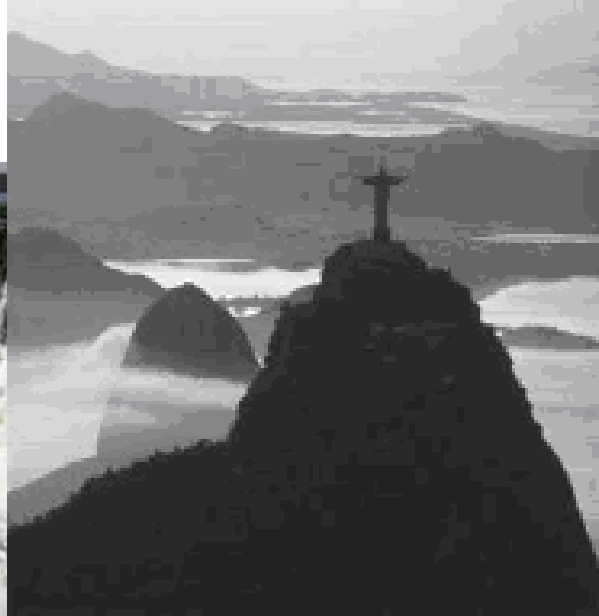
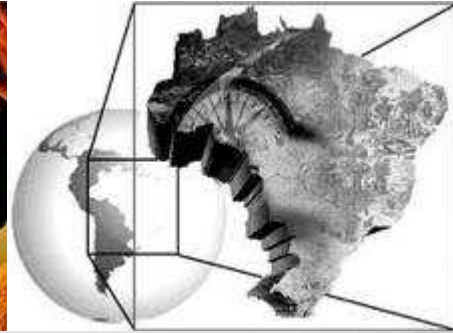


FRANCO CAIADO GUERREIRO & ASSOCIADOS

SOCIEDADE DE ADVOGADOS, RL

ATTORNEYS AT LAW



# INVESTOR'S GUIDE TO BRAZIL

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# Investor's Guide to Brazil - Getting into Brazil -

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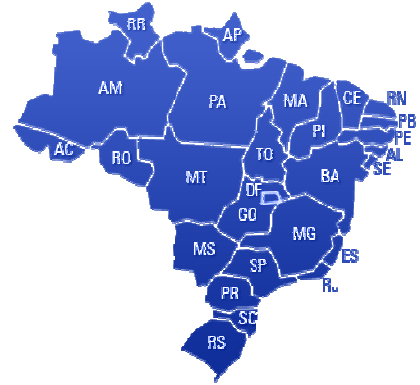
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## 1. INTRODUCTION

With this guide Franco Caiado Guerreiro & Associados wishes to offer its friends and clients an objective set of key guidelines for investing in Brazil. Franco Caiado Guerreiro & Associados is a multijurisdictional law firm practicing Portuguese, Brazilian, Angolan, Mozambican, Cape Verdean and São Tomé law.



Our intention is to provide brief but systematic information on how to invest in Brazil from a corporate, tax, labour law, intellectual property and litigation points of view.

The information provided in this guide obviously does not hinder the investor from the need to take further specific legal advice.

Please feel free to contact us should you require any further information on any of the matters referred in this guide.

Lisbon, 6<sup>th</sup> June 2011

João Caiado Guerreiro  
*Managing Partner of*  
*Franco Caiado Guerreiro & Associados, RL*

## 1.1 Get a quick glimpse of Brazil

**Official Name** – *República Federativa do Brasil* (Federative Republic of Brazil)

**Independence date from Portugal** - 1822

**Political System** – Presidential Republic

**Constitutional System** – Brazil is a republic, ruled by a Constitution, which has 3 independent and harmonic powers, namely: (i) the Executive, exercised by the President (and its State Ministers), elected by the people for a 4 years mandate, being the re-election permitted once; (ii) the Legislative, exercised by the Congress, composed by the Senate and the House of Representatives. The Senate is formed by representatives of the states and the federal district, elected by means of the majority principle. Each state and the federal district shall elect 3 senators. The House of Representatives is formed by representatives of the people, elected by means of a proportional system in each state, territory and the federal district; and (iii) the Judiciary, composed by the *Supremo Tribunal Federal* (Supreme Court), *Conselho Nacional de Justiça* (National Council of Justice), *Superior Tribunal de Justiça* (Superior Tribunal of Justice), federal and state courts and judges (including courts and judges of the federal district) and labour, electoral and military courts and judges.

**Main Political Parties** – There are currently, 27 political parties registered with the *Tribunal Superior Eleitoral* (Superior Electoral Court), amongst which the most relevant are: PT – *Partido dos Trabalhadores* (Workers' Party), DEM – *Democratas* (Democrats) - former PFL – *Partido da Frente Liberal* (Liberal Front Party), PMDB – *Partido do Movimento Democrático Brasileiro* (Brazilian Democratic Movement Party), PSDB – *Partido da Social Democracia Brasileira* (Brazilian Social Democratic Party), PP – *Partido Progressista* (Progressive Party), PTB – *Partido Trabalhista Brasileiro* (Brazilian Labour Party), PSL – *Partido Social Liberal* (Liberal Social Party), PSB – *Partido Socialista Brasileiro* (Brazilian Socialist Party), PPS – *Partido Popular Socialista* (Popular Socialist Party), PDT – *Partido Democrático Trabalhista* (Democratic Labour Party (PDT)), and PCdoB – *Partido Comunista do Brasil* (Communist Party of Brazil).

**Territorial Organization** - Brazil is a federation formed by 26 states and 1 federal district, where the capital of the country, Brasília, is located.

**Capital** – Brasília

**Area** - 8,514,877 km<sup>2</sup>

**Population** – 190,732,694

**Currency** – Reais (R\$)



**Language – Portuguese** is the third most widely spoken European language in the world and is the native language of about 200 million people. Brazil, Portugal, Angola, Cape Verde, Guinea-Bissau, Mozambique, S. Tome and Principe and East Timor are countries in which Portuguese is the official language. There are also Portuguese-speaking communities in France, Luxembourg, Germany, United States, Canada, Venezuela, South Africa and Australia, as well as small groups of people in former colonies such as Goa and Macau.

## International Relations

Brazil maintains trade and diplomatic relations with almost all countries throughout the world, and commercial ties with all of them.

Brazil is a member of a wide range of international organizations, including:



- **UN** United Nations – since 1945 (Founding Member)
- **WTO** – World Trade Organization
- **G20**
- **G8+5**
- **Mercosul** – Mercado Comum do Sul (Southern Common Market)
- **UNASUL** – União das Nações Sul-Americanas (Union of South American Nations)
- **CPLP** – Comunidade dos Países de Língua Portuguesa (Community of Portuguese Speaking Countries) – since 1996 (Founding Member)
- **BRIC Countries**

## Economic Overview

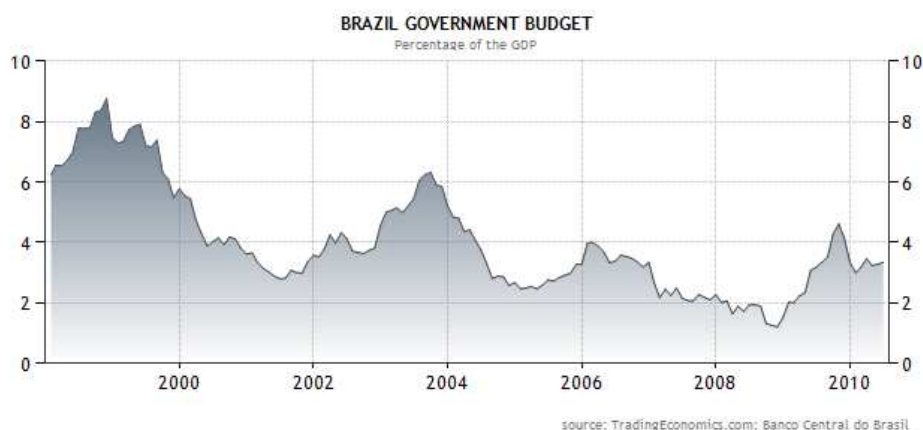
Brazil is the largest national economy in Latin America and the world's eighth largest economy at market exchange rates.

The Brazilian economy is expected to become one of the five largest in the world in the decades to come, with a growing Gross Domestic Product (GDP) per capita. The economy is diversified and has a number of highly sophisticated sectors.

Along with Argentina, Uruguay and Paraguay, Brazil forms the Mercosul – Mercado Comum do Sul (Southern Common Market), in which it actively participates. This is a large market covering more than 240 million individuals.

Brazil has a vigorous economy, with substantial natural resources and a large, vertically integrated and modern industrial sector that targets world-class productivity indices.

## Main Macro-Economic Variables 2000-2010



The Gross Domestic Product (GDP) in Brazil expanded 0.50% in the third quarter of 2010 overcoming the previous quarter.

