

# Guide to Doing Business in Brazil



1	Preface
3	The Brazilian Political Structure, Legal System and Economy
6	Foreign Investment in Brazil
8	Types of Business Entities
16	Investment in Publicly Held Companies
20	Brazilian Tax System
32	Labor and Employment
41	Intellectual Property
45	Environmental Laws
51	Antitrust Legislation
53	Dispute Resolution Methods



## Preface

The growing economy, natural resources and population of Brazil generate great interest among governments, corporations and business executives worldwide. However, unfamiliarity with the laws and business culture may cause potential investors to hesitate. This guide was developed as a way to provide understanding of this dynamic economy.

The guide was written by Brazilian lawyers at Tauil & Chequer Advogados. We provide information and insights on the economy, political and legal system, types of business entities, taxation, labor, intellectual property and environmental law as well as antitrust law and dispute resolution methods.

We welcome questions and comments from our readers.

### **The Editors**

Tauil & Chequer Advogados in association with Mayer Brown LLP  
June 2011



# The Brazilian Political Structure, Legal System and Economy

The Federative Republic of Brazil is the largest country in South America. It is the world's fifth largest country, both by land mass (almost 8.6 million square kilometers) and by population (more than 190 million people). It is the only Portuguese-speaking country in the otherwise Spanish-speaking Americas and the largest lusophone (Portuguese-speaking) country in the world.

Brazil is the 20th member of the G20, and one of the BRICS countries, along with Russia, India, China and South Africa.

Brazil provides a solid legal and economic platform for business. The current federal Constitution, enacted in 1988, established the basis of the Brazilian legal framework and set forth fundamental rights, while the monetary program, known as the Real Plan, achieved a price stability, which has set Brazil on the road to economic growth.

Over the last decade, solid macroeconomic foundations, the power of the Brazilian internal market (fostered by intensive income distribution programs), the existence of robust plans for investment in infrastructure (e.g., Accelerated Growth Programs or "PACs") and a strong, efficient and transparent banking system have combined to make Brazil an attractive destination for international investment. Brazil is currently ranked as the world's eighth largest economy and is considered to be among the most desirable countries in the world for foreign direct investment. Brazil ranks 4th (after China, the USA and India) in the 2010 A.T. Kearney FDI Confidence Index<sup>®1</sup>

## The Brazilian Political Structure

Brazil is a Federative Republic with broad powers granted to the federal government, quite different from the US federal system. The presidential system was established by the federal Constitution, and the government of the country is separated into three independent branches: executive, legislative and judicial.

The President is elected by direct vote for a four-year term (reelection for one additional term being permissible) and stands as the chief 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 proportionately, based on state population.

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.

---

<sup>1</sup> <http://www.atkearney.com/index.php/Publications/foreign-direct-investment-confidence-index.html>. Retrieved May 17, 2011.

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 precedents playing a subsidiary role.

The federal Constitution sets overarching 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 branches. 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 Civil Code Introductory Law (*Lei de Introdução ao Código Civil* or “LICC”) and the Brazilian Civil Code of 2002 (the “Brazilian Civil Code” or the “Civil Code”).

LICC 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 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.

## The Brazilian Economy

Agriculture is key for economic growth and export in the Brazilian economy and accounts for about 5.5 percent of GDP (25 percent when including agribusiness) and 36 percent of Brazilian exports. Brazil had a positive agricultural trade balance of \$55 billion in 2009.

Brazil is the world’s largest producer of sugarcane, coffee, tropical fruits and frozen concentrated orange juice (FCOJ), and it has the world’s largest commercial cattle herd (50 percent larger than that of the United States) at 170 million animals. Brazil is also an important producer of soybeans (second to the United States), corn, cotton, cocoa, tobacco and forest products.

Brazil also holds a noteworthy position in the chemical and textile industries, as well as in the pulp and paper sector. Brazil is the largest eucalyptus fiber producer 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 rarer minerals, are commercially mined.

Brazil has one of the most diversified manufacturing industries 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 the ultra-deep pre-salt reservoir into account.

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

Blessed with a variety and quantity of natural resources, a diversified industrial landscape, a sophisticated financial system and a large domestic market, Brazil is currently one of the most attractive investment destinations for foreign investors, especially as the people and government of Brazil are determined to maintain their commitment to modernizing the country, strengthening its currency and implementing the necessary reforms. ♦

## Foreign Investment in Brazil

In general terms, investments made by nonresidents in Brazil do not face a broad range of legal restrictions and are permitted in the vast majority of economic sectors. 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. All such transactions 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 empowered “CMN” (the National Monetary Council), “BACEN” (the Central Bank of Brazil) and “CVM” (the Brazilian equivalent of the US Securities & Exchange Commission) to enact regulations providing specific procedures for the registration of the different types of foreign investment in Brazil.

Under the terms of the Foreign Capital Statute, for any exchange transaction to be performed in connection with a foreign investment (e.g., the remittance abroad of dividends, interest, repatriation of principal), such foreign investments 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. As a result, the remitting party could 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 Brazil and its registration procedures. The registration, which is done 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 actually 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 actual inflow of funds into Brazil, since the RDE-IED number has to be indicated in each and every foreign exchange contract executed by and between the paired foreign investor/Brazilian company. Step number (iii) can be performed up to 30 days after the actual 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—it 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.

Those representatives must make available updated documentation necessary for supporting all information reported in the RDE-IED. This obligation expires five years from the date in 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 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. ♦

## Types of Business Entities

A foreign company willing to do business in Brazil might either form a branch company or incorporate a company to carry out its business. Because the formation by a foreign company of a branch in Brazil requires authorization granted by a Presidential Decree, the majority of foreign companies set up businesses in Brazil using subsidiaries or affiliated companies. In addition, compared to creating a subsidiary, establishing a branch in Brazil presents certain adverse tax impacts and other liabilities.

Corporate entities existing in Brazil are basically regulated by the Civil Code and by Law no. 6404 of December 15, 1976 (the “Corporation Law”). There are several types of corporate entities contemplated by such laws and the most widely used in Brazil are the limited liability company (*sociedade limitada* or “*limitada*”) and the joint-stock corporation (*sociedade anônima* or “S.A.”).

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

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. Courts are more likely to pierce the corporate veil of *limitadas*, especially with respect to labor- and tax-related debts.

Individual or corporate foreign partners must be enrolled in the Federal Revenue Office in Brazil, which reports to the Ministry of Finance.

Generally (subject to thin capitalization rules), there are no minimum corporate capital requirements. Corporate capital may be allocated among the partners as they find proper.

### 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 be either individuals or legal entities. Quotaholders not resident in Brazil must be formally represented by a person residing in Brazil who is authorized 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 and severally liable for the entirety of the *limitada* quota capital until it is fully paid. Once the capital is paid, 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 particulars of each quotaholder; (ii) the company designation clearly stating its purpose and accompanied by the expressions “Limitada” or “Ltda.”; (iii) the company purpose; (iv) the address of its headquarters; (v) any limits on the duration of its existence; and (vi) the quota 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 on initial subscription. A *limitada*’s corporate capital can only be increased after past calls have already been paid.

The corporate capital of the *limitada* is divided into quotas representing the value of money, credits, rights or assets contributed by the quotaholders for the formation of the company

(although the quotas cannot be paid with services). The quotas are not represented by securities or certificates, and the ownership and the number of quotas are set out in the 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 all of the quotaholders or, at least, the quotaholders who represent three-fourths of the capital.

