

LEGALINK

INVESTMENT AND BUSINESS START UP IN BRAZIL

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

The legal system in Brazil is the civil law system.

2. What are the major law courts in your country?

The major law courts in Brazil are:

(i) the Supreme Court (*Supremo Tribunal Federal*), which hears cases decided by other courts whose decision (a) is contrary to constitutional provisions; (b) declares a federal treaty or law unconstitutional; (c) upholds the validity of a local government law or act which was questioned as being in contravention of the Constitution; (d) holds a local law valid, if challenged vis-à-vis a federal law.

(ii) the Superior Court of Justice (*Superior Tribunal de Justiça*), which hears cases decided by other courts whose decision (a) contravene a treaty or federal law, or deny effectiveness thereof; (b) find valid a law or act of the local government contested in light of federal law; and (iii) interpret the federal law in a manner other than what was construed by another court.

There are also higher jurisdiction (courts of appeals) and lower jurisdiction (judges who have the competence to hear cases at first instance).

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

Legislation. Where legislation is silent, the courts must have recourse to legal doctrine, case law, general principles of law, analogy, customs and usage, and equity.

4. What is/are the official language(s) in your country?

The official language in Brazil is Portuguese.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

As a general rule foreign individuals and companies are free to invest in Brazil and are treated in the same way as Brazilian individuals and companies. The few legal restrictions imposed on foreign investors are related to the exploitation of certain activities.

6. Are there any exchange control or currency regulations in your country?

There are exchange control and currency regulations in Brazil. The basic framework is contained in Law No. 4,131 of September 3, 1962, which provides the basic rules for all forms of foreign investment. The two main governmental agencies responsible for such policies and regulations are the National Monetary Council and the Central Bank of Brazil.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

In accordance with the Brazilian Constitution, foreign individuals or legal entities should be subject to the same legal treatment applicable to Brazilian residents. Thus, there are not many specific incentives to non-residents.

With that being said, please note that certain characteristics of the Brazilian legislation end up attracting foreign investors to carry on business within Brazil. An important characteristic of the Brazilian legislation refers to the inexistence of a double level of taxation in Brazil, meaning that dividends paid out by Brazilian companies to non-residents are not subject to withholding tax (even to non-residents domiciled in tax havens).

Another interesting feature of the Brazilian legislation refers of the possibility of being a qualified investor in the Brazilian capital markets. Provided that certain requirements are met (set forth by the Brazilian Central Bank), capital gains derived from the commercialization of certain instruments are not subject to taxation.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

The most common form of business vehicle used by foreign investors in Brazil are the limited liability companies (*Limitadas*). Another common vehicle is the corporation (*Sociedade Anônima*). A foreign company may also set up a branch in Brazil, which is the common practice, for instance, in case of foreign airlines.

Please provide details on:

i. Registration formalities;

A limited liability company or a corporation comes into existence when all the necessary documents have been registered at the Commercial Registry / Civil Registry of Legal Entities.

ii. Minimum (and maximum) share capital;

As a general rule, there is no minimum or maximum share capital.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Shares can be issued for non-cash consideration, such as assets, but not for services.

iv. Any restrictions on foreign shareholders;

As a general rule, there are no restrictions on foreign shareholders/quotaholders.

v. Management structure and any restrictions on foreign managers;

Directors of a limited liability company and of a corporation must be residents in Brazil. Foreign individuals may obtain a permanent visa for such purposes. Members of a Board of Directors are not required to reside in Brazil but, in this case, need to be represented in Brazil by a Brazilian resident.

vi. Directors' liability;

vii. Parent company liability; and

Directors and shareholders of Brazilian companies may be subject to the following liabilities:

Labour Liability - With regard to any potential labour law liabilities, Paragraph 2 of Article 2 of the Brazilian Consolidated Labor Laws ("CLT") establishes the joint and several liability of companies of the same economic group for any labour law liabilities of any group member company (or of anyone forming part of the same economic group). Accordingly, it is not uncommon to have Brazilian labour courts to quite easily extending the liability for labour debts not only to other companies of the same corporate group and their shareholders/quotaholders, but also to the Brazilian company's management (officers and directors).

Tax Liability - Tax liabilities attributable to third parties other than the company are governed by Articles 134, 135 and 137 of the Brazilian National Tax Code (locally known as the "CTN"). In turn, under the

provisions of Article 135 of the CTN, officers and shareholders can be held personally liable for a company's tax debts if such debts resulted from acts performed by such shareholders or officers in violation of the law and/or the Company's Articles of Association/By-laws. The Company's shareholders and/or officers may also be held personally liable for the Company's taxes and fines should their actions constitute a crime or misdemeanour ("contravenção penal") as set forth in the applicable criminal legislation, pursuant to Clause I of Article 137 of the CTN. This rule is not applicable if shareholders and/or officers acted in fulfilment of their corporate duties.

Environmental Liability - Enforcement of environmental laws in Brazil is becoming a new trend. In this regard, please note that officers and directors of companies involved in environmental contamination and incidents can be held liable for such contamination/pollution, especially from a criminal perspective. With regard to the personal liability of shareholders/quotaholders for environmental damage, Law 6,938/81 provides for a broad concept of polluter, comprising any individual or corporate entity either directly or indirectly responsible for an activity which causes environmental damage. Accordingly, the risk of having a quotaholder/shareholder held liable, as an indirect polluter, for claims arising from environmental damages caused by a company, should be taken into account. In addition to the foregoing, Law No. 9,605/98 provides for the possibility of "piercing of the corporate veil" in the assessment of the liability for environmental damage. It should be noted that Brazilian Law provides for the criminal liability of corporate entities and individuals for environmental crimes.

