



CESCON  
BARRIEU

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KEY LEGAL CONSIDERATIONS REGARDING

# DATA CENTERS IN BRAZIL

MARCH 2026

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# SUMMARY

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## DATA CENTERS INDUSTRY OVERVIEW

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DATA PROTECTION

GOVERNMENT AFFAIRS

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PROJECT FINANCE

ENERGY

REAL ESTATE

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## CESCON BARRIEU

OUR FIRM

OUR OFFICES

OUR TELECOM CLIENTS

OUR DATA CENTER CLIENTS

The menu on the side are clickable  
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mentioned slides.

DATA CENTERS  
INDUSTRY  
OVERVIEW



# DATA CENTERS INDUSTRY OVERVIEW LATIN AMERICA



The demand for Data Centers in Latin America has grown with the development of technologies, like the **software-defined data center**, the **Internet of Things (IoT)**, and **disaster recovery**.

The size of Latin America's Data Center construction market in 2025 is estimated at

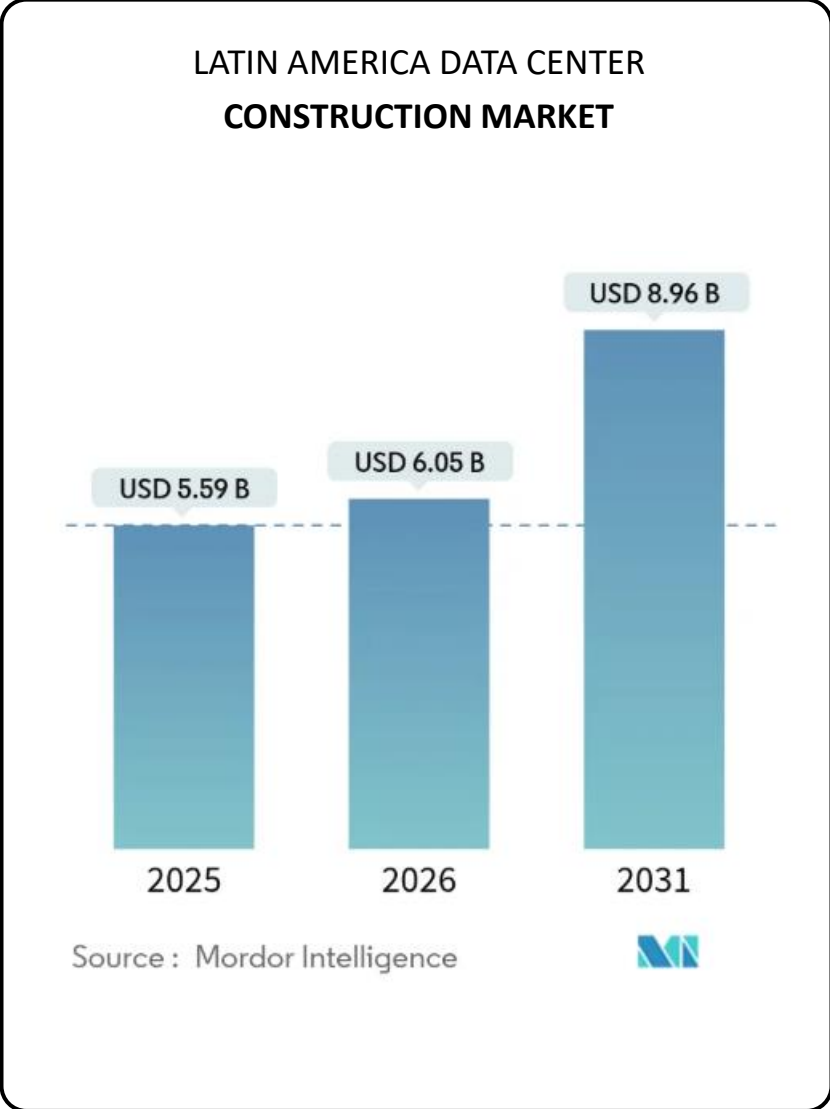
US\$ **5.59** billion

and is expected to reach US\$8.48 billion by 2031, growing at a CAGR of over

**8.19%**

during this period.

Source: Mordor Intelligence. Available [here](#).



# DATA CENTERS INDUSTRY OVERVIEW LATIN AMERICA



The Latin American Data Center **industry is fragmented**, and the competitive rivalry is high.