## 1.2 Brazil: Trade and investment opportunities

The Brazilian economy has rebounded quickly from the recent financial crisis and there are a wide range of trade and investment opportunities. In the next few years, federal, state and local governments will be stimulating the economy by spending billions of dollars in preparation for 2 of the world's biggest sporting events: the 2014 FIFA World Cup and the 2016 Summer Olympics.

For instance, Brazil's National Growth Acceleration Program includes funds for building and remodeling stadiums in 12 cities that will host World Cup matches and upgrading 10 regional airports.

Brazil has one of the most diversified industrial parks in the world, and the largest in Latin America, developing cutting-edge technology 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 pulp producer worldwide.



Brazil's fluvial network is the most extensive in the world, with the largest amount of fresh water available worldwide, placing the country among the leading producers of hydroelectric power.

The Brazilian aeronautical industry ranks fourth in aircraft production worldwide and first in the Southern hemisphere.

Brazil has extensive mineral resources. Large iron ore and manganese reserves provide important sources of industrial raw materials and export earnings.

The Brazilian tourism industry has also grown significantly over the past years, representing an excellent investment choice. Several hotels and resorts have been built along the Brazilian northeastern and southeastern coastline, in order to meet the increasing demand for domestic and international tourism. Many of these ventures are attractive to foreign investors.

The country has also a highly developed financial system. Eighteen of the major banks in the world are Brazilian.



## Business opportunities

Currently, Brazilian's main business opportunities concern the following sectors:

### - Oil and Gas

In August 2010, Brazilian oil and gas production averaged 2,598,763 bpd. Petrobras has a market value of R\$ 430 billion, being ranked as the third largest publicly-held company in America and the sixth in the world. Amongst the listed oil companies, Petrobras has the fourth largest proven oil reserve (11.7 billion barrels) and the most advanced technology for oil prospecting in deep waters. Brazil has developed an innovative technology for hybrid fuel engines (gas, petroleum and ethanol), as well as for biofuels.

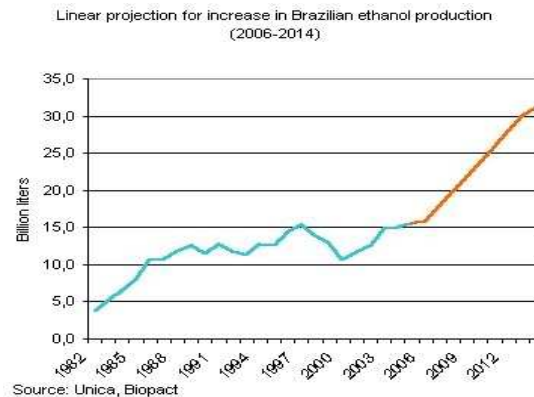
### - Renewable Energies

Renewable energies in Brazil accounted for more than 85.4% of the domestically-produced energy used in the country, according to preliminary data from the 2009 National Energy Balance, conducted by the Energy Research Corporation (EPE).

After the oil shocks of the 1970s, Brazil started focusing on developing alternative sources of energy, mainly sugarcane ethanol.

The Brazilian Wind Energy Association and the government have set a goal of achieving 10 gigawatts of wind energy capacity by 2020 from the current 605 megawatts, having another 450 megawatts under construction. The industry expects that the tender procedure will help kick-start the wind-energy sector, which already accounts for 70% of the total in all of Latin America.

Although only 15% of its output is currently exported, Brazil is the world's biggest ethanol exporter and its production is expected to become an essential component to Europe's biofuels directive targets.



**- Banking and Insurance**

A huge part of Brazilian production is traded on BM&F Bovespa S.A., headquartered in the City of São Paulo. Shares of listed companies are also traded on this stock exchange.

Nowadays, there are no restrictions on foreign investments in insurance companies and other companies belonging to the National Private Insurance System.

Regarding incorporation of an insurance company, it is subject not only to the requirements usually applying to the incorporation of joint-stock companies in general, but also to specific procedures.

BM&F Bovespa S.A. is the world's third largest stock exchange in market value, and the second largest in America.

**- Mining**

Brazil has extensive mineral resources. Large iron ore and manganese reserves provide important sources of industrial raw materials and export earnings. Nickel, tin, chrome, bauxite, beryllium, copper, lead, tungsten, uranium, zinc, gold, silver and precious and semiprecious stones, as well as rare minerals, are commercially traded.

**- Agriculture**

Brazil is one of the world's largest agricultural producers and exporters. Besides being the largest orange and eucalyptus pulp producer worldwide, the country has, in a world scale, the highest production level of cotton, coffee, sugarcane, soybeans, oranges, tobacco, cocoa, beef and poultry beans.

**- Construction and Infrastructure**

The Brazilian aeronautical industry ranks fourth in aircraft production worldwide and first in the Southern hemisphere. *Embraer* (the Brazilian aircraft company) is one of the world's largest aerospace companies. 69 countries fly nearly 4,100 aircrafts manufactured by the latter.

**- Tourism**

The Brazilian tourism industry has also grown significantly over the past years, becoming an excellent investment choice.

Brazil offers for both domestic and international tourists many different traveling options, including ecotourism (the country's most popular tourism product) with leisure and recreation, adventure trips combined with sports practice, as well as historic and cultural tourism.

**Excellent environment to live and work**

Brazil has big and small cities, beaches and green hills. A combination of state and private ownership of industry is driving Brazil's economy, now amongst the fastest growing in the world. People are warm, outgoing and open.



## 1.3 Getting the Feel of Brazil

### Entry Requirements

Usually, in order to be admitted into Brazilian territory, foreigners shall carry a passport that must remain valid for a minimum period of 6 months after the date of their entrance in Brazil (except Argentinean, Chilean, Uruguayan and Paraguayan citizens entering Brazil by land, who need only a photo ID).

Except otherwise set forth in the applicable law, to enter Brazil, foreigners are also required to hold a visa. However, particularly in the case of nationals of countries with which Brazil maintains a diplomatic relationship, such requirement may be dismissed. Nevertheless, generally, the period of time that such foreigners are allowed to remain in the country is limited by the rules issued by Brazilian immigration authorities.

There are seven types of visa envisaged in the Brazilian law, as follows:

- transit;
- tourist;
- temporary;
- permanent;
- courtesy;
- official; and
- diplomatic

All types of visa are subject to the relevant Brazilian legislation and regulation, especially to the rules issued by the Ministry of Foreign Relations “*Ministério das Relações Exteriores*” and the National Immigration Council “*Conselho Nacional de Imigração*” .

#### - Transit Visas

A transit visa may be granted to foreigners who, in order to reach their final destination, might have to pass through Brazilian territory. Such visa is valid for a not extendable 10 days period and allows the foreigner a sole entrance in Brazil. The transit visa is not required from foreigners in continuous dislocation interrupted solely by necessary scales justified by transportation reasons, i.e. flight scales.

**- Tourist Visas**

Tourist visas may be granted to foreigners that want to enter Brazil for tourism purposes, provided that such foreigners do not intend to immigrate to Brazil or develop any remunerated activity therein.

Such tourist visas, whenever required, may be granted for a maximum period of 5 years, enabling the foreigner to enter Brazil multiple times, during such period; each entrance may not exceed 90 days, being such period renewable once (which amounts to a total of 180 days per year).

**- Temporary Visas**

Temporary visas may be granted to foreigners in the following circumstances:

- cultural mission or for studys purposes;
- business trip;
- artists and sportsmen;
- students;
- scientists, professors, technicians or other professionals contracted by or rendering services to the Brazilian Government;
- correspondents of foreign newspapers, magazines, radio, television or other news agency; and
- members of religious congregations.

Considering temporary business visas, if the applicant is an American citizen, since April 1995, the visa may be granted for a 5 (five)-year period, granting the foreigner multiple 90 day period entries in Brazil, which can be extended once for the same period of time. This type of visa allows a maximum period of stay in Brazil of 180 days per year. On the other hand, if the applicant is not an American citizen, the visa may be granted for a period of no longer than 90 days, also being possible its extension for another 90 day period. This visa allows its holder to carry out business activities in Brazil but not to be compensated by a "Brazilian source" (i.e., a person travelling to Brazil under a temporary business visa may work only under his non-Brazilian employer's payroll). In view of that, there are no personal income tax liabilities in Brazil.

There are also temporary working visas granted to people who (i) will work directly for a Brazilian company, under an employment agreement and, therefore, subject to Brazilian labour law, being the Brazilian company responsible for the repatriation of said employee at the end of his contract, or (ii) will render technical assistance services to a Brazilian company upon execution and delivery of a technical assistance agreement and registration thereof with the *INPI – Instituto Nacional da Propriedade Industrial* (Brazilian Patent and Trademark Office). In the latter case, compensation must be paid by a non-Brazilian party. The temporary working visa is granted for up to 2 years and may be renewed once for another 2 years period. Foreigners residing in Brazil for over 12 consecutive months are deemed as Brazilian residents for tax purposes and, thus, become subject to Brazilian income tax.