Civil/ commercial liability. Quotaholders may be liable if they expressly approve certain deliberations which violate either the law or such company's Articles of Association. The Law of Corporations provides that shareholders shall be liable for damages caused to the company as a result of the abusive exercise of their voting rights, even if their vote did not prevail (Paragraph 3 of Article 115 of the Law of Corporations). In addition, under Article 117 of the Law of Corporations, a controlling shareholder shall be held liable for any damages caused by acts performed by abuse of its controlling power.

In addition to the foregoing, the principle of "piercing the corporate veil" may be applicable under the Brazilian Civil Code. As in other countries, the

legal principle of piercing the corporate veil in Brazil disregards the corporate fiction in order to avoid damages to the public/third parties. Pursuant to this principle, the shareholders/quotaholders who abusively use the corporate entity for purposes other than the objectives of the company or intermingling of company's and shareholders/quotaholders' assets would be liable as if there were no corporate entity, such shareholders/quotaholders thereby being considered personally liable for the debts which are owed by the corporate entity.

Liability deriving from Consumer protection laws. The lifting of the corporate veil can also be lifted in civil and consumer protection laws to seek to attach assets belonging to shareholders and management should fraud, deviation of the company's purpose and commingling of assets be ascertained.

Liability deriving from antitrust/competition infringement. Finally, management and shareholders can face administrative, civil and criminal penalties (including heavy fines), for antitrust/competition infringement. Leniency and settlement may be available if timely applied for.

viii. Reporting requirements (including filing of accounts).

At the end of each financial year, limited liability companies and corporations must draw up their financial statements. Limited liability companies are not obliged to have their books and financial statements examined annually by an auditing firm. However, in accordance with Law No 11.638/2007, large sized companies, incorporated as corporations or not, should comply with the provisions of such Law for bookkeeping accounting records and drawing up of the financial statements, as well as the obligation to have their books and financial statements examined annually by an independent auditing firm. In accordance with Law No 11.638/2007, large sized companies are a legal entity or all a legal entities under the same control, with total assets in excess of R\$240 million (approximately £60 million) or annual gross turnover above R\$300 million (approximately £ 75 million). Closed corporation may also opt to have the books and financial statements audited by an auditing firm; where the corporation does not do so, the inspection committee may choose to engage the services of an auditing firm. Publicly held corporations are required to engage an independent auditor, which is duly registered with the Securities and Exchange Commission - CVM.

The financial statements of limited liability companies need not be filed with the Commercial Registry or published in the *Official Gazette*. The financial statements of corporations must be filed with the Commercial

Registry and published in the *Official Gazette*; although closed corporations with fewer than 20 shareholders and a net worth of under R1 million are not subject to the publication requirement.

Further, the financial statements of publicly held corporations and all related accounting issues are subject to CVM control, pursuant to several directives and regulations.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

Employment relationships in Brazil are regulated by federal laws. The main law regulating employment relationships in Brazil is the Consolidated Labor Code (*Consolidação da Leis do Trabalho – CLT*). Additionally, Brazilian Federal Constitution contemplates provisions regarding employment relationship and the Superior Labor Law Court's Precedents have legal value and are respected by employers.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

No formal written employment agreement is required in Brazil.

This is due to the fact that Brazilian employment system is based on the concept of the “actual contract” (*contrato realidade*), whereby despite what may be written to the contrary, an employment relationship will arise if indeed some requirements, which are described Article 3 of the Brazilian Consolidation of Labor Laws (“CLT”), have been satisfied by ascertaining what actually occurred between the parties to the contract.

In accordance with Article 3 of the Brazilian Consolidation of Labor Laws (“CLT”), an employee is defined as an individual who renders services (“*personalidade*”), on a regular basis (“*habitualidade*”), and is subordinated (i.e. is subject to the direct oversight) to his/her employer (“*subordinação*”) against receipt of salary (“*onerosidade*”).

Therefore, regardless of the existence of a written employment agreement, if any individual renders services in Brazil through a relationship with the above-mentioned requirements, such individual will be considered an employee and, therefore, be entitled to labor rights that cannot be waived.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Foreign employees are required to obtain a work permit/visa in order to work in Brazil. Temporary work permits/visas are usually granted to foreigner employees intending to come to Brazil to work directly for a Brazilian company under an employment contract, subject to Brazilian Labor Law. Permanent work permits/visas are usually granted to foreigners being transferred to Brazil to occupy positions of officers/managers or directors of companies set up in Brazil. It takes approx. 45 to 60 days to obtain a temporary work permit/visa and a permanent work permit/visa at a estimated cost of approx. US\$ 10 (application fee) + visa issuance fee (variable, but around USD 300) per application.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employees are not usually entitled to management representation and/or to be consulted in relation to corporate transactions.

The only exception relates to reduction or elimination of benefits previously granted to the employees. In accordance to Brazilian labor legislation, none employment contract can be changed to restrict or eliminate any benefits or rights previously granted to employees. In accordance with Article 7, VI, of the Brazilian Federal Constitution, reducing an employee's compensation is expressly forbidden, with the exception of temporary reductions negotiated with labor unions to avoid RIFs (i.e. economic crisis, event of force majeure, etc). In other words, the unilateral reduction of salaries by the employer – or even authorized by the employees without assistance from the Union – is void, in view of the present constitutional protection.