Limited liability companies may distribute accrued profits to their partners. If the partners are individuals or legal entities residing or domiciled abroad, dividends remitted at the commercial exchange rate are subject to prior registration with the BACEN. Similar to a common-law partnership, distributions do not have to be made *pro rata* to the percentage of the equity holdings. Further, there are no restrictions on the distribution and remittance of profits abroad. Profits and dividends distributed are not subject to income tax.

The *limitada* does not need to publish amendments to its Articles of Association, or other corporate documents, except in the event of capital reduction, merger, spin-off or consolidation. However, Articles of Association are public documents and must be registered with the competent state Board of Trade. Third parties may obtain copies of the Articles of Association by application to the Board of Trade.

Since January 1, 2008, large 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 to compulsory auditing of their financial statements by an independent auditor accredited by the CVM. Under Law no. 11.638 of December 28, 2007, a company (or group of companies under common control) that has posted total assets above R\$240 million, or annual gross revenues above R\$300 million, will qualify as a “large-sized company.”

## RESOLUTIONS

If a *limitada* has 11 or more quotaholders, resolutions may be made at a general meeting (known as *assembleia*) held on 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.

The law provides for the possibility of dispensing with a partners’ meeting or a general meeting (*assembleia*) to deliberate upon said matters, offering a more agile decisionmaking 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 person 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), or by two-thirds of the quotaholders (if the capital is fully paid). Foreigners may be appointed for management 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 and is essentially a commercial corporation. It also could be defined as a business corporation having as its purpose the earning of profits to be distributed to the shareholders.

The corporate capital of the S.A. is divided into shares that represent fractions of the corporate capital. Depending on the rights conferred to their holders, the shares may be common or preferred, and may be split into different classes and series. Shares need not 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 confer voting rights.

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

Corporations incorporated after 2001 may issue nonvoting preferred shares up to 50 percent of the company's total corporate capital. Nonvoting preferred shares must be issued with 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 a joint-stock corporation 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 these same bylaws, as opposed to the usual capital increase process which requires an approval by the shareholders' general meeting.

An S.A. may be formed by public or private subscription. In either case, all shares must be subscribed to by at least two shareholders, and a minimum of 10 percent of the capital must be paid upon its incorporation.<sup>2</sup> The paid-up capital must be deposited with 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 for other than in cash, a general meeting must be called to appraise the assets being used.

---

<sup>2</sup> The exception to that rule is the wholly owned subsidiary. A wholly owned subsidiary is a company whose total capital stock is owned by another company. The owner of the wholly owned subsidiary 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..

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 holders credit rights against the issuer. The conditions of these credit rights held by the debenture holders against the company must be set out in the respective deed of issue. Debentures may be convertible into shares, may be secured and may be subordinated or senior *vis-à-vis* the other creditors of the company. As a rule, the total amount of outstanding debentures cannot exceed the company's capital (except in case of secured debentures).

### SUBSCRIPTION WARRANTS

A company with authorized capital may issue negotiable securities called subscription warrants (*bônus de subscrição*). These securities entitle their holders to subscribe to shares when the 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 Official Gazette 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 with regard to the purchase and sale of their shares, preemptive rights for the acquisition of shares and the manner in which the shareholders exercise their voting rights. A shareholders' agreement is recognized under the Corporation Law, which provides that such agreement is binding on the company's management as long as it is duly filed at the company's headquarters.

### SHAREHOLDERS' RIGHTS

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) priority in the subscription for shares, participation certificates, convertible debentures and subscription warrants; and (v) withdrawal from the company in the circumstances stipulated by law. Disputes among shareholders or between the shareholders and the company may be resolved by arbitration.

### SHAREHOLDERS' MEETINGS/GENERAL MEETINGS

Shareholders' meetings are called and commenced pursuant to applicable laws (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 verifying and approving management accounts, examining, discussing and voting on the financial statements, electing managers and members of the fiscal board, 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. 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 in 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 created, the board of directors has the powers vested in it by the Corporation Law and the bylaws, which includes overseeing the executive officers. 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, 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 at the commercial exchange rate is conditional on 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 9.249/95 and Law 9.430/96. Payment of interest on net equity is conditional on the existence of profits 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.

## Other Main Aspects of a *Limitada* and an S.A.

	LIMITED LIABILITY COMPANIES ( <i>LIMITADA</i> )	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 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.	The law requires the distribution and the payment of mandatory dividends. The dividends shall be distributed in proportion to each shareholder's ownership interest. However, preferred shares can be awarded certain benefits.
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 provide for certain restrictions.
LIABILITY OF PARTNERS/ SHAREHOLDERS	The liability is limited to the partners' stock holdings. If the corporate capital is not fully paid, all partners are jointly and severally responsible for its payment.	Liability is limited to the issue price of shares subscribed for or acquired.
RESOLUTIONS	<p>If the company has 10 or fewer partners, resolutions are passed in a meeting as established in the Articles of Association.</p> <p>If the company has 11 or more partners, the rules of the general meeting (<i>assembléia</i>) set out in the Brazilian Civil Code should be adhered to.</p> <p>The meetings may be waived if all members agree through written resolution. The 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.</p>	Resolutions are passed at general meetings, notice of which is required to be published in the official gazette 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.



<b>CORPORATE BOOKS</b>	Optional.	Certain corporate books are mandatory.
<b>AMENDMENTS TO THE ARTICLES OF ASSOCIATION/ BYLAWS</b>	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 competent 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 only when registered at the Board of Trade and published.
<b>CAPITAL INCREASE</b>	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.
<b>QUORUM</b>	<p><b>FOR RESOLUTIONS:</b></p> <ul style="list-style-type: none"> <li>• 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 indication of the liquidator.</li> <li>• 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.</li> <li>• Three-quarters of the corporate capital is required for: amendments to the Articles of Association and approving takeover, merger or liquidation of the Company.</li> <li>• Unanimity is only required when: transforming the corporate type and electing a quotaholder manager when the corporate capital is not fully paid.</li> </ul> <p><b>QUORUM FOR A PARTNERS' MEETING:</b> 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.</p>	<p><b>FOR RESOLUTIONS:</b></p> <ul style="list-style-type: none"> <li>• As a general rule, decisions at the general meeting are taken by the majority vote of the shareholders present.</li> <li>• Qualified Quorum: At least 50% of the shareholders with voting rights are required for creating preferred shares, creating a new class of shares, changing the rights or preferences of any class of shares, reducing the mandatory dividend, approving any takeover or merger and amending the corporate purpose.</li> </ul> <p><b>QUORUM FOR A GENERAL MEETING:</b> 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.</p>



## Registration Procedure

Because they are legally defined as commercial companies, both S.A.s and limitadas must file their acts of incorporation 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 place of the company's head office.

## Enrollment with the CPF and CNPJ

### CNPJ

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 before the Central Bank.

### CPF

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.

The registration with the 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 to obtain the enrollment of the nonresident individual before the CPF: (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 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, should be translated into Portuguese by a certified translator.

All the documents set out above should 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 Bank of Brazil (*Banco do Brasil*), and then filed at the Federal Revenue Service in Brazil. ♦

# Investment In Publicly Held Companies

## Overview

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

CVM is an independent federal agency connected to the Ministry of Treasury and created by Law no. 6.385/86. It was created 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, with its own financial resources and budgetary powers. CVM's commissioners have a fixed mandate and cannot be removed at will.

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. Resolution no. 2.690/00 of the National Monetary Council provides governing rules for stock exchanges.

## 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 so as 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.

## 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;
- Summary of decisions taken at the annual general shareholders' meeting;
- Minutes of the annual general shareholders' meeting;
- 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; and
- All necessary documents related to the exercise of voting rights at shareholders' meetings, as per required in specific regulations depending on the nature of the subject matter.