Members of religious congregations holding such visas are allowed to remain in the country up to 1 year.

Foreigners on cultural missions, scientists, professors, technicians and other professionals contracted by or rendering services to the Brazilian Government, as well as foreign correspondents as mentioned above may remain in Brazilian territory for as long as the duration of the mission, contract or rendering of services, provided that proof of such mission, contract or rendering of services is made to Brazilian consular authorities and all requirements set forth in the applicable labour legislation are met.

Holders of temporary visas are subject to certain restrictions such as not being permitted to establish themselves as sole proprietorships or to become managers, officers or senior managers of companies without the prior authorization from the Brazilian immigration authorities.

Diplomatic and official visas may be transformed into temporary visas, subject to the fulfilment of the requirements under the relevant legislation, at the discretion of the Ministry of Foreign Relations “*Ministério das Relações Exteriores*”. Such transformation shall terminate any and all prerogatives, privileges and immunities related to diplomatic and official visas.

#### **- Permanent Visas**

Permanent visas may be granted to foreigners who go to Brazil with the intention of remaining there permanently or holding a managerial position in a Brazilian company. Foreigners holding

a permanent visa shall become fully subject to Brazilian income tax upon issuance of such permanent visa and their entrance in Brazil.

The granting of a permanent visa is conditional upon satisfaction of the requirements set forth by the rules issued by the *Conselho Nacional de Imigração* (National Immigration Council) and may likewise be conditioned, for a maximum period of five years, to performance of a given activity. In the case of foreigners holding managerial positions in Brazilian companies, such Brazilian companies are required to have a share capital of at least USD 2,000.00 duly registered before the Brazilian Central Bank. Otherwise, individuals applying for permanent visas are required to make a minimum investment of USD 50,000.00 in a either existing or newly incorporated.Brazilian company.

Transit, tourist and courtesy visas cannot be converted into permanent visas.

In what regards temporary visas, as a general rule, such visas also cannot be converted into permanent visas, except if held by scientists, professors, technicians or other professionals hired by or rendering services to the Brazilian Government and members of religious congregation to which said conversion is permitted subject to the fulfilment of the requirements set forth in the applicable laws. In the particular case of members of religious congregations, the application of said conversion is only allowed after foreigners complete a 2-year period of residency in Brazil.

Diplomatic and official visas may be converted into permanent visas, subject to the requirements under the relevant legislation, at the discretion of the *Ministério das Relações Exteriores* (Ministry of Foreign Relations). Such transformation shall terminate any and all prerogatives, privileges and immunities related to diplomatic and official visas.

#### - Courtesy, Official and Diplomatic Visas

Especial situations granted in the specific cases as foreseen in the law.

### Public Holidays for 2011

<b>New Year's Day</b>	<b>1<sup>st</sup> January</b>
<b>Carnival</b>	<b>8<sup>th</sup> March</b>
<b>Tiradentes</b>	<b>21<sup>st</sup> April</b>

<b>Sexta-Feira Santa (Holy Friday)</b>	<b>Movable</b>
<b>Easter Sunday</b>	<b>Movable</b>
<b>Labour Day</b>	<b>1<sup>st</sup> May</b>
<b>Corpus Christi</b>	<b>Movable</b>
<b>Independence Day</b>	<b>7<sup>th</sup> September</b>
<b>Nossa Senhora Aparecida – Padroeira do Brasil (Patron Saint of Brazil)</b>	<b>12<sup>th</sup> October</b>
<b>All Souls' Day</b>	<b>2<sup>nd</sup> November</b>
<b>Proclamation of the Republic</b>	<b>15<sup>th</sup> November</b>
<b>Christmas Day</b>	<b>25<sup>th</sup> December</b>
<b>New Year's Eve</b>	<b>31<sup>st</sup> December</b>

## Climate

Situated between the Equator and the Tropic of Capricorn, Brazil has a predominately tropical climate, which means hot and humid. The climate of Brazil varies considerably from the mostly tropical North, to temperate zones below the Tropic of Capricorn, which crosses the country at the latitude of the city of São Paulo.

Brazil as a whole does witness seasonal changes in the weather and climate in relation to rainfall, temperatures and humidity. Yet as you travel from the north to the south these changes do become a lot more acute due to the distance from the equator.

Temperatures along the equator are high, averaging above 25 °C, but not reaching the summer extremes of up to 40°C in the temperate zones. There is little seasonal variation near the equator, although at times it can get cool enough for wearing a jacket, especially when raining.

Temperatures in the cities of Belo Horizonte and Brasília are moderate, usually between 15°C and 30°C, due to their altitude of approximately 1,000 meters. Cities like Rio de Janeiro, Recife, and Salvador on the coastside have warm climates, with average temperatures ranging from 23

to 27 °C. The cities of São Paulo, Curitiba, Florianópolis and Porto Alegre have a subtropical climate and temperatures can fall below freezing in winter.

Most of Brazil has moderate rainfall of between 1,000 and 1,500 mm in a year, high and relatively regular levels of precipitation in the Amazon contrast sharply with the dryness of the semiarid Northeast, where rainfall is scarce and there are severe droughts in cycles averaging seven years.

Winter in Brazil lasts from June to August and Summer lasts from December to February. Summer is holiday time and most Brazilians go on vacations during this time of the year to enjoy the heat.

Seasons in Brazil are the reverse of those of the Northern Hemisphere:

In most of the territory, the seasons are marked by the rains. As the country is located in the Southern hemisphere (remember their pattern is the opposite of seasons in Europe):

- Summer in Brazil starts end of November and goes on until March. The hottest months are December, January and February. During this period, temperatures vary between 30°C and 40°C. Summer is not the ideal season for going to the Amazon as it rains heavily and is extremely hot and humid.
- Winter is almost non existent; it simply means the arrival of the rains. However, considering the vastness of the country, temperatures are far from uniform. In Rio de Janeiro, nights are cool and during daytime temperatures are pleasant (15°C - 25°C). In the Northeast, temperatures are lower than in summer but still close to 28°C. The months of June, July and August bring tropical rains, which means cool weather. Finally, winter is the best time to go to the Amazon. This is the dry season, lasting from March until September, with relatively lower temperatures and humidity levels.
- Spring, from September to November, is an excellent season. It does not rain much and you still do not get the summer heat.

## Time zones

Brazil has 4 time zones. To make it simpler, we will just say that there is a 3 hours difference between Brasilia and Lisbon, in the winter, and a 4 hours difference, in the summer.

## 2. CORPORATE

### 2.1 Types of corporation

Corporations in Brazil generally assume one of the two most common forms:

1) Private limited company – (“Sociedade Limitada” or “Limitada” or its abbreviated form “Lda.” or “Ltda.”);

2) Public limited company or joint-stock corporation ( “Sociedade Anônima” or (“S.A.”);



The other forms of company are not commonly used in practice, as most of them provide for unlimited liability of their partners.

The liability of quota holders is limited to the amount contributed to pay up the company’s capital. Therefore, in principle, the partners may not be held liable for any amount in excess of such contributions, unless any illicit act occurs.

The “Sociedade Limitada” are generally of a smaller dimension when compared to S.A.. Their legal structure favors the personalization of the business, providing a personal nature or group nature to it. In a “Limitada”, the capital is divided into quotas representing each individual or corporate partner’s share of the total capital stock.

The “Sociedade Anônima”, designation and form provides the positive image of a larger corporation and grants prestige and contractual strength to the carried out investment. The capital is divided into stocks and each stockholder’s liability is limited to the value of stocks held and subscribed.

These two types of companies have some common features. There shall exist at least two quota holders, who may be either individuals or legal entities domiciled in Brazil. In case of foreign based quota holders these shall have an attorney-in-fact in Brazil, who is duly vested with powers to represent such partners with regard to their partner status in the Brazilian company. In addition, foreign-based individual or corporate partners must be enrolled with the Federal Revenue Office.

There is no minimum capital requirements for any of these both types of companies, the capital stock may be allocated between parties at their own discretion

Nevertheless, in “Limitadas” all quota holders are held jointly and severally liable for the limitada quota capital until it is fully paid up. Once the capital is paid up, liability is limited to the amount of each partner's ownership interest.

Normally, there is a requirement regarding the minimum capital that must be paid up on the initial subscription. A limitada's quota capital can only be increased after past calls have already been paid up.

The “Sociedade Anônima” must have a minimum number of two shareholders, which are liable only to the extent that the capital stock for which they have subscribed remains unpaid. This company may be formed by public or private subscription. In either case, at least 10% of its capital stock must be paid up outright. The paid-up capital must be deposited with a commercial bank until all formalities for incorporation of the company have been fully completed.

