# HOW TO INVEST IN BRAZIL

## *A GUIDE TO INVESTORS*

2016

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# SUMMARY

# 1. FOREIGN INVESTMENT CAPITAL AND CENTRAL BANK OF BRAZIL

1.1. Foreign Direct Investment

Assets, machinery and equipment brought into the Country without an initial outlay of foreign currency, to be employed in the production of goods or services, and financial or monetary resources admitted into the Country for investment in business activities, are considered foreign capital, provided that in both cases they belong to individuals or corporate entities residing, domiciled or based abroad, and must be registered electronically with Central Bank of Brazil (BACEN), through an investor-recipient related code called RDE-IED, which was initially instituted through the repealed BACEN Circular 2,997 of 11 August 2000, and is currently ruled by Resolução 3.844, of March 24, 2010 ("Resolução 3.844") and Circular 3.689, of 16 December 2013 ("Circular 3.689"), both issued by the BACEN.

Registration at BACEN is a condition for the remittance abroad of profits and dividends, and interest on owners‟ equity, obtained by means of investments made in the Country and guarantees the investor the possibility of repatriating the resources invested.

The investor can also invest in Brazilian companies through the conveyance of tangible goods (machinery and equipment), provided that such goods are imported, without the obligation of a payment to a nonresident. In this case, the registration must be made, firstly, in the ROF – Registro de Operação Financeira (Financial Operation Registration) module of the RDE, and, subsequently, in the IED module of the RDE as foreign direct investment. This Registration in the RDE-ROF module must be linked to the cleared Import Declaration (Declaração de Importação – DI).

In addition to investments in corporeal property to be employed in the production of goods and services, BACEN also accepts such intangible goods as trademarks, patents and know-how, as the subject of investment as foreign capital. The registration of intangible goods in BACEN should also be done through the RDE-ROF module, linked to an invoice or equivalent document that characterizes the importation of the intangible goods, provided that approved by the agency responsible for the registration and control of industrial property rights in the Country, namely the INPI (Brazilian Patent and Trademark Office). Finally, the registration is conducted in the RDE-IED module.

According to the Circular 3.689 rules, the technology transfer subject to INPI registration does not characterize an intangible good for the purposes of the financial operation registration designed for the payment of the capital of Brazilian companies.

The foreign investor may also make investments through the conversion of credits that are capable of generating transfers abroad, such as foreign loan principal and interest duly registered in the RDE-ROF Module, profits or dividends, interest on owners‟ equity and other amounts remittable abroad.

On the basis of the declarations and data informed electronically to the Electronic Central Bank System – SISBACEN, by companies or their representatives, a Consolidated Foreign Direct Investment Registration Statement will be generated. This statement is the appropriate document to evidence the investment made by the foreign investor before third parties.

The investment registration procedure shall be formalized within 30 days from the investment's entry into Brazil. In relation to foreign investments through tangible goods, the registration period is 30 days from the customs clearance date of the goods, on pain of submitting the recipient company of the investment to the application of a fine of up to R$ 250 thousand, in accordance with the provisions of the Resolução 4.104,

of June 28, 2012, issued by BACEN.

The aforesaid registration will be made in the foreign currency actually brought into the Country or in the amount declared in the import document of the goods.

Profits distributed by companies established in Brazil and allocated to residents and individuals or corporate entities domiciled abroad, but that are reinvested in the same companies from which they originated or in another sector of the Brazilian economy, are also subject to registration as foreign capital, with BACEN.

Foreign investors with ownership interests in Brazilian companies may transfer these interests to third parties abroad. The foreign purchaser, notwithstanding the price paid for the acquisition, must alter the Consolidated Foreign Direct Investment in Brazil Registration Statement, obtaining a new RDE-IED registration number, which will identify its investment in substitution of the assigning investor, in order to permit future remittances, profit reinvestment registrations and any repatriation of the investment.

Lastly, it is important to mention that individuals or companies domiciled or based abroad, that have ownership interests and other assets in Brazil are obliged to register in the CPF (Federal Register of Individual Taxpayers) and CNPJ (Federal Register of Corporate Taxpayers), respectively.

1.2. Foreign Investment in Local Currency

In 2007, BACEN published new foreign exchange rules permitting the registration in local currency of ownership interests held by a foreign partner, which, up to that time, could not be made at BACEN, due to there being no evidence of the regular entry of the resources into the Country (via the contracting of foreign exchange, as determined in the prevailing foreign exchange regulations). This situation was known as “tainted capital” (capital contaminado). The consequence of this situation, among others, was that of not permitting the remittance of profits and dividends abroad on the unregistered portion of the capital/ investment.

In accordance with the new rules, foreign capital should only be registered with BACEN, in local currency, if the respective amount is stated in the accounting records of the Brazilian recipient company of the foreign capital, and if there is documentary evidence with respect to the ownership of the foreign capital.

Once the registrations are regularized with BACEN, the foreign investor is authorized to return abroad the total computed profits and dividends, among others, up to the limit of the holdings held in the company.

Lastly, the capitalization of profits and dividends, interest on owners‟ equity and profit reserves, originating from the portion of the capital registered in local currency, are subject to the same registration modality.

1.3. Foreign Loans

1.3.1. Foreign loans via the foreign exchange market

The foreign loan contracting process is conducted through the electronic declaratory registration, by means of the Financial Operation Registration Module (ROF) of SISBACEN, which dispenses with the presentation of documents to BACEN, prior to the receipt of the loan resources. The electronic registration is thus prepared through the declarations and data informed electronically in SISBACEN, in two phases: (i) prior registration, relating to the general conditions of the operation, to allow for the entry of resources into the Country and (ii) registration of the payment scheme, done after the closing of the foreign exchange and entry of the resources into the country, enabling remittances to be made abroad as payment, both of the

principal and interest.

It is important to mention that the aforementioned prior registration may be denied by the system, if the costs of the operation are not compatible with normal market conditions and practices or if the proposed structure of the operation is not compatible with the standards of the system.

BACEN does not currently call for any minimum or maximum average term for the debt amortization and repayment of the loan principal, or for the renewal and extension of loans. However, such terms may be fixed by BACEN in accordance with the Country's current foreign exchange and monetary policy. The interest varies in accordance with the term contracted, and may be fixed or variable, or even non-applicable, provided that, as previously mentioned, they are within the parameters prevailing in the international market. Spreads are also permitted.

Still in relation to the interest, the term for its calculation will begin to run on the date that the funds enter the Country, namely, the settlement date of the foreign exchange contract. However, when the disbursement of the funds abroad occurs up to five (5) consecutive days before their entry into the Country, the disbursement date may be used as the initial date for the reckoning of the term.

After the entry of the funds into the Country, the payment scheme must be registered, in order to permit remittances of the payments of the interest and principal abroad.

As a general rule, the interest will be taxed by withholding income tax, at the rate of 15%.

The Tax on Financial Operations – Currency Exchange (IOF – currency exchange) is zero for loans exceeding 180 days, and 6% for operations under the time limit mentioned above.

However, besides IOF – currency exchange the loan is also subject to the additional 0.38% over the operation amount.

If it does, there is no TFO on the principal amount. When the principal amount and interests are paid, there is no TFO, regardless of the term of the loan. We emphasize that such parameters are often subject of amendments, which can be in effect from their publication by decree.

Loans (principal and interest) may, as a general rule, be converted into foreign direct investment, after their registration in the ROF, by means of the performance of simultaneous foreign currency purchase and sale operations.

The accelerated payment of the loan principal (either total or partial) is permitted, it being sufficient to include, in the ROF, the payment date of the principal and interest, and the sum of the interest due up to the payment date.

1.3.2. Foreign loans via the issuance of securities

Resolução 3.844 and Circular 3.689 regulate the electronic declaratory registration, by means of the Financial Operation Registration Module (ROF), of foreign loan operations obtained by means of the placement of convertible securities (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas of its own issuance) and securities exchangeable into shares or quotas (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas issued by another institution based in the Country) or also warrants (purchase options of shares or quotas, placed abroad by institutions based in the Country).

Moreover, BACEN legislation also establishes that, prior to the date of the conversion, exchange or exercise of the purchase option by the holders of warrants, the distribution of dividends and exercise of subscription will constitute rights of the issuer institution of the securities abroad.

Promissory notes issued for placement in the international market, whether under the private placement regime or otherwise, are known as Floating Rate Notes or Fixed Rate Notes, depending on whether their remuneration is stipulated in variable or fixed interest.

The entity issuing the notes does not require a specific legal form or special registration for their issuance, and BACEN is directly and exclusively responsible for their control, in the same format as loan registrations. However, the difference lies in the existence of an issuing agent figure of the notes, which shall necessarily be an authorized financial institution, responsible for issuing and obtaining funds from entities abroad.

1.3.3. Local Currency Loans

In 2007, BACEN published new foreign exchange rules permitting the registration in local currency of foreign loans, which, until that time, could not be registered at BACEN, due to the non-existence of evidence of the regular entry of the resources into the Country (via the contracting of foreign exchange, as determined in the prevailing foreign exchange regulations). The direct consequence of this situation was that the borrower of the resources in Brazil was precluded from remitting to the foreign creditor the interest due on the loan or the principal itself.

Nevertheless, in accordance with the new rules, as long as documentary evidence exists with respect to the ownership of the foreign capital (i.e., in the name of the foreign creditor) and the indication of the number of the operation conducted via International Transfer in Reais (“TIR”) through which the resources were remitted to the country, the same may be registered with BACEN, in the local currency loan registration modality, according to the terms and criteria established by BACEN. Thus, once the registrations are regularized, the borrower of the resources may remit abroad the respective interest due or the principal itself.

1.4. Foreign Exchange Market

In 2005, BACEN published new rules with a view to simplifying foreign exchange operations in Brazil, indicating the probability of a future complete foreign exchange opening. Additionally, the measures in question are designed to combat illegal transfers linked to drug and armament traffic, and terrorism. The main rules currently in force are:

a) unification of the free and floating rate markets;
b) individuals and corporate entities may purchase and sell foreign currency or make transfers of any nature, without limitation of value, though transfers on behalf of third parties are prohibited;
c) Brazilian investment abroad does not depend on authorization and/or any kind of prior communication to/from BACEN and is not subject to any limitation of value;
d) nonresident individuals or corporate entities in Brazil may maintain accounts in the Country called “nonresident accounts”, with financial institutions authorized to operate in Brazil by BACEN, though the use of such accounts to make transfers on behalf of third parties is, however, forbidden.

1.5 Changes in the SISBACEN System

According to the information provided by a SISBACEN analyst, changes in the system used for the registration of investments and loans are expected to occur this year; however, no date is scheduled yet. Until then, the guidelines set out here are still valid,

## 2. THE BRAZILIAN ANTITRUST ACT (LAW 12,529/2011) AND THE PRE-MERGER REVIEW SYSTEM

The current Brazilian antitrust act (Law 12,529/2011), in force since May 29, 2012, significantly changed the antitrust law in Brazil, formerly regulated by Law 8,884/94.

The law currently in force has introduced in Brazil the pre-merger review system, following which new regulations were issued.

Law 12,529/2011 consolidated the investigative, prosecutorial and adjudicative functions of the Brazilian authorities into one single agency – the Administrative Council for Economic Defense (CADE).

Today, CADE is now composed of: (i) Administrative Tribunal, comprised of six Commissioners and one President; (ii) General Superintendence, in charge of carrying out investigations and reviewing mergers, which were functions formerly conducted by the Secretariat of Economic Law of the Ministry of Justice (SDE/MJ) and the Secretariat for Economic Monitoring of the Ministry of Finance (SEAE/MF); and (iii) Department of Economic Studies, responsible for preparing opinions and economic studies, as well as assisting the Council.

Under the new system, if a notifiable transaction is consummated prior to CADE's approval, the parties involved will be subject to fines ranging from BRL 60 thousand to BRL 60 million. Moreover, administrative proceedings can be initiated and the transaction can be considered void.

Today, consolidations, acquisitions, mergers, association agreements, consortiums and joint ventures must be notified to CADE if at least one of the economic groups involved in the transaction registered gross revenues or a total business volume in Brazil of at least BRL 750 million in the last fiscal year preceding the transaction, and another economic group involved in the transaction registered gross revenues or a total business volume in Brazil of at least BRL 75 million in the last fiscal year preceding the transaction.