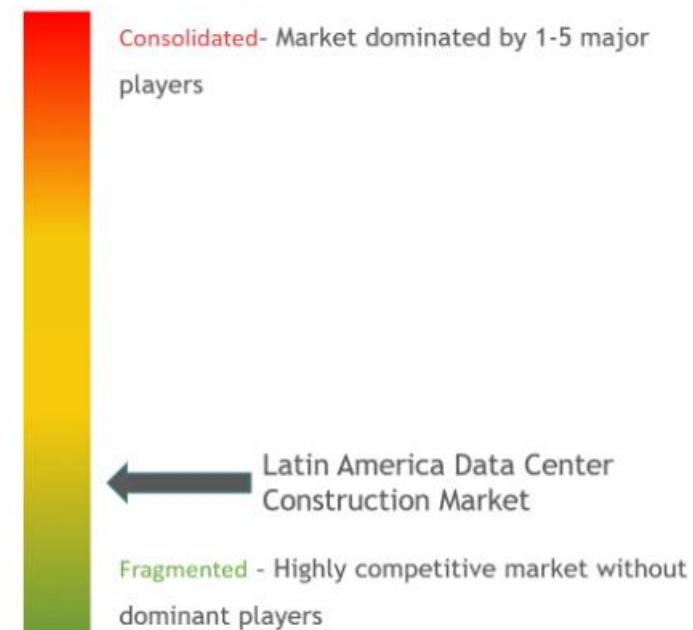


**Sustainable competitive advantage can be achieved through innovation** in this market, due to the growing need for differentiated products for multiple applications.



**Players are continually expanding their presence** in the market by offering the most advanced technologies, thus increasing their revenues in the market.

## MARKET CONCENTRATION



Source: Mordor Intelligence. Available [here](#).

# DATA CENTERS INDUSTRY OVERVIEW BRAZILIAN SCENARIO



Brazil is expected to dominate market share.

South America has **416 DATA CENTERS**, of which

**199**

ARE IN BRAZIL

## MARKET CONCENTRATION

**Consolidated** - Market dominated by 1-5 major players.



← Brazil Data Center Construction Market

**Fragmented** - Highly competitive market without dominant players.

Sources: Mordor Intelligence. Available [here](#).  
Data Center Map. Available [here](#).

# DATA CENTERS INDUSTRY OVERVIEW

## MAIN PLAYERS IN BRAZIL



One of the most traditional technology companies, IBM has three operating data centers in Brazil.



Equinix owns and operates more than 220 data centers around the world. In Brazil, Equinix has 5 operating data centers.



Focused on the colocation segment, Ascenty has the largest number of data centers in Brazil among all providers, with 17 operational data centers and 6 under construction.



Brazilian technology services company that acquired Synapsis in 2014, has now data center facilities in Argentina, Brazil, Chile, Colombia, Mexico and Peru.



Brazilian-based company focused on hyperscale and large colocation, had 9 data centers in operation in Brazil as of December 2024.



Cirion has a network of 350 data centers worldwide, 18 of which are in Latin America (3 in Brazil).



Focused on colocation for hyperscale demand, Odata has 16 data centers operating in Latin America, with 4 being in Brazil.



Operating since 2019 Only in Brazil, Where it has been growing through acquisitions, Elea Digital is strongly focuses on colocation services, with 9 data centers already operating in Brazil.

Source: ABDI.

[Data Centers no Rio de Janeiro: entenda o papel na região \(odatacolocation.com\)](#)

[Elea Digital, da Piemonte, inaugura seu segundo datacenter em Porto Alegre – Bnamericas](#)






[Cleber Braz revela planos da Scala Data Centers para 2024 - DCD \(datacenterdynamics.com\)](#)

[Brazil Data Centers - Providers Map in Brazil](#)

# DATA CENTERS INDUSTRY OVERVIEW

## BRAZILIAN SCENARIO

Brazil is experiencing an expansion in the Data Center industry due to several factors, such as:

-  growing cloud computing needs
-  the increased presence of foreign cloud providers
-  the development of government regulations for local data security
-  increasing investment by national players
-  availability of abundant water and energy resources to support data center operations

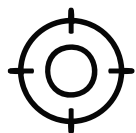
Brazil's investment in the **IT industry**  
and **telecom sector** will be around

US\$ **40-50**  
billion respectively.

**The exponential advance of artificial intelligence may turbocharge this expansion.**

# DATA CENTERS INDUSTRY OVERVIEW GREENSHORING

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Greenshoring is a practice that prioritizes locating operations in regions with abundant access to **renewable energy** and **sustainable resources**.



The practice has emerged as a critical strategy in the data center sector, which has encountered challenges in maintaining its infrastructure in the US and Europe due to limitations on the availability of energy and water resources.



Data centers situated in regions that facilitate the reduction of carbon emissions enable alignment with broader sustainability goals.

THE KEY WORDS ARE



**SUSTAINABILITY**



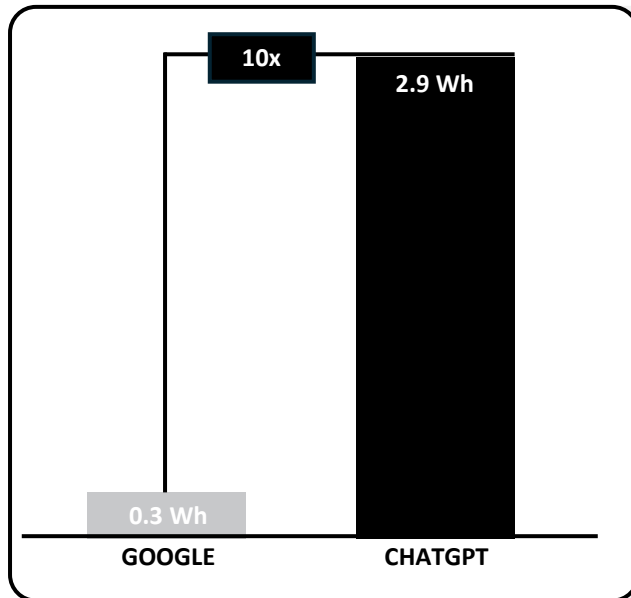
**LOCALIZATION**

# DATA CENTERS INDUSTRY OVERVIEW

## GREENSHORING



DATA CENTERS CONSUME SIGNIFICANT AMOUNTS OF ENERGY TO **POWER AND COOL THEIR SERVERS.**



A ChatGPT search consumes

**10** ⚡

**TIMES MORE**

energy than a Google Search.

