

# DOING BUSINESS

IN BRAZIL

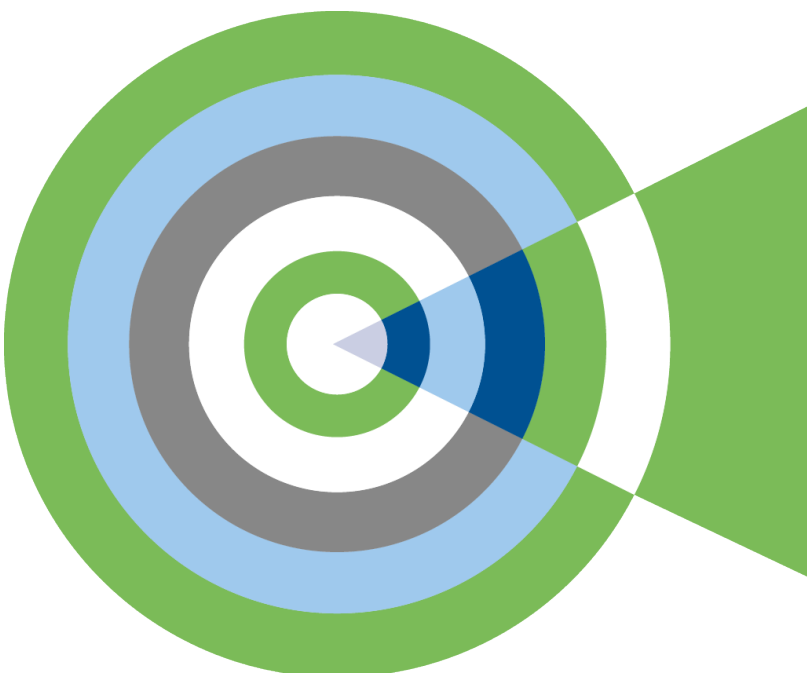


The network  
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business

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# 1 - INTRODUCTION

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UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in around 100 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Brazil has been provided by the office of UHY representatives:

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Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at **August 2024**.

We look forward to helping you do business in Brazil.

## 2 - BUSINESS ENVIRONMENT

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### OVERVIEW

Following more than three centuries under Portuguese rule, Brazil gained its independence in 1822, maintaining a monarchical system of government until the abolition of slavery in 1888 and the subsequent proclamation of a republic by the military in 1889. Brazilian coffee exporters politically dominated the country until populist leader Getulio VARGAS rose to power in 1930. By far the largest and most populous country in South America, Brazil underwent more than a half century of populist and military government until 1985, when the military regime peacefully ceded power to civilian rulers. Brazil continues to pursue industrial and agricultural growth and development of its interior. Exploiting vast natural resources and a large LABOR pool, it is today South America's largest economy and a regional leader. In the past twelve years, the country has gained recognition as one of the most powerful economies in the developing world, and it became a focus of international attention when it was selected to host the 2014 World Cup and 2016 Olympics.

### CLIMATE

Although most of Brazil lies in the tropics, more than 60 percent of the population live in areas which are cooled either by altitude, sea winds or polar fronts. While the coastal cities of Rio de Janeiro, Recife and Salvador can get extremely hot, plateau cities such as São Paulo, Brasília and Belo Horizonte have mild climates, and the southern cities of Porto Alegre and Curitiba have a climate similar to that of southern Europe.

Brazil's most intense rain falls around the mouth of the Amazon near the city of Belém, and also in the upper regions of Amazonia where more than 2,000 millimetres (78 inches) of rain fall every year. Most of Brazil has moderate rainfall of between 1,000 and 1,500 millimetres (39 to 59 inches) a year, most of it coming between December and April. The driest part of the country is the northeast, where rainfall is irregular and the evaporation rate very high, making it difficult to grow crops.

### GOVERNMENT

#### ELECTORAL SYSTEM

Elections in Brazil are conducted under a system of universal suffrage and secret ballot. Electoral enrolment and voting are mandatory for all literate citizens between the ages of 18 and 70, but voluntary for the illiterate and those aged 16-17 and over 70. Any person wishing to run for public office in Brazil must belong to a political party. Parties have to be formally registered with the Superior Electoral Court. They are guaranteed the freedom to define their own internal structure, organization and operation, including rules regarding party loyalty and discipline.



Votes are registered electronically, even in the most remote parts of the country, thereby reducing potential for fraud and decreasing the time taken for results to be declared.

## EXECUTIVE

Executive power is exercised by the President of the Republic, assisted by Ministers of State. The President and Vice-President are elected for four-year terms. In accordance with specific provisions in the Constitution, the President may be removed from office (impeached) by Congress.

If the office of the President were to become vacant for any reason, it would be filled by the Vice-President for the remainder of the original term. If he or she were unable to carry out this function, next in the line of succession would be the President of the Chamber of Deputies, then the President of the Senate, and the President of the Federal Supreme Court.

The President appoints the Ministers of State, who are directly responsible to him and whom he may dismiss at any time. A Minister of State may be summoned to appear before the Chamber of Deputies, the Senate or any of its committees.

## JUDICIARY

### FEDERAL SUPREME COURT

Judicial powers are vested in the Federal Supreme Court, Superior Court of Justice, regional courts, and the specific courts for electoral, LABOR, military, and other matters. Judges in all courts, at both federal and state level, are appointed for life.

The Federal Supreme Court is at the apex of the judicial system. It has its seat in Brasília but holds jurisdiction throughout the country. It is composed of eleven judges, appointed by the President of the Republic after their nominations have been approved by an absolute majority in the Senate.

## LEGISLATIVE

Legislative power is exercised by the National Congress, which consists of two houses: the Chamber of Deputies (lower house) and the Federal Senate (upper house).

## CONGRESS

The Chamber of Deputies is composed of 513 federal deputies. The number of deputies by which a state is represented is proportional to its population. Deputies serve four-year terms and are elected by direct secret ballot under universal suffrage.

The Senate is composed of 81 senators - three for each of the 26 States (and another three for Federal District). Senators are elected for eight-year terms, but the elections are staggered so as to take place every four years, coinciding with those for the Chamber of Deputies.

Federal deputies and senators are entitled to stand for re-election without restriction.

## STATE GOVERNMENT

Brazil is made up of 26 States and a Federal District. Their independence is guaranteed by Brazil's 1988 Constitution. Brazil's states maintain a separation between executive and legislature. Each of the 27 governors must achieve more than 50 per cent of the vote, including a run-off between the top two candidates if necessary. State legislatures have only one chamber. The deputies are elected through an open-list system in which the state serves as one constituency.

## LOCAL GOVERNMENT

Government in Brazil's nearly 5,000 municipalities is also structured with a separation between the executive office of the Mayor (*prefeitura*) and a legislative city council (*câmara de vereadores*). Elections for mayor also require the winner to obtain more than 50 per cent of the vote, with the exception of cities with less than 200,000 inhabitants. Local elections are held in the second year between presidential, congressional and state elections.

## ECONOMY

### GROSS DOMESTIC PRODUCT (GDP)

In 2023, Brazil's GDP growth was moderate but resilient, considering the global economic environment. The economy grew by approximately 2.3%, slightly higher than expected, driven by robust agricultural output and a rebound in service sectors. However, industrial production faced challenges, especially due to high-interest rates and global supply chain disruptions. The agricultural sector was a significant contributor, with record harvests, particularly in soybeans and corn.

As of mid-2024, the GDP growth rate is expected to decelerate slightly to around 1.8%-2.0%. This slowdown reflects a combination of external uncertainties, including global economic cooling and internal factors such as tighter monetary policy to curb inflation.

### OECD AND ECONOMIC REFORMS

Brazil's relationship with the OECD (Organization for Economic Co-operation and Development) has been strengthening. The country is actively pursuing membership, which would mark a significant step in its efforts to align with global economic standards. Throughout 2023, Brazil implemented several reforms aimed at improving its economic framework, including tax reform and regulatory improvements to enhance the business environment. These efforts are ongoing in 2024, with the government focusing on labor market flexibility and improving public sector efficiency to meet OECD requirements.

### INTERNATIONAL TRADE

Brazil's international trade saw mixed performance in 2023. Exports remained strong, particularly in agricultural products, oil, and iron ore, benefiting from high global commodity prices. However, imports faced pressure due to a weaker domestic currency and higher costs of goods. The trade balance remained positive, but the surplus narrowed compared to previous years.

In 2024, Brazil continues to capitalize on its strong agricultural exports, though there are concerns about potential global market shifts, particularly in China's demand for raw materials. Trade relations with major partners like the United States and the European Union remain crucial, especially with the ongoing negotiations around the Mercosur-EU trade agreement, which could bring significant benefits if finalized.

### INFLATION AND MONETARY POLICY

Inflation was a major concern in 2023, with rates hovering around 5-6%, prompting the Central Bank of Brazil to maintain high-interest rates. This tight monetary stance impacted borrowing costs and investment but was necessary to anchor inflation expectations.

In 2024, inflation is expected to ease slightly, with rates projected to be around 4-5%, allowing the Central Bank some leeway to begin lowering interest rates gradually. However, this will depend on global inflation trends and domestic fiscal policies.

## FISCAL POLICY AND PUBLIC DEBT

Brazil's fiscal situation remains a challenge, with high public debt levels and persistent budget deficits. In 2023, the government made efforts to control spending and improve tax collection, but public debt remained elevated at around 90% of GDP. The 2024 fiscal outlook indicates continued pressure, with the government balancing the need for fiscal consolidation against social spending demands.

## SOCIAL AND ENVIRONMENTAL ASPECTS

Brazil's economy is also influenced by social and environmental factors. In 2023, social inequality and poverty rates were significant concerns, exacerbated by inflation and unemployment. The government has been working on social programs to address these issues, with mixed success.

Environmental sustainability is becoming increasingly important, especially regarding deforestation and climate change. International pressure and domestic advocacy have led to some progress in curbing deforestation, but challenges remain, particularly in balancing economic development with environmental preservation.

## OUTLOOK FOR 2024

Looking ahead to the rest of 2024, Brazil's economy is expected to face a complex set of challenges and opportunities. The focus will be on maintaining growth momentum, controlling inflation, and continuing structural reforms. International trade dynamics, fiscal policy decisions, and the ongoing process of OECD accession will be key factors shaping Brazil's economic trajectory.

Overall, while Brazil's economy in 2023 and 2024 shows resilience, it also faces significant headwinds that require careful management and strategic planning.

## FINANCIAL MARKETS

The Brazilian Financial Market is one of the most developed of the world, based on a modern and solid banking system, a state-of-the-art payment system, and reliable market infrastructure, it counts with a active central bank, which supervises and controls the system, applying strictly the precepts determined by the National Monetary Council. The National Financial System includes both financial and non-financial institutions covering a broad range of services.

## INTEREST RATES AND MONETARY POLICY

In 2023, Brazil's Central Bank, Banco Central do Brasil (BCB), maintained a tight monetary policy, keeping the Selic rate high to combat inflation. The Selic rate, which started the year at 13.75%, remained elevated for most of the year, only showing signs of a potential reduction toward the end of 2023 as inflationary pressures began to ease slightly. The high-interest rate environment, while effective in anchoring inflation expectations, led to a contraction in credit growth and dampened consumer spending and business investments.

By mid-2024, with inflation showing a more stable trend and external pressures easing, the Central Bank started to gradually lower the Selic rate, aiming to stimulate economic activity. The Selic rate is expected to be around 12.5% by the end of 2024, depending on inflationary trends and global economic conditions.

## CURRENCY MARKETS

The Brazilian real (BRL) experienced volatility in 2023, influenced by global market conditions, domestic political developments, and monetary policy decisions. The currency faced depreciation pressures due to global risk aversion, concerns about fiscal sustainability, and the high-interest rate environment, which limited economic growth prospects.

In 2024, the real has shown some stabilization, supported by improving commodity prices and a more favorable trade balance. However, the exchange rate remains sensitive to external shocks, particularly changes in U.S. monetary policy and global economic trends.

## CAPITAL MARKETS

### EQUITY MARKETS

The Brazilian stock market, represented by the B3 (Brasil Bolsa Balcão), had a mixed performance in 2023. The Ibovespa index, Brazil's benchmark stock index, faced downward pressure for most of the year due to high-interest rates, slowing economic growth, and global uncertainties. Sectors such as financials, consumer goods, and industrials struggled, while commodity-based companies, particularly in the energy and mining sectors, provided some support to the index due to strong global demand for raw materials. In 2024, the equity market has seen some recovery, driven by expectations of lower interest rates and improving corporate earnings. The outlook for Brazilian equities is cautiously optimistic, with sectors like technology, infrastructure, and renewable energy expected to attract more investor interest as the economy stabilizes.

### FIXED INCOME MARKETS

The fixed income market in Brazil was highly attractive in 2023, given the high Selic rate. Government bonds, particularly shorter-term instruments, offered substantial yields, attracting both domestic and international investors. The demand for fixed income was strong, but the high-interest rates also led to increased borrowing costs for the private sector, which impacted corporate bond issuance.

As interest rates began to show signs of peaking in late 2023 and early 2024, the fixed income market dynamics started to shift. Investors began to anticipate future rate cuts, which led to a rally in longer-duration bonds. The outlook for 2024 suggests that fixed income will remain an attractive asset class, particularly if the Central Bank continues to lower rates in a controlled manner.

### PRIVATE EQUITY AND VENTURE CAPITAL

Private equity and venture capital activity in Brazil faced challenges in 2023 due to the uncertain economic environment and high borrowing costs. Fundraising and deal-making were subdued compared to previous years, with investors adopting a more cautious approach.

In 2024, there are signs of renewed interest in the private equity and venture capital space, particularly in sectors like fintech, agribusiness, and technology. The improving economic outlook and potential interest rate cuts are expected to revive activity in this segment, although challenges remain, particularly in terms of regulatory uncertainty and market liquidity.

### REGULATORY ENVIRONMENT

The regulatory environment in Brazil's financial markets saw some important developments in 2023. The Brazilian Securities and Exchange Commission (CVM) introduced new rules aimed at increasing transparency and investor protection, particularly in the areas of ESG (Environmental, Social, and Governance) reporting and corporate governance. These reforms are expected to enhance market confidence and attract more institutional investors.

In 2024, further regulatory updates are anticipated, especially concerning digital assets and financial technology, as Brazil continues to position itself as a leader in the fintech space. The government's approach to balancing innovation with regulation will be crucial in shaping the future of Brazil's financial markets.

### OUTLOOK FOR 2024

Looking forward to the rest of 2024, Brazil's financial and capital markets are expected to navigate a complex landscape of global economic uncertainties, domestic policy shifts, and evolving investor sentiment. The anticipated gradual lowering of interest rates should provide support for both equity and fixed income markets, while the currency may stabilize if global conditions remain favorable. However, risks related to fiscal policy, inflation, and external shocks will require careful monitoring.



Among the institutions that supervise and control the market, under influence and control the National Monetary Council and the Brazilian Department of the Treasury (ministry), the most influent are:

## BC - BRAZILIAN CENTRAL BANK

Created in 1964, it is the monetary authority in Brazil. BC has as main functions:

- Emission of currency - paper money and coin;
- Assure the purchase power stability;
- Assure the solidity of the National Financial System, through the control of the financial institutions' operations;
- Create and execute the exchange policy, by regulation and rules' issue, and accompany the foreign financial relationship;
- Keep the inflation's level under control
- Determine the Interest rate (known as SELIC rate)
- Regulate, supervise and issue the rules for the financial institutions' operation
- Manage the Treasury's International Reserves
- Regulate the clearance system for checks and securities.