In respect to redundancies, in Brazil, employers are free to terminate individual employment's agreements, without the employee's agreement and without cause, provided that he pays all the mandatory severance the employee is entitled to. However, other rules are applied in cases of collective dismissals, in which case it is mandatory that the Labor Union assists the collective dismissals in order to represent the employee's rights and will.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

Brazilian labor laws are highly protective of employees. Employees are entitled to, among others:

- a) Annual mandatory salary increase – as a percentage determined in either the collective bargaining agreement executed by and between the respective employer and employee unions - whether or not they are affiliated to such unions (“Convenção Coletiva de Trabalho”); or a collective labor claim filed by the employee union against the employer union (“dissídio coletivo de trabalho”), or the collective bargaining agreement agreed upon by and between the employees’ unions and the company (“Acordo Coletivo de Trabalho”);
- b) Annual Christmas bonus (commonly referred to as a thirteenth salary) – an additional annual payment equal to an employee’s monthly compensation;
- c) Vacation - an annual 30-day vacation, coupled with a bonus equal to 1/3 of the employee's monthly compensation. The total vacation pay equals 133.33% of the employees monthly salary, coupled with the average (1/12) of all salary variable amounts paid (e.g. overtime);
- d) Accrued severance fund (“FGTS”) - an amount to be funded by the employer corresponding to 8% of the employee's monthly compensation, deposited into a special bank account maintained in the name of the employee at a branch of the Federal Savings Bank (Caixa Econômica Federal);
- e) Transportation voucher - the employer shall be liable for the total cost of transportation vouchers exceeding 6% of the employees' monthly compensation;
- f) 15-day paid sick leave - the employer shall be liable for the payment of a 15-day sick leave, thereafter the leave shall be extended for a term to be determined by the INSS, which shall be responsible for the payment of the employee's salaries;
- g) 120-day maternity leave - female employees are entitled to a 120-day maternity leave period, to be paid by the employer and male employees are entitled to a 5-day paternity leave period, also to be paid by the employer;
- h) Dangerous working premium: 30% premium on employee’s wage or salary for dangerous working conditions;
- i) Unhealthy working premium: a 10%, 20% or 40% increase of the minimum wage for unhealthy working conditions;
- j) Temporary moving allowance: a 25% increase in pay for a temporary transfer of the workplace, which results in the need for a change in the employee’s domicile;
- k) Dismissal indemnity (FGTS indemnity): an accrued severance fund indemnity - in the event of dismissal without cause, the employee is entitled to receive a payment corresponding to 40% over the balance of deposits made during the employment relationship (the employer must, at such time, pay a further 10% over such balance

in favor of the fund itself, giving a total cost to the employer of 50% over the amount of such account balance);

l) Overtime salary premium: overtime pay with a minimum additional payment of 50% over the normal hourly rate. Unless otherwise determined by the applicable collective bargaining agreement, the employer and the employees may enter into a “time bank” working hours’ offsetting agreement to offset overtime hours with rest periods in lieu of paying the salary corresponding to overtime hours. Such agreement is limited to a 12-month period and shall be entered into in writing;

m) Night shift hour reduction: every 52 minutes 30 seconds of work done after 22:00 and before 05:00 is considered to correspond to a full 60 minutes of work;

n) Night shift premium: 20% additional pay for night shift workers;

o) Reduced work shifts: 6-hours-shifts for certain employee categories, such as bank employees (“bancários”), typists (“digitadores”) and telephone operators (“telefonistas”);

p) Minimum salary: the employee is entitled to receive, at least, the national minimum salary (which corresponds to R\$ 678.00) or the minimum salary established for the category to which the employee belongs, which can be either provided by law (i.e. engineers have a minimum salary of five times the national minimum salary) or by collective bargaining agreement; and

q) Weekly paid rest – at least one rest day for every week, preferably on Sundays. Male employees are entitled to take at least one Sunday off every seven weeks and female employees are entitled to that at least one Sunday off every four weeks (i.e. the weekly paid rest shall be given on a Sunday at least once during such period). Certain employee categories are entitled to different rules regarding the mandatory Sunday rest.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

Yes, there is a pension system in Brazil and it is on a mandatory basis.

It is mandatory that a total of at least 25,8% of the employee’s salary base is collected to the INSS (Instituto Nacional de Seguridade Social), plus 1%, 2% or 3% depending on the activities’ risk level.

From the 25,8% plus 1%, 2% or 3%, the employer is obliged to collect from 8% to 11% of the employee’s salary base, which reverts to the INSS (Instituto Nacional de Seguridade Social). This percentage varies according to the employee’s salary value.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

In Brazil employers are free to terminate individual employment contracts and Brazilian Labor Law recognizes four different types of employment agreement termination:

a) Dismissal for cause: Dismissal for cause is only possible in the situations provided for by Article 482 of the CLT, which include: theft; direct order disobedience, non-compliance with the company's internal rules and policies, among others. In such cases, the employee is only entitled to accrued vacation pay plus vacation bonus, salary balance and FGTS contribution over the salary balance. The situations must be clearly demonstrated by through evidences gathered by the employer and, in certain situations, must result from a progressive disciplinary procedure. Should the former employee files a labor claim seeking the annulment of the dismissal without cause and the employer is not able to demonstrate the alleged cause, the employer may be liable for damages – including pain and suffering ones – arising from the dismissal for cause allegation.