In addition, other events may require the submission of information such as the following:

- Notice of an extraordinary general shareholders' meeting;
- Summary of decisions taken at the extraordinary general shareholders' meeting;
- Minutes of the extraordinary general shareholders' meeting;
- Shareholders' agreement;
- Corporate group convention (agreement to form a corporate group);
- Statement of material fact;
- Information regarding any petition for protection from creditors, including the grounds for the petition, the financial statements drawn up especially for the purpose of obtaining protection from creditors and, if applicable, the situation of debenture holders with respect to recovery of their investment;
- Judgment granting protection from creditors;
- Information on any petition or confession of bankruptcy;
- Judgment declaring bankruptcy; and
- Any other information that may be requested by CVM.

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 quoted 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.

### Mandatory 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 share holdings 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 and CVM Instruction no. 361/02);
- 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);
- 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.

### Primary and Secondary Public Offerings

Public offerings for the distribution of securities both in the primary and the secondary markets are subject to the requirements of applicable legislation, and particularly CVM Instruction no. 400/03.

Any public offering of securities made within the Brazilian territory has to be submitted for prior registration before CVM. Among the registration requirements established by CVM Instruction no. 400/03, the prospectus must contain 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, 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 approval by CVM, 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 offer.

In order to carry out a public offering, the issuer must engage an underwriter to place the securities with the public. The issuer 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. 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 issuer 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.

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

# Brazilian Tax System

## General Aspects

The Brazilian Constitution allocates taxing power between the federal government, the states and the municipalities. This taxing authority includes taxes, improvement fees, contributions, fees and compulsory loans.

Unless otherwise expressly specified in the federal 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 on events that occurred before the enactment of the law creating the tax, or have its rates increased for those events;
- **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 PIS or COFINS, within 90 days of their publication; and
- **Principle of non-confiscation** (*princípio da 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)
- Social Contribution on Net Profits (CSL)
- Tax on Manufactured Products (IPI)
- Tax on Financial Transactions (IOF)
- Profit Participation Program Contribution (PIS) and the Social Security Financing Contribution (COFINS)
- Contribution on Economic Activities (CIDE)
- Import Duty (II)
- Export Duty (IE)

### State Taxes

- Tax on Distribution of Goods and on Provision of Communications and Interstate or Intrastate Transportation Services (ICMS)
- *Causa Mortis* and Donation Tax (ITCMD)

### Municipal Taxes

- Tax on Services of any Kind (ISS)
- Urban Land and Building Property Tax (IPTU)
- Inter-vivos Property Transfer Tax (ITBI)

## Federal Taxes

### INCOME TAX

Federal income tax is paid by the taxpayer. However, the law may also require the entity that remunerates the taxpayer to withhold and pay tax on that remuneration.

A “taxpayer” is a natural person or legal entity that receives earnings or any sort of income. The law may confer the responsibility to withhold and pay the tax to the entity that remunerates the taxpayer. Foreign legal entities that have activities in Brazil are considered regular taxpayers—i.e., companies under Brazilian or foreign control are subject to the same taxation.

Corporate income tax is levied at 15 percent on the book-taxable income assessed at the end of each tax period. A 10 percent surtax will apply to any portion of the annual book-taxable income above R\$240,000.

“Book-taxable” corresponds to the company’s net book-income adjusted by the statutory additions, exclusions and deductions.

Brazil has adopted the “worldwide income taxation principle” (*princípio da universalidade*). As a result, income tax is levied on the income reported by entities in Brazil, even if earned abroad. However, profits and dividends from Brazilian sources are tax-exempt.

A holding company is subject to the same taxation system as corporations. Income tax is payable only on direct income earned by the holding company (i.e., income from its business activities), since indirect income (i.e., profits earned by subsidiaries) has already been subject to corporate income tax.

As a rule, 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 (IRF), as follows:

- At a generic rate of 15 percent;
- At a rate of 25 percent for income reported by employees or service providers;
- At a rate of 25 percent for income paid to a person residing at a place offering favorable tax laws for foreign businesses and individuals (i.e., without taxing income or imposing a maximum tax rate below 20 percent);
- At a specific rate determined in the double taxation treaties signed by Brazil.

IRF 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.

### SOCIAL CONTRIBUTION ON NET PROFITS

The Social Contribution on Net Profits (CSL) is calculated on the year-end results adjusted by the additions, exclusions and offsetting events established by tax law. The tax base may only be lowered (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 CSL tax base; as a result, the profits, income and capital gains earned abroad by Brazilian companies are also subject to CSL.

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

### TAX ON MANUFACTURED GOODS

The tax on manufactured goods (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 mechanism is not applicable to credits related to fixed assets. Rates are assessed on the value of manufactured goods as they are imported or sold from domestic plants and vary in accordance with 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 of products abroad.

### TAX ON FINANCIAL TRANSACTIONS

The tax on financial transactions 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 in accordance with the type of transaction involved. The IOF rates and tax base may be changed at any time during the fiscal year without prior notice by means of Decree issued by the federal government.

### PROFIT PARTICIPATION PROGRAM CONTRIBUTION AND THE SOCIAL SECURITY FINANCING CONTRIBUTION

The Profit Participation Program Contribution (PIS) and the Social Security Financing Contribution (COFINS) are social contributions levied on the company's revenues.

Law no. 10.637 of December 30, 2002 introduced the PIS noncumulative system, and Law 10.833/03 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 the company. Under a non-cumulative system of calculation, the company is allowed to take credits related to the acquisition of goods and services necessary for the company's core 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 of November 27, 1998, adopting a flat PIS and COFINS rate of 0.65 percent and 3 percent, respectively.

As of 2004, the levy of PIS and COFINS was extended to imports of foreign products and services, known as “PIS-Imports” and “COFINS-Imports.” The taxes are levied on: (i) entry of foreign goods into the Brazilian territory or (ii) payment, credit, delivery, use or remittance of funds to foreign-based persons in consideration for services rendered.

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

As a rule, PIS-Imports and COFINS-Imports adopt the same rates as those charged under the non-cumulative taxation system, which means that PIS-Imports and COFINS-Imports paid on the import of products or services may entitle the Brazilian company to tax credits that can be used against its tax debts. However, this credit only applies to contributions on imports of goods intended for further resale or goods and services serving as inputs on the manufacture of goods or provision of services intended for sale.

#### CONTRIBUTIONS ON ECONOMIC ACTIVITIES

Currently, there are Contributions on Economic Activities (CIDE) levied on remittance of royalties to abroad (CIDE-Royalties) and on fuels (CIDE-Fuels).

CIDE-Royalties are levied on overseas remittances relating 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 payable by the Brazilian company at a rate of up to 10 percent on the sums remitted abroad.

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

#### State Taxes

##### TAX ON DISTRIBUTION OF GOODS

ICMS is the primary state tax. It is imposed on operations involving the distribution of goods, including import, on interstate and intermunicipal transport, and on communications services.

ICMS is a value-added tax that allows the taxpayer to record input tax credits from the ICMS paid on the purchase of raw materials, intermediary products and packaging materials. Credits related to fixed assets are permitted with some restrictions. Intrastate rates normally vary from 7 to 25 percent. In interstate operations applicable rates are 7 percent or 12 percent depending on destination.

ICMS is not levied on exports.

## ESTATE AND GIFT TAX

The Estate and Gift Tax (ITCMD) is levied on the value of goods and rights conveyed by donation or estate succession, at a rate to be determined by each Brazilian state (capped at 8 percent, as determined by the federal Senate). In the state of São Paulo, for example, the ITCMD is levied at a rate of 4 percent.