In Virginia (USA), which hosts the largest concentration of data centers globally:

THESE FACILITIES ACCOUNT FOR

**20%**

of the electricity usage in the northern region of the state.

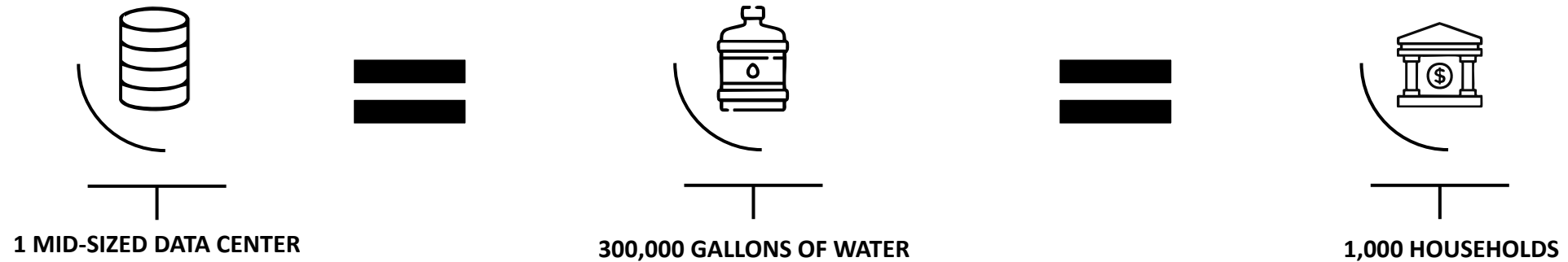
Brazil, with its abundant renewable energy resources (hydroelectric, biomass, solar and wind power) presents a highly attractive location for data centers seeking to reduce their carbon footprint.



# DATA CENTERS INDUSTRY OVERVIEW

## GREENSHORING

**Water availability** is a critical factor for the efficient operation of data centers, particularly given that water is extensively utilized in the cooling of servers. The daily water consumption of one mid-sized data center is considerable, equivalent to the usage of approximately 1,000 households.



In regions where water resources are scarce or access to potable water is limited, data centers face challenges in sustaining operational efficiency, which can affect performance and operational costs.



**This is an opportunity for Brazil, as it possesses approximately 12% of the world's freshwater reserves.**

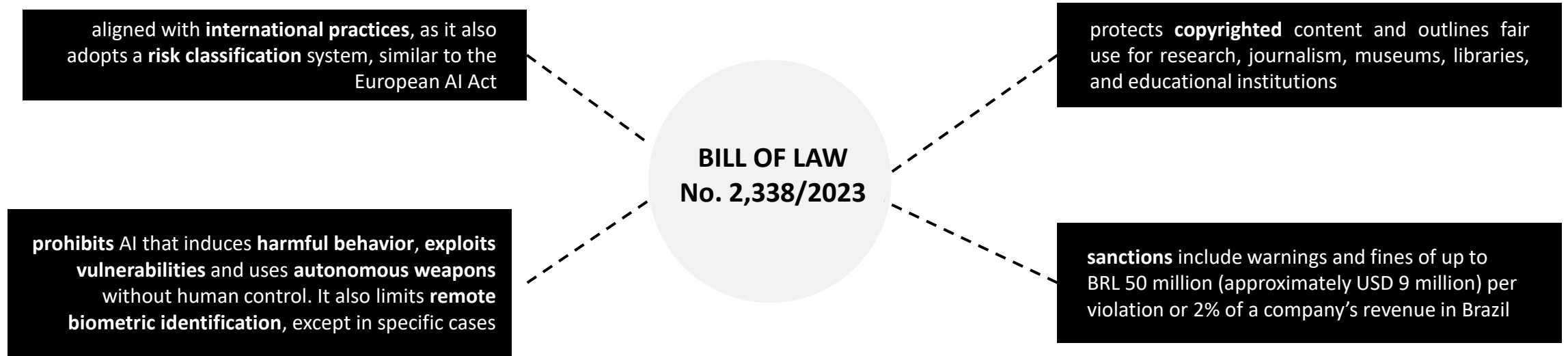
# DATA CENTERS INDUSTRY OVERVIEW

## AI REGULATION

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As AI systems rely on large-scale data processing and secure storage, compliance with AI regulations ensures that data privacy, security and ethical standards are upheld. AI regulation is under discussion in the form of **Bill of Law No. 2,338/2023**. The legal certainty and alignment with international practices sought by AI regulations are expected to attract investment and cultivate a competitive environment across various sectors linked to this technology, such as the data center sector.

