Brazil is, without a doubt, an energy giant. By virtue of its natural, environmental and climatic conditions, the country has different energy matrices, both renewable and nonrenewable. These include hydro energy, thermal energy, wind energy, fossil-fuel-derived energy and bioenergy. The energy sources available and explored in Brazil are diverse. This exploration cannot occur outside the law. Judicial guidelines are the instrument used by the State to allow rational exploration of different energy sources in order to cater to public and private interests linked to such exploration.

It is no wonder that fossil fuels, particularly oil, natural gas and their derivatives, are widely studied energy sources regulated by judicial guidelines. Whether because of their economic and political importance or their nonrenewable nature, Brazilian law seeks to regulate the exploration and production of these energy sources as a way of safeguarding the collective interest and making exploration and production as efficient as possible. At the same time, the environmental variable is also a constant concern for the Brazilian legal order, especially due to the potential polluting level of fossil fuels.

On the other hand, ever since the oil crises of the 1970s, the Brazilian State has been concerned with developing biofuels, a second important renewable energy matrix, through the “National Alcohol Program” (“PROALCOOL”), encouraging the production of biofuels, which are still widely consumed today in the form of alcohol. The advent of this second energy source catalyzed all the development of the biofuel industry in the contemporary energy scenario, with special emphasis on biodiesel.

This brings us to the purpose of this book.

Notwithstanding the title (Energy Law in Brazil), the work we present here is underpinned by the study of Brazilian judicial guidelines that regulate the oil, natural gas and biofuel energy sectors.

This is not a random choice. These three energy sectors currently most represent the economic, political and Brazilian judicial areas. In the economic area, this is due to their importance in the Brazilian economy and economic development in Brazil.
as a whole. In the political realm, this is owing to the role that the three energy matrices (in particular oil and natural gas) play in the Brazilian and world geopolitical context and, in the judicial field, because of the extensive legislation regulating the three energy sources.

Given the scope of the issue at hand, Energy Law in Brazil exhibits a multidisciplinary and polyfaceted nature in terms of judicial analysis: interdisciplinary because the analysis employed will be not only judicial but will also use technical, economic and political concepts and polyfaceted because the work is subdivided into different chapters, each reflecting on a specific branch of law, such as regulatory law, environmental law, tax law, international law, among others. Thus, in addition to presenting a general overview of energy law in Brazil, the work seeks to deepen its analysis via different judicial disciplines applied to the energy sector.

With respect to its structure, the work is divided into 6 parts and 12 chapters. The first chapter of Energy Law in Brazil gives an overview of the petroleum, natural gas and biofuel sectors. Chapter 1 introduces the main premises and characteristics of the aforementioned energy sectors through a historical panorama of the oil, natural gas and biofuel industries in Brazil. The authors also present statistical and economic data on these energy sectors.

Chapter 2 discusses the regulatory aspects of the oil, gas and biofuel industries. Here the judicial approach proposed by the work is initiated. Divided into three sections, each one covering a particular energy sector (oil, natural gas and biofuels), the purpose of this chapter is to present, in general terms, the historical evolution of regulation in the aforementioned energy sectors, from the colonial period (in the case of oil) to the contemporary regulatory context.

Chapter 3 deepens the analysis of regulation in the oil and gas sectors, with an emphasis on Federal Law No. 9.478, of August 6, 1997, also denominated the “Oil Law.” This law is an important regulatory guideline in the oil and natural gas industries, particularly due to the fact that, since its inception, Brazil has relinquished its monopoly on oil and natural gas exploration and production, allowing private companies to operate in the Brazilian oil market. In addition to analysis of Federal Law No. 9.478/1997, Chap. 3 also presents the characteristics of so-called concession contracts, which regulate the judicial relationship of economic agents that develop the exploration and production of oil and gas, in addition to analyzing “government participation,” legal instruments that allow the Brazilian State to share in the revenues generated by the oil sector.