## Municipal Taxes

### TAX ON SERVICES

The most significant municipal tax in relation to setting up and developing a business in Brazil is the Tax on Services (ISS).

The ISS is assessed on the services provided by a company or independent contractor, in accordance with a list of services attached to the Supplementary Law no. 116 of July 31, 2003. This tax is generally calculated at a rate of 2 to 5 percent on the service value.

The ISS is levied on (i) service imports (meaning the services fully rendered outside of Brazil for a person established in Brazil) and (ii) services initiated abroad (meaning the services that could be divided into stages, some of them being performed within Brazil for a beneficiary established in Brazil).

In these cases, if ISS cannot be charged directly to the foreign service provider, the service recipient will be responsible for payment of the tax.

### INTER-VIVOS PROPERTY TRANSFER TAX

The Inter-Vivos Property Transfer Tax (ITBI) is a municipal tax assessed on the conveyance of title to real estate properties and related rights, at a rate ranging between 2 and 6 percent as determined by each municipality (in the City of São Paulo, ITBI is figured at 2 percent). The taxpayer is the buyer of real property or related rights.

The ITBI is not levied on the transfer of real estate properties or rights composing a company's capital stock or resulting from merger, consolidation, 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 properties and related rights.

### URBAN LAND AND BUILDING TAX

The Urban Land and Building Tax (IPTU) is assessed on ownership and possession of urban properties. IPTU is assessed annually on the value of the real property, at a progressive rate to be determined by the value, use and location of said property.

## Summary—Main Brazilian Taxes

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

TAX	BASIS OF CALCULATION	RATE
Corporate Income Tax (IRPJ)	Actual profits, estimated profits or profits determined by tax authorities	15% on the income below R\$240,000 per year; 10% on the income in excess of this threshold
Withholding Income Tax (IRF)	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
Tax on Manufactured Products (IPI)	Sales price of the industrialized product	Variable per product classification
Tax on Financial Transactions (IOF)	Credit, foreign exchange, insurance and securities transactions	Variable per type of transaction—federal government may increase or decrease the IOF rate by means of issuance of Decree
Social Contribution on Profits (CSL)	Adjusted net profit	9% to corporations or 15% to financial institutions
Profit Participation Program Contribution (PIS)	Gross revenues	1.65% under the non-cumulative regime and 0.65% under the cumulative regime
Social Security Financing Contribution (COFINS)	Gross revenues	7.6% under the non-cumulative regime and 3% under the cumulative regime
Contribution on Economic Activities on Royalties (CIDE-Royalties)	Payment of royalties and fees on technology transfers and technical services by foreign persons	10%
Contribution on Economic Activities on Fuels (CIDE-Fuels)	Marketing and import of fuels	Variable per type of fuel
Tax on Distribution of Goods and Services (ICMS)	Value of the transaction	7% to 25%
Tax on Services (ISS)	Service price	2% to 5%
Import Duty (II)	Value of the imported product	Variable according to the imported product
Estate and Gift Tax (ITCMD)	Value of assets or rights transferred by donation or legal succession	2% and 6% according to state legislation
Inter-Vivos Transfer Tax (ITBI)	Transfer of title to real properties and related rights	Up to 8% according to municipal legislation
Urban Land and Building Tax (IPTU)	Ownership of urban properties	Variable according to each municipal legislation and characteristics of real estate property
Export Duty (IE)	Value of exported product	Variable according to the exported product

## Governmental Incentives

The Brazilian government has established several schemes intended to stimulate growth in developing sectors of the economy. These include subsidized financing, tax credits and tariff exemptions.

Investment projects are approved on a case-by-case basis by the relevant agency. These decisions are usually conditioned on a certain degree of governmental control over the investment project. Incentives include an exemption from income tax and other indirect taxes for a specific period of time, subsidized credit from governmental development banks and the privilege of importing capital goods duty-free, or at sharply reduced tariff rates. The following 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 Amazon 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 the 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;
- **Tax on Manufactured Products (IPI)** on foreign products intended for consumption or manufacture 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;
- **Tax on Distribution of Goods and Services (ICMS)** for products from other states that are intended for consumption or manufacture in the ZFM. Additionally, companies will have an ICMS credit with regard 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 percent 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 of Jan. 2, 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 Brazilian domestic market.

## STATE TAX INCENTIVES—REDUCTIONS ON 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, the Brazilian federal government created the Special Regime for Infrastructure Development Incentives (REIDI), pursuant to which companies that have an approved infrastructure project connected to developing transportation, ports, energy and basic sanitation will benefit from tax incentives.

Companies that qualify for REIDI also benefit from a suspension of PIS and COFINS on domestic sales and imports of new machinery and equipment and on 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 REGIME FOR CONSTRUCTION, REFORM OR MODERNIZATION OF SOCCER STADIUMS

In 2010, the Brazilian government approved the Special Regime for Construction, Reform or Modernization of Soccer Stadiums (RECOM), which grants certain tax benefits to legal entities working on an approved project in relation to the construction, reform or modernization of soccer stadiums that will be used to host matches during the Confederations Cup of 2013 and the World Cup of 2014. The main tax benefits that may be allowed are:

- Imports of materials and equipment to be used in RECOM projects will not be subject to PIS-Import or COFINS-Import, II or IPI;
- PIS, COFINS and IPI will not be levied on the sale of goods from a Brazilian entity if they are to be used in a RECOM project;
- PIS and COFINS will not be levied on revenues earned by Brazilian entities that render services or sell goods to any beneficiary of the RECOM; and
- PIS-Import and COFINS-Import will not be levied on the rendering of services from a foreign company to a beneficiary of the RECOM.

## 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 the 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 entity 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) that 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.

#### Brazilian Transfer Pricing Rules

Corporate Income Tax (IRPJ) and Social Contribution on Profits (CSL) are payable on net 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.

Brazilian legislation defines related parties, in relation to a Brazilian taxable business, as any of the following:

- A foreign-based parent company;
- Foreign-based branches or agencies;
- Foreign-based individuals or legal entities whose equity interests in the Brazilian company characterizes them as controlling or affiliate parties;
- A foreign-based company characterized as a controlled or affiliate company;
- A foreign-based company under the same corporate or administrative control as the Brazilian company, or when at least 10 percent (each) of their respective capital stock belongs to the same individual or legal entity;
- A foreign-based individual or legal entity that, jointly with the Brazilian company, owns an equity interest in a third legal entity that is characterized as a controlled or affiliate entity;
- A foreign-based individual or legal entity in partnership with the Brazilian company as a consortium or condominium, pursuant to Brazilian law;
- A foreign-based individual who is a relative (up to the third degree), spouse or common-law spouse of any of companies' directors or controlling partners or shareholders, directly or indirectly;
- A foreign-based individual or legal entity that acts as exclusive agent or distributor for the purchase and sale of goods, services and rights; or
- A foreign-based individual or legal entity for which the Brazilian company acts as

exclusive agent or distributor in the purchase and sale of goods, services and rights.

When products are imported by a Brazilian company, transfer pricing rules determine whether the Brazilian company is making excess payments to the foreign supplier. To that end, certain deductibility limits apply to payments made by the Brazilian company to its foreign supplier. Any amounts above such limit are added to the company's taxable income.