b) Employee's resignation ("pedido de demissão"): Upon resigning, an employee must give the employer a 30-day prior notice; otherwise the employer may discount from the employee's severance payment the value corresponding to one month's salary in case of the employee do not work none of the 30 days, or the value corresponding the not worked days. Additionally, the employee is entitled to accrued and pro-rata vacation pay plus vacation bonus, pro-rata Christmas bonus, salary balance and FGTS.

c) Dismissal without cause: The dismissal without cause is permitted but is subject to the employer providing the employee a minimum 30-day prior notice (which is increased should the employee has more than one year of employment and may reach a maximum of 90 days) and in addition to the severance due in case of an employee's resignation, the employer will also have to pay, as previously explained, a dismissal indemnification corresponding to 50% of the balance of the employee's FGTS's account.

d) Indirect dismissal (dismissal for cause of the employer): The indirect dismissal (constructive dismissal) has the same consequences as the dismissal without cause and occurs if any of the situations contemplated by Article 483 of the CLT are ascertained, which include breach of contractual obligations by the employer, including delay on salary payment; salary reduction or physical or psychological aggressions by the employer or any of its representatives.

With respect to severance payments terms, regardless of the form of termination, the employee is entitled to receive his severance by the 10th day following the dismissal (in the event of an indemnified 30-day prior notice) or by the first business day after the end of the worked prior notice. Moreover, if the employment agreement has been in force for more than twelve (12) months, then

termination must be signed in the presence of and approved by the employee's union officer or by the government authorities at the Local Ministry of Labor Office. For the calculation of pro-rata payments, any period longer than 14 days is considered as a full month, and with respect to the vacation, the 14 days considering the employee's admission date. Additionally, please note that if the employee is dismissed 30 days or less prior to the bargaining date ("data-base"), counting for such purposes his prior notice period (either worked or indemnified), he/she will be entitled to one additional salary.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

Brazilian Labor law does not regulate lay-off procedures. Therefore, there is no mandatory negotiation/notification involving the Labor union in case of such dismissals (as occurs in the US with respect to WARN procedures). In this regard, the individual dismissal without cause procedures established by Brazilian Labor shall be applied. Nevertheless, despite the absence of specific provisions regarding mandatory negotiations and restrictions to mass dismissals, recent precedents of the Brazilian Superior Labor Court (TST) indicate that companies conducting collective dismissals should previously negotiate with the respective unions alternatives to reduce costs. Also, recent precedents from the Labor Regional Courts of São Paulo and Campinas determined (i) the suspension of mass dismissals – especially those occurred earlier this year due to the global economic crisis; (ii) that companies should negotiate with the Labor union other alternatives to the mass dismissals (i.e. salary reduction, suspension of contracts and voluntary dismissal programs)

Only after implementing such measures and provided that they are not sufficient, the employer would be able to lay-off employees, in which case it should negotiate additional benefits to the employees who will be dismissed (i.e. extension of the health insurance, dismissal bonus, etc). Please note that such scenario is significantly influenced by the labor union representing the employees, therefore in case of not so active labor unions, the risk of a future demand claiming the annulment of the reduction or additional benefits to the affected employees is limited.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Brazil adopts the worldwide principle of taxation, meaning that Brazilian tax residents are subject to income tax on their worldwide income. Any income tax paid abroad may be offset as a foreign tax credit against the Individual Income Tax (locally known as "IRPF") that is due on a monthly or annual basis, limited to the amount of IRPF due in Brazil over the same income or earnings obtained abroad. No carry forward to subsequent years is permitted for such foreign tax credits.

18. Under what circumstances are employees subject to taxation in your country?

Income received by foreign employees working in Brazil are only subject to taxation by income tax if they: (i) arrive in Brazil with a permanent visa; or (ii) arrive in Brazil with a temporary visa to work under a local employment agreement; or (iii) stay in Brazil for more than 183 days, consecutive or not, over a twelve-month period. As from the 184th day, workers would be subject to taxation in Brazil on a worldwide basis. Hence, such foreign workers would be required to report salaries and any other income received abroad (including benefits in kind) to the Brazilian tax authorities.

IRPF is calculated and paid on a monthly basis, and the monthly payments are considered as advances of the IRPF due at the end of each fiscal year. The amount due at the end of each fiscal year, calculated over annual taxable income and after the deduction of monthly IRPF payments (i.e., tax credits), should be paid on the last business day of April of the subsequent year. By such date, an individual is also required to file his/her annual income tax return. IRPF is calculated based on a sliding scale and its maximum rate corresponds to 27.5%.

19. What income tax or social security contributions must be paid by:

i. Employees?

For the fiscal year of 2013, IRPF due monthly must be calculated based on the following sliding scale:

Monthly Income	Rate	Portion to be Deducted from the Amount Due
Up to R\$ 1,710.78	Exempt	-
From R\$ 1,710.79 to R\$ 2,563.91	7.5%	R\$ 122.78
From R\$ 2,563.92 to R\$ 3,418.59	15%	R\$ 306.80
From R\$ 3,418.60 to R\$ 4,271.59	22.5%	R\$ 552.15
In excess of R\$ 4,271.59	27.5%	R\$ 756.53

For the fiscal year of 2014, such sliding scale will be updated to the following amounts:

Monthly Income	Rate	Portion to be Deducted from the Amount Due
Up to R\$ 1,787.77	Exempt	-
From R\$ 1,787.78 to R\$ 2,679.29	7.5%	R\$ 122.78
From R\$ 2,679.30 to R\$ 3,572.43	15%	R\$ 306.80
From R\$ 3,572.44 to R\$ 4,463.81	22.5%	R\$ 552.15
In excess of R\$ 4,463.81	27.5%	R\$ 756.53

Employees must also pay social contribution (INSS) at a rate between 8% and 11% of their gross salary.

ii. Employers, in relation to their employees?