## CVM - BRAZILIAN SECURITIES AND EXCHANGE COMMISSION

Created in 1976, CVM supervises and develops the market, through protecting investors, maintaining fair, orderly, and efficient markets. The institution has as main functions:

- Promote the correct operation and expansion of the market;
- Assure and supervise the correct operation of the Securities, Commodities and Futures Exchange;
- Protect the investor by supervising the securities issue, evaluating the financial data issued by public companies, avoiding fraud, assuring the public access to the financial data of the public companies (in compliance of the Act 6.404);
- Accredite and supervise auditors, brokers and managers of securities' portfolios;
- Supervise and inspect public companies and investment funds.

## SUSEP - SUPERINTENDENCE OF PRIVATE INSURANCE

Created in 1996, SUSEP is the institution that controls and supervises the insurance, private social security, savings bonds and reinsurance markets. SUSEP is part of the SNSP - National System of Private Insurances, also constituted by CNSP - Private Insurances National Board, and IRB - Brasil Resseguros S.A. SUSEP has as main assignments and functions:

- Institute guidelines and policies for the private insurance market, and reinsurance;
- Supervise the insurance broker activities;
- Regulate and supervise the constitution and operation of the Insurance Companies, Savings Plans Companies, Private Pensions Funds and Reinsurance Companies;
- Protect the insured, ensuring the liquidity and solvency of the institutions (companies and funds);
- Promote the stability and expansion of the market under its authority.

## BANKS

Brazil has national banks with branches throughout the country, all of which boast advanced technology – all payment orders are handled electronically, checks issued anywhere in the country are cleared and settled within 48 hours, and Brazilian banks are also leaders in the field of internet banking.

## INVESTMENT FUNDS

According to ANBIMA - Brazilian Association of the Financial and Capital Markets' Entities the industry of funds is composed by more than 10 thousand active investment funds, more than 90 investment fund administration companies and more than 402 managing companies. In 2018, the volume of funds allocated in investment funds in Brazil reached R\$4.5 trillion, registering a 10% growth compared to 2017.

Although CVM has the authority to regulate and supervise the investment fund industry, the investment fund market is also supervised and supported by ANBIMA, which institutes the benchmarks for market through creation and updating its Code of Best Practices, and provides studies and researches about the investment funds market.

Brazilian Investment fund market's participants:

- Administrator: responsible for the correct operation of the investment fund, controls the services providers, like accountants, lawyers and auditors, and protects the investors' best interests.
- Management company: responsible for the trades, seeking objectives and investment policies established by by-laws.
- Custodian: responsible for safeguarding the fund's financial assets and securities, generates data and sends fund's information's to administrators and managers.
- Distributor: responsible for the selling of the fund's shares, this function can be performed by the fund's administrator.

## CAPITAL MARKETS

Brazil has a highly developed capital market which offers numerous investment opportunities, along with a wide range of services and products.

BM&FBOVESPA S.A. – Securities, Commodities and Futures Exchange was created in 2008 following the merger between the Brazilian Mercantile and Futures Exchange (BM&F) and the São Paulo Stock Exchange (BOVESPA). It is one of the largest exchanges in the world in terms of market value, the second largest in the Americas, and the leading exchange in Latin America. In today's global scenario, in which the ability to respond quickly to market changes has become increasingly important, BM&FBOVESPA is an attractive investment option with cost-efficient trading fees. BM&FBOVESPA trades stocks, public and private sector securities, futures contracts based on financial assets, indexes, interest rates, foreign exchange rates and commodities, in addition to spot US Dollar and gold. Trading is carried out exclusively in the electronic trading system, where investors can perform transactions involving stock purchases and sales, hedge, price arbitration between markets and/or assets, portfolio diversification and position leverage. As the leader in the Latin American equity and derivatives markets, the mission of BM&FBOVESPA is to contribute to regional macroeconomic growth and to position Brazil as an international financial hub for equities, commodities, and other financial instruments, combining operational excellence with a socially responsible approach.

### *Reference in risk and collateral management*

With a totally integrated business model, BM&FBOVESPA acts as a central counterparty across its markets through its four clearing houses – equity, derivatives, foreign exchange, and securities – and also offers a full securities custody system.

It is mandatory that all equity, derivatives, foreign exchange and fixed income transactions, including OTC transactions, carried out at BM&FBOVESPA by financial institutions or by investment funds must be registered at a centralized registration system authorized by the Central Bank of Brazil. The Exchange maintains a system that allows the equity and derivatives clearinghouses to identify the clearing agents, the intermediaries (brokerage houses) and the clients responsible for the transactions. In addition, the Brazilian regulatory entities may access and obtain information about risk exposures and transactions carried out by various institutions.

### *Corporate Governance*

BM&FBOVESPA offers three special corporate governance levels for the listing of companies: Novo Mercado, Level 1 and Level 2. Listed in the Novo Mercado segment, which corresponds to the highest corporate governance level, BM&FBOVESPA maintains a governance policy that is aligned with the needs of its shareholders and of the community in which it operates, providing excellence in its services and transparency regarding its management. The Board of Directors of the Exchange comprises 11 members, six of whom are independent directors.

### *Internationalization*

As a basis for its expansion, the New Exchange maintains a close relationship with investors and international markets. BM&FBOVESPA established its first strategic alliance with the group that controls the Chicago Exchanges, the CME Group, and in September 2008 CME Group clients in over 80 countries were authorized to trade the BM&FBOVESPA financial derivatives and commodities directly. Following that, in February 2009, BM&FBOVESPA clients were authorized to trade the Chicago products directly.

### *Evolution of the trading environments*

BM&FBOVESPA has been continually enhancing the quality of access to its markets with IT implementations. In the derivatives segment, four direct market access (DMA) modalities are available, including access via DMA service providers and access via co-location, which consists of a service that allows investors to use their own computers inside the Exchange facilities.

## REAL ESTATE MARKET

Although the Real Estate Market in Brazil growth in recent years, accompanying the economy development in past years, there is still a lot of room to growth. The improvement that has been felt over the economy, leading a rise on the LABOR occupation's levels and a increase at the wages levels, combined with an ample credit offer on the market, caused a boost on the real estate sales, however the building industry is not able to supply the demand as fast as it grows, leading to a soaring on the prices.

## ENERGY

Energy is one of the most important inputs for the industry, It's availability, price and quality are fundamental for Brazilian's competitive capability.

Within the global context, Brazil remains one of the highlights in the generation of renewable energy that is a low environmental impact energetic matrix. Brazil is ahead of many countries in terms of sustainable energy efficiency. According to International Energy Agency (IEA), Brazil is the third largest generator of renewable energy - those that do not release residues or gaseous pollutants into the atmosphere - as well as the third largest hydropower producer. "Brazil has an electricity matrix of predominantly renewable origin, with hydroelectric generation accounting for 68.1% of the domestic supply," says the Energy Research Company (EPE). Renewable sources represent more than 50% of the energy generated and consumed in Brazil, and this rate tend to rise while hydroelectric energy is maintained as the main energy source, and Solar and Wind develop and grow.

### 1. HYDROPOWER

Hydropower is the cornerstone of Brazil's energy matrix, accounting for around 60% to 65% of the country's electricity generation. Brazil's extensive river systems, particularly in the Amazon Basin, provide vast hydropower potential. Major hydroelectric plants like Itaipu and Belo Monte are among the largest globally, contributing significantly to the national grid.

However, the reliance on hydropower also presents challenges, especially during periods of drought. In recent years, Brazil has experienced fluctuations in hydropower output due to changing rainfall patterns, leading to increased reliance on other energy sources.

## 2. BIOMASS AND BIOFUELS

Biomass and biofuels are significant components of Brazil's energy matrix, contributing around 8% to 10% of the total energy supply. Brazil is a global leader in the production and use of biofuels, particularly ethanol, which is primarily derived from sugarcane. The country's ethanol program is well-established, with flex-fuel vehicles capable of running on gasoline, ethanol, or any blend of the two being widespread.

Biomass, including bagasse (a byproduct of sugarcane processing), wood, and other organic materials, is also widely used in electricity generation, particularly in rural areas and industrial applications.

## 3. WIND ENERGY

Wind energy has seen rapid growth in Brazil over the past decade and now contributes about 11% to 12% of the country's electricity generation. The Northeast region, with its strong and consistent winds, is the heart of Brazil's wind power industry. States like Bahia, Rio Grande do Norte, and Ceará have seen significant investment in wind farms, making Brazil one of the largest wind energy producers in Latin America.

## 4. SOLAR ENERGY

Solar energy is another rapidly growing sector in Brazil's energy matrix, although it still represents a smaller share compared to hydropower and wind energy. Solar power accounts for around 3% to 4% of the electricity generation mix. The country's high solar incidence, particularly in the Northeast, makes it a prime location for solar energy development. Recent years have seen a surge in distributed generation, where businesses and households install solar panels, contributing to the grid.

## 5. NATURAL GAS

Natural gas plays an increasingly important role in Brazil's energy matrix, particularly as a complementary source to renewable energy. It accounts for about 10% to 12% of the country's electricity generation. Natural gas is used primarily in thermal power plants, which can be ramped up quickly to compensate for fluctuations in hydropower and other renewable sources. Brazil has been investing in infrastructure to expand the use of natural gas, including LNG (liquefied natural gas) terminals and pipelines.

## 6. OIL

Oil remains a critical part of Brazil's overall energy supply, particularly for transportation. While its role in electricity generation is limited (around 3% to 5%), oil-derived products are essential for the transportation sector and various industrial applications. Brazil is a significant oil producer, particularly with the development of pre-salt oil fields offshore, which has positioned the country as a net exporter of oil.

## 7. NUCLEAR ENERGY

Nuclear energy contributes about 2% to 3% of Brazil's electricity generation, with two operational nuclear power plants, Angra 1 and Angra 2, located in Rio de Janeiro state. There are plans to complete a third reactor, Angra 3, which would further increase nuclear's share in the energy mix. While nuclear energy remains a small part of the matrix, it provides a stable and reliable source of electricity.

## 8. CHALLENGES AND FUTURE OUTLOOK

Brazil's energy matrix is heavily renewable, which aligns with global trends towards decarbonization. However, the country faces several challenges, including:

- **Climate Variability:** Droughts can significantly impact hydropower generation, leading to energy shortages and increased reliance on fossil fuels.
- **Infrastructure:** Expanding and modernizing the grid to integrate more wind and solar energy is crucial, especially given the geographic distribution of these resources.
- **Energy Security:** Diversifying the energy matrix further and improving energy storage technologies are essential for ensuring stability and security.

The future outlook for Brazil's energy matrix is positive, with continued investments in renewables, particularly wind and solar, expected to further reduce the country's carbon footprint. Brazil's ongoing focus on expanding its biofuel and biomass sectors, along with advancements in energy storage and smart grid technologies, will likely reinforce its position as a leader in sustainable energy.

## PRICE INDEXES

A comprehensive overview of price patterns in Brazil is offered by a wide array of price indices calculated and reported by government agencies and foundations in Brazil.

### *Getúlio Vargas Foundation (Fundação Getúlio Vargas - FGV)*

The Getúlio Vargas Foundation, a think-tank and independent higher education institution operating in Rio de Janeiro, São Paulo and Brasília, calculates the longest series of price indices reported on a regular basis in Brazil.

Since 1944 it has provided monthly indices based on information collected nationwide on wholesale prices (IPA), consumer prices (IPC-BR) and the national cost of civil construction (INCC), the latter with nationwide coverage since 1985.

A composite price index (IGP-DI) is calculated as a weighted index of these three indices. In 1989 FGV introduced the IGP-M, an index with the same structure as the IGP-DI but a different data-collection period. As well as full monthly releases, two 10-day previews are reported. Another index in the IGP group is the IGP-10, released monthly, which also uses the same structure as the IGP-DI, again differing only with regard to the length of time over which the data is collected.

### *Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística - IBGE)*

The Brazilian Institute of Geography and Statistics, a federal government agency, calculates the National Consumer Price Index (INPC) and the Enlarged Consumer Price Index (IPCA), both released on a monthly basis. The IPCA is used as the reference for the inflation target.

### *Economic Research Foundation, São Paulo University (Fundação Instituto de Pesquisas Econômicas da Universidade de São Paulo - FIEP-USP)*

FIEP-USP has been calculating the monthly Consumer Price Index (IPC-FIEP) retroactively since 1939. Other price indices are also available. A price index for a representative food basket is calculated daily by the Consumer Protection Agency (PROCON) and the Inter-Trade Union Statistics and Socioeconomics Department (DIEESE).

## INFLATION

Under the inflation-targeting framework, annual inflation targets for the national Broad Consumer Price Index (IPCA) are set by the National Monetary Council and announced by the Minister of Finance.

Monetary policy decisions are based on inflation forecasts, dependent upon alternative interest rate paths, and take into account the state of the economy and the probable future development of exogenous variables.

### *Current Inflation (2024)*

- **Recent Trends:** In 2023, Brazil's inflation rate was relatively high, fluctuating between 5% and 6%, driven by factors such as global commodity price increases, supply chain disruptions, and domestic challenges like currency depreciation. However, as of mid-2024, inflation has started to moderate, with the most recent data indicating an annual inflation rate of around 4.5% to 5%. This decline reflects the impact of the Central Bank's tight monetary policy, with the Selic rate remaining high throughout 2023 and into early 2024.

- **Contributing Factors:** Several factors have contributed to the recent moderation in inflation:
  - **Monetary Policy:** The Central Bank of Brazil (BCB) has kept the Selic rate at elevated levels, which has helped to anchor inflation expectations and curb demand-driven inflation.
  - **Global Commodity Prices:** Global commodity prices have begun to stabilize, easing cost pressures on key imports such as food and fuel.
  - **Exchange Rate Stability:** The Brazilian real has stabilized somewhat in 2024, reducing imported inflation.

#### *Expected Inflation (Rest of 2024)*

- **Forecasts:** Inflation is expected to continue its downward trend throughout the rest of 2024. Most forecasts suggest that inflation will end the year within the Central Bank's target range, which is currently set at 3.25% with a tolerance margin of 1.5 percentage points (i.e., a range of 1.75% to 4.75%). The consensus expectation is that inflation will settle around 4% to 4.5% by the end of 2024.
- **Monetary Policy Outlook:** The Central Bank is expected to begin gradually lowering the Selic rate in the latter half of 2024, provided that inflation continues to trend downward and remains within the target range. This anticipated easing of monetary policy reflects growing confidence that inflation is under control, though the BCB is likely to proceed cautiously to avoid reigniting inflationary pressures.
- **Risks:** Despite the positive outlook, there are several risks that could affect inflation expectations:
  - **Global Economic Conditions:** Any significant changes in global economic conditions, such as a resurgence in commodity prices or geopolitical tensions affecting supply chains, could put upward pressure on inflation.
  - **Fiscal Policy:** Brazil's fiscal situation remains challenging, with high public debt levels. If fiscal discipline weakens, it could lead to higher inflationary expectations.
  - **Weather-related Shocks:** Brazil's heavy reliance on agriculture makes it vulnerable to weather-related shocks, which could affect food prices and overall inflation.