In order to ascertain the price parameter for calculating the transfer pricing adjustments in import transactions, Brazilian legislation sets forth the following rigid methods:

- **Independent Comparative Prices Method (PIC)** — defined as the average of the prices of identical or similar goods or services in the Brazilian market or in the markets of other countries for purchase and sale transactions on similar terms;
- **Resale Price Less Profit Method (PRL)** — defined as the average resale price of the goods or services, less: (i) discounts granted, (ii) taxes and contributions levied on sales, (iii) commissions and brokerage fees paid and (iv) the 20-percent profit margin, calculated on the resale price or, in the case of imported goods used in production, the 60-percent profit margin calculated over the resale price after deduction of the amounts previously mentioned and the value added in Brazil; and
- **Production Cost plus Profit Method (CPL)** — defined as the average production cost of identical or similar goods or services in the country where they were originally produced/rendered, plus taxes and fees charged by said country on export transactions, plus a 20-percent profit margin calculated on the assessed cost.

In relation to exports, the Brazilian tax authorities check whether prices are lower than the prices determined by market comparability methods. If lower, Brazilian companies must explain the basis for calculating the price when selling goods and providing services to foreign-based related companies.

TP Rules state that revenues from the export to a related party of goods, services or rights will only be subject to adjustments if their average price is less than 90 percent of the average price for the sale of the same goods, services or rights in the Brazilian market during the same period and in similar payment conditions. Moreover, TP Rules also determine that the Brazilian company is in compliance with TP Rules if (i) total export revenues do not exceed the limit of 5 percent of the total income earned by the company or (ii) the company obtained profits from exports to related parties equal to at least 5 percent of the revenues from all export transactions. If neither of these safe harbors is available, one of the following methods must be applied in order to determine the transfer pricing adjustments:

- **Comparable Uncontrolled Price Method (PVEx)** — similar to the CUP method, under the OECD TP Guidelines, the average sales price of exports made by the same company to other customers or of exports made by another Brazilian exporter of equivalent or similar goods, services or rights during the same tax period and under similar payment conditions;
- **Wholesale Price Method (PVA)** — the average sales price of equivalent or similar goods in the wholesale market of the country of destination, under similar payment conditions, decreased by the taxes included in the price in the country of destination and by a profit margin of 15 percent on the wholesale price;
- **Retail Price Method (PVV)** — the average sales price of similar goods in the retail



market of the country of destination, under similar payment conditions, decreased by the taxes included in the price and by a profit margin of 30 percent on the retail price;

- **Cost Plus Method (CAP)**— the average purchase cost or the average production cost of exported goods, services or rights, increased by taxes paid in Brazil and by a profit margin of 15 percent over the total cost plus taxes.

### Brazilian Thin Capitalization Rules

The 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 percent 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 CSL purposes.

The Brazilian Thin Capitalization Rules also apply to transactions in which the Brazilian company is surety, guarantor, attorney or any intervener 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 and Ukraine. Brazil also signed treaties with Paraguay, Venezuela and Russia, which are currently awaiting ratification.

The tax treaties provide 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.



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	10 or 15
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
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



# Labor and Employment

## Legislation

Brazilian employment conditions are regulated and governed by the rules provided by the federal 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 a labor 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, sex, 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 Department (DRT). New companies have 30 days to certify their books before the DRT, starting from the date on which the first employee is hired.

### EMPLOYMENT BOOKLET

The employment booklet (CTPS) is issued by the Regional Labor Ministry Offices. The interested individual must personally go to the office 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 annotations (employment date, function, compensation and special conditions, if any) in the CTPS. Annotations in the CTPS must also be made in the event of termination of the employment contract.

Failure by the employer to make the proper annotations 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 the Brazilian law for purposes of characterizing the employment relationship. The 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 consent of the employee. 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 upon 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 probation contract.

The term of a probation contract cannot exceed 90 days; the term of other permissible fixed-term contracts may not exceed a term of 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 labor 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 90 days with the possibility of extension for a further 90 days. Any extension must be duly explained to the Ministry of Labor.

## 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.

### *Apprentices*

There are some limitations on the employment of apprentices. However, according to the law, 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.

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

The validity of an apprenticeship agreement is conditional on its proper annotation 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*

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).

Where an employee employed through an outsourcing agreement is directed by the company, there is a risk that individual will file a claim against the company before the labor courts demanding the acknowledgment 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, INSS, income tax).

## Basic Rights of Employees

### SALARY AND OTHER REMUNERATION

Under the Brazilian labor laws 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 floor 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 express 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 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 in private entities, the maximum workday is eight hours and the maximum workweek is 44 hours. For some specific professional categories, called “*categorías profesionales 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.

## 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 5 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 has the right to 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 (“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.

## PRIOR NOTICE OF TERMINATION

If an employer wishes to terminate an employment contract without cause, the employer must either give the employee 30 days’ 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 full salary.

In the event of termination of the employment agreement by the employee, the 30 days’ prior notice should also be given or indemnified to the employer.

## 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 accidents are entitled to certain employment tenure protections.

#### EMPLOYEE SEVERANCE FUND

Under the employee severance 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. Additionally, a contribution of 0.50 percent of each employee's compensation for the previous month shall be paid to the government.

A contract terminated by the employer without just cause entitles the employee to withdraw the FGTS deposits, together with interest, monetary damages and a further 40 percent calculated over the total amount deposited by the employer.

### 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 Labor Ministry of Brazil:

- Prove the receipt of investments in "know-how" transfer, or any other capital goods, with the value equal to or greater than US\$50,000, or the equivalent in any other currency, for each nonresident appointed for a management position, presenting for this purpose 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 US\$200,000, 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 legal 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 attain a visa before entering the Brazilian territory. Brazil's immigration policy is coordinated by the Brazilian Immigration Council, a body of the Ministry of Labor and Employment.

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 Ministry of Labor and Employment, 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 Ministry of Labor and Employment for review, accompanied by documents showing evidence of the professional skills and expertise of the foreigner, in addition to his 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 Ministry of Labor and Employment 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 and abandonment of the job.

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.



## EMPLOYEE RIGHTS ON DISMISSAL

### *Dismissal Without Just Cause*

#### **Fixed-Term Contract**

In the case of a fixed-term contract, besides the regular compensation, no indemnity is payable to an employee on the termination of the employment relationship due to the expiration of the fixed term. However, if during this contract the employee is terminated without cause, an indemnity in the amount equivalent to half of the salary due to the employee for the unexpired portion of the contract should be paid.

#### **Indefinite Term Contract**

In the case of termination of an employment contract by the employer without just cause, the employee shall have the following rights:

- Outstanding salary for the days worked during the month;
- Thirty days' 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 30-day 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 of 8.50 percent of the salaries due at the termination; and
- FGTS penalty equaling 40 percent of the total amount deposited in the employee's FGTS account during the labor contract, plus 10 percent on the said amount to the government.

### *Dismissal With Just Cause*

In the event of dismissal for cause in a fixed-term contract or 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:

- 8.50 percent to the FGTS;
- 20 percent to the Social Security (the National Institute of Social Security or 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

The employer shall pay union dues, in January, 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, which are supported by the employee:

- A variable percentage from 7.65 percent to 11 percent of the monthly salary to the INSS, according to the amount of the employee's salary;
- Personal income tax ranging from 15 percent 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. ♦

# Intellectual Property

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

Brazilian legislation is in conformity with 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 a trademark applied for by a Brazilian or foreign company to distinguish products or services related to its activities.

Before using 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. If the trademark is not used, third parties may request its cancellation for lack of use. 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 used by its owner or a licensee in Brazil, registration will be valid for 10 years and this protection term may be renewed for like successive 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.