Employers are imposed social contribution on the total payroll and the rate may reach up to approx. 28%, depending on the type of business activity.

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Income Tax (IRPJ) and Social Contribution on Net Profits (CSLL) are federal taxes levied on taxable income. Although their bases are similar, there are some specific differences. Brazilian companies are subject to the IRPJ and CSLL on a worldwide basis, so that any income derived from foreign activities must be submitted to taxation, just like any income that is sourced in Brazil. Note that Brazilian companies are not allowed to offset losses incurred abroad against income locally produced.

As a general rule, companies may elect to calculate taxable income for IRPJ and CSLL purposes under either the actual-profit method (known as “lucro real”) or the presumed-profit method (known as “lucro presumido”) every fiscal year. Certain companies (e.g., taxpayers with gross revenues exceeding R\$78 million in the previous year; companies with income, capital gains or profits generated abroad - excluding direct exports of goods or services; financial institutions; among others) are required to adopt the actual-profit method.

It is important to highlight that in both methods quoted above, the IRPJ and CSLL rates are the same. Only their respective tax basis is different. The IRPJ is currently levied at a 15% rate and a surtax of 10% is applicable on taxable income exceeding R\$240,000 per year (R\$20,000 per month). CSLL is imposed at a 9% rate on taxable income.

Please note that the decision regarding the choice between the actual-profit method and the presumed-profit method should be made taking into consideration a comparison of the application of said methods based on a projection of future revenues and costs of the business for the relevant fiscal year. This choice, which should be made in the beginning of every fiscal year (or just after the company has been organized) also impacts the determination of PIS and COFINS, as explained below.

(a) Actual-Profit Method

Under the actual-profit method, Brazilian companies determine taxable income by effectively subtracting all allowed deductions from gross income (e.g., ordinary and necessary expenses) and making other relevant adjustments (e.g., consideration of tax

loss carryforwards, transfer pricing adjustments, etc.). The tax legislation considers certain expenses, however, non-deductible.

In the actual-profit method, tax losses may be carried-forward without any time restrictions, however offset against future profits cannot exceed thirty percent (30%) of the profits obtained per year. Therefore, even having accumulated tax losses exceeding its corporate profits, a Brazilian company may have to pay taxes, since only thirty percent (30%) of its profits may be offset against accumulated losses.

(b) Presumed-Profit Method

The legislation surrounding the presumed profits method simply assumes that a certain percentage of the gross revenues of the company duly reflects its profits for that period, and it therefore takes such a percentage, added by the non-operational income, as the tax basis of IRPJ and CSLL.

The law establishes said percentage that varies depending on the activity conducted by the company. A percentage of 32% for IRPJ and CSLL is applicable to gross income related to rendering of services in general. In turn, percentages of 8% for IRPJ and 12% for CSLL are applicable to gross income related to sale or manufacturing of products.

21. Under what circumstances are incorporations subject to taxation in your country?

The set up of a Brazilian company per se do not trigger taxes, as a general rule. Such transactions would only be subject to taxation in case a capital gain or any other income is derived.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

The chart below summarize the main Brazilian taxes:

Tax	Tax Base/Triggering Event	Rate
Corporatæ Income Tax (IRPJ)	Actual profits; estimated profits; profits ascertained by the tax authorities (lucro arbitrado)	15% + Surtax of 10% on the exceeding R\$ 240,000.00
Social Contribution on Net Profits (CSLL)	Actual profits; estimated profits; profits ascertained by the tax authorities (lucro arbitrado)	9%
Withholding Income Tax (IRRF)	Income, royalties, interest interest on net equity and capital gains earned by non-residents from Brazilian	15% to 25% (depending on the nature of income and the country)

	paying sources	
Tax on manufactured products (IPI)	Sale when the product leaves the manufacturing establishment or upon importation	Variable (as a rule, healthcare products are subject to rates between 0 and 15%)
Tax on financial transactions (IOF)	Credit, foreign exchange, insurance and securities transactions	Variable
State Tax on distribution of goods and services (ICMS)	Transaction value – domestic sales and imports	7% to 33% (certain healthcare products are exempted from ICMS)
Municipal Tax on services (ISS)	Service price	2% to 5%
Import duty (II)	CIF product value	0% to 35%
Export duty (IE)	Exports of products made or cleared in Brazil	30% but other rates may apply. Nowadays most products are currently tax at 0%
PIS contribution (deductible)	Revenue (the company's gross income) and imports	1.65% or 0.65% (non-cumulative or cumulative taxation system respectively)
Social security financing contribution (COFINS) (deductible)	Revenue (the company's gross income) and imports	7.65% or 3% (non-cumulative or cumulative taxation system respectively); 4% (for institutions)
Contribution on Economic Activities (CIDE) – overseas remittances	Remittance of royalties and fees for technology transfer and payment for technical services	10%
Tax on Urban Property (IPTU)	Market value of urban property	Variable per municipality

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Exempt.

ii. Dividends received from foreign companies?

Exempt.

iii. Interest paid to foreign corporate shareholders?

