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Guide to Doing

BUSINESS IN BRAZIL

About

Tauil & Chequer Advogados in association with Mayer Brown has a team of partners and associates highly specialized in several areas of business law in Brazil.

We are a full service firm that provides legal advice to both national and international companies and financial institutions, including those involving multijurisdictional operations.

Our global reach combined with our in depth knowledge of local laws and regulations makes us a prime choice for businesses around the world. Our clients value our ability to offer creative, pragmatic and sophisticated solutions.

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The Brazilian Political Structure, Legal System and Economy

The Federative Republic of Brazil is the largest country in South America and the world's fifth largest country, both by land mass (almost 8.6 million square kilometers) and population (more than 200 million people). It is the only lusophone (Portuguese-speaking) country in otherwise Spanish-speaking Latin America and the largest lusophone country in the world.

Brazil is a member of the G20, and one of the BRICS countries, along with Russia, India, China and South Africa. The country's Constitution serves as the foundation of the Brazilian legal framework and sets forth fundamental rights. The Constitution's enactment in 1988 marked Brazil's redemocratization after two decades of rule by a military dictatorship (1964-1985).

After a turbulent political period that included the impeachment of President Fernando Collor de Mello (1990-1992), the administrations of President Itamar Franco (1992-1994) and President Fernando Henrique Cardoso (1995–2002) achieved price stability by means of a monetary program know as the Real Plan and initiated a series of economic and administrative reforms aimed at modernizing the Brazilian state and economy. The reforms, including privatization of state-owned companies incorporated during the authoritarian period and democratization of the public administration, set Brazil on the road to economic development and reduced social inequality.

Under President Luiz Inácio Lula da Silva (2003–2010), Brazil substantially reduced social inequality by means of a deepening and enhancement of federal income distribution programs, combined with favorable international conditions for Brazilian exports and adoption of well-succeeded anti-cyclical measures during the 2008-2009 global financial crisis. Macroeconomic measures implemented under President Cardoso were maintained, and Brazil achieved significant growth rates.

After a period of relative fiscal stability under four administrations, the first administration of President Dilma Rousseff (2011-2014) eased the government's fiscal policy and boosted the financing granted by state-owned public banks to parts of the private sector. President Rousseff's so-called "new economic matrix" resulted in a disastrous imbalance in Brazil's public accounts. Her second administration has struggled to reestablish fiscal stability.

Despite the country's current economic challenges, solid macroeconomic foundations established under prior administrations, the strength of the Brazilian domestic market and a strong, efficient and transparent banking system have combined to make Brazil an attractive destination for international investment. Brazil received USD 62 billion in foreign direct investment in 2014 and is the world's eighth largest economy.

The Brazilian Political Structure

Brazil is a Federative Republic, with broader powers granted to the federal government than in the US federal system. The country has a presidential system established by the Constitution, and the government is separated into three independent branches: executive, legislative and judicial.

The country's president is elected by direct vote for a four-year term (and can be reelected for one additional term) and functions as the head of the executive branch. The executive branch's powers include the right to appoint ministers of state as well as key executives to selected administrative and political posts.

The legislative branch is composed of the federal Senate and the House of Representatives. The country is divided administratively into 26 states plus the federal District of Brasília. Each state is entitled to elect three members to the Senate, while members of the House of Representatives are elected proportionally, based on the population of each state.

The judicial branch consists of the Supreme Court, the Superior Court of Justice and a network of lower federal and state courts.

At the state level, the executive branch consists of governors, elected for a four-year term (with the possibility of reelection). The legislative branch consists of state representatives, also elected for a four-year term.

Finally, at the municipal level, the executive branch consists of mayors, who are elected for a four-year term (reelection also being permitted). The legislative branch consists of city representatives, also elected for a four-year term.

The Brazilian Legal System

The Brazilian legal system follows in the tradition of continental Europe. It is a civil-law system in which the main source of law is statute, with judicial precedent playing a subsidiary role.

The Constitution establishes fundamental principles of the Brazilian legal system that all other laws and judicial decisions must follow.

Brazil is a federation, with the federal government, the states and each of the municipalities having their own authority to pass and enforce laws and to issue and collect taxes. The federal government has the exclusive jurisdiction to legislate business entities, contractual rules, commerce, financing, employment and intellectual property.

At the federal and state levels, there is an executive branch, a legislative branch and a judicial branch. Municipalities do not have a judicial branch.

The federal judicial branch is fully independent from the state judiciaries. The federal government and the states (including the federal district of Brasília) have their own judicial systems. Within the federal judicial branch there are specialized divisions, such as the Labor Justice System and the Military Justice System. Decisions by the legislative and the executive branches may be challenged in court as to their compliance with the Constitution and/or the law.

Business law is set out in many different statutes. However, two of them merit special mention: the Law of Introduction to the Norms of Brazilian Law (*Lei de Introdução às Normas do Direito Brasileiro or "LINDB"*) and the Brazilian Civil Code of 2002 (the "Brazilian Civil Code" or the "Civil Code").

LINDB establishes general rules of legal interpretation, law and private international law. The Civil Code sets out most rules on legal capacity, private contracts, business entities, statutes of limitations, torts and family law.

International treaties executed by Brazil and ratified by the National Congress have the status of law in Brazil. Some of those treaties have a direct impact on Brazilian business law, such as the *Mercado Comum do Sul* (MERCOSUL) treaty. In addition, arbitral practices are governed by Law No. 9.307/96, which provides that arbitral awards will produce the same effects as decisions handed down by the judiciary. The law stipulates that arbitral awards do not have to be ratified by the judiciary.

The Brazilian Economy

Agribusiness is key for economic growth and export in the Brazilian economy and accounted for about 22 percent of gross domestic product in 2014. Brazil is the second largest exporter and the biggest supplier of sugar, orange juice and coffee in the world. Also, Brazil is an important producer of soybean (second largest producer and biggest exporter), corn, cotton (fifth largest producer), cocoa, tobacco, tropical fruits and forest products, and has the world's largest commercial cattle herd at 209 million livestock.

Brazil holds a noteworthy position in the chemical and textile industries, as well as in the pulp and paper sector. Brazil is one of the largest eucalyptus fiber producers worldwide.

Like its supply of carbon-based fossil fuels, Brazil's proven mineral resources are extensive. Large iron and manganese reserves are important sources of industrial raw materials and export earnings. Deposits of nickel, tin, chrome, bauxite, beryllium, copper, lead, tungsten, uranium, zinc, gold, silver and precious and semiprecious stones, as well as more rare minerals, are commercially mined.

Brazil has one of the most diversified manufacturing sectors in the world and the largest in Latin America. Brazil's diverse industries include automobiles and parts, machinery and equipment, textiles, shoes, cement, computers, aircraft (including the first aircraft production facilities in the southern hemisphere) and consumer durables.

Petrobras, one of the largest companies in the world, is known for its oil and gas exploration capabilities in ultra-deep water. Brazil's known oil reserves are ranked among the 20 largest in the world, particularly when taking into account the ultra-deep pre-salt reservoir.

Brazil's river network is the most extensive in the world, containing the largest volume of fresh water worldwide and placing the country among the leading producers of hydroelectric power. Hydroelectric plants provide most of the country's electricity.

Endowed with a large and varied array of natural resources, a diversified industrial sector, a sophisticated financial system and a large domestic market, Brazil is one of the most attractive investment destinations for foreign investors, especially as the Brazilian people and government show a determination to maintain their commitment to a strong currency and continued modernization.

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Foreign Investment in Brazil

Brazil allows nonresidents to invest in the vast majority of the country's economic sectors, and investors do not face a broad range of legal restrictions. However, foreign exchange is subject to strict control by the Brazilian Central Bank. Therefore, any transaction between a nonresident and a resident in Brazil is subject to foreign exchange regulations and must be carried out through the Brazilian Official Exchange Market.

The primary rule applicable to foreign investments is Federal Law no. 4.131/62, referred to as the "Foreign Capital Statute." The statute empowers the National Monetary Council ("CMN"), the Central Bank of Brazil ("BACEN") and the Securities and Exchange Commission ("CVM") to enact regulations providing specific procedures for the registration of various types of foreign investment in Brazil.

Under the terms of the Foreign Capital Statute, any exchange transaction performed in connection with a foreign investment (e.g., the remittance abroad of dividends, interest, repatriation of principal) must be registered with BACEN. Additionally, payments between certain persons and entities that are resident, domiciled or headquartered in Brazil and entities headquartered abroad, which are not carried out through the Brazilian Official Exchange Market, are considered illegitimate foreign exchange transactions. In such cases, the remitting party can be subject to an administrative fine of up to 100 percent of the amount of the relevant transaction, pursuant to Decree no. 23.258/1933.

BACEN's Resolution 3.844/2010 further regulates foreign capital entering or existing in Brazil and its registration procedures. The registration, which is completed electronically, applies to foreign direct investment (foreign investment in equity) and foreign credit (financing and loans), among other things.

Foreign Investment in Equity

The registration of foreign investments should be made in the currency in which the funds entered Brazil.

Once the foreign investor or the company receiving the investment has been granted access to the Central Bank Information System (SISBACEN), registration consists of three steps: (i) the furnishing of basic data relating to both the Brazilian invested company and the nonresident investor; (ii) a permanent number (the "RDE-IED number") being assigned, which pairs the Brazilian invested company with the nonresident investor; and (iii) the furnishing of the basic terms and conditions of the equity investment.

Stages (i) and (ii) should be performed prior to the inflow of funds into Brazil, since the RDE-IED number has to be indicated in every foreign exchange contract executed by and between the paired foreign investor and the Brazilian company. Step number (iii) can be performed up to 30 days after the inflow of funds.

Article 4 of Resolution 3.844/2010 makes registration the responsibility of both the Brazilian company receiving the investment and the foreign investor. Registration therefore should be carried out by their relevant representatives together. Under the terms of the RDE-IED Module Operational Manual, BACEN expressly permits the Brazilian company receiving the investment to be the foreign investor's representative.

The participation by nonresident investors in the share capital of the receiving company, paid or acquired in accordance with the legislation, shall, in effect, be registered as a foreign direct investment, including any eventual capitalization of profits. Furthermore, registration on SISBACEN is also mandatory for any corporate reorganizations involving the Brazilian company receiving the investment, such as spin-offs, share splits, consolidations and mergers.

The representatives must make available updated documentation necessary for supporting all information reported in the RDE-IED. This obligation expires five years from the date on which the foreign person or entity no longer owns corporate interest in the Brazilian receiving company.

Finally, BACEN may, at its discretion, suspend or cancel the equity investment registration and/or impose fines if any of the following acts is performed: (i) furnishing incorrect, incomplete or untimely information to BACEN or (ii) failing to furnish required information according to the applicable rules.

Foreign Debt Transactions

The registration of financial operations before BACEN (RDE-ROF) is required in connection with foreign loans, foreign financing and foreign financial leases. The registration is the responsibility of the borrower or leaseholder.

Funds entering Brazil pursuant to a foreign loan, whether contracted directly or through the issuing of securities in the international market (regardless of their maturity) are subject to registration.

Once the resources have entered the country, changes to the maturity date, financial conditions and debtor are generally permitted, but are also subject to registration.

Registration of the debt transactions should be made in the currency agreed between the nonresident lender and the resident borrower and should be carried out by the resident borrower or its representative. Such registration involves three steps:

- Furnishing of basic data concerning (i) borrower, lender(s) and guarantor(s), if any; (ii) the financial conditions of the debt transaction and of the terms relating to the payment of principal, interest and any other fees due under such transaction, and (iii) the document(s) in which the transaction conditions are set forth or the terms of the credit and the guarantee, if any, contemplating such conditions;
- Obtaining the RDE-ROF number, which should be automatic for debt transactions — unless such transactions are not compatible with the usual market practices and conditions or do not fit the patterns contained in SISBACEN for debt transactions, in which case BACEN will indicate to the Brazilian borrower the necessary alterations for registration to be granted; and
- Inclusion of a payment scheme of all amounts due to the nonresident lender under the debt transaction.

The RDE-ROF will be automatically cancelled (a) in the event that no disbursement is made within 60 days from the date the relevant RDE-ROF number is obtained or (b) after the full repayment of the loan in accordance with the relevant payment scheme.

When an exchange agreement is processed using the RDE-ROF number, the write-off of the corresponding installment indicated in the payment scheme or the cancellation of the ROF, as applicable, is automatic. The payment can also be registered directly in the system.

After the cancelation of the RDE-ROF, the borrower must keep all documentation that constitutes evidence of the information declared therein. Such information must be available for the BACEN for a period of five (5) years, starting from the date of the full repayment of the loan/cancellation of the RDE-ROF.

Once the resources have entered the country, changes to the maturity date, financial conditions and debtor indicated in the existing RDE-ROF are generally permitted, but are also subject to registration.

It is also possible to convert a foreign loan transaction registered with the RDE-ROF into a foreign direct investment in equity. In this case, simultaneous foreign exchange transactions (*operacões simultâneas de câmbio*) will be necessary, and the foreign investor must comply with the formalities indicated above for the RDE-IED.

The participation by nonresident investors in the share capital of the receiving company, paid or acquired in accordance with the legislation, shall, in effect, be registered as a foreign direct investment, including any eventual capitalization of profits.

Types of Business Entities

A foreign company willing to do business in Brazil can either create a branch office or incorporate a company in order to carry out its business. Because the formation of a Brazilian branch by a foreign company requires authorization granted by a Presidential Decree, the majority of foreign companies set up businesses in Brazil using subsidiaries or affiliated companies. Additionally, in comparison to the creation of a subsidiary, establishing a branch in Brazil presents adverse tax impacts and other liabilities.

Corporate entities existing in Brazil are essentially regulated by Law No. 10.406 of January 10th, 2002 (the "Civil Code") and by Law No. 6.404 of December 15th, 1976 (the "Corporation Law"). There are several types of corporate entities guided by these laws and the most widely used in Brazil are: (i) the limited liability company (*sociedade limitada or "limitada"*), regulated by the Civil Code; and (ii) the joint-stock corporation (*sociedade anônima or "S.A."*), regulated by the Corporation Law.

The liability of quotaholders or shareholders, both in limited liability companies and joint-stock corporations, is generally restricted by the amount that they paid for their quotas or shares.

However, in cases of fraud or illicit acts, Brazilian courts can "pierce the corporate veil" – disregarding the corporate entity and holding partners directly liable for the entity's obligations. Experience shows that courts are more likely to pierce the corporate veil in respect to labor and tax obligations.

Foreign individuals or corporate entities investing in Brazil must be enrolled in the Federal Revenue Office in Brazil with the Brazilian Taxpayers' Registry (*Cadastro Nacional da Pessoa Jurídica* – "CNPJ"), which reports to the Ministry of Finance. They must also be registered before the Brazilian Central Bank ("BACEN").

Except for certain types of businesses (*i.e.* financial institutions) and those businesses subject to thin capitalization rules, there are no minimum corporate capital requirements and the corporate capital may be allocated among the shareholders as the company sees fit.

Limited Liability Company (*Sociedade Limitada*)

A *limitada* is required by law to have at least two quotaholders who, with a few exceptions, need not be Brazilian nationals and can either be individuals or legal entities. Non-resident quotaholders in Brazil must be formally represented by an individual residing in Brazil with powers to receive service of process.

A *limitada* is established by a contract ("Articles of Association") and has only one class of partner, the limited liability quotaholder. All quotaholders are held jointly liable for the entirety of the limitada's corporate capital until it is fully paid-up. Once the capital is paid-off liability is limited to the amount of each quotaholder's ownership interest.

The Articles of Association of a *limitada* must state: (i) the name and personal details of each quotaholder; (ii) the company designation, accompanied by the expressions "*Limitada*" or "Ltda."; (iii) the company purpose; (iv) the address of its head office; (v) any limits on the duration of its existence, if applicable; and (vi) the share capital and its apportionment and payment conditions.

As mentioned above, except in very few cases, there is no requirement as to the minimum capital that must be paid-up on initial subscription. However, applicable law states that a *limitada*'s corporate capital can only be increased after it has been fully paid-up.

The corporate capital of the *limitada* is divided into quotas representing the value of money, credits, rights and/or assets contributed by the quotaholders for the formation of the company (although the quotas cannot be paid-up with services). The quotas cannot be represented by securities or certificates. The Ownership and the number of quotas are set up in the relevant Articles of Association. Therefore, any transfer of title of the quotas will require an amendment to the Articles of Association, which must be signed by at least three-fourths of the shareholders.

Limitadas may distribute accrued profits to their quotaholders. If the quotaholders are individuals or legal entities residing or domiciled abroad, dividends remitted abroad are subject to prior registration with the BACEN. Similar to a common-law partnership, the *limitadas* distributions do not have to be made *pro rata* to the percentage of the equity holdings. Furthermore, there are no restrictions on the distribution and remittance of profits abroad. Profits and dividends that are distributed are not subject to income tax.

The *limitadas* are not required by law to publish amendments to their Articles of Association in the Official Gazette or other corporate documents, except in the event of: (i) capital reduction; (ii) merger; (iii) spin-off; or (iv) amalgamation. However, Articles of Association are publicly available documents that are filed with the state Board of Trade and may be assessed by any third party.

Nevertheless, since January 1st, 2008, large-sized companies (even those not organized as joint-stock corporations) are subject to the bookkeeping and reporting requirements set out in the Corporation Law, as well as compulsory auditing of their financial statements by an independent auditor accredited by the CVM.

The qualification for a "large-sized company" was outlined in Law No. 11.638 on December 28th, 2007, and was defined as a company (or group of companies under common control) that has posted total assets above BRL240 million or an annual gross revenue above BRL300 million.

RESOLUTIONS

If a *limitada* has 11 or more quotaholders, resolutions may be made at a general meeting (known as *assembleia*) held with at least eight days' prior notice, at first call, or at least five days' prior notice, at second call.

If the *limitada* has 10 or fewer quotaholders, the meetings do not need to be held in accordance with the rules applicable to the *assembleia*. In these cases, meetings can be called with greater flexibility. In both cases, if all the quotaholders are present in the *assembleia* or the meeting, whatever the case may be, the notices may be dismissed.

The law allows for the possibility of adjourning a partners' meeting or a general meeting (*assembleia*) to deliberate upon said matters, offering a more agile decision making process for the company's internal affairs. This will apply whenever all partners approve a written resolution.

MANAGEMENT

The *limitada* may be managed by one or more individual quotaholders or by a third party appointed by the quotaholders, either in the Articles of Association or by means of a separate resolution. The appointment of managers who are not quotaholders is conditional upon the unanimous consent of all quotaholders (if the capital has not been fully paid off), or by two-thirds vote by the quotaholders (if the capital is fully paid-up). Foreigners may be appointed to managerial positions, provided that they have a valid permanent visa, as described in the "Permanent Visa" section, below.

The quotaholders may retain control over certain decisions by reserving certain rights and imposing restrictions on the management actions in the Articles of Association. The quotaholders may also enter into an agreement in order to govern the conduct of the company's affairs and define relations between partners.

Joint-Stock Corporation (*Sociedade Anônima*)

A joint-stock corporation, or S.A., is governed by the Corporation Law. The corporate capital of the S.A. is divided into shares that represent fractions of the corporate capital. Depending on the rights agreed upon by their holders, the shares may be common or preferred, and may be split into different classes and series. According to the Corporation Law, the shares do not need to have a par value and can be book-entry shares or be represented by certificates.

In general, common shares entitle the holder to the rights of common shareholders; preferred shares have special rights of a financial nature and usually do not grant voting rights.

The corporation keeps a record of its shareholders in its own corporate books in an S.A., as opposed to a *limitada*, where the ownership of quotas is set out in the Articles of Association.

Corporations incorporated after 2001 may issue nonvoting preferred shares for up to 50 percent of the company's total corporate capital. Nonvoting preferred shares must be issued with at least one of the following rights, on a cumulative or noncumulative basis: (i) priority in the distribution of fixed or minimum dividends; or (ii) priority in capital repayment (with or without a premium).

The bylaws (*estatuto social*) of an S.A. must state the corporation's subscribed capital and may also establish an authorized capital. The authorized capital consists of a limit (in Brazilian currency or number of shares) on which the subscribed capital may be increased by resolution of the board of directors without an amendment to the company's bylaws, as opposed to the usual capital increase process which requires an approval by the shareholders' general meeting and the proper amendment to the company's bylaws.

A S.A. may be incorporated by public or private subscription of shares. In either case, all shares must be subscribed by at least two shareholders[1], and a minimum of 10 percent of the capital must be paid-up upon its incorporation. The paid-up capital must be deposited in a commercial bank until all formalities for incorporation of the company have been completed.

The incorporation of a company by public subscription requires: (i) preliminary registration of the share issue with the CVM; (ii) intermediation by a financial institution; (iii) approval of the incorporation by a general meeting called by the subscribers; and (iv) appraisal of any assets transferred to the company as payment for shares.

Incorporation by private subscription may take place at a general meeting of the subscribers, or by a public deed of incorporation published simultaneously with subscription for the shares. If any of the shares are paid-up for in a form other than currency, a general meeting must be called to appraise the assets being used.

A corporation may be either publicly or closely held. A publicly held company must be registered with the CVM, along with its securities, which may be traded on the stock exchange or on the over-the-counter market. The securities of a closely held company are not available to the general public.

Other securities that may be issued by an S.A. are subscription warrants and bonds (debentures). Despite not forming part of the corporate capital, the rules relating to the ownership and circulation of shares also apply to these securities.

DEBENTURES

Debentures are debt securities that grant their holder's credit rights against the issuer. The conditions of these credit rights held by the debenture holders against the S.A. must be set out in the respective deed of issue. Debentures may be convertible into shares, may be collateralized and may be subordinated or senior *vis-à-vis* the other creditors of the S.A.

SUBSCRIPTION WARRANTS

An S.A. with authorized capital may issue negotiable securities called subscription warrants (*bônus de subscrição*). These securities entitle their holders to subscribe for shares when the corporate capital of the company is increased, subject to the conditions set out in the corresponding certificates.

INCORPORATION OF A *SOCIEDADE ANÔNIMA*

All constitutional documents must be filed with the Board of Trade (*Junta Comercial*), as described below, and subsequently published in the state's Official Gazette where the company's head offices are located and in another newspaper where the company has its principal place of business.

SHAREHOLDERS' AGREEMENT

By means of a shareholders' agreement, the shareholders can establish terms in regards to the purchase and sale of their shares and preemptive rights for the acquisition of shares. A shareholders' agreement is recognized under the Corporation Law, which provides that such agreement is binding for the company's management as long as it is duly filed at the company's head office.

SHAREHOLDERS' RIGHTS

As a general rule, shareholders have the following basic rights: (i) participation in the company's profits; (ii) participation in the distribution of the company's assets if the company is wound up; (iii) control over the company's management; (iv) preemptive rights in subscription for shares, participation certificates, convertible debentures and subscription warrants; and (v) withdrawal from the company under the circumstances stipulated by law. Disputes among shareholders or between the shareholders and the company may be resolved by arbitration, if so defined in the company's bylaws.