In the S.A., the capital is divided into stocks and each stockholder's liability is limited to the value of stocks held and subscribed. A S.A. may be publicly-held (“aberta”) or privately-held (“fechada”), depending on whether or not its securities, including shares, are traded on the over-the-counter market or the stock exchange. The corporate purposes of the S.A. must be expressly and fully described in its by-laws (“estatuto social”). The company's name must contain its activity and the expression “Companhia” or “Sociedade Anônima” (or its abbreviated form “S.A.”) may not be identical or similar to the name of a pre-existing company.

## 2.2 Proceedings on incorporation

### The “Sociedade Limitada”

A “Limitada” needs a minimum number of two partners, which are the quota holders. This is applicable not only to Brazilian resident and non resident individuals, but also to legal entities.

In order to incorporate a Limitada, partners must sign a “contrato social” (articles of association) and observe the registration requirements of the state in which the company is situated. Normally, a partner who is not a Brazilian resident, has to select a Brazilian resident. This resident is considered as representative, with powers to receive service of processes on behalf of the non-resident partner with respect to company matters.

### Articles of Incorporation

Regarding this matter, those articles shall be drafted in accordance with the purposes of the Limitada, written in Portuguese language and include:

- a) the name of the quota holders and their personal information;
- b) the name of the Limitada, which subject to an prior authorization must include its purpose and the expression “Limitada” (or its abbreviated form “Lda.” or “Ltda”);
- c) the address of the registered office;
- d) the company’s capital, whether or not it is fully paid and, if not, its payment term;
- e) the company’s duration, which may be fixed or undetermined;
- f) the company’s purposes, which must be plainly described;
- g) each partner’s holding in the capital and reference to the fact that the responsibility of each partner is limited to the company’s subscribed capital.

### Commercial Corporation Registry

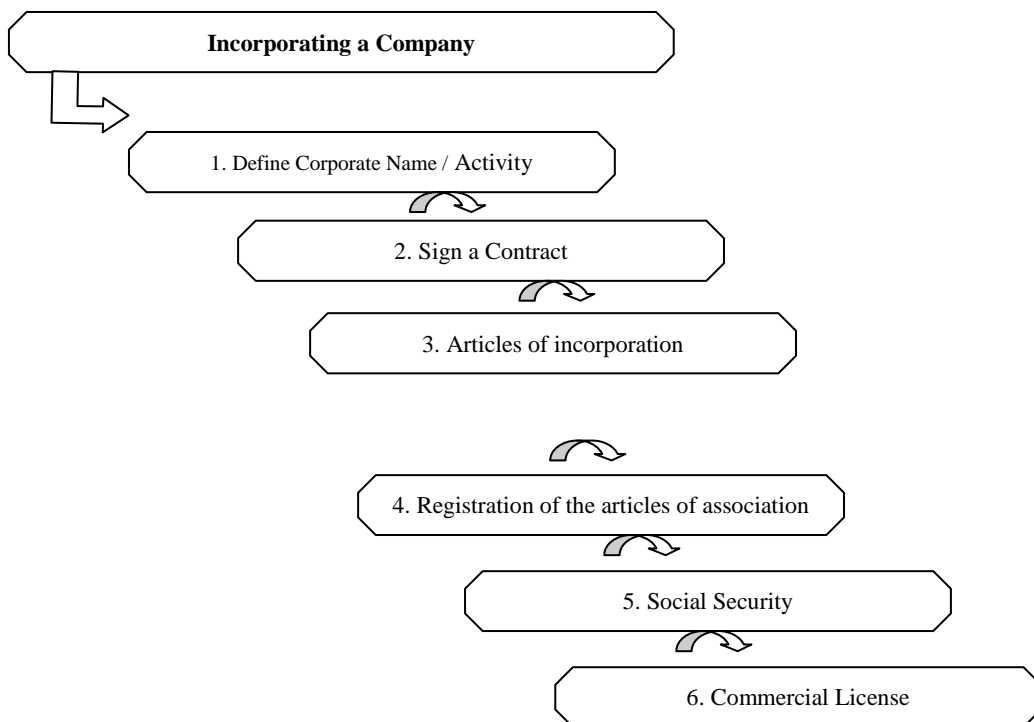
Only if the “Limitada” is not organised as a business enterprise, the articles of association must be registered by the shareholders at the appropriate commercial registry office. The articles of association must be registered within thirty days of execution, if the retroactive legal effect as of the date of execution with respect to third parties, is required.

In order to file the acts of incorporation of other commercial companies the following documents must be presented at the Commercial Registry offices:

- Three original counterparts of the Articles of Association signed by all the partners and two witnesses.

- A certified copy of each partner's identity card.
- Extract or certificate, when the articles of association have been entered into by a public deed;
- A document as means of evidencing the foreign partner is existence in its country of origin;
- A power-of-attorney granted by the foreign resident partners signed before a Public Notary in their country of origin, legalised at the Brazilian Consulate, translated by a public translator in Brazil and registered at any Brazilian Deeds and Documents Registry Office.
- Forms containing data on the company and its partners, duly filled in and accompanied by proof of payment of filing fees.
- A personal declaration signed by each partner or manager of the company that he is not prevented from engaging in commercial activities, which may be made in the articles of association themselves or in a separate document.

After the incorporation, the registry of the activity at the Commercial Registry Office shall be carried out. Following the aforementioned, the Public Register publishes it in the official daily journal.



## The “Sociedade Anônima”

A S.A. is established through the public or private subscription of the company's capital by at least two individuals or legal entities or both, whether or not resident in Brazil.

At least 10 percent of the capital stock must be paid up outright upon subscription. Within five days all capital that has been paid-up in cash, must be deposited in an authorised financial institution.

The incorporation of a company by public subscription requires a preliminary registration of the share issuing with the Brazilian Securities Commission (CVM).

The distribution of the company's shares must be carried out by a financial institution.

The general share holders meeting approve the full subscription of the capital, the formation of the S.A.. Private subscription has to be approved by subscribers of capital at a general shareholders meeting or through the execution of a public deed, including approval of the proposed by-laws of the company.

The by-laws of the company must be completed, with the determination of the company's purposes and capital value in Brazilian currency. It should also contain the number and classes of shares, where multiple classes exist, including corresponding rights and obligations, the convening of shareholders meetings, the management structure and operation, profit distributions and form of dissolution.

After approval, the by-laws must be registered and published, prior to the initiation of the company's activities. Corporate documents of the S.A. must be registered within the competent commercial registry office.

All the records such as the corporate books, registered share book and registered share transfer book and all the relevant documents must be kept.

## 2.3 Joint Ventures

Joint ventures are not particularly regulated by Brazilian legislation. Regarding Brazilian business practice, a joint venture is usually structured through the establishment of a company. It is possible to have two forms: a Limitada or a privately-held S.A.. The choice of which should take into consideration, among other factors, the ownership and management structure and confidentiality concerns.

In the formation of a joint venture, there is a memorandum of understanding among parties, which may agree upon a preliminary agreement.

A Joint Venture may take the form of any of the business organizations foreseen in Brazilian law. The Joint Venture can be accomplished by forming a new company or by subscribing shares or quotas in an already-existing company.

## 2.4 Mergers and Acquisitions

The merger is a voluntary transaction, in which one or more companies are absorbed by another. All rights and liabilities are maintained.

Before the buyer enters into a contractual commitment to buy the target business or corporation, it is advisable to acquire as much information as possible. Due diligence investigations may consist in the most cost-effective alternative.

There are preliminary negotiations in which the parties agree on purchase terms and conditions, representations and warranties, non-competition and indemnification provisions, which may be reflected in a memorandum of understanding providing for more exclusive negotiations and due diligence investigations. In a preliminary discussion, the parties to the transaction should consider whether to carry it out through an asset or share acquisition.

Through a stock acquisition, the buyer acquires the stocks of the company that owns the business and not the business itself. All documentation such as the articles of association of the target Limitada or the by-laws of the target S.A., should be reviewed for any restrictions on the assignment and transfer of quotas or shares, respectively, including rights of first refusal.

## 2.5 Acquisitions of a “Limitada”

Through the approval and registration of an amendment to the articles of association of the target company to reflect the assignment and transfer of quotas to the new partners. At the same time, it is executed a detailed quota purchase and sale agreement, including purchase terms and conditions, confidentiality and non-compete provisions and, accordingly to due diligence investigation results, representations and warranties, indemnity clauses and guarantees, among other case specific provisions.

At the conclusion of the deal, the purchaser may also replace the management of the company through an Amendment of the Articles of association or through the revocation of the document which appointed the existing managers, and signing a new one with the appointment designating new directors.

Total control is acquired, only when the investor acquires at least 75 percent of the company capital,

## 2.6 Acquisition of a "S.A"

With the approval and execution of a share transfer in the Share Register Book, or in the case of shares represented by a deposit with an authorised issuing agent, upon notice to the issuing agent the acquisition is accomplished. Normally, it is executed a share purchase and sale agreement, which includes a purchase terms and conditions, confidentiality and non-competition provisions and, based on due diligence investigation results, representations and warranties, indemnification clauses and guarantees, among other case specific provisions.