## 3 - FOREIGN INVESTMENT

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FDI in Brazil is on a positive trajectory, with strong inflows expected to continue in 2024. The country's diverse economic base, abundant natural resources, and strategic initiatives in infrastructure and technology make it an attractive destination for foreign investors. However, maintaining this momentum will require addressing persistent challenges, particularly in regulatory clarity and infrastructure development, while navigating the uncertainties of the global economic environment.

### CURRENT FDI TRENDS (2024)

**FDI Inflows in 2023:** Brazil experienced a rebound in FDI in 2023, attracting approximately \$80 billion in investments. This marked a recovery from the pandemic-induced lows seen in previous years. The sectors that attracted the most investment was energy, particularly renewables, technology, infrastructure, and agribusiness. Brazil's rich natural resources, large consumer market, and strategic location continue to make it an attractive destination for foreign investors.

#### Key Drivers:

- **Energy Sector:** Brazil's energy sector, especially renewables like wind and solar power, attracted significant foreign investment. The country's commitment to expanding its renewable energy capacity, coupled with favorable regulatory conditions, has been a major draw.
- **Technology and Digitalization:** The growing digital economy in Brazil, particularly in fintech, e-commerce, and telecommunications, has also been a magnet for FDI. Foreign investors are increasingly interested in Brazil's large and young population, which is driving demand for digital services.
- **Agribusiness:** Brazil remains a global agricultural powerhouse, and FDI in this sector has been robust, particularly in areas like food processing, biofuels, and sustainable agriculture.

**Geopolitical and Economic Context:** Despite the global economic uncertainties, Brazil's relative political stability and its strategic push toward economic reforms have been positive factors. However, challenges such as bureaucratic hurdles, legal complexities, and infrastructure gaps still pose risks to potential investors.

### EXPECTED FDI TRENDS (REST OF 2024 AND BEYOND)

**Positive Outlook:** The outlook for FDI in Brazil for the remainder of 2024 is cautiously optimistic. FDI inflows are expected to remain strong, with estimates suggesting investments could reach or slightly exceed \$85 billion by the end of the year. The continued emphasis on infrastructure development, particularly through public-private partnerships (PPPs), is expected to attract further foreign capital.

#### • Sectoral Focus:

- **Infrastructure and Logistics:** With ongoing projects in transportation, ports, and urban development, the infrastructure sector is likely to continue being a significant recipient of FDI. Brazil's efforts to modernize its infrastructure, reduce logistical costs, and improve connectivity are aligned with investor interests.
- **Green and Sustainable Investments:** ESG (Environmental, Social, and Governance) factors are increasingly important for investors, and Brazil's vast opportunities in sustainable agriculture, renewable energy, and environmental conservation are expected to draw more FDI.
- **Technology and Innovation:** The technology sector, including startups and innovation hubs, will likely continue to attract FDI, especially in fintech, edtech, and healthtech, driven by Brazil's dynamic and growing digital economy.

- **Challenges and Risks:**
  - **Regulatory Environment:** While Brazil has made strides in improving its regulatory environment, ongoing concerns about legal and regulatory stability, particularly around tax policy and labor laws, could affect investor confidence.
  - **Global Economic Conditions:** The global economic slowdown and geopolitical uncertainties, such as tensions between major economies, could impact FDI inflows into emerging markets like Brazil. Additionally, fluctuations in commodity prices and interest rates could affect investor sentiment.
  - **Domestic Economic Policies:** Brazil's fiscal policies, particularly regarding public debt management and inflation control, will play a crucial role in shaping the FDI landscape. Investors will be closely watching the government's commitment to economic reforms and fiscal discipline.

## FOREIGN CAPITAL IN BRAZIL

Foreign Capital in Brazil is governed by Act 4.131 issued on September 3th, 1962 (the Foreign Capital Law); and Act 4.390 issued on August 29th, 1964. Both laws are regulated by Decree No. 55.762 of February 17th, 1965, and have been amended.

According to Act 4131 *"foreign capital is considered to be any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, and are intended for the production of goods and services, as well as any funds brought into the country to be used in economic activities, provided that they belong to individuals or legal entities resident or headquartered abroad."*

There are two official exchange markets in Brazil, both of which are subject to Central Bank regulation, and operate at floating exchange rates:

- a) the free commercial/financial exchange rate market, which is reserved basically for (i) trade-related transactions (import and export); (ii) foreign currency investments in Brazil; (iii) foreign currency loans to residents in Brazil; and (iv) other transactions involving remittances abroad that are subject to preliminary approval from the Brazilian monetary authorities; and
- b) the tourism exchange rate market, which was initially developed for the tourism industry, and was later expanded to cover certain other transactions. Applicable regulations indicate the types of transactions that qualify for this market.

While both markets operate at floating rates negotiated between the parties, the key distinction between them is that (i) the commercial/financial exchange market is restricted to transactions that in certain cases require preliminary approval from the Brazilian Central Bank; and (ii) the tourism exchange market is open to transactions that do not require such approval.

Exchange operations are effected by means of exchange contracts, and may be divided into transactions entailing the entry of foreign capital, and transactions entailing an outflow of foreign exchange.

Effective from February 1st, 1999, the exchange positions on the free and floating exchange rate markets were unified for financial institutions, according to Brazilian Central Bank Resolution No. 2.588 of January 25th, 1999. Resolution 2.588 may be viewed as the first step taken by the Brazilian Central Bank towards unification of the free and floating exchange rate markets.



## RESTRICTIONS ON FOREIGN INVESTMENT

Participation of foreign capital in the following activities is prohibited:

- nuclear energy;
- health services;
- the ownership and management of newspapers, magazines and other publications, and of television and radio networks;
- the ownership of property in rural areas and of businesses abutting on international borders;
- post office and telegraph services – that may be altered following the Brazilian Post Service Company privatization;
- domestic airline concessions – that is to be altered; and
- the aerospace industry.

There are still certain restrictions on participation of foreign capital in financial institutions, which can however be circumvented if in the national interest. Supplementary legislation must still be enacted to regulate this matter, including for insurance companies. As a result of the constitutional reform mentioned below, Brazilian companies, even when controlled by aliens, can acquire, commercially exploit and lease rural land.

The 1995 constitutional reform had the following main effects in relation to the economic sector:

- a) it eliminated the concept of a Brazilian company with domestic capital, and re-established the traditional concept of a Brazilian company as a company that is organized pursuant to Brazilian law, and headquartered and managed in Brazil;
- b) it allowed private telecommunications companies to commercially offer sound or sound/image broadcasting services either directly or through concession, authorization or licensing;
- c) it eased the government monopoly, allowing private capital to be contracted to prospect for, research, refine, trade or transport petroleum and explore gas pipelines;
- d) the various Brazilian states were allowed to directly or via concession offer commercial piped gas services; and constitutional restrictions on offshore companies' engaging in cabotage (coastal navigation) services were lifted. Ordinary law must now be enacted to regulate these various areas.

Brazilian companies may request and obtain a permit to operate in the mining sector, even when controlled by a foreign company.

Act 9.074 of July 7th, 1995, provided that the Concessions Law (Act 8.987 of February 13rd, 1995) applies to the participation of private companies in the generation and transmission of electric power and commercial running of customs posts and terminals, highways and barriers.

## REGISTRATION OF FOREIGN CAPITAL

Foreign capital should be registered with the Brazilian Central Bank, through the Electronic Registration System – Foreign Direct Investments (*Registro Declaratório Eletrônico – Investimento Externo Direto - RDE-IED*). The registration of foreign capital is required when the commercial/financial exchange rate is to be used for the remittance of profits abroad, the repatriation of capital, and the registration of the reinvestments. Investments will always be registered in the foreign currency in which they are actually made, or in Brazilian currency, when they originate from a non-resident account duly maintained in Brazil.

## CURRENCY INVESTMENTS

No preliminary official authorization is required for investment in currency. The investment to subscribe for capital or to buy a stake in an existing Brazilian company can be remitted to Brazil through any banking establishment authorized to deal in foreign exchange. However, closing of the exchange contract is conditional on the existence of a RDE-IED registration number for the foreign investor and the Brazilian investee.

Registration of the investment is made through the RDE-IED System by the Brazilian company receiving the investment within 30 days of closing of the exchange contract for the remittance, together with documents reflecting capitalization of the funds.

Foreign currency investments must be registered in the original currency or, upon express request of the investor, in another currency, maintaining the exchange parity, in addition to the registration in Brazilian currency, as mentioned above.

## INVESTMENT BY CONVERSION OF FOREIGN CREDITS

If the foreign credits to be converted into investments are duly registered at RDE, no preliminary authorization from the Brazilian Central Bank is required. After receipt by the investee of the credit characteristics, and of a statement from the creditor consenting to the conversion, then a token exchange transaction must be performed, representing the purchase and sale of the foreign currency.

As for the credits not entered at RDE, a preliminary authorization from the Brazilian Central Bank is required for their conversion into investment.

## INVESTMENT BY IMPORT OF GOODS WITHOUT EXCHANGE COVER

Investment by import of goods without exchange cover (to pay up corporate capital) does not require a preliminary approval from the Brazilian Central Bank.

The goods, machinery and equipment must be intended for production of goods or rendering of services. In the cases of both imports of used goods and imports backed by tax incentives, such goods must have no Brazilian counterpart. Second-hand goods must be used in projects fostering the economic development of Brazil.

Once the imported tangible goods have been cleared by customs, the Brazilian company has 90 days to make the respective investment registration at RDE-IED.

As for intangible goods, the respective foreign direct investment will be conditioned to the Central Bank preliminary approval.

## REMITTANCE OF PROFITS AND TREATIES TO AVOID DOUBLE TAXATION

There are usually no restrictions on the distribution and remittance of profits abroad. Profits and dividends posted and distributed as from 1996 are exempt from income tax. Brazil has signed double-taxation avoidance treaties with the following countries: Germany, Argentina, Austria, Belgium, Canada, China, South Korea, Denmark, Ecuador, Spain, the Philippines, Finland, France, the Netherlands, Hungary, India, Italy, Japan, Luxembourg, Norway, Portugal, the Czech Republic, Slovakia and Sweden.

## REINVESTMENT OF PROFITS

According to the Foreign Capital Law, reinvestments are profits "made by companies established in Brazil and assigned to persons or companies resident or domiciled abroad, which have been reinvested in the company that produced them or in another sector of the domestic economy." Should the foreign investor decide to reinvest rather than remit profits, such profits are eligible for registration as foreign capital along with the original investment, through the RDE-IED system.

## REPATRIATION

Foreign capital registered with the Central Bank may be repatriated to its country of origin at any time without authorization. Remittances in excess of the registered amount will be considered capital gains for the foreign investor, and are thus subject to 15% withholding income tax.

## REMITTANCES ABROAD

Remittance of funds abroad in foreign currency using the commercial/financial exchange rate is restricted when such funds are not registered with the Central Bank, since the remittance of profits, repatriation of capital, and registration of reinvestment are all based on the amount of foreign investment registered. The international transfer of funds in Brazilian currency between residents (including subsidiaries of foreign companies) and non-residents, provided that the transactions are carried out through banks authorized to deal in foreign exchange in Brazil, is expressly free and does not require prior approval. Local currency transferred abroad is converted into foreign currency through a number of mechanisms, one of them being interbank transactions on the tourism exchange market. The remittance of foreign currency abroad for investment purposes (up to US\$ 5 million per year) is entirely free. Transactions in excess of such value require preliminary approval from the Brazilian Central Bank. In any event, it is required that the remittances be made on the tourism exchange market, and carried out through banks authorized to deal in foreign exchange in Brazil. Certain formalities have to be complied with.

## TRANSFER ABROAD OF INVESTMENTS IN BRAZIL

The equity interest owned in a Brazilian company by a foreign investor may be sold abroad, with no tax implications in Brazil, irrespective of the price paid. The foreign purchaser will be entitled to register foreign capital in the same amount as the registration previously held by the selling company, regardless of the price paid for the investment abroad. In this case, the foreign purchaser—through its representative resident in Brazil—must enrol at RDE-IED and then enter its purchase. At the same time, the foreign seller must update its registration at the Brazilian Central Bank, also through RDE-IED, so as to account for cancellation of the values referring to the portion then disposed of. This registration is necessary for the new investor to remit/reinvest profits and to repatriate capital based on the commercial/financial exchange rate.

## OFFSHORE LOANS

Pursuant to Central Bank Resolution No. 2770 of August 30, 2000, the financial conditions underling an offshore loan transaction between Brazilian-based and foreign-based persons must be submitted to and registered with the Central Bank within 10 business days after settlement of the respective currency exchange transaction. The Central Bank will review the respective application through FIRCE, and will then issue a certificate of registration for the corresponding transaction. Such registration will enable the borrower to make remittances of loan principal and charges. A certificate of registration issued by FIRCE is valid for up to 120 calendar days counted from each maturity date stated on the respective certificate. After such deadline, no payment may be made under such certificate, whether for closing of currency exchange transactions or for payment in Brazilian currency. The parties interested in making any payment after such period (or in changing the terms and conditions originally agreed on) must apply to FIRCE for revalidation of such certificate.

## PORTFOLIO INVESTMENTS

Any foreign institutional investors that are interested in trading shares directly on the Brazilian stock exchanges may now avail themselves of a new mechanism that revamped the rules on foreign investments in the Brazilian financial and securities markets (foreign portfolio investments). A non-resident investor is accorded the same registration codes and treatment available to resident investors for investments in the fixed and floating income markets, and may freely migrate from one investment mechanism to another. Portfolio investments are open to non-institutional legal entities and individuals based abroad. Under these regulations, non-resident investor, whether acting as an individual or on a collective basis, means the individual or legal entity, fund or other investment pool with residency, headquarters or domicile abroad. As a result, foreign-based individuals and non-institutional entities are allowed to make direct investments in Brazil, without being subject to the eligibility requirements (e.g., minimum asset requirements) set out in CVM Instruction No. 169.

Non-resident investors are only required to trade in derivatives or other futures positions on stock exchanges, futures and commodities markets, or organized over-the-counter markets, or else through registration, clearing and custodial systems recognized by the Brazilian authorities, such as the Securities Registration and Clearing System managed by the Securities Custodial and Clearing Center (*Central de Custódia e de Liquidação Financeira de Títulos — CETIP*), the Special Custodial and Clearing System (*Sistema Especial de Liquidação e de Custódia — SELIC*) managed by Brazilian Central Bank, and Brazilian Custodial and Clearing Company (*Companhia Brasileira de Liquidação e Custódia*).

Non-resident investors must meet the following basic requirements:

- a) one or more nominees must be appointed under a mandate;
- b) one person must be appointed to be held accountable for the investor's tax obligations;
- c) a form must be filled out as per the attachment to CMN Resolution No. 2689 ("Form");
- d) a custodial agreement must be entered into with a CVM-accredited institution; and
- e) the CVM registration must be obtained.