SHAREHOLDERS' MEETINGS/GENERAL MEETINGS

Shareholders' meetings are called and commenced pursuant to the Corporation Law and the company's bylaws. The meetings provide a forum to consider and determine matters connected to the company's purpose, as well as to adopt any resolutions deemed advisable for its protection and development. Such powers, however, are limited to the company's business purpose, applicable laws and bylaws.

There are two kinds of General Meetings:

- Annual General Meeting — which has the purpose of: (i) verifying and approving management accounts; (ii) examining, discussing and voting on the financial statements; (iii) electing managers and members of the fiscal board; and (iv) allocating net profits for each fiscal year and on the distribution of dividends and; approving monetary adjustments of the corporate capital; and
- Extraordinary General Meeting — which may address all the other matters and may take place at any time during the year.

The publication of the minutes of any shareholders' meeting and of the annual financial statements is mandatory for the S.A. The company must keep and maintain corporate books in order to register share transfers, share titles, shareholder meetings, officers and audit council.

MANAGEMENT BODIES

Shareholders may choose to divide the corporate management into two levels: the board of directors and the executive officers, who may also be organized as an executive board. An S.A. is not required to have a board of directors, except in the case of publicly held and authorized capital companies and financial institutions, where the establishment of the board of directors is mandatory.

If existent, the board of directors shall have the powers vested in it by the Corporation Law, which includes overseeing and electing the executive officers and any additional power invested in it by the company's bylaws. Unlike the executive officers, the members of the board of directors (*conselheiros*) may reside abroad; however, such board members must appoint an attorney-in-fact residing in Brazil who is authorized to receive service of process of lawsuits filed in connection with corporate litigation. The attorney-in-fact must remain during the term of office and for at least three years after the expiration of the board members' term of office.

When a board of directors is installed, the executive officers must comply with its decisions.

PAYMENT OF DIVIDENDS

Corporations may pay dividends to shareholders out of profits. If the shareholder is an individual or legal entity resident or domiciled abroad, the remittance of dividends abroad is conditioned upon prior Central Bank registration of the inward investment. The distribution of dividends is not subject to taxation. There is no withholding tax on dividends to a nonresident.

Joint-stock corporations may also pay interest on net equity (*juros sobre o capital próprio*), pursuant to Law No. 9.249/95 and Law No. 9.430/96. Payment of interest on net equity is conditional on the existence of profits of at least twice the sum of the interest to be paid or credited. Interest on net equity is calculated by applying the Brazilian long-term interest rate (TJLP) to the company's adjusted net equity.

Comparison Chart between a *Limitada* and an S.A., according to the Brazilian Law

LIMITED LIABILITY COMPANIES (*LIMITADA*)	JOINT-STOCK CORPORATIONS (S.A.)
APPLICABLE LAW	
The Civil Code and, in the absence of statutory provision in the Civil Code, the provisions of the Corporation Law shall be applied, if such secondary applicability is expressly established by the Articles of Association.	The Corporation Law.
DISTRIBUTION OF PROFITS/DIVIDENDS	
If allowed by the Articles of Association, or with the consent of all partners, dividends do not need to be distributed in proportion to the partners' equity holdings.	Article 202, § 2º of Corporation Law requires the distribution and the payment of mandatory dividends (25% of the net income). The dividends shall be distributed in proportion to each shareholder's ownership interest. However, preferred shares can be awarded priority upon the receipt of dividends. The shareholders can only deliberate about the allocation of profits after: (i) the deduction of accumulated losses and income tax; (ii) the deduction of profit sharing due to employees, officers, directors, and the holders of beneficiary parties; and (iii) the allocation to legal reserve.
ALLOCATION OF PROFITS	
The partners are free to determine the allocation of profits.	Before any other allocation, including the distribution of the dividends, at least 5% of the profits shall be applied for the formation of the statutory legal reserve (which must not exceed 20% of the corporate capital).
APPROVAL OF ANNUAL ACCOUNTS	
The financial statements should be approved at a partners' meeting held within the first 4 months of the fiscal year.	The financial statements should be approved at an annual general meeting held within the first 4 months of the fiscal year.
TRANSFER OF SHARES OR QUOTAS	
The partners may transfer their quotas to third parties, unless such transfer is hindered by partners representing at least 1/4 of the company's corporate capital. There is no restriction on the transfer of quotas between the partners. However, the Articles of Association may create more strict rules relating to the transfer of quotas.	As a general rule transfers are allowed and are not conditional on any approval as long as the transfer is duly registered in the share transfer book and in the share register. The bylaws or the shareholders' agreement may lay-out certain restrictions.
LIABILITY OF PARTNERS/SHAREHOLDERS	
The liability is limited to the partners' stock holdings. If the corporate capital is not fully paid-up, all partners are jointly and severally responsible for its payment.	Liability is limited to the issue price of shares subscribed for or acquired.

LIMITED LIABILITY COMPANIES (*LIMITADA*)	JOINT-STOCK CORPORATIONS (S.A.)
RESOLUTIONS	
If the company has 10 or fewer partners, resolutions are passed in a meeting as established in the Articles of Association. If the company has 11 or more partners, the rules of the general meeting (*assembleia*) set out in the Brazilian Civil Code should be adhered to. The meetings may be waived if all members agree through written resolution. The prior notice requirements for the meeting may be waived if all partners attend the meeting or declare in writing knowledge of the location, date, time and agenda.	Resolutions are passed at general meetings, prior notice of which is required to be published in the state's Official Gazette where the company's head offices are located and in a newspaper of general circulation, respecting the terms prescribed in the Corporation Law and in the bylaws. The notice requirements for the meeting may be waived if all shareholders attend the meeting or declare in writing knowledge of the location, date, time and agenda.
CORPORATE BOOKS	
Optional.	Certain corporate books are mandatory.
AMENDMENTS TO THE ARTICLES OF ASSOCIATION/BYLAWS	
Amendments to the Articles of Association have to be approved in writing by partners representing 3/4 of the corporate capital. Amendments to the Articles of Association are enforceable against third parties when registered at the authorized Board of Trade. A meeting is not necessary in order to amend the Articles of Association if all the partners consent.	Amendments to the bylaws have to be approved by a majority of the shareholders at an extraordinary general meeting. Amendment to the bylaws are enforceable against third parties when registered at the Board of Trade and published.
CAPITAL INCREASE	
The corporate capital can only be increased when it has been fully paid-up by the subscribers.	The corporate capital can only be increased when at least 3/4 has been paid-up by the subscribers.
QUORUM	
FOR RESOLUTIONS: • A majority of the corporate capital is required for: election and removal of the managers, determination of the remuneration of the managers, bankruptcy filing and selection of the liquidator. • Two-thirds of the corporate capital is required for the election and removal of the managers, who are not partners, when the corporate capital is fully paid-up. • Three-quarters of the corporate capital is required for: amendments to the Articles of Association and approval of takeover, merger or liquidation of the Company. • Unanimity is only required when: transforming the corporate type and electing a quotaholder manager when the corporate capital is not fully paid-up. QUORUM FOR A PARTNERS' MEETING: Requires three-quarters of the corporate capital, on first call, and any quorum in the second call. The partners are allowed to increase the quorum through the Articles of Association.	FOR RESOLUTIONS: • As a general rule, decisions at the general meeting are made by a majority vote of the shareholders present. • Qualified Quorum: at least 50% of the shareholders with voting rights are required for the creation of preferred shares, the creation of a new class of shares, changes in the rights or preferences of any class of shares, a reduction in the mandatory dividend, the approval of any takeover or merger and amendment of the corporate purpose. QUORUM FOR A GENERAL MEETING: Requires one-quarter of the shareholders with voting rights in first call and any quorum in second call. However, for amendments to the bylaws, the minimum quorum in first call is 2/3 of the voting shareholders and any number in second call. These quorum requirements can be increased by the bylaws.

LIMITED LIABILITY COMPANIES (*LIMITADA*)	JOINT-STOCK CORPORATIONS (S.A.)
CAPITAL	
There is no public subscription.	Private or public subscription.
ISSUANCE OF TRANSFERABLE SECURITIES	
It is not possible to issue most transferable securities.	May issue several kinds of transferable securities to raise funds in the market.
MANAGEMENT	
Managed by one or more individual (quotaholders or non-quotaholders) appointed in the Articles of Association or in a separate document.	Managed by a board of directors – not mandatory in closely held companies – and officers. There must be at least two officers, who are residents of Brazil and who are elected in General Shareholders Meeting (or board of directors meeting, if applicable). The board of directors is comprised of at least three members, who are to be elected in the General Shareholders Meeting.
RESPONSIBILITY OF THE MANAGERS	
As a general rule, the officers are responsible for any abuse of power, Illegal actions, or violations of the articles of association that result in liability for the company, its partners or third parties. Officers are responsible if they use their corporate rights and assets for their own benefit or for a third parties' benefit without previous consent by the company's quotaholders. Officers may be held responsible for labor, social security and administrative obligations, even if there is no malicious intent or culpability (objective responsibility). Officers are responsible for damages caused to the company. This responsibility can be limited upon the approval by the quotaholders of the company's financials presented by the officers. The mechanism used to limit said responsibility is less formal, less regulated and less efficient in limitadas.	As a general rule, all managing members are responsible for fault, fraud, abuse or excess of powers, illegal actions or violations of the company's bylaws that result in liability for the company, its partners or third parties. The members of the management are responsible for ill-intentioned actions, even when acting in accordance with the law or the bylaws. Members of the management may be held responsible for labor, social security and administrative obligations, even if there is no malicious intent or culpability (objective responsibility). Managing members are responsible for damages caused to the corporation. This responsibility can be limited upon the approval by the shareholders of the company's financials, which are to be presented by the managers during the mandatory general shareholders' meeting.
DISCLOSURE OF INFORMATION	
As a general rule, there are no obligations to publish corporate documents, such as financial statements and minutes of quotaholders' meetings. However, the publication is required upon: (i) capital reduction, to protect the creditors; (ii) merger; (iii) spin-off; (iv) consolidation; and (v) to convene a quotaholders' meeting, unless all quotaholders are present or were notified of the place, date and time and agenda of the meeting. In some States, according to the respective Board of Trade, based on Law No. .638/2007, large-sized companies may have to publish their minutes of general quotaholders' meeting deliberating the approval of the financial statements of the previous year and their respective financial statements, as occurs in São Paulo.	It is required to publish certain information, i.e.: financial statements, accounting balance, minutes of shareholders' meeting, minutes of board of directors meetings and other information required by law. However, closed corporations with less than 20 shareholders and net equity not exceeding BRL,000,000.00 may choose to: (i) convene its general shareholders' meeting through a notice sent to each shareholder; and (ii) not publish its financial information, if such information is registered in the Board of Trade.

Registration Procedure

Because they are legally defined as commercial companies, both S.A.s and *limitadas* must file their corporate deeds of incorporation, subsequent amendments and minutes of shareholders and quotaholders meetings with the Board of Trade in the state where the company is headquartered.

The filing of the incorporation documents and subsequent amendments of other commercial companies must, in the same manner, be presented to the Board of Trade with jurisdiction over the location of the company's head office.

CNPJ ENROLLMENT

A foreign legal entity is required to register with the Federal Taxpayers' Registry of Legal Entities (*Cadastro Nacional de Pessoas Jurídicas* or "CNPJ") if it owns stocks or quotas of Brazilian legal entities or other goods and rights in Brazil, including investments.

Currently, a CNPJ number can be automatically assigned to a foreign investor upon registration of its investment with the Central Bank.

CPF ENROLLMENT

Individuals domiciled abroad are required to register with the Federal Taxpayers' Registry of Individuals (*Cadastro de Pessoas Físicas or* "CPF") if they own stocks or quotas of Brazilian legal entities or other goods and rights in Brazil, including investments.

Registering a CPF of nonresident individuals can be requested in Brazil by an attorney-in-fact. It is also possible to register at the nearest Brazilian Embassy or Consulate, but the procedure in Brazil is faster.

The attorney-in-fact must present the following documents in order to obtain the CPF enrollment of the nonresident individual: (i) a certified copy of the individual's identity card or passport, (ii) identity card of the attorney-in-fact and (iii) power of attorney with specific instructions for CPF enrollment. Besides these documents, the attorney-in-fact must inform the Federal Revenue offices of the foreign individual's parents' names.

The power of attorney issued abroad must be duly legalized at a Brazilian Consulate. If not in Portuguese, the individual's identity card or passport, and the power of attorney, must be translated into Portuguese by a certified translator.

All the documents set out above must be presented by the attorney-in-fact first at the Post Office (*Agências dos Correios – Empresa Brasileira de Correios e Telégrafos*), Federal Savings Bank (*Caixa Econômica Federal*) or the Bank of Brazil (*Banco do Brasil*), and then filed with the Federal Revenue Service in Brazil.

Individual Limited Liability Company (*Empresa Individual de Responsabilidade Limitada* – EIRELI)

Upon the enactment of Law No. 12,441 of January 9th, 2012, the laws of Brazil introduced the permission for the formation of a single-partner type of entity named *Empresa Individual de Responsabilidade Limitada* – EIRELI.

On the EIRELI, a single individual can hold the totality of fully paid-up corporate capital, which must be equivalent to at least 100 times the highest minimum wage effective in Brazil (roughly BRL88,000.00). Each individual cannot take part in more than 1 (one) EIRELI and EIRELIs corporate name must have the addition of the term EIRELI, for identification.

The EIRELI follows the same rules of limitation of liability as the *limitadas* (i.e. the company is only liable for debts up to the corporate capital, and personal assets shall not be subject to the company's debts).

Foreigners cannot apply for an investor visa by starting an EIRELI in Brazil. In order to obtain this type of visa, it's necessary to invest in *limitadas* or S.A..

Endnotes

[1] The exception to that rule is the wholly owned subsidiary. A wholly owned subsidiary is a company whose total corporate capital is owned by another company, which must be a Brazilian company. Incorporation by public deed is required. An existing company may be converted into a wholly owned subsidiary upon acquisition of all its shares by a Brazilian company with that purpose.

Investment In Publicly Held Companies and Capital Markets

Overview

Publicly held companies are permitted to raise funds through public offerings of their securities. However, they have to comply with specific obligations imposed by law and by regulations, which are issued mostly by the Comissão de Valores Mobiliários ("CVM").

CVM is an independent federal agency connected to the Ministry of Treasury. It was created by Law no. 6.385/76 in order to regulate, control, develop and supervise the securities markets in Brazil. With the changes introduced by Law no. 10.303/01, CVM's jurisdiction also includes the commodities and futures markets, the organized over-the-counter market and securities transactions clearing and settlement entities. CVM has independent administrative authority and absence of hierarchical subordination in relation to any government authority, with its own financial resources and budgetary powers. CVM's commissioners have a fixed mandate and can be removed only as a result of resignation, judicial final conviction or administrative disciplinary process.

The rationale behind CVM is to protect investors, using mechanisms of control and supervision. Closed companies have more freedom when it comes to accomplishing the shareholders' aims; however, publicly held companies are subject to restrictions that reduce the shareholders' flexibility in establishing the rules that will govern the company.

In order to have securities traded on the stock exchange or on the over-the counter market, publicly held companies must be registered with CVM and meet the registration requirements imposed by the stock exchange or over-the-counter institutions.

Additionally, foreign investments in publicly held companies, if made through the securities market, benefit from a favorable tax regime.

Securities Markets

The Brazilian securities markets cover a variety of transactions involving securities issued by publicly held companies — including shares, subscription bonuses, debentures and promissory notes for public distribution.

Stock exchanges and the over-the-counter markets (organized or not) are able to carry out transactions that involve securities issued by publicly held companies, and such transactions are regulated by CVM.

General Aspects Related to Publicly Held Companies

BOARD COMPOSITION OF PUBLICLY HELD COMPANIES

Due to the fact that publicly held companies obtain at least part of their funds from the public, control mechanisms must be applied in order to encourage investment and protect investors' interests. Thus, such companies have to comply with certain corporate governance requirements that allow minority investors to appoint representatives to the board of directors.

The Brazilian Corporation Law gives the holders of at least 15 percent of the total number of voting shares in a publicly held company the right to elect and remove one member (and alternate) of the board of directors in a separate vote at the annual general meeting of shareholders. Holders of preferred shares without voting rights — or with restricted voting rights — that represent at least 10 percent of the capital of a publicly held company are also entitled to elect and remove one member (and alternate) of the board of directors. For publicly held companies that have only issued common shares, these 15 percent thresholds are reduced to 10 percent.

PERIODIC FILING REQUIREMENTS AND OTHER INFORMATION

All companies must comply with the publication requirements established in the Brazilian Corporation Law. Additionally, once a publicly held company's securities have been registered with CVM, the registered company must provide information on a regular basis to CVM and to the stock exchange on which its securities are admitted for trading (CVM Instruction no. 480/09).

The following information has to be submitted on a regular basis, at the times and in the form established by regulation:

- Registry form;
- Reference form;
- Financial statements;
- Financial statement standard form (DFP);
- Quarterly Information (ITR) form;
- Documents required under Article 133 of the Corporation Law, to be made available prior to the annual general shareholders' meeting;

- Publication of notice of the annual general shareholders' meeting, up to 15 days prior to the date of the annual shareholders' meeting, or at the same day of its publication;
- All necessary documents related to the exercise of voting rights at the annual general shareholders' meetings, as per required in specific regulations, up to one month prior to the date of the annual general shareholders' meeting;
- Summary of decisions taken at the annual general shareholders' meeting, on the day of its occurrence;
- Minutes of the annual general shareholders' meeting, up to 7 business days of its occurrence, accompanied by any explanations of vote, dissidence or protest; and
- Reports prepared by the trustees.

In addition, other events may require submitting such information as:

- Call notices for extraordinary, special and debenture holders general meetings, on the same day they are published;
- All necessary documents related to the exercise of voting rights at the extraordinary general shareholders' meetings, special general meeting and general debentures holder's meeting, as required by specific regulations;
- Summary of decisions taken at the extraordinary, special and debenture holders meetings, on the meeting date;
- Minutes of the extraordinary general shareholders' meeting, special general meeting and general debentures holder's meeting, up to seven business days after its occurrence, accompanied by any explanations of vote, dissidence or protest;
- Minutes of the board of directors' meeting, provided that they contain resolutions intended to affect third parties, accompanied by possible comments submitted by the directors, up to seven business days after its occurrence;
- Minutes of the supervisory board's meeting that approved opinions, accompanied by possible comments submitted by the members of the supervisory board, up to seven business days after its occurrence;
- Appraisal reports required by the regulation issued by CVM;
- Shareholders' agreement;
- Corporate group convention (agreement to form a corporate group);
- Statement of material fact;
- Share trading policy;
- Information disclosure policy;
- Bylaws and any amendments thereto, within seven business days from the date of the respective general shareholders' meeting that resolved on the matter;
- Materials presented at meetings with analysts and market players, on the same day of such meeting;
- Acts of regulatory authorities approving certain matters mentioned in CVM Instruction no. 480/09, on the same day of the publication of such act;
- Reports prepared by rating agencies hired by the company, on the same day of the publication of such reports;
- Securitization term of credit rights and any amendment, up to seven business days after its execution;
- Indenture of debentures and any amendment thereto, up to seven business days after its execution;
- Information on shareholder agreements of which the controlling shareholder or subsidiaries and affiliates of the controlling shareholder are part, regarding the exercise of the right to vote at the company or the transfer of the company's securities, containing, at least, date of execution, term, parties, and descriptions of provisions relating to the company;
- Communications by the trustee set out in compliance with Article 68, Paragraph 1, sub-item "c" of the Brazilian Corporation Law;
- Initial judicial recovery petition, with all documents supporting it, on the same day of filing thereof in court;
- Judicial recovery plan, on the same day of filing thereof in court;
- Concession or denial of the judicial recovery request, with the indication, in the latter case, of the judicial administrator appointed by the judge, on the same day of knowledge thereof by the company;
- Extrajudicial recovery plan approval request, with the financial statements submitted especially to support the request, on the same day of filing thereof in court;
- Concession or denial of the extrajudicial recovery plan approval, on the same day of knowledge thereof by the company;
- Filing of a bankruptcy petition on the same day of knowledge thereof by the company;
- Concession or denial of the filing of a bankruptcy petition, on the same day of knowledge thereof by the company;
- Statement of intervention or liquidation, with the indication of the intervener or liquidator appointed, on the same day of knowledge thereof by the company;
- Notice of the installation of statutory audit committee, which shall include at least the names and the curriculum of its members, within seven business days of your installation;
- Communication about changes in the composition or dissolution of the statutory audit committee, up to seven business days from the date of the event;
- Internal rules of the statutory audit committee and any amendments, within seven business days of your installation or of the approval of the amendments by the board of directors;

- Communication on the capital increase decided by the board of directors, with the exception of capital increases through subscription in a public offering filed in the CVM;
- Communication on related-party transactions, within seven business days from the date of the event; and
- Communication on approval of negotiation of the company's own shares.

With respect to the "statement of material fact" noted above, CVM Instruction no. 358/02 defines as "material" any fact relating to the business of a company (including any decision by the controlling shareholder and any resolution adopted by the shareholders at a general meeting or by any of the management bodies of the company) that could influence the trade price of securities issued by the company; the decision by investors to trade in the company's securities or to continue holding them; and the decision by investors to exercise any rights attached to their ownership of the company's securities.

Both CVM and the stock exchange on which the company's securities are admitted for trading may require the company's investor relations officer to provide further information to clarify communications and/or disclosures made in connection with a material fact. It is important to remember that the basic information contained in the company's registration must be kept current, and CVM must be informed of any change in that information.

Public Offerings

MANDATORY AND VOLUNTARY PUBLIC TENDER OFFERS

According to the Brazilian Corporation Law and CVM regulations, public tender offers (*Oferta Pública para Aquisição de Ações,* called an "OPA") are required to acquire minority stakes in the following cases:

- When the controlling shareholders propose to cancel the listing of a publicly held company (Article 4, section 4 of the Brazilian Corporation Law, CVM Instruction no. 361/02 and special regulations of BM&FBovespa);
- When the controlling shareholder's interest reaches a percentage that, under CVM regulations, impedes the market liquidity of the remaining shares. The offer must be for all the shares of the affected class or type (Article 4, section 6 of the Brazilian Corporation Law and CVM Instruction no. 361/02); and
- When the controlling interest in a publicly held company is sold, the offer must be made by the purchaser who acquired control, to all shareholders that have full and permanent voting rights (Article 254-A of the Brazilian Corporation Law and CVM Instruction no. 361/02). The offer under Article 254-A works as a statutory tag-along right to shareholders in case of the sale of controlling ownership.
- There are also the voluntary tender offers that do not need prior obligations with CVM but must follow the rules of CVM Instruction no. 361, such as the acquisition of the control of the company (without having a sale of control) (Article 257 of the Brazilian Corporation Law).