The protection afforded by a patent is valid 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 repair 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 either 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 to the competitor's advertising campaign or the 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 Law no. 8.955/94 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 signature of the franchising agreement or pre-agreement 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 issuance of the law. 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 a case 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 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 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 same work.

Either 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 the 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 Environmental Policy, a framework which encompassed a comprehensive and significantly different approach, meaning an end to tolerance for pollutant emissions and 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 conduct. In this sense, the industry solely bares the risks inherent to its activities. Therefore, only the 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.

Also, Brazilian Environmental Policy empowers the Public Prosecutor's Office to act in defense of the environment, being responsible to defend public interests and the environment. Federal Law no. 7.347/1985 extended this competence 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 provides 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 the preservation of the environment; (iv) definition of specially protected areas; and (v) performance of an environmental impact assessment for the installation of activities that may cause significant environmental degradation.

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

If there is no federal law regulating a specific matter, states have full legislative competence for regulating such 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, and 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 are responsible for the enforcement of environmental laws, so federal, state and municipal environmental agencies are involved with this activity.

### Brazilian Environmental Policy

Federal Law no. 6.938/1981, which established the Brazilian Environmental Policy (*Política Nacional do Meio Ambiente* or the “PNMA”) is the basis for the Brazilian environmental law.

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 permits in their respective jurisdictions.



## Environmental Liabilities

Article 225, paragraph 3, of the federal Constitution, provides that in relation to “activities that are harmful to the environment violators shall be subject, whether individuals or companies, to criminal and administrative sanctions, regardless of the obligation to repair the damage caused.” Essentially, the federal Constitution provided for environmental liability in three distinct fields: civil, administrative and criminal.

Article 70 of Federal Law no. 9.605/1998 (Environmental Crimes Act) defines an environmental administrative infraction as “any action or omission that violates the legal rules of use, usufruct, promotion, protection and recovery of the environment.” Administrative liability subjects the transgressor to sanctions including a warning, simple fine, daily fine, confiscation, suspension of activities, restriction of rights and other sanctions described in the Environmental Crimes Act and Federal Decree no. 6.514/2008. Administrative fines may range from 50 to 50 million Reais.

In relation to the restriction of rights, Federal Decree no. 6.514/2008 provides varied penalties that can be imposed on a violator: suspension or cancellation of a registration, permit or authorization; restriction or suspension of tax benefits and incentives or credit from official institutions; and a prohibition on entering into any contract with public authorities.

Notwithstanding that such penalties are characterized as administrative sanctions, in most cases they will also be connected with civil liability. Therefore, administrative sanctions may be used as grounds for lawsuits seeking civil damages and, in specific cases, even the imposition of criminal liability on the violator, pursuant to the Environmental Crimes Act.

Civil liability is strict and jointly shared. According to Article 14, paragraph 1, of the PNMA, guilt of the polluter does not have to be proven in order to establish the obligation of repairing or paying compensation for environmental damage. Joint liability is regulated by Article 3 of the PNMA and Article 275 of the Civil Code, which establish that the obligation to repair or pay compensation for any environmental damage may be imposed, entirely, on anyone who has directly or indirectly contributed to its occurrence, regardless of the degree of participation in causing the damage. In such an event, the one the debt is collected from would be entitled to recover the loss through legal action against those who also contributed to the damage.

There is no limitation for compensation or recovery costs in connection with civil liability. Also, under the strict liability standards, the defendant bears the burden of proof that there is no causation between the defendant’s activities and the environmental damage.

Environmental criminal liability is provided for in the Environmental Crimes Act, which imposes criminal sanctions on activities harmful to the environment. Unlike the strict liability imposed for civil liability, for criminal liability, the determining element of accountability is fault of the agent that caused the damage. Therefore, the application and severity of criminal penalties imposed upon the violator is directly tied to willful misconduct or negligence on the part of the agent when committing the crime. Penalties range from restriction of rights to imprisonment, and companies may be held criminally liable for environmental infractions via their agents.

Criminal liability is extended not only to the person directly causing the damage, but also to any agents who knew about the criminal conduct and willfully did not act to prevent it. Senior managers, officers, managers, auditors, legal representatives and members of the board or board committees may also be held criminally liable.

## Environmental Permitting

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

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

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

In any event, regardless of the competent environmental agency, the process to issue environmental permit shall always consider the technical expertise of other environmental agencies involved in the permitting process as well as the opinion of other interested federal, state and municipal agencies, as per Resolution CONAMA no. 237/97, Article 4, section 1, Article 5, section 1, and Article 6.

It is possible that a certain activity—depending on its characteristics, location and the quality of assets and interests affected thereby—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 permits:

- **Preliminary Permit (LP)** — granted at the preliminary stage of the enterprise or activity, approving its location and concept, certifying its environmental feasibility and establishing basic requirements and conditions to be met at the next stages of its implementation. At this stage, an Environmental Impact Assessment (*Estudo de Impacto Ambiental* or “EIA”) and its corresponding report (*Relatório de Impactos ao Meio Ambiente* or “RIMA”) may be required, if the activity has a greater potential for pollution.
- **Installation Permit (LI)** — authorizes the installation of the enterprise or activity in compliance with the specifications contained in the approved plans, programs and projects, including the environmental control measures and other conditions.
- **Operation Permit (LO)** — authorizes the operation of the activity or enterprise subsequently to the verification of the effective compliance with the requirements set forth in the previously mentioned permits.

CONAMA may create, whenever needed, specific environmental permits, in due compliance with the nature, characteristics and peculiarities of the activity or enterprise.

#### ENVIRONMENTAL OFFSETTING

In order to obtain an environmental permit for activities deemed potentially damaging to the environment by the competent 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 permit, according to the “ecosystem impact level” of the proposed activity, pursuant to Article 31-A of Federal Decree no. 6.848/09. Such value must be no greater than 0.5 percent of the project’s total costs.

#### Specially Protected Areas

##### PERMANENT PRESERVATION AREAS

Permanent Preservation Areas (APP) are areas with the function of providing environmental services as described in Article 1 of the Federal Law no. 4.771/65 (Forestry Code). APPs can be established in two ways: by the enactment of the Forestry Code itself, which provides a list (in Article 2) of APPs such as river banks, mountain tops and areas having mangrove vegetation; or by a specific legislative act, for other areas also listed in the Code (in Article 3). An important feature of APPs is that they must remain untouched. In exceptional cases (public utility, social interest and in cases of low environmental impact), however, economic activities can be conducted in APPs, as regulated by CONAMA Resolution no. 369/2006.

##### LEGAL FOREST RESERVES

Legal Forest Reserves (RFL) are specially protected areas located within rural estates, aiming at the sustainable use of natural resources, the conservation and rehabilitation of ecological services and biodiversity. The Forestry Code (Article 16) 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 RFL areas, the clearing of forests is not permitted; the only permitted use of the land is through a sustainable forestry regime (Article 16, paragraph 2), according to the principles and criteria established by Federal Decree no. 5.975/2006.

The location of RFLs must be approved by the state environmental agency, which must take into account the social role of the real estate, its proximity to other RFLs, APPs, conservation units or other specially protected areas, and any existent environmental spatial planning instrument (Article 16, paragraph 4). The Forestry Code also requires that RFLs be registered in the respective Real Estate Registry (Article 16, paragraph 8).

According to the Forestry Code (Article 44), those landowners that do not meet the RFL minimum percentage of vegetative cover for their property (forests set-aside obligation) are required to adopt, separately or jointly, depending on the case, the following measures: (i) replant vegetation to comply with the RFL obligation; (ii) allow the natural regeneration

of vegetation; and/or (iii) replant vegetation in another property located in the same ecosystem as the one that does not comply with the RFL minimum.