Law 12,529/2011 also excludes consortiums and arrangements made specifically for the purpose of participating in public bids; consequently, they do not need to be submitted to or approved by CADE.

Moreover, CADE Resolution 02 of May 29, 2012, redefined the criteria for subjecting the acquisition of shares to CADE's clearance. The following transactions must be notified:

(i) Acquisitions of interest that result in the acquisition (individually or jointly with others) of the control of the target corporation;

(ii) If the investee is not a competitor and is not active in a vertically related market: (a) transactions as a result of which the purchaser holds, directly or indirectly, 20% or more of the company's total or voting shares; and (b) transactions in which the purchaser already holds 20% or more of the company's total or voting shares and acquires from a single seller an additional stake of 20% or more of the total or voting shares; and

(iii) If the investee is either a competitor or active in a vertically related market: (a) transactions as a result of which the purchaser holds, directly or indirectly, 5% or more of the company's total or voting shares; and (b) the last of a series of acquisitions that, individually or together with the others, results in an additional stake of 5% or more, in case the investor already holds 5% or more of the company's total or voting shares.

Additionally, the sole paragraph of article 9 of CADE's Resolution 02 expressly determines that the notification

is not mandatory in cases of acquisitions of shares by the individual controlling shareholder.

CADE's Resolution 02 also defines "economic group" for the purpose of calculating gross revenues. Under the Law, an "economic group" is: (i) a group of companies under common (internal or external) control; and (ii) a group of companies in which any of the companies mentioned in item (i) holds, directly or indirectly, at least 20% of the total or voting shares.

If the transaction involves investment funds, the gross revenues of the following entities must be considered: (i) the economic group of each shareholder that holds, directly or indirectly, at least 50% of the units of ownership of the fund that is involved in the transaction, either individually or through any kind of members' agreement; and (ii) the companies controlled by the fund involved in the transaction and the companies in which this fund holds, directly or indirectly, at least 20% of the total or voting shares.

Even though notifiable transactions are not allowed to be consummated, Law 12,529/2011 gives the CADE the option to allow the parties to consummate the transaction prior to CADE's decision. However, in this case, there may be limitations on asset liquidation; integration of activities; layoffs; closing of points of sale; extinction of brands or product lines; and/or changes in marketing plans.

Under CADE's regulations, transactions involving public offerings may be consummated prior to CADE's clearance, in which case the exercise of political or voting rights is suspended in relation to the acquired shares.

CADE also issued Resolution 10, which lays down the criteria which must be met upon submission of association agreements to CADE. Under such Resolution, any agreements: (i) for a term of more than 2 years (including any extension and indefinite term) involving horizontal or vertical cooperation or risk sharing that may result in an interdependence relationship between the parties must be submitted.

The Resolution explains that an interdependence relationship will be deemed to exist whenever: (i) the sum of the shares held by the parties under horizontal cooperation with respect to the subject matter of the agreement is at least 20% of the relevant market, or (ii) in case of vertical cooperation, at least one of the parties holds at least 30% of the relevant markets affected by the agreement, provided that at least one the following conditions is met: sharing of revenues or losses, or exclusivity clause.

Finally, differently from Law 8,884/94, the pre-merger control system imposes no deadline to notify a transaction. CADE's review of a notified transaction must be completed within 330 calendar days from the notification date.

In 2015, CADE reviewed 386 mergers and reviews took an average of 27,6 days. Fast-track cases, cases under simplified procedures and cases resulting in no or low impact on competition were reviewed in 18 days, in average.

# 3. COMPANIES

Brazilian law provides for different forms of association for the conduct of economic activities geared to the production or circulation of goods and services.

Among the corporate entity types of companies, the most commonly used are the corporation ("sociedade anônima – S/A") and the limited business company ("limitada - LTDA."), which may be transformed from one type to the other, as set forth in law.

Companies that develop business activities are subject to registration at the Commercial Board ("Junta Comercial")

3.1. Corporation (S/A)

S/As are governed by their corporate bylaws and regulated by Law 6,404/76.

3.1.1. Cost

A S/A involves more formalities than a LTDA. for its organization and operation, notably by virtue of the mandatory publication of certain corporate acts and documents; consequently, its cost is higher than that of a LTDA. As an example of this cost, a S/A will currently spend a minimum amount of approximately R$ 30 thousand (US$ 7.5 thousand) annually, on mandatory publications alone. However, closely held S/As with less than 20 shareholders and with shareholders" equity, on the balance sheet date, of less than R$ 1 million (equivalent to approximately US$ 250 thousand), are not required to publish financial statements and other management documents; they are only required to register a certified copy of such documents with the Commercial Board. In addition, closely held S/As with a net shareholders' equity of less than R$ 2 million (approximately US$ 500 thousand) on the date of the balance sheet are not required to prepare and publish cash flow statements, which considerably reduces the cost of publications.

3.1.2. Name

An S/A name must necessarily be followed by the expressions "sociedade anônima" or "companhia", in full or in abbreviated form.

3.1.3. Types

S/As may be of two types:

a) publicly held ("open"): when their issued securities are admitted for trading on the stock market. Publicly held companies involve a greater number of formalities, and are also subject to the specific legislation of the capital market, which has as its main supervisory body the Brazilian Securities Commission (Comissão de Valores Mobiliários - CVM), corresponding to the U.S. Security Exchange Commission (SEC);

b) closely held ("closed") - when their issued securities are not admitted for trading on the stock market. Their operation is less formal and several requirements that are obligatory in relation to publicly held companies are optional in the case of closely held companies.

3.1.4. Capital

There is no minimum capital requirement, except in special cases (financial institutions, trading companies,

obtainment of permanent residence visa, participation in public bids, etc.). S/As may be organized with authorized capital and with less subscribed capital than that authorized by the bylaws: in this case, the increase of the subscribed capital, up to the authorized limit, will not depend on a bylaws reform.

The capital stock may consist of cash assets or any kind of assets with a monetary worth. At least 10% of the cash-subscribed capital (or 50% in the case of financial institutions) must be paid-up at the time of the company's incorporation and the remainder, within the term prescribed in the company's Bylaws.

3.1.5. Liability of Shareholders

The liability of shareholders is limited to the issue price of the subscribed or acquired shares, except in case of proven violation of the law or of the corporate bylaws. A corporation has a distinct existence from that of its shareholders, hence the capital autonomy in relation to the partners. It is the assets of the corporation that serve as security for creditors for debts incurred on its behalf. However, this rule is not absolute. For the protection of third parties, Brazilian legislation sets forth some cases where the shareholders are exceptionally accountable for the debts of the corporation. Examples: liability of the controlling shareholder for abuse of power; in certain situations, the liability of the shareholders for labor, tax and social security debts, liability for damages caused to consumers, liability for violations against the economic order (Antitrust Law), all resulting from the application of the „piercing the corporate veil" theory. These are exceptions established by law that cannot be quashed by a contractual or bylaw provision.

3.1.6. Shares

The capital stock is divided into shares, which may have a face value or not. The minimum number of shareholders is 2.

The shares may be common, preferred or usufructuary, depending on the nature of the rights or advantages that they grant to their holders.

The common shares of closely held companies and preferred shares of publicly held or closely held companies may be of one or more classes, according, among other particularities, to the policy-related advantages that they confer for the election of administrators.

The number of non-voting preferred shares or preferred shares with restricted voting rights may not exceed 50% of the total shares of the company. This rule, however, is only binding on companies incorporated as of 01 November 2001. Thus, publicly and closely held companies existing prior to that date can continue under the former regime, which permits the issuance of up to 2/3 of preferred shares, in relation to the total shares issued by the company. The law regulates the way in which non-voting preferred shares shall enjoy this right.

For preferred shares issued by closely held companies, the advantages may consist of: (i) priority in the distribution of fixed or minimum dividends; (ii) priority in the reimbursement of capital, with or without a premium, or (iii) the accumulation of the advantages indicated in items (i) and (ii).

Additional asset advantages shall be conferred on preferred shares traded on the stock market, in comparison to those conferred on preferred shares issued by closely held companies.

As to form, the shares will always be registered.

The shares may be freely transferred and assigned without the need of a bylaws amendment, operating

through a term entered in the Transfer of Registered Shares Book, dated and signed by the transferor and transferee, or their lawful representatives. However, the corporate bylaws of closely held companies may impose limitations on the transfer of shares, as long as they regulate such limitations in detail and do not impede their trading or subject any shareholder to the discretion of the management bodies of the company or the majority of the shareholders.

3.1.7. Mandatory Dividend

The corporate bylaws of a S/A shall fix the mandatory dividend to be paid to the shareholders; if the bylaws are imperfect or incomplete in this respect, the shareholders are entitled to receive as a mandatory dividend, for each year, the amount determined pursuant to law.

3.1.8. Shareholders' Agreements

Shareholders" agreements are allowed to deal with such matters as the purchase and sale of shares, the preemptive right to acquire them, the exercise of voting rights or of the control power; however, for such agreements to be observed by the company, they must be filed in its registered office.

3.1.9. Minority Shareholders

The protection of minority shareholders is provided for by law, and may be extended through provisions in the corporate bylaws and shareholders' agreements.

3.1.10. Shareholders' Meeting

The Shareholders" Meeting is the supreme body of the company, with due regard to the law and any bylaw and contractual provisions.

In the first call, the Shareholders" Meeting shall convene with the presence of shareholders representing, at least ¼ of the voting capital. In the second call, it will be called together with any number. The voting quorum is, as a general rule, more than half of the voting shares ("maioria absoluta"). The voting quorum will be two thirds of the voting capital, in the first call, only when the Shareholders' Meeting is called with the purpose of amending the Bylaws. In the second call, the Meeting will be called with any number.

Shareholders" Meetings may be annual (AGO) or special (AGE).

The AGO has the powers to: (i) receive the administrator accounts and resolve on the financial statements; (ii) decide on the appropriation of net profits for the year and the distribution of dividends; (iii) elect the administrators and members of the Audit Committee, if applicable. The AGO shall be held annually, in the first 4 months subsequent to the end of the fiscal year.

The AGE has the powers to decide on any other matters brought to the approval of the shareholders, such as: (i) reform the corporate bylaws; (ii) authorize the issue of debentures; (iii) suspend the exercise of shareholder rights; (iv) resolve on the valuation of assets contributed by shareholders for the formation of the capital stock; (v) authorize the issue of participation certificates; (vi) resolve on the transformation, merger and spin-off of the company or its absorption into another; (vii) its dissolution and liquidation, elect and depose liquidators and decide on their accounts; (viii) authorize the administrators to confess bankruptcy and petition for judicial reorganization.

For the voting of the following matters a qualified quorum is necessary (approval of shareholders representing

at least half the voting shares, if a larger quorum is not prescribed by the corporate by-laws): a) creation of preferred shares or increase of existing classes of preferred shares, without maintaining a proportion with the other classes of preferred shares; b) alteration in the preferences, advantages and conditions of the redemption or amortization of one or more classes of preferred shares, or creation of a new more privileged class; c) reduction of the mandatory dividend; d) spin-off, merger by or of the company; e) participation in a group of companies; f) alteration of the corporate purpose; g) suspension of the state of liquidation of the company; h) creation of participation certificates and (i) dissolution of the company. The AGE may be held at any time, whenever the need arises.

Special attention should be given to a reform of the bylaws with the aim of increasing or decreasing the capital.

A capital increase may take place in any of the following ways: a) by capitalization of profits or reserves, which implies the alteration of the par value of the shares or distribution to the shareholders of the new shares corresponding to the increase; b) by the public or private underwriting of shares. A condition for this type of increase is that at least ¾ of the capital stock have been paid up. The shareholders have the preemptive right for the subscription of the increase, in proportion to the number of shares held thereby.

A capital decrease may occur in one of the following situations: a) loss up to the sum of accumulated losses; b) if excessive. In order to protect any creditors, the Law determines that the decrease of any excessive amount of the capital will only become effective 60 days after the publication of the AGE minutes that decided same.

3.1.11. Administration

The administrative bodies of S/As are the Board of Directors (mandatory for publicly held companies and authorized capital companies) and the Board of Executive Officers. The Board of Directors is responsible for determining the company's general business orientation. The Board of Executive Officers is the company's executive body, with exclusive responsibility for representing the S/A before third parties.

