

# The Art of Sustainability of Vivacqua Advogados Law Firm



Currently having offices in the states of Rio de Janeiro, São Paulo and the Federal District, Vivacqua Advogados Law Firm started its activities in Rio de Janeiro in 2009 and in 2015 implemented a different legal modeling seeking greater competitiveness in the legal market.

Despite being a recent office, Vivacqua Advogados Law Firm combines modernity with tradition, as its main partners come from traditional legal families, such as Dr. João Paulo Cordeiro Guerra whose grandfathers, João Baptista Cordeiro Guerra and Solon Vivacqua, who were members of the Supreme Federal Court (“Supremo Tribunal Federal – STF”) and the Superior Labor Court (“Tribunal Superior do Trabalho – TST”), respectively.

Created by the association of professionals with accumulated background experience in companies that are members of national and international groups, as well as in traditional law firms, Vivacqua Advogados Law Firm, since the beginning of its activities, has turned its attention to legal entities from a wide range of segments, with the concept of adjusting structure, operation, management and control of the companies to the legal requirements. In this context, it has always sought in a conservative way the adequate efficiency

of the binomial Cost x Risk.

The performance of the office in the consultative and contentious fields allows the feedback of these by the exchange of knowledge and experience among its professionals, feeding the cycle causes consequence.

The harmony, the diversity of training and the experience of the professionals that make up the office allow the 360° evaluation of the internal and external repercussions arising from the decisions taken by modern business management.

In order to manage a portfolio of more than 29,000 active lawsuits throughout Brazil, Vivacqua Advogados Law Firm not only has more than 100 associates in several states of Brazil, but also needed to invest in technology and structure currently having WEB environment, DATA CENTER, civil liability insurance, internal legal system, external access to the system for clients and own IT support.

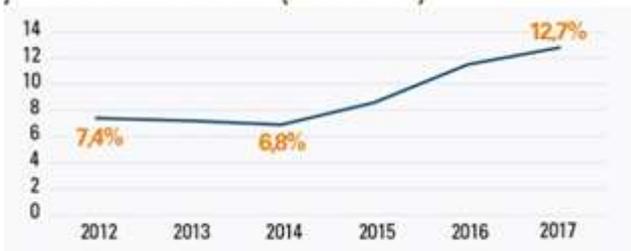
In the words of Ricardo Pontes Vivacqua, founding partner, the great differential of Vivacqua Advogados Law Firm, is not only communicating in an uncomplicated way with clients, not being managed as a law firm but rather as a company always adapting to seek the greatest efficiency,

while respecting the standards of compliance of its clients, that is not a few as the office assists companies of the financial market.

Ricardo Vivacqua's management skills are not uncommon, but he has been honored throughout his career, where he has taken on prominent positions both in public bodies and the Municipality of Rio de Janeiro, where he was Deputy Secretary of Management and President of the Special Quality Assurance Committee, as well as in the private sector, in which he held positions such as Legal and Regulatory Vice President of Generali Brasil Seguros SA, Legal Superintendent of the Leader Magazine Group, Tax Manager of Ampla Energia e Serviços SA (now Enel Distribuição Rio), among others, during which time he worked on the implementation of governance standards such as Sarbanes & Oxley and Bovespa.

Currently the most prominent area of the office is public law (biddings and administrative contracts), headed by the partner Paula Pincelli T. Vivacqua, who for more than six (6) years is the President of the Special Bidding and Contracts Commission Administrative – “CELCA” of the Brazilian Bar Association – “OAB / RJ”.

Annual average unemployment rate of persons 14 years or older in Brazil ("PNAD-C")



Information source: IBGE - DPE

Gross Tax Cost - 2015 and 2016

Components	2015	2016
Gross National Product ("GNP")	5.995,79	6.259,23
Gross Tax Revenue	1.925,45	2.027,01
Gross Tax Burden	32,11%	32,38%

Information source: RFB and IBGE

# "Brazil has a long and difficult way to go, but I have no doubt that the Brazilian economy is bound to grow"

## Legal Market in Brazil



**RICARDO VIVACQUA**  
**Founding Partner**  
**VIVACQUA ADVOGADOS**

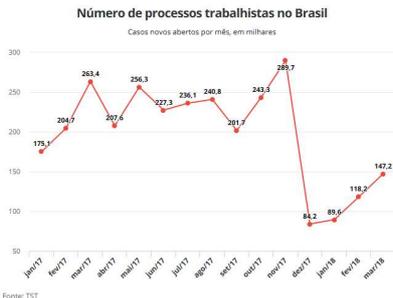
**Evolution of the Brazilian tax burden from 2002 to 2016**