Chapter 4 investigates the current regulatory context of the oil and gas sectors, with an emphasis on the judicial discipline of the so-called presalt layer. The discovery of the presalt layer in 2006 provided Brazil with a new energy paradigm, especially given the amount of oil and gas deposited in the oil basins of the presalt layer and the challenges related to oil and natural gas exploration and production in the region. Thus, by virtue of its importance, Brazil introduced a new judicial regime related to oil and natural gas exploration and production in the presalt layer, with new contractual arrangements and a new model of state participation that will be adopted for economic agents seeking to develop their activities in the region.
Chapter 5, in turn, presents a panorama of natural gas regulation in Brazil, with special emphasis on Federal Law No. 11.909, of March 4, 2009, also known as “The Gas Law.” Chapter 5 stands out from the others in that it focuses on the regulatory aspects of natural gas transport and distribution in Brazil, activities that obey specific rules that must be strictly followed by gas transporters and distributors.

Similarly to Chap. 5, Chap. 6 investigates the regulatory aspects of the biofuel industry in Brazil. The chapter initiates its analysis by discussing the general aspects of biofuel regulation in Brazil, followed by a deeper investigation of the two main biofuels produced in Brazil: biodiesel and ethanol.

Chapter 7 studies the characteristics of environmental law in the oil, natural gas and biofuel industries. This issue is of significant importance to the oil, natural gas and biofuel industries, particularly due to the potential environmental impact of the first two energy sectors. In this respect, Chap. 7 starts by presenting an overview of environmental law in Brazil, with particular emphasis on Guidelines contained in the Federal Constitution of 1988, which regulates environmental protection. The chapter then addresses questions related to the environmental protection judicial regime in Brazil, such as the National Environmental Policy, the institute of environmental licensing and environmental crimes. The aspects of environmental law applied to the oil, natural gas and biofuel industries are highlighted in the topics related to regulating seismic topographic procedures, air pollution and water disposal at oil platforms, among others.

Chapter 8 deepens the reflections initiated in Chap. 7, discussing issues related to international environmental law as it pertains to petroleum and the Brazilian context. Starting his analysis by applying the principles of international law in environmental protection, the author examines problems related to oil spills at sea and Brazil’s position on such incidents.

Chapter 9 studies Brazilian tax law as applied to the oil, natural gas and biofuel industries. Starting with a general analysis of the Brazilian tax system, the author presents the main peculiarities and different types of taxes existing in Brazil. Next, specific taxation aspects in the oil, natural gas and biofuel sectors are examined. Finally, a number of characteristics of special tax regimes as applied to the oil and gas sectors are presented.

Chapters 10–12, the last three chapters of the book, discuss the peculiarities existing in international law applied to the oil and gas sectors.

Chapter 10 analyzes the problems involved in oil and gas exploration and production contracts and foreign companies that operate in Brazil. To that end, the author investigates the peculiarities involving foreign companies that engage in oil and natural gas exploration and production activities and foreign investment protection mechanisms in Brazil.

Chapter 11, in turn, discusses international arbitration as applied to the oil industry and the position of Brazilian law on this issue. Special emphasis is given to arbitration applied to solve conflicts originating in oil and natural gas exploration and production contracts and how the judicial order in Brazil behaves with respect to this topic.
Finally, Chap. 12 investigates the important issue of energy law, that is, the institute of “unitization,” widely discussed in cases of transboundary oil wells. The particularity of the chapter lies in the issues involving international unitization (when transboundary oil fields belong to different countries) and how Brazilian law regulates the issue.

It is expected that the topics presented here will serve as a guide to both Brazilian and foreign scholars and researchers of energy law, helping them understand how the Brazilian judicial order regulates its energy sector. At the same time, the investigations undertaken here are the most contemporary on the issue, giving readers a first glimpse of state-of-the-art Brazilian energy law.

The publication of this book was made possible by the support of the National Oil, Gas and Biofuels Industry (ANP), Petróleos Brasileiros S/A (Petrobras) and the Brazilian Institute of Oil, Gas and Biofuels (IBP).
Energy Law in Brazil
Oil, Gas and Biofuels
de Alencar Xavier, Y.M. (Ed.)
2015, XII, 287 p. 5 illus., 3 illus. in color., Hardcover
ISBN: 978-3-319-14267-8