PRIMARY AND SECONDARY PUBLIC OFFERINGS OF SECURITIES

Public offerings for the distribution of securities both in the primary and the secondary markets within the Brazilian territory are subject to the requirements of applicable legislation. These offerings must be submitted for prior registration before CVM in accordance with CVM Instruction no. 400/03, except in the case of a public offer distributed with restricted placement efforts pursuant to CVM Instruction no. 476/09.

Among the registration requirements established by CVM Instruction no. 400/03, a prospectus shall be prepared containing information regarding the offer, the offered securities and the issuing company and its financial situation. This document must be written in a clear manner so that it will be easily understood by anyone (not only by sophisticated investors), and the information it contains must be complete, precise, accurate, current, clear, objective and necessary, so that investors may make informed decisions regarding the investment.

Advertising materials related to the offering may be used only with CVM's approval, and the materials cannot provide information that differs from, or is inconsistent with, the prospectus.

There is the possibility of a waiver of the registration — or certain registration requirements (such as publication, deadlines and other procedures established under the regulations) — depending on the specific characteristics of the offering.

In order to carry out a public offering pursuant to CVM Instruction no. 400/03, the company must engage an underwriter to place the securities with the public. The company may authorize the underwriter to distribute a supplementary offering of securities if demand is greater than expected, at the same price as the initial offering of securities (green shoe). The prospectus must set out the limits for the supplementary offering, which may not be larger than 15 percent of the number of securities initially offered. Also, the company may, at its own discretion, increase the offering by up to 20 percent without making a

new application for registration or modifying the terms of the original registration (hot issue).

CVM has the power to suspend (for up to 30 days) or cancel an offering that is (i) being carried out contrary to the applicable legislation or the terms of the offering's registration, (ii) illegal, (iii) contrary to CVM regulations or (iv) fraudulent.

Offerings distributed with restricted placement efforts pursuant to CVM Instruction no. 476/09, as mentioned above, are not required to either submit a prior registration to CVM or prepare a prospectus. For this reason, they became the main source of public funding through the capital markets for publicly held companies in the recent years.

Until September 25, 2014, only debt offerings were allowed to be carried out in accordance with CVM Instruction no. 476/09. However, since the enactment of CVM Instruction no. 551/14, which has amended CVM Instruction no. 476/09, publicly held companies are also allowed to conduct public offerings of shares with restricted placement efforts.

In public offerings distributed with restricted efforts, only super-qualified investors (called "professional investors") are allowed to invest in the offerings, being that the securities can be offered to no more than 75 investors, but they can be subscribed to by no more than 50 investors.

Moreover, the securities offered can be traded among qualified investors, except as otherwise set forth in specific regulations, after a lock-up period of 90 days after each subscription or purchase by the investors (the referred lock-up is not applicable to transactions involving shares, subscription warrants and share deposit certificates).

Debt Capital Markets and Securitization – Most Common Instruments

Local capital markets transactions, including public offerings and those with restricted placement efforts, have an increasing role in the financing of corporations in Brazil, considering the expected reduction in the funding of companies by the public sector (including BNDES and other governmental bodies and agencies).

There are several instruments available to local companies to obtain funding in the capital markets. These vary according to the term of the instrument, the destination of funds and the sector in which the issuer of the securities carries its business. The following are the mainstream instruments used in Brazilian capital markets.

PROMISSORY NOTE

The promissory note can be issued by corporations or limited liability companies. Due to applicable regulation, it is commonly used as a short-term financing instrument (up to 360 days). However, a recent regulatory change permitted the issuance of long-term promissory notes if certain requirements are observed, such as the presence of a legal representative of the note holders (*agente fiduciário*).

DEBENTURE

The debenture can only be issued by corporations. It is often used as a long-term debt instrument, used to fund a variety of needs of corporations, including capex requirements.

Due to fiscal incentives by the government, companies with infrastructure projects may turn to the issuance of infrastructure debentures, which are exempt of income tax, as long as certain requirements are met. These requirements include longer maturity periods and the destination of funds to infrastructure projects approved by the government.

The debenture may also be issued by securitization companies in the banking receivables sector. In this case, the debentures are issued to fund the acquisition, by the securitization company, of receivables from banks, including non-performing loans ("NPLs"). Considering the recent economic instability in Brazil, opportunities in the NPL business are increasing, which leads to the increase in this type of debenture issuance.

REAL ESTATE BACKED CERTIFICATE (*CERTIFICADO DE RECEBÍVEIS IMOBILIÁRIOS*, OR "CRI")

The CRI is a certificate issued by real estate securitization companies, backed by receivables related to such real estate transactions as leases, development of real estate projects and built-to-suit transactions. CRIs have a tax incentive to individuals, which are exempt from income tax.

AGRIBUSINESS BACKED CERTIFICATE (*CERTIFICADO DE RECEBÍVEIS DO AGRONEGÓCIO*, OR "CRA")

CRAs are certificates issued by agribusiness securitization companies. They are backed by receivables related to agricultural chain of production, from preparation of the land with fertilizers until the sale of the agricultural product. CRA issuances have increased substantially over the last two years, as the instrument has been better known in the market and due to a tax incentive to individuals, who are exempt from income tax.

Receivables Investment Fund (Fundo de Investimento em Direitos Creditórios, or "FIDC")

The FIDC is an investment fund that is exclusively used to acquire receivables related to a variety of sectors. Its formation and incorporation depends on prior approval by the CVM; the process of approval depends on the fund's characteristics, such as targeted receivables to be acquired and to which investors the quotas issued by the fund will be offered.

The FIDC is not subject to taxation over gains reported within the fund, but the amortization and repayment of quotas is subject to income tax at a rate that varies according to the period of time that the quotas are held by the investors. Foreign investors are taxed at a 15 percent rate.

In case the funds raised by the FIDC are destined to invest in infrastructure projects, it will be entitled to the same tax benefits to which the infrastructure debentures are entitled.

Brazilian Tax System

General Aspects

The Brazilian Constitution allocates taxing power among the Federal Union, the states and municipalities. As expressly specified in the Constitution, the imposition, levy and collection of taxes must at least comply with the following fundamental constitutional principles:

- Principle of legality (*princípio da legalidade*), which dictates that a tax may only be levied, or have its rate increased, by a law duly approved by the Brazilian National Congress;
- Principle of equality (*princípio da isonomia*), which dictates that taxpayers who are in an equivalent situation must be treated equally;
- Principle of non-retroactivity (*princípio da não-retroatividade*), which dictates that a tax cannot be levied or collected retroactively;
- Principles of predictability (*princípio da anterioridade*), which dictates that taxes cannot be collected in the same fiscal year in which the law that instituted them, or increased their rates, was published or, in respect of contributions such as profit participation contributions (PIS) or social security financing contributions (COFINS), within 90 days of their publication; and
- Principle of non-confiscation (princípio do não-confisco), which dictates that taxes cannot be confiscatory, i.e., may not justify the appropriation of the taxpayer's property.

Brazilian Taxes Currently in Force

FEDERAL TAXES

- Income Tax (IR)–Corporate Income Tax (IRPJ) and Individual Income Tax (IRPF)
- Social Contribution on Net Profits (CSLL)
- Excise Tax (IPI)
- Tax on Financial Transactions (IOF)
- Social Contributions on Revenues (PIS and COFINS)
- Contribution upon Economic Activities (CIDE)
- Import Duty (II)
- Export Duty (IE)

STATE TAXES

- Value-added Tax (ICMS)
- Causa Mortis and Donation Tax (ITCMD)

MUNICIPAL TAXES

- Tax upon Services (ISS)
- Municipal Real Estate Tax (IPTU)
- Property Transfer Tax (ITBI)

FEDERAL TAXES

CORPORATE INCOME TAX (IRPJ)

IRPJ must be paid by Brazilian legal entities that are considered tax residents in Brazil and is charged on their worldwide income.

IRPJ is levied at a 15 percent rate on the taxable income assessed at the end of each tax period. A 10 percent surtax will apply to any portion of the annual taxable income above BRL240,000.

Taxable income corresponds to the company's net income adjusted by the additions, exclusions and deductions established by law.

Brazilian tax legislation establishes two main methods for the calculation of taxable income: the Actual Income Method and the Deemed Profit Method.

The Actual Income Method can be based on the annual income or on quarterly taxable income, after which the choice is irreversible for the whole calendar year.

On the other hand, the Deemed Profit Method is based on estimated taxable income, which is calculated from the income accrued in the period before the calculation of the IRPJ and CSLL and is adjusted by add-backs and deductions established in legislation.

In the following cases, companies are obliged to the Actual Income Method:

- Companies that have accrued total revenues in an amount greater than BRL78 million in the previous calendar year.
- Companies who have existed for less than year that have accrued total revenues of more than 24 million reais or 2 million reais times that amount of months they have existed if inferior to 12 months (applies only for periods less than 12 months);
- Financial institutions, insurance companies, and similar financial entities;
- Companies that have earned abroad income, profits or capital gains;
- Companies that are beneficiary of tax incentives related to exemption or reduction of income tax;
- Companies that have made monthly payments of income tax during the calendar year;
- Companies whose activities are engaged to factoring.

The income, capital gains and other earnings paid by a Brazilian source to a foreign-based individual or legal entity are subject to Withholding Income Tax ("IRRF" or "WHT") at a rate of 15 percent with these exceptions:

- At a rate of 25 percent for income paid to employees or service providers;
- At a rate of 25 percent for income paid to an individual or legal entity domiciled at a place offering favorable tax laws to foreign individuals and foreign businesses and (i.e., imposing a maximum tax rate below 20 percent or not taxing income); or
- At a specific rate determined in the double taxation treaties signed by Brazil.

WHT is also assessed at a rate of 15 or 25 percent on capital gains earned by a foreign-based company from the sale of assets and rights located in Brazil to a Brazilian paying source.

Recently, Provisional Measure No. 692/2015 was enacted, changing the rules regarding income tax levied on capital gains.

Section 21 of Law No. 8,981/1995 has been changed to levy progressive rates ranging from 15–30 percent on capital gains earned by individuals from the disposal of assets and rights of any nature, as detailed below:

15 percent on capital gains that do not exceed BRL1 million;

20 percent on capital gains that exceed BRL1 million and do not exceed BRL5 million;

25 percent of the amount of capital gains that exceed BRL5 million and do not exceed BRL20 million; and

30 percent of the amount of capital gains that exceed BRL20 million.

Section 2 of the Provisional Measure provides that the same rates also should be applied when calculating income tax levied on capital gains earned from the disposal of non-current assets by legal entities that are not subject to the taxable income method, the estimated profit method or the arbitrated profit method.

SOCIAL CONTRIBUTION ON NET PROFITS (CSLL)

The CSLL is calculated on the year-end results adjusted by the additions, exclusions and offsetting events established by tax law. The calculation basis can only be reduced (up to 30 percent) by carrying over the negative tax bases reported in past periods.

Since September 1999, the worldwide income taxation principle applies to the CSLL calculation basis; as a result, the profits, income and capital gains earned abroad by Brazilian companies are also subject to CSLL.

CSLL is assessed at a rate of 9 percent on the taxable income of all legal entities except financial institutions, which are subject to CSLL at a 15 percent rate.

EXCISE TAX (IPI)

The IPI is levied on the sale and on the import of manufactured goods. IPI is a value-added tax, and the amount due may be offset by the credits arising from the tax imposed on the purchase of raw materials, intermediary products and packaging materials. However, the IPI amount may not be offset by credits related to fixed assets.

Rates are assessed on the value of manufactured goods when they are imported or when they are sold from domestic plants and vary based on the nature of the goods.

IPI is levied at a progressive rate; nonessential products, such as cigarettes, are subject to IPI at a higher rate.

IPI is not levied on exports.

TAX ON FINANCIAL TRANSACTIONS (IOF)

The IOF is levied on (i) intercompany loans and loans between companies and individuals; (ii) transactions between factoring companies; (iii) exchange transactions made by institutions authorized to deal in the foreign exchange market; (iv) insurance transactions made by insurance companies; and (v) securities or gold transactions when carried out by institutions authorized to operate on the securities market.

IOF is charged at variable rates based on the type of transaction involved. IOF rates and tax base may be changed at any time during the fiscal year without prior notice by means of a decree issued by the Brazilian federal government.

IOF is not levied on foreign currency entering Brazil as loans (the tax rate today is 0 percent)as long as the funds remain in the country for the minimum term established by the tax legislation that is in force on the entry date. However, if the minimum term is not observed or the loan is considered novated/extended or paid in advance, the IOF will be levied at a 6 percent tax rate.

The minimum term that needs to be observed depends on the legislation in force on the date that the currency exchange agreement was contracted for each tranche entry or novation/extension of the loan. (See the following table.)

DATE OF EXECUTION OF THE EXCHANGE CURRENCY AGREEMENT	MINIMUM TERM	LEGAL BASIS
Up to March 28, 2011	90 days	Section 15, Decree 6,306/2007
From March 29, 2011 to April 6, 2011	360 days	Decree 7,456/2011
From April 7, 2011 to February 29, 2012	720 days	Decree 7,457/2011
From March 1st, 2012 to March 11, 2012	3 years	Decree 7,683/2012
From March 12, 2012 to June 13, 2012	1800 days	Decree 7,698/2012
From June 14, 2012 to December 4, 2012	720 days	Decree 7,751/2012
From December 5, 2012 to June 3, 2014	360 days	Decree 7,853/2012
From June 4, 2014 until now	180 days	Decree 8,263/2014 / Decree 8,325/2014

FEDERAL TAXES ON REVENUES ("PIS" AND "COFINS")

The PIS and COFINS are social contributions levied on a legal entity´s revenues.

Law No. 10,637/2002 introduced the PIS noncumulative system and Law No. 10,833/2003 established the noncumulative system for COFINS, by which the PIS and COFINS are levied at 1.65 percent and 7.6 percent, respectively, on the gross revenues earned by a company. Under a non-cumulative system of calculation, the company is allowed to use credits related to the acquisition of goods and services necessary for the company's main activity.

Not all companies qualify for this noncumulative system: some are still fully or partially subject to the PIS and COFINS cumulative system, depending on the activity and type of revenue earned. The cumulative system follows the taxation rules set out in Law No. 9,718/1998, adopting a flat PIS and COFINS rate of 0.65% and 3% respectively. As of 2004, the levy of PIS and COFINS was extended to imports of foreign products and services, known as "PIS-Import" and "COFINS-Import". The taxes are levied on: (i) entry of foreign goods into the Brazilian territory or (ii) payment, credit, delivery, or remittance of funds to foreign-based persons in exchange for services rendered.

PIS-Import and COFINS-Import are paid by (i) the importer, meaning the individual or legal entity that brings the goods into Brazilian territory; (ii) the individual or legal entity retaining services from a foreign-based resident; and (iii) the service beneficiary, if the contractor is also resident or domiciled abroad.

Provisional Measure (PM) No. 668/15 (converted into Law No. 13,137/2015), published in the Official Gazette on January 30, 2015, increased the standard PIS and COFINS rates levied on the import of goods, from a combined rate of 9.25% (1.65% PIS and 7.6% COFINS) to 11.75% (2.1% PIS and 9.65% COFINS). According to PM No. 668/15, taxpayers are allowed to accrue PIS and COFINS input credits based on the increased rates (under the non-cumulative regime). Others sectors that were already subject to increased PIS and COFINS rates for imports under special regimes (such as cosmetics, machinery, pharmaceuticals and tires) are now subject to combined rates as high as 20%, depending on the product.

PIS and COFINS rates on imported services remain unchanged (i.e. combined rate of 9.25%).

As of July 1, 2015, financial revenues are subject to PIS and COFINS at a 4.65% combined rate due to the terms of Decree No. 8,426/2015. Prior to that date, the tax rate was 0%.

CONTRIBUTIONS ON ECONOMIC ACTIVITIES ("CIDE")

Currently, there are contributions on economic activities(CIDE) levied on remittance of royalties abroad ("CIDE-Royalties") and on fuels ("CIDE-Fuels").

CIDE-Royalties are levied on overseas remittances related to payment for the use of copyrights, royalties for patents and trademarks, technical and administrative assistance services, and technical services (including telecommunications activities). In these cases, CIDE-Royalties are to be paid by the Brazilian company at a rate of up to 10 percent of the sums remitted abroad.

The CIDE-Fuels are assessed on imports and sales of oil and by-products, natural gas and its derivatives, and ethanol.

STATE TAXES

VALUE-ADDED TAX ("ICMS")

ICMS is a state tax levied on transactions involving goods (including imports), on interstate and inter-municipal transport, and on communications services.

In respect to the non-cumulative principle, the ICMS paid on the purchase of raw materials, intermediary products and

packaging materials can be offset against the ICMS levied on the subsequent transaction. Credits related to fixed assets are allowed with some restrictions. Intrastate rates normally vary from 7 to 25 percent. Under interstate operations, applicable rates are 4 percent (applicable to imported goods)[2], 7 percent or 12 percent depending on the destination or import content.

ICMS is not levied on exports.

It is important to stress that the ICMS system has been modified by Constitutional Amendment No. 87/2015, which established a new tax treatment of interstate transactions involving end consumers that are not ICMS taxpayers.

On April 16, 2015, Constitutional Amendment No. 87 was enacted, thereby amending the State Value-added taxation system for purchases made by non-taxpayers. The new rule gradually changes the taxation from an origin-based model to a destination-based model.

Pursuant to the Federal Constitution before the amendment, where the buyer was not a Value-added taxpayer, the relevant taxpayer had to pay Value-added tax in full solely to the state in which the establishment of the seller was located. As a consequence, the state in which the buyer was located or the state of the destination of the goods did not receive any portion of the tax.

In the old system, the Federal Constitution ruled that on sales to a non-taxpayer located in another state the tax rate was (i) the interstate rate, where the buyer was a taxpayer, in which case the state of destination was entitled to the amount derived from the difference between the internal tax rate and interstate tax rate or (ii) the internal rate, where the buyer was a non-taxpayer, and the state of Origin was entitled to the tax.

Pursuant to these new regulations, the interstate rate will apply even where the buyer is a non-taxpayer and the amount of tax resulting from the difference between the Value-added tax rate at the destination and the interstate rate is due entirely in the state of the buyerbefore2019.

CAUSA MORTIS AND DONATION TAX ("ITCMD")

The Causa Mortis and Donation Tax (ITCMD) is levied upon donations that occurred in the state or inheritance of goods and rights at a rate to be determined by each Brazilian state (limited to 8 percent, as determined by the Federal Senate).

In the state of São Paulo, for example, the ITCMD is levied at a tax rate of 4%, while in the state of Rio de Janeiro the tax rates are 4.5% if the value of the goods and rights is less than 400.000 UFIR-RJ and 5% if the values are greater than these amounts.[3]

MUNICIPAL TAXES

TAX ON SERVICES (ISS)

The most significant municipal tax related to setting up and developing a business in Brazil is the tax upon services (ISS), which is levied on services rendered by a company or independent contractor, in accordance with a list of services attached to Complementary Law No. 116/2003. This tax is generally calculated at a rate varying from 2% to 5% of the service value.

The ISS is also levied on import of services (meaning services fully rendered outside of Brazil for a person established in Brazil and services initiated abroad). The service importer is the responsible for the ISS payment.

PROPERTY TRANSFER TAX (ITBI)

The property transfer tax (ITBI) is a municipal tax levied on the transfer of real estate titles and related rights, at a rate varying from 2% to 6% as determined by each municipality (in the City of São Paulo and Rio de Janeiro it is established at 2%). The taxpayer is whoever purchased the real estate or related rights.

The ITBI is not levied on the transfer of real estate or rights such as investments in equity of a Brazilian entity or those resulting from mergers, consolidations, or the spin-off or winding-up of a legal entity, unless the buyer's core activity is the purchase and sale, lease or rental of real estate and related rights.

REAL ESTATE TAX (IPTU)

Real estate taxes are due upon ownership of urban real estate. IPTU must be paid annually and it is calculated based on the value of the real estate, at a progressive rate to be determined by each Municipality, considering the value, use and location of the property.

Summary – Main Brazilian Taxes

The following table summarizes the main Brazilian taxes, describing the basis of calculation and respective rates:

Recent Changes in Brazilian Legislation

TAX	BASIS OF CALCULATION	RATE
Corporate Income Tax (IRPJ)	Actual profits, estimated profits or profits determined by tax authorities	15% plus a 10% surtax on those profits exceeding BRL240,000.00
Withholding Income Tax	Income and capital gains earned by nonresidents from sources in Brazil	15% or 25%, depending on the type of income and the domicile of the recipient
Excise Tax (IPI)	Sales price of the industrialized product	Dependent upon product classification
Tax on Financial Transactions (IOF)	Credit, foreign exchange, insurance and securities transactions	Dependent upon type of transaction — federal government may increase or decrease the IOF rate through the issuance of a Decree
Social Contribution on Net Profits (CSLL)	Adjusted net profit	9% for corporations or 15% for financial institutions
Federal Tax on Revenues (PIS)	Gross revenues	1.65% under the non-cumulative regime and 0.65% under the cumulative regime
Federal Tax on Revenues (COFINS)	Gross revenues	7.6% under the non-cumulative regime and 3% under the cumulative regime
PIS-Import	Importation of goods, payment, credit, delivery, use or remittance of amounts related to the provision of services to residents overseas	2.1% 1.65%
COFINS-Import	Importation of goods or payment, credit, delivery, use or remittance of amounts related to the provision of services to residents overseas	9.65% 7.6%
Contribution on Economic Activities on Royalties	Payment of royalties, fees on technology transfers and technical services by foreign persons	10%
Contribution Upon Economic Activities on Fuels (CIDE-Fuels)	Marketing and import of fuels	Dependent upon type of fuel
Value-added Tax (ICMS)	Value of the transaction	7% to 25%
Tax Upon Services (ISS)	Service price	2% to 5%
Import Duty	Value of the imported product	Dependent upon the imported product
Causa Mortis and Donation Tax (ITCMD)	Value of assets or rights transferred by donation or legal succession	2% and 6% according to state legislation
Property Transfer Tax (ITBI)	Transfer of title to real properties and related rights	Up to 8% according to municipal legislation
Municipal Real Estate (IPTU)	Ownership of urban properties	Dependent upon each municipal legislation and characteristics of real estate property
Export Duty (IE)	Value of exported product	Dependent upon the exported product

PROVISIONAL MEASURE NO. 692/2015

Through Provisional Measure No. 692/2015, the rules regarding income tax levied on capital gains have been changed. Provisional Measure No. 692/2015 was published on September 22nd, 2015, with the purpose of creating progressive rates for income tax levied on capital gains.

In relation to income tax levied on capital gains, the Provisional Measure changed Section 21 of Law No. 8,981/1995 and established progressive rates ranging from 15% to 30%, levied on the capital gains earned by individuals as a result of the disposal of assets and rights of any nature, as detailed below:

- 15% of the amount of capital gains that do not exceed BRL1,000,000.00;
- 20% of the amount of capital gains that exceed BRL1,000,000.00 and do not exceed BRL5,000,000.00;
- 25% of the amount of capital gains that exceed BRL5,000,000.00 and do not exceed BRL20,000,000.00; and
- 30% of the amount of capital gains that exceed BRL20,000,000.00.