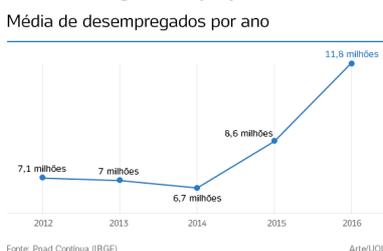
**Gross National Product ("GNP") Evolution**



**Labor Proceedings in Brazil**  
**New Judicial Demand per Month**



**Average Unemployed a Year**



### How is the current Brazilian legal market?

The legal market, like any other, cannot be dissociated from the reality of the country.

Brazil is experiencing a political and economic situation that is not stable, with the consumer market shrinking, this is not to say that it is not the time to invest in the country, for those who are capitalized and expect a long-term return can be a great opportunity. This is clear if there are no major legislative changes, as the country needs a profound overhaul in order to position itself as a large and rapidly developing world economy.

I believe that this reformulation will not reach the constitutional spectrum, as this would generate a great deal of legal insecurity in the eyes of national and foreign investors.

Such a scenario leaves contentious advocacy more expeditious than the advisory one, since the recession generates unemployment (which encourages the volume of lawsuits in Labor Justice), which increases default (consequently the volume of collection lawsuits) and bankruptcy proceedings and judicial recovery, which only from January to April this year reached 518 (five hundred and eighteen) requests for judicial recovery.

It is true that the change in labor legislation generated two (2) atypical movements in the volume of distribution of lawsuits, a first increase in the inflow of lawsuits before the law was in force, and its drastic reduction after the validity of the labor reform. However, in 2018, the volume of lawsuits distributed grew again, according to a research made by the Superior Labor Court ("TST").

### Does this mean that M&A operations in Brazil are not occurring?

No, far from that, even large operations such as the acquisition of Eletropaulo's control by Enel in June are occurring. The market is not paralyzed,, we find this

in the volume of work that has been demanded, especially those related to bidding processes.

There are market expectations that the 2018/2019 biennium will have a scenario of resumption of economic growth. Brazilian GDP grew by 1% in 2017 and the trend is to continue expanding in the coming years.

GDP growth indicators are very relevant to an economy emerging from recession.

In addition there are other positive signs such as inflation control and the constant and gradual cuts in the "SELIC" rate that is decided by the Monetary Policy Committee ("Comitê de Política Monetária - COPOM")

If these trends consolidate, the expectation for the coming years is for growth, which will certainly help to restore investors' credibility in the Brazilian market, and with this, a new cycle of growth in our economy.

### What is your expectation for the future?

Brazil has a long and difficult way to go, but I have no doubt that the Brazilian economy is bound to grow. All growth has its price, our politicians only have to define when and how we are going to bear this cost, because for that we have to change our model, especially the tax.

The government cannot intend to implement models of countries with basic characteristics different from those of Brazil, among them the geographic dimension and the volume and population dispersion.

The Brazilian tax model has in addition to seeking equilibrium in the "Laffer Curve", to stop charging a lot of the few and to charge little of many, so that it is not worth the taxpayers to withhold taxes. Proper and efficient taxation is imperative for the growth of any country.

The model of increasing taxation to cover public accounts has reached its limit,

what should be done is to adjust the public accounts to the volume collected. This fact is evident when comparing Brazil to other countries with stable economies of similar geographical dimensions, since in 2016 we achieved a tax equivalent to 32.38% of the Gross Domestic Product - Brazilian GDP, according to a study conducted by the Internal Revenue Service of Brazil ("Receita Federal do Brasil") in the end of 2017.

This fact, coupled with the low counterpart of the population in essential public services (such as security), the public security deficit, the corrosion of basic state infrastructure and corruption within the state machine, as has been reported in the media, among other elements, the risk of investment in the country, making even Brazilian investors seek investments outside Brazil, or even choose to move abroad.