The acquisition of a publicly-held S.A. must be entered into between the interested parties, and the acquisition process will be similar to the acquisition of a privately-held S.A. described above, or through a public offer. Nevertheless, public offer must be complete through a financial institution, which will guarantee compliance with the obligations of the offeror. The purchaser will have the controlling interest if the shares are acquired.

Regarding a acquisition of a publicly-held S.A., this must be notified to the CVM and disclosed to the market. Also, the purchaser of the controlling stake has to make a tender offer for the acquisition of the remaining common shares of the company for a price equal to at least 80 percent of the price paid for the controlling shares.

## 3. LABOUR

Labour Law in Brazil was strongly influenced by developments and trends in Europe, the efforts of various countries to codify laws for the protection of workers and, particularly, by Brazil's commitments to the International Labour Organization. These influences, alongside significant domestic factors, including burgeoning industrialization and the labour policies of the Brazilian Government, were instrumental in the formulation of a body of national labour laws.

On 1943, the Consolidation of the Brazilian Labour Laws (CLT) was created to group the few laws existing at that time in addition to the institutes developed by legal scholars.

Thus the CLT, which contains over 900 articles, provides legal standards governing labour relations in Brazil.

With the enactment of the Federal Constitution in 1988, in addition to the labour provisions duly consolidated, new labour rights were created or improved in the body of the final version.

### 3.1 FORMS OF EMPLOYMENT CONTRACT

#### Indefinite Term Agreement

Normally, an employee is hired for an undetermined period of time, and may be dismissed at any time. This type of agreement may be terminated at any time without just cause, upon prior notice given by one party to the other.

If the one that terminates the contract without just cause is the employer, he must give the employee at least 30 days prior notice, and during such period the employee is allowed to reduce the workday by two hours or otherwise, to be realised from work for seven consecutive days, without prejudice to payment of the employee's compensation.



#### Term Agreement

The fixed term agreement can only be entered into to fulfil a corporation's temporary need and only for the exact time that this need lasts. In certain situations, such as (i) the nature of the services justifies establishment of a predetermined period of time; (ii) the nature of the company's activity is temporary; or (iii) it is a probation contract. In general, this type of contracts cannot exceed two years, and probation contracts cannot exceed 90 days.

Term agreement has to be entered into in written form.

In case of a fixed term agreement, its termination period has to be agreed. But regarding an undetermined term agreement, this depends on the maintenance of the grounds that justified the hiring of the employee for an undetermined term.

#### Part-Time Employment Agreement

The Part-time employment contract is different from the other types of employment contracts, once it allows that an employee could be employed for a maximum workweek of 25 hours. The compensation payable to a part-time employee is proportional to the full workweek of employees who perform the same activities.

Unless the overtime work and vacation period (which cannot exceed 18 days), Brazilian law provides the same basic rights to those who work under a part-time contract.

## 3.2 GENERAL RULES ON HIRING WORKERS

### Timetable

A normal period of a day's work has a maximum of 8 hours and the weekly duration cannot go beyond 44 hours with 1 hour break for meal and rest.

There must be a minimum rest period of 11 consecutive hours between workdays.



### Overtime

Work carried out outside the normal working timetable is treated as overtime. It can only be used when an employer needs to respond to temporary and relevant circumstances of increased work, that does not justify the hiring of another worker.

At least, the compensation for overtime limits is 50% higher than a normal hourly rate. And there would be no overtime payments to those employees engaging in external activities which cannot be subject to fixed work hours, or to managers.

### Night Shift

Night work is considered between 10:00 p.m and 5:00 a.m.. This night shift entitles the workers to receive an additional compensation of at least 20% higher than the normal hourly rate, without prejudice to overtime compensation.

### Rest Periods

Accordingly with the Brazilian legislation, employees have the right to at least one day's remunerated rest per week, which is usually on Sunday. For those who receive their compensation monthly, payment of the weekly remunerated rest period will already be included in the month compensation.

### 13<sup>th</sup> Salary (Christmas Benefit)

In December of each year, the employer will pay the employee an extra compensation, the Gratificação de Natal (Christmas Benefit) which is also known as the 13<sup>th</sup> salary, corresponding to the salary for said month plus the annual average of other monies habitually paid to the

employee during the year. When taking a vacation at any time of the year, the employee may request an advance equal to half of his 13<sup>th</sup> salary.

## Wages

All workers are entitled to a minimum monthly wage, or less than the lowest wage floor established in the collective labour convention for each professional category which is set each year by the government.

In addition to the wage itself, an employee's compensation encompasses the benefits granted by the employer on a habitual basis, unless otherwise prescribed by law. While on vacation, employees are entitled to their full regular wage.

Even with the employee's consent wages cannot be reduced.

## Holidays

Employees have the right to 30 consecutive days' vacation, upon completing one year's service, if they have not been absent from work more than five unjustified times during said period. The employee may benefit from 20 consecutive days of vacation being compensated with remuneration due for 10 days. The salary in the vacation period must be paid at the latest two days before the start of the vacation period.

## Unemployment Compensation Fund - FGTS

Employees hired after October 5, 1988, this system became automatic and compulsory accordingly to the Federal Constitution, the FGTS (Fundo de Garantia por Tempo de Serviço). This was created with the intention of granting compensation to the employees in certain cases of termination of labor contract.

With FGTS system, the employer must currently every month, deposit the equivalent to 8% of each employee's compensation for the previous month in a blocked bank account in the name of the employee.

## Termination of Labour Agreements

The agreement may end over different causes:

1. Objective causes, like death, retirement or bankruptcy;
2. Termination by unilateral decision of one of the parties.

3. Parties decision (including termination by mutual agreement, term of labour term agreements in the conditions foreseen in written labour agreement);

**A) Individual dismissal with just cause for disciplinary reasons**

Individual dismissal with “just cause” occurs whenever there is the termination of a labour agreement by unilateral decision of the employer grounded on a serious disciplinary breach by the employee, which makes the maintenance of the labour agreement almost impossible.

Some of the reasons for dismissal for “just cause” are:

- a) Any act of indiscipline or insubordination, roughly speaking;
- b) Violation of trade secrets;
- c) Dishonesty;
- d) Any act of violence or any act injurious to the honour or reputation of the employer or superiors, except in legitimate cases of self-defence, or defence of third-party interests;
- e) Abandonment of employment;
- f) Inappropriate conduct or lack of self restraint;
- g) Acts contrary to national security where these are duly proved in an administrative proceeding.

Under said cases, the employee will receive a compensation correspondent to the days worked during the month (“outstanding salary”), cumulated vacation and the additional one-third bonus in respect of the accrued vacation.

**B) Unfair dismissal:**

When a contract is terminated without just cause the employee has some rights, as follows:

- a) Vacation or double vacation, if any;
- b) 30 days’ prior notice;
- c) Outstanding salary for the days worked during the month of dismissal;
- d) One-third vacation bonus;
- e) Release of the FGTS deposits, with a fine of 40% on the total amounts deposited in the employee’s FGTS account, during the employment contract.

**3.3. Social Security Contributions**

The Brazilian contribution system consists in a general contribution scheme for employers and employers and special contribution schemes. Under the law, all companies must pay contributions to such entities, according to the respective field of activity. These contributions are paid to the Brazilian Social Security Institute (Instituto Nacional do Seguro Social or INSS).

The Federal Government may levy the following social contributions to fund social programs:

- Social contribution on corporate profits (*CSL – Contribuição Social sobre o lucro líquido*): levied on pre-tax profits, assessed in accordance with commercial law, with adjustments and exceptions set forth in law. The current rate is **9%**;
- Social contribution for funding Social Security (COFINS): levied monthly on the gross income. Current rates are **3% and 7.6%**, the former being cumulative and the latter non-cumulative, in accordance with criteria set forth in law. Export goods are exempted from COFINS.
- Contribution towards the Social Integration Program (PIS): levied monthly on the gross income of corporate entities. Current rates are **0.65% and 1.65%**, the former being cumulative and the latter non-cumulative, in accordance with criteria set forth in law; Export goods are exempted from PIS.
- Contribution towards the Social Integration Program (PIS) and Social contribution for funding Social Security (COFINS), levied on imports, assessed on the customs value of goods or the price paid for services, including applicable taxes. The general rates are **1.65%** for PIS/PASEP, and **7.6%** for COFINS, aside from other specific rates;
- Payroll charges for Social security contributions (CINSS): employers must withhold this charge on behalf of their employees, at the rate of **11%**, whereas self-employed workers pay 20%. In both cases, the basis for calculation of this charge is limited to R\$ 2.400,00 (adjusted monthly as of January 2004).