In addition, Section 2 of the Provisional Measure states that the same rates should also be applied when calculating income tax levied on capital gains earned as a result of the disposal of non-current assets by legal entities that are not subject to the taxable income method, the estimated profit method or the arbitrated profit method.

BILL OF LAW NO. 27/2015:

Although it has not been approved yet, it is important to mention that Bill of Law No. 27/2015, which is the bill of the conversion into law of Provisional Measure No. 692/2015, establishes that the progressive rates will range from 15% to 22,5% as detailed below:

- 15% of the amount of capital gains that do not exceed BRL5,000,000.00;
- 17.5% of the amount of capital gains that exceed BRL5,000,000.00 and do not exceed BRL10,000,000.00;
- 20% of the amount of capital gains that exceed BRL10,000,000.00 and do not exceed BRL30,000,000.00; and
- 22.5% of the amount of capital gains that exceed BRL30,000,000.00.

DECREE NO. 8,426/2015: PIS AND COFINS ON FINANCIAL REVENUES

Decree No. 8,426/2015, published in the Official Gazette on April 1, 2015, established the 0.65% and 4% rates of, respectively, PIS and COFINS levied on financial revenues accrued by the legal entities submitted to the PIS and COFINS non-cumulative regime.

In addition, Decree No. 8,426/2015 maintained the rates of PIS and COFINS levied on net equity interest at, respectively, 1.65% and 7.6% as well as the 0% rate applicable to PIS and COFINS levied on financial revenues derived from currency exchange variation.

PROVISIONAL MEASURE NO. 694/2015

Through Provisional Measure No. 694/2015, which was published on September 30, 2015, the following changes were made in Brazilian federal taxes legislation:

- Increase of the Withholding Income Tax Rate levied on interest on net equity ("JCP") from 15% to 18%;
- Established the limit of deduction of the interest, which can be considered the long term interest rate ("*taxa de juros de longo prazo*" – TJLP) or a rate 5%, whichever one is lower;
- Suspension of the benefits set forth by Law No. 11,196/2005 ("*Lei do Bem*") for the2016 calendar year, in regards to the exclusion in the calculation basis of Income Tax and Social Contribution on Profits for amounts superior to the ones effectively incurred with Research and Development ("P&D"):
- (i) to the legal entities in general, executed directly or through an ICT (public scientific and technologic institutes) or private entities;
- (ii) to the legal entities belonging to the computer and automation industry, as also information technology. Increase of the PIS-Import and COFINS-Import rate (from 0.54% and 2.46% to 1.11% and 5.02%), applicable as of January 1, 2016 on importation of petrochemicals.

LAW NO. 13,254/2016: CREATION OF SPECIAL REGIME FOR MONETARY AND TAX REGULATION (RERCT)

On January 13, 2016, Law No. 13,254/2016 was enacted, thereby creating the Special Regime for Monetary and Tax Regulation ("RERCT"), which allows people or legal entities who owned legally obtained goods and revenues which had not been previously declared or had been declared with inconsistencies on December 31, 2014 to voluntarily declare

them to Tax Authorities with a reduction in taxes and penalties levied and a no criminal prosecution for failure to report said goods and revenues.

The regime is applicable to all resources, assets or rights legally obtained, including but not limited to: bank deposits; quotas for investment funds; insurance policies; loan operations with a legal entity or physical person; amounts paid to foreign companies in the form of shares or capital; intangible assets such as software, know-how, trademarks; vehicles, aircrafts, and vessels.

Summary – Brazilian Tax Returns

FEDERAL TAX RETURNS

TAX RETURN	DESCRIPTION	PERIODICITY
ECF	Demonstrates the calculation basis of IRPJ and CSLL.	Annual Deadline: last business day of June
SPED (ECD)	Digital file with the complete company's tax accounting ledger book, monthly balances.	Annual Deadline: last business day of May
EFD-Contributions	Demonstrates the calculation basis of PIS and COFINS	Monthly Deadline: last business day in the second month subsequent to the occurrence of taxable event
DIRF	Withheld tax information - contain all taxes withheld when paying individuals or other legal entities	Monthly Deadline: for calendar-year of 2015, DIRF must be filed by February 29th, 2016
DCTF	Information about federal taxes due and information regarding the method of payment of such debts	Monthly Deadline: 15th business day of the second month subsequent to the occurrence of taxable events
DSPJ	Simplified return to the legal entities that were inactive during the previous calendar year	Annual Deadline: January 2nd, 2016 to March 31st, 2016
DASN	Digital file related to the companies under the Simplified Tax Regime ("Simples Nacional")	Annual Deadline: Until March 31st of subsequent year
SISCOSERV	Disclosure of transactions carried out between Brazilian residents and non-residents involving services, intangible assets, and other operations	Deadline: the last business day of the month following the occurrence of related transactions.
FCONT	Bookkeeping of the equity and income accounts according to the double entry method adopted by companies	Annual Deadline: Last business day of June of the subsequent year
PER/DCOMP	Electronic request for compensation and restitution used by companies that have tax credits to claim before the Brazilian IRS	
GFIP/SEFIP	Information about the social contributions and Government Severance Indemnity Fund for Employees ("FGTS").	Monthly Deadline: before the 7th day of the subsequent month
E-SOCIAL	Digital file with tax, labor and social security obligations	Monthly, being gradually applicable as of September 2016

STATE TAX RETURNS

States may have different names for each tax return, but, in general, the following tax returns are required.[4]

TAX RETURN	DESCRIPTION	PERODICITY
GIA	Monthly tax return with a compilation of all ICMS related operations (purchase and sale of goods / fixed assets, as well as consignation, transfers for lease and other operations comprised of movement of any kind of goods)	Monthly, before the 18th day of the subsequent month
GIA-ST	Operations in which the company is responsible for withholding and collecting ICMS due by third parties	Monthly, before the 10th day of the subsequent month
SPED	Digital file containing detailed ICMS related operations, with a compilation of the tax calculations. This is reported to the Federal Revenue and states in a specific file layout.	Monthly, before the 15th day of the subsequent month
DECLAN	Tax return providing inventory control, tax books, stock movement	Semi-annual
CT-e	Electronic Bill of Landing	Upon occurrence of event.
DUB-ICMS	Information about any tax benefits and incentives, whether or not they are used by the company; any operation where ICMS was not fully paid must be disclosed in detail.	Every six months: regarding the first semester, the deadline is September 30; regarding the second semester, the deadline is March 31.
Electronic Invoice (NF-e)	Invoice must be issued when services are provided.	Upon occurrence of event.

The goods and revenues will be treated for taxation purposes as capital gain and will be submitted as income tax at a 15% rate. In addition, a 15% rate of penalty will be charged.

Governmental Incentives

The Brazilian government has established several benefits intended to stimulate growth in developing sectors of the economy; including financing, tax credits and exemptions. Below are some examples.

INCENTIVES IN THE MANAUS FREE TRADE ZONE

The Manaus Free Trade Zone (ZFM) was created, and is regulated, by Law no. 3.173 of June 6, 1957 and Decree-law no. 288 of Feb. 28, 1967. The zone was promulgated to maintain an industrial, trade and agribusiness center in the Amazonian region. It sought to do this by creating economic conditions intended to stimulate development by overcoming certain local difficulties and the great distance between the production site and consumers. Special ZFM tax incentives have been allocated under the Constitution until 2023.

The companies established in the ZFM may be eligible for exemption from, or a reduction in, the following taxes:

- Import Duty (II) on products intended for ZFM-consumption (a reduction in import duty rates for materials incorporated into products manufactured in the ZFM when they are shipped to other points in Brazil);
- Export Duty (IE) on products manufactured in the ZFM for export;
- Excise Tax (IPI) on foreign products intended for consumption or manufactured in the ZFM and on goods produced in the ZFM for consumption anywhere in Brazil;
- Income Tax (IR) for operations and projects approved by the Amazon Development Authority;
- Value-added Tax (ICMS) for products from other states that are intended for consumption or manufacture in the ZFM. Additionally, companies will have an ICMS credit in relation to products from other Brazilian states, and refund of a variable ICMS payment for industrial undertakings approved by the Amazonas Finance Office; and
- Tax on Services (ISS) for companies providing services under projects approved by the Manaus City Hall.

INCENTIVES IN THE ADA AND ADENE AREAS

The companies established by the Amazon Development Agency (ADA) and the Northeast Development Agency (ADENE) may be granted a reduction of up to 75% of IRPJ when undertaking an investment project approved by these agencies.

INCENTIVES IN THE EXPORT PROCESSING ZONES

In Brazil, Export Processing Zones (ZPEs) were regulated by Law No. 8.392/1992. The intention of the federal government is to grant tax incentives to companies that are established in the ZPEs and export their products. Companies established in ZPEs may import "permanent assets" exempt from II, IPI, PIS-Import and COFINS-Import. Moreover, companies established in ZPEs may be granted a reduction in ICMS levied on imports and acquisition of assets in the Brazil's domestic market.

STATE TAX INCENTIVES — REDUCTIONS OF ICMS

In order to attract investments, some Brazilian states grant reductions in the ICMS rate for companies established within the state.

SPECIAL REGIME FOR INFRASTRUCTURE DEVELOPMENT INCENTIVES

In 2007, Brazil's federal government created the Special Regime for Infrastructure Development Incentives (REIDI), which gives companies that have an approved infrastructure project related to the development of transportation, ports, energy and basic sanitation tax incentive benefits..

Companies that qualify for REIDI also benefit from a suspension of PIS and COFINS on domestic sales, imports of new machinery and equipment, and construction materials.

These suspensions are converted into zero rate taxation after the use of the materials or goods in the infrastructure work is established. If the use is not established, the tax must be paid.

SPECIAL TAX REGIME FOR INFORMATION TECHNOLOGY EXPORT COMPANIES

In 2005, the Brazilian government created the Special Tax Regime for Information Technology Export Companies (REPES) that is designed to benefit legal entities that perform activities related to software development or information technology services and obtain at least 80 percent of their annual gross product and service revenues from exports. The tax benefits created by REPES are: (i) exemption from PIS and COFINS on gross revenues from the sale of new goods or services intended for the development of software and information technology in Brazil to another REPES beneficiary entities and (ii) exemption from PIS-Imports and COFINS-Imports on the acquisition of new goods or services intended for the development of software and information technology in Brazil.

SPECIAL REGIME FOR ACQUISITION OF CAPITAL GOODS BY EXPORT COMPANIES

In 2005, the Brazilian government created the Special Regime for Acquisition of Capital Goods by Export Companies (RECAP), which is designed to benefit companies whose gross export revenue has reached at least 80 percent of their total gross revenue for at least two calendar years. The tax benefits related to RECAP are: (i) exemption from PIS and COFINS on the gross revenues from the sale of new machines, appliances, instruments and equipment to another RECAP beneficiary entity and (ii) exemption from PIS-Imports and COFINS-Imports on acquisition of new machines and equipment.

PADIS/PATVD – SPECIAL REGIME FOR PRODUCTION OF SEMICONDUCTORS AND DIGITAL TELEVISION EQUIPMENT

Through Law No 11,484/2007, the manufacturing and R&D performance in such areas grant the following benefits: (i) Zero percent rate of PIS, COFINS and IPI on the acquisition (imports and domestic) of machinery, devices and equipment, and on the sale of said products; (ii) corporate income tax rate reduction on the exploration profit (it must be registered as a capital reserve); and (iii) For PADIS only, a zero percent Import Tax (II) and CIDE on remittances abroad in relation to royalties is applicable.

BRAZILIAN TRANSFER PRICING RULES

IRPJ and CSLL are payable on taxable income adjusted by the additions, exclusions and offsetting prescribed by tax laws. The Brazilian Transfer Pricing Rules ("TP Rules") is one of these adjustments.

The TP Rules seek to avoid the transfer of projects abroad as a result of price manipulation on imports or exports of goods, services or rights in transactions with foreign-based related parties. In other words, the transfer pricing rules seek to ascertain whether pricing policies in international transactions between related companies are in line with the conditions of the market (arm's length) or if they are being used to transfer profits abroad.

The Brazilian TP Rules do not fulfill the OCDE Model and sets forth methods in order to define the parameter price that must be adopted by related entities.

BRAZILIAN THIN CAPITALIZATION RULES

Brazilian Thin Capitalization Rules were enacted at the end of 2009. They limit the deductibility of interest paid to foreign companies by a related Brazilian company.

Pursuant to Brazilian Thin Capitalization Rules, interest paid from a source in Brazil to a related legal entity that is domiciled abroad in a jurisdiction that is neither a tax haven nor a privileged tax regime shall only be deductible in Brazil if the amount of the indebtedness is not higher than twice the amount of the net equity of the legal entity resident in Brazil.

If the recipient of the interest is domiciled in a tax haven jurisdiction or a privileged tax regime, the interest paid shall be deductible in Brazil only if the amount of the indebtedness is not higher than 30% of the amount of the net equity of the legal entity resident in Brazil.

If the indebtedness exceeds the ratios mentioned above, the interest related to the excess will not be considered deductible for IRPJ and CSLL purposes.

The Brazilian Thin Capitalization Rules also apply to transactions in which the Brazilian company is surety, guarantor, attorney or any anyone who negotiates on behalf of a related company.

DOUBLE TAXATION TREATIES

Brazil has signed and ratified double taxation treaties with the following jurisdictions: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic and Slovakia, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, Norway, Peru, Philippines, Portugal, South Africa, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine, and Venezuela.

The tax treaties call for maximum rates applicable on income earned by a resident of a country in another country. Therefore, the domestic legislation of the countries that entered into the treaties must observe the limits determined by those treaties.

BASE EROSION AND PROFIT SHIFTING (BEPS) RULES

Even though Brazil has adopted the BEPs Project, the only legal act enacted regarding one of the BEPS' action was Provisional Measure No. 685/2015. MP 685/2015 has created the obligation to file a return with information about operations that result in suppression, decrease or deferment of taxes. However, Law No. 13,202/2015, which is the conversion into Law of Provisional Measure No. 685/2015, do not provide such ancillary obligations.

The following table summarizes the applicable maximum rates according to double taxation treaties signed by Brazil:

	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
Argentina	-	-	-
Austria	15	15	10 or 15 or 25
Belgium	15	10 or 15	10 or 15 or 25
Canada	15	10 or 15	15 or 25
Chile	10 or 15	15	15
China	15	15	25
Czech Republic and Slovakia	15	10 or 15	15 or 25
Denmark	25	15	15 or 25
Ecuador	15	15	15 or 25
Finland	10	15	10 or 15 or 25
France	15	10 or 15	10 or 15 or 25
Hungary	15	10 or 15	15 or 25
India	15	15	15 or 25
Israel	10 or 15	15	15 or 25
Italy	15	15	15 or 25
Japan	12.5	12.5	12.5 or 15 or 25
Korea	15	10 or 15	15 or 25

	DIVIDENDS (%)	INTEREST (%)	ROYALTIES (%)
Luxembourg	15 or 25	10 or 15	15 or 25
Mexico	10 or 15	15	15
Netherlands	15	10 or 15	15 or 25
Norway	15	15	15 or 25
Peru	10 or 15	15	15
Philippines	15 or 25	10 or 15	15 or 25
Portugal	10 or 15	15	15
South Africa	10 or 15	15	10 or 15
Spain	15	10 or 15	10 or 15
Sweden	15 or 25	15 or 25	15 or 25
Trinidad and Tobago	10 or 15	15	15
Turkey	10 or 15	15	10 or 15
Ukraine	10 or 15	15	15
Venezuela	10 or 15	15	15

FEDERAL DECREE NO. 8506/2015 – TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL TO IMPROVE INTERNATIONAL TAX COMPLIANCE AND TO IMPLEMENT "FATCA"

On August 25, 2015, Federal Decree No. 8506/2015 was published in the Official Gazette. This decree enacts the treaty entered into by Brazil and USA to improve international tax compliance and to implement the Foreign Account Tax Compliance Act ("FATCA"), and was signed in Brasilia on September 23, 2014.

The aforementioned Decree enacted an agreement of cooperation between Brazil and the United States to provide financial information of the citizens or companies of these countries. The sole purpose of the agreement is to identify and combat the tax evasion, especially of US citizens and companies. In order to achieve the aforementioned purpose, it will become mandatory for financial institutions to submit an annual return.

FATCA gives non-US financial institutions the obligation to report financial information related to US citizens and companies and related to citizens and companies that appears to be from the US to the IRS. As above said, the return must be submitted annually and must contain information such as the account number, account balance, also in addition to every other piece data established by the decree.

In the event of non compliance with the agreement, the financial institution will be given a penalty, which consists of the withholding of 30 percent of any payment of U.S. origin to any nonparticipating financial institution subjected to the withholding of taxes.

Endnotes

[2] According to Senate Resolution No. 13/2012 and ICMS Convention No 38/2013, interstate transactions with goods previously imported are subject to 4% ICMS rate. However, if the imported good is submitted in Brazil to a manufacturing process, the 4% ICMS tax rate is solely applied in cases of "import content" higher than 40%. The import content is provided through the percentage correspondent to the quotient between the amount related to the part imported and the total value of subsequent interstate transaction. The tax effect is basically a decrease in the tax burden of the interstate transaction, since the regular tax rates applicable are 7% or 12%.

[3] These tax rates of *Causa Mortis* and Donation Tax in Rio de Janeiro have been changed by Law No. 7,174/2015 and will become effective on March 28th, 2016. For clarification purposes, 1 UFIR-RJ corresponds to BRL 3,0023 in 2016.

[4] We have informed the tax returns required by Rio de Janeiro State, as in example.

Employment & Benefits

Legislation

Brazilian employment conditions are regulated and governed by the rules provided by the Brazilian Constitution, the Consolidation of the Labor Laws (*Consolidação das Leis do Trabalho* or "CLT") and also by collective bargaining agreements entered into by and between the employees' and employers' unions. The freedom to negotiate an employment contract is, however, limited to the principles and rules set forth in the Brazilian labor laws.

Brazilian labor laws grant all workers in Brazil a number of specific rights, including the right of protection against arbitrary dismissal, a minimum wage, unemployment insurance, maternity and paternity leave and occupational accident insurance. In addition, the Brazilian Constitution prohibits employment discrimination on the basis of race, gender, age, color or marital status.

Employees' Records

GENERAL ISSUES

The employer must keep a record in the Employees Registry Book of each employee hired. This book must be registered with the Regional Labor Office (SRT). New companies have 30 days to certify their books before the SRT, starting from the date on which the first employee is hired.

EMPLOYMENT BOOKLET

The employment booklet (CTPS) is issued by the Labor Ministry (MTE). The employee must personally go to MTE and present the required documents and information to obtain the CTPS.

The employer has 48 hours from the employee's engagement to proceed with the proper registrations (employment date, function, compensation and special conditions, if any) in the CTPS. Registrations in the CTPS must also be performed in the event of termination of the employment contract.

An employer's failure to make the proper registrations in the CTPS in relation to the employee may result in the payment of a penalty to the labor authorities.

Work Relationship

A formal written agreement is not required under Brazilian law for purposes of characterizing the employment relationship. Brazilian labor laws contemplate several rights that are inherent to an employment relationship, and these rights do not need to be established in a written contract.

The conditions set forth in the employment agreement cannot be modified or amended without the employee's consent. However, any modifications or amendments that conflict with the employee's legal rights, even if made with the employee's consent, are deemed to be legally null and void before the Brazilian labor courts.

EMPLOYMENT CONTRACT FOR AN INDEFINITE TERM

As a general rule, an employee is contracted for an indefinite period of time. However, there are circumstances when the contract can be for a fixed time period.

EMPLOYMENT CONTRACT FOR A FIXED TERM

If the parties agree on a certain date for the termination of the employment relationship, then the contract is for a fixed period. The law defines a contract for a fixed period as "a contract whose effectiveness depends upon a prefixed date or upon the performance of specific services, or upon the occurrence of some event susceptible to prediction." The CLT specifically allows contracts for a fixed period only in the following cases: (i) services whose transitory nature justifies the predetermination of a contractual term; (ii) temporary business activities; or (iii) a probationary contract.

The term of a probationary contract cannot exceed 90 days; the term of other permissible fixed-term contracts may not exceed two years. If a fixed-term contract is executed for a shorter term (i.e., less than 90 days or two years, as the case may be), the law allows one extension limited to the maximum term established by the law. Otherwise, this employment contract will be considered as having an indefinite term.

The law does not allow another contract for a fixed period to be executed between the same employee and employer until six months after the end of the last contract. The fixed-term contract cannot include provisions that allow either party to terminate the contract for any reason before the fixed term.

TEMPORARY WORKERS

Temporary work is defined by law as the service rendered by an individual to a firm on a short-term basis in order to replace its regular permanent staff (e.g., vacation, maternity leave) or as a result of an extraordinary increase in its business. Temporary workers are not employees of such firm; rather, they are registered as employees of companies that supply workers to other companies. In this sense, all the labor rights of the temporary workers shall be borne by these specialized companies. The term of these agreements is three months with the possibility of extension until the maximum of nine months. Any extension must be duly explained to the Labor Ministry.

DEFINITION OF EMPLOYEE

In accordance with the CLT, an employee is defined as a "person who provides services on a regular basis to an employer, at the

employer's direction and upon receipt of wages."

The following categories of workers are not considered "employees" under the CLT.

INDEPENDENT CONTRACTORS

Independent contractors are individuals who render services on an occasional and independent basis to third parties, without an employment relationship. In order to be considered an independent contractor, the individual should not be controlled by the contracting party (e.g., managers appointed in the corporate documents of the company). Independent contractors are entitled to freely negotiate their remuneration with the contracting party and no labor rights are due to such workers. For purposes of mitigating any labor risks, the contracting party must prevent any of the characteristics of employment relationship, avoiding any direct subordination and not controlling the workday of the independent contractor.

APPRENTICES

An apprentice is defined as a student from technical schools, between the ages of 14 and 24, subject to professional training for the job.

Employers are obliged to hire a number of apprentices equal to 5 percent of the total number of employees who perform technical services to the company. However, there are some limitations on the employment of apprentices.

The validity of an apprenticeship agreement is conditional on its proper registration in the CTPS. An apprentice is also entitled to a minimum wage. The term of an apprenticeship agreement shall not exceed two years, although the agreement may be terminated with cause or at the request of the apprentice before the expiry of such term.

OUTSOURCING

Companies are allowed to outsource ancillary services (Precedent No. 331, III Superior Labor Court - TST), but not their core businesses — i.e., those services directly related to their corporate purpose cannot be outsourced, which is considered unlawful by the TST and the Labor Ministry ("MTE").

In order to avoid labor risks, the company should only enter into an outsourcing agreement with specialized and reputable companies, and it should do so only for services that are not directly related to the company's main purpose (e.g., security, cleaning services, IT and other support services).

Bill of Law 4330/2004, which is still under discussion in the legislature, would allow for the possibility of outsourcing ancillary services.