The adjustment in taxation would help a lot to attract investors, creating jobs, enabling the growth of the economically active population and the consumption of goods, that is, it would foment our economy, not to mention that it would reduce the government's expenses with the subsidies granted to the less favored people, such a measure, at first, would be unpopular for the Government, since it would initially cause great suffering for the population before reaping the benefits.

**How could the government reduce its expenses to fit within the amount collected?**

There are some ways, one of them is the reduction of bureaucracy, which increases and much that we know in the business world of our country as "Brazil Cost". Any entrepreneur who has assessed the cost of setting up and maintaining a company in Brazil knows "what I'm talking about". Although for some time different treatments have emerged for smaller companies, the back office cost that companies have to bear to meet their legal obligations to the government is very big. The simplification of the current model would not only relieve entrepreneurs but also allow the government to reduce the size and cost of the "state machine".

**But would not it be necessary to change many laws?**

Yes, not only change, but also revoke laws that are innocuous. In Brazil, one hears the absurdity of "the law did not catch", how can a norm that has coercive power, "not catch"? There is only one explanation, the state cannot control whether its governed are complying with the law, so what is the obligation if the state cannot execute it. Another regrettable situation in Brazil is that, due to a lack of harmony and proper communication between the agencies, it is not uncommon for companies, especially those operating in a regulated environment, to comply with the rule of a state entity, end up failing to do the other. How to stay in compliance in a situation like this? There is no way, so what the good manager does is to choose for the path that generates the smallest pecuniary penalty and then, if it's worth it, goes to the judiciary to discuss the constitutionality or legality of the rule that was forced to infringe.

There were not many projects in the energy sector that experienced such situations, since they had all the authorizations to start their implementation, except the environmental ones, which caused delays in the implementation schedules for the investors who chose not to start the works in due time and the respective application of the penalty for contractual noncompliance (established in a bidding procedure) or the application of penalties by the environmental protection agency to those who started implementing their projects without complying with all legal requirements.

Just look, how can an investor, by the best adviser, be able to foresee so many obstacles? It is difficult, in addition to everything, the patchwork quilt that has become the Brazilian legislation, foments the corruption as it has been seen in the news. So there is no other choice but to understand that yes, a broad reformulation of our legislation is necessary for Brazil to become a country that attracts non-speculative investors.

In short, the measures that must be adopted to leverage the national economy are: reducing the tax burden, reducing the amount of norms and their harmony, reducing bureaucracy that will not only contain the cost of entrepreneurs, but also state apparatus, helping to reach the long-awaited "Minimum State" that weighs less in the taxpayer's pocket.

**This scenario, which you described, does not affect public contracts?**

Unfortunately, it is not often that the entrepreneurs and chief executives officers are discouraged from participating in bidding processes because they do not believe in the smoothness of the procedures or government bodies involved. Recently it was reported the involvement of members of the public accounts oversight body of the State of Rio de Janeiro, the State Court of Accounts, in a corruption scheme. This has a negative impact, directly and indirectly on the public accounts, directly because it is characterized by poor management of the public treasury, with the use of resources to meet private interests and indirectly in the face of the progressive discrediting of public administration, interest of most companies in participating in bidding processes, reducing competitiveness and efficiency in the use of state resources. But a portion of the population using the law on access to information has been raising awareness and seeking to monitor the proper use of public resources, including organized through the "Social Observatories", which constitute a space for the exercise of citizenship, which should be democratic and not linked to any political party and should bring together as many representative entities of civil society as possible in order to contribute to the improvement of public management, including our partner, Paula Pincelli T. Vivacqua Counselor of the Advisory Council of the "Social Observatory of Brazil" of Rio de Janeiro, which currently has as chairman Dr.<sup>a</sup> Tatiana Quintela de Azeredo Bastos.

**So, for law firms, is the Brazilian market very good for what you have just described?**

It could be a lot better if the uncertainties in our market were not so many, it went beyond the acceptable risk limit for non-speculative investors who are choosing to invest in more stable markets. I am not saying that Brazil is a country that does not deserve investment, on the contrary, it is a country of continental dimensions, a great consumer market, interesting for any company, it only needs a management that better attracts domestic and foreign investments, since it does not generates jobs, it increases the collection of taxes organically and does not burden the state of the cost of subsidy policies to the needy population without the non-speculative investment of the entrepreneurs.