insurance group Aegon on its acquisition of Mongeral Seguros e Previdência. Led by Anna Mello, the transaction left Aegon with a 50% stake in the Brazilian pension fund manager.

## Project finance

### Recommended firms

#### Tier 1

Machado Meyer Sendacz e Opice  
Pinheiro Neto  
Souza Cescon Avedissian Barriou e Flesch

#### Tier 2

Barbosa Müssnich & Aragão  
Mattos Filho Veiga Filho Marrey Jr e Quiroga  
TozziniFreire  
Trench Rossi e Watanabe

#### Tier 3

Demarest e Almeida  
Lefosse  
Levy & Salomão

With foreign investment banks reducing their project involvement in the region, it is hoped that public investments made through Brazil's development bank (BNDES) will sustain financing facilities until normalisation occurs. Brazilian lenders have also begun to embrace, and fill, the void left by foreign institutions, producing the option of pure domestic financing for some deals. "Fortunately, the Brazilian economy, and public banks in particular, are less affected than in other jurisdictions," says one lawyer.

BNDES's high-profile activity is hardly a new phenomenon. Within the last several years the development bank has approved large financing packages for projects like the

hydroelectric dams now under construction on the Madeira River. Estimates for the project's cost hover around R\$13 billion (\$6.7 billion), with the Jirau dam alone securing BNDES's largest loan ever at R\$7.2 billion. In fact, the financial crisis has only increased the development bank's prominence in the market through the allure of government guarantees and its sizeable balance sheet.

Infrastructure has been the primary focus of the development bank in the recent past, something the financial downturn has only intensified. According to lawyers, the government hopes to fan the heat of the economy through infrastructure until other sectors become healthy again. Brazilian lawyers describe the demand for projects concerning conventional and renewable sources of energy as consistent over the last year. Similar market appetite exists for improving federal toll road systems.

Many market observers, however, concede that foreign capital must return for continued market activity. "It would be an illusion to think all of the financing needs can be supplied in Brazil," notes one lawyer. The decreased appetite for risk has forced even mid-market deals into club financing, stressing an already diminished pool of potential lenders. To date, the exception to risk aversion is export financing.

A decline in project transactions has led firms to examine their commitment to this practice going forward. Lawyers here see work concentrating between firms with established, balanced practices in banking and M&A. This mirrors similar shifts with clients in the market, as industries like steel, precious metals and ethanol saw significant consolidations throughout the downturn.

### Machado Meyer Sendacz e Opice

Machado Meyer draws upon a wealth of established relationships with financial institutions, infrastructure development agencies and project sponsors to maintain a thriving infrastructure practice. The firm's strength can also be seen in the recent promotions of Ana Karina Esteves de Souza and Silvia Fizman to partner in December 2008. Prior to this, Fizman negotiated \$368 million in financing from the Inter-American Development Bank for clients Companhia de Concessões Rodoviárias. The financing funded the development of a greenfield metro system in the city of São Paulo, including the purchase of 14 trains, to be completed in 2010.

Advising multinational miner Anglo American, Machado Meyer negotiated financing terms for two of the miner's recent projects in Brazil. After securing \$5.5 billion in

commitments from a syndicate of lenders, Anglo American put their fresh equity to use in improving the infrastructure of existing iron ore facilities in the states of Amapá and Minas Gerais. This included the construction of new port facilities in Amapá and a new iron ore duct. Machado Meyer also helped restructure railway concessions in connection with Anglo America's Amapá project.

In lending work, Machado Meyer was retained by Barclays and Credit Suisse in connection with their funding of Mirabela's new nickel mining project in the state of Bahia. José Ribeiro do Prado led the negotiations for the Machado Meyer team, ultimately providing \$360 million in financing from the foreign lenders.

#### Leading lawyers

José Virgílio Lopes Enei  
Antonio Corrêa Meyer  
José Ribeiro do Prado

#### Pinheiro Neto

Pinheiro Neto has built a strong project finance platform as a spinoff from the M&A work that has largely come to define the firm's reputation. "Pinheiro Neto are very well qualified and capable at this type of work," says one client.

Pinheiro Neto provided local counsel to Australian nickel miner Mirabela in securing \$360 million in financing commitments for the development of a new project in the state of Bahia. Working in tandem with Australian counsel from Wright Legal, the firm negotiated the financing with lenders Barclays and Credit Suisse.

Aside from serving as developers' counsel, Pinheiro Neto rounds out its projects practice with frequent representations of lenders. In February 2009, during the worst of the credit crunch, the firm negotiated a 15-month bridge loan worth R\$305 million for the construction of a 360MW power plant. Representing Citibank, Banco Itaú, Banco Santander, Banco Bradesco and Banco Votoantim, Pinheiro Neto secured the short-term facility with MPX Energia as the borrower.