Where an individual who is employed by a third party through an outsourcing agreement is directed by the contracting company, there is a risk that individual will file a claim against the company before the labor courts demanding the recognition of the employment relationship. This can result in the company being held liable for salaries, vacations, Christmas bonuses (called "13th salary"), social security (INSS) and other labor benefits.

Also, for purposes of avoiding labor risks, it is advisable to include a provision in the outsourcing agreement requiring the outsourcing company to present, on a monthly basis, a copy of the receipts of the payment of the employees' labor rights and contributions, subject to the retention of its fee. This provision is advisable due to the fact that the company may also be liable for the payment of all labor rights and contributions (e.g., FGTS – Severance Indemnity Payment Fund, INSS, income tax).

Basic Rights of Employees

SALARY AND OTHER REMUNERATION

Under the Brazilian labor law, any individual rendering any kind of service is entitled to compensation, which is known as "*salário*" (wage or salary) and is usually paid on a monthly basis. The wage paid to an employee may never be less than the minimum wage or than the minimum wage level (*piso salarial*) established in the collective bargaining agreement for the relevant professional category.

For all legal purposes, in addition to cash, salary includes food, housing, clothing and any other benefits the company provides habitually to employees by explicit or tacit agreement. Thus, these benefits should be included in the total amount that should be used as basis for the calculation of the contractual and severance payments, such as 13th salary, vacations and Employee Severance Indemnity Payment Fund (FGTS). In the same manner, it will serve as basis for calculation of income tax and social security contribution.

Once these benefits are considered part of the employment contract for all legal purposes, they become permanent and cannot be withdrawn by the employer or waived by the employee.

WORKDAY

For employees working for private entities, the maximum workday is eight hours and the maximum workweek is 44 hours. In Brazil, employees are entitled to at least one rest period within the working day (minimum of one and up to two hours to lunch and rest), and also to a rest period in between working days (at least 11 uninterrupted hours to rest).

For some specific professional categories, called "*categorias profissionais diferenciadas*", collective labor bargaining can establish a different length for the workday or workweek.

Work performed beyond these time limits is considered overtime. Up to two hours' overtime per day may be rendered by the employee. The minimum compensation for overtime is 50 percent higher than the normal hourly rate.

WEEKLY REMUNERATED REST PERIOD

All employees have the right to one paid rest day, which should preferably fall on a Sunday. In the case of employees who receive their salary on a monthly basis, the paid rest days are included in the monthly salary. The Labor Courts held the understanding that overtime on Sundays or holidays must correspond to remuneration equal to 100 percent of the regular hourly rate.

VACATIONS

After completing one year of service in the same company (acquisition period), every employee is entitled to 30 vacation days to use throughout the next year, as long as the employee has not been absent from work more than five times during this period without justification. The vacation should be granted to the employee within 12 months of completing the initial year of service. The employee may sell 10 vacation days back to the employer and use the remaining 20 days.

VACATION BONUS

At the time they take their annual vacation leave, employees have also the right to receive an additional bonus payment equal to one-third of their normal monthly wage.

13TH SALARY (ALSO KNOWN AS "CHRISTMAS BONUS")

The employer shall pay to the employee a salary bonus, known as Christmas bonus, corresponding to a payment equal to the employees' monthly wage. The Christmas bonus shall be paid to the employee as follows: 40 percent in November and 60 percent in December.

UNHEALTHY CONDITIONS, RISK AND NIGHT PREMIUM

When the employment includes activities considered by law to be hazardous, an additional monthly allowance will be paid by the employer. Such allowance should be equivalent to 10 percent, 20 percent or 40 percent of the minimum wage, depending on the degree of hazard involved.

When the employment includes dangerous activities, such as those involving contact with explosives or flammable materials, an additional payment in compensation for the risk involved will be paid by the employer at 30 percent of the employee's salary.

Employees who work between 10 p.m. and 5 a.m. are entitled to receive an additional allowance of at least 20 percent above the daytime working hour (hourly rate).

EMPLOYEE TENURE

Employees who are pregnant, members of a union or CIPA (Accidents Prevention Internal Committee) or on sick leave due to work-related accidents are entitled to certain employment tenure protections.

EMPLOYEE SEVERANCE INDEMNITY PAYMENT FUND

Under the employee Severance Indemnity Payment Fund system (FGTS), an employer must deposit the equivalent of 8 percent of each employee's compensation for the previous month into a blocked bank account that was opened in the employee's name.

A contract terminated by the employer without just cause entitles the employee to withdraw the FGTS deposits, together with interest, monetary adjustment and a further 40 percent calculated over the total amount deposited by the employer. Additionally, the employer must pay a 10 percent penalty to the government.

Expatriates

The employment relationship with an expatriate requires the existence of a written agreement. In addition, the expatriate is required to apply for a permanent or, in certain cases, a temporary visa. The temporary visa is used for employees who will work in the country for short periods of time.

The expatriate worker can perform technical services under a signed technical assistance agreement between a Brazilian company and a foreign company. Because the technicians will have an employment relationship with the foreign company, they are supposed to continue receiving compensation abroad, and there would be no need for an employment agreement with the Brazilian company.

In order to obtain the permanent visa, the company will have to comply with the following requirements, established by the MTE:

- Prove it received a transfer of "know how," or of any other capital goods, with the value equal to or greater than USD50,000, or the equivalent in any other currency, for each nonresident appointed for a management position. For this purpose, the company must present a copy of the Foreign Capital Registry Certificate (Registry Certificate) issued by the Brazilian Central Bank (BACEN). In this case, the company must

also undertake to create at least 10 employment posts in a two-year period after the company's formation, or after the investment of the nonresident appointed as the manager or officer of the company; or

- Prove the receipt of investments equal to or greater than USD200,000, or the equivalent in any other currency, for each nonresident appointed for a management position, presenting for this purpose (i) the foreign exchange contract issued by the receptor bank of the investment and (ii) the amendment of the Articles of Association, duly registered with the competent Commercial Registry, proving the investment in the company and the appointment of the manager conditional on his permanent visa being issued.

FOREIGNERS WORKING IN BRAZIL AND VISAS

At least two-thirds of a company's employees must be Brazilian. This ratio also applies to the company's payroll, so that two-thirds of the expenditure on compensation must be destined for Brazilian citizens.

Under Brazilian law, foreigners with tax residence in Brazil are granted the same rights as Brazilian citizens. However, the granting of work visas in Brazil depends on certain requirements.

Law No. 6,815/1980 requires that foreigners must obtain a visa before entering the Brazilian territory. Brazil's immigration policy is coordinated by the Brazilian Immigration Council, a body of the Labor Ministry.

The granting of any kind of visa is conditional upon national interests. Brazilian law contemplates the following types of visas: (i) transit; (ii) tourist; (iii) temporary; (iv) permanent; (v) courtesy; (vi) official; and (vii) diplomatic.

Transit visas, which allow a stay for a non-extendable 10-day period, are required for all foreigners in transit in Brazil, except for those stopping on national soil only in order to get a connection of any sort.

As the Brazilian government has signed several treaties for reciprocal treatment regarding the entry and exit of tourists, some nationalities are not required to obtain a tourist visa.

Temporary visas are available for a variety of individuals, including (i) those on cultural trips; (ii) those on business trips; (iii) sportsmen; (iv) artists; (v) students; (vi) professionals contracted to work for a local organization or to render services for the Brazilian government; (vii) mass media correspondents; or (viii) missionaries. These visas authorize foreigners to stay in Brazil for a specified period of time. The visa holder may also leave and return to the country within the original period of stay. The granting and validity of a visa does not prevent foreigners from applying for and obtaining new visas of the same or a different type.

Foreigners intending to engage in any remunerated activity in Brazilian territory must apply for a temporary or permanent visa.

Temporary visas will only be granted to professionals who meet the requirements of the Brazilian Immigration Council and have a work contract approved by the Labor Ministry, unless they are visiting Brazil to render services to the Brazilian government.

Brazilian legislation imposes certain restrictions upon the holders of temporary visas, such as not being permitted to become managers of companies.

Dependents of temporary visa holders and foreign students may not engage in remunerated activities. Foreigners who have entered Brazil on temporary visas but with work contracts may only engage in remunerated activities with the companies that contracted them.

TECHNICAL SERVICES

It is also possible to obtain a temporary visa where the transfer of technology is contemplated in an agreement between a Brazilian and a foreign company. Brazilian law states that the demand for such technical services must be specific and sporadic.

The technical assistance or technology transfer agreement must be registered with the National Industrial Property Institute. The temporary visa will be valid for up to two years, extendable for an equal period, and cannot be transformed into a permanent visa.

EMPLOYMENT CONTRACTS WITH FOREIGNERS

Foreigners may apply for a temporary visa to engage in remunerated activities in Brazil under an employment contract entered into with a Brazilian company. The respective application must be submitted to the Labor Ministry for review, accompanied by documents showing evidence of the professional skills and expertise of the foreigner, in addition to his/her suitability for the activities to be performed within Brazilian territory.

Visa requirements include: (i) two years' experience in the practice of a high-level profession or (ii) three years' experience in the practice of an average-level profession, with a minimum education of nine years. The Brazilian company must provide the Labor Ministry with the reasons for hiring foreigners for the relevant positions.

PERMANENT VISA

A permanent visa will be issued to a foreigner who intends to stay in Brazil for an indefinite period. To obtain a permanent visa, the foreigner must demonstrate certain levels of qualification. The skills offered by the foreigner have to be specialized.

A foreigner holding a permanent visa may leave the country and return without an entry visa, provided that no more than two years have elapsed since that person's departure from Brazil.

As was described in the "Expatriates" section, above, the granting of permanent visas to foreigners who are officers or executives, or who hold other management positions in Brazilian companies, will be subject to other requirements.

Termination of Employment Contract

GENERAL ISSUES

Employment agreements can be terminated by either party. The employer may dismiss an employee with or without just cause. Termination for just cause may result from violation of the employee's legal, contractual or behavioral duties, giving the employer the right to terminate the employment agreement. "Just cause" events are determined by law and include such grounds as negligence, misdemeanor, insubordination, abandonment of the job and disclosure of company secrets.

An employment relationship also may be terminated by the employee's resignation, the employer's default and other factors that trigger the rights to possible indemnification.

PRIOR NOTICE OF TERMINATION

Law No. 12,506/2011 establishes that the prior notice corresponds to the period of work of the employee for the employer. Thus, until one year of service, the employee is entitled to 30 days of prior notice; after one year, the employee is entitled to three days' notice per year of service, until the maximum of 90 days.

If an employer wishes to terminate an employment contract without cause, the employer must either give the employee the corresponding days of prior notice or indemnify the employee for such period. During the notice period, the working day of the employee should be reduced by two hours per day or by seven consecutive days, without prejudice to the payment of the employee's entire salary.

EMPLOYEE RIGHTS ON DISMISSAL

DISMISSAL WITHOUT JUST CAUSE

Fixed-Term Contract

No additional indemnity is payable to an employee on the termination of the employment relationship due to the expiration of the fixed term. However, if the employee is terminated without cause before the contract expires, an indemnity in the amount equivalent to half of the salary due to the employee for the unexpired portion of the contract must be paid.

Indefinite-Term Contract

For contracts without a fixed term, upon termination by the employer without just cause, the employee shall have the following rights:

- Outstanding salary for the days worked during the month;
- Prior notice, which may be converted into the equivalent in cash, if the company does not intend to allow the employee onto the company premises during the notice period;
- The acquired vacation period (if the last period was not taken) plus an additional one-third, amounting to one and one-third month's salary;
- Vacation rights proportional to the time worked after the last full vacation period, plus the corresponding additional one-third;
- Proportional 13th salary (calculated on the salary earned during the last month of employment);
- FGTS deposits due at the termination; and
- FGTS penalty equaling 40 percent of the total amount deposited in the employee's FGTS account during the employment contract, plus 10 percent on the said amount to the government.

DISMISSAL WITH JUST CAUSE

In the event of dismissal for cause — in either a fixed-term contract or an indefinite term contract — the employee will not be entitled to the FGTS penalty, prior notice, pro rata 13th salary or vacation pay. The company will be liable only for the amount already due to the employee, such as the salary balance corresponding to the days worked and vacations not enjoyed. In the case of a dismissal for cause, the employer will be required to provide sufficient evidence regarding the violation that caused the dismissal.

RESIGNATION

A resigning employee is entitled to all the severance pay listed above, except for prior notice and the FGTS penalty.

Employer's Obligations

GOVERNMENT CONTRIBUTION

Based on the monthly salary earned by the employee, the employer must pay:

- 8 percent to the FGTS;
- 20 percent to the INSS;
- 3.30 percent to several public and private institutions, as follows:
- INCRA — 0.20 percent;
- SENAI/SENAC — 1 percent;
- SESI/SESC — 1.50 percent;
- SEBRAE — 0.60 percent;
- 2.50 percent as education salary; and
- 2 percent as a compulsory insurance for labor accident (SAT) paid to the Social Security (average).

Depending on the type of activity developed by the employer, the above contributions mentioned may be subject to specific charges and destinations.

UNION DUES

Each January, the employer shall pay union dues proportional to the capital of the employer's company and its revenues. The payment of the union dues is based on the number of employees who belong to a determined economic, occupational or professional category represented by the union.

EMPLOYER'S WITHHOLDING OBLIGATIONS

The employer is responsible for withholding the following taxes and contributions:

- Between 8 and 11 percent of the employee's monthly salary to the INSS;
- Personal income tax ranging from 15 to 27.5 percent, depending on the amount of the employee's monthly salary; and
- One-thirtieth of each employee's monthly salary to the employee's union, to be paid once each year.

Brazilian labor laws grant all workers the right of protection against arbitrary dismissal, a minimum wage, unemployment insurance, maternity and paternity leave and occupational accident insurance.

Intellectual Property

The protection of intellectual property is regulated by federal law and international treaties.

Brazilian legislation conforms to most of the standards established by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), an international treaty entered into by the members of the World Trade Organization (WTO) and incorporated into Brazilian regulations by Decree no. 1.355/94.

Industrial Property

The Brazilian Industrial Property Institute (INPI) is the governmental body responsible for issuing and enforcing the rules on industrial property rights.

According to the Brazilian Industrial Property Law (Law no. 9.276/96) protection shall be granted to trademarks, patents, utility models and industrial designs. False geographical indications and acts of unfair competition shall be prohibited. This law introduced certain innovative concepts, such as the grant of patents for prescription drugs, chemicals, pharmaceuticals and food products, and the acknowledgment of rights inherent to well-known trademarks.

Company names are also protected as industrial property, but are regulated by specific rules.

TRADEMARKS

All trademark rights derive from registration in Brazil. As a general rule, a trademark is awarded to the first party that applies for the registration. Brazilians or foreigners can apply for trademark registration at INPI.

A Brazilian trademark is used by Brazilian or foreign companies to distinguish products or services related to their activities.

Before applying for a trademark in Brazil, a foreign company should search for existing trademark registrations and unregistered trademarks being used in the market. The Brazilian patent and trademark office uses the Nice International Classification System in order to classify trademarks.

However, trademarks that are well-known in the relevant industry are granted protection under Brazilian law, regardless of registration in Brazil, pursuant to the Paris International Convention and the Industrial Property Law.

Foreign trademarks are registered under the terms of the Paris Convention and, consequently, are granted a priority term of six months, counting from the date of the trademark application in the country of origin, for their owners to apply for the same trademark in Brazil.

The main reason for registering a trademark within the priority period set out by the Paris Convention is that the date of filing in the country of origin will also be valid in Brazil. However, the Paris Convention benefits will not apply if a trademark is applied for in Brazil by a foreign person without a priority claim under the Paris Convention.

Once the trademark is registered, the foreign company has five years to start using it in Brazil. The company must use the trademark in the exact form in which it was registered and only on the goods or services listed on the registration certificate. If the trademark is not used, third parties may request its cancellation for lack of use.

If the trademark is used by its owner or a licensee in Brazil, registration will be valid for 10 years and this protection term may be renewed for successive 10-year periods.

PATENTS AND UTILITY MODELS

A patent is granted when an invention is novel, involves an inventive step or is capable of industrial application. To comply with the novelty requirement, the invention must be new to the world's body of technical knowledge. An invention involves an inventive step when it is not obvious to a person of ordinary skill in the relevant area. Industrial applicability is satisfied when the invention can be manufactured or incorporated into practice in the respective industry.

An item of practical use, or any part thereof, is patentable as a utility model provided that it is capable of industrial use, presents a new shape or layout and involves an inventive act that results in functional improvement in terms of use or manufacture.

Patents provide protection for 20 years (for inventions) or 15 years (for utility models), counting from the date of filing of the application at INPI.

Patent applications filed before INPI must contain the inventor's claims, a complete description of the invention, with a drawing (if appropriate), and evidence of compliance with all legal requirements. INPI will then proceed with a preliminary formal review and a filing certificate will be issued. This application will be kept confidential for 18 months, after which it will be officially published. The inventor has 36 months to request a technical examination of the patent application. If no such request is made, the application will be dismissed. The letters patent will be issued after granting of the patent application and may be canceled by court order at any time.

UNFAIR COMPETITION

Besides the above-mentioned protections, the Industrial Property Law criminalizes acts of unfair competition, which acts are punished by imprisonment or fine.

Unfair competition is characterized by the intention of a party to discredit another's business or to create confusion for the consumer with other products. Unfair competition entitles the aggrieved party to seek reparations in the civil sphere and impose criminal liability on the offender.

Among other events, unfair competition is asserted against whoever:

- Publishes, gives or discloses false information about a competitor or itself;
- Uses illegal means to attract another's clientele;
- Misleads the consumer through advertising campaigns that have a very strong similarity either to the competitor's advertising campaign or to the competitor's product, itself;
- Sells, displays or offers for sale, in another's container or wrapper, an adulterated or counterfeited product, or trades it for another product of the same type, even if not adulterated or counterfeited;
- Gives or promises money or other assets to employees of a competitor, encouraging such employees to neglect their duties to the detriment of the competitor; and
- Makes an unauthorized disclosure of, or exploits or uses, any confidential matter, information or data used in industry, trade or service activities to which the person had access as a result of a contractual or employment relationship, even after termination of the corresponding contract, except for any matter, information or data that is available to the public or is clearly available to an expert on the matter.

TECHNOLOGY TRANSFER, PATENT AND TRADEMARK LICENSE AGREEMENTS

Technology transfer, patent, trademark and franchise license agreements must be recorded with INPI to be enforceable in Brazil. Only after receiving INPI's approval do these agreements become binding on third parties.

Generally, technology transfer agreements deal with the acquisition of know-how and technology not protected as an industrial property right; they provide for access to techniques, planning and programming methods, research, studies and designs.

Remuneration for the technology to be transferred may be established at an overall price, a price per item sold, a percentage of the profits or a percentage of the net sales, less taxes, fees and other charges agreed to by the parties.

As a rule, technology transfer agreements must specify their object and clearly describe the method to be adopted for the actual transfer of technology. Patent or trademark license agreements must set out the conditions for actual use of the patents regularly filed or granted in Brazil or for the licensing of the respective trademark or trademark application in Brazil.

Furthermore, patent and trademark licenses must specify whether the license is granted with exclusivity on a remunerated or royalty-free basis, and if sublicensing is allowed. The term of effectiveness of such agreements cannot exceed the validity of the patent or trademark registration.

FRANCHISING

Franchising in Brazil is regulated by Law no. 8.955/94 and by the Brazilian Association of Franchising Auto Regulation Code.

Law no 8.955/94 defines the franchising system and governs the relationship between franchiser and franchisee, from the preliminary negotiation until a franchising agreement is executed.

The key point of the law appears in Article 3, which deals with the obligation of the franchiser to furnish to the potential franchisee the Franchise Offering Circular (adaptation of original Uniform Franchise Offering Circular or "UFOC").

This offering circular is a document intended to provide the future franchisee with a very clear scenario of the business. Among other information, this offering circular must contain: (i) financial information; (ii) historical summary; (iii) detailed description of the franchise; (iv) detailed description of the necessary initial investment; and (v) a model agreement.

The offering circular has to be given to the potential franchisee 10 days before the franchising agreement or pre-agreement is signed, or before payment of any kind of tax by the franchisee.

Furthermore, Law no. 8.955/94 reiterates and confirms the sentiments that were emerging from the Brazilian Tribunals before the law was issued. These sentiments related primarily to the lack of an employment relationship between franchiser and franchisee or between the franchiser and the franchisee employees — except in cases where an employment agreement obviously exists with or without collusion between the parties involved.

Copyright

Copyright in Brazil is regulated by Law no. 9.610/1998, pursuant to which all creative works, however expressed, are protected as intellectual property. Copyright is divided into two main branches: moral rights and property rights.

Moral rights ensure that the work is bound to its author; these rights are not transferable. Such rights include (i) the

right to claim authorship of the work at any time, (ii) the right to have the author's name stated on the work and (iii) the right to object to any modification of the work that would be prejudicial to the author's reputation or honor.

On the other hand, property rights are those related to the use, enjoyment and disposal of an intellectual work. These rights are transferable to third parties, including to legal entities.

The author of the work or, in the absence of proof to the contrary, the person who purports to be the author, or the person whose name is included on the work, is deemed to be the copyright owner under Brazilian law.

Any person who adapts, translates, compiles or edits a work that is in the public domain may claim copyright to such work, but this same person cannot prevent publication of another adaptation, translation, compilation or edition of the original work.

A person or an entity may own copyrights, subject to the authorization or assignment by the respective author.

Registration of copyrights in Brazil is optional and not essential for the author's protection. However, in order to secure his or her rights, and as evidence of ownership, an author may register the work at specific agencies.

Civil and criminal actions may be brought against anyone infringing another's copyrights. The civil courts prohibit the publication of any work that infringes copyright and may also award damages to the copyright owner. Copyright infringement is also punishable as a criminal offense.

Environmental Laws

Overview

Prior to 1981, the Brazilian environmental legal system was different from the current protectionist framework. The concept of pollution was limited to industrial emissions that did not conform to legal and technical standards and guidelines. This idea was founded on the understanding that industrial activities would cause an impact to the environment; thus, margins of tolerance were established within which pollutant emissions could be allowed.

In 1981, Federal Law No. 6.938/1981 established the Brazilian National Environmental Policy, a framework which encompassed a comprehensive and significantly different approach which ended tolerance for pollutant emissions and imposed strict rules for repairing environmental damage.

The new framework is one of strict and jointly shared liability. Pollution tolerated under established standards may cause environmental damage and, in such an event, the polluter is liable to repair or provide compensation for the damage, regardless of guilt or legality of the act. In this sense, the industry solely bares the risks inherent to its activities. Therefore, only causation must be proved (cause-and-effect chain) in order for the polluter to be held liable. Due to the joint nature of liability, anyone who has directly or indirectly contributed to the damage may be held liable for the entirety of the damage, regardless of their degree of participation.

In addition, Brazilian Environmental Policy empowers the Public Prosecutor's Office to act in defense of the environment, making them responsible to defend public interests and the environment. Federal Law no. 7.347/1985 extended this authorization to environmental entities (NGOs); it created a specific type of lawsuit expressly aimed at the defense of environmental interests, among others: the class action suit (*ação civil pública*).