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CLICK HERE AND CHECK OUT OUR  
SPECIAL MATERIAL

**AI LEGAL FRAMEWORK BILL**  
**2,338/23**

Sources: [Reuters](#). "Microsoft to make \$2.7 billion cloud, AI investments in Brazil. Available here."  
[Reuters](#). Meta to inform Brazilians how it uses their personal data to train AI. Available here.  
[Reuters](#). Brazil proposes \$4 billion AI investment plan. Available here.

# DATA CENTERS INDUSTRY OVERVIEW

## DATA CENTER REGULATION

### AI - DATA CENTER REGULATION

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The Brazilian Senate is currently debating Bill of Law No. 3,018/2024, which proposes specific regulations for data centers dedicated to artificial intelligence (AI). The bill aims to ensure that AI-related data infrastructures operate with high standards of security, transparency, and efficiency. This is part of a broader legislative effort to establish a regulatory framework for AI technologies in Brazil, aligning with the Bill of Law No. 2,338/2023.

clear guidelines for the installation and operation of AI-focused data centers

defines standards for data auditability, control, and regulatory oversight

promotes the use of renewable energy sources and environmentally sustainable practices

### NATIONAL DATA CENTER POLICY

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The Ministry of Development, Industry, Trade and Services has been working, together with other ministries, on the formulation of the National Data Centers Policy, composed of two instruments:

I – Special Tax Regime for Data Centers (Redata);

II – Initiatives to foster the data center production chain.

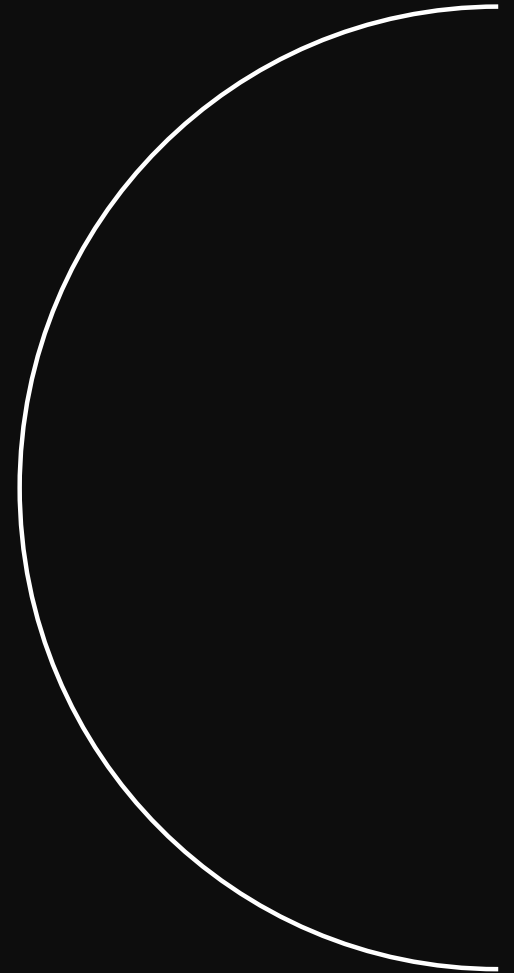
The National Policy aims to define principles, objectives, and regulatory priorities for the sector, addressing issues such as:

- infrastructure distribution
- sustainability
- energy efficiency
- security
- governance

DATA CENTERS

KEY LEGAL

CONSIDERATIONS



# KEY LEGAL CONSIDERATIONS

The menu are clickable and will redirect you to the mentioned slides.



TELECOMMUNICATIONS



PROJECT FINANCE



DATA PROTECTION



ENERGY



REAL ESTATE



GOVERNMENT AFFAIRS



CONTRACTS



TAX



ENVIRONMENTAL LAW

# TELECOMMUNICATIONS SERVICE LICENSING AND EQUIPMENT CERTIFICATION

## DATA CENTER OPERATION IN BRAZIL MAY REQUIRE A SPECIFIC TELECOM LICENSE IN ORDER TO USE NETWORK INFRASTRUCTURE

Even if data center operators use their **own telecommunications network** to interconnect their facilities, it may be necessary to **apply for a specific telecom license** with the National Telecommunications Agency ("ANATEL"): the license to provide the so-called **SLP** (private limited service).

If data center operators provide connectivity from clients' premises to the clients' nearest point of presence, another type of license would be required. In this case, an **SCM** – multimedia communication service license would be adequate, since it allows the **provision of telecommunications services to third parties**.

## INFRASTRUCTURE OPERATORS AND THEIR EQUIPMENT NEED TO COMPLY WITH TELECOM REGULATORY REQUIREMENTS AND TECHNICAL STANDARDS

**Resolution No. 715/2019** sets out the rules for certifying telecommunications products in Brazil, requiring prior approval from Anatel. Telecom products are equipment, devices, or components that serve as essential or sufficient means for telecommunications.