The investor's representative will have to make necessary disclosures to CVM and BACEN upon request, as well as to keep updated records and certify the signature of a non-resident investor, among other duties. For its part, the investor only has to retain one or more custodian institutions, considering the obligation to have assets and securities, as well as other financial transactions carried out by a non-resident investor, registered, held in custody or maintained in a depository account at an institution or entity authorized by Brazilian Central Bank or CVM to render such services, as the case may be. The foreign investor, if it wishes, can invest 100% of its portfolio in just one publicly-held company. However, trades cannot result in the direct or indirect acquisition of a controlling interest or in an increased stake in a controlled or associate company, nor in the acquisition of securities from closely-held companies. All trades involving publicly-held companies authorized to trade on the securities market should be carried out on the stock exchange. The capital gains earned by non-resident investors from trades in stocks issued by publicly-held companies are not subject to income tax. Any positive results obtained in stock, commodities, futures, or like markets are considered capital gains.

However, the same does not apply to income, which is taxed:

- a) at 10%, when arising from investments in floating-income funds (which are now admitted under the new regulations), swaps and other futures transactions off the stock exchanges; and
- b) at 15% in the other cases, including fixed-income investments and interest on net worth.

This favourable treatment is not available for investments sourced in countries where income is either not taxed or subject to taxation at less than 20% (the so-called "Tax Havens"), which are subject to the same rules as those applying to persons resident and domiciled in Brazil. In addition to income tax, non-resident investments are still subject to the Tax on Financial Transactions (*Imposto sobre Operações Financeiras — IOF*) on the Brazilian currency value of the exchange contract entered into upon the currency inflow.

## FOREIGN TRADE SYSTEM

Entry of foreign goods into Brazil for internal consumption is subject prevailing MERCOSUL and Common Foreign Tariff (TEC) guidelines, based on the Common MERCOSUL Nomenclature (NCM). Most import duties range from 0% to 35%, but the federal government has implemented an import policy that is intended to reduce such rates to an average 14%. Import duty is calculated on the price at which the goods are offered for sale on the wholesale market in the exporting country, plus the cost of insurance and freight (c.i.f.). It should be stressed, however, that increases in import duty are specifically excluded from application of the rule that no tax may be levied unless the law came into force before the beginning of the relevant tax year (the ex-post-facto rule). In other words, the federal government may change import duty rates at any time. Consequently, this is one of the basic mechanisms of the federal government for controlling imports.

Furthermore, subject to certain exceptions, the import of products comparable to locally manufactured products may not be eligible for certain tax or exchange advantages (i.e. exemptions or reductions). The responsibility for ascertaining whether a comparable domestic product exists lies with the Brazilian Foreign Trade Department (SECEX), which normally consults the domestic manufacturers. Domestically manufactured products are considered to be comparable to foreign goods if they are capable of replacing the imported products in terms of quality, price and delivery terms.

Imports are also subject to IPI and ICMS. Under specific conditions, some imported goods are eligible for tax exemptions, reductions and incentives in respect of IPI and/or ICMS. The exporters of manufactured goods are entitled to export incentives, represented by financial and tax incentives, such as IPI and ICMS immunity for all manufactured products. They also qualify for maintenance of ICMS and IPI credits ensuing from the purchase of raw materials and inputs used in the manufacturing process, which can be deducted from the taxes due on business transactions on the domestic market. These are the main tax incentives available, but there are many others offered in accordance with the government interest in the development of certain economic and social areas. In order to trade in imports, companies must be registered with the SECEX General Register of Exporters and Importers. Any applicant complying with the necessary requirements will be registered. In exceptional cases where a company is shown to be involved in certain acts, SECEX may cancel or suspend (for up to two years) registration or may refuse an application for registration.

## 4 - SETTING UP A BUSINESS

### TYPES OF ORGANIZATIONS

The setting up of a foreign branch to operate in Brazil is subject to the provisions of Decree-law 2.627 of September 26th, 1940 (articles 64 to 73) and Normative Ruling DNRC No. 81 of January 5th, 1999. The foreign company must submit an application to the Brazilian Government, which must be approved by presidential decree. A certificate of the decree and other pertinent acts will then be published in the Official Gazette, and a copy registered at the appropriate commercial registry. Only after all formalities have been completed will the branch be in a position to start up its activities. The foreign company must also empower a representative—who need not be Brazilian but must be resident in Brazil—to act on its behalf. As the procedure is lengthy, and the red-tape and expenses involved are greater than for setting up a Brazilian company, the establishment of a branch in Brazil is not recommended, except in very special circumstances. Brazilian law provides for several forms of corporate organization, with the most widely adopted being the *sociedade por quotas de responsabilidade limitada* (LTDA) and the *sociedade anônima* (joint-stock company).

#### LIMITED LIABILITY COMPANY BY QUOTAS (LTDA)

The LTDA which is governed by Decree No. 3.708 of January 10th, 1919, is a hybrid between a partnership and a company by shares, with aspects of each type of entity. A LTDA is required by law to have at least two partners, who, with few exceptions, need not be Brazilian nationals, and can be either corporate or natural persons. In fact, the partner need not even be resident in Brazil. When the capital is not yet fully paid up, the liability of the partners is limited to the total capital of the company. Once the capital is paid up, liability is limited to the amount of each partner's participation. Holdings in a LTDA are reflected in the company's articles of association, since the quotas representing the division of capital are not represented by certificates as in the case of shares. The articles must therefore be amended whenever quotas are assigned, transferred, or increased, so as to accurately reflect the ownership of the company's capital. There is no requirement as to the minimum capital that must be paid up on initial subscription or subsequent capital increases, except for certain types of companies for which the law provides for a minimum capital requirement. The LTDA may be managed by all the partners, by some partners, or by only one partner. The articles of association must state who is to be the managing partner. Should the managing partner be a legal entity or an alien resident abroad, the delegation of administration and management powers to one or more individual's resident in Brazil is required. The partners can, however, retain control over certain decisions by reserving certain rights in the articles of association. The LTDA need not publish its accounts, amendments to its articles of association, or other corporate documents. This entails less expense and the right to maintain a certain degree of confidentiality as to company affairs. The articles of association are, however, still public, meaning that third parties may obtain copies by application to the commercial or civil registry of legal entities with which the articles of association and their amendments must be filed.

#### BRAZILIAN JOINT-STOCK COMPANIES (S.A)

The joint-stock company is the corporate form which most closely resembles a joint-stock company or corporation. It is governed by Act 6.404 of December 15th, 1976, and its amendments (the Corporation Law). A joint-stock company must in principle have at least two shareholders, who are liable only to the extent that the share capital for which they have subscribed remains unpaid. A joint-stock company may be formed by public or private subscription. In either case, all the shares must be subscribed for by at least two persons, and a minimum of 10% of the capital must be paid up. The paid-up capital must be deposited with a commercial bank until all formalities for formation of the company have been completed. The formation of a company by public subscription entails: preliminary registration of the share issue with the Brazilian Securities and Exchange Commission (CVM); the intermediation of a financial institution; approval of the incorporation of the company by a general meeting called by the incorporators at the close of the subscription period; and appraisal of any assets contributed to the company in lieu of cash payments for the shares.

Formation by private subscription may take place at a general meeting of the incorporators, or by a public deed of incorporation published simultaneously with subscription for the shares. If any of the shares are paid up other than in cash, a general meeting must be called to value the assets contributed. All documents relating to the formation of the company must be filed at the commercial registry, and subsequently published in the Official Gazette and in another widely circulated newspaper published where the company has its principal place of business.

This type of company may be either publicly- or closely-held. A publicly-held company must be registered at CVM, along with the securities it issues, which may be traded on the stock exchange or on the over-the-counter market. The securities of a closely-held company are not available to the general public. The capital may be either subscribed or authorized. In the case of a company with subscribed capital, the company's bylaws state the amount of capital actually subscribed for by the shareholders, although this capital need not necessarily be paid up. The bylaws of an authorized capital company establish the limit up to which the capital actually subscribed for by the shareholders may be increased without the obligation of executing an amendment to its bylaws. The authorized capital limit may also consist of a number of shares, rather than an amount expressed in currency. Company capital is divided into several kinds of shares, all of which have different advantages, rights or restrictions attributed to them.

Common shares in a closely-held company may belong to different classes, depending on:

- their no convertibility into preferred shares;
- the requirement that the shareholder be Brazilian; or
- the right to vote separately for election of certain officers of the company.

Preferred shares in a publicly or closely-held company may belong to one or more classes, and carry rights and/or privileges that may include the right to elect certain members to the company's administrative bodies, even should the preferred shares be granted no other voting rights. Holders of nonvoting preferred shares will be entitled to receive dividends at least 10% higher than those paid to common shares, except for the shares that are entitled to cumulative or noncumulative fixed or minimum dividends. Other privileges that may be granted to the holders of preferred shares are priority in the distribution of dividends by way of a fixed or minimum dividend, and/or priority in reimbursement of capital.

The amount of preferred shares issued by the company may not exceed two-thirds of the company's total outstanding shares. Shares need not have a par value, and may be represented by certificates. Shares may be paid up in cash or in assets capable of being valued in cash. Appraisal of the assets is obligatory, and the evaluation report must be approved by the shareholders in a general meeting. Shares in a publicly-held joint-stock company may only be transferred after 30% of their issue price has been paid. The company may not purchase its own shares except in the circumstances provided for by law. The bylaws of a closely-held company may restrict the circulation of shares, provided they do not prevent their transfer. Should such restrictions be imposed by means of an amendment to the bylaws, they will only apply to the shares of those holders who expressly agreed with them. Other securities which may be issued by a joint-stock company are participation certificates, subscription warrants, and debentures. The rules relating to the ownership and circulation of shares are also applicable to these securities, although they do not form part of the capital.

## PARTICIPATION CERTIFICATES

Participation certificates are no-par securities which confer on their holders the right to participate in up to 10% of annual profits. These securities carry none of the rights attributable to the shareholders, except the right to review the actions of the corporate officers. The bylaws may provide for the redemption of participation certificates by capitalization of a reserve especially created for this purpose.

## SUBSCRIPTION WARRANTS

A company with authorized capital may issue negotiable securities called subscription warrants. These securities entitle their holders to subscribe for shares when the capital is increased, subject to the conditions stated on the certificates.

## DEBENTURES

Debentures are securities that give their holders a credit with the issuing company. The par value, relevant conditions, rights, and guarantees of the holders, and the date of maturity must be set forth in the certificates. Inclusion of a monetary adjustment clause is possible. Debentures may be converted into shares, and are guaranteed by the issuing company. The total value of debentures issued, except where otherwise permitted by law, may not exceed the capital of the company.

## SHAREHOLDERS' RIGHTS

Shareholders have the following basic rights:

- participation in the company's profits;
- participation in the distribution of the company's assets if the company is wound up;
- overseeing the management of the company's affairs;
- priority in the subscription for shares, participation certificates, convertible debentures and subscription warrants; and
- withdrawal from the company in the circumstances stipulated by law.

Shares in each class confer equal rights on their holders. Each common share carries one vote at general meetings of the company. No shareholder is entitled to plurality vote. Holders of preferred shares may enjoy any of the rights attributed to the common shares—including the right to vote - but their rights may be restricted provided that they are not deprived of their basic rights. Preferred shares without voting rights, or with restricted voting rights, acquire full voting rights if the company fails to distribute the fixed or minimum dividends within the period stipulated in the bylaws (not exceeding three consecutive years), and keep this right until the company pays dividends.

## SHAREHOLDERS' AGREEMENTS

Filing with the company of any shareholders' agreement regarding the purchase and sale of shares, the right of first refusal for acquisition of shares, or the exercise of voting rights enables the shareholders to enforce the terms of such agreement.

## CORPORATE AND MONITORING BODIES

The administration and management of a company are carried out by the following corporate and monitoring bodies: the Shareholders' General Meeting, the Board of Directors (*Conselho de Administração*), the Executive Committee (*Diretoria*) and the Audit Committee.

## GENERAL MEETINGS

General Meetings are attended by stockholders; they are called and instated pursuant to applicable laws and the corporate bylaws, with authority to resolve on all transactions related to the company's object, as well as to pass any resolutions deemed advisable for its protection and development. Such powers, however, are limited to the company's business purpose, applicable laws and the bylaws. Annual Meetings have the purpose of verifying the management accounts; examining, discussing and voting on financial statements; electing officers and members of the Audit Committee; and resolving on the allocation of the net profits for each fiscal year, as well as on the distribution of dividends. All other cases require an Extraordinary General Meeting.

Separate General Meetings may be called to discuss specific subjects related to holders of preferred shares, debentures, participation certificates or subscription warrants.



## MANAGEMENT BODIES

Pursuant to law, the shareholders have the choice of dividing the corporate management body into two parts: the Board of Directors and the Executive Committee. Should the company choose not to have a Board of Directors, the Executive Committee will perform all administrative functions, outline the overall policy of the company business, and execute it in compliance with the company's bylaws. Members of these corporate bodies must reside in Brazil, except for the members of the Board of Directors, who may reside abroad, provided they appoint an attorney-in-fact residing in Brazil with powers to receive service of process in lawsuits filed on the basis of corporate legislation. In the event a Board of Directors is convened, the Executive Committee will have to comply with its decisions. The officers (*diretores*) will have the freedom necessary to carry out their duties.

The establishment of the Board of Directors is mandatory for publicly-held and authorized capital companies and for banks.

## THE BOARD OF DIRECTORS

The Board of Directors acts as an intermediary between the General Meeting and the Executive Committee. It has as well full authority to establish the economic, corporate and financial policy to be followed by the company, and to supervise on a permanent basis the Executive Committee members. General Meetings are charged with electing the Board members, or dismissing them either totally or in part. The bylaws establish the number of Board members (at least three), how to replace them, their term of office (which will not exceed three years, with re-election being permitted), the rules concerning their call, instatement and operation.

## THE EXECUTIVE COMMITTEE

The Executive Committee will consist of two or more officers, who can be elected and dismissed at any time by the Board of Directors. The officers are immediately subordinate to the Board of Directors, and subject to the General Meeting only if there is no Board of Directors. The officers will represent the company in its dealings with third parties. The bylaws will establish the number of officers permitted, the manner of their replacement, their term of office (which will not exceed three years, with re-election being permitted), and the assignments and powers of each officer. Officers will perform their duties separately, according to their assignments and powers, but in keeping with the other officers, and will not be held liable for any obligations assumed on behalf of the company as routine acts necessary for the company's management.

## THE AUDIT COMMITTEE

The Audit Committee may be either permanent or appointed for a specific financial year. Should the Audit Committee not be permanent, it may be instated, at the stockholders' discretion, at a general meeting. This committee will be responsible for supervising the senior managers and providing information in this respect to the General Meeting. The Audit Committee may request that the senior management appoints experts to verify facts that need to be clarified for them to discharge their duties. Should the company have independent auditors, the Audit Committee members may request that they provide clarifications or information, or verify specific facts. It occasionally may play an important role in defending the company and its stockholders, when charged with examining the management acts in such a way as to ensure that they perform their legal and corporate duties. The Audit Committee's duties can be neither delegated nor attributed to any other body of the company.

## LIABILITY OF THE SENIOR MANAGEMENT

The members of the Audit Committee, Board of Directors and Executive Committee will be liable for any damages resulting from omission in performing their duties and from acts performed negligently or maliciously, or that violate the law or the company's bylaws. They will not be held liable for unlawful acts carried out by other members, except if they act in collusion with them or in fact participate in such act.