### 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 restricted, but allowed, in differing 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, hereafter “SNUC Act”) and further regulated in 2002 by the Brazilian System of Conservation Units Decree 2002 (Federal Decree no. 4.340, hereafter “SNUC Decree”).

While the IPU grouping relies on an absolute preservation approach, being composed of five subcategories, and allowing no economic activity (only public visitation and scientific research activities are allowed), the SUU grouping is composed of seven subcategories, generally privately owned, of which use is based on a sustainable development approach. The conservation units are created by a specific law or decree. ♦

# Antitrust Legislation

## Overview

Law no. 8.884/1994 (Brazilian Antitrust Law) sets out a regime for antitrust regulations in Brazil that is intended to restrain and prevent abuses of economic power.

The Brazilian Antitrust System (*Sistema Brasileiro de Defesa da Concorrência* or “SBDC”) has three competition authorities: (i) the Administrative Council for Economic Defense (CADE), an independent agency connected to the Ministry of Justice; (ii) the Secretariat for Economic Law (SDE), a governmental entity that reports to the Ministry of Justice; and (iii) the Secretariat for Economic Monitoring (SEAE), a governmental entity reporting to the Ministry of Finance.

CADE, assisted by SDE and SEAE, exercises its powers on behalf of the community and also has jurisdiction over any acts performed outside the country that produce, or may produce, effects on Brazilian markets.

The Brazilian Antitrust Law applies to any and all individuals and legal entities (whether public or private), organizations and joint ventures, as well to the officers, who can be liable for anticompetitive acts individually or jointly with the company itself.

## Preventive Control

According to the Brazilian Antitrust Law, any acts that may limit or otherwise restrain competition shall be subject to review. The SBDC must be given notice of any transaction that results in a market-share concentration of 20 percent or more, or that involves a company or group of companies with a turnover of at least R\$400 million in the last financial year in Brazil.

The parties have 15 business days to notify the SBDC after executing the first binding transaction document. Untimely notification of the transaction is subject to fines ranging from R\$62,000 to R\$6.2 million. Although the parties are not generally obliged to, they can opt to seek CADE’s prior approval in order to mitigate the risks associated with non-approval of a transaction.

The transactions submitted to SBDC for review are analyzed by both SEAE and SDE before CADE gives a judgment. The analysis made by SEAE is based mostly on economic parameters, while SDE provides a legal study on the case. However, the report of these entities is nonbinding, and CADE can accept or reject the recommendations made.

## Restraining Control

According to the Brazilian Antitrust Law, anticompetitive practices are those that (i) can limit, falsify or in any way restrain competition, (ii) create a monopoly by illegally eliminating competitors or (iii) constitute abuse of economic power.

### EXAMPLES OF SUCH PRACTICES INCLUDE:

- Tie-in sales;
- Refusal to sell;
- Price arrangements between competitors;
- Market division;

- Bid rigging;
- Underselling;
- Imposition of resale prices on distributors, retailers and representatives;
- Retaining of production or consumer goods; and
- Resale price maintenance.

The SDE's jurisdiction includes carrying out preliminary investigations if evidence of anticompetitive conduct is insufficient to file an administrative proceeding. In such cases, SDE has the capacity to initiate administrative proceedings in response to a formal complaint, upon acknowledging anticompetitive conduct or when preliminary investigations are completed.

During administrative proceedings, both SDE and CADE may request information from any persons, agencies, authorities or entities, whether public or private. Failure to comply with such a request is punishable by a daily fine of approximately R\$6,000, which may be increased by 20 times, depending on the offender's economic condition. With substantiated grounds, SDE or SEAE may also authorize inspections of the investigated company. Obstructing or otherwise failing to comply with the antitrust authorities' work is punishable by fines ranging from R\$5,320 to R\$9,576,900.

The SDE proceedings are decided by CADE. The CADE decision is final and conclusive in the administrative instance. CADE's decisions may be appealed in court.

If a company is found guilty of anticompetitive practices, CADE may require such company to pay a fine ranging from 1 percent to 30 percent of its gross turnover posted in the latest fiscal year. If the company's executives are also deemed liable for such offense, they may be subject to a fine varying from 10 percent to 50 percent of the company's penalty.

Along with the fine, other penalties may be applied, including: compulsory licensing of patents; prohibition from contracting with official financial institutions and participating in public bids; transfer of control; cancellation of tax incentives or public subsidies; company spin-off; or divestiture.

Monitoring of compliance with the administrative decision falls to CADE and the Attorney General's Office. ♦

# Dispute Resolution Methods

## Litigation

The Brazilian Judicial system, in relation to civil and commercial litigation, is structured into two different branches: 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 majority of the lawsuits submitted to federal courts involve the federal government, while most lawsuits involving private parties are determined by state courts.

With the exception of family matters, court proceedings in civil and commercial cases are not confidential.

## JURISDICTION IN CIVIL AND COMMERCIAL CASES

The Civil Code of 2002 revoked the Brazilian Civil Code of 1916 as well as the first part of the Brazilian Commercial Code. This federal statute is considered to be the legal foundation for judicial proceedings relating to commercial and civil matters, as the Brazilian Commercial Code only addresses maritime commercial issues. The procedural rules are established in another federal statute, the Brazilian Civil Procedure Code. The organization of the courts and the specific venue rules of each state are contained in that state's Judicial Organization Code.

Civil and commercial litigation is filed before state courts. It will be analyzed and determined by an individual judge, and such decision can be reviewed on certain grounds by a state court of appeal. There is no trial by jury in commercial and civil cases.

Generally, the defendant's domicile is used to determine and establish jurisdiction of the court, whether the defendant is an individual or a company. When there is no specific legal determination on the election of the venue, parties are permitted to elect, consensually, a different jurisdiction to resolve disputes.

The Brazilian Civil Procedure Code provides for several kinds of special proceedings, but the most used type is the ordinary proceeding (*processo ordinário*). This kind of proceeding, especially in contract and tort cases, is applicable to disputes with a value of over 60 minimum salaries.

## INITIAL PROCEDURES

The lawsuit is initiated when the plaintiff files a complaint indicating factual and legal points. The complaint must be filed before the competent court, according to the Judicial Organization Code of the relevant state. Then, the defendant is called to answer the allegations in the complaint within, generally, 15 days. The plaintiff will then file another petition to respond to the defendant's factual and legal points.

The judge will then request that the parties disclose the evidence they wish to produce and present to the court. After that, a reconciliation hearing may be called to try to settle the case. If the reconciliation hearing is not successful and the case proceeds to a trial, the judge must render an interlocutory decision, which is a preliminary judgment by the court of all procedural formalities and issues raised by the parties, except the merits of the case.



At this moment, the case can still be dismissed by the court in case of absence of a statutory prerequisite (such as standing to sue, interest to sue and cause of action) or if the judge deems that the defendant is not answerable in respect of the claim. In addition, the evidence to be produced and presented to the court will be admitted or dismissed by the judge.

## EVIDENCE

There is no provision in Brazilian law for US-style discovery proceedings, and the admission of evidence is entirely controlled by the judge. Normally, documentary evidence is presented to the court together with the complaint. The defendant presents documentary evidence together with the answer to the complaint. As a general rule, other documents pertaining to the case, which will become relevant as the case develops, can always be presented by the parties at any point, provided that the other party is given the right to comment on them.