Constitutional Law

Article 225 of the Brazilian Constitution also emphasizes the need for environmental protection, stating that every person has the right to an ecologically balanced environment. Environmental preservation and protection is the responsibility of the government, as well as of the entire community.

The Constitution established a series of duties to be imposed on public authorities, including: (i) preservation and recovery of species and ecosystems; (ii) preservation of the variety and integrity of genetic heritage and supervision of entities engaged in genetic research and manipulation; (iii) environmental education at all educational levels, and development of public awareness about preservation of the environment; (iv) definition of specially protected areas; and (v)execution of an environmental impact assessment for the installation of activities that may cause significant environmental degradation.

The power to legislate on the environment in Brazil is established by Article 24 of the Constitution. This provision establishes concurrent legislative jurisdiction of the federal government, states and federal district.

If there is no federal law regulating a specific matter, states have full legislative competence for regulating said matter. The existence of a general federal law suspends the effect of the state law in the case of discrepancy. However, states are still allowed to introduce new forms of environmental protection, and they are also able to create more severe laws than those established at the federal level. Based on a broad interpretation of the Constitution as a whole-- Article 30 specifically-- municipalities are also entitled to legislate on environmental protection when related to local issues.

Article 23 of the Constitution establishes that all three administrative levels (federal, state and municipal) are responsible for the enforcement of environmental laws. Thus, federal, state and municipal environmental agencies are involved with this activity.

Complementary Law No. 140/2011 establishes guidelines for the cooperation between the administrative levels, including rules regarding the responsibility to conduct the environmental licensing proceedings on an administrative level. Federal Decree No. 8,437/2015 regulates the aforementioned Complementary Law in respects to federal environmental licensing.

Brazilian National Environmental Policy

Federal Law No. 6.938/1981, which established the Brazilian National Environmental Policy (Política Nacional do Meio Ambiente or the "PNMA") is a framework that lays out the broad foundation on which Brazilian environmental law sits.

In order to achieve its objectives, the PNMA established the National System for the Environment (Sistema Nacional do Meio Ambiente or "SISNAMA"), which includes all of the environmental agencies at the federal, state and municipal levels that are responsible for the protection and improvement of environmental quality:

- Superior Body: The Government Council is responsible for preparing national policy and guidelines related to the protection of the environment;
- Consultative and Deliberating Body: The National Council for the Environment (Conselho Nacional do Meio Ambiente or "CONAMA") is the federal normative body. CONAMA conducts studies and proposes environmental standards, guidelines and regulations;

- Central Body: The executive secretary of the Ministry of the Environment (Ministério do Meio Ambiente or "MMA") is the executive branch agency responsible for formulating national policy and government guidelines on the environment, as well as planning, coordinating and monitoring activities related to the Brazilian Environmental Policy;
- Executive Agencies: The Federal Environmental Agency (Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis or "IBAMA") and the Federal Conservation Agency (Instituto Chico Mendes de Conservação da Biodiversidade or "ICMBio") are responsible for the execution and enforcement of all federal environmental laws;
- State and Municipal Agencies: State and municipal agencies regulate the use of land and other environmental resources, conduct inspections and grant licenses in their respective jurisdictions.

Environmental Liabilities

Article 225, paragraph 3, of the federal Constitution, states that in relation to "procedures and activities considered as harmful to the environment shall subject the infractors, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damages caused." Essentially, the federal Constitution outlined environmental liability in three distinct fields: civil, administrative and penal.

Environmental Civil Liability, which is mainly tied to the concepts of pollution and the polluter, is strict, jointly and severally shared and unlimited. Regarding its strict nature, according to Article 14 (1) of the National Environmental Policy Act, culpability of the polluter need not be proven in order to establish an obligation for the repair or payment of compensation for environmental damages. Any indication of a causal relationship between the activity being carried out and the creation of pollution is considered sufficient evidence. The obligation to repair or pay compensation for any environmental harm may be charged, in its entirety, to anyone who has directly or indirectly contributed to its occurrence, regardless of their degree of participation in the pollution . The parties that are meant to pay the repair/compensation costs are granted the right to demand contribution from other polluters/contributing parties in order recover said costs.

Environmental Administrative Liability subjects violators to administrative sanctions, including warning, fines, suspension of activities, restriction of rights and other sanctions described in federal, state and municipal legislation. It is enforced by administrative entities only, regardless of their judiciary powers, through the application of the aforementioned self-enforceable legal sanctions. While administrative fines may reach BRL50,000,000.00, restriction of rights may result in penalties such as suspension or cancellation of registration/permit/authorization; restriction or suspension of tax benefits/incentives or credit from official institutions; and prohibition of execution of contracts with public authorities. In contrast with civil liability, environmental administrative liability may occur regardless of whether or not pollution is generated (e.g. one may be sanctioned with a fine for operating a certain activity without an environmental permit, even though this irregular operation did not cause any pollution).

Lastly, environmental Criminal Liability is also covered by Brazilian legislation, which establishes criminal sanctions applicable to activities harmful to the environment. The core element of accountability for the application of criminal sanctions is the existence of fault on the part of the agent that committed the crime (negligence, imprudence, malpractice or willful misconduct), contrary to civil environmental strict liability. Liable parties may be sanctioned with fines, rendering of community services, restriction of rights and, in worst cases scenarios, imprisonment. Executive officers, directors, administrators, managers etc. may also face environmental criminal liability along with companies.

According to National Environmental Policy Act, the entities and funding bodies (including private banks) and government incentives will only extend credit if the activities are environmental licensed. The Central Bank of Brazil - BACEN Resolution No. 4,327/2014 deals with the implementation by financial institutions. of policies concerning social and environmental responsibility.

Environmental Licensing

Pursuant to Article 10 of the PNMA, through the license-granting process, the official environmental agencies can control the location, installation, operation and expansion (alteration) of projects and activities that use environmental resources. This allows the agencies to better understand the potential for pollution or environmental degradation. The use of environmental licenses seeks to ensure that preventive and control measures are adopted in projects, making them compatible with sustainable development. The licensing process can establish the conditions that allow a project to be implemented, with the project owner being bound to comply or face penalties such as having the licenses cancelled or suspended. When considering whether to issue an environmental license, the environmental agency assesses the impact of the project — including its potential to cause environmental damage — and proposes mitigation, recovery or compensation measures.

Together with the Brazilian Environmental Policy, CONAMA Resolution No. 237/1997 regulates the Environmental License System at the federal level, setting guidelines to be observed at the state and municipal levels.

The procedure followed in order to issue an environmental license can be conducted at all administrative levels, with jurisdiction being defined mostly according to the extent of the actual or potential influences of an activity on the environment. State environmental agencies and the Federal Environmental Agency are in charge of most of the environmental licensing procedures. Municipalities are only allowed to take part in the process once they have met minimal infrastructure requirements.

In any event, the process to issue an environmental license shall always consider the technical expertise of other environmental agencies/entities involved in the license process as well as the opinion of other interested federal, state and municipal agencies, as per Resolution CONAMA No. 237/97. It is possible that a certain activity — depending on its characteristics, location and the quality of assets and interests thereby affected — shall meet the requirements and be examined by the environmental, forest, traffic and infrastructure, health, culture (historic and cultural heritage) agencies, among others, at the three administrative levels.

According to Brazilian environmental laws there are three types of environmental licenses:

- Preliminary License (LP) - granted during the preliminary stage of planning of the enterprise or activity by approving its location and design, certifying the environmental viability and establishing the basic requirements and conditions to be met in the coming phases of their implementation;
- Installation License (LI) - authorizes the installation of the project or activity in accordance with the specifications contained in the approved plans, programs and projects, including environmental control measures and other restrictions
- Operating License (LO) - authorizes the operation of the activity or venture, after the verification of effective compliance with the previous licenses, with environmental control measures and conditions fully met for the operation.

Environmental licenses may be issued separately or subsequently, depending on the nature, characteristics and phase of the project or venture. (CONAMA Resolution No.237/1997)

ENVIRONMENTAL OFFSETTING

In order to obtain an environmental license for activities deemed potentially damaging to the environment by an official environmental agency (based on the analysis of the EIA/RIMA), the project owner must pay an environmental offset, which will be invested in conservation units (e.g., national parks and biological reserves), pursuant to Article 36 of Federal Law No. 9.985/00.

The value of the environmental offset is established by the environmental agency issuing the license, according to the "ecosystem impact level" of the proposed activity, pursuant to Article 31-A of Federal Decree No. 6.848/09. Said value must be no greater than 0.5 percent of the project's total costs.

Natural Resources

PROTECTED AREAS

PERMANENT PRESERVATION AREAS

Permanent Preservation Areas (APP) are rural or urban areas with the function of providing environmental services as described in Article 3 of Federal Law No. 12,651/2012 (Forestry Code). APPs can be established in two ways: by the enactment of the Forestry Code itself, which provides a list (in Article 4) of APPs such as river banks, mountain tops and areas with mangrove vegetation; or by a specific legislative act for other areas also listed in the Code (in Article 6). An important feature of APPs is that they must remain untouched, except for in cases of public utility, social interest and in cases of low environmental impact, which are outlined in the Forestry Code.

FORESTRY

Forest Reserves (RF) are specially protected areas located within rural estates. RF are meant to promote the sustainable use of natural resources and the conservation and rehabilitation of ecological services and biodiversity. The Forestry Code (Article 12) requires that rural landowners maintain a fixed minimum percentage of natural vegetative cover on their property, ranging from 20 to 80 percent, depending on the region where the property is located (Amazon Forest = 80 percent; Amazon Savannah = 35 percent; all other areas = 20 percent). In RF areas, the clearing of forests is not authorized; the only authorized use of the land is through a sustainable forestry regime (Article 17, paragraph 1), according to the principles and criteria established by Federal Decree No. 5.975/2006.

The location of RFs must be approved by the state environmental agency, which must take into account the social function of the property , its proximity to other RFs, APPs, conservation units or other specially protected areas, and any existent environmental spatial planning instrument (Article 14). The Forestry Code also requires that RFs be

registered in the Rural Environmental Registry – *Cadastro Ambiental Rural* (Article 18).

According to the Forestry Code (Article 66), those landowners that did not meet the RF minimum percentage of vegetative covering of their property by July 22th, 2008 are required to adopt, separately or jointly, depending on the case, the following measures: (i) replant vegetation to comply with the RF obligation; (ii) allow the natural regeneration of vegetation; and/or (iii) offset the RF by, among other options, replanting vegetation in another property located in the same ecosystem or buying a Environmental Reserve Quota.

CONSERVATION UNITS

Conservation Units are specially protected areas divided into two broad groupings: Integral Protection Units (IPU) and Sustainable Use Units (SUU). These groupings are divided into 12 subcategories that range from areas where no kind of economic activity is allowed to less restrictive subcategories where economic activities are permitted, but restricted in varying degrees.

This network of conservation units (*Sistema Nacional de Unidades de Conservação* or "SNUC") was created in 2000 by the Brazilian System of Conservation Units Act (Federal Law no. 9.985/2000, or the "SNUC Act") and further regulated in 2002 by the Brazilian System of Conservation Units Decree 2002 (Federal Decree no. 4.340, or the "SNUC Decree").

While the IPU grouping relies on an absolute preservation approach composed of five subcategories which allow no economic activity (only public visitation and scientific research activities are allowed), the SUU grouping is composed of seven subcategories, which are generally privately owned, and utilize a sustainable development approach. The conservation units are created through specific laws or decrees.

Unauthorized interference in specially protected areas or lack of compliance with its regulations may subject the transgressor to civil liability (if environmental damage occurs), administrative sanctions (such as fines) and, depending on the circumstances, criminal liability (of individuals or companies).

WATER RESOURCES

Certain uses of water resources are subject to authorization from official agencies: the National Water Agency (Agência Nacional de Águas – "ANA") for federal waters and state agencies for state waters , as outlined in Federal Law No. 9,433/97, Federal Decree No. 24,643/34 and specific state laws.

There are specific regulations in relation to water quality standards, such as CONAMA Resolution No. 357/2005 and CONAMA Resolution No. 430/2011.

Any abstraction of water or sewage discharge into bodies of water without authorization/ concession issued by an official body may subject the transgressor to sanctions provided for in the applicable environmental legislation.

OIL & GAS

As stated in applicable laws CONAMA Resolution No. 23/1994, CONAMA Resolution N. 350/2004 and MMA Ordinance No. 422/2011, among others, the specific licenses required for the regular installation and operation of oil & gas upstream activities in Brazil are as follows:

- Seismic Survey License authorizes the execution of seismic data acquisition;
- Preliminary License For Drilling authorizes the drilling activity and subjects, the entrepreneur to the provision of the Environmental Control Report – RCA , where he must report on the intended activities and the indicate the demarcation of the area of intended operation;
- Production License For Research authorizes the production of research on the economic viability of the field, by introducing the entrepreneur to the provision of the Environmental Feasibility Study-EVA;
- Installation License authorizes — after the approval of EIA or RAA and the weighing of other environmental studies in the area of interest — the installation of units and systems necessary for production and outflows;
- Operating License authorizes — after the adoption of the Environmental Control Project-PCA — the beginning of the operation of the venture or the development of units, facilities and systems related to the activity in the area of interest.

In order to issue the licenses described above, the official environmental agency, some studies are compulsory, such as the Environmental Impact Study.

MINING

The National Department of Mineral Production - DNPM, is a federal agency established by Law No. 8,876, of May 2, 1994, under the Ministry of Mines and Energy. The DNPM is responsible for the planning and development of exploration of mineral resources and the control and monitoring of the performance of mining activities throughout Brazilian territory.

Considering the environmental aspects, the main regulations are provided for by: (i) CONAMA Resolution No. 9/1990, which covers environmental licensing procedures;

(ii) CONAMA Resolution N. 10/1990, which also covers environmental licensing procedures; (iii) Federal Decree N. 97,632/1989, which establishes obligations of the Degraded Area Recovery Plan; (iv) CONAMA Resolution N. 237/1997, which establishes obligations for environmental licensing for mining activities.

Indigenous People and Traditional Communities

In relation to indigenous people, the Brazilian Constitution establishes that: "Article 231. Indians shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy, it being incumbent upon the Union to demarcate them, protect and ensure respect for all of their property; Paragraph 1. Lands traditionally occupied by Indians are those on which they live on a permanent basis, those used for their productive activities, those indispensable to the preservation of the environmental resources necessary for their well-being and for their physical and cultural reproduction, according to their uses, customs and traditions.; Paragraph 2. The lands traditionally occupied by Indians are intended for their permanent possession and they shall have the exclusive usufruct of the riches of the soil, the rivers and the lakes existing therein; Paragraph 3. Hydric resources, including energetic potentials, may only be exploited, and mineral riches in Indian land may only be prospected and mined with the authorization of the National Congress, after hearing the communities involved, and the participation in the results of such mining shall be ensured to them, as set forth by law. (...)".

The National Indian Foundation – FUNAI, created by Law No. 5,371, of December 5, 1967, is the official Brazilian indigenous agency. Indigenous people are now able to participate more and more in the environmental licensing proceedings. The FUNAI Ordinance N. 02, of March 27, 2015 establishes some guidelines on environmental licensing for activities intended for placement in indigenously sensitive areas.

In relation to traditional communities, such as quilombolas, the Brazilian Constitution states in article 68 that: ". Final ownership shall be recognized for the remaining members of the ancient runaway slave communities who are occupying their lands and the State shall grant them the respective title deeds." Federal Law No. 7,668, of August 22, 1988 created the Palmares Cultural Foundation - Fundação Cultural Palmares (FCP), which is the first public institution dedicated to the promotion and preservation of and Afro-Brazilian art and culture. FCP Ordinance No. 01, of March 25, 2015 establishes some guidelines on environmental licensing of activities that may be placed in areas occupied by traditional communities.

Waste Management

Waste generated by certain activities must be properly stored, transported and disposed of. Failure to comply with said obligations may lead to civil (repair/indemnify damages caused), administrative (e.g., fines, suspension of activities etc.) and, depending on the circumstances, criminal liability.

Federal Law No. 12,305/2010 establishes the National Policy on Waste Management, which regulates the management and some obligations related to waste management, such as reverse logistics and shared liability for product life cycle. Federal Decree N. 7,404/2010 regulates the aforementioned Policy.

Industrial Pollution

CONAMA Resolution No. 420, of December 28, 2009 establishes criteria and standard values of soil quality regarding the existence of chemical substances and establishes guidelines for environmental management of contaminated areas by these substances as a result of human activities. Specific rules regarding contaminated areas are regulated by State laws.

As explained by environmental civil liability, the obligation to repair or pay compensation for any environmental harm may be charged, entirely, to anyone who has directly or indirectly contributed to its occurrence, regardless of their degree of participation in the pollution.

Please note that the Federal Decree No. 6,514/2008 provides the infraction related to pollution that may result in damages to human health, fauna or flora, which included soil contamination. The fines may vary from BRL5,000.00 to BRL50,000,000.00, depending on the damage caused.

In relation to criminal liability, Federal Law N. 9,605/98 provides for the pollution crime, which is applicable when the pollution caused may result in damages to human health or to fauna and flora. Please note that in relation to environmental criminal, the crime ought to be committed on behalf of the company.

Competition Legislation

53 // Overview

Overview

Brazil has been developing a consistent antitrust policy since 1994, with the enactment of Law 8,884/94. This statute was paramount to set up a merger control system in the country, as well as to foster effective government enforcement against anticompetitive practices.

These efforts were reinforced by the enactment of Law No. 12,529/11 (the current "Brazilian Competition Law" - BCL) on November 30th, 2011, which reorganized the institutional structure of the Brazilian Antitrust System ("SBDC") and implemented a pre-merger review system in the country.

The Brazilian Administrative Council for Economic Defense (known by its Portuguese acronym CADE, for Conselho Administrativo de Defesa Econômica) is now composed of four main bodies, operating within the same agency:

- The General Superintendence ("SG"), which replaced the Secretariat of Economic Law ("SDE/MJ") and the Secretariat for Economic Monitoring ("SEAE/MF") in the investigation of anticompetitive practices and the review of merger cases. The office is led by the General Superintendent, who has the power to (i) issue recommendations on whether or not to convict companies and individuals for anticompetitive conduct; and (ii) either approve or challenge mergers submitted to CADE's review;
- The Administrative Tribunal (CADE's Tribunal), which is composed of one president and six commissioners, is responsible for issuing final decisions on antitrust proceedings concerning anticompetitive practices and merger cases that have been challenged by the General Superintendence ("SG"). These decisions are made by majority vote and cannot be reviewed within the Executive Branch;
- The Department of Economic Studies ("DEE"), which supports both the Tribunal and the SG in complex economic matters; and
- The Attorney's General Office, which provides legal advice for the agency's activities and represents CADE before the Brazilian courts.

MERGER CONTROL

Under the Brazilian Competition Law, a transaction must be submitted for antitrust review if the parties meet the following turnover thresholds provided by article 88: (i) gross turnover in the last financial year in Brazil of at least BRL750 million by one of the economic groups involved; and (ii) gross turnover in the last financial year in Brazil of at least BRL75 million by another economic group involved.[5]

Additionally, it requires that the following types of transactions must be reported to CADE once the turnover thresholds are met: (i) merger between two previously independent companies; (ii) integration of one company into another; (iii) acquisition of tangible or intangible assets; (iv) acquisition of participation; and (v) the execution of a joint venture, consortium or associative contract (except when formed for the specific purpose of participating in public procurement procedures).[6]

With regard to the substantive competitive assessment of transactions, CADE usually follows similar criteria and methods employed by its counterparts in other countries, as detailed in the Horizontal Merger Guidelines, approved in 2001.

Essentially, there are two types of procedures in the merger control system under the Brazilian Competition Law: summary procedures and ordinary procedures, which are adopted by the SG at its sole discretion, according to the complexity of the transaction.

In accordance with CADE's Resolution No. 02/2012, the summary procedure can be applied to transactions that do not raise competitive concerns, which, in turn, will receive a simplified decision by SG. Transactions that meet the revenue criterion but do not fall within the framework of the summary procedure hypothesis shall be evaluated under ordinary procedure. According to Brazilian Antitrust Law, CADE must render a final decision on merger control within the time limit of 330 days. However, the average time to render a decision for merger review usually is of 30 days for summary and approximately 90 days for ordinary procedure cases.

Under the pre-merger review system implemented by Law 12,529/11, transactions subject to merger control cannot be closed before CADE's final clearance. The standstill obligation must be observed by the relevant parties until CADE's final decision. Failure to comply with this regulation makes an entity subject to gun-jumping penalties ranging from BRL60 thousand to BRL60 million.[7]

In certain exceptional circumstances, CADE may allow for the completion of a transaction to take place before its approval. CADE has 30 days from the filing date to analyze such request. However, this is only granted on a provisional and preliminary basis and CADE can impose conditions on the authorization to ensure that the concentration act is reversible until its final clearance.

CARTEL ENFORCEMENT AND PERSECUTION OF OTHER ANTICOMPETITIVE CONDUCTS

The Brazilian Competition Law sets forth that any act which has the objective of or the ability to produce the following effects, even if they never actually occur, constitutes an antitrust violation: (i) to limit, distort or harm free

competition or free initiative; (ii) to dominate the relevant market of goods or services; (iii) to arbitrarily increase profits; and (iv) to abuse dominant position.

Additionally, it lists a number of anticompetitive offenses that include both collusive conduct (which requires an agreement amongst parties) and unilateral practices (actions perpetrated by a single agent with market power).

Based on CADE's precedents, the most serious offence is the hardcore cartel, i.e., agreements among competitors to fix: "a) the prices of goods and services individually offered; b) the production or the commercialization of a restricted or limited quantity; c) the division of parts or segments of an actual or potential market of goods or services through, amongst other things, the distribution of clients, suppliers, regions or time periods; d) prices, conditions, advantages or abstention in public bids".[8]

Other horizontal practices can also be deemed anticompetitive, especially with CADE's recent tendency to pay more special attention to trade associations' suggestions of prices to member companies. With regard to unilateral practices (or abuse of dominant position by large firms), the law sets up a list of potentially anticompetitive conducts that have been construed by CADE in a similar fashion to its counterparts in other countries. Therefore, there has been a high number of investigations and decisions involving predatory pricing, exclusive dealing, conditional discounts, refusals to deal, and other alleged abusive practices.

According to article 31 of the Brazilian Competition Law, individuals, public or private legal entities, as well as to any associations of entities or individuals, whether *de facto or de jure*, incorporated or unincorporated, even if engaged in a business under the legal monopoly system are liable under the statute provisions. Moreover, companies or entities which are part of the same economic group are jointly and severally liable for antitrust violations.

Consequently, companies may face fines from 0,1% to 20% of the gross revenue of its economic group in the last financial year, registered in the economic sector where the anticompetitive act occurred. For managers, the penalty can be of 1% to 20% of the fine applied to the company.