**Resolution No. 780/2025** broadened the certification requirements to include data centers connected to telecom networks. It prohibits telecom providers from implementing or contracting new data center facilities without prior Anatel certification and mandates that existing facilities comply with the certification rules within three years. However, **the regulation is currently suspended by ANATEL pending further developments, following an industry request for annulment** submitted through the administrative process.

**Public Consultation No. 48/2025** was launched to submit to public comment the draft operational procedures and corresponding technical requirements, detailing the criteria, stages, and parameters applicable to the certification and regulatory oversight of such infrastructures.

# TELECOMMUNICATIONS INCENTIVIZED DEBENTURES

In Brazil, incentivized debentures were established as a public policy instrument to attract private capital to infrastructure projects. Under Law No. 12,431/2011, projects formally designated as “priority” by the Federal Government may be financed through bonds that grant tax benefits to investors, thereby reducing funding costs for strategic sectors such as telecommunications.



**Telecommunications:** The Ministry of Communications is responsible for defining the eligibility criteria for priority projects within the telecommunications sector. The Ministry is currently preparing an Ordinance (Portaria) to further regulate this framework, including the potential inclusion of digital infrastructure projects.



**Data centers:** For data centers, eligibility depends on their functional integration with telecommunications networks. Facilities that directly support the provision and operation of telecom services, such as network processing, storage, connectivity, and core infrastructure, may qualify for incentivized debenture financing.

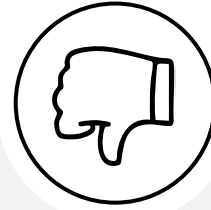
# DATA PROTECTION GOVERNANCE AND PENALTIES FOR NON-COMPLIANCE

DATA CENTER OPERATION IS ESSENTIALLY ABOUT STORING, MAINTAINING, AND PROCESSING DIGITAL INFORMATION. THE BRAZILIAN GENERAL DATA PROTECTION ACT (LGPD) REQUIRES ANY COMPANY THAT PROCESSES PERSONAL DATA TO ADAPT ITS POLICIES AND CONDUCT TO BE IN ACCORDANCE WITH THE LAW



## GOOD PRACTICES AND GOVERNANCE

- Privacy by Design
- Privacy by Default
- Data Protection Officer (DPO)
- Anonymization
- Data life cycle mapping
- Cybersecurity
- Governance Structure
- Contingency plan in case of an information security incident
- Impact Assessment on Privacy



## PENALTIES FOR NON-COMPLIANCE WITH THE LAW

- Warning
- A simple fine of up to 2% of the group or conglomerate revenues in Brazil in its preceding fiscal year, limited to BRL 50 million per infraction
- Daily fine, observing the total limit of BRL 50 million per infraction
- Public disclosure of the infraction
- Blocking or deleting personal data
- Total or partial suspension of the processing activity
- Total or partial prohibition on the performance of processing activities

# GOVERNMENT AFFAIRS

## IMPORTANCE OF GOVERNMENT RELATIONS IN DATA CENTER INDUSTRY



### GOVERNMENT AFFAIRS

#### EVOLVING SECTOR REGULATION

- Legislation on personal data protection (LGPD)
- Information security, cybersecurity, and AI standards
- Possible federal, state, and municipal requirements for construction and operation

#### GOVERNMENT INCENTIVES

- Tax incentive programs for digital infrastructure and modernization
- Public policies to attract investments in technology and critical infrastructure
- Tax reductions and logistical benefits in special zones.

#### COMPLIANCE AND RELATIONS WITH REGULATORY AGENCIES

- Dialogue with the National Regulatory Agency (“ANPD”)
- Interaction with infrastructure and telecommunications agencies
- Need for transparent relations for approval and operation

#### GOVERNMENT RELATIONS AS A STRATEGY

- Anticipate and influence public policies and regulations
- Ensure legal predictability and risk mitigation for operations

#### NEW AND COMPLEX MARKET

- A sector still developing in Brazil with potential for new regulations
- Need to monitor public discussions on digital infrastructure and innovation

#### OPPORTUNITIES IN ESG AND SUSTAINABILITY

Collaboration with governments to promote sustainable solutions, such as clean energy and energy efficiency.

#### CRITICAL AND PRIORITY SECTOR FOR GOVERNMENTS

- Data centers as a foundation for digital transformation and data sovereignty
- Government interest in resilient, secure, and sustainable infrastructure

# TAX TAXES LEVIED ON DATA CENTER SERVICES

## DATA CENTERS ABROAD (FEDERAL REVENUE OFFICE)

Remittances should be taxed as import of services if purchaser of service is domiciled in Brazil.

## EXPORT OF DATA CENTER-RELATED SERVICES

No PIS and Cofins (Indirect Tax on Revenue) or municipal services tax (ISS\*) should levy - Corporate Income Tax (IRPJ) and Social Contribution on Net Profits (CSLL) must be paid.

## DOMESTIC TRANSACTIONS

Potential levy of PIS and Cofins, IRPJ, CSLL and ISS.

## ACQUISITION OF ASSETS

Tax benefits apply in some cases (CapEx reductions).

## MUNICIPAL TAX - ISS

Potential levy of the municipal services tax (ISS) on Data Center activities: Contracts must be analyzed on a case-by-case basis.