15% (25% if a tax haven). Different rates may apply in case the beneficiary resides in a country which have entered into a double tax treatment for the avoidance of double taxation on income with Brazil. Those rates usually vary from 10% to 15%.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

15% (25% if a tax haven). Different rates may apply in case the beneficiary resides in a country which have entered into a double tax treatment for the avoidance of double taxation on income with Brazil. Those rates usually vary from 10% to 15%.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

Yes. The Brazilian thin-capitalization rules provide fixed debt-to-equity ratios to establish the limit of acceptable funding through debt, by means of which it is determined the amount of interest deductible for IRPJ and CSLL purposes. Within said limits, a Brazilian company may fully deduct incurred interest (safe haven). If debt is excessive, all or a portion of incurred interest is not deductible. Putting it differently, thin-capitalization rules aim at limiting the deductibility of expenses with interest remitted abroad or locally paid in certain cases.

Said rules are applicable to companies that are resident in Brazil and owe debts **(i)** to related parties that are non-residents; **(ii)** to companies or individuals resident in tax havens or privileged fiscal regimes, regardless of being related or not; and **(iii)** to non-residents that are independent third parties when the debt is guaranteed by a joint and severally liable entity, guarantor, attorney-in-fact or a intermediary non-resident and related to the Brazilian debtor (*e.g.* back-to-back financing). In turn, if the non-resident creditor is not a related party, the financing would not be subject to thin cap.

In accordance with the legislation current in force, the calculation should be based on the net equity as stated in the last balance sheet of the company, with the option of using the net equity of the month preceding the monthly period in which deduction of interest is tested, considering the income statements up to such month. The deduction of interest by a Brazilian company in the determination of IRPJ and CSLL is subject to three criteria of debt-to-equity ratio, as follows:

(i) Rule for Shareholders/Quotaholders (Direct Investors in Debtor): debt-to-equity ratio of 2:1. Under a “stand-alone deductibility test,” the equity to be considered is proportional to the net equity correspondent to the shares held by

shareholders in the Brazilian company. Thin capitalization control is made in light of loans granted by each foreign related shareholder;

(ii) Rule for Lenders in Tax Havens or Privileged fiscal regimes (even if Direct Investors in Debtor): debt-to-equity ratio of 0.3:1, considering the total net equity of the borrower. Control takes into account all loans granted by lenders resident in tax havens and privileged fiscal regimes;

(iii) Rule for Related Lenders Not Resident in Tax Havens (Related Parties - non Direct Investors in Debtor): debt-to-equity ratio of 2:1, considering the total net equity of the borrower;

Common Rule for “i” and “iii” above (when debt is jointly granted by Direct Investors and other Foreign Related Companies): total debt with foreign related companies cannot exceed the amount corresponding to two times the net equity proportional to all shares held by foreign shareholders in the Brazilian company. This rule is not applicable if there are exclusively loans or debt granted by related lenders which are non direct investors, in which case rule “iii” would apply without this common limit.

Should the Brazilian company’s debts exceed the limits found upon application of the thin capitalization rules, the respective and proportional exceeding interest would be considered an expense unnecessary to the company’s activities and, consequently, non-deductible for IRPJ and CSLL purposes.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

Yes. Should Brazilian companies hold interest in controlled foreign companies, they would be required to include the profits generated by such foreign subsidiaries in the calculation of income taxes in Brazil on December 31st of each year, regardless of an effective distribution of dividends. As previously mentioned, income taxes are imposed at a maximum combined rate of 34% in Brazil over the profits generated by a foreign subsidiary before the deduction of the income tax due in the country where such subsidiary is located.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

International transactions between related companies (including companies located in tax havens) are subject to transfer pricing rules in Brazil, for both imports and exports. As in any other country, transfer prices are understood in Brazil as those prices which should be charged by a Brazilian company for rights, goods or

services sold to / purchased from a foreign related entity, as if such transaction is executed with an independent party. In other words, transactions between related parties should be carried out at arm's length.

Such rules determine the maximum deductible price on imports and the minimum taxable price on exports for income taxes purposes in Brazil, which are imposed at a combined rate of 34%. Putting it differently, if the actual price of a given import is considered not to satisfy transfer pricing rules, a portion of it is considered non-deductible and a positive adjustment is made for income tax purposes; in turn, a minimum taxable revenue shall be booked if the actual price of a given export does not satisfy the transfer pricing rules.

It is worth pointing out that although the Brazilian transfer pricing rules are inspired by the OECD transfer pricing guidelines, Brazil is not a member of OECD and its transfer pricing rules do not reflect or apply precisely such guidelines. Accordingly, the Brazilian tax authorities are not bound to and may not follow the OECD guidelines or comments.

27. How are imports and exports taxed in your country?

Imports are subject to five main taxes, namely: (i) Custom Duty – locally known as “II”; (ii) Excise Tax – “IPI”; (iii) State Value-Added Tax – “ICMS”; and two social contributions on imports (iv) PIS and (v) COFINS. They rates may vary according to the classification code of the imported products.

Importation of services are subject to following taxes (i) withholding tax – IRRF; (ii) special contribution on royalties and on technical services – CIDE; (iii) Municipal Tax on Services – ISS; (iv) PIS and (v) COFINS.

As a general rule, exports are exempted from taxation. Export tax applies very rarely to specific products (e.g., military weapons, pharmaceutical products). The other products are usually subject to a zero rate.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Brazil has currently in force more than thirty Tax Treaties to avoid the double taxation of income. The Treaties were entered with, for instance, 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; Philippines; Portugal; Slovak Republic; South Africa; Spain; Sweden; Trinidad and Tobago; Turkey; Ukraine; Venezuela. In turn, there is no Double Tax Treaty neither with UK nor with the United States of America.