Besides pecuniary penalties, CADE may also impose other sanctions, such as the obligation to publish the decision in a major newspaper at the wrongdoer's expense; the prohibition of the wrongdoer from participating in public procurement procedures and from obtaining state aid for up to five years; and a recommendation to tax authorities to prohibit the company involved in the wrongful conduct from paying taxes in installments or obtaining tax benefits.

Such sanctions can only be applied after an administrative proceeding has been opened by the General Superintendent, where investigated companies and individuals have several due process guarantees. Once the SG finds that a anticompetitive conduct was practiced, it recommends the alleged wrongdoers to be convicted before CADE's Administrative Tribunal, being the case then distributed to a reporting commissioner Parties can contest the SG's findings and submit any arguments and documents it deems suitable for its defense. A final decision is made in a public trial session before the Tribunal and a conviction is imposed if the party is found guilty by majority vote.

Those who are held liable for the antitrust violations are also subject to civil liability in lawsuits, which may be filed by victims (consumers, competitors) or by the Public Prosecutor's Office.

Moreover, cartels can also be characterized as violations of other statutes, most notably criminal offenses under the Economic Crimes Law (Law No. 8137/90) and the Public Procurement Law (Law No. 8666/93).

As to criminal enforcement, the rule is that only individuals are subject to criminal liability, being the Public Prosecutor's Office entitled to prosecute them before a Criminal Law Court.[9] CADE has no criminal jurisdiction. Criminal sanctions vary from 2 to 5 years in prison, and a fine.[10]

Endnotes

[5] These triggering values were increased by means of the Ministry of Justice and Ministry of Finance Joint Regulation No. 992, as of 30 May 2012.

[6] Seeking to provide additional clarity about the definition of "collaborative agreements", at the end of 2014, CADE issued Resolution No. 10/2014, which establishes the types of agreements that shall be considered "collaborative" in nature and, therefore, subject to CADE's pre-merger control. Such Resolution became effective on January 3rd, 2015. More information about it can be found here: http://www.tauilchequer.com.br/en-US/CADE-Issues-New-Regulation-on-Associative-Agreements-11-07-2014/

[7] In order to diminish the legal uncertainty about what could be understood as "gun-jumping practices", in May, 2015, CADE released the "Report for Analysis of Previous Completion of Concentration Acts", setting the parameters to be used as guidelines during negotiations and for analysis of economic transactions. More information about such document can be found here: https://www.mayerbrown.com/files/Publication/94ecd94a-273b-4f01-8324-d52a80912caf/Presentation/PublicationAttachment/f2aff975-6aa1-4a70-a7f2-fa9263338546/150930-UPDATE-Antitrust.pdf

[8] Law No. 12529/2011, article 36, paragraph 3, item I.

[9] The exception being that companies are criminally liable for environmental crimes.

[10] For a complete and deep overview of Brazil's Regulation, please see: GABAN, Eduardo M.; DOMINGUES, Juliana O. Brazilian Competition Law. A Practitioner's Guide. Wolters Kluwer, 2013.

Those who are held liable for antitrust violations are also subject to civil liability in lawsuits, which may be filed by victims (consumers, competitors) or by the Public Prosecutor's Office.

Dispute Resolution Methods

Introduction

The Brazilian legal system is entering into a new era of dispute resolution with its recent legislation regarding litigation coming into effect.

The National Congress just approved a bill for a new Civil Procedure Code that reforms the Arbitration Law, bringing several innovations to court litigation and arbitration proceedings.

The outcome of such legal innovations will modernize litigation, making court proceedings faster mostly due to limitations on the right to appeal. Additionally, the new Civil Procedure Code encourages composition at every step of the procedure.

Litigation

The Brazilian judicial system is structured into two different branches of jurisdiction in relation to civil and commercial litigation: the federal courts and the state courts.

The jurisdiction of the federal courts is based on the matter under dispute (*ratione materiae*) and the legal nature of each of the parties involved in the litigation (*ratione personae*). The vast majority of the lawsuits submitted to the federal courts involve the federal government and its organs and entities, while most lawsuits involving private parties are processed by the state courts.

Except for in a few specific situations, court proceedings in civil and commercial cases are not confidential. Therefore, Brazil generally makes records of the court proceedings public accessible to any person.

However, the most relevant innovation in this legislation is that it now allows for the possibility of a lawsuit that deals with arbitration issues to be declared confidential after proof of the existence of a confidentiality clause inserted in the arbitration convention. Before the reform, it was at the court's discretion whether or not to declare the lawsuit confidential.

JURISDICTION IN CIVIL AND COMMERCIAL CASES

The Civil Procedure Code is a federal act that establishes procedural rules. The organization of State Courts and the specific rules concerning venue are outlined in each state's Judicial Organization Code.

Claims are generally analyzed and ruled upon by an individual judge. Under certain circumstances, this decision can be reviewed by a court of appeals generally composed of three judges. There is no trial by jury in commercial and civil cases.

Generally, the defendant's domicile is used to determine and establish the jurisdiction of the court. When the jurisdiction is entirely based upon territorial criteria and there is no specific legal provision on the selection of the venue, parties are allowed to elect, consensually, a different jurisdiction to resolve their disputes.

In relation to international contracts, the new Civil Procedure Code allows the parties to select the seat where the dispute will be resolved. This rule does not apply to cases in which Brazilian courts have exclusive jurisdiction, e.g., cases in which the dispute involves a property located in Brazil.

INITIAL PROCEDURES

Proceedings are initiated after the filing of a statement of claim indicating the facts and highlighting the legal grounds the claim is based upon. According to the new Civil Procedure Code, if the lawsuit permits an agreement between the parties, a reconciliation hearing is scheduled in an attempt to settle the case. If the conciliation hearing is not successful, the Defendant must present its defense and, eventually, a counterclaim within 15 (fifteen) days, counted from the date of such hearing.

EVIDENCE

Thereafter, the judge will ask the parties to provide the evidence that they wish to present to the court. In Brazil, the judge is the sole authority on the evidence and may choose to admit or dismiss it is at his discretion.

It is important to highlight that there is no provision in Brazilian Law for the Common Law discovery proceeding and that the admission of evidence is fully managed by the judge. There are three means of presenting evidence: documentary, oral and expertise.

As a general rule, the burden of proof will lie with the party that has presented the claim. There are, however, exceptional cases in which the law assigns the burden of proof to the other party, such as in consumer claims. Furthermore, there is also the possibility that the burden of proof is inverted by the judge if it is proved that the claim is excessively burdensome or impossible for one of the parties to withstand.

Regarding the means of proof, the Plaintiff's documentary evidence is usually presented to the court as an attachment to the statement of claim, while the Defendant`s documentary evidence is normally presented with its reply to Plaintiff's statement of claim. It is crucial to recall, however, that as the case develops and new facts are brought to light, other documents relevant to the resolution of the case can always be presented, as long as the other party has the right to comment on them.

The parties and their witnesses are heard during an evidence hearing. The witness testifies under the obligation to always

speak the truth. If the testimony is thought to be false, the witness will then be subject to inquiry and cross-examination and it may be prosecuted for the crime of false testimony.

If an expert witness is needed for the resolution of the case, the judge will appoint a qualified expert. The expert report consists of a document covering (a) elaboration of the subject being analyzed, (b) technical analysis made by the expert, and (c) indication of the method used.

After the hearing, the parties still have the right to present comments on the collection of evidence.

AWARD

After the conclusion of the proceedings the judge renders an award. The structure of this decision generally consists of (a) a description of the matter in dispute, (b) a summary of the claim and of the counterargument, and (c) the ruling.

If the award is not challenged by the losing party, it becomes final and binding. However, if there is an error in the ruling, the party can file a motion to throw out the award within 2 years from its issuance. The Civil Procedure Code has strict provisions regarding such motions, limiting them to gross mistakes, e.g., manifest disregard of the law or corruption of the judge.

APPEALS

The new Civil Procedure Code restricts the possibility of appealing against interlocutory decisions in order to fasten the procedure. Thus, as a general rule, challenges against interlocutory decisions may only be addressed along with a final appeal at the end of the proceedings.

The rule in Brazil is that a decision can only be challenged by one appeal at time. There is an exception related to appeals to the superior courts. In some cases, the party is obliged to present an appeal to each of the two Brazilian superior courts, otherwise the appeal presented cannot be accepted.

The appeals are decided upon by a panel of three upper court judges. After that, the parties are allowed to file appeals to the Superior Court of Justice and the Supreme Court. While the Superior Court of Justice deals with violation of federal laws, the Supreme Court only evaluates breaches of the Federal Constitution. The superior courts do not assess evidence nor contested facts. It should be highlighted that these appeals do not interrupt the progress of the lawsuit in state or federal courts, therefore, it is possible a provisory enforcement of the award granted while the judgment of the appeals to the superior courts is still pending.

In addition, no discussion of the facts is permitted and only the legal issues are subject to review by the superior courts. Therefore, in principle, no evidence will be evaluated by the superior courts.

The most significant modification in the appeals rules made within the new Procedure Civil Code is an increase of the available mechanisms that can be used to evaluate judicial precedent. The new Civil Procedure Code expanded the rules surrounding appeals involving repetitive subjects, as the new Code establishes the possibility of a single trial for a "model appeal", which contains an identical judicial discussion as the repetitive appeals submitted to the courts and is characterized as an appeal that represents the whole controversy observed in these various similar cases. This modification aims to increase consistency and legal certainty of courts decisions.

Some cases that involve only legal arguments can be subjected to this procedure. One case is elected as a model case, to serve as a precedent and then it is then tried by the Superior Court. Thereafter, the decision granted will then serve as a precedent used in all other similar lawsuits.

AWARD ENFORCEMENT

Once the award is rendered the debtor has 15 (fifteen) days to comply with it. If there is a failure to comply with the award, the winning party is entitled to initiate an enforcement procedure in order to compel the debtor to realize the payment and/or fulfill the obligation determined by the award.

In these situations, the debtor is entitled to present a motion to interrupt the execution. However, this sort of defense is only allowed in specific cases, e.g., when the creditor presents excessive calculation of the condemnation. The motion to interrupt the enforcement of the award has to be presented within 15 (fifteen) days from the submittal of a court guarantee.

If the debtor does not present a defense or if the judge dismisses it, the creditor is entitled to identify assets in the name of the debtor that would be able to satisfy the claim.

There are three efficient methods for locating the defaulting party's assets: "BacenJud", "InfoJud" and "RenaJud". The first one allows the judge to access data from the Central Bank and order the blocking of bank accounts in the name of the debtor. Through the InfoJud system the judge can request that the Internal Revenue Service disclose the debtor's income tax declaration. Finally, the RenaJud system enables the judge to identify vehicles owned by the debtor and require their attachment.

If the debtor refuses to pay the amount due even after the identification and the attachment of assets in its name, the property will be evaluated and auctioned and the funds will be used to pay the winning party.

The Brazilian legal system does not provide any criminal sanction against debtors.

Arbitration

Arbitration is a contractual method of resolving disputes. By an arbitration convention the parties agree to submit their differences to the decision of a sole arbitrator or a panel of arbitrators. This alternative method can be summarized as a consensual, neutral, quick and effective way to solve complex conflicts.

If one of the parties resists submitting the dispute to arbitration, a party can request that the disagreeing party appears before the court where the latter will be encouraged to sign an arbitration commitment.

In the first semester of 2015, a bill for the reform of the Brazilian Arbitration Law was approved. The new legislation has several provisions that strengthen the practice of arbitration, such as the regulation of cooperation between judges and arbitrators.

In this sense, a concept has been introduced by this new law: the arbitration letter. Its purpose is to facilitate communication between arbitrators and judges by creating a standard method for the exchange of procedural orders and decisions between courts and arbitral tribunals. Moreover, the reform of the arbitration law sets forth regulation of judicial assistance for arbitration by codifying the proceedings that used to be regulated by case law. For instance, the arbitrator will be legally authorized to revoke provisional measures granted by the courts before an arbitral tribunal is created. Another important change is that the lawsuits related to arbitration proceedings may be processed under judicial secrecy in cases where confidentiality has been proved to be provided for in the arbitration convention.

Additionally, it should be highlighted that the Brazilian National Council of Justice, a public institution that aims to improve the Brazilian Justice System, made a goal for every capital city to establish at least two lower courts specialized to deal with arbitration related disputes.

This reform intends to clarify certain aspects of the former Brazilian Arbitration Law, such as explicit authorization of arbitration involving public entities. The only conditions imposed by the new legislation are that the proceedings are conducted publicly and in accordance with rules of law.

Another innovation introduced in the approved bill is the addition of a provision in the Brazilian Corporate Act that allows for the withdrawal of a shareholder who does not agree with the inclusion of an arbitration clause in the company bylaws.

As in the other major jurisdictions, the arbitration awards in Brazil are final and binding. There is no judicial review on the merits of the award. The grounds for the vacation of an arbitration award before a court are restricted to the formal aspects of the decision.

RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Since July 2002, Brazil is a member State of the New York Convention, a treaty used for the recognition and enforcement of foreign arbitral awards. In order for a foreign verdict or award is recognized as an award in Brazil, the Superior Court of Justice must render an exequatur in order to grant enforceability to the award.

According to the provisions in the convention, the requirements for the recognition of foreign awards are that: (a) the award must be in compliance with Brazilian public policy, sovereignty and good moral principles; (b) the award must have been rendered by an authority that has jurisdiction; (c) the award must have been rendered in a proceeding where the parties have been given the opportunity to be heard and fully present their cases; (d) the award must be final and binding; (e) the award must be certified by the Brazilian consulate residing in the country where it was rendered together with a sworn translation of the award to Portuguese.

The Superior Court of Justice cannot review the merits of the award; it will only analyze its formal aspects.

The Brazilian Bankruptcy System and Credit Recovery

Brazilian Bankruptcy Law

Federal Law No. 11,101, in force since June 9, 2005, replaced the 1945 Federal Decree-law No. 7,661 as the Brazilian Bankruptcy Law (hereinafter the "Bankruptcy Law").

The Bankruptcy Law was conceived to permit the reorganization of viable enterprises and the efficient liquidation of those enterprises that are not economically or financially viable, all while preserving jobs and creditors' rights aimed at fostering economic activity and financial transactions. The Bankruptcy Law contemplates three different proceedings: judicial reorganization (*recuperação judicial*), extrajudicial reorganization (*recuperação extrajudicial*) and bankruptcy (*falência*).

Judicial reorganization

The Judicial Reorganization is the Brazilian equivalent to US Bankruptcy Code's Chapter 11.

The Proceeding of the Judicial Reorganization

Debtors that wish to apply for Judicial Reorganization should file a formal request before the relevant court (Bankruptcy Court), supported with the required information and documentation (the Required Documentation). Creditors cannot request the judicial reorganization of the debtor.

If the Required Documentation is in good standing, the Bankruptcy Court shall accept the case and issue a decision. Among other things, the decision shall: (i) appoint the Bankruptcy Trustee, who acts solely as an assistant of the court and has no management powers over the debtor; (ii) order the immediate stay of actions and executions filed against the debtor for a 180-day period; and (iii) order the issuance of a public notice containing the summary of the mentioned decision and the List of Creditors as attached to the request for Judicial Reorganization by the debtor (the Acceptance Decision).

The Acceptance Decision triggers the occurrence of three events: (i) the 180-day Stay Period for certain actions and executions; (ii) the 60-day legal term for the presentation of the reorganization plan (the "Reorganization Plan), which is followed by the voting on the Reorganization Plan; and (iii) the 15-day legal term to file proofs of claims and/or challenges to the List of Creditors before the Bankruptcy Trustee.

I. THE STAY PERIOD

All actions and executions filed against the debtor are stayed for 180 days following the Acceptance Decision, except for:

- Actions claiming a non-fixed amount, which continue before the relevant court until a final judgment is awarded and then transferred to the Bankruptcy Court;
- Labor claims, which continue before the relevant labor court until a final judgment is awarded and then transferred to Bankruptcy Court;
- Tax claims, which are not subject to the Judicial Reorganization in any of its stages;
- Executions of advance on exchange contracts (ACC);
- Actions or executions of a creditor holding the position of fiduciary owner of real or personal property, financial lessor, owner or committed seller of real estate whose respective agreements include an irrevocability or irreversibility clause, including under real estate developments, or an owner under a sale agreement with title retention.

With respect to item (v) above, despite the fact that the related actions or executions are not suspended, the Bankruptcy Law does not allow the sale or removal from the debtor's establishment of any capital assets essential to the business during the Stay Period.

On the other hand, the executions of ACCs would continue irrespectively of the Stay Period, as per Bankruptcy Law and existing case law on the matter (art. 52, III[11]).

If the Reorganization Plan is not approved within the Stay Period, the creditors are entitled to resume actions and executions, irrespectively of the stage of the negotiations concerning the Reorganization Plan.

II. PRESENTING AND VOTING ON THE REORGANIZATION PLAN

Following the Acceptance Decision, the debtor will have up to 60 days to present a Reorganization Plan. This plan includes the means of reorganization — which may be, e.g., a change in the company's control or a partial sale of its assets, mergers or leases of commercial establishments — and a study on its economical feasibility and appraisal reports on economic-financial situation and debtor's assets.

Creditors may present objections to the Reorganization Plan. In such a case, the Bankruptcy Law sets forth that a General Meeting of Creditors needs to be scheduled, at which time the creditors will vote on the Reorganization Plan. To be valid, the Reorganization Plan will need to be approved at such meeting, when the creditors will be divided in four groups: (i) holders of labor-related claims and claims resulting from on-the-job accidents; (ii) holders of claims with *in rem* guarantees; (iii) unsecured creditors; and (iv) small-cap creditors.

The Reorganization Plan needs to be approved by all classes. The approval within classes (ii) and (iii) requires the favorable vote of the holders of more than 50 percent of the value of the claims pertaining to the creditors present at the

General Meeting of Creditors and of the majority of the creditors present at that meeting. The Reorganization Plan shall be considered approved by classes (i) and (iv) only if it has been approved by the simple majority of the creditors present at the General Meeting, regardless of the value of their claims.

Alternatively, provided that the Reorganization Plan does not entail different treatment among the creditors of the class which may have rejected it, the Reorganization Plan shall pass with (i) the approval of creditors representing more than 50 percent of the amount of claims present at the General Meeting of Creditors, irrespectively of the class; (ii) the approval by two classes (or one if there are only two classes); and (iii) the favorable vote of more than 33 percent of the class which rejected the plan (also known as "cram down").

Once approved, the reorganization of the enterprise is granted and court-supervised for a period of two years. As a general rule, a default on an obligation under the Reorganization Plan within such period shall result in the liquidation of the debtor's estate.

III. FILING OF PROOFS OF CLAIMS

The Acceptance Decision triggers the commencement of a 15-day term for the creditors that are subject to the Judicial Reorganization to either file proofs of claims or challenge the List of Creditors. The proofs of claims and challenges are presented to the Bankruptcy Trustee, who is responsible for analyzing the creditor's claims and preparing a second List of Creditors. The second list may be disputed by creditors before the Bankruptcy Court. It is very common that the final List of Creditors be only known after the Plan is voted.

IV. CREDITORS NOT SUBJECT TO THE PROCEEDINGS

The Judicial Reorganization encompasses all creditors, except for: (i) the creditor that has its credit guaranteed by fiduciary ownership of real estate property or movable assets; (ii) the lessor under a commercial leasing agreement; (iii) the owner or committed seller of real estate whose respective agreements include an irrevocability or irreversibility clause; (iv) the owner under a sale agreement with retention title; and (v) the creditor under an advance on exchange contract (ACC).

Extrajudicial Reorganization

The second mechanism granted to debtors by the Bankruptcy Law to pursue reorganization is the Extrajudicial Reorganization, an out-of-court agreement that must be later confirmed by the Judiciary.

Creditors that are not subject to a plan under a Judicial Reorganization are excluded from the Extrajudicial Reorganization. So, too, are holders of labor related claims, claims arising out of on-the-job accidents and tax claims.

The Extrajudicial Reorganization may precede a Judicial Reorganization and may resolve all categories of claims other than those that are excluded, some categories of creditors or even a group of certain categories. In order to include all creditors of a certain category, approval by the holders of more than three-fifths of the amount of the claims is necessary.

Liquidation

Pursuant to the Bankruptcy Law, Liquidation is the remedy for enterprises that are not economically or financially viable, and their assets and productive resources shall be preserved and sold as to optimize their efficient usage by the purchaser of the asset.

To reach one of the main goals of the Bankruptcy Law, which is to maintain a productive corporate structure, Bankruptcy Law allows for the leasing of the debtor's establishment and goods during the liquidation proceeding.

Moreover, in a Liquidation, claims resulting from obligations undertaken during the Judicial Reorganization — including financing agreements — are considered as post-petition claims, which means that such claims are given higher priority to be paid before the claims listed in the Liquidation. These measures are intended to encourage third parties to extend lines of credit as well as to negotiate a more favorable interest rate in the loans granted to corporations facing difficulties — considering that the risk of offering the credit has decreased, bank spread shall lessen accordingly.

Further, after the payment of the indispensable expenses to the administration of the bankruptcy with cash availabilities, the order of payment set forth in the Bankruptcy Law is the following:

- Strictly salary-related claims fallen due three months prior to the liquidation decree, to a limit of five minimum wages per worker, paid off as soon as cash is available;
- Restitutions in cash;
- Post-petition claims;
- Labor-related claims (limited to one hundred and fifty minimum wages per creditor – five minimum wages already paid) and occupational accident claims;
- Secured claims;
- Claims listed as Public Collectible Debts;

- Special privileged claims (i.e. small-cap claims);
- General privileged claims;
- Unsecured claims;
- Claims related to contractual penalties and fines for breach of criminal or administrative law, including tax-related fines;
- Subordinate claims, as follows: those so provided for by law or contract, as well as the claims of partners and officers without an employment bond.

Thus, the Bankruptcy Law provides companies in financial distress with a proper legal framework for reorganization. Allowing a debtor to present a reorganization plan based on its economic and financial capabilities — other than to apply for a deferring and/or a reduction of payment of unsecured debts — helps to reduce creditor risks and to tighten interest rate spreads to the extent that they relate to the probability of the satisfaction of a creditor's claim.

Endnotes

[11] Article 52. The documentation required under article 51 hereof being in order, the judge shall grant processing of the judicial reorganization and, by the same act, shall: (...)
III – order the suspension of all actions or executions against the debtor pursuant to article 6 hereof, the respective case records to remain at the court where they are proceeding, except for the actions under article 6, paragraphs 1, 2 and 7, hereof and those relating to claims excepted under article 49, paragraphs 3 and 4, hereof;

Compliance and White-Collar Crime

Legislation

Brazil is undergoing major changes in law enforcement driven by the adoption of a new anticorruption statute as well as new prosecutorial tools. Operation "Carwash" is a hallmark, but only one of several criminal/administrative investigations launched in recent years.

The Clean Company Act came into force in early 2014 and became fully regulated in early 2015. It is very similar in substance to the FCPA and UK Bribery Act, but its enforcement is administrative and civil rather than criminal.