Data processing is subject to a 2% to 5% ISS (depending on the municipality).

If there is no provision of services (e.g. pure rental), no ISS should be levied.

## WHERE IS THE ISS DUE (IF THIS IS THE CASE)?

City where the provider is located.



### TAX REFORM

The CBS and IBS will replace the current PIS/Cofins, ISS and ICMS taxes.

Domestic transactions by data centres will be subject to IBS and CBS, but exports will be exempt.

The new rules will take effect gradually, starting on January 1, 2026

\*This scenario does not consider tax benefits, shown below.

# TAX INCENTIVE FOR DATA CENTERS – REDATA - BILL N<sup>o</sup> 278/2026 (UNDER DEBATE IN CONGRESS)

The Special Tax Regime for Data Centers (REDATA) was established in September 2025 by Provisional Measure No. 1,318/2025 as one of the core instruments of Brazil's National Data Centers Policy, with the aim of improving the activities of data centers in Brazil (effective from January 2026). The benefit grants suspension of Import Tax, Excise Tax (IPI) and PIS/CoFins. **As a provisional measure, it was constitutionally required to be converted into law within the applicable timeframe. As this did not occur, it expired and ceased to have prospective legal effect.**

To preserve the policy initiative, Bill No. 278/2026 was introduced in the Chamber of Deputies to replace the provisional measure and formally incorporate REDATA into Brazil's statutory framework. **The bill preserves the core structure of REDATA**, including the suspension of certain federal taxes on the acquisition and importation of equipment and infrastructure for qualifying data center projects, subject to compliance with defined investment and sustainability requirements. **Its effectiveness depends on final approval by Congress and presidential sanction.**

## POSSIBILITY OF PARTICIPATION AS A

- a) **Qualified entity:** For legal entities implementing a project to install or expand data center services within Brazil; and
- b) **Co-qualified entity:** For legal entities that have a contractual relationship to supply information and communication technology products manufactured by them, either on their own initiative or by order, for incorporation into the fixed assets of users qualified under the Regime.

## BENEFITS

Suspension of the following taxes levied on domestic sales and imports of electronic components and other IT products:

- PIS/COFINS levied on revenue - until 2026
- PIS/COFINS-Import - until 2026
- IPI levied on imports or domestic acquisition - until 2026 (does not apply if the good is also manufactured in the ZFM)
- Import Tax - II (if there is no similar domestic product)

## VALIDITY PERIOD

The benefit is valid for five years, with a limitation of application until 2026 for taxes that will be eliminated with the tax reform.

# TAX INCENTIVE FOR DATA CENTERS – REDATA- BILL N° 278/2026 (UNDER DISCUSSION)

## COMMITMENTS AND COUNTERPART OBLIGATIONS

To apply the benefits, eligible companies must cumulatively fulfill the following commitments

Commitment	Description	Observations
<b>Capacity Provision</b>	Make available to the domestic market at least 10% of the data processing, storage and processing capacity to be installed with the benefits of the regime	Its allocation for export or personal use is prohibited in the absence of domestic demand. It can be supplied through non-onerous assignments to Institutions of Science and Technology (ICTs) and public authorities or other types of investments.
<b>Sustainability</b>	Meet the sustainability criteria and indicators defined in regulations	To be detailed in regulations
<b>Clean Energy</b>	All the data center electricity demand must be fulfilled through supply contracts or self-production from clean or renewable sources	To be detailed in regulations
<b>Water Efficiency</b>	Present a Water Usage Effectiveness-WUE equal to or less than 0.05 L/kWh, with annual measurement	Strict control of water use
<b>R&amp;D Investments</b>	Make investments in the country corresponding to 2% of the value of products acquired in the domestic market or imported with the benefit of REDATA in research, development and innovation projects	In partnership with ICTs, educational institutions, state-owned companies or qualified social organizations

If the establishment is located in the North, Northeast, or Central-West regions, including the respective areas covered by regional development agencies, the commitments to provide capacity and invest in R&D will be reduced by 20%.

Failure to comply with the capacity provision requirement will result in the suspension of benefits for new acquisitions, which will automatically result in the cancellation of REDATA eligibility if the legal entity fails to remedy the violation within 180 days.

# PROJECT FINANCE TAX INCENTIVES FOR FINANCING TELECOM INFRASTRUCTURE

Projects for development and implementation of data centers are mainly financed by BNDES (“FUST” credit line), international infrastructure funds, and local and international capital markets. Capital markets transactions entitle either the issuer, the sponsor, or investors to certain tax benefits. The chart below summarizes the applicable withholding income tax (WHT) rates levied on the earnings derived by the holder of key instruments utilized to finance such project locally:

<b>INVESTOR</b> <i>(holder of the securities/debentures)</i>	<b>INCENTIVIZED LOCAL DEBT SECURITIES*</b> <i>(Law 12,431)</i>	<b>INFRASTRUCTURE LOCAL DEBENTURES</b> <i>(Law 14,801)</i>	<b>OFFSHORE BONDS</b> <i>(Incentivized debt securities issued abroad)</i>
Resident individual investor	0%	WHT regressive table from 22,5% to 15%	-
Non-resident individual investor	0%	15%	0% (30% if paid to a foreign related party)
Tax heaven domiciled investor	25%	25%**	25%** (30% if paid to a foreign related party)
Resident Financial Institutions	15%	No WHT (yields are added to taxable income)	-
FIP-PD&I; FI-IE, FIC-FIP, FIEE, FIDC and FIS from tax-exempt corporate bonds	0%	10% on the redemption, amortization, or sale of shares or distribution of income, when distributed to tax exempt funds	-
Issuer	-	An additional exclusion of 30% of the interest and inflation related adjustments of the par value paid to the holders of the debentures, for Corporate Income Tax purposes	-

\* Eligible incentivized local debt securities are debentures, real estate receivables certificates (“CRI”) and quotas of credit rights investment funds (“FIDC”).

\*\* 25% rate also applies to foreign investors located in a jurisdiction subject to a privileged tax regime

# PROJECT FINANCE LOCAL DFI LINES



The National Bank for Economic and Social Development (BNDES) launched a

**BRL 2 billion**

credit line for the development of data centers across Brazil. The initiative is supported by resources from BNDES and the Telecommunications Service Universalization Fund (FUST).



The Northeast Financing Fund (FNE) will allocate

**BRL 47.29 billion**

in 2025 to finance investments projects in the productive sectors of the Northeast region of Brazil, including the infrastructure sector.



The government of Bahia, a state in the Northeast of Brazil, will invest

**BRL 52.5 million**

over five years to advance projects in digital transformation. This initiative stems from the approval of a credit line from the Inter-American Development Bank (IDB) and includes actions related to data centers.

# ENERGY COST OPTIMIZATION AND RISK MINIMIZATION

Electricity is a major cost factor for data centers, with supply security being crucial due to the need for constant operation of equipment. Over the past two decades, Brazil has improved its energy security by diversifying its power sources.

The opening of the free energy market is a welcome change for large consumers, such as data centers operators. Large consumers are also entitled to request direct access to high-voltage grid from the Ministry of Mines and Energy.

Opportunities for optimizing energy costs include maximizing the Power Usage Efficiency (PUE), a standard efficiency metric for power consumption in data centers. PUE is the ratio of total facility energy to IT equipment energy used in a data center.

## GREEN ENERGY

Brazil has a high degree of renewable electricity – 85% of the electricity generated comes from renewable sources such as hydroelectric, biomass, wind and solar.

## ENERGY OPTIONS

- A full supply contract with an energy supplier - Power Purchase Agreements (“PPAs”) - or self generation structures (allowing access to certain sector charges exemption).
- Distributed generation in small scale data centers (currently considered the “cheapest power” in the Brazilian market), by means of which consumers connected to distribution companies (“DisCos”) can offset all their consumption.
- Assessment of energy storage solutions, based on the development of sector regulation.

## ACCESS TO/EXPANSION OF THE GRID

- The Federal Government organizes 2 to 3 auctions per year, with the purpose of securing the expansion of the transmission facilities required for the increase of renewable projects in the Brazilian mix as well as of large consumers.
- To plan their investments, companies may indicate to the Energy Research Company (“EPE”) their interest in implementing data centers by means of an electronic form.

# REAL ESTATE KEY CONSIDERATIONS IN DATA CENTERS LEASE AND OWNERSHIP



## COMMERCIAL LEASE

### REAL ESTATE DUE DILIGENCE

Carrying out a real estate due diligence aimed at assessing: **(i)** the risks in leasing in relation to any liens on the property that may impact the lease; **(ii)** the owner of the property; and **(iii)** construction approvals and licensing.

### LEASE AGREEMENTS

When negotiating a commercial lease, one should consider **(i)** preference for a long-term or short-term lease and the possibility of mandatory renewal and, additionally, also the execution of a built-to-suit lease agreement in the event of customization of the leased property to meet the lessee's specific necessities, **(ii)** inclusion of specific provisions ensuring that the lease remains in force until its full term, even when the property is sold during the term of the agreement (effectiveness clause), and **(iii)** the lessee's right of first refusal to purchase the property in the event of a sale to a third party.

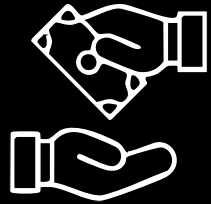
### REGISTRATION COSTS

Lease agreements must be registered with the relevant land registry office for the lessee to be entitled to certain rights, which generates additional costs for the lessee.

### LICENSING

An Operation License "LIF" from the local city government and a Fire Department Permit "AVCB" from the State Fire Department must be obtained to ensure compliance with urban zoning rules and that the building is suitable to be used for the activity being carried out.

# REAL ESTATE KEY CONSIDERATIONS IN DATA CENTERS LEASE AND OWNERSHIP



## BUILD AND OWN

### REAL ESTATE DUE DILIGENCE

Real estate due diligence in the acquisition of property is more extensive and involves not only the issues observed in a commercial lease, but also the analysis of risks of fraud in the acquisition of a real property and assuming *propter rem* debts.