#### Leading lawyers

Ricardo Vieira Coelho  
Carlos Alberto Moreira Lima

#### Souza Cescon Avedissian Barriau e Flesch

Still under a decade old, Souza Cescon has established itself as one of the pre-eminent project finance firms in Brazil for corporate clients and financial institutions alike. The

practice's quick rise to fame can be traced back to the quality of its lawyers, like Cristiane Flesch and Guilherme Forbes. Both are recognised by peers as leaders of the practice and come highly recommended by clients. "She's one of the best lawyers I've ever worked with in my life. She's awesome," says one client of Flesch. Another client offers general praise for the firm's project finance abilities, saying: "This firm did the work for a very complex project finance transaction for us and they did a great job."

Advising a consortium of banks, Souza Cescon was able to negotiate long-term financing equalling R\$1.3 billion (\$670 million) for the development of an iron ore terminal and port facility in the state of Rio de Janeiro. Represented by Luis Antônio de Souza, the consortium included Banco Itaú, Unibanco and BNDES. Similarly, the firm advised a Banco Santander-led consortium in the financing for the development and construction of a 3,150MW hydroelectric plant with Santo Antônio Energia. The plant, to be located in the state of Rondônia, required R\$3 billion in financing commitments.

Corporate representations for the firm included its implementing a long-term financing facility and debt issuances for a sewage treatment system in the state of Rio de Janeiro. Estimated at R\$328 million, Souza Cescon negotiated the financing with counterparties from the Infrabrasil Fund and BNDES.

#### Leading lawyers

Cristiane Flesch  
Guilherme Forbes  
Roberto Mario Lima Neto  
Luis Antônio de Souza

#### TozziniFreire

The ethanol industry has been a boon for TozziniFreire's projects practice as it looks to expand its presence in the Brazilian market. While energy is an overall strength for the firm, representations of InfraBrasil and CPFL Energia are standouts this year.

Despite the loss of Rodrigo de Campos Vieira to mining company Ferrous Resources do Brasil, Tozzini Freire is still viewed as having a solid level of talent in projects, including Pedro Seraphim and Antonio Felix de Araujo Cintra.

"Of all the experiences we've had with law firms to date, our experience with them has been absolutely the best," says a client. "We've been using them ever since we were founded. They've done for us pretty much everything, from contracts to international and Brazilian public markets work, fiscal – every conceivable

aspect of our company. They've been absolutely extraordinary."

Seraphim is advising CPFL Energia on its potential biomass joint venture with ethanol mills in the state of São Paulo. The project takes a macro look at power cogeneration and distribution throughout the state by means of sugar cane biomass. TozziniFreire is also negotiating for the private-equity subsidiary of Banco Real in a similar transaction. Representing InfraBrasil, the firm is structuring the joint venture between the private-equity fund and an ethanol mill with the goal of cogeneration of electricity through sugar cane biomass.

#### Leading lawyers

Antonio Felix de Araujo Cintra  
Pedro Seraphim

#### Trench Rossi e Watanabe

The projects team at Trench Rossi e Watanabe consists of three partners whose work covers the gamut of energy, mining and infrastructure expertise. Much of the firm's focus this year has been in the energy sector, with clients like CPFL Energia mandating the firm to negotiate in two separate bids for the construction and operation of multi-billion dollar hydroelectric dams in partnership with the Brazilian federal government. José Roberto Martins represents CPFL in both bids.

Elsewhere in the energy sector, Maria Beatriz Mello and Joaquim Muniz are representing AES Rio PCH in connection with the DBFM (design-build-finance-maintain) processes for three hydroelectric plants along the Piabahna River in the state of Rio de Janeiro.

#### Leading lawyers

José Roberto Martins  
Maria Beatriz Mello  
Joaquim de Paiva Muniz

#### Other ranked firms

The talent of Eduardo Lima in project finance work has fostered much of Lefosse's recent success in the market. Lima helped secure the joint venture between client Tractebel Energia and sugar and ethanol producer Açúcar Guarani. The agreement will create a 33MW biomass generation power plant in co-operation with sugar and ethanol manufacturing facilities owned by Açúcar Guarani.

Recently, Lefosse was retained by OAS Investimentos and Walker Participações as the developers of a new port terminal facility in the state of São Paulo. The proposed R\$1 billion (\$516 million) facility is the first to be structured since the Brazilian government

enacted legislation allowing private investment into port infrastructure.

The project finance highlight for **Levy & Salomão** in the last year has been the firm's involvement in the ongoing Medeira project. Advising a syndicate of domestic banks including Banco do Brasil and Banco Bradesco, the firm helped secure the estimated \$7 billion project to construct the Jirau dam on the Madeira River. Ana Cecília Manente and Luiz Roberto de Assis led the Levy & Salomão team on the transaction.

### **Other notable firms**

The banking expertise at **Pinheiro Guimarães** has allowed the firm to build a respectable presence in the projects market. Serving as lenders' counsel to Banco UBS Pactual, the firm negotiated the terms for the \$650 million financing of highway construction in the state of São Paulo through Concessionária Rodoanel Oeste.

Borrower-side work saw the firm advise Companhia Siderúrgica Nacional and Transnordestina Logística on its ongoing development of the Transnordestina railway. BNDES provided the \$900 million in financing for the project.