Corporations pay CINSS at the rate of **20%** on payments to individuals for services performed, with no ceiling;

- Provisional Contribution on Financial Operations (CPMF): established by Constitutional Amendment 3/93, this charge, instituted in January 1997, was extended to December 2007 by Constitutional Amendment 42/03. The rate is **0.38%**;
- Contribution to intervene in the economic domain (CIDE):
  - (i) CIDE/Fuel is due at specific rates on import and trade in the domestic fuel market; and
  - (ii) CIDE/Remittances are due on remittances to foreign individuals for royalties or technology transfers, at the rate of **10%**.

## 4. TAX

### 4.1 Introduction

The Brazilian Federal Constitution and the National Tax Code (CTN), confers upon the Federal Union, the States, and the Municipalities the power to collect taxes.

Below you will find a brief summary of the Brazilian Taxation System, outlining the main taxes and contributions.

The Brazilian tax system has different categories of taxes, and the most important may be classified as:

- i) taxes on income and revenues,
- ii) taxes on production and circulation of goods and on services and cross-border trade, and
- iii) taxes on financial operations

## 4.2 Taxes on income

Concerning this matter, generally speaking, domestic companies must pay federal taxes imposed on all income, which combines the product of capital and labour, or a combination of all gains, defined as increases in a taxpayer's property which are not included in income.

Profits arising from activities carried out in Brazil or abroad are subject to:

- Corporate Income Tax (IRPJ) and
- to the Social Contribution on Profits (CSLL).

For each calendar year (January 1 -December 31), companies are required to file an annual federal tax return, even if the company adopts a different financial year for corporate purposes.

The Social Contribution for Financing of Social Security (COFINS) and the Contribution to the Social Integration Program (PIS) must be paid by Domestic companies to the federal government. COFINS and PIS are contributions levied on a monthly basis on the total revenue of a company, including financial revenue, but excluding revenue resulting from the holdings of such Brazilian company in other companies. There are some admissible deductions depending on the activities carried out by the company.

PIS and COFINS also apply to the importation of goods and services.

Normally, the income, capital gains and other earnings paid, credited, remitted, or delivered to a foreign-based individual or legal entity are subject to withholding income tax - (*Imposto de Renda na Fonte* – IRF), at the generic rate of 15% or 25% depending on the beneficiary's country of residence and the nature of the income. A 'Contribution of Intervention in the Economic Domain' is due, on January 1, 2001, at the rate of 10%, upon remittances of royalties or compensation deriving from technology transfers, in cases where the withheld income tax rate is 15%. This does not apply to profits and dividends, which are exempt from withheld income tax.

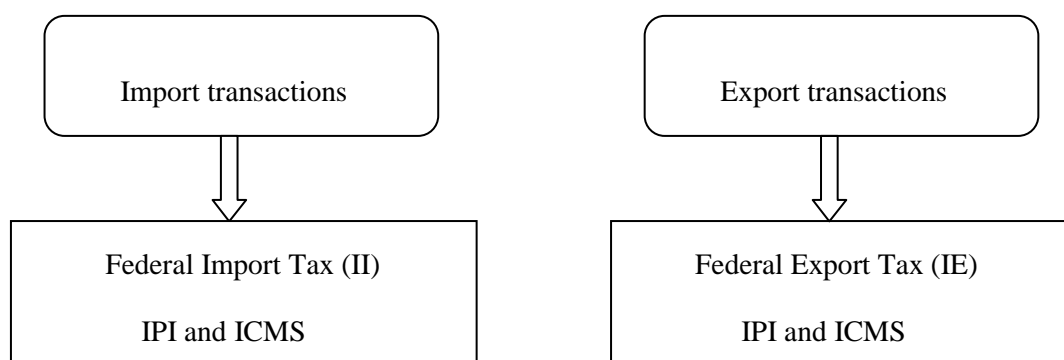
### 4.3 Tax on Production and on Domestic or Cross-Border Transactions

Regarding the Federal Tax on Industrialized Goods (*Imposto sobre Produtos Industrializados – IPI*) this is levied on output and on the importation of industrialized goods. IPI is collected by the manufacturing company. IPI is variable by the nature of the goods in accordance with HTS code – Harmonized Tariff Schedule and is noncumulative; and thus tax due may be offset by credits arising from the purchase of raw materials, intermediary products, and packaging materials. However, no credits are granted for goods that become fixed assets. The average rate is 10%. Goods exported from Brazil are exempted from IPI and the corresponding credits accrued can be kept and used to offset other federal taxes.

Taxes on domestic production and circulation of goods and services are:

- the Federal Excise Tax (IPI)
- the State Value Added Tax (ICMS)
- the Municipal Service Tax (ISS)

Import and export transactions are subject to:



The rates may differ according to the product or service in question, the applicable tax classification number and the place of the transaction.

In order to define the tax rates of II and IPI in Brazil, goods are classified under the Nomenclatura Brasileira de Mercadorias (Brazilian Nomenclature of Goods). This classification is also respected by MERCOSUR rules (MERCOSUR Common External Rates).

ICMS is a state tax similar to IPI. ICMS is payable at all stages of the chain of sales, from the manufacturer to the end consumer. ICMS is collected/paid by the manufacturer and/or the trader. ICMS rates may vary from one Brazilian state to another.

Tax exemptions, reductions and incentives in respect of ICMS are granted or cancelled by means of conventions between the Brazilian states. Both ICMS and IPI are assessed on added value. There are, however, some exceptions, such as the case of intrastate transactions involving the transfers of goods between premises belonging to one same taxpayer.

The Tax on Services (ISS) is assessed on the services provided by a company or independent contractor or professional, in accordance with a list of services attached to a federal supplementary law. This tax is generally figured at a rate of 2% to 5% on the service price.

ISS are levying on: service imports and on services initiated abroad.

#### **4.4. Tax on financial Transactions**

Taxation on credit and exchange transactions, insurance and securities (*Imposto sobre Operações Financeiras* – IOF) is due on bank loans and similar transactions, on foreign currency transactions, on insurance premiums, and on traded securities. Depending on the type of operation, rates may change, being minored or higher with some frequency. IOF rates can be also modified at any time by the Brazilian government, without Congressional approval, through a Presidential Decree, provided that the maximum rates established by law are observed. Said changes are effective instantly, but not retroactively.

#### **4.5. Investment incentives**

There are several situations in which a company or its shareholders can obtain tax incentives from government agencies. These incentives are generally continually-changing package of subsidized financing, tax credits and tariff exemptions. Most of these incentives are available to both domestic and foreign-controlled companies, but certain incentives are restricted to Brazilian-controlled companies. These tax incentives were created to promote the economic development of certain areas of the country, or to channel private capital to specific economic activities.

Investment projects are approved on a case-by-case basis by the relevant agency. Approval is usually conditioned to a considerable degree of governmental control over the investment project.

Incentives may include an exemption from the 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.

Nowadays, investment incentives in general are subject to re-evaluation and further studies by the government authorities so that future incentives may be actually directed to less developed areas and to activities that will foster the Brazilian economy and development.

## **4.6. Municipal Taxes**

Municipalities and the Federal District are empowered to levy the following taxes:

- Urban Property Tax (IPTU);
- Tax on Real Estate Transfers (ITBI);
- Services Tax (ISS - *Imposto sobre Serviços*) is levied on certain services listed in federal law, and the average rate is 5%.

## **4.7. Other Taxes**

### **4.7.1. Capital Gains Tax**

Generally, capital gains are subject to income tax of 15 percent, that shall be paid by the Brazilian source, unless in case of a resident in a tax heaven. For this possibility a rate of 25 percent will apply. If the capital gains are made outside Brazil in transactions involving assets located in Brazil, those are subject to Brazilian income tax, The transaction may only involve non-Brazilian residents.

### **4.7.2. Dividends**

Inside and outside Brazil, dividends payable by a Brazilian company declared and distributed from 1996 to its shareholders, are exempt from income tax.

### **4.7.3. Interests**

Payments of interest made by a Brazilian party to a resident outside of Brazil with respect to loan transactions are subject to withholding tax at a rate of 15 percent. In case of a resident in a tax heaven or any other lower rate as provided in any applicable tax treaty between Brazil and the country of the beneficiary, said rate is increased to 25 percent.

## 4.8. Double Taxation Agreements - Tax Treaties

Brazil has entered into treaties for avoidance of double taxation with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, Norway, Peru, the Philippines, Portugal, Slovak Republic, South Africa, Spain, Sweden and Ukraine.

## 4.9. Transfer Pricing Rules

Corporate Income Tax (IRPJ) and Social Contribution on Profits (CSL) are payable on the net income adjusted by the additions, exclusions and offsetting prescribed by tax laws. Transfer pricing rules are one of these adjustments.

Transfer pricing rules seek to avoid the transfer of results abroad by manipulation of prices agreed on imports or exports of goods, services or rights in transactions with foreign-based related parties.