These treaties entered into by Brazil and its partners follow the OECD's model, as a rule.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

Yes, there is. The Brazilian Antitrust Law (Law No. 12.529), based on the 1988 Federal Constitution, is guided by the principles of free enterprise, free competition, consumer protection and social purpose of private property. Law No. 12,529 was enacted on May 29, 2012 and introduced many changes in the Brazilian antitrust system. The Administrative Council for Economic Defense – CADE became the sole authority responsible for reviewing mergers and acquisitions and investigating anticompetitive practices.

30. Are restrictive agreements and practices regulated by competition law in your country?

Yes. CADE is the competent authority for the review of anticompetitive practices which might generate: (i) any restraint to free competition or free initiative; (ii) the arbitrary increase of profits; and (iii) the abusive imposition of an economic agent to impose advantages and establish a dominant position.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

The unilateral (or single-firm) conduct is contemplated by the Brazilian competition legislation.

32. Are mergers and acquisitions subject to merger control in your country?

Yes. The following transactions are subject to mandatory notification: (i) merger of two or more independent companies; (ii) direct or indirect acquisition of controlling interests or assets in one or more companies; (iii) incorporation of companies; and (iv) execution of a cooperation agreement, consortium or joint venture. Companies or groups of companies are only required to submit their transactions to CADE in case the following two conditions are cumulatively met: (i) the economic group of at least one of the parties involved in the transaction has recorded in the previous financial year gross revenue in Brazil, equal to or exceeding R\$750 million (currently equivalent to approximately US\$ 330 million); and (ii) the economic group of at least one of the parties involved in the transaction has recorded in the previous financial year gross revenue in Brazil equal to or exceeding R\$ 75 million (currently equivalent to approximately US\$ 33 million).

33. Intellectual property

34. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?

ii. How is it protected?

iii. How is it enforced?

iv. How long is it protected?

Intellectual Property rights in Brazil comprises trade and services marks, invention and utility model patents, technology transfer, industrial designs, franchising, technical and scientific services, protection of unfair competition and other rights following the definition of “industrial property” which was introduced by the Paris Convention. The subject is mainly regulated by the Industrial Property Law (Law No. 9,279/1996), the Paris Convention and Stockholm Revision, several norms issued by the Brazilian Patent and Trademark Office – (“INPI”), as well as the Central Bank of Brazil. The INPI is the federal agency in charge of regulating, granting and protecting industrial property rights, as well as the formal examinations and granting of patent and trademark applications.

Patents are granted for inventions and utility models (improvements on physical objects of practical utility) and industrial designs. A Brazilian patent grants its holder the power to prevent third parties from producing, using, selling, or importing patented products. There are certain practices exempted from the exclusive rights of the inventor, such as: (i) Non-commercial private use of the invention which does not imply in financial loss to the inventor; (ii) Experimental use for scientific or technological researches purposes. The requirements for the application of patents are: (i) Novelty; (ii) Industrial use or application; and (iii) Inventive step. The “First to File” Rule applies and the ownership of a certain patent is assured to the person who first registered it with INPI. Patents may be granted for periods of: (i) 20 years for inventions; (ii) 15 years for utility models; (iii) 10 years for industrial designs (extendable for three five-year periods). Once the patent has expired, the invention belongs to the public domain. The issuance of a patent in Brazil takes approximately 7 to 8 years.

Trademarks must be signs of a “visually perceptible” nature. In case of priority claim, a foreign holder of a trademark may file with the INPI a certified copy of the trademark application in the country of origin within six months from the foreign application as defined in the Paris Convention (well-known foreign trademarks are protected regardless of registration in Brazil). Registration in Brazil will provide a ten-year protection period for the trademark, and may be extended for successive ten-year periods. For application purposes, the holder of a trademark is required to actually use the trademark within five years of registration in order to prevent it from forfeiting. Ownership of a certain trademark is assured to the person who first registered it with INPI and registration takes approximately from 2 to 3 years to be granted.

Copyright. protection extends to original works of authorship in any tangible form of expression, such as books, music compositions, cinematography works, photographs, translations and any transformation of the original works, drawings, paintings and other tangibles forms thereof. Copyright is regulated by the Copyright Law (Law No. 9610 of 1998) which protects and regulates all creative works. Additionally, Brazil is signatory of the Bern and Geneva Conventions. The duration of a copyright work is for the whole life of its author and seventy years thereafter. Copyright is not mandatory for obtaining protection. However, registration is helpful to prevent piracy and as a proof of ownership in case of litigation. In this case, the author may register his/her work with the specialized entities in accordance with the nature of the work.

Software. Law No. 9,609, enacted in 1998, also known as the “Software Law”, establishes the principal rules for the protection of intellectual property contained in computer programs. The protection assured copyright under the Brazilian Copyright Law (Law No. 9,610 of 1998) is also applicable to the Software Law. Software is protected for 50 years following its publication, release or creation. Registration is not required for the protection of software copyrights, although INPI accepts the registration of computer programs for other purposes, such as facilitating presentation of evidence of authorship. In respect of protection to foreigners, the Software Law applies the international principle of reciprocity. Protection is extended to foreigners domiciled outside Brazil, as long as the country where the software was granted grants the same rights to Brazilians. Technology transfer agreements involving software (in case of transfer of the source code) must be registered with INPI in order to be enforceable against third parties, to permit remittance of royalties abroad and deductibility of payments for tax purposes. For the purposes of such registration all technical documents, descriptions, functional specifications and other technical information must be filed (confidentially) with INPI.