## TRANSFORMATION

A company may be transformed from one type to another, without dissolution and liquidation. For example, a joint-stock company can be transformed into a LTDA (limited liability company by quotas), or vice versa. Stockholder approval must be unanimous, unless otherwise provided for in the bylaws. Dissident shareholders have the right to withdraw. It is often advantageous to incorporate a company as a LTDA, as this is simpler and less expensive than the incorporation of a joint-stock company. The company could then be easily transformed into a joint-stock company at a later stage.

## MERGERS, CONSOLIDATIONS AND SPIN-OFFS

Mergers, consolidations or spin-offs may be effected between companies of the same or different types. A merger entails the absorption of one or more companies into another, which then succeeds to all rights and obligations of the merged companies, which are consequently extinguished. The consolidation of two or more companies entails the extinguishment of the consolidated companies and the formation of a new company, which will succeed to all the rights and obligations of the former companies. Corporate spin-off entails the transfer of part or all of a company's assets and liabilities to one or more companies already in existence or formed for this purpose, dividing the company's capital in the event of partial spin-off. Should all the company's assets and liabilities be transferred, the company is thereby extinguished. Rights and obligations of the spun-off company are absorbed proportionately by the companies receiving the net value transferred. The proposal for merger, consolidation or spin-off of one or more companies must be explained and justified in a protocol of justification signed by the senior managers of the companies involved. The protocol must then be approved by a general meeting of the partners of these companies. Shareholders dissenting from the decision of the general meeting approving the merger, consolidation or spin-off of the company should have the right to withdraw. Appraisal of the net worth of the company or companies to be merged, consolidated or spun off is mandatory, and must be approved by the partners in a general meeting.

## WHOLLY-OWNED SUBSIDIARIES

A wholly-owned subsidiary is a company whose total share capital is owned by another company. This is the only way that a single shareholder can own the total share capital of a company. The owner of the subsidiary must be a Brazilian company. Incorporation by public deed is required.

## JOINT VENTURES

Joint ventures are not specifically defined by Brazilian legislation. In Brazilian business practice, a joint venture is a company stemming from the agreement of two or more parties to carry out a business enterprise jointly. This can be accomplished by forming a new company or by subscribing for or acquiring shares or quotas in an already-existing company. A joint-venture company may take the form of any of the business organizations recognized under Brazilian law.

## AMENDMENTS TO THE COMPANIES' LAW (ACT 6.404 DECEMBER 15, 1976)

Act 9.457 of May 5th, 1997 - the main modifications:

- Exclusion of the Item I, in the article 16, which addresses about ordinary stocks convertibility in non public companies.
- Amendment to article 17 and its Items, which addresses about preferred stock advantages.
- Amendment to article 14, Items IX, X and XI, which addresses about statements in the stock certificate.
- Act 10.303 of October 31st, 1997 - the main modifications:
- Article 4 - changed definitions of publicly or closely-held company, and details about companies foundation.
- Article 15 - changed the restriction to a minimum of preferred stocks without vote rights to 50%.

Act 11.638 of December 28th, 2007 - the main modifications:

- Modifications in several accounting aspects.
- Modifications in several taxation aspects.

## INSURANCE COMPANIES

Article 192 of the Federal Constitution states that insurance companies require preliminary governmental authorization to operate, and establishes that the granting of such authorization and participation of foreign capital in insurance companies will be regulated by supplementary legislation. The incorporation and operation of insurance companies in Brazil are governed by Decree-law 73/66, as regulated by Decree 60.459/67, specific provisions of the Civil and Commercial Codes, and regulations issued by the specific bodies indicated below.

The incorporation of an insurance company is subject not only to the requirements usual for the incorporation of joint-stock companies in general, but also to specific proceedings. Authorization for a company to act as an insurance company is granted under an ordinance issued by the Ministry of Finance. To obtain such authorization, the incorporators must submit a written application to CNSP, through SUSEP, together with proof of the regular incorporation of the company, proof of the deposit at Banco do Brasil S.A. of a portion of paid-up capital, and a copy of the company's bylaws. The Minister of Finance, acting as the president of CNSP, will grant authorization by means of an ordinance, stating the different types of insurance that can be offered by the company, and any requirements for the company to engage in this activity. As from publication of the ordinance, the company has 90 days to offer proof to SUSEP that it has subscribed for the required amount of IRB's shares; that it has made all due registrations and published all acts required by law to start operation; and, if applicable, that it has complied with any SUSEP requirements. Any proposal for alterations in the bylaws, consolidation, merger or any other similar operation carried out by an insurance company must be submitted to CNSP and SUSEP, and then to the Minister of Finance for approval. Should a company have insufficient capital resources or technical reserves, or poor financial standing, SUSEP may appoint a fiscal director to act within the company.

CNSP Resolution 155/2006 establishes a minimum capital requirement for insurance companies according to the field of activity, at least 50% of which must be paid up upon incorporation in cash or federal government bonds.

All applications for the transfer of share control of insurance companies must be examined by SUSEP in advance.

Insurance companies are not subject to the ordinary rules of bankruptcy. There is a special dissolution procedure that may be voluntary or compulsory (when the company is guilty of certain acts prohibited by law). The respective proceedings are always carried out by SUSEP. Another special requirement to keep in mind is that foreign insurance brokers may only be represented in Brazil by brokers registered with SUSEP.

## FINANCIAL INSTITUTIONS

Financial institutions include commercial banks, investment banks, multiservice banks, credit, financing and investment companies, securities dealerships, and brokerage companies, and are governed Act. 4.595 of December 31st, 1964 (the Banking Law) and Act 4.728 of July 14th, 1965 (the Capital Market Law). The incorporation of private financial institutions is subject to certain restrictions, such as mandatory preliminary authorization to operate from the Brazilian Central Bank, incorporation as a joint-stock company, and issuance of shares in registered form. In addition, all corporate documents, amendments to their bylaws, capital increases and other no routine corporate acts must be approved by the Brazilian Central Bank. The Federal Constitution prohibits the setting up of new offices of foreign financial institutions in Brazil, as well as any increases in foreign participation in the capital of financial institutions with their principal places of business in Brazil, until the corresponding legislation can be enacted, or in the event that the investment is recognized as being of national interest. Generally speaking, foreign capital participation in financial institutions is limited to one-third of the voting capital and to one-half of the total share capital. The share capital and net worth of financial institutions must always meet the minimum capital and debt-to-equity ratio requirements imposed by the Brazilian Central Bank for each type of financial institution.

## COMMERCIAL BANKS

Commercial banks are financial institutions that are allowed to offer checking services. Their main business is the receipt of cash deposits from the public, and the making of short-term loans. Provided applicable requirements are satisfied, commercial banks may also be authorized to deal in foreign exchange.

## INVESTMENT BANKS

Investment banks specialize in medium and long-term financing for the supply of capital and investment of third-party funds. Investment banks may also deal in foreign exchange, provided the necessary requirements are fulfilled and Central Bank authorization is granted.

## SECURITIES DEALERSHIPS

Securities dealerships underwrite securities for resale or distribution on the market. The Central Bank establishes the minimum capital for this type of company from time to time.

## BROKERAGE COMPANIES

Brokerage companies have the exclusive right to deal on the stock exchange in authorized securities and other commercial instruments. They may also act as intermediaries in auctions held in connection with debt/equity conversions.

## MULTISERVICE BANKS

Multiservice banks are entities that may upon authorization exercise all the functions of commercial banks, investment banks, credit, financing and investment companies, real estate credit companies, and leasing companies. The activities related to each type of company are carried out by separate departments of the bank.

## LEASING COMPANIES

Leasing companies are subject to the same basic conditions governing financial institutions in general. Leasing operations are restricted to leasing companies; multiservice banks; investment, development and savings banks (provided they have a specialized leasing department); and, in the case of real property, real estate credit companies, and savings and loan associations.

## LICENSING OF FINANCIAL INSTITUTIONS

The Central Bank sets forth the procedures for obtaining a license to operate a financial institution. It may also provide for special requirements for each type of institution. Should the interested party not comply with the requirements within the time frame fixed by the Central Bank, the application will lapse.

As a prerequisite for obtaining a license to operate as a financial institution, a company must comply with the provisions of both the Corporation and Banking Laws. The Brazilian Monetary Council will establish the minimum start-up capital for each type of company. At least 50% of the amount subscribed for must be paid up in cash, and deposited with the Central Bank within five days of receipt by the financial institution.

## AGENCIES/BRANCHES

The setting up of a permanent agency/branch of a Brazilian financial institution requires preliminary authorization from the Central Bank. An authorized agency/branch must initiate its business activities within 360 days of official publication of the authorization, notifying the Central Bank that it has done so on the date it opens, under penalty of automatic cancellation of the respective authorization. The setting up of a permanent branch, agency or representative office abroad is subject to the preliminary approval of the Central Bank. Acquisition of a stake in the capital of foreign entities by financial institutions with principal places of business in Brazil is also subject to such approval.

There are no regulations as to the kind of business in which such agencies, branches or offices may engage. However, should the foreign country not establish limitations on the third-party funds that may be raised by sight and term deposits, or on the guarantees that may be granted, the agency, branch, representative office or subsidiary must comply with the rules to which the bank is subject in Brazil. The procedure for setting up of a branch or agency in Brazil of a financial institution with its principal place of business abroad is basically the same as for a branch of a Brazilian institution. The original documents resolving on the setting up of the branch must be notarized and legalized at a Brazilian consulate, translated by a certified translator, registered at a registry of deeds and documents, and then submitted to the Central Bank for approval. Representative offices of a financial institution which has no branch or agency in Brazil must request preliminary authorization from the Central Bank to operate in Brazil. Only individuals or companies based in Brazil may act as representatives of a foreign-based financial or similar institution. The representative will act solely as a link between the principal place of business and its clients, and will not undertake any business inherent exclusively to financial institutions. Should the representative exceed these limits, accreditation may be cancelled by the Central Bank, without prejudice to the applicable criminal sanctions.

## INTELLECTUAL PROPERTY

### INDUSTRIAL PROPERTY

The Act 9.279 of May 15th, 1997, (Industrial Property Law) governs issues related to industrial property including the granting of patents to medicines, chemical, pharmaceutical and food products. An additional feature is the recognition given to well-known ("notorious") brands. The Brazilian Institute of Industrial Property (INPI) is the government entity in charge of industrial property rights, and formal examination of applications for trademark registrations, advertising slogan registrations, and issuance of letters patent. In relation to international protection of industrial property, Brazil is signatory to the Paris Convention (Stockholm Revision), the Patent Cooperation Treaty (PCT), and the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").

### PATENTS

As provided for in article 8 of the Industrial Property Law, the requirements essential for the granting of a patent in Brazil are: absolute novelty, industrial nature, and inventive nature. A patent is considered to be new when its subject is not included in the prior art concept. Prior art constitutes everything that has become accessible to the public through a written or oral description or by use or any other means, including the contents of patents in Brazil and abroad before filing a patent application, with the exception of cases where priority was previously applied for or a priority claim was made pursuant to the Paris Convention. A patent application that has been normally filed in countries that are members of the Paris Convention may be filed in Brazil within the terms set out in the Industrial Property Law. These terms are one year for invention and utility model patents, and six months for industrial model and design patents.

Letters patent may be issued for the protection of inventions, utility models, and registration of industrial designs. The protection granted by a patent extends for 20 years, in the case of inventions; for 15 years for patents on utility models; and for 10 years for industrial design patents, always as from the date the request for protection is filed at INPI. Proceedings for the issuance of a letter patent are lengthy and time-consuming. An application must be submitted to INPI, containing the inventor's claims, a full description of the invention and its drawing (when applicable), and proof of compliance with all legal requirements. Once the application has been presented, a preliminary formal examination takes place, and a certificate of filing is issued. The application will be kept secret for 18 months, and will then be officially published. The inventor has 36 months to request a formal examination of the application. Failure to request this formal examination will cause the application to be considered withdrawn. Granting of any patent application can be cancelled at any time by the courts.

Commercial use of the patent must be initiated within three years of the date of issue of the letter patent, under penalty of obligatory licensing or lapse. Extinguishment of a patent may also occur if its use is interrupted for a period of two or more consecutive years; if the inventor fails to pay the required annuities to INPI; if the inventor expressly waives the privilege; or if it is administratively cancelled or judicially annulled.

The Industrial Property Law provides for conducts that constitute patent infringement, which is subject to penalties varying from three (3) months to one (1) year of imprisonment or a fine. This law determines that the manufacture of a product or use of any means or processes covered by a patent, without authorization of the respective patent owner, will constitute a patent infringement.

## TRADEMARKS

The system for protection of trademarks in Brazil is based on ownership, and all rights stem from the registration of the trademark in Brazil. No protection whatsoever is accorded an unregistered owner even though it may have been using a trademark for years. However, if the foreign owner of an unregistered trademark is able to prove its trademark is well-known worldwide, it is possible to claim the international protection granted by article 6 bis of the Paris Convention, which establishes that the signatory countries must deny applications for registration or cancel registrations of a trademark that reproduces a well-known trademark registered in another signatory country. However, in order to qualify for the benefit of article 6 bis of the Paris Convention, the owner must apply for registration of its trademark in Brazil. Application may be made to register a trademark either as a foreign or a Brazilian trademark. A foreign trademark is registered under the Paris Convention, which establishes an exclusive priority period of six months from the date of application in the country of origin for its owner to apply for registration of this same trademark in other countries which are signatories to this Convention. In order to file such application in Brazil, it is necessary to submit to INPI a certified copy of the application for trademark registration in the country of origin, or the certificate of registration. Registration of a trademark in Brazil may be applied for either by a Brazilian or foreign company. If a trademark registration is applied for in Brazil by a foreign company without the priority claim established in the Paris Convention, it will be considered a Brazilian trademark, and therefore the benefit of such Convention will not be granted.

Brazilian law requires that the field of business of the trademark owner in Brazil be related to the goods or services covered by such trademark. In order to apply for registration of a trademark in Brazil, certification that the applicant is a company duly organized in accordance with the laws of its country to operate within its field of business is required. Registration of the trademark protects it for ten years. This period may be extended for successive ten-year periods. The use of a trademark is essential to its protection in Brazil. A trademark will lapse if it is not used for five years from the date of registration, or if its use is interrupted for more than five consecutive years. Use can be proved by the owner of the trademark in Brazil or by the licensee that actually uses it.

# TECHNOLOGY TRANSFER AGREEMENTS AND TRADEMARK OR PATENT

## LICENSE AGREEMENTS

Technology transfer agreements in Brazil are subject to filing at INPI. After approval of the Industrial Property Law, several requirements for approval of agreements of this kind were eliminated, simplifying the procedures for approval. Among other changes, the list of mandatory clauses that the agreements should contain was eliminated. Currently, INPI review of agreements that involve licensing of industrial property rights (trademarks and/or patents), transfer of technology, technical assistance services and similar agreements will be limited to examination of the aspects intrinsic to the documents submitted thereto, the tax and exchange legislation, and any characterization of antitrust or unfair competition practices. INPI approval of such agreements is not only essential for the registration at the Central Bank of Brazil that will allow remittance of the remuneration abroad, but also for the deduction of fees paid by the licensee or recipient of the technology as operating expenses. Furthermore, INPI approval of patent license agreements is necessary, together with actual use by the licensee, to evidence commercial use of the licensed patent and to avoid forfeiture, as well as to enforce them upon third parties. Other valid documents evidencing the transfer of technology and conditions governing such transfers (invoices, for instance) may also be submitted to INPI for approval, thus permitting remittance of funds abroad and tax deduction of payments resulting from the transfer.

Generally, technology transfer agreements must clearly state their object and the industrial property rights involved, and describe in detail how the transfer will actually take place. The license agreements must state the conditions for actual use of patents regularly applied for or granted in Brazil; the registered trademark in Brazil or application for registration; the acquisition of know-how and technology not protected by industrial property rights; and the obtainment of techniques, planning and programming methods, research, studies and projects intended for execution or rendering of specialized services. Trademark and patent license agreements must also state whether the license is exclusive and remunerated, and whether sublicensing is permitted. The term of the agreement must not exceed the validity of the trademark registration or patent. Trademark and patent license agreements will only entitle the owners to collect fees if the requirements mentioned above are met. Contracts for rendering of technical and scientific assistance services must state the time required to perform the specialized services, the number of technicians required, their specialization and training programs, and respective remuneration.

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

## COPYRIGHTS

Copyrights in Brazil are regulated by Act 9.610 of February 19th, 1999, pursuant to which all creative works of inspiration howsoever expressed are protected as intellectual property. The author of the work or, in the absence of proof to the contrary, the person claiming to be the author or whose name is included in the registered work, is treated by Brazilian law as owner of the copyright. In addition, any person who adapts, translates, arranges or edits a work that is no longer under copyright may claim the copyright to the work, but he/she cannot prevent the publication of another adaptation, translation, arrangement or edition of the same work unless the new version is derived from his/her own. Not only individuals, but also corporations are allowed to own the copyright to a work. However, a corporation must hold such rights always at the author's approval.

Registration of a work in Brazil is optional, and not essential for its protection. Nevertheless, in order to secure the copyright the author may register his/her work with the following bodies, depending on its nature:

- at the Brazilian National Library;
- at the School of Music of the Federal University of Rio de Janeiro;

- at the School of Fine Arts of the Federal University of Rio de Janeiro;
- at the Brazilian Film Institute; or
- at the Federal Council of Engineering, Architecture and Agronomy.

Any other work that cannot be classified within any of the above categories may be registered at the Brazilian Copyright Information Center of the National Copyright Council. Proceedings in the civil and criminal courts may be brought against anyone who infringes another's copyright. The civil courts prohibit publication of a work which infringes copyright, and can also award damages to the owner of the copyright. Infringement of copyright can also be punished as an offense by the criminal courts.

## SOFTWARE

Protection of software in Brazil is regulated by Act 9.609 of February 19th, 1999, which provides mainly for: (a) protection of the software itself as intellectual property; (b) the rules for marketing software, creating mechanisms for government agencies to monitor this marketing with a view to protecting Brazilian software; and (c) penalties of a criminal nature, for cases of infringement of software copyrights and certain rules for marketing. Software is protected for 50 years as from January 1st of the year following its publication, or if not published, following its creation in each country. As with copyrights, software owners that reside outside Brazil are ensured protection, provided that their country of origin offers reciprocal treatment, granting both Brazilian and alien residents in Brazil protection equivalent in extent and time. The protection of software does not depend on registration, and the author need not register it. Registration can be made at the Brazilian Institute of Industrial Property (INPI). Infringement of software copyright is a criminal offense, which subjects the offender to detention from six months to two years, plus a fine. Unless the parties agree otherwise, the rights to any software developed during the life of any agreement or statutory relationship, research or development, in which such activity is carried out by the employee, civil servant or individual hired to render services as expressly provided for in the respective agreements, or which results from the nature of the work for which he/she was hired, will belong to the employer or service principal. However, if the software is developed independently of any agreement or statutory relationship, and without the use of any resources, know-how, materials, facilities or equipment belonging to the employer or service principal, the rights to such software will belong to the employee, civil servant or individual rendering the services. Rights to technological modifications or derivations that belong to the author—provided this has been contractually stipulated—must be established pursuant to contract.

According to the Software Law, the following situations will not violate software copyright:

- reproduction of a copy that has been legally acquired, provided it is essential to the proper use of the program;
- partial quotation for educational purposes, provided the author and the software quoted are mentioned;
- similarity of two copies, provided this similarity stems from functional features in their application, from compliance with legal, regulatory precepts or technical standards, or a limitation of alternative forms for their expression; and
- integration of software and its basic features into an application or operating system that is technically indispensable to the user's needs, provided it is used exclusively by whoever undertook this integration.



## CULTIVATED PLANT VARIETY PROTECTION

Act 9.465 of April 25th, 1997, included cultivated plant varieties in the protection for intellectual property rights. Any new such varieties as well as other varieties subject to the conditions set out by law are eligible for protection. The term of protection is 15 years, except for grapevines, fruit trees, forest trees and ornamental trees (18 years). The variety must be registered at the Brazilian Cultivated Plant Variety Protection Service - SNPC, reporting to the Ministry of Agriculture and Supply. Both natural persons and legal entities that file for protection of such plant varieties in countries with which Brazil has an agreement or in an international organization to which Brazil is a party and that therefore produces the same effect as filing in Brazil will be assured priority rights for up to 12 months.

## 5 - LABOR

### LABOR LAW - GENERAL ASPECTS

Brazilian LABOR law defines an employee as the person who renders services on a regular basis to, and under the direction of, an employer in return for compensation. Subordination is the essential requirement to characterize an employee, and, consequently, an employment bond. A self-employed worker is one who renders services on an independent basis, both as to terms and performance. He/she acts for him/herself, determining his/her own tasks, developing his/her own business, and assuming the risks of his/her activities, as his/her own master, since there is no subordination relationship, and he/she is not subject to the authority of any third party. According to Brazilian law, an employer is a company, severally or jointly, that takes the risk for its economic activity, hires, pays salaries, and sets out the guidelines for the services provided by the employee. The rights and duties of employers and employees are set out in the Consolidated LABOR Laws - CLT, in collective bargaining agreements and collective conventions, as well as in some special laws on specific matters. Certain classes of employees, such as civil servants, domestic servants and rural workers, however, are excluded from the scope of the Consolidated LABOR Laws, as they are subject to special regulations.

### EMPLOYMENT CONTRACT

A formal agreement is not necessarily required under Brazilian law for employment of an employee. Oral employment is fully valid. In any event, however, it is essential that the employment contract be recorded in the Work and Social Security Card — CTPS of the employee. The law sets forth various rights that are inherent to an employment relationship without the need for these rights to be repeated or specified in a written contract. As a general rule, an employee is contracted for an undetermined period of time, and contracts for a determined period of time constitute an exception to this rule. The latter contract will only be valid when (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, contracts for a determined period of time cannot exceed 2 years. Probation contracts cannot exceed 90 days. No indemnity is payable to an employee on termination of his/her employment after expiration of a determined-term contract. However, if during the contract the employee is dismissed without good cause by the employer, he/she will be entitled to an indemnity of half of the salary due him/her during the unexpired portion of the contract. If it is the employee who terminates the contract, he/she must indemnify the employer for any loss resulting from this breach of contract.

### BASIC RIGHTS OF EMPLOYEES

Only mandatory labor law rights are described in this item. Specific legislation and collective labor conventions for distinct professional categories may ensure employees other or broader rights.

#### ***(I) Salary and Compensation***

Under Brazilian labor law, any individual rendering any kind of service is entitled to compensation, which may be paid monthly, fortnightly, weekly or even per piece or task, depending on the conditions established for the hiring. The compensation paid to an employee may never be less than the minimum wage established by the Government throughout the Brazilian territory or less than the lowest wage level (piso salarial) established in the collective convention for each professional category. The compensation includes—in addition to cash payment, or wage—food, housing or any other benefits the company provides habitually to the employee by express or tacit agreement. After having been granted, these benefits are in general considered part of the employee's employment contract, and cannot be reduced or abolished. This is because under Brazilian law any changes in employment contracts that adversely affect the employee, even if with his/her consent, are prohibited and may be deemed to be legally null and void.

#### ***(II) Weekly Remunerated Rest Period (DSR)***

All employees have a right to one day's remunerated rest period, which should preferably fall on a Sunday. In the case of employees who receive their compensation monthly, payment of the weekly remunerated rest period will already be included in the monthly compensation.

### ***(III) Vacations***

Every employee, upon completing one year's service with the same company (the "acquisition period"), is entitled to 30 calendar days' vacation if he/she has not been absent from work more than five unjustified times during the period. Salary in relation to the vacation period must be paid at the latest two days before the start of the vacation period. Vacation should be granted in the year following the acquisition period, which is called granting period, under penalty of the employer's being required to pay double vacation.

### ***(IV) One-Third Bonus on Vacation***

As from enactment of the 1988 Federal Constitution, workers acquired the right to receive a one-third bonus in addition to the normal monthly compensation, at the time of annual vacations.

### ***(V) 13th Salary***

In December of each year, the employer will pay the employee an extra compensation, known as 13th 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/her 13th salary.

### ***(VI) Prior Notice***

An employment contract for an undetermined period may be terminated at any time without good cause, upon prior notice given by one party to the other. If it is the employer that decides to terminate the employment contract without good cause, it must give the employee at least 30 days' prior notice, and during such period the employee is entitled to reduce the workday by two hours or to be released from work for seven consecutive days, without prejudice to payment of the employee's compensation. The employer may release the employee from work during the prior notice period by paying the respective indemnity. Lack of prior notice by the employer entitles the employee to a payment corresponding to such period.

### ***(VII) Health Hazard Allowance and Risk Premium***

In the case of employment in activities considered by law to be hazardous, an additional monthly allowance to compensate for such health hazardous work conditions to which the employee is exposed will be paid by the employer. Such allowance will be equivalent to 10%, 20% or 40% of the minimum wage, depending on the hazard degree. In the case of dangerous activities, such as those involving contact with explosives, flammable materials and electricity, an additional payment in compensation for the risks involved will be paid by the employer at 30% of the employee's salary.

### ***(VIII) Workday***

As a rule for all employees, the maximum workday is eight hours and the maximum workweek is forty-four hours, with one-hour break for meal and rest. There must be a minimum rest period of eleven consecutive hours between workdays. Some distinct professional categories, called *categorias profissionais diferenciadas*, are eligible for a special workday system. Work performed beyond the time limits provided under the law is treated as overtime. The minimum compensation for overtime is 50% higher than the normal hourly rate. No overtime payments will apply to employees engaging in external activities, which cannot be subject to fixed workhours, or to managers, meaning the employees in management positions, including as well directors and heads of a department or branch.

Night work is that performed between 10:00 p.m. and 5:00 a.m. Work performed between these hours entitles the employee to a compensation at least 20% higher than the normal hourly rate, and this payment may be added to overtime. In 1999, a Provisional Measure created an offsetting system known as "Banco de Horas", by which an extra pay may be eliminated if a collective labor convention or collective bargaining agreement provides that the overtime worked on one day is to be offset by a reduction in the hours worked in another day, so that the hours worked during a maximum period of one year will never exceed the total number of hours per week permitted under the law nor the maximum limit of ten hours per day.

### ***(IX) Unemployment Fund - FGTS***

According to the Federal Constitution, the FGTS system became automatic and compulsory for all employees hired after October 5, 1988. Under the FGTS system, every month the employer deposits the equivalent of 8% of each employee's compensation for the previous month in a blocked bank account in the name of the employee.

An FGTS-opting employee unfairly dismissed is entitled to withdraw the total FGTS deposits from his/her FGTS account, plus interest, monetary correction and a 40% fine figured on the total. Collective employment contracts may provide for an additional indemnity.

### ***(X) Social Security***

Every employee must be officially enrolled at the Social Security System. Social security in Brazil is sponsored by monthly contributions from employees, employers and the State. After a certain period of enrollment and contributions, the employee is entitled to receive social security benefits under the pertinent law.

## **INFORMAL WORK RELATIONSHIP**

The Brazilian Labor Law rules the relationship between formally hired employees and the employer, however, it also covers the relationship between two parties when there exists:

- compensation for the work done
- habitual work (primarily daily)
- Subordination

Therefore, even in cases that there is no contract between the parts, the law is applicable. No-contract workers are eligible to all rights the Labor Law determines. Often, when undocumented employees claim for the employment rights that arise from the Brazilian Labor Law through a Labor Lawsuit, they are successful, and, in addition to benefits and payroll taxes not paid, the employer is condemned to pay penalties, and interest on the unpaid amounts (both to the employee and to the Government). The Labor Law does not affect the relationship with outsourced workers.

## **SUSPENSION OF AN EMPLOYMENT CONTRACT**

The suspension of an employment contract occurs when the duties inherent thereto are not enforced, there being no compensation and computation of the length of service. Typical examples are: non-remunerated leave of absence, and the participation in strikes, without wages. In 1999, a Provisional Measure provided for another event of suspension of employment contract. Under this new rule, an employment contract may be suspended for a period of two to five months, provided that the purpose of such suspension is to allow the employee to participate in a professional training course or program offered by the employer for a period equal to that in which the contract is to be suspended, as provided for in a collective labor convention or collective bargaining agreement and subject to the employee's formal agreement.

## **TERMINATION OF AN EMPLOYMENT CONTRACT**

The termination of an employment contract may occur, as a general rule, either by decision of the employer (dismissal) or by decision of the employee (resignation). In the case of dismissal of an employee, it may be either for good cause or by unfair dismissal.

(I) Dismissal for Good Cause: The dismissal of an employee for good cause may only occur where the dismissal results from one or some of the following material acts on the part of the employee:

- a) dishonesty;

- b) improper conduct or lack of self-restraint;
- c) regularly doing business on his/her own account or for the account of a third party without the employer's permission, or when the activity is in competition with the employer's business or adversely affects the quality of the employee's work;
- d) criminal sentencing of the employee, in final judgment, provided that execution of the penalty has not been suspended;
- e) sloth in the execution of his/her duties;
- f) intoxication during working hours;
- g) violation of trade secrets;
- h) any act of indiscipline or insubordination;
- i) abandonment of employment;
- j) any act of violence or any act injurious to the honor or reputation of any person, except in legitimate cases of self-defense, or defense of the interests of a third party;
- k) any act of violence or any act disparaging to the honor or reputation of the employer or superiors, except in legitimate cases of self-defense, or in defense of the interests of a third party; or
- l) constant gambling;
- m) acts contrary to national security where these are duly proved in an administrative hearing.

If the employee is dismissed for good cause, he/she will be entitled only to the compensation corresponding to the days already worked during the month ("outstanding salary"), accrued vacation and the additional one-third bonus in respect of the accrued vacation.

(II) Dismissal without Good Cause (Unfair Dismissal): In the case of termination of the employment contract without good cause by the employer, the employee shall have the following rights:

- a) outstanding salary for the days worked during the month;
- b) 30 days' prior notice;
- c) proportionate 13th salary (calculated based on the salary earned during the last month of employment);
- d) vacation or double vacation, if any;
- e) one-third bonus in respect of vacation; and
- f) release of the FGTS deposits, with a fine of 40% of the total amounts deposited in the employee's FGTS account, during the employment contract.

The individual employment contract and collective convention may provide for other benefits, which must also be considered in the event of termination of the contract.

(III) Resignation: A resigning employee is entitled to all the monies listed above, except for prior notice and release of the FGTS deposits plus a 40% fine. When an employee resigns prior to completing one year's employment with one same employer, the employee will have no rights to proportional vacation. In any of the abovementioned events of termination of employment contract, and providing that the employee has worked with one same employer for more than one year, it will be necessary to provide for homologation of termination of the employment contract at the employee's labor union or at the Regional Labor Office. If the employee is a manager or an officer, there may be other steps to be taken outside the labor area for termination of his/her employment contract, such as cancellation of powers of attorney or formalization of an instrument of replacement of delegate manager, and so on.

All severance pay must be made by the employer within ten days of the resignation or prior notice, where such period is indemnified. If the employee is kept on the job during the prior notice period, the severance pay must be made available on the first business day after the end of the notice period. Failure by the employer to respect these deadlines will give rise to a fine for the employer, equivalent to the employee's one-month compensation.

## TEMPORARY WORK

Under the Brazilian law, the purpose of temporary work is to meet the company's seasonal service needs, whether to stand in for a company's regular and permanent staff, or to provide additional services required by the company. Temporary work cannot exceed 90 days.

## FOREIGN WORKERS - JOB OPPORTUNITIES

Like many other countries, Brazil has taken steps to preserve job opportunities for its citizens. According to the principle of proportionality, all industrial or commercial firms with more than three employees are required to ensure that at least two-thirds of their personnel are Brazilians. This proportion applies to both the number of employees and to the payroll, i.e. two-thirds of the wages must be paid to Brazilian employees by any company in Brazil. Likewise, under the law, a Brazilian worker may not be paid a wage lower than an alien for performing the same work, and whenever it is necessary to lay off workers, an alien must be laid off before a Brazilian performing the same work.

## IN-HOUSE JOB ACCIDENT PREVENTION COMMISSION — CIPA

CIPA is mandatory for all companies whose staff is composed of more than 50 employees, the purpose of which is the prevention of occupational accidents and diseases, by way of control of the risks existing in the work environment, conditions and organization. CIPA is composed of the employer's representatives appointed by the employer itself, and by the employees' representatives elected by the other employees by secret ballot. The number of CIPA representatives depends on the number of the company's employees and the degree of occupational risk. The employees' representative in CIPA cannot be dismissed from the date his/her candidature is recorded until one year after the end of his/her term of office.

## UNIONS

Unions are organized by categories: the professional category, which represents the employees' interests, and the economic category, which represents the interests of employers. The representation of each union is limited to a certain municipal, state or national territory. No union may act within a territory smaller than the area of a municipality. Only one union per category is permitted within the same territory. Union membership is mandatory and, as a general rule, is defined according to the main economic activity of the company and the place where it is situated. The representation authority of unions does not depend on the voluntary association of companies or employees. Companies and employees must pay annual dues to their associations and unions, respectively.

Collective bargaining agreements are established through voluntary negotiations between the company and the union representing its employees. Collective conventions are mandatorily negotiated by professional unions and employers' associations for a certain category with a view to establishing the collective work conditions applying to such category. Collective conventions are binding upon the company and all the union member and non-member employees. If the unions fail to reach an out-of-court agreement as to the terms of the collective convention, the Labor Court will establish the conditions applicable to the categories involved by way of judicial proceedings known as labor disputes.

## EMPLOYEES' PARTICIPATION IN CORPORATE PROFITS

Provisional Measure 794 of December 29th, 1994 established the participation of employees in corporate profits or results as a means of production incentive, seeking a better integration between capital and work. This provisional measure, which has been successively reissued, obligates companies to establish a Plan for employees' participation in profits or results, by way of negotiations between the employee and the employer, with mandatory participation of the professional union.

Subject to the formalities set forth in the aforesaid Provisional Measure, payments by way of participation in profits may not be made at intervals shorter than six months. These payments are deductible from the company's income tax, and do not have any effects on labor-related payments, such as 13th salary, vacation pay or FGTS.

## SOCIAL SECURITY CHARGES

Social security charges are intended to sponsor the Brazilian Social Security Institute (INSS) and entities engaging in the promotion of social services and welfare, or in the formation of professionals and assistance to workers. Under the law, all companies must pay contributions to such entities, according to the respective field of activity (industrial, commercial or services). These contributions are paid to the INSS and correspond to the following percentages on payroll:

(a)	Brazilian Social Security Institute (INSS)	20,0%		
(b)	Industrial Workers' Social Service (SESI) or Commercial Workers' Social Service (SESC) or Transportation Social Service (SEST)	1,5%		
(c)	Brazilian Industrial Apprenticeship Service (SENAI) or Brazilian Commercial Apprenticeship Service (SENAC) or Brazilian Transportation Service (SENAT)	1,0%		
(d)	Brazilian Institute for Rural Settlement and Agrarian Reform (INCRA)	0,2%		
(e)	Support Center for Microcompanies and Small-Size Companies (SEBRAE)	0,6%		
(f)	Education Allowance	2,5%		
(g)	Workers' Accident Insurance (SAT)	1,0%	2,0%	3,0%
<b>Total</b>		<b>26,2%</b>	<b>27,2%</b>	<b>28,2%</b>

## 6 - TAXATION

### TAXES AND TAXING POWERS

In Brazil, the main directives for taxation are provided by the Federal Constitution, which establishes the general principles of taxation, the limitations on the power to tax, tax competence across level of government as well as tax revenue sharing provision. Thus, the National Tax System is instituted by the Constitution itself, which establishes that the Union, the States, the Federal District and the Municipalities may collect taxes. The administrative-political autonomy, which is an essential characteristic of our federative system, confers to each level of government the possibility of instituting taxes, fees (due to its police power or to the use of public services) and improvement charges (due to public works). With respect to social contributions, most of them may only be established by the Federal Government. In the same manner, the Constitution allows the Union to impose compulsory loans under special conditions in it defined, and to institute social contributions, as well as contributions for intervention in the economic order and in the interest of professional or economic categories. The States, the Federal District and the Municipalities may only collect from their civil servants contributions directed to financing their own social security and social assistance benefit plans. The relative importance of each of the taxes that make up the Brazilian tax system may be better assessed by its share in the total tax burden. Notwithstanding that most taxes have the primary goal of raising funds to finance government activities (fund raising taxes), some of them have characteristics that qualify them as economic or social policy instruments (regulatory taxes).

Examples of regulatory taxes are the IOF and IPI, that may be used by the federal government as auxiliary instruments in conducting monetary and industrial policies, respectively. Annex II shows a summary table with the main features of each tax within the National Tax System.

The main social contributions in effect, all assigned to the Union, are presented below:

Tax competence	Taxes
<b>FEDERAL</b>	<ul style="list-style-type: none"> <li>• On foreign trade - on imports <b>(II)</b> and exports <b>(IE)</b> of goods and services</li> <li>• On income and earnings <b>(IR)</b></li> <li>• On industrialized products <b>(IPI)</b>, a value added tax levied on manufactured goods</li> <li>• On financial operations <b>(IOF)</b></li> <li>• On rural land property <b>(ITR)</b></li> </ul>
<b>STATES AND THE FEDERAL DISTRICT</b>	<ul style="list-style-type: none"> <li>• On inheritance and gifts <b>(ITCD)</b></li> <li>• On the circulation of goods and transportation and communication services <b>(ICMS)</b>, a value added tax levied on goods in general and some services</li> <li>• On motor vehicles <b>(IPVA)</b></li> </ul>
<b>MUNICIPALITIES AND THE FEDERAL DISTRICT</b>	<ul style="list-style-type: none"> <li>• On urban land property <b>(IPTU)</b></li> <li>• On real estate conveyance <b>(ITBI)</b></li> <li>• On services <b>(ISS)</b>, except those subject to <b>ICMS</b></li> </ul>
Tax competence	Contribution
<b>FEDERAL</b>	<ul style="list-style-type: none"> <li>• Contribution for the Financing of Social Security <b>(COFINS)</b></li> <li>• Social Integration Program/Civil Servants Savings Program Contribution <b>(PIS/PASEP)</b></li> <li>• Contribution on Net Profit <b>(CSLL)</b></li> <li>• Provisional Contribution on Financial Movement <b>(CPMF)</b>, a bank debit tax</li> <li>• Social Security Contribution, a contribution on payroll and self-employment earnings</li> </ul>



## FISCAL PRESENCE

Aside from its coercive function, the Federal Revenue Service has sought in recent years to increase the effectiveness of its activities by being closer to the taxpayer. This increased presence encompasses the implementation of a modern taxpayer assistance system, development of mechanisms to facilitate compliance of tax obligations and communication with taxpayers and more widespread customs presence. The Federal Revenue Service has strong LABOR-intensive fiscal presence at customs borders because it is required to act in both primary zones (ports, airports and land borders) and secondary zones (interior customs offices - EAD) so as to follow the flow of individuals and goods and developing permanent activities of border surveillance and repression of smuggling and drug trafficking.

The rationale for customs activities undertaken by the Federal Revenue Service is that in a world of globalized trade, where the fast flow of goods greatly affects competitiveness, the control enforced by customs authority should not be detrimental to regular commerce. Therefore, the greatest challenge is to find the balance between control and procedures' facilitation, based on the premise that efficient tax auditing selections to prevent frauds should not necessarily negatively affect trade flows.

## CORPORATE TAXES

### INCOME TAX

A company may opt to apply the following alternative calculation methods:

- actual income;
- deemed income;
- assessed income.

'Actual income' (Lucro Real) represents pre-tax income as per the company's accounting records, adjusted in accordance with tax regulation provisions. The actual income method is the most extensively used and the one that is described in detail in the following pages.

The 'deemed' (Lucro Presumido) pre-tax income method is only applicable to certain small enterprises that meet all of the following criteria:

- to have annual gross income up to R\$ 72 million (equivalent to approximately US\$ 20,5 million as at June 2015). Limits are pro-rated to reflect the numbers of months of operations in the year, for newly incorporated or closing down companies;
- not be a public held company;
- not be a financial institution (commercial bank, savings and loans, investment bank, insurance company, pension fund or security broker);
- not be a government-owned or part-owned company.

'Assessed income' is a calculation system that may be adopted by enterprises ineligible for the deemed income method. The percentages are used to calculate the estimated monthly advances and are determined by the industry category into which the enterprise falls, as follows:

Industry	%
Sales of goods	8%
Resale of fuel	1,6%
Transportation, except cargo	16%
Financial Institution	16%
Services	32%
Real estate management, rental	32%
Factoring	32%
All other	8%

## TAX YEAR

In general, the system consists of monthly payments based on the previous month's taxable income, subject to an annual 'adjustment' return, which is intended to consolidate monthly results compared to taxes paid. At the year end, the difference between the tax effectively due and the cumulative payments made during the year must be either supplemented by the company (where tax due is higher) or carried forward and offset against income tax payable in subsequent periods (where tax paid is higher). The fiscal year for companies is the calendar year. As a general rule, companies close their financial years at 31 December, in order to avoid the administrative burden of preparing two sets of financial statements per year, but they may have a financial year over any 12-month period.

Where a company merges, consolidates or splits during a fiscal year it must calculate income tax due from 1 January of the year of merger, consolidation or split, up to the date of any of these events.

## RATES

### *Income tax rate for corporations*

The annual income tax rate for corporations is 15% on the first R\$ 240,000 (approximately US\$ 68,5 thousand) of pre-tax income with the excess subject to tax at a rate of 25%.

### *Social contribution*

Social contribution is calculated, based on a rate of 12%, before the determination of pre-tax income.

## INCOME SUBJECT TO TAX

### *General rules*

The income which is subject to taxes is calculated based on an entity's profits, both operating and non-operating, including capital gains, and is measured in local currency (Real – R\$).

The accounting criteria applied in determining taxable income should be consistent from year to year, and may only be changed (to alternative acceptable criteria) where the change is not intended to gain an incidental tax benefit.

### *Inventory valuation*

Inventories are stated at the lower of cost or market value in the accounting records. Provisions reducing inventories to market value, if lower, are not deductible for income tax purposes. Either average or FIFO cost systems may be used, the LIFO method is not acceptable, but valuation at selling price less mark-up is permitted.

### *Capital gain and losses*

Capital gains and losses have no special treatment for income tax purposes, being included within non-operating revenue and expenses and normally accounted for in the income tax calculation.

## *Expenses*

### *General rules*

Expenses directly or closely connected with the conduct of the business, necessary to obtain income and to maintain income sources, are deductible. Depreciation, amortisation, depletion.

Deductibility of these charges is acceptable if:

- the relevant assets are being used for manufacturing, selling or distributing the products or for rendering the services of the company; and
  
- the rates applied to calculate the charges, applying the straight-line method, are equal to or lower than the following limits:

Type Of asset	%
Land	N/A
Building	4%
Machinery and equipment	10%
Tools	15%
Vehicle	20%

Disbursements or accrued expenses relating to maintenance, repairs, taxes and the insurance of assets not used for the activities referred to above, are not deductible under the new regulations.

### *Royalties*

As a general rule, royalties are deductible as business expenses to the extent that they are covered by a formal agreement duly registered with, and approved by INPI – Brazilian Industrial Property Agency. Certain limitations apply to the deductibility of royalties, this is based upon the percentage of revenue generated relating to the royalty.

### *Interest*

Interest paid on loans and debts, either to banks or to other entities is deductible as an operating expense. In transaction with related party.

### *Thin Capitalization*

Remittances of interest between related party, solely are deductible for purposes of determining the corporate taxable income and the calculation basis of social contribution on profits, if it appears necessary to constitute expenditure activity, given cumulatively the following requirements: (i) the value of the debt does not exceed two times the value of participation in equity linked from an entity located in Brazil; and (ii) the total value of the sum of debts do not exceed two times the sum of the interest of all affiliate entities in the net equity of an entity located in Brazil.

### *Reserves and provisions*

Provisions and reserves are not deductible, with the following exceptions:

- technical and mathematical reserves accounted for by insurance companies and pension funds;
- provision for employees' monthly thirteen salaries as well as for vacations to employees;
- allowance for bad debts, subject to certain limits.

### *Leasing agreements*

Instalments paid under lease agreements on buildings, vehicles, machinery, equipment or furniture may only be deducted as operating expenses if the relevant assets are used for manufacturing, selling or distributing the company's products or for the business of the company. Most lease contracts in Brazil are for capital, rather than operating leases.

### *Non-deductible expenses*

In principle, expenses not related to the business or not necessary to maintain its source of income are not tax deductible. Expenses which are subject to limits or conditions are not deductible where the conditions are not met (or the portion that exceeds specified limits is not tax deductible). The following expenses are also not tax deductible:

- non-mandatory contributions, except when the objective is the insurance, healthcare or pension plans of the business's employees and officers;
- gifts to clients or suppliers;
- meals paid to partners, shareholders and officers, except in the case of food provided to all employees;
- donations, except when certain conditions are met.