### RESTRICTIONS ON THE PURCHASE AND LEASE OF RURAL PROPERTIES BY FOREIGNERS

Brazilian law imposes restrictions on the direct and indirect purchase and leasing of rural properties by foreigners or by Brazilian companies that are directly or indirectly controlled by foreigners.

### TURNKEY APPROACH

An EPC Contractor delivers the whole project and agrees to engineer, procure, and construct.

### REAL ESTATE COSTS

Real Estate related costs include architect, planning and design costs, building costs, costs for permits, costs for fire suppression and detection systems, notary costs, and costs of registrations of the agreements and annotation of the construction at the relevant land registry.

### LICENSING

A qualified technical professional (engineer or architect) must obtain approval of construction or modification plans from the local city government and obtain the corresponding construction permit authorizing the execution of the intended works on the site, in addition to obtaining an LIF and AVCB when the project becomes operational.

- Cost-efficiency
- Risk management
- Single point of contact

# CONTRACTS

## CONTRACTUAL ASPECTS IN DATA CENTERS OPERATION

### SCOPE OF SERVICE

- Revenue contract type: triple net leases, master services agreements, and colocation agreements.
- Parties should assess the scope of services that the data center operator will perform under a service level agreement (SLA).
- Services could range from entire business processes or merely IT processes to the exclusive provision of IT infrastructure within the data center.

### LIMITATION OF LIABILITY

- Parties should assess the validity of any limitation of liability provision regarding strict liability on a case-by-case basis.
- The limitation of liability of the data center operator should always consider the risk of cyber attacks and the adoption of appropriate preventive measures.

### AVAILABILITY, PHYSICAL AND LOGICAL SECURITY

- Parties should ensure that the availability of the data center is well defined in the agreement, as well as procedures for physical and logical security.
- Data migration in case of termination.

### ASSESSMENT OF SLAs; BANKABILITY

- Scope of the data center lease and the rights and obligations vary according to what was agreed by the parties.
- Remedies, such as service credits or termination rights.
- Parties to consider bankability issues, such as **(i)** the ability to use credit receivables to secure financings and **(ii)** termination rights.

### WARRANTY CLAIMS

- Parties should evaluate the local enforcement of warranty claims waivers or limitations.
- For example, statutory warranty obligations of the contractor cannot be excluded from the General Terms and Conditions in many jurisdictions.

### RISKS AND DOWNTIMES

- IT and Data Center services are prone to outages, require maintenance or updates, and may be subject to cyber attacks.
- Backup power, redundancy systems, and disaster plans; requirement for backup generators in case of power interruption.
- These and other adverse effects may lead to downtime and impact the availability of the data center.
- Attention to termination rights to avoid a termination by tenant or termination for convenience without penalty.
- Force Majeure, considering climate events.
- Price adjustments (e.g. increased energy costs or expanded capacity).

# ENVIRONMENTAL LAW

## ENERGY RAISES ENVIRONMENTAL CONCERNS

### ENERGY CONSUMPTION

Data centers consume copious amounts of energy. This energy demand must be met without interruption to ensure seamless operations.

### BACKUP GENERATION

Most data center operators prepare for contingencies by installing backup power sources. These often take the form of standalone diesel units on-site.

### THE GREEN MOVEMENT

Investors in data center businesses are increasingly interested in “green” data centers. These centers prioritize not only maximum energy efficiency but also minimal environmental impact by looking at indicators such as Water Usage Efficiency (WUE), i.e., an indicator used to measure the amount of water required by a data center per unit of energy consumed.

### RENEWABLE ENERGY OFFSETS

To achieve this green vision, data centers are turning to renewable energy offsets. Corporate Power Purchase Agreements (PPAs) facilitate the procurement of renewable energy credits.

### PRACTICAL CHALLENGES

Despite the push for renewables, physically operating a data center solely on renewable power remains technically challenging. The need for 100% uninterruptible power complicates the transition.

### CORPORATE PPAs

Most corporate PPAs involve customers seeking to offset their thermal energy consumption from the grid with renewable energy production.

C E S C O N

B A R R I E U



# O U R F I R M

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- **Over US\$ 180 billion** in M&A transactions (2015-2024).
- **One of the leaders in financing and debt securities.**
- Advice on more than **70 public equity offerings** (2015 – 2024).
- Advice on our clients' **most strategic disputes**, representing them in disputes before several arbitration institutions.
- Strong presence in **over 30 practice areas** across **all industries.**
- **Reference in business law**, with over 50 awards for transactional work and antitrust clearances.
- **Latin Lawyer Elite firm** for the 5th consecutive year.
- Clients in **over 50 countries.**
- **Diversity and gender equality:** more than 50% of our legal staff are women.
- Our firm has won **the Local Legal Adviser of the Year** category at IJGlobal's IJInvestor Awards 2024 – Americas.

\*Source: Transactional Track Record

SIX INTEGRATED  
OFFICES STRATEGICALLY  
IN BRAZIL AND IN  
CANADA

S ã O P A U L O

R I O D E J A N E I R O

B E L O H O R I Z O N T E

B R A S Í L I A

S A L V A D O R

T O R O N T O

# OUR TELECOM CLIENTS



# OUR DATA CENTER CLIENTS

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