Domain Name. Currently Registro.br is the entity responsible for domain names registration in Brazil. The right to use a domain name in Brazil is granted to the first party applying for its registration. The Brazilian country-code top level domain name is “.br”. The registration of domain names in Brazil may be granted in the name of individuals (holding a CPF number) or legal entities (holding a CNPJ number) legally represented or established in Brazil. Foreign corporate entities are permitted to register domain names in Brazil, provided they file a power of attorney to represent them with respect to matters concerning the domain name and also file an affidavit attesting that the company will be established in Brazil within 12 months as of the registration date of the domain name.

(G) Marketing agreements

35. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

i. Agency;

Commercial representation relationships are governed by Law No. 4,886/65, as amended by Law No. 8,420/92 (the “Commercial Sales Representative’s Law”) and, wherever applicable, by Articles 710 to 721 of the Brazilian Civil Code (the BCC). The Commercial Sales Representative’s Law is extremely protective towards commercial representatives. For example, the indemnification amount due to the commercial representative as a result of the termination of a commercial representation agreement depends on whether: (i) such termination was effected *with* or *without just cause*; and (ii) the agreement had originally been entered into for a fixed or indefinite period of time. In the event of a commercial representative being removed *with just cause* (clear and sound evidence being required by the principal to prove the occurrence of the event[s] triggering such cause of removal), no indemnification is due to the agent by the principal, provided effective negotiations had not been handled by him/she/it. Quite to the contrary, the principal will be entitled to recover from the agent losses and damages caused by the wrongful event. Furthermore, the principal is also entitled to retain any commission due to the agent as compensation for damages caused by the latter, without prejudice to recovering from the agent in court any outstanding balance. On the other hand, an agent may also be removed by the principal *without just cause*. In this case, indemnification must be paid by the principal to the agent as a result of early termination of the commercial representation agreement. Indemnification is calculated in different manners, according to the term of the commercial representation agreement (fixed period of time or indefinite period of time).

ii. Distribution; and

Distribution agreements are considered to be governed by many scholars and case law by Articles 710 to 721 of the BCC. Distributors purchase the products from the supplier/principal/manufacture and then resell them to their own clients. The remuneration of distributors generally arises from the profit obtained through the resale of products purchased from the supplier. Article 711 of the BCC provides that exclusivity is presumed, unless the parties expressly agree otherwise. Article 720 of the BCC stipulates that in distribution agreements entered into for an indefinite period of time, either party may terminate the respective agreement by giving the other party 90 days’ prior written notice. The required prior notice may be longer (i.e., must be given with more than 90 days in advance), depending on the nature and volume of investment required by the distributor throughout the duration of the relationship.

iii. Franchising

Franchises in Brazil are governed by Law No. 8,955~~9~~/94 (the Franchise Law). The scope of regulation of this law, however, is very narrow, limited only to pre-contractual transactions, specifically relating to disclosure. In fact, in regards to the disclosure period, the law provides for in details all information that must be disclosed by the franchisor before the signing of the franchise contract and establishes severe financial penalties for any deviation of this process.

(H) E-commerce

36. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

There are certain rules enacted in 2013 regulating the Brazilian Consumer Protection Code in respect of e-commerce. Such rules contemplate which type of information must be made available to consumers, as well as certain provisions related to the right to cancel the agreement by consumers. Furthermore, electronic signatures are also regulated by the Brazilian legislation and widely used in many different sectors.

(I) Data protection

37. Are there any data protection laws in your country? If so, please give brief details.

The Brazilian Constitution (Article 5) lists the fundamental rights of individuals, including the right to privacy, i.e. *“the privacy, private life, honor, and image of individuals is an inviolable right, and the right to compensation for property and ‘moral’ damages due to the violation of such right is ensured.”* The Brazilian Civil Code (Articles 20 and 21) also provides for the protection of an individual’s private life as an inviolable right.

Further, the Brazilian Constitution also contains a *habeas data* provision. This provision guarantees individuals the right to: (i) have access to their personal information contained in governmental registries and [governmental or private] databanks; and (ii) demand the correction of such data should it be incorrect. The lack of correction of consumer data (in case the consumer so requests) is considered a crime under the Brazilian Consumer Code - “CDC” (Article 73).

General database rules under the CDC include consumers’ right to access data collected about them and to be informed about the data source. The data shall be clear, objective and true.

(J) Product liability

**38. Are there any laws regulating product liability and product safety in your country?
If so, please give brief details.**

Yes. Article 186 of the Brazilian Civil Code provides that whoever violates a right, and as a result causes damages through a voluntary act or omission, or negligent or reckless behaviour, is considered to have committed an illicit act. Further, in accordance with article 927 of the Brazilian Civil Code, any party committing an illicit act resulting in damages to third parties is liable for such damages.

In addition to that, the Brazilian Consumer Protection Code contemplates two fundamental principles, namely: (i) strict liability (i.e., liability deriving from there being a *nexus* between the event of damage and an action or omission regardless of the existence of fault); and (ii) joint and several unlimited liability for all entities involved in the supply chain. Therefore, any limitation of liability and damages to be indemnified may be considered null and void in Brazil.

Finally, there are certain governmental authorities responsible for issuing regulations in respect of product safety in Brazil, such as ANVISA (National Sanitary Vigilance Agency) and INMETRO (National Institute of Measurements, Quality and Technology), among others.

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