In other words, the purpose of transfer pricing rules is to check whether the pricing policy adopted for international trades between intra group companies is in accordance with market conditions (“arm’s length”), or else serves to transfer results overseas. To that end, fixed margins have been set for transactions with related parties.

When products are imported by a Brazilian company, transfer pricing rules verify whether such company is making excess payments to the foreign supplier. According to this, 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.

As for exports, the Brazilian Tax Authorities check whether prices are not lower than those determined by comparability methods. On this regard, the Brazilian company must report a minimum taxable income when selling goods and providing services to foreign-based related companies.

In order to reduce the potential negative impact of recovery of the real against the U.S. dollar and other foreign currencies, taxpayers subject to the Brazilian transfer pricing rules have to adjust up 9% in export revenues with related parties earned in 2010.

## 4.10. Tax Heavens

A tax heavens may be the one that:

(a) does not impose income tax;

- (b) imposes income tax at a rate lower than 20%;
- (c) imposes restrictions on the disclosure of shareholding composition or on the ownership of investments; or
- (d) does not disclose beneficial ownership is deemed to be a tax heaven.

For this purposes, Brazilian tax authorities issued a list of jurisdictions considered to be tax heavens for purposes of transfer pricing rules and imposition of higher withholding tax rates

## Brazilian Taxation at a Glance

Tax	Tax Base / Triggering Event	Rate
Corporate Income Tax (IRPJ)	Actual profits; estimated profits; profits ascertained by the tax authorities ( <i>lucro arbitrado</i> )	15%
IRPJ Surcharge	Actual profits; estimated profits; profits ascertained by the tax authorities ( <i>lucro arbitrado</i> )	10% on the portion exceeding R\$ 240,000/year
Withholding Income Tax (IRF) - overseas remittances	Income and capital gains earned by non-residents from Brazilian paying sources	15% or 25% (depending on the type of income)
Tax on Manufactured Products (IPI)	Sale price when the product leaves the industrial establishment, or upon import	Variable per product classification
Tax on Financial Transactions (IOF)	Credit, currency, insurance and securities transactions	Variable per type of transaction (0% to 5.38%)
Social Contribution on Income	Adjusted net income	9% or 15%
PIS Contribution (deductible)	Revenue (the company's gross income)	1.65% or 0.65% (non-cumulative or cumulative taxation system, respectively)
Social Security Financing Contribution (COFINS) (deductible)	Revenue (the company's gross income)	7.6% or 3% (non-cumulative or cumulative taxation system, respectively); 4% (for financial institutions)
Contribution on Economic Activities (CIDE) - overseas remittances	Remittance of royalties and fees for technology transfer and payment for technical services	10%
Contribution on Economic Activities (CIDE) - fuels	Fuel sales and imports	Variable per type of fuel
Tax on Distribution of Goods and Services (ICMS)	Transaction value	7% through 33%
Tax on Services (ISS)	Service price	2% through 5%
Import Duty (II.)	CIF product value	0% through 35%
Export Duty (I.E.)	Exports of product made or cleared in Brazil, as per CAMEX act	Generally 30%, but other rates may apply (capped at 150%). Most products are currently taxed at 0%

## 5. Real Estate

### 5.1. Introduction

Under Brazilian law, immovable assets (i.e., lands and buildings) are, by nature, immobile or fixed to the soil, and cannot be partially or totally removed without causing their own destruction or devaluation, i.e., without substantially altering or destroying them. Immovable property encompasses land, and anything that has been naturally or artificially incorporated thereto.

Brazilian law further confers certain rights with the status of immovable assets for legal purposes. This is the case with deeds to immovable property, government stock incorporating an inalienability clause, and inheritance right to property through succession, even when inheritance is comprised only of movable assets.

As a general rule, the owner of land also owns the subsoil. However, the right of property does not include the right to explore mineral deposits, mines and natural resources, potential hydroelectric power sources, archaeological sites, or other assets referred to in specific legislation. In fact, there is a huge difference between land property and rights to such resources of the subsoil, which are considered Federal Government's property.

Concerning Air space, the applicable principle is practically the same, because the property owner may build vertically, but shall respect all the legal prescriptions and limitations foreseen in the Brazilian Law (e.g. Zoning Rules).

The Brazilian Civil Code defines the right of property as an absolute and exclusive right to use, enjoy and dispose of his goods and to recover them from whoever may unlawfully have taken possession of them. This right may be owned by a single or corporate person and its regime also contemplates the joint ownership and the condominium.

The right of property may be restricted or extinguished in consequence of collision with a conflicting public interest or simply restricted in consequence of a collision with third parties' right of property. Therefore, it is possible the expropriation of real estate properties by the government upon payment of a fair compensation or a simple restriction on urban property use or zoning by the building legal framework or by the municipality master plan.

### 5.2. Acquiring or Selling Real Estate

Acquisition by *Inter Vivos* transaction of Real Estate Property in Brazil entails a formal Sales Agreement between the purchaser and the seller, which may be entered into by an individual or a corporate person. The acquisition could also be realised by two or more purchasers, because Brazilian Legislation admits the joint ownership of a right of property. In those cases of multiple ownership, each owner may exercise any faculties included on the right of property as long as it does not compromise the indivisibility of the property.

According to the Brazilian applicable law, the ownership of a Real Estate Property is constituted upon registration of the public or private instrument whereby the sale was accomplished at a Real Estate Registry in the jurisdiction where the property is located.

Any non registered instrument concerning Real State property is only binding between the parties that have entered into the sale agreement and has no enforceability against third parties, since the right of property is only acquired upon registration of the deed of transfer, which may be:

- (i) By a Sale Agreement entered into between the seller and the purchaser;
- (ii) By accession (i.e., expansion of a property as a consequence);
- (iii) Squatter rights, i.e., properties acquired by occupation and possession over a certain period of time established in law;
- (iv) By inheritance;

The Real State Registration system is based on the principle of priority, whereby the person or company who first registers a Real State Property or presents deeds for registration has priority before the others.

Foreign individuals or foreign-owned companies may acquire real state in Brazil under the same conditions of Brazilian individuals or citizens. However, non-resident individuals or companies shall be registered for tax purposes prior to purchasing any Real Estate Property in Brazil.

Under Brazilian Law, rural properties are those that are considered rustic buildings to continuous areas, regardless of location, devoted to farming, agro-industry, or stock raising, whether in the hands of the private sector or under public land policies.

The acquisition of rural properties by foreigners, individual persons, who have permanent residence in Brazil, cannot be superior to 50 units of rural land known as “módulos rurais”, although the precise extension of each unit of rural land could vary according to the economic and environmental characteristics of the region where the property is located and the kind of agricultural activity to be carried out.

Foreign individuals' non residents in Brazil cannot acquire rural properties, except if this acquisition is due to inheritance rights. On the other hand, the restrictions to the acquisition of rural properties by Brazilian companies under foreign equity control are now being challenged, since the amend to the Brazilian Constitution of 1995 was approved.

Even though, foreign companies can only acquire rural properties for agricultural purposes, including cattle-raising and industrial or settlement projects that must be specified in the company's by-laws. Those projects shall be approved by either the Brazilian Agriculture Ministry or the Department of Trade and Industry, respectively. The power to sign this authorization may be arrogated by the President, through a specific Decree, if he considers that such property contributes to priority projects under national development plans. This

presidential authorization may be given in total derogation of the applicable rules concerning Real Estate Acquisition by foreigners.

### **Taxation**

Property Transfer Tax (Imposto sobre a Transmissão de Bens Imóveis – ITBI) is a tax assessed by municipalities, payable when real estate property or rights in rem to any real estate property (except those in guarantee), for any reason whatsoever, and in exchange for payment, are transferred, or upon assignment of rights to acquisition of a property.

For example, the rate assessed by the Municipality of São Paulo, under São Paulo Municipal Law, varies between 2% and 6%, depending on the value of the property.

ITBI is not due when the transfer of a Real Estate Property or the rights to any such property are used to pay up the capital of a company, the results from any merger, consolidation, spin-off, or liquidation of a Company, except when the purchasing company's main activity consists in buying and selling such assets and rights.

## **5.3. Real Estate Investment Funds**

### **The Concept**

Brazilian Real Estate Investment Funds (FII) is special purpose vehicles with the aim of advancing investors' capital in different real estate values following a principle of division of risk between investors and the FII. The creation of a Real Estate Investment Fund is dependent of an authorization provided by the Brazilian Securities and Exchange Commission (CVM), entity responsible for authorizing, regulating and inspecting Real Estate Investment Fund operations and management. So, they should be taken into account when considering real estate acquisition, construction sale, resale and rental.

Real Estate investment funds are currently engaged in raising funds for construction of shopping centres, office buildings and resorts throughout Brazil. Previously, Pension Funds were the major investors in real estate projects, but currently they are investing indirectly, through the purchase of shares in real estate investment funds.