Besides documentary evidence, the Brazilian legal system permits presentation of oral evidence from witnesses and technical reports from experts. In relation to expert's reports, the judge will appoint the court's expert and the parties will forward to that person questions to be answered in writing. The parties also have the right to appoint assistant experts of their own choosing to answer the questions and to make comments on the report of the court's expert.

The ordinary hearing will take place on the date determined by the court. This will only occur after the parties have had the opportunity to set their points and arguments on the documentary evidence and after the expert's reports have been examined by the parties.

At the hearing, witnesses previously listed by the parties and accepted by the presiding judge will be examined by the judge, and then by the parties' attorneys, and a written transcript of the proceeding shall be taken. Witnesses testify under oath and will be subject to criminal proceedings if they fail to tell the truth.

After the hearings, the parties are still able to present comments on the evidence and testimonies. Finally, the judge is able to decide the claim upon examination of the entire record.

## DECISION

The judge issues a decision after the conclusion of the proceedings. The structure of the decision generally consists of a description of the issues involved, a summary of the claim and of the answer, a brief description of the facts, the judge's opinion in respect of each of the issues and the judgment.

The decision may award a party an indemnification, may order a party to take an action or may even declare which is the right interpretation of a clause of a contract.

## APPEALS

Until recently, both interlocutory and final decisions were subject to appeal. However, the Brazilian Civil Procedure Code was amended to restrict the possibilities of interlocutory appeals, in light of the fact that such decisions do not dismiss the lawsuit. Thus, as a general rule, challenges to interlocutory decisions are only addressed together with a final appeal at the end of the proceedings. A stay may be produced on the proceedings if the challenge falls within certain exceptions permitted by Brazilian law.



Appeals are determined by a panel of a court of appeal composed of an even number of judges. They may revise the earlier decision with respect to the law and the facts. The parties may appeal further to the superior federal courts, which are the Superior Court of Justice and the Supreme Court.

If one party claims that a violation of a treaty, a federal law or conflicting interpretation of federal law by other state courts has occurred, an appeal can be presented to the Superior Justice Tribunal. If a violation of the federal Constitution is claimed, an appeal can be presented to the Supreme Court.

Both of these appeals can be proposed at the same time but their availability is very restricted. No discussion of the facts is permitted, and only the legal issues are subject to review in the superior federal courts. The appeal to the superior federal courts does not suspend the process, and the party can initiate the enforcement proceedings.

#### ENFORCEMENT OF A JUDGMENT

After the final judgment is rendered, a party receiving an award is entitled to initiate an enforcement action to obtain payment.

Alterations to the Brazilian Civil Procedure Code have accelerated the process of enforcing judgments. The plaintiff will state the amount claimed to be owed. The judgment will establish how much and on what basis the damages have to be calculated. If the award determines that an asset must be delivered by the defendant, the judge will outline measures that ensure a practical result equivalent to payment.

In the case of a fixed award, if the debtor does not pay within 15 days of the notification, the compensation award will be increased by 10 percent. Then, the creditor will be entitled to identify assets owned by the debtor that the creditor wishes to charge in order to satisfy the compensation award, which charge can be challenged by the debtor.

If, after the judgment, the defendant is unable or unwilling to pay the recovery or perform the action required by court, the charged property will be valued and sold in a public auction and the money used to pay the winning party.

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

#### Arbitration

Before the enactment of the Brazilian Arbitration Law (Law no. 9.307/1996), arbitration was not widely used.

Arbitration is an alternative dispute resolution in which the parties seek to settle the dispute outside the courts. According to Brazilian legislation, only disposable property rights can be submitted to arbitration. This alternative method is commonly used in business transactions, as it permits the dispute to be solved by experts in a confidential and expeditious way.

As an alternative to courts, parties must agree to submit a certain dispute to be solved by arbitration. Such consent is reflected in an agreement to arbitrate, which comprises an arbitration clause (*cláusula compromissória*) and an arbitration commitment (*compromisso arbitral*).

The arbitration clause is set out in the initial contract. This clause is considered independent from the rest of the contract because of its severability character, meaning that invalidity of the contract would not necessarily void the arbitration clause.

The main changes brought by the Brazilian Arbitration Law can be summed up as follows:

- An arbitration clause will obligate the parties to refer any dispute to an arbitration tribunal in lieu of the judiciary. This is an affirmative covenant, subject to specific performance;
- Arbitration clauses may require that the arbitration have discovery procedures that are conducted in accordance with the rules of an institutional arbitration body or specialized entity, whether domestic or foreign, or it may require the parties to draft arbitration rules;
- If one of the parties resists submission to arbitration, the parties will be required to appear before the court, and its decision will be binding as to the arbitration commitment;
- The arbitration decision has the same effect on the parties as a decision handed down by the judiciary branch, and any finding against a party constitutes a judicial enforcement instrument. Under the new arbitration law, the arbitration decision is not appealable, and there is no longer any need for its recognition by the judiciary branch;
- Enforcement of decisions of a foreign arbitral tribunal is subject to the Superior Court of Justice's recognition, applying the same requisites for recognition of foreign court rulings. The local courts are no longer required to recognize any arbitration decision; and
- Service on a party resident or domiciled in Brazil under the agreement to arbitrate or procedural law of the country where the arbitration has actually taken place (for instance, service by mail) is not considered an offense to Brazilian public policy.

The growth of arbitration chambers and use of arbitration agreements in Brazil reflect the expansion of the mechanism in the country. In addition, Brazil ratified the New York Convention, a treaty for recognition and enforcement of foreign arbitral awards widely known for its pro-arbitration provisions, thus permitting the recognition and enforcement of foreign arbitral awards within Brazilian territory. ♦

## About Tauil & Chequer Advogados in association with Mayer Brown LLP

Founded in 1992, Tauil & Chequer Advogados (T&C) has grown rapidly and today has approximately 90 lawyers and offices in Rio de Janeiro, São Paulo and Vitória. In December 2009, the firm entered into an agreement with Mayer Brown LLP to become "Tauil & Chequer in association with Mayer Brown LLP."

T&C is a full service law firm, offering clients in-depth local knowledge combined with global reach. The firm represents local and international businesses on their domestic and cross-border activities and offers clients the full range of legal services including corporate and M&A, debt and equity capital markets, banking and finance, employment and benefits, environmental, intellectual property, litigation and dispute resolution, restructuring, bankruptcy and insolvency, tax, and real estate. The firm has a particularly strong and long-standing presence in the energy, oil and gas and infrastructure industries as well as with pension and investment funds.

T&C represents clients with operations around the world, including Africa, Angola, Algeria, Argentina, Bolivia, Canada, China, Egypt, Spain, the United States, France, Guatemala, Hong Kong, Iran, Iraq, the Congo and Sweden.

Through its association with Mayer Brown LLP, T&C takes advantage of its international platform to build relationships with clients in different jurisdictions. The firm regularly works on regional or global transactions and has extensive experience in managing pan-European, trans-Atlantic, Asia-Pacific and global projects. It also has a strong client base among African clients, especially from Angola.

Please visit [www.tauilchequer.com.br](http://www.tauilchequer.com.br) for more information.

## About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia and Europe. 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, DAX and Hang Seng 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 & enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

Mayer Brown is a global legal services organization comprising legal practices that are separate entities (the Mayer Brown Practices). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; Mayer Brown JSM, a Hong Kong partnership, and its associated entities in Asia; and Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated. "Mayer Brown" and the Mayer Brown logo are the trademarks of the Mayer Brown Practices in their respective jurisdictions.

This publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek legal advice before taking any action with respect to the matters discussed herein.

© 2011. The Mayer Brown Practices. All rights reserved.