Under the criminal enforcement umbrella, the Organized Crime Act is a noteworthy development. It has allowed for extensive plea bargaining in the context of Operation Carwash, as well as the leveraging of individuals through its obstruction of justice provisions.

This new enforcement scenario has created the need for better internal controls in the form of compliance programs, ethics and whistleblower policies as well as dawn-raid policies and crisis-management protocols.

The Clean Company Act

GENERAL ISSUES

The Clean Company Act (Law No. 12.846/2013), also known as the Brazilian Anti-corruption Law, establishes corporate, administrative and civil liability for corruption, bid rigging, and other offenses against the Public Administration. The law establishes strict liability for the company, including acts committed by any persons – including third parties – on the behalf of the company or for its benefit.

While the liability standard is broad, the law also provides for mitigation strategies in the form of cooperation and compliance mechanisms that will be further addressed below.

OFFENSES

The Clean Company Act created a comprehensive list of offenses, including (i) direct and indirect acts of bribery of Brazilian and foreign public officials; (ii) bid rigging; (iii) defrauding public bids; (iv) the financing or provision of material support to one of the aforementioned offenses, as well as (v) obstructing investigations.

THE LIABILITY STANDARD

Under the Clean Company Act, a company can be held liable for any offenses committed on its behalf, and authorities are not required to prove that the company's representative acted with criminal or corrupt intent. A company may even be held liable for offenses perpetrated by third parties without the company's intent or knowledge.

PENALTIES

Administratively, the Office of the Brazilian Comptroller General sets legally binding regulations for the calculation of fines, which may range from 0.1% to 20% of the company's previous year's gross revenue (or from USD1,850 to approximately USD18,505,000, if for any reason the gross revenue criteria cannot be used).

The Clean Company Act also provides for civil liability. Civil penalties encompass debarment, suspension of activities, and even the dissolution of a company.

ENFORCEMENT AGENCIES

The *Controladoria Geral da União* ("CGU" – Office of the Comptroller General) is the administrative authority responsible for the enforcement of the Clean Company Act at the federal level. At the state level, administrative proceedings may be initiated by each of the Executive, Legislative and Judiciary branches.

Mitigating Factors

COMPLIANCE PROGRAMS

Even though the Clean Company Act had already indicated that the existence and functioning of internal compliance and integrity programs would be considered a mitigating factor, it did not provide clear indications as to how they would be evaluated.

While the Clean Company Act was enacted in August of 2013, the Federal Government only issued detailed regulations in March of 2015. Federal Decree No. 8.420, sets forth the criteria for the assessment of compliance programs:

- if the compliance program is explicitly supported by the high direction of the company;
- if the company's Code(s) of Conduct and Ethics and integrity policies are applicable to all employees and representatives within the company, as well as to third parties who act on its behalf;
- if employees and representatives are periodically trained on the directives of the compliance program;
- periodic assessments of risks related to the company's activities and relations with public power;
- the existence of internal whistleblowing channels and investigative proceedings that could lead to the enforcement of disciplinary penalties;
- actions to prevent and/or immediately cease unlawful conduct within the company's activities;
- previous evaluation of potential partners' commitment to ethics and integrity;

- compliance due diligence prior to mergers and acquisitions; and
- transparency of donations to political parties and other persons.

LENIENCY AGREEMENTS

A company that acknowledges misconduct and willingly cooperates with investigators will be qualified to receive the benefits of a leniency agreement. Fines can be reduced by up to two-thirds of the total fine, and it may also exempt the company from other sanctions.

The Clean Companies Act allows authorities to enter into leniency agreements with legal entities, provided that they effectively collaborate with the investigations and with the administrative proceedings, and if that collaboration results in the identification of the persons involved in the violation, as applicable. The company must also quickly disclose any documents and information that may substantiate the occurrence of offenses.

The regulation sets forth that leniency agreements can be signed at any time until a final decision on the administrative proceedings is prepared by the authorities. Moreover, companies can exit leniency agreement negotiations at any time, in which case the authorities have to return the evidence previously provided and, as a general rule, cannot use anything that was disclosed by the company against it.

The regulation also sets forth that, among other obligations, leniency agreements must have provisions relating to the adoption, application and enhancement of the legal entity's compliance program.

SUCCESSOR LIABILITY

The Clean Company Act also states that liability for corruption acts will subsist even in the event of mergers and acquisitions as well as similar corporate transactions. In sum, a company that acquires another legal entity will inherit liability for the acquired company's previous violations of the Law, and, likewise, the aforementioned liability does not cease to exist should the legal entity be merged into another one.

Public Improbity Act

GENERAL ISSUES

The Public Improbity Act (Law No. 8.429/92) punishes acts that may cause damage to Public Administration. While primarily focused at public agents, private persons or entities that participate in or in any way provide assistance for the commitment of these acts may also be held liable.

OFFENSES

Acts of administrative improbity are divided in three groups under Law No. 8.429/92:

- unjust enrichment of public agents;
- embezzlement of public money;
- violation of the principles of Public Administration or duties of honesty, impartiality, legality and loyalty related to a public office.

Public officials and private persons or entities that take part in such acts be administratively and/or civilly liable if their conducts fall within the description of any of the groups above. The exception may be the embezzlement of public money, since Brazilian case-law establishes that it only constitutes administrative improbity if it damages public coffers.

PENALTIES

The penalties for acts of public improbity include compensation for damages (if applicable), asset forfeiture, removal from public office (if applicable), suspension of political rights, fines, debarment as well as exclusion from subsidies and tax incentives.

White-Collar Criminal Enforcement

There are several statutes that cover white-collar crime enforcement in Brazil. Primarily, the Brazilian Criminal Code sets penalties for corruption, embezzlement, influence peddling and fraud, among other crimes. Crimes against the financial markets are regulated by Law No. 7.492/1986, while bid rigging and related offenses are established by Law No. 8.666/1993. Laws No. 8.137/1990 and 9.613/1998 set forth penalties for tax evasion and money laundering, respectively.

While Brazilian Law covers most of what is commonly referred to as white-collar crime, statutes that were recently enacted also changed many traits of investigations related to these offenses, providing for new investigative tools and procedures, such as plea bargaining, against sophisticated criminal organizations and schemes. In this context, Law No. 12.850/2013 – The Organized Crime Act – plays an important role.

THE ORGANIZED CRIME ACT

The Organized Crime Act defines what constitutes criminal organizations and provides a new procedural framework for Law enforcement authorities. It is similar in spirit to the U.S.´s Racketeer Influenced and Corrupt Organizations Act (RICO). A criminal organization is deemed by Law as an association of four or more persons structurally organized and characterized by formal or informal division of labor, with the objective of obtaining, directly or indirectly, advantages of any kind through the commitment of criminal offenses.

PLEA BARGAINING AND OBSTRUCTION OF JUSTICE

Plea bargaining was not common in criminal proceedings until very recently. Former Laws did state that persons who voluntarily collaborated with the authorities would be rewarded with a reduction or even dismissal of eventual penalties, but procedural guidelines were lacking in clarity.

The Organized Crime Act better regulated plea bargaining, and has become the most heavily utilized investigative instrument by Law enforcement in Brazil. These provisions of the Organized Crime Act have allowed for the gathering of evidence and prosecution of persons in an unprecedented manner, a hallmark being Operation "Carwash".

Although Judges have some autonomy in rejecting a plea agreement, however, they usually concur in practice.

THE TAX AMNESTY PROGRAM

In an effort to restore balance to Brazilian economy, the Federal Government proposed and Congress approved Law No. 13.254/2016, also known as the Tax Amnesty Program or Repatriation Law. It grants full immunity from criminal prosecution to those who voluntarily declare moneys and/or assets maintained abroad.

It also significantly reduces the cost of the regulation for the Federal Revenue Office and the Brazilian Central Bank and partially exempts interested persons from the payment of fines.

Real Estate

Overview

Most rules regarding ownership, liens, leasing and other rights to real estate in Brazil are included in the Brazilian Civil Code and a few other federal laws and are valid throughout the country. Brazilian states and municipalities are also entitled to establish rules specific to the use and occupancy of real estate. For this reason, occupancy and licensing rules and procedures can vary depending on a property's location.

Each property in Brazil is represented by a real estate record file maintained by the Real Estate Registry Office ("RERO"). The file contains all relevant information regarding the property (limits and boundaries, ownership, liens, encumbrances, built area). This means that any transaction involving modification, extinction, transmission or creation of rights to real estate must be registered with the RERO. As an example, the transfer of a property title is only deemed effective once all relevant documents have been registered with the RERO.

Acquisition of Real Estate

Real estate acquisitions must always be preceded by due diligence on the property and on the sellers and previous owners. This is true regardless of the property's value. However, the type of property (e.g., commercial, residential, urban or rural) may dictate the extent of the due diligence. This is because certain types of liabilities of the seller and of the real estate may fall to the real estate after a transfer of ownership. Brazilian real estate taxes – either *Imposto Predial e Territorial Urbano* (IPTU) or *Imposto sobre a Propriedade Territorial Rural* (ITR) – are one example of a liability associated with the property that may fall to the buyer. Environmental liabilities are by law imposed to the holder of ownership title of the real estate and therefore may fall upon buyer. In some cases, the real estate may be judicially arrested to secure certain obligations of the seller. For that reason, it is imperative to investigate whether the seller is creditworthy and in good legal standing and also perform further investigation on the real estate to verify whether there may be contingencies that may fall upon buyer.

Prospective buyers should also seek assistance from a real estate consulting firm to evaluate technical aspects of the property, such as the potential for construction and the required city permits, as well as other licensing requirements.

Once the buyer has completed all due diligence, the parties can execute the final deed of purchase and sale.

Taking ownership of a real estate in Brazil is accomplished by filing the public deed of purchase and sale with the RERO. The public deed must be executed in the presence of a notary public. The seller must present certain tax clearance certificates and buyer must pay a real estate transfer tax known as *Imposto sobre Transmissão de Bens Imóveis* (ITBI). While the ITBI can legally be paid by either the buyer or the seller, it is standard practice in Brazil for the buyer to pay for this transfer tax.

It is also important to verify whether ownership title or "fee farm title" of a real estate is being acquired. Certain real estate in Brazil are considered as owned by the Federal Government which entitles particulars to hold a "fee farm" title of such real estate. In such cases, in addition to the ITBI, purchaser will also have to pay the fee farm fee which usually corresponds to 5% of the value of the transaction.

The public deed of purchase and sale will only be registered with the RERO if the record file of the targeted real estate is duly regular, which is one of the main focus of the due diligence.

A real estate may also be purchased indirectly through the purchase of stock in a legal entity that holds title to the real estate. The use of this structure is most common in purchases of commercial properties (e.g., warehouses, office buildings).

Restrictions to the Acquisition of Real Estate by Foreigners

Foreigners are free to acquire real estate in Brazil, with the exception of rural properties and land near Brazil's national borders or lands considered as "terrenos de marinha" – which ownership title is held by the Federal Government (with the exception of individual units of a condominium ruled by Federal Law 4,591/64).

Federal Law No. 5,709 of 1971 imposed certain limitations on the acquisition of rural properties by foreigners, which according to such law were also applicable to Brazilian companies whose partners, individuals or legal entities, residing or established abroad, hold the majority of the capital stock.

Although such distinction was originally accepted by the Federal Constitution of 1988, the 6th Amendment to the Federal Constitution of 1988 eliminated the distinctions between legal entities with domestic capital and legal entities with foreign capital. Therefore, a company organized in Brazil with its head office and principal place of business in Brazil is deemed a Brazilian company, regardless of the nationality of its partners.

Opinion AGU/LA-04/94 issued by Brazil's attorney general supported the understanding that the Federal Constitution had revoked the distinction made by Law No. 5,709 between Brazilian companies of domestic or foreign capital, and therefore no limitations should be imposed due to the terms set forth in Law No. 5,709.

Several years later, the attorney general issued another opinion (Opinion AGU GQ-181/1997) confirming that the above-mentioned restriction to foreign companies was not incorporated by the Federal Constitution of 1988.

Then, on August 23, 2010, the attorney general issued Opinion LA-01, changing the prior opinion and setting forth that Law No. 5,709 should apply to Brazilian companies controlled by foreigners. In addition, the new opinion stated that the concept of a "majority of capital stock" must be interpreted according to the broader concept of "corporate control" set forth in the Brazilian Corporation Law.

The concept of control is defined in Article 116 of the Corporation Law as "an individual or a legal entity, or a group of individuals or legal entities by a voting agreement or under common control, which: (a) possesses rights which permanently assure it a majority of votes in resolutions of general meetings and the power to elect a majority of the corporation officers; and (b) in practice uses its power to direct the corporate activities and to guide the operations of the departments of the corporation".

In summary, the attorney general's most recent opinion maintains that the restrictions for acquisition of rural lands by Brazilian companies controlled by foreign entities, set forth by Law No. 5,709 and its regulation (Decree No. 74,965/1974), are still valid.

A recent decision of the National Counsel of Justice and of the State Court of São Paulo has ruled that the distinction set forth in Law No. 5,709 and its regulation (Decree No. 74,965/1974) should be considered revoked due to the 6th Amendment to the Federal Constitution of 1988, and therefore there should be no restriction on the acquisition of rural properties by Brazilian companies controlled by foreigners. Notwithstanding, there is a claim proposed at the Federal Supreme Court questioning this matter, based on the above mentioned Opinion LA-01.

As long as such dispute and controversy in the validity of the distinction set forth in Law No. 5,709 and its regulation (Decree No. 74,965/1974) is not solved, it may be said that on the basis of the most recent opinion issued by the attorney general, Brazilian companies controlled by foreign entities are currently subject to the following restrictions:

Acquisition of rural properties by foreign legal entities or by Brazilian legal entities controlled by foreign legal entities in excess of a certain area, which varies according to the region, in continuous or discontinuous areas, is subject to prior authorization by the Brazilian Congress.

Regardless of the size of each individual property, the sum of the rural areas owned by foreign individuals, foreign legal entities or Brazilian legal entities controlled by foreign legal entities cannot exceed 25 percent of the total surface of the municipality where such areas are located.

The sum of the rural areas owned by foreign individuals, foreign legal entities or Brazilian legal entities controlled by foreign legal entities of the same nationality cannot exceed 10 percent of the total surface of the municipality where such areas are located.

Foreign legal entities or Brazilian legal entities controlled by foreign legal entities may only acquire rural properties destined for the development of agricultural, cattle raising, forestry, industrial, touristic or colonization activities, in accordance with their corporate purposes, upon approval of the relevant project by the Ministry of Agrarian Development.

Costs of a Real Estate Transaction

Financial expenditures include due diligence costs, notary and registration fees, transfer taxes and brokerage fees.

The extent of the due diligence carried out on the real estate will influence the transaction costs associated with the purchase. A large part of the background investigation is made through various clearance certificates. Some of these can be obtained online, but most must be requested directly from the appropriate notary office (e.g., tax, labor, real estate). In general, however, costs for obtaining the certificates are not excessive, and the largest portion of the expenses is related to the investigation of hidden liabilities, such as environmental and urban liabilities, which are not in the certificates.

Notary registration fees vary from state to state and are generally calculated based on the value of the real estate attributed by the Municipality or the value of the transaction, whichever is higher. An equivalent fee is due on the registration of the deed of purchase and sale with the RERO. In States like São Paulo and Rio de Janeiro, these fees can reach hundreds of thousands of Brazilian Reais.

Real Estate transfer taxes (ITBI) also vary depending on the location of the real estate. The taxes generally range from 2 percent to 5 percent of the total real estate value or the value of the transaction, whichever is higher.

Brokerage fees are negotiated among the parties, but are usually between 3 percent and 6 percent on the sale price, depending on the value and characteristics of the real estate.

It is common practice for the buyer to pay all of the above fees.

Other potential expenses in completing a real estate transaction in Brazil depend on the type of property and its intended use. In the case of a farm or allotment, for example, geo-referencing expenses and notary registration expenses will be incurred.

Leasehold

There is no restriction for foreigners to lease real estate in Brazil, except for the lease of rural property for agribusiness purposes where the same restrictions regarding ownership title apply.

Brazilian lease law is very protective for tenants, and landlord cannot early terminate a lease agreement during its fixed term except for tenant's breach of the lease. Tenant, on the other hand, may early terminate the lease upon payment of the penalty established in the agreement, which in case of a typical lease shall be proportional to the remaining term of the lease.

Other rights are secured by Brazilian lease law in a typical lease, such as both parties' right to request the review of the rent based on market prices at least within 3 years as of the last rent amount definition. Construction or improvements made by tenant on landlord's real estate (other than movable improvements) are considered attached to landlord's real estate and are usually not reimbursed by landlord. Most tenants are generally able to negotiate a certain term of grace period to start paying rent. It is also important to remark that the rent of lease agreements is subject to adjustment for inflation (currently annually as expressly allowed by the current legislation in force).

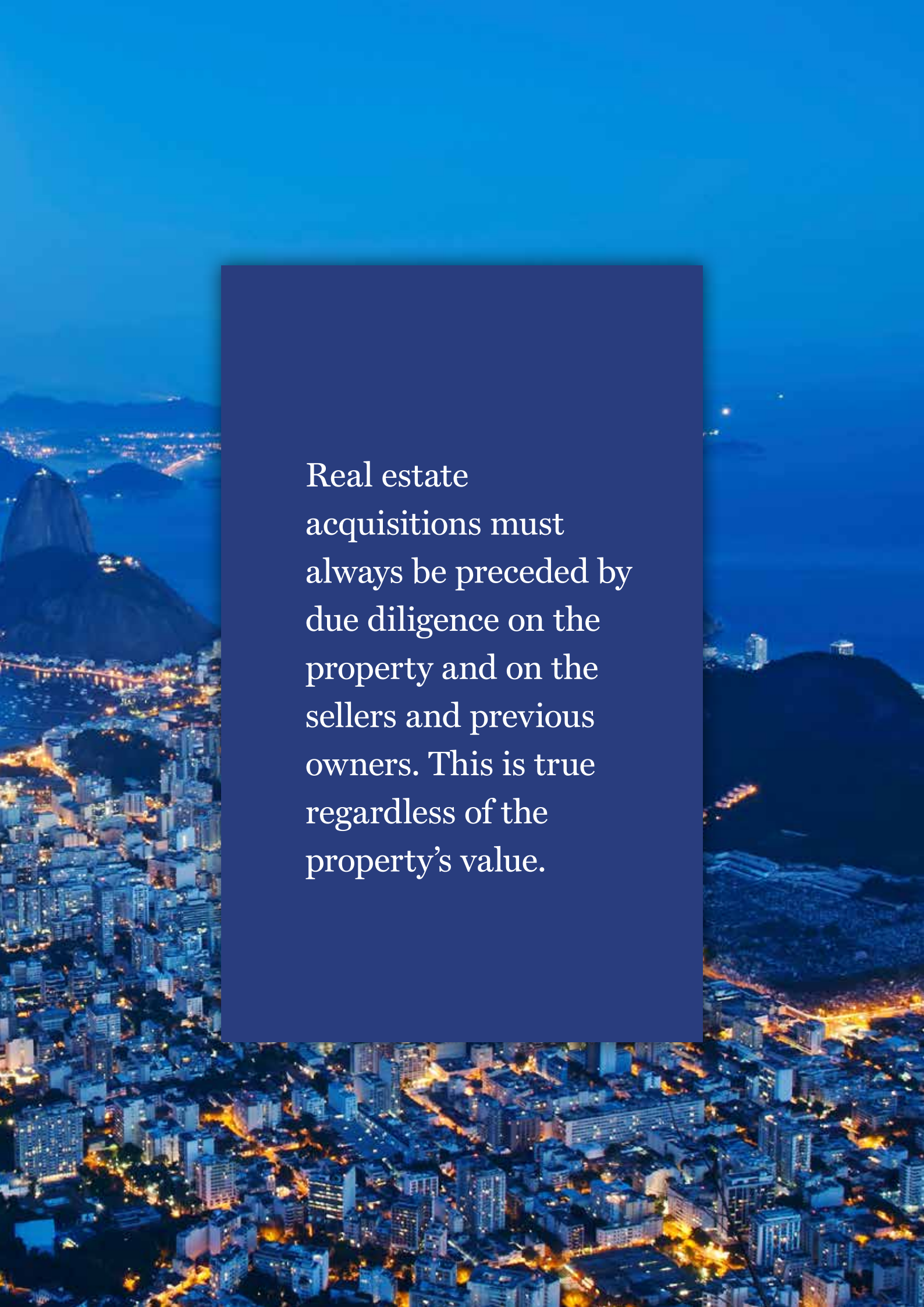
Brazilian law also recognizes the existence of certain non-typical lease relationships (built-to-suit, sale and lease back among others) where the parties are free to negotiate the terms and conditions of the lease, with due regard to general principles of law and provided the compliance with the procedural provisions of Brazilian lease law.

As an example, in built-to-suit leases in which tenant leases a real estate that is tailor-made for its business, the real estate acquisition costs and construction are borne by the landlord, and in view of that tenant commits to lease the real estate for a certain term. In this lease tenant may not early terminate the agreement unless it indemnifies landlord for the totality of the remaining rents. Both parties also typically waive their right to review the rent amount to market standards as provided in Brazilian lease law.

Financing of Real Estate

Many banks offer financing to both performing and non-performing real estate development projects. The structure usually adopted is the use of the property as collateral – through either mortgage or, more commonly, fiduciary lien (*alienação fiduciária em garantia*) – with a repayment term of more than 10 years.

Entrepreneurs seeking funds for commercial projects (e.g., office buildings or logistics centers) can turn to capital markets with a special interest in real estate projects. Real estate funds, referred to in the industry as *Fundo de Investimento Imobiliário* (FII) or even private equity funds (*Fundos de Investimento em Participações – FIP*) are commonly set up with the purpose of raising funds in the capital markets with accredited investors aiming to apply those funds to specific projects, and Real Estate Credit Certificates (CRIs), securities backed by real estate receivables, are very commonly structured to raise funding by selling the real estate receivables of a purchase and sale, built-to-suit lease or real estate financing to investors looking for alternative fixed income results.



Real estate acquisitions must always be preceded by due diligence on the property and on the sellers and previous owners. This is true regardless of the property's value.

Foreign investments in publicly held companies, if made through the securities market, benefit from a favorable tax regime.

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About Tauil & Chequer Advogados

Tauil & Chequer Advogados in association with Mayer Brown has a team of partners and associates highly specialized in several areas of business law in Brazil. From simple everyday transactions to extremely complex and sophisticated deals, we represent clients in a wide range of matters with an unparalleled level of excellence in the legal market.

We are a full service firm that provides legal advice to both national and international companies and financial institutions, including those involving multijurisdictional operations.

Our global reach combined with our deep knowledge of local laws and regulations makes us a prime choice for businesses around the world. Our clients value our ability to offer creative, pragmatic and sophisticated solutions and deal with specific demands using our international work platform with Mayer Brown.

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Mayer Brown is a global legal services organization advising clients across the Americas, Asia, Europe and the Middle East. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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