Foreign individuals and corporations may acquire shares in such undertakings. Since the foreign investment shall be duly registered in the Central Bank, the remittance of gains and profits from the respective investment can be sent abroad. Capital gains resulting from such investments are

subject to income tax (IR) at a rate of up to 20%, assessed upon disposal or withdrawing of Real Estate Investment Fund quotas.

Any individual or corporate person may invest in a Real Estate Investment Fund. However, the managing institution can establish the target audience of the fund and the minimum investment required. After the shares' purchase by the investors, the Real Estate Investment Fund will acquire, under its own name, not only the properties it will explore, through rental, lease or sale, among other forms authorized, but also the backed real estate securities, which will compose its portfolio. The shareholder just stays with the expectation to receive a part of the Fund's income, according to the number of shares he holds.

The fund shall apply, at least, 75% of their incomes on assets and rights concerning Real Estate Properties. The remaining value can be applied on other fixed income assets, to obtain ordinary expenses necessary to its maintaining.

## **Taxation**

The FII shall distribute to its shareholders at least 95% of earnings, calculated under the cash basis, based on the balance sheet or trial half balance ended June 30 or December 31 of each year.

The income and capital gains earned by the FII, when distributed to any beneficiary, subject to withholding income tax at a rate of 20%, as well as the capital gains and income earned on the sale of shares.

To the FII which has a developer, builder or partner, a shareholder who owns, alone or in conjunction with a person connected with him, more than twenty-five percent of the shares of the fund, will not be applicable the differential tax regime, being subject to taxation applicable to companies.

## **6. Dispute Settlement**

Brazilian courts have been the main formal means of resolving disputes and enforcing property and contractual rights. Many foreign firms and investors consider Brazilian courts slow and ineffective and routinely seek assistance from lawyers and also prefer to include arbitration clauses in their contracts, as well as preventing disputes whenever possible through careful drafting of their contracts.

However, in what regards to commercial conflicts their resolution has a high rate of submission to arbitration. Under these circumstances a Trial is created for each case with a minimum of 3 arbitrators. Arbitration clauses can include any disposable rights, the chosen law to regulate conflicts, and any other domain not exclusively to be dealt by a judicial court.

## 6.1. Overview through the Brazilian Judicial System

The new Brazilian Civil Code provides the basis for judicial decisions on commercial and civil matters that must be subject to the State Courts jurisdiction, which have general jurisdiction and are presided by a single judge. The State Courts decision is always subject to appeal to be judged by a State Court of Appeals, if the aggrieved party so wishes.

Brazilian Constitution does not provide for jury trial in commercial and civil cases and the Procedural rules are provided by the Civil Procedure Code, a federal legal framework, applicable in all federate states. Under Brazil's federative system, State Courts are, in general, not specialized, having jurisdiction over civil, commercial, criminal and family cases.

Litigants shall pay court fees, which vary from State to State. As a general rule, an initial payment shall be made by the plaintiff, usually calculated as a percentage of amounts in dispute. In the event of appeals subsequent payments must be made by the party which presents the appeal. The Code of Civil Procedure also provides that all court costs and attorney's fees incurred by a winning party be paid by the loser, including the reimbursement of fees charged for the court costs, experts, witness fees and lawyers' fees.

The judge's decision is delivered in writing and contains a brief description of the parties and the issues involved, a summary of claims and counterclaims, a brief description of the facts, and the judge's opinion on each of the issues. The decision may award a party compensation, may order a party to take certain measures, or may provide a precise interpretation of a contractual clause.

When a plaintiff's lawyer presents a petition, he may, in specific cases, ask for a temporary restraining order to bring into immediate effects the final decision. For this the plaintiff shall demonstrate his claim that irreparable damage may result from delay. The Brazilian legal system also foresees a writ of prevention which can be presented before or after the main lawsuit. In either case, plaintiff seeks to protect a right that is in jeopardy if a provisional measure is not granted.

An appeal does not generally suspend the proceedings. The same lawyer may plead the case in the higher courts. Appeals are submitted to a panel in the State Court, composed of an even number of judges. They may review the decision in the light of their interpretation of the law and the facts.

The parties may appeal further to the federal high courts, i.e. the Superior Court of Justice (STJ) and the Supreme Federal Court (STF). If a party claims violation of a treaty, a federal law, or an interpretation in conflict with federal law by the State Courts, he can appeal to the STJ. Should the claim involve a violation of the Federal Constitution, appeal can be made to the Supreme Court. Both types of appeals may be presented, but the admission is highly restricted.

Such appeals shall not entail any discussion of the facts, and only the legal principles are subject to review in the federal high courts whose hearings are before a panel. Appeal to a high federal court does not suspend the proceedings, and the winning party can initiate the enforcement proceedings.

## 6.2. Arbitration

The Brazilian applicable law to individuals, companies and entities legally qualified to enter into agreements to resort to arbitration for settlement of disputes.

The legal rules applying to submit to arbitration may be freely established by the parties, and may include general principles of law, custom, usage, or international trade rules. An arbitration clause inserted into an agreement is legally binding upon the parties. The Brazilian Arbitration Law also foresees the fact that one of the parties makes a judicial demand for arbitration to take place, in the event that the other party fails to comply with the arbitration clause.

The parties may, by mutual agreement, define a procedure for selection of arbitrators. Alternatively, the specific rules of an institutional arbitrator or specialized entity may be adopted. The arbitrator is competent to rule on matters of fact and of law. Arbitration awards are not subject to appeal or validation by the Judiciary.

Arbitration is deemed to have been instituted when an arbitrator (or arbitrators) accepts his/their appointment. The parties may put forward their claims through their attorneys, but are at liberty to designate other persons to represent or assist them in arbitration proceedings.

An arbitration award has the same binding effect upon the parties and their successors as a court decision, as well as the same effect as an executable deed. It shall be given within stipulated by the parties. Nevertheless and when nothing has been agreed, the deadline for the submission of the judgment is six months, from the arbitration procedure. The arbitration award shall include:

- A report, containing the names of the parties and a brief summary of the dispute;
- Grounds for the decision, describing questions of fact and of law involved, and expressly indicate whether the arbitrators ruled on equity (if applicable);
- The ruling, when arbitrators decided the issues submitted to them and a deadline for compliance (if applicable); and
- The date and place of the award.

Anyone may be appointed to be an arbitrator, provided it has the confidence of the parties, since they may appoint one or more arbitrators, in odd number, as well as their alternates. However, in performing its function, the arbitrator shall act with impartiality, independence, competence, diligence and discretion.

When various arbitrators are appointed, they shall elect, through majority vote, the presiding arbitrator. But, failing the consensus, the older will be appointed the President. The arbitrator or the presiding judge shall appoint, when appropriate, a secretary who may be one of the arbitrators.

The persons, who have with the parties or the dispute submitted to arbitration, some of the relationships that characterize the cases of judges' impediment or suspicion, are not allowed to perform the function of arbitrator, being applicable the same duties and liabilities established for the judges in the civil procedure code.

## 7. Conclusion

We have striven to provide prospective investors with a practical overview of how companies are formed and how they operate in Brazil. Brazil offers countless opportunities for prospective foreign investors, in light of its robust and diversified economy, enormous economic potential and a huge domestic market, considerably expanded by joining MERCOSUL. The current governmental policies, targeting modernization of the economy to bring Brazil back into the international economic scenario, have been most successful. Brazil's political and economic stability, together with the progressive opening of its economy, the noteworthy reduction of inflation, privatization, and economic growth, have attracted ever-increasing offshore investments.

Franco Caiado Guerreiro e Associados, RL provides actual and prospective investors with specialized services in almost all areas of legal practice. Our network throughout Brazil and the world, plays a key role in our effort to provide our clients with everything they need for their investments.

## 8. SOURCES

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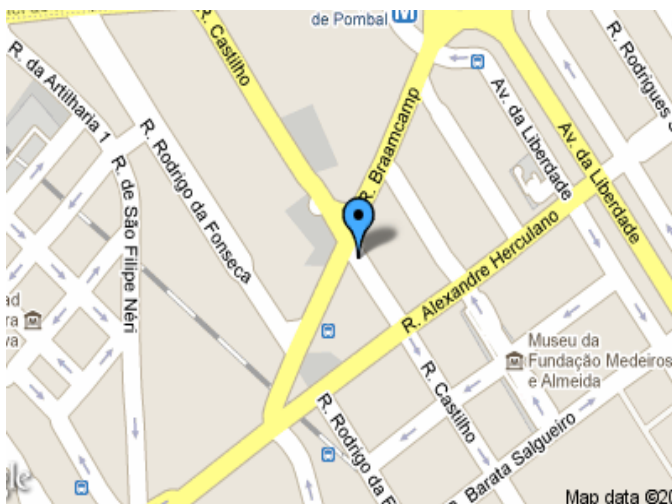
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