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Brazil implements changes to facilitate the recordal of IP agreements

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In what will be seen as a welcome development to IP owners, the Brazilian Patent Office (BRPTO) is improving the system to record IP agreements.

More specifically, on 11 July 2023, the BRPTO published Ordinances 26 and 27/2023, improving the guidelines for registration of technology transfer and franchise agreements. For recordal purposes, complete agreements are no longer required to have certified notarized and legalized/apostilled signatures of the parties in case digital signatures are used. When executed abroad, such digital signatures do not have to comply with ICP-Brazil standards to be accepted by the BRPTO. Also, the requirement of two witness to the agreement has been abandoned.

Brazilian companies are no longer required to submit a Registration Form and documents such as bylaws, articles of association, memorandum of association and/or last amendment on corporate purpose and consolidated legal representation.

Broadening the scope of the agreements, the BRPTO follows international practice by accepting the recordal of know-how licenses. Such measure is a landmark on the BRPTO practice, which denied the possibility of licensing unpatented technologies as a matter of law. Moreover, patent, trademark and design patent applications are eligible to be licensed and royalties to be paid under the new regulation.

Finally, these changes are an important addition to improvements made by Law No. 14,596/2023, which provides for transfer pricing rules and enters into force on January 1, 2024, and will repeal legal provisions that established the recordal obligation for tax deductibility purposes. Moreover, since December 30, 2022, when Law No. 14,286/2021 (New Foreign Exchange Framework) came into force, the registration is no longer a requirement to legitimize remittances of royalties abroad, and proof of payment of income tax due.

This regulation trend shows the willingness of the Brazilian authorities to improve the business environment of the country.

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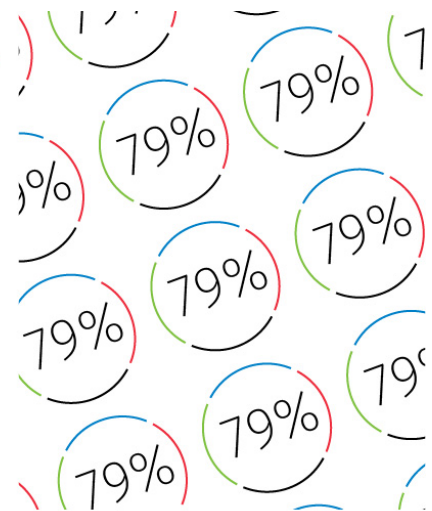
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