### *Profit Remittances*

#### **Dividends**

No restrictions are imposed on the number of dividends distributed to shareholders domiciled abroad. Dividends paid out of profits are not subject to withholding tax. Dividends received are not subject to income tax and dividends paid are not deductible in arriving at taxable income.

#### **Interest on Capital**

Companies are allowed to remunerate their shareholders by way of interest on capital payments, calculated on adjusted net equity. This payment is deductible for corporate income tax purpose and for social contribution purposes. These payments are subject to a 15% withholding tax (or 25% if of payment is made to a low tax jurisdiction).

### *Investment incentives*

Investment incentives are presently restricted to investment in certain underdeveloped and developing regions, as follows:

- Amazonian region;
- North east;
- Manaus free trade zone.

### *Related party transactions and transfer pricing*

Related party transactions which are not carried out on an arm's length basis may be considered a dividend distribution or an attempt to improperly transfer expenses or profits. As such, these operations are subject to certain limits and rules. Transfer prices rules (not significantly different from those in place in the United States of America) apply to purchase and sale operations with related parties.

### *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. The purpose of transfer pricing rules is to check whether the pricing policy adopted for international trades between intragroup 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. To that end, certain deductibility limits apply to payments made by the Brazilian company to its foreign supplier. Any amounts above such limit are added to the company's taxable income. As for exports, the Brazilian tax authorities check whether prices are not lower than those determined by comparability methods. To that end, the Brazilian company must report a minimum taxable income when selling goods and providing services to foreign-based related companies.

### *Tax losses carry forward*

Tax losses may be carried forward and offset against pre-tax income up to an annual limit of 30% of that income. Non-operating revenue and losses, subject to identical limits, must be controlled separately.

### *Other taxes and contributions*

#### **a) State VAT - Sales and Service Tax (ICMS)**

This operates in a similar way to a value added tax (VAT) and is levied on almost all domestic products as well as some services (transportation, electricity, and telephone services). Rates range from 7% to 25% and the tax is administered at State level.

### b) Federal VAT - Excise tax (IPI)

Excise tax is imposed by the federal government on industrialised and imported products. The tax is non-cumulative and has the effect of targeting certain social groups. e.g. alcohol, tobacco and luxury goods are heavily taxed. General rates range from 10% to 25%, the highest tax is on tobacco at 360%.

### c) Municipal VAT - Service Tax (ISS)

ISS is imposed by municipality on services rendered or imported, is normally subject to the rates range from 2% to 5% in accordance with a list provided under law. The rate can vary from municipality to municipality.

### d) Social Contributions

Social programmes are funded by two contributions (taxes, in practical terms), as follows:

- PIS (Social Integration Program Tax): 1.65% on value added (certain taxpayers, which are expressly referred to in PIS legislation are still subject to 0.65% on gross revenue). Under this regime the taxpayers are allowed to credits certain costs and expenses (labor costs and most back-office expenses do not give to PIS credits).
- COFINS (Contribution for Social Security Program): 7,6% on value added (certain taxpayers are still subject to 3% on gross revenue).

### e) Tax on Financial Transactions - IOF

The Tax on Financial Transactions (IOF) is a federal tax levied on:

- credit transactions made by financial institutions;
- credit transactions carried out by companies engaging in the cumulative and ongoing provision of services inherent to credit advice,
- market research, credit management, risk selection, management of payables and receivables, acquisition of credit rights resulting from term sales or services (factoring);
- intercompany loans, and loans between companies and individuals;
- exchange transactions;
- insurance transactions made by insurance companies;
- securities transactions;
- deals in gold as a financial asset, or currency instruments.

IOF rates vary according to the type of transaction involved, and are lowered or increased with some frequency, depending on the legal circumstances.

### f) Import Tax

Charged on the customs value of imported goods at rates that vary significantly depending on the type of good;

### g) Social Security Contributions

Salary taxes are intended to provide for pension payments on retirement and to fund the healthcare system and are levied as follows:

- Employees: 8% to 10% of salary (certain maximum limits apply).
- Employer: 27% to 29% with no limit.

Employer must contribute payments on the basis of 8% of the employee's monthly gross salary to a fund for severance indemnities. If an employee is dismissed arbitrarily or without just cause, the employer must pay the employee an additional amount equal to 50% of the company's deposits. This fund is managed by the Federal Government.

### *Non-resident companies*

Non-resident companies are subject to corporate income tax on certain Brazilian source income, namely:

- royalties;

- cost sharing;
- technical assistance and know-how;
- interest.

The level of corporate income tax on non-resident companies is determined by the relevant tax treaty with Brazil.

Royalty payments are authorized only after the underlying patent or trademark is registered in both the country of origin and in Brazil. To establish remittance rights for patent and trademark royalties and technical assistance fees, licensees must have the underlying licensing agreement approved by the National Institute of Industrial Property (Instituto Nacional de Propriedade Industrial, or INPI) and registered with the BACEN.

Remittances of royalties and fees through the official market to foreign licensors are generally limited to 1-5% of sales. The maximum amount deductible on the remittance is 5% of net receipts from the product manufactured or sold.

Technical services are subjected the payment of withholding tax of 15%, CIDE - Contribution for Intervention in the Economic Domain charged on the remittance of royalties or any compensation deriving from the transfer of technology, at the rate of 10%, ISS (rate vary from 2% to 5%), PIS on Importations (rate of 1,65%) and COFINS on Importations (rate of 7,6%).

### *Repatriation of Capital*

The repatriation of share capital generally is not restricted if the investor registers the original investment, capital increases and capitalized earnings with the BACEN. Repatriation usually is accomplished after sale of the shares to a local resident, a capital reduction or liquidation of the company. Commercial law contains specific rules on share redemption and on companies re-acquiring their own shares.

Capital is most commonly repatriated through the sale of shares. A foreign investor's capital gain on a sale to a local resident is the excess of the sale price over the foreign capital registered with the BACEN. That gain is subject to a 15% withholding tax.

Funds repatriated in excess of the foreign capital registered with BACEN are subject to a 15% withholding tax.

### *Personal taxes*

#### **Residents**

Individuals are considered resident in Brazil, for tax purposes, if they meet any of the following criteria:

- Individuals living in the country on a permanent basis.
- Holders of permanent resident visas. Resident status begins on the date of arrival in the country.
- Holders of temporary resident visas with a local LABOR contract.
- Resident status begins on the date of arrival in the country.
- Holders of temporary resident visas without a local LABOR contract and who have been in the country for at least 183 days, during any 12-month period. Residence status begins on the 184th day of presence in Brazil;
- Brazilian citizens who had become non-residents and returned to Brazil definitely. Resident status begins on the date of arrival in the country.
- Former resident taxpayers who left Brazil temporarily or permanently without obtaining a tax clearance certificate before departure. These individuals are deemed to be resident taxpayers for a 12-month period following their departure.

Residents pay income tax under a general system known as 'current basis', which consists of paying tax on monthly income and preparing an adjustment return at each year end. Tax is paid on the individual's worldwide income, but income taxes paid abroad may be offset, subject to certain restrictions and conditions.

## Non-residents

Non-residents pay income tax on their Brazilian source income.

### *Sources of income*

#### Employment income

An employee, including a director or manager who is a Brazilian resident, is normally taxed on all his/her emoluments for a fiscal year. Deductions are restricted to social security contributions, family allowances and education (certain limits apply) and medical expenses.

#### Business income

For income tax purposes, business profits received from corporations are, as stated above, free of further income tax. Profits obtained in the conduct of other non-corporate business are taxed on the following basis:

- Profits from a personally owned enterprise (known as a 'unipersonal company') are taxed as personal income;
- Profits from a so-called 'microcompany', where taxation is similar to that of an employee in which case income tax is calculated and paid on monthly income.

#### Social security benefits

Subject to certain limits, social security benefits are in general taxable, except for those that have an indemnity nature.

#### Capital gains

An individual's capital gains are taxable, although capital losses are not deductible or in any way offsettable. Income tax on capital gains is due on a monthly basis.

#### Interest

Interest earned from financial institutions or corporations is usually subject to withholding tax. Interest on shareholdings, as described in the section above dealing with corporate income tax, is subject to a 15% withholding tax which is the final tax.

#### Rentals

Rental income from real estate, net of certain deductible expenses, is subject to income tax both at the corporate level and the individual level.

#### Personal allowances and deductions

The most common permissible deductions are social security contributions (both the mandatory, government managed system and private pension plans), family allowances; alimony payments imposed by the Courts, education expenses and certain charitable gifts and medical expenses. Certain items are subject to maximum deductible amounts.

#### Exchange Control

Exchange control mechanisms have been substantially removed. One remaining requirement is that foreign currency remittances, both outbound and inbound, are subject to Central Bank registration.

#### Withholding Taxes

The percentage of tax on interest and royalties for non-treaty countries is 15%. The withholding tax rate applicable to capital gains of residents of "low-tax" jurisdictions is 25%. The percentage of tax on interest and royalties for most treaty countries is also 15%, including: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, India, Italy, Korea, Luxembourg, Netherlands, Norway, Philippines, Portugal, Spain and Sweden. An exception is Japan, where tax is levied at 12.5%. Usually, income tax withheld in Brazil is taken as an advance against the payment of the income

tax by the parent company in the investor country, where both countries have a treaty to avoid double taxation.

Where the parent company is incorporated in a country that does not have such a treaty, the amount withheld in Brazil is normally taken as a deductible expense in the parent company's income tax return.

### Tax Consolidation

Brazilian Tax Law does not allow the consolidation of the income tax return. Therefore, the entities from the same group are not allowed to consolidate the income and deduction of the members in order to submit to taxation the net income of the group.

### Tax Administration

The Federal tax system is administrated by the Federal Tax Revenue (Secretaria da Receita Federal or SRF), which is part of the Ministry of the Economy. States and municipalities maintain similar administrative departments.

### Interest and Penalties

Income tax paid after the due date may be subject to the following interest and penalties:

- Official interest (SELIC) charged at a monthly rate published by the government; and
- A daily fine of 0.33% on the tax due, up to a maximum penalty of 20% (excluding interest).

Tax assessments arising from failure to pay tax attract an automatic penalty of 75% of the tax not paid, while the penalty for fraud is 150% of the tax due. These penalties may be reduced by 50% if a taxpayer pays the tax due without disputing the assessment at the administrative level (other reductions on penalties may also be available during the appeal process).

### Statute of Limitations

The statute of limitations in Brazil for tax purposes is generally five years, beginning on the first day of the calendar year following the year when the tax could have first been assessed (in practice, up to six years). Longer statute of limitation periods apply for the Severance Pay Indemnity Fund – FGTS (up to 30 years).

### Ancillary Tax Obligations

Brazilian corporate taxpayers operating in Brazil are required to comply with the Public Digital Bookkeeping System - SPED, which has replaced paper bookkeeping. The SPED is a requirement in which taxpayers should file all account and tax information available on an annual or monthly basis using a standard electronic layout.

The SPED can be divided into the following main systems:

**EFD Fiscal** - Digital Fiscal Bookkeeping: The EFD is a set of digital monthly tax filings that keep track of all transactions related to the input and output of acquired goods and rendered services, including a detailed description of each transaction. All current tax paper bookkeeping must be replaced for a single digital file, which includes all current tax books that are available regarding the IPI Federal Excise tax, as well as the ICMS State VAT tax computations. The EFD includes the following books: Input and output registry, Inventory Registry, IPI Computation Registry, ICMS Computation registry and the Control of ICMS input credits on Permanent Assets (CIAP). In general, all ICMS and/ or IPI taxpayers must submit the EFD to the Brazilian tax Authorities.

**EFD Contributions** - PIS/COFINS Digital Fiscal Bookkeeping - The EFD Contributions must be utilized by taxpayers of PIS/COFINS taxes and shall be based on the documents and operations supporting the income earned, as well as costs, expenses which may generate input credits, under the non-cumulative regime.

**ECF** - Accounting and Tax Return



Regardless of the accounting year adopted by a company, or of any election made to pay corporate taxes based on actual profits or deemed profits, a Brazilian company must file an annual tax return based on its consolidated results for the calendar year. The return (ECF) must be filed by the last working day of June following the end of the tax year. Accounting and Tax Return (Escrituração Contábil Fiscal - ECF) - As of 2015, the ECF not only replaced Income Tax Return, but also integrated the information from the income tax and Social Contribution on Net Profit in the Public Digital Bookkeeping System (SPED) environment. A small entity with taxable income below specified amounts is also generally required to file an annual income tax return but using a simplified method of accounting ("Simples"). A tax-exempt entity must also generally file annual income tax returns. Individuals are generally required to file their annual income tax returns by the end of April following the end of the tax year.

**DCTF**

Federal Tax Debts and Credits Statement (DCTF) must be file in a monthly bases with information the federal tax debts and detail of its payment.

**DIRF**

Statement of Income Tax Withheld at Source (Declaração do Imposto sobre a Renda Retido na Fonte - DIRF) must be file in an annual basis.

## 7 - ACCOUNTING & REPORTING

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The Brazilian Generally Accepted Accounting Principles are derived primarily from the Brazilian Corporate Law (Lei 6404/76 - Lei das S/A) and its updates (amends) released through other important laws such as Law 11638/07 and Law 11941/09.

The Federal Board of Accountancy (CFC) issues regulation about general accounting matters addressed by laws. The CFC statements deal specifically with accounting policies and procedures, no tax regulation is issued by CFC, but by Federal, State and Municipal Governments. Additionally, certain sectors adopt specific GAAPs, issued by Regulators such as:

- Brazilian Central Bank (BCB) and CMN: Banks and Financial Institutions
- Securities and Exchange Commission (CVM): Public Traded Companies and Investment Funds
- SUSEP: Insurance Companies
- CNSP and PREVIC: Pension Funds

The Brazilian GAAP is, mostly, in line with IFRS. Accounting Statements Committee (CPC) is the entity responsible for analysing, translating and - whenever necessary - adopting the IFRS to the Brazilian reality.

CPC issues its statements, Interpretations, and Orientations based on those issued by IASB.

It is generally mandatory to a Brazilian entity to report its Financial Statements in the cases below:

- Mandatory by CVM - Public Traded Securities: Issuers (Stock or Debt), Investment Funds
- Mandatory by BCB and CMN: Banks, Financial Institutions, Credit Card Companies, Credit Unions, Consortia
- Mandatory by SUSEP: Insurance and Reinsurance Companies
- Mandatory by Law: Large Companies over a certain amount of revenue or assets
- Mandatory by CNSP and PREVIC: Pension Funds
- Mandatory by contract with Specific Banks such as BNDES, World Bank, BID; or Public Investment Funds such as FI-FGTS and other: Companies that raise funds from these entities
- Mandatory by the Brazilian IRS (RFB): The Brazilian IRS requires that companies fill out the annual return that replicates the companies' balance sheets and other financial statements for tax measurement purposes

## 8 - UHY REPRESENTATION IN BRAZIL

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# UHY BENDORAYTES & CIA – AUDITORES INDEPENDENTES BRAZIL



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Year established: 1960  
PCAOB registered?: Yes  
Number of partners: 10  
Total staff: 105

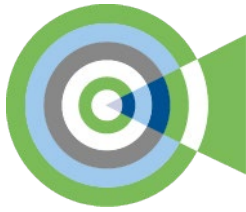
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