The members of the Board of Executive Officers will be individuals residing in the Country, whereas the Board of Directors may be made up of individuals residing and domiciled abroad also, provided that they have attorneys-in-fact residing in Brazil, duly empowered to receive summons. The Board of Directors shall be composed of at least 3 members, whereas the Board of Executive Officers shall be composed of at least 2 officers, who may be shareholders or otherwise. Up to 1/3 of the members of the Board of Directors may be elected to the Board of Executive Officers.

The term of office of administrators may not exceed 3 years, re-election being permitted. The Board of Directors is elected and deposable at any time by the Shareholders" Meeting and the Board of Executive Officers is elected and deposable at any time by the Board of Directors (when there is one) or by the Shareholders" Meeting (when there is no Board of Directors). There is no minimum or maximum limit for the remuneration of administrators.

Administrators are not personally liable for the obligations they incur on behalf of the corporation and by virtue of regular management acts. However, they are civilly liable for the losses they cause, when they act: I – with fault or fraud or deceit, within their duties or powers; II – with violation of the law or of the bylaws. Moreover, the same exceptions determined in connection with the liability of shareholders, detailed in the paragraph "Liability of Shareholders" above apply to administrators.

3.1.12. Advisory Committee

S/As may optionally have an Advisory Committee, whose members may reside abroad and be remunerated by the Brazilian company.

3.1.13. Audit Committee

A corporation will have an Audit Committee, whose constitution, when its operation is not permanent, may occur in any shareholders‟ meeting, as provided by law. The duties of the Audit Committee include: (i) supervise the acts of the administrators and verify the fulfillment of their legal and bylaw obligations; (ii) opine on the annual management report; (iii) opine on proposals from the administrative bodies to be submitted to the Shareholders‟ Meeting concerning, among other matters, the modification of the capital stock, distribution of dividends, transformation, merger by incorporation, merger and spin-off; (iv) report to the administrative bodies or the Shareholders‟ Meeting any errors, frauds or crimes that it discovers and suggest courses of action that are useful to the company; (v) analyze, at least quarterly, the trial balance and other interim financial statements drawn up by the company, and (vi) examine the financial statements for the fiscal year and opine thereon. The Audit Committee shall be composed of a minimum of 3 and maximum of 5 members and alternates in an equal number, who may be shareholders or otherwise, elected by the Shareholders' Meeting.

3.1.14. Financial Statements

At the end of the fiscal year, the Board of Executive Officers shall have the following financial statements drawn up: I- balance sheet; II- profit and loss statement; III-income statement, and IV- the cash flow statements. Publicly held companies are also required to prepare a value added statement. The financial statements shall be (i) available to the shareholders at least one (1) month before the date scheduled for the AGO;(ii) published in the Official Gazette and in a newspaper of general circulation at least 5 days before the date scheduled for the AGO; (iii) the subject of an opinion of the Audit Committee, if in operation; and (iv) submitted to the decision of the Annual Shareholders‟ Meeting and subsequently filed in the Commercial Registry, along with the AGO minutes that approved them.

3.1.15. Publicly held Companies

Publicly held companies are under the control of the CVM and are subject to specific rules, in addition to the general rules applicable to closely held companies. The public distribution of securities cannot occur without prior registration at CVM. The sale of the control of a publicly held company is subject to certain conditions (e.g. public offerings) in accordance with CVM rules. Moreover, such companies shall have independent auditors and comply with a series of disclosures determined in the rules issued by CVM.

Law 6,404/76, which regulates corporations, was amended in 2001, with the aim of increasing transparency and increasing the rights of minority shareholders. Therefore, at least theoretically, the reform privileged the inclusion of rules that may be classified as being of corporate governance, including the following: (i) reduction, in the capital of the company, of the number of preferred shares without voting rights or subject to restriction in the exercise of this right; (ii) increased advantages of the preferred shares of publicly held companies (iii) tag along: in the event of the sale of the direct or indirect control of a publicly held company, the acquirer will be required to conduct a public offering for the acquisition of the voting shares held by the other shareholders, at the amount equivalent to at least 80% of that paid per voting share of the control block; (iv) increase in the period of time preceding the publication of the Shareholders‟ Meeting to 15 days in the 1st call and 8 days in the 2nd call (the time for closely held companies is 8 and 5 days, respectively); (v) right to elect and depose one member and one alternate for the Board of Directors to shareholders with more than 15% of the total voting shares and to holders of preferred shares without the right to vote or with

restricted voting rights that represent 10% of the capital stock; (vi) inclusion of the spin-off among the cases that entail the right of withdrawal, if the spin-off implies the reduction of the mandatory dividend, participation in groups of companies or changes in the corporate purpose; (vii) obligation of the controller of a publicly held company, of the shareholders and group of shareholders that elect a member of the Audit Committee to immediately apprise CVM, the Stock Exchange and organized over-the-counter entities of modifications to their shareholder statuses in the company; (viii) in the event of the going private of the company, the obligation of the controlling shareholder or of the company itself to make a public offering for the acquisition of all the shares at a fair price; (ix) increased independence of the Audit Committee, permitting any member to supervise the acts of the administrators, verify compliance with legal and bylaw obligations, and report any errors, frauds or crimes to the administrative bodies, and in case of failure to carry out the necessary measures, by such bodies, to the Shareholders" Meeting, suggesting courses of action that are useful to the company.

3.1.16. Large-sized companies

Large-sized companies, whether S/As or LTDAs, are subject to specific rules, provided by Law 11,638/07. These specific rules were created with a view to the modernization and harmonization of the corporation law with the fundamental principles and best international accounting practices, in order to correct imperfections of the law in force up until then, adapt the law to the social and economic changes in the market and strengthen the capital market itself. Said law requires large-sized companies to adopt a number of measures, including: (i) alterations concerning the recording and drawing up of financial statements, based on international standards (IFRS – International Financial Reporting Standards) and (ii) the requirement of an independent audit. For the purposes of this law, a large-sized company shall be construed as any company that had total assets, in the previous year, in excess of R$ 240 million (US$ 96 million) or an annual gross turnover of more than R$ 300 million (US$ 120 million).

3.2. Limited Company (LTDA)

The LTDAs, which were previously regulated in a somewhat flexible and relatively simple manner by the provisions of Decree 3,708/19, are now disciplined in detail by the new Brazilian Civil Code, approved by Law 10,406/02, which came into force on 11 January 2003.

3.2.1. Cost

Although the Brazilian Civil Code determines that LTDAs must publish certain acts and corporate documents, the maintenance costs of LTDAs are usually lower than those of S/As (see item 3.2.12 below).

3.2.2. Articles of association

The bylaws of LTDAs are called “articles of association” in Brazil. The articles of association allow for a series of provisions established between the partners and can be very flexible.

3.2.3. Name

A LTDA may adopt a firm (name of partners) or name (fictitious name), but must always be accompanied, at the end, by the expression “limitada” or its abbreviation (“Ltda”). The company name shall inform the purpose of the company in a summarized manner.

3.2.4. Capital and quotas

The minimum number of partners is likewise 2 in this type of company. Similarly to the S/A, the capital of a LTDA may consist of cash assets or assets with monetary worth. However, there is no need for the initial payment of any minimum capital subscribed in cash.

The capital of LTDAs is divided into ideal parts (quotas), which are divided among the partners in percentages and are not physically represented by certificates. As the number of quotas held by each partner is established by the articles of association, any transfer or assignment of ownership over the quotas depends on an amendment to the articles of association.

The quota capital may only be increased after all the quotas have been paid up, observing the preemptive right of the partners to participate in the increase, in proportion to their quota holdings. The capital may be decreased by means of a corresponding amendment of the articles of association: (i) after its payment, if there are irreparable losses and (ii) if excessive in relation to the nature of business of the company.

Unless otherwise provided in the articles of association, the transfer to third parties of the quotas or preemptive right to participate in a capital increase, among partners, is not subject to the consent thereof; however, when involving a transfer to third parties, the requirement is that no opposition is made by the partners representing at least ¼ of the quota capital .

3.2.5. Liability of Partners

Once the capital of a LTDA has been fully paid up, the partners are, in principle, no longer personally liable for the company's obligations before third parties, except in the cases of violation of law or of the articles of association. The same provisions contained in the paragraph "Liability of Shareholders" under the heading S/A above, apply to LTDAs as regards the liability of the partners. However, if the capital has not been fully paid up, each partner is personally and jointly liable for the company's corporate obligations, though limited to the total missing amount for the full payment of the quota capital.

Moreover, the partners are jointly and severally liable for debts with the social security authorities, as well as for labor credits, as a result of the application, in these specific cases, of the "disregarding the corporate entity" theory.

3.2.6. Administration

LTDAs are administered by one or more administrators, who may be Brazilian or foreign individuals, residing in Brazil, and not necessarily partners. If the articles of association allow the administration to be exercised by a non-partner, the designation of the latter will require the unanimous approval of the partners, when the quota capital is not fully paid up, or the resolution of the partners representing at least 2/3 of the quota capital, when the capital has been paid up. In addition, the deposal of an administrator who is a partner of the LTDA, duly nominated in the articles of association, requires the approval of partners representing at least 2/3 of the quota capital, unless the articles of association determine otherwise.

The responsibility of the administrator of a LTDA before third parties, in principle follows the previously made comments applicable to administrators of S/As. In practice the administrators of LTDAs are being held to answer in the labor and social security fields, jointly with the company, regardless of the cause of the event.

The Brazilian Civil Code permits the creation of a Board of Directors and Audit Committee for LTDAs, whose respective duties and operation shall be regulated in the articles of association.

The remuneration of the administrators of a LTDA is not subject to a minimum amount or limit.

3.2.7. Profit

It is not necessary to determine the minimum profits to be distributed to the partners in this type of company. The participation of partners in the company profits, in a different proportion to such partners' interests in the quota capital is permitted. However, no rule that excludes a partner from profit sharing is permitted.

3.2.8. Resolutions

The law stipulates some minimum quorums for the approval of certain matters, such as: (i) the amendment of the articles of association, and the merger by incorporation, merger, spin-off or dissolution of the company (3/4 of the quota capital); (ii) designation of an administrator by a separate instrument to the articles of association, deposal of non-partner administrators, fixing of the remuneration of administrators and petition for judicial reorganization (more than half the quota capital); (iii) other cases provided for in law or in the articles of association, if the latter does not call for a higher quorum (majority vote of those present).

Partner resolutions shall be passed in a partners' meeting (for companies with up to 10 partners) or in a general meeting (for companies with more than 10 partners). If the articles of association are silent on the subject, the rules of the law that disciplines general meetings will apply, which are very similar to the rules applicable to the shareholders' meetings of S/As.

A general or partners' meeting shall be held annually during the first 4 months subsequent to the end of the annual accounting period for the approval of the administrator accounts and distribution of profits for the year.

3.2.9. Exclusion of partners

The law provides for the possibility of the non-judicial exclusion of any partner who is jeopardizing the company's continuity, by virtue of acts of undeniable gravity, as resolved by the partners representing more than half the quota capital, as long as the articles of association provide for exclusion for good cause and with due regard to the legal procedures.

3.2.10. Partners' Agreement

The execution of Partners' Agreements in LTDAs is also possible, similarly to S/As.

3.2.11. Supplementary Regulation

In accordance with the Civil Code, Law 6,404/76 (Corporation Act) applies secondarily to LTDAs when so determined in the articles of association. In cases where the Civil Code and the articles of association are imperfect and incomplete, the general rules provided in the Civil Code for the so-called simple companies (companies designed to perform an intellectual activity, of a scientific, literary or artistic nature) will, in principle, be applied.

3.2.12. Large-sized LTDAs

Law 11,638/07 determines the application of the aforesaid Law 6,404/76 to large-sized LTDAs, in respect of matters concerning the recording and preparation of financial statements and the requirement of an independent audit; see the explanation on this matter in the Large-sized companies paragraph of item 3.1. Corporation (S/A). In this context, among the provisions of the law for large-sized LTDAs, there is some discussion going on as to whether these companies are also required to publish their financial statements,

there being conflicting opinions regarding the interpretation of the rule. For the purposes of said law, large-sized LTDAs are those companies that have total assets, in the previous year, in excess of R$ 240 million (US$ 60 million) or annual gross turnover of over R$ 300 million (US$ 75 million).

3.2.13. Choice of Business Entity

Choosing between LTDA and S/A will depend on each specific case, but by and large, one may say that LTDAs work very well for the operation of subsidiaries whose total quota capital is held by foreign companies. In case of joint ventures in Brazil, the use of a S/A is recommended due to, among other things, the legal security conferred by the already officially accepted interpretation of the rules that govern this type of company.

3.3. Branch Offices of Foreign Companies

A foreign company may directly operate in Brazil through a branch office, i.e, through an extension of the foreign corporate entity itself. However, this procedure presents some disadvantages in comparison with the establishment of a business concern in Brazil through ownership interests, for the following reasons:

a) the need of prior authorization, through an act of the Federal Executive Branch;

b) prohibition of the remittance of royalties to the head office abroad for the use of trademarks and exploitation of patents, and

c) tax disadvantages, as indicated in item 6.1.1.2 below.

3.4. Corporate Reorganization Operations and Sale of Establishments

Corporate reorganization operations involving the transformation, spin-off, merger and merger by incorporation of companies may be conducted both by S/As and by LTDAs.

In a transformation, the company is transformed from one type of company to another, without the dissolution or interruption of its activities.

In a spin-off, the company transfers portions of or even its total equity (assets and liabilities) to one or more companies, with the continuation of the spun-off company, if its equity has been partially transferred, or with its extinction, if all its equity has been transferred. The law stipulates specific succession rules for the obligations of the spun off or extinguished company.

In a merger, two or more companies are combined to form a new company, which succeeds them to all their original rights and obligations.

In a merger by incorporation, one or more companies will be absorbed by another company, which succeeds them to all their rights and obligations. S/As and LTDAs may further sell their industrial or commercial establishments, in which case the acquirer will succeed to all their respective rights and obligations. In this regard, please refer to the notes contained in chapter 17 below, notably as regards the new Bankruptcy Law.

3.5. Consortium

Different organizations, S/As or LTDAs, under the same control or otherwise, may set-up a consortium to carry out a specific undertaking.

Through a consortium several companies, by mutually associating, are able to assume certain activities, which could not be carried out individually by each company, due, in most cases, to technical or economic financial conditions.

As a general rule, a consortium is not a corporate entity and its members, in principle, are only bound under the conditions provided for in its incorporation agreement. Each member company is accountable for its own obligations, without the presumption of joint and several liability.

However, exceptionally, just for federal tax purposes, this rule does not apply, since in operations in the consortium's own name, the consortium will satisfy the respective tax obligations and the member companies will be jointly responsible for these obligations. In the labor, tax and consumer fields, however, such joint and several liability may also be constituted, as applicable.

This type of association is common for participation in procurement processes and in the sectors responsible for the concession of public and private works and services, and imports and exports.

The consortium incorporation agreement and its amendments must be filed at the Commercial Board (Junta Comercial) of the venue of its headquarters.

3.6. Undisclosed joint venture partnership (SCP)

This type of association does not appear to third parties, for it consists merely of a private agreement, entered into by two or more participants, with the purpose of permitting the exploitation of a business opportunity or specific business activity. SCPs do not have a distinct legal identity from that of their participants.

The law differentiates two types of participants: (i) the visible partner: develops the component activities of the company purposes in his individual name and assumes responsibility for the company obligations in an exclusive manner, and (ii) the secret partner: appears merely as an investor, not appearing to third parties; assumes responsibility towards the visible partner within the limit provided in the company's formation instrument.

The formation of an SCP is not subject to any formality, and may be proved by means of any evidence permitted by Brazilian law. It is most commonly used in particular operations, such as import, export, and participation in transactions, procurements and others.

3.7. Wholly owned subsidiary

The Corporation Law also provides for the wholly owned subsidiary, which is a strictly unipersonal corporation, whose only shareholder shall necessarily be a Brazilian company. Its creation can be originated or derived. In the former case, it will be incorporated by public deed. Its creation will be derived when the company is converted into a wholly owned subsidiary through the acquisition, by a Brazilian company, of all its shares or through the incorporation of all the shares of the capital stock into the net equity of another Brazilian company.

# 4. INDUSTRIAL PROPERTY

Industrial Property is regulated by Law 9,279/96, the Industrial Property Act (Lei da Propriedade Industrial - LPI), which was drawn up with the purpose of adapting Brazilian legislation to the requirements established by the World Trade Organization (WTO). Therefore, the protection conferred by the LPI on patent and trademark rights' owners located both in Brazil and abroad is consistent with international industrial property protection standards.

Invention patents are valid for a period of 20 years and the utility model type, for the period of 15 years, as from the date of the respective filing. Patents filed in Brazil are only valid in Brazil. However, in this case, because of the Patent Cooperation Treaty (PCT) the process for filing patents abroad will be simpler.

The LPI permits the compulsory license of patents when their owner exercises the rights resulting therefrom in an abusive manner, commits abuse of economic power through them, when there is no exploitation of the patent's subject matter in the Brazilian territory or the incomplete manufacture thereof. In these cases, the license may only be applied for by an interested party with a legitimate interest in and the technical capacity for the efficient exploitation of its subject matter, three years after the patent granting date.

It is important to point out that though pharmaceutical products and processes have been patentable since the enactment of the LPI, the granting of patents in this segment is contingent on prior approval from the Brazilian Sanitary Surveillance Agency (Agência Nacional de Vigilância Sanitária – ANVISA).

With respect to trademarks, the Law permits the forfeiture of the respective registration, at the request of third parties with legitimate interests, if its use has not been commenced in Brazil after the passage of 5 years from its granting date or if its use has been interrupted for more than 5 consecutive years or, further, if during this period, the trademark has been used with a modification altering its primitive distinctive characteristics.

Following the Paris Union Convention for the Protection of Industrial Property (art. 6 bis 1), Law 9,279/96 left it clear that well-known trademarks, including service trademarks, enjoy special protection, regardless of whether they have been previously applied for or registered in Brazil. However, there is no objective criterion to classify a trademark as a "well-known" trademark; this will be decided on a case by case basis based on the documents submitted by the applicant showing that the trademark is "well-known".

In 2013, the Brazilian Patent and Trademark Office (INPI) published Resolution 107/13, which regulates the procedures for obtaining protection to famous marks. Famous marks, unlike "well-known" trademarks, enjoy protection in a range of specialties, that is, they are not related to only one specific activity carried out by their owner.

The law also provides for the punishability of crimes against industrial property, including patents, industrial designs, trademarks, geographical and other designations, and against unfair competition, also consolidating the dispersed rules on the subject.

Trademarks, patents and industrial designs shall be registered at the Brazilian Patent and Trademark Office (INPI).

Moreover, the acts and contracts related to the licensing of industrial property (use of trademarks and exploitation of patents), technology transfer, franchise, technical, scientific and other support services are subject to registration with INPI. The said registration is a condition for:

a) the publicity, i.e., the validity of the acts or contracts before third parties;

b) the remittance abroad of payments due, within the legal limits;

c) the tax deductibility of the amounts paid, within the limits of the law.

Trademark and patent royalty payments are only permitted in the cases of invention or registration of trademarks granted by INPI. Trademarks or patents that have merely been applied for, but are not registered, entitle their holders to enter into licensing agreements, but do not make the receipt of remuneration as a result of the license established lawful. The privilege or registration of an extinct trademark, or trademark in the process of annulment or cancellation, or privilege or registration of a trademark whose owner is not eligible for remuneration, will not qualify for royalties.

The deductibility of royalty expenses (for the use of trademarks, patents or industrial designs) and with remuneration for technology transfer and the provision of technical support by a subsidiary, is limited to a maximum of 5% of net sales revenue, with due regard to the specific limits for each industrial activity sector (Ordinance 436/58 of the Ministry of Finance). The tax deductibility for the use of trademarks is in all cases limited to 1%.

The tax deductibility of the remittances to the licensor or grantor overseas depends not only on the registration of the respective contracts with INPI, but also their registration with BACEN, today done electronically by the commercial bank responsible for the payment remittance, through the Electronic Declaratory Registration (Registro Declaratório Eletrônico – RDE), in which the conditions registered and authorized by INPI are checked online, at the time of the remittance.

Controlled companies established in Brazil may also remit royalties for the exploitation of invention patents, use of trademarks and remuneration for technology transfer and the provision of technical, scientific or similar support services to their parent companies abroad.
INPI, based on its own interpretation of the federal tax legislation, understands that generally the amount to be remitted in cases of control relations may also not exceed the maximum annual limit of up to 5% of net sales revenue of the product manufactured or sold.

At the time of the remittance of royalties, remuneration for technical support and similar services or payment for technology transfer, there is withholding of Income Tax at Source (IRF), at the rate of 15%, except when there is an international agreement to avoid double taxation determining a lower rate (art. 710 of the RIR and art. 2A of Law 10,168/00). However, if the royalty remittance is made in favor of a person domiciled in a Tax Haven, the aforesaid rate rises to 25% (art. 685 of the Income Tax Regulation (RIR)). This position was reaffirmed in art. 17 of Normative Instruction (Instrução Normativa – IN) 1,455/2014.

In addition to IRF, the remittance will also be subject to the payment of the economic domain intervention contribution (CIDE) at the rate of 10%, which is earmarked for funding technological development and interaction programs between Brazilian universities and research centers and private enterprise (art. 2 paragraph 4 of Law 10,168/00).

Remittances abroad for the payment of technical, management and similar support services that do not imply technology transfer are also subject to the payment of IRF and CIDE (art. 2 paragraph 2 of Law 10,168/00).
In addition to the IRF and the CIDE, remittances of royalties are also subject to IOF (IOF-Câmbio) at the rate of 0.38% on the amount of the remittance (art. 11 of Decree 6,306/07).

If Brazil has signed an agreement to avoid double taxation with the country licensing the technology, then income tax exemption or credit mechanisms will certainly be applied in that country according to the provisions of the relevant treaty and local laws, but only in relation to the portion withheld as IRF, excluding the possibility of the set off of amounts withheld in the way of CIDE.

There is a possibility of the Municipality of São Paulo additionally exacting ISS (Service Tax) at the rate of 5% for “The assignment of the right of use of trademarks and advertising signs” or of 2% for “The licensing or assignment of the right of use of computer programs”, since such operations are currently listed as service by the São Paulo Municipal Tax Administration (art. 1, item 3.01 and item 1.05, respectively, of Municipal Decree 53,151/12).

# 5. REAL ESTATE

5.1. Acquisition of real property

The most common method of acquiring real property between living persons is the registration of the title deed at the Real Estate Registry Office.

Another method of acquiring real property is usucaption: those who, for 15 years, without interruption, or opposition, possess a property as their own, acquire its ownership, regardless of title and good faith; and may request that the judge declares as much by a judgment, which will serve as the title for registration in the Real Estate Registry Office. This period may be reduced in certain cases. It may be reduced to 10 years, for example, if the possessor has established his habitual residence on the property, or carried out works or services of a productive nature on it. There are other cases of usucaption provided for in law.

The purchase of urban properties can be freely made by:

a) a foreign individual or corporate entity residing or domiciled abroad, whereas the investment made in the property purchase is not subject to registration as foreign capital with Central Bank (BACEN), and

b) by a corporate entity based in Brazil but controlled by foreign capital, whereas the investment made in the property purchase is subject to registration with BACEN, as foreign capital invested in the Brazilian company.

There are restrictions in statutory law with respect to the acquisition of real property located in national security and rural areas, by foreign individuals or corporate entities, or by Brazilian corporate entities controlled by foreigners residing or based abroad.

Rural real property is subject to the following basic rules:

a) the total sum of the rural areas owned by foreigners cannot exceed 1/4 of the surface area of the Municipalities and persons of the same nationality cannot own more than 40% of the said limit;

b) the surface areas are divided into module units, whose areas, depending on the locality, vary between 5 ha. (in the Greater São Paulo region) and 100 ha. (according to the region of the Country);

c) foreign individuals residing in Brazil may freely purchase areas of up to 3 module units for undefined exploitation, provided that the above surface area restrictions are observed and it is the foreign individual's first purchase (in practice, it is recommended that the National Land Development Agency (Instituto Nacional de Colonização e Reforma Agrária – INCRA) is consulted to ensure that the purchase complies with the surface area restrictions); for areas in excess of 3 and up to 50 module units, and for the operation of a second purchase, authorization from INCRA must be obtained, whereas for areas of between 20 and 50 module units, a land use project will also have to be submitted; for areas of 50 to 100 module units, approval needs to be obtained from the President of the Republic, and it will have to be evidenced that the project is of national interest and approved by the National Defense Council; for the purchase of areas in excess of 100 module units authorization from Congress will have to be obtained;

d) foreign corporate entities authorized to operate in Brazil or corporate entities based in Brazil but controlled by individuals or corporate entities residing or based abroad, must obtain authorization from the Ministry of Land Development, through the competent agency, in this case INCRA;

e) a foreign individual that has Brazilian children or is married under the partial or community property system with a Brazilian person are free to purchase rural property.

Recently, there was a significant change in the understanding that was being applied to item “d” above.

Until July 2010, the understanding that prevailed was that of the former AGU (Office of the Federal Attorney General) opinion in the sense that there was no distinction between the Brazilian company of national capital and the Brazilian company of foreign capital. Therefore, a company based in Brazil, whose capital was controlled by a foreign corporate entity, did not suffer any type of restriction, either to purchase or lease rural property in Brazilian territory, provided that the property was not located in the Country’s frontier strip.

After August 2010, through a new AGU opinion, signed by the then President of the Republic Luiz Inácio Lula da Silva, Brazilian companies whose capital is controlled by a foreign corporate entity received the same treatment as a foreign company, and began to suffer the restrictions set forth in Law 5.709, of 7 October 1971, namely: (i) cannot acquire a rural area that has more than 50 modules of undefined exploitation; (ii) only rural real property to be used for the implementation of cattle breeding, agricultural and industrial projects and that are linked to the corporate purposes set forth in their corporate bylaws or articles of association and approved by the Ministry of Land Development and INCRA may be acquired or leased.

On 3 December 2012, the Office of Judicial Administration of the State of São Paulo Supreme Court (Corregedoria Geral de Justiça do Tribunal de Justiça do Estado de São Paulo) issued Opinion 461/2012-E holding that Law 5,709/71 is unconstitutional and advising the State of São Paulo notaries to ignore the restrictions and guidelines set forth in that Law.

On 25 June 2014, the federal government and INCRA filed an action against the State of São Paulo in the Federal Supreme Court seeking the annulment of Opinion 461/2012-E. The proceeding is at its beginning and there are no decisions regarding this matter.

Nonetheless, this is a hot topic that must be analyzed on a case by case basis, taking into account the negotiated terms and the State in which the property is located.

Furthermore, it is important to remember that a determination exists whereby the sum of the rural areas belonging to foreign persons or Brazilian companies controlled by foreign companies shall not exceed 25% of a municipality.

Special restrictions are also imposed on rural properties located in areas known as frontier strips, which are considered indispensable to national security. This area is defined as the 150 kilometer-wide internal strip (equivalent to 93 miles), running parallel to the borderline of the national territory.

The purchase of rural land within the frontier strip, by a foreign individual or corporate entity, or by a company that has any foreign ownership interest (whether majority or minority, as a shareholder or member of the Board), will depend on prior approval from the National Defense Council (Conselho de Defesa Nacional).

Prior approval from the National Defense Council will also be required for the establishment or operation, within the frontier strip, of industries that are of interest to national security, listed as such in an Official Decree, and for the establishment, in this same strip, of companies engaged in the following activities:

a) prospecting, extraction, exploitation and utilization of mineral resources, except for those of immediate application in civil construction, as classified in the Mining Code, and

b) land settlement and rural developments.

The companies listed in the foregoing paragraph shall, necessarily, satisfy the following conditions:

i) at least 51% of the capital must be held by Brazilians;

ii) at least 2/3 of the employees must be Brazilians, and

iii) the majority of the administrators and managers shall be Brazilians, who shall be guaranteed predominant powers.

Rural real property is subject to the Rural Land Tax (ITR), levied pursuant to the respective Tax Table. The rate ranges between 0.03% and 20%, in accordance with the size of the property, its utilization and the efficiency of its exploitation and is applicable on the "bare land" value, which is construed as the total worth of the property, minus the value of its buildings, facilities, improvements, permanent and temporary crop cultures, cultivated and improved pastures and planted forests. The respective rates and other legal provisions concerning the ITR are set forth in IN/SRF (Normative Instruction/Federal Revenue Department) 256, of 11 December 2002. An increase in the Rural Land Tax rate may occur, in accordance with the utilization ratio of the land and efficiency of the property's exploitation; this increase is a penalization factor, aimed at discouraging the maintenance of unproductive properties.

Moreover, city properties are subject to a land tax levied on plots of land, and to a building tax - for buildings. In the City of São Paulo, the rates of this tax for 2006 vary between 0.8% and 1.6%, for residential properties and 1.2% to 1.8% for commercial property and land, calculated on the fair market value of the property, as determined by the Local Government Authority.

5.2. Mortgage

A real property may be given in mortgage as security for the debts or obligations of its owner or of third parties. The mortgaged property is subject, by a real relationship, to the performance of the obligation.

5.3. Deed of Trust Form of Mortgage ("Alienação Fiduciária")

Law 9,514, of 20 November 1997, which disciplines the Real Estate Financing system, instituted the deed of trust form of mortgage ("alienação fiduciária") of real property. Prior to this law, this guaranty was only permitted to finance the purchase of movables. As in a mortgage, the assets given in "alienação fiduciária" are subject, by real relationship, to the performance of the obligation.

5.4. Construction Right

Owners may erect constructions on their land as they deem convenient, respecting the right of neighbors and administrative regulations. The neighborhood right is regulated in the Civil Code. The administrative regulations (construction rules and zoning restrictions) are mainly set forth in municipal laws. Special attention should be paid with respect to the location and authorization for the establishment of manufacturing plants, which require the approval of the zoning and pollution control agencies.

# 6. TAX SYSTEM

## 6.1. Main Federal Taxes

### 6.1.1. Income Tax

Corporate entities taxed by Actual Taxable Income may determine their income on the basis of the annual balance sheet at 31 December of each year or by quarterly trial balance sheets (arts. 220 and 221 of the Income Tax Regulation approved by Decree 3,000 of 26 March 1999 – RIR).

Corporate entities that have profits, earnings and capital gains from abroad, are obliged to determine Actual Taxable Income (art. 246, III and 394 of the RIR).

Income tax is levied at the rate of 15% on the Actual Taxable Income calculated annually (annual Actual Taxable Income) or quarterly (quarterly Actual Taxable Income) by corporate entities, in accordance with their accounting records, prepared pursuant to the commercial and tax laws (art. 541 of the RIR). .

Under specific circumstances, the tax administration may arbitrate the income amount (art. 530 of the RIR); the applicable rate on taxable income for these cases is also 15%, with due regard to the comments made further on relating to the tax base of the tax.

Corporate entities with partners or shareholders resident or domiciled abroad may calculate income tax by Presumed Income, providing that total gross income in the previous calendar year did not exceed the R$ 78 million limit, equivalent to approximately US$ 19.5 million, or R$ 6.5 million, equivalent to approximately US$ 1.62 million, multiplied by the number of months of activity in the preceding calendar year, when less than 12 months (art. 13 of Law 9,718 of 27 November 1998 with the wording introduced by art. 7º of Law 12,814, of 16 May 2013).

Companies, including branch and representative offices or agencies of foreign corporate entities in Brazil with their main offices abroad that present monthly taxable, presumed or arbitrated income in excess of R$ 20 thousand, equivalent to approximately US$ 5 thousand, will be subject to an income tax surtax levied at the rate of 10%

Actual Taxable Income is the net income (considered as the algebraic sum of operating income, non-operating results and ownership interests) corresponding to the base period, adjusted by the additions, exclusions or offsets determined by law (art. 247 of the RIR).

The Presumed Income, on which income tax is levied, corresponds to the result of the application of the percentages predetermined by law on gross income, of between 1.6% and 32%, according to the type of activity performed by the corporate entity (art. 519, paragraph 1 of the RIR).

For companies electing for the annual Actual Taxable Income calculation system, the tax losses and negative basis for Social Contribution on Net Profits (CSLL) may be offset up to the maximum limit of 30% of net income adjusted by the additions and exclusions permitted by the income tax and CSLL legislations. For quarterly Actual Taxable Income, the tax loss of a quarter can only be carried forward up to the limit of 30% of the Actual Taxable Income of the subsequent quarters. In the case of Presumed Income, it is not possible to offset tax losses.

6.1.1.1. Remittances Abroad

Remittances of profits and dividends abroad, on the basis of the results determined as from 1 January 1996, are not subject to Withholding Income Tax ("IRRF" - art. 692 of the RIR).

Regulations issued by the Federal Revenue Department ("RFB") have established that the profits and dividends calculated in 2014 in the corporate accounting records exceeding the amounts calculated in the tax accounting records (the latter calculated according to the rules applicable to the Transitional Tax Regime) will be subject to taxation depending on the beneficiary (natural person or legal entity) and on the beneficiary's domicile (in case of beneficiaries resident or domiciled abroad, the surplus will be subject to the IRRF at the rate of 15%, or of 25% if the beneficiary is located in a country or dependency of favored taxation, as referred to in art. 24 of Law 9,430, of 27 December 1996 – the so-called "tax havens" (art. 28 of the RFB IN 1,397 of 19 September 2013, with the wording introduced by RFB IN 1,492, of 17 September 2014).

In general, remittances of interest are subject to the IRRF at the rate of 15% (art. 1 of Law 9,959, of 27 January 2000). This rate is increased to 25% if the recipient of the remittances resides in a tax haven or tax favorable jurisdiction.

Interest remitted abroad may be deducted from the calculation of taxable profit of a corporate entity in Brazil, with limitations.

In the case of the payment of interest to related persons residing abroad and non-related persons residing in a tax haven or subject to privileged tax systems, interest may be deducted up to an amount that does not exceed the value calculated based on the specific rate plus a percentage margin as spread, as defined by the Ministry of Finance based on the market average (currently, Ordinance 427, of 30 July 2013, issued by the Ministry of Finance, establishes a 3.5% spread for such payments). In the event of transactions in dollars, the rate applicable to Brazil's sovereign bonds issued in the foreign market in dollars will apply. In the event of transactions in reais, the rate applicable to Brazil's sovereign bonds issued in the foreign market in reais will apply. In the remaining cases, the London Interbank Offered Rate – LIBOR is applicable for a period of six (6) months (art. 22 of Law 9,430 of 27 December 1996).

With regard to undercapitalization rules, in the case of payment of interest to a related person that is not a resident of a tax haven and that is not subject to a privileged tax regime, the limit for deduction purposes must not exceed up to twice the amount of the related party's (creditor) interest in the net worth of the legal entity residing in Brazil (art. 24 of Law 12,249 of 11 June 2010). In the case of remittances of interest to a beneficiary that is a resident in a tax haven or that is subject to a privileged tax regime, only the interest will be deductible, on proportional terms, as long as the debt does not exceed 30% of the net worth amount of the corporate entity residing in Brazil (art. 25 of Law 12,249/2010).

In both cases, the total amount of the aggregate indebtedness of the corporate entity resident in Brazil, cannot be higher than these limits (twice and 30% of the net worth, respectively.

Remittances of royalties, or of remuneration for technical support or similar services or the payment of technology transfer, are subject to the IRRF, at the rate of 15%, except when there is an international agreement to avoid double taxation, providing for a lower rate (art. 710 of the RIR and art. 3 of Provisional Measure (Medida Provisória - MP) 2,159-70/01). It is important to note that such remittances are also subject to the levy of the Economic Domain Intervention Contribution (CIDE), at the rate of 10% (see comments in item 6.1.6.5).

Earnings from labor, with or without an employment relationship, and income from the provision of services of a personal nature paid, credited, delivered, employed or remitted to persons resident or domiciled abroad, are subject to the levy of withholding income tax at the rate of 25%, with due regard to the cases of agreements to avoid double taxation (art. 685, II, “a” of the RIR).

The income tax rate levied on any amounts that constitute remuneration of invested capital, including the remuneration produced by variable income securities, such as interest, bonuses, commissions, premiums, discounts and profit sharing, and positive results received on investments in investment funds and clubs, produced by federal government securities, purchased as of 16 February 2006, when paid, credited, delivered or remitted to beneficiaries resident or domiciled abroad is reduced to zero, except in countries that do not tax income or that tax it at a maximum rate of under 20% (art. 1 of Law 11,312/06).

The income tax rate levied on income received on investments in Equity Holding Funds, Equity Holding Quota Investment Funds and Emerging Company Investment Funds when paid, credited, delivered or remitted to individual or institutional beneficiaries resident or domiciled abroad that conduct financial transactions in the Country in accordance with the rules and conditions established by the National Monetary Council (art. 3 of Law 11,312/06) is reduced to zero as well.

Any amounts paid, credited, delivered, employed or remitted for any reason, either directly or indirectly, to individuals or corporate entities resident or established abroad and residents of tax havens will only be deductible from the taxable income of a corporate entity in Brazil if the effective beneficiary of the entity abroad and recipient of such amounts is identified, if there is proof of the operating capacity of the individual or entity abroad to carry out the operation, and documentary proof of the payment of the respective price and receipt of the goods, rights or use of the service (art. 26 of Law 12,249/2010).

6.1.1.2. Branch Office of a Foreign Company

As previously indicated in item 3.3 above, the establishment of a branch office produces the following, among other disadvantages of a tax nature: impossibility of deducting expenses paid or credited to the head office abroad, as royalties for the use of patents and manufacturing processes or formulas or for the use of trademarks (art. 353, III, “a”, of the RIR).

6.1.1.3. Capital Gains on Financial Investments

Earnings and capital gains derived from financial investments by corporate entities with their principal place of business and administration in Brazil, of Brazilian or foreign capital, for fixed income or variable income funds are subject to the levy of withholding income tax at the following rates: 22.5% on investments with terms of up to 180 days; 20% on investments with terms of 181 to 360 days; 17.5% on investments with terms of 361 to 720 days; 15% on investments with terms of over 720 days (art. 1 of Law 11,033/04 and RFB Normative Instruction (Instrução Normativa – IN) 1,585 of 31 August 2015).

Earnings from financial loan operations between corporate entities or between corporate entities and natural persons are subject to the same tax as fixed-income investments (art. 47 of RFB IN 1,585/2015). In the case of intercompany loans, the tax levy also occurs when the operation is conducted between parent companies and subsidiary, associated or related companies. The tax is also levied on income earned by means of combined operations, conducted in or out of the stock exchanges (art. 730, I of the RIR).

The tax is not levied on earnings (fixed or variable income) owned by financial institutions in general and from investment fund portfolios (art. 14, I and 71, I and II of RFB IN 1,585/2015).

These earnings and gains shall constitute the Actual Taxable or Presumed Income and the tax withheld or paid may be offset against the tax due in the monthly or annual calculation of Actual Taxable Income, or quarterly calculation, in the case of Presumed Income.

Earnings and capital gains derived from financial investments by individual or institutional investors resident or domiciled abroad (other than a tax haven) suffer the levy of withholding income tax, at the rate of 15% for fixed income funds, and at rates of between 10% and 15% for variable income funds (art. 29 of MP 2,158-35/01, art. 16 of MP 2,189-49/01 and arts. 88 and 89 of RFB IN 1,585/2015).

Capital gains received by foreign investors from operations conducted in stock, commodity, futures and similar exchanges are not subject to the levy of income tax (art. 90 of IN 1,585/2015), including any sale of quotas of Market Index Funds – Stock Index Funds, with the exception of capital gains from combined operations in the put and call option markets in the stock, commodity and futures exchanges ("box"), in the forward market in the stock, commodity and futures exchanges, in sales operations with guaranty and without daily adjustments, in the over-the-counter market, and also in operations with gold (financial asset) outside the exchanges, which are taxed as fixed-income financial investments at the rate of 15% (art. 684 of the RIR).

The tax system relating to foreign fixed and variable-income investments, transcribed above, does not apply to investments originating from tax havens, which will be subject to the same rules established for persons resident or domiciled in the Country (art. 7 of Law 9,959/00).

6.1.1.4. Treaties to Avoid Double Taxation

It is important to mention that Brazil has signed treaties to avoid double taxation of income tax that are currently effective, with the following countries: South Africa, Argentina, Austria, Belgium, Canada, Chile, China, Korea, Denmark, Ecuador, Spain, the Philippines, Finland, France, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Peru, Portugal, the Netherlands (Holland), Sweden, the Czech Republic, Slovakia, Trinidad and Tobago, Turkey, Ukraine and Venezuela (the latter only for taxes relating to air transport – Decree 86,354/81) (art. 997 of the RIR).

6.1.2. Import Duty on Foreign Products – (Imposto sobre a Importação de Produtos Estrangeiros - I.I.)

As a general rule and unless otherwise provided for by law, products imported into the Brazilian territory are subject to duties at rates of between 0% and 35% (the latter with regards to automobiles) on the customs value (generally, CIF). However, most taxed products are subject to rates of between 10% and 20%. See also paragraph 23.2.

6.1.3. Export Duty on National or Nationalized Products (Imposto sobre a Exportação de Produtos Nacionais ou Nacionalizados - I.E)

Although virtually inapplicable in practice, exports of some few national or nationalized products are subject to export duty at rates of 0% to 150%, unless otherwise provided by law.

6.1.4. Tax on Industrialized Products or Excise Tax – (Imposto sobre Produtos Industrializados – IPI)

IPI is levied on the manufacture and importation of products. It is a tax on consumption, the mechanics of which obey the product selectivity principle, in accordance with the product's essentiality. Products deemed to be superfluous are subject to a higher tax burden, whereas those with a higher degree of essentiality are treated differently.

IPI rates currently range between 0% and 300%, the latter applicable to cigarettes. Most products are subject to rates of 10% to 20% (Decree 7,660 of 26 December 2011 – The IPI Table – TIPI).

IPI is a non-cumulative tax; this mechanism consists of offsetting what is due in each operation, by the credit system, against the tax charged on the previous operation.

We should point out that, in addition to industrialized products destined for export, books, newspapers, periodicals and the paper used for their printing; gold, when defined by law as a financial asset or exchange instrument; electric power, petroleum by-products, fuels and minerals of the Country are not subject to IPI (art. 18 of Decree 7,212 of 15 June 2010 - IPI Regulation – "RIPI").

6.1.5. Tax on Credit, Insurance and Foreign Exchange Operations, or on Operations relating to Negotiable Instruments and Securities – (Imposto sobre Operações de Crédito, Seguro e Câmbio, ou sobre Operações relativas a Títulos e Valores Mobiliários – IOF)

(i) Credit operations

IOF is levied on credit operations at the time of the total or partial delivery of the sum or of the amount that constitutes the subject matter of the obligation, or its availability to the interested party (art. 3 of Decree 6,306 of 14 December 2007).

The taxpayers are the borrowers of the credit. IOF is charged at the maximum rate of 1.5% per day on the credit operation amount, corresponding to the principal sum that constitutes the subject matter of the obligation, or the amount made available to the interested party, and may be reduced to zero in express cases provided for in the legislation (arts. 6 and 8 of Decree 6,306/07).

Currently, the generally applied rate is 0.0041% (when the borrower is a corporate entity) or 0.0082% (when the borrower is a natural person) per day in the aforementioned operations (art. 7 of Decree 6,306/07), which, as a general rule, is limited to the product of the multiplication of the daily rate by three hundred and sixty five days.

Moreover, an additional 0.38% rate is levied on credit operations, regardless of the term of the transaction and of whether the borrower is an individual or corporate entity.

(ii) Foreign exchange operations

In this case, the IOF is levied on the delivery of the local or foreign currency, including the document representing the same, or its availability to the interested party, in a sum corresponding to the foreign or local currency delivered or made available thereby, at the time of the settlement of the foreign exchange operation (art. 11 of Decree 6,306/07).

IOF taxpayers are the buyers or sellers of foreign currency in operations concerning financial transfers to or from abroad, respectively, including manual foreign exchange operations and the companies authorized to operate exchange transactions are responsible for the payment (art. 13 of Decree 6,306/07).

The tax base for the calculation of IOF is the sum in local currency received, delivered or made available, corresponding to the sum, in foreign currency, of the foreign exchange operation. The maximum rate is 25%, currently reduced to thirty-eight hundredths of a percent (0.38%), except for the events below, among other cases (arts. 14, 15 and 15-B of Decree 6,306/07):

a) on foreign exchange transactions related to the remittance to Brazil of revenues arising from the export of goods and services: zero;

b) on foreign exchange transactions to remit to Brazil cash donations received by public financial institutions controlled by the federal government and aimed at preventing, monitoring and fighting deforestation and promoting the conservation and sustainable use of Brazilian forests pursuant to Law 11,828 of 20 November 2008: zero;

c) on foreign exchange transactions to transfer from and to abroad sums related to investments in investment funds abroad, subject to the limits and conditions determined by the Brazilian Securities Commission (Comissão de Valores Mobiliários – CVM): zero;

d) on foreign exchange transaction carried out by international air transport companies headquartered abroad to remit their local revenues: zero;

e) on foreign exchange transactions to remit foreign currencies to Brazil to cover the expenses incurred in Brazil with the use of credit cards issued abroad: zero;

f) on foreign exchange operations of an interbank nature between institutions that make up the National Financial System authorized to operate in the foreign exchange market and between the latter and financial institutions overseas: zero;

g) on the settlement of foreign exchange transactions to remit from or to Brazil the sums paid as foreign loan and financing, except for the transactions under “m” below: zero;

h) on the settlement of foreign exchange transactions to remit interest on shareholders’ equity and dividends paid to the foreign investor: zero;

i) on the settlement of foreign exchange transactions carried out by the foreign investor to remit to Brazil – including through concurrent operations – sums to be used in meeting the initial or additional margin requirements of stock, commodities and futures exchanges: zero;

j) on the settlement of concurrent foreign exchange transactions to remit to Brazil sums through the cancellation of depositary receipts for investments in shares traded on a stock exchange: zero;

k) on foreign exchange transactions for the fulfillment of obligations imposed by credit card managers or commercial or multiple banks acting as the credit or debit card issuer, as a result of a purchase of goods and services abroad by the credit card user, subject to the provisions in clause “l” below: six point thirty-eight per cent;

l) on foreign exchange transactions for the fulfillment of obligations imposed by credit and debit card managers or commercial or multiple banks acting as the credit card issuer, as a result of a purchase of goods and services abroad, whenever the credit card user is the federal, state or municipal government or the Federal District, or any of their related companies: zero;

m) on the settlement of foreign exchange transactions carried out to remit sums to Brazil – including through concurrent operations – in relation to a foreign loan subject to registration with the Central Bank of Brazil (Banco Central do Brasil), whether directly or through the issuance of bonds in the foreign market with a payment term of up to one hundred and eighty days: six per cent;

(iii) Insurance Operations.

In insurance operations, the taxable event of IOF is the receipt of the premium. The expression “insurance operations” includes life and related insurance, personal and occupational accident insurance, and insurance covering property, values, things and other non-specified insurance. The taxpayers are the insured persons and the persons responsible for the collection and payment are the insurance companies or financial institutions that make the payment of the premium (arts. 18, 19 and 20 of Decree 6,306/07).

The tax base for the calculation of IOF is the sum of the premiums paid. The rate is 25%, but is reduced (arts. 21 and 22 of Decree 6,306/07):

a) on the following operations: reinsurance; mandatory insurance, related to the financing of housing, conducted by an agent of the Financial Housing System; export credit insurance and international transport of goods insurance; insurance taken out in Brazil, relating to the coverage of risks in connection with the launching and operation of the Brasilsat I and II satellites; in which the sum of the premiums is earmarked for funding life insurance plans with coverage for survival; aeronautical insurance and civil liability insurance paid to air carriers and performance bond: 0%;

b) on life and related insurance, personal and occupational accident insurance operations, including the mandatory insurance for personal injuries caused by overland automotive vehicles and by vessels, or by their cargo, to persons transported or otherwise and excluding aeronautical insurance and civil liability insurance paid to air carriers: 0.38%;

c) on private health care insurance operations: 2.38%, and

d) on other insurance operations: 7.38%.

(iv) Operations relating to notes and securities

The taxable event of IOF is the purchase, assignment, redemption, renegotiation or payment for settlement of notes and securities. Its taxpayers are: (a) the purchasers, in the case of the purchase of notes and securities and the holders of financial investments, in cases of redemption, assignment or renegotiation; (b) the financial institutions and other institutions authorized to operate by Central Bank of Brazil (arts. 25 and 26 of Decree 6,306/07).

The tax base for the calculation of the tax is the operation amount (of the purchase, redemption, assignment or renegotiation) and the maximum rate is 1.5% per day (arts. 28 and 29 of Decree 6,306/07).

Gold, as a financial asset or foreign exchange instrument, is currently also subject to IOF at the rate of 1%, on the first purchase by a financial institution (arts. 36 and 39 of Decree 6,306/07).

6.1.6. Social and other Contributions

6.1.6.1. Social Integration Program - PIS

The objective of the PIS contribution is to finance the Unemployment Insurance Program and the Annual Bonus of one minimum wage. The purpose of unemployment insurance is to provide temporary financial aid to jobless workers, whether dismissed without cause or owing to the partial or total stoppage of the employer’s activities.

The contribution is payable by companies from the private sector, including financial institutions, with their own funds, based on the total revenue earned in the month by the corporate entity, irrespective of its denomination and of its accounting classification, although some deductions are permitted. (art. 1 of Law 10,637 of 30 December 2002).

It is relevant to note that Law 10,637/02 introduced a new PIS calculation mechanism in relation to corporate entities taxed by actual taxable income. The said Law instituted the rate of 1.65%, but allows companies to deduct from the PIS payable, credits relating to the PIS paid on prior operations, such as: goods purchased for resale; goods and services, used as inputs for the provision of services and for the production or manufacture of goods or products intended for sale, including fuels and lubricants; rents of buildings, machinery and equipment, paid to a corporate entity, used for the company's business activity; electric power consumed in the company's establishments, and other cases (arts. 2 and 3 of Law 10,637/02).

Moreover, it is important to mention that the former PIS calculation method, i.e., the application of the rate of 0.65%, without the right to the aforementioned credits, is still valid for corporate entities taxed by income tax on the basis of presumed or arbitrated income, tax-immune corporate entities, the revenues derived from the provision of telecommunication services and other cases (art. 8 of Law 10,637/02).

The PIS contribution is not imposed on income from exports of goods abroad and services rendered to individuals or companies resident or domiciled abroad, whose payments represent an inflow of funds, on sales to trading companies with the specific purpose of exportation (art. 5 of Law 10,637/02 and Law 10,865 of 30 April 2004) and, as a rule, on issues of merchandise destined for consumption or for manufacturing in the Manaus Free Trade Zone by a corporate entity established outside of the Manaus Free Trade Zone (art. 2 of Law 10,996 of 15 December 2004).

On the other hand, the rate of the PIS contribution is 1.65% upon the import of services and 2.1% upon the entry of foreign goods (art. 8 "I" and "II" of Law 10,865 of 30 April 2004). In relation to certain goods, specific rates are applicable (pharmaceuticals, cosmetic products, vehicles, art. 8, §§ 1, 2 and 3 of Law 10,865/04).

6.1.6.2. National Social Security Institute – (Instituto Nacional de Seguro Social – INSS)

Business concerns generally contribute monthly to the INSS, with their own funds. These companies are required to pay 20% of the total compensations paid or credited in any way to employees, during the month; 20% to insured employees, self-employed workers, free lancers and other individuals (insured individual taxpayers, art. 22, I of Law 8,212 of 24 July 1991). Moreover, for the financing of the benefit relating to occupational accidents, companies pay: 1%, if the risk of an occupational accident is considered slight, 2% if the risk is average and 3% if the risk is serious (art. 22, II, of Law 8,212/91). In addition, the contribution must be paid at 5.8% of the compensation paid to employees and allocated to other sectors. Some corporate entities, such as financial institutions and insurance companies, in addition to the contributions mentioned above, are subject to a surcharge of 2.5% assessed on the same tax base on which the rate of 20% applies (art. 22, paragraph 1 of Law 8,212/91, altered by Provisional Measure (Medida Provisória - MP) 2,158-35/01).

Companies are also required to make the discounts and payments of the social security contributions of their employees. These contributions range from 8% to 11%, of the respective compensation, observing the ceiling established by law (art. 20 of Law 8,212/91).

Another thing that should be pointed out is that under Provisional Measure (Medida Provisória – MP) 540 of 2 August 2011, converted into law 12,546 of 14 September 2011, the federal government introduced a policy to lower payroll taxes in certain branches of economic activity. The purpose here is to help keep existing jobs and create new jobs.

The companies engaged in the business activities covered by this new policy may calculate the INSS differently: they may apply a rate that may vary from 1 to 4.5% of the gross revenue arising from such activities, excluding any revenue arising from export and international cargo transport, the IPI and the ICMS (Tax Substitution) passed on to buyer, cancelled sales and unconditional discounts.

Whenever a company is hired to perform the services covered by the policy through an assignment of labor, the hiring company must withhold and pay 3.5% of the value of the bill of sale or service invoice.

If the company performs activities covered by the policy as well as activities not covered by the policy, then such company must calculate the INSS based on two different systems – payroll and revenue – according to the proportion of the revenue generated by each activity in the company's total revenue, pursuant to Law 12,546/2011.

This new system is an option for the companies engaged in the branches of economic activity covered by the policy, including:

(i) maintenance and repair of aircrafts, engines, components and related equipment; (ii) international cargo transportation; (iii) international passenger transportation and auxiliary services to international passenger transportation; (iv) long-distance, coastal and inland maritime transport of cargo and passengers (v) maritime and port support navigation; (vi) maintenance and repair of vessels; (vii) specific retail activities; (viii) provision of information technology (IT) and information and communication technologies (ICT) services; (ix) companies engaged in the hotel industry; (x) collective passenger transport by road; and (xi) industrialization of any products whose Mercosur Common Nomenclature (NCM) is listed in Law 12,546/11.

It is important to point out that the application of this system involves many different details that must be analyzed on a case by case basis.

6.1.6.3. Contribution for the Funding of Social Security - (Contribuição para Financiamento da Seguridade Social – COFINS)

COFINS is entirely allocated for the maintenance of Social Security and, under the cumulative system, is levied at the rate of 3% (art. 8 of Law 9,718 of 27 November 1998) on the monthly turnover, and some deductions provided in law are permitted (art. 3, paragraph 2 of Law 9,718/98).

For financial institutions, the COFINS contribution is imposed at the rate of 4% (art. 18, of Law 10,684/03).

Revenues generated with the sale of goods or services destined for the foreign market are exempt from the COFINS contribution (art. 14, I and III of MP 2,158- 35/01), and also the sale made by a trading company specifically for export purposes (art. 6, III of Law 10,833/03) and, as a rule, issues of goods destined for the Manaus Free Trade Zone for sale or industrialization in that area, by a corporate entity located outside of the Manaus Free Trade Zone (art. 2 of Law 10,996/04).

It is important to mention that Law 10,833/03 introduced the COFINS non-cumulative system for corporate entities taxed by actual income. Under such system, COFINS is payable at 7.6%, but permitting that companies calculate and discount from the due amount of the contribution, credits relating to certain previous operations, such as: goods purchased for resale; goods and services, used as inputs for the provision of services and in the production or manufacture of goods or products intended for sale, including fuels and lubricants; rents of buildings, machinery and equipment, paid to a corporate entity, used in the company's business activity; electric power consumed in the company's establishments, and other cases (arts. 2 and 3 of Law 10,833/03).

In addition, it is important to mention that the former COFINS calculation mechanism, i.e., the application of the rate of 3%, without the right to the aforesaid credits, is still valid for corporate entities taxed by income tax on the basis of presumed or arbitrated income, tax-immune corporate entities and the revenues derived from the provision of telecommunication and information technology services.

On the other hand, the rate of the COFINS contribution is 7.6% upon the import of services and 9.65% upon the entry of foreign goods (art. 8, "I" and "II" of Law 10,865/04). In relation to certain specific goods, a specific rate is to apply (pharmaceuticals, cosmetic products, vehicles, - art. 8, paragraphs 1, 2 and 3 of Law 10,865/04) and an additional 1% rate must be paid (art. 8, paragraph 21 of Law 10,865/04 coupled with the Exhibit to Law 12,546 of 14 December 2011).

6.1.6.4. Social Contribution on Net Income of Corporate Entities - (Contribuição Social sobre o Lucro Líquido da Pessoa Jurídica – CSLL)

The CSLL contribution is levied at the rate of (a) 20%, from 1 September 2015 to 31 December 2018; and 15% from 1 January 2019, in case of financial institutions, private insurance companies and capitalization companies; (b) 17% from 1 October 2015 to 31 December 2018 and 15% from 1 January 2019, in case of credit cooperatives; and (c) 9% for the other corporate entities, before the deduction of the contribution itself, with due regard to certain adjustments provided by law (art. 3 of Law 7,689 of 15 December 1988).

The verification of its tax base follows practically the same income determination method used for Corporate Income Tax - IRPJ (actual, presumed or arbitrated), the only difference being some express deductions set forth in specific legislation.

6.1.6.5. Economic Domain Intervention Contribution – (Contribuição de Intervenção no Domínio Econômico –CIDE) - Technology

The CIDE contribution was instituted on 29 December 2000, through Law 10,168/00, as a means of funding technological development and interaction programs between Brazilian universities and research centers and private enterprise. This contribution, which was established at a rate of 10%, has as its tax base the payment, credit, delivery or remittance to persons residing or domiciled abroad, of remuneration derived from the license of use or acquisition of technological know-how, as well as agreements that imply technology transfer (defined by the law as those relating to the exploitation of patents or use of trademarks and the supply of technology and technical support).

Moreover, art. 6 of Law 10,332 of 19 December 2001 extended the coverage of CIDE, as of 1 January 2002, to include remittances abroad as payment for technical and administrative support and similar services that do not imply technology transfer.

Of the total resources collected by CIDE, 50%, at least, are invested in programs to foster technological qualification and support scientific research and technological development (arts. 1 and 2 of Law 10,332/01).

6.1.6.6. Economic Domain Intervention Contribution - CIDE - Fuels

Moving ahead with the alterations in the tax legislation by virtue of the opening of the fuel market to foreign investors, the CIDE-Fuels was created, which is levied on the importation and sale of oil and its by-products, natural gas and its by-products and ethyl alcohol fuel (art. 1 of Law 10,336 of 19 December 2001).
CIDE taxpayers include the producer, formulator and importer of the fuels mentioned above, whether they are natural persons or corporate entities.

The tax base of the contribution is the unit of measure defined in law, which varies for each type of fuel. The rates are also specific for each type of product (Law 10,336/01). For instance, the rate applicable to gasoline is R$ 860 per cubic meter.

6.2. Main Taxes Levied by the States and Federal District

6.2.1. Tax on Operations Involving the Distribution of Goods and Interstate and Inter-municipal Transportation and Communication Service Renderings or State VAT – (Imposto sobre Operações Relativas à Circulação de Mercadorias e sobre a Prestação de Serviços de Transporte Interestadual e Intermunicipal e de Comunicação – ICMS)

ICMS is a state tax levied on the distribution of goods by any establishments, as well as on the entry of merchandise imported from abroad, and also on the provision of interstate or inter-municipal transportation and communication services, even when the respective distribution or service rendering are originated abroad.

Similarly to IPI, ICMS is a non-cumulative tax. It can also be a selective tax, depending on the essentiality of the goods and services.

Among the cases in which ICMS is not due, by express constitutional or legal provision, the following are of general interest to the foreign investor:

a) on transactions transferring merchandise abroad, and renderings sending services abroad, provided that the tax amount charged in previous transactions can be recorded and set off (art. 155, paragraph 2, X, “a” of the Federal Constitution);

b) on transactions transferring oil, including lubricants, liquid and gaseous fuels derived therefrom and electric power to other States (art. 155, paragraph 2, X, “b” of the Federal Constitution);

c) on gold, when it is considered a financial asset or foreign exchange instrument (art. 155, paragraph 2, X, “c” of the Federal Constitution);

d) on the exportation of merchandise and renderings that send services abroad (via an exporting company, including trading companies.

It is important to note that some States of the Federation grant tax incentives in relation to the ICMS with the aim of attracting the establishment of industrial projects, although sometimes such incentives fail to meet the validity requirements laid down by the Federal Constitution.

For transactions where sender and recipient are located within the same state (or the Federal District), the ICMS rate will be set by such state in relation to the relevant goods and services, subject to the limits set in the applicable federal laws. In the state of São Paulo, for instance, the rate may vary from 4 to 25%. In general, a 18% rate is applicable. In relation to communication services for consideration, a 25% ICMS rate is applicable.

For transactions involving the exit of goods or services from one state to another, for delivery to end consumers, whether or not ICMS taxpayers, a 12% rate is generally applicable. When such transactions are made in the South and Southeast regions and when th” of the Federal Constitution, as amended by Constitutional Amendment 87 of 16 April  2015, effective as from 31 March 2016).

In January 2013, however, Resolution 13, issued by the Senate on 25 April 2012 came into force. Under such Resolution, a 4% ICMS rate is applicable to interstate transactions involving imported goods, provided that, after customs clearance, such goods (i) do not undergo any industrialization process and (ii) result in goods with an Import Content over 40% after undergoing any processing, improvement, assembly, packing, repacking and renovation process.

This 4% rate is applicable even when the interstate transaction is not carried out immediately after the import transaction. The Senate's Resolution 13/2012 is applicable to all interstate transactions carried out after importation.

However, the 4% ICMS rate is not applicable to interstate transactions involving (i) imported goods without similar counterparts locally manufactured in Brazil, as defined in a list issued by the Council of Ministers of the Chamber of Foreign Trade (Câmara de Comércio Exterior - CAMEX); and (ii) goods manufactured in accordance with the basic production processes set out in Law-Decree 288 of 28 February 1967 and Laws 8,248 of 23 October 1991, 8,387 of 30 December 1991, 10,176 of 11 January 2001 and 11,484 of 31 May 2007); and (iii) natural gas imported from abroad. In these cases, the 7% or 12% rate applicable to interstate transactions will be applicable, depending on the state of origin and state of destination of the goods.

In order to regulate Resolution 13/2012, the National Public Finance Policy Council (Conselho Nacional de Política Fazendária - CONFAZ) enacted SINIEF ruling 20, of 7 November 2012, and ICMS Agreement (Convênio) 38, of 22 May 2013, which set out the procedures and ancillary obligations that taxpayers are required to follow and comply with.

Finally, it must be noted that under ICMS Agreement 123/2012, no tax benefit is available as from 1 January 2013 in relation to interstate transactions involving goods that are subject to the 4% ICMS rate, except: (i) if the tax benefit results in an interstate tax burden that is lower than 4%; and (ii) in case of tax exemption.

6.2.2. Inheritance and Gift Tax – (Imposto sobre transmissão causa mortis e doação de quaisquer bens ou direitos – ITCMD)

ITCMD is levied on the transfer of property or rights (shares, quotas, local or foreign currency, deposits, etc.) taking place by legal or testate succession, including provisional succession, and by gift.

The tax base of the ITCMD is the market value of the property or right transferred, expressed in local currency. The generally applicable rate is between 4% and 5% .

6.3. Main Municipal Taxes

6.3.1. Service Tax - ISS

ISS is a tax levied by municipal governments (and the Federal District) on service renderings of any nature specified by complementary law and not included in the list of services subject to ICMS (mentioned in item 6.2.1 above). The ISS is calculated based on the price of the service and the rate generally ranges between 2% and 5%.

Among the services subject to the tax are consulting, technical advisory services, plans and dealerships, among others. At this time each municipality establishes its rates for the services taxed.

It is important to mention that several municipalities require the registration of companies located in other

Brazilian municipalities that render services to recipients based in within such municipality, on pain of the recipient of the service being required to carry out the withholding and payment of the ISS.

ISS is also charged on certain imports of services. Hence, the legal provisions of each Municipality should be analyzed for specific cases.

6.4. Summary of the Tax Burden on Corporate Entity Profits and Labor and Social Security Charges of Companies

6.4.1. Tax Burden on Profits

In summary, the tax burden incurred on company profits, up to their final distribution to partners or shareholders abroad, amounts to approximately 34% (25% as IRPJ and 9% as CSLL).

Specifically in the case of the payment of Interest on Owners‘ Equity (Juros sobre Capital Próprio – “JCP”), Withholding Income Tax (IRRF) will be levied at the rate of 15% upon payment to the partners (legal transactions occurred between 1 January 2016 and 8 March 2016, when the rate of 18% set out in Provisional Measure 694 of 30 September 2015 was applied, are still to be regulated by the Congress, and such regulation may be in the form of Legislative Decree). However, these amounts paid are deductible for the purposes of Corporate Income Tax (IRPJ) and Social Contribution on Net Income (CSLL), which reduces the tax burden of corporate entities to 19% with respect to the amounts paid as Interest on Owners‟ Equity (pursuant to art. 14 of IN 1,397/2013, with the wording introduced by IN 1,492/2014).

6.4.2. Labor and Social Security Charges

These charges, including employee labor rights, amount to an average of approximately 100% of the payroll amount.

6.5. A Summary of the Tax Burden on Service Imports

When involving the importation of services – but not those subject to ICMS – , this transaction will be generally subject to the levy of ISS, IRRF, PIS, COFINS and CIDE-Technology and IOF, totaling approximately 50% of the service amount.

# 7. LABOR LAW AND SOCIAL SECURITY

The Consolidation of Labor Laws (Consolidação das Leis de Trabalho - CLT) is the main set of rules that regulates labor relations in Brazil. It contains a number of definitions, principles and rules designed to protect the interests of employees and workers in general.

## 7.1. Employee

Employee is defined as the natural person who personally provides services to another person, on a habitual basis and under subordination, in exchange for remuneration.

The following criteria must be observed for the hiring of employees in Brazil:

(i) Minimum age of 16;
(ii) From 14 to 16 only as an apprentice and provided that the employee is studying in the natural sciences area that he or she intends to work;
(iii) Over the age of 18 for night, unhealthy and hazardous work.

## 7.2. Employer

Employer is defined as the entity, with or without a legal personality, that has employees.

The employer, in the majority of cases, is a company, but liberal professionals, associations, etc. may also be employers.

## 7.3. Individual Employment Contract

Individual Employment Contract is defined as the tacit or express agreement, corresponding to the employment relationship.

The adoption of a written contract is more advisable.

Contracts may be for an indeterminate or determinate period, though contracts for indeterminate periods are more common, since determinate period contracts are only allowed to be signed in specific situations set forth in law.

## 7.4. Work and Social Security Booklet (CTPS)

The work and social security booklet is obligatory and proves the existence of a written or verbal employment contract.

## 7.5. Rights of employees

Employee rights include:

### a) Working hours

Ordinary working hours are 8 hours a day and 44 hours a week. The law provides for shorter working hours in certain situations (e.g. minors) and for certain professions (e.g.: railroad workers, physicians, telephone operators, journalists, bank workers, etc).

The working day will be diurnal, when it is between 5:00 a.m. and 10:00 p.m., in urban centers, with other criteria for rural areas. Nocturnal work generally occurs when the work is performed between 10:00 p.m. of one day and 5:00 a.m. of the following day.

Overtime refers to the hours worked beyond the normal limits fixed by law, collective bargaining agreements, normative sentence or individual employment contracts. Overtime is classified into five types:

(i) Overtime resulting from an extension agreement, not exceeding 2 hours per day;
(ii) Compensation of hours system;
(iii) Overtime worked for the purpose of the conclusion of non-postponable services or the execution of which may cause losses to the employer;
(iv) Overtime worked to recover work stoppage hours;
(v) Overtime worked in case of force majeure.

b) Remunerated weekly rest period

Remunerated weekly rest period is defined as the remunerated weekly rest period of 24 consecutive hours, preferably taken on Sundays and within the limits of the technical requirements of companies, or on public and religious holidays, in accordance with local tradition. The employee's full attendance at work during the week is a condition for the maintenance of the remunerated weekly rest period.

c) Meal and Rest break

Employees who work 8 hours daily are ensured a break for a meal and rest of at least one hour.

d) Vacation

All employees will have the right to vacation, after each 12-month period of a valid employment contract, without prejudice to the remuneration. Its duration depends on the assiduity of the employee, suffering a reduction in proportion to the employee's unjustified absences (maximum of 30 and minimum of 12 days' vacation).

It is forbidden to discount the employee's absences at work from the vacation period. The employer shall grant vacation during the 12 months subsequent to the acquisition period. Otherwise, the employer must pay double the amount of the vacation pay.

During vacation, employees receive the same amount of salary as if they were working, plus a 1/3 bonus. In addition, employees may trade 1/3 of their vacation period in exchange for remuneration.

e) Wages

The law does not define wages, but indicates its components and fixes the rules for its payment and protection.

The Government establishes the minimum wage amount annually. On 1 January 2015, it was fixed at R$ 788.00 (approximately US$).

Severance pay, profit sharing, pension plan benefits and their supplements, and intellectual rights are not regarded as wages.

Wages may be paid in cash, check or via bank deposit and in fringe benefits.

The law requires the payment to be made in Brazil's local currency and considers payment in foreign currency as not made, though the latter may serve as the calculation basis for conversion into national currency, at the time of payment.

Payment in fringe benefits ou in kind is the payment method whereby the employee receives such economic goods as food, housing, the use of an automobile, credit card, payment of household bills, etc, as payment of part of his or her wage, though it should be pointed out that, accoridng to court decisions and the law, employers are not allowed to pay the entire wage in fringe benefits.

The wage amount may be freely stipulated, provided that such stipulation is not conflicting with the labor protection provisions, collective bargaining agreements and judicial rulings.

The following constitute special types of wage:

(i) Advances: advance in money or wage advance established as a result of temporary needs.

(ii) Additional overtime pay: is at least 50% and is incorporated into the base compensation for the purpose of calculating the additional amounts to which the worker is entitled (13th wage, vacation, etc.).

(iii) Additional night pay: is 20% of the contractual wage due, as a rule, for services rendered after 10:00 p.m., in urban centers, and it is incorporated into the base compensation for the purpose of calculating the additional amounts to which the worker is entitled;

(iv) Health hazard allowance: is due to employees that render service in an environment that is considered unhealthy – it is 10%, 20% or 40% of the minimum wage, according to the degree of health hazard (minimum, average and maximum, respectively) – and it is incorporated into the employee's base compensation for all purposes.

(v) Hazard pay: is due to employees that render services under highly risky conditions –– it is 30% of the contractual wage – and is incorporated into the employee's compensation (except for the purposes of bonuses, gratuities and profit sharing).

(vi) Additional transfer pay: is due to any employee that is temporarily transferred by the employer to another locality and its amount is 25% of the contractual wage.

(vii) Others: commissions, bonuses, gratuities and premium bonuses.

f) Thirteenth wage (or "Christmas bonus")

Thirteenth wage is defined as a mandatory bonus in compliance with the law and is of a wage nature.

It corresponds to one wage of the employee and must be paid in two installments, the first of which between February and November 30 or at the time of vacation – if the employee so requests in advance, in January of the relevant year – and the second on or before December 20 of each year.

For employees that worked less than 1 year, the 13th wage is proportional to the months of service, in the order of 1/12 per month, considering a fraction of 15 days or over as a full month and disregarding smaller fractions.

g) Unemployment Compensation Fund - FGTS

The FGTS is a bank account that the worker can use on the occasions provided by law, which is formed by monthly deposits made by the employer.

Every month, the company has to deposit, with its own resources, in a specific account held by each employee, the equivalent of 8% of the employees‟ compensation. For employment contracts executed with minors qualified as apprentices, the rate is 2%.

The sums deposited will be the property of the employee and withdrawals shall be made in the situations set forth in law, such as in the case of unfair dismissal.

In the latter case, the company is also obligated to pay the employee an indemnity of 40% of the FGTS account balance and pay the sum of 10% of the same balance, as social contribution.

h) Tenure

Tenure is defined as the right of an employee to remain in the job, even against the employer's wish, while there is no relevant cause expressed in law and that does not give rise to the employee's discharge, except when there is prove that just cause exists.

It is the law that sets forth the cases of job tenure, e.g. the tenure of union leaders and representatives, victims of accidents, committee representatives, expectant mothers and employees' representatives in the CIPA (Internal Commission for the Prevention of Accidents).

i) Collective bargaining agreements

In addition to the previously described benefits, companies must observe the rules established in the collective bargaining agreements entered into between the unions that represent the professional category.

7.6. Termination of employees

An employee may be dismissed for cause or without cause. The grounds for dismissal for cause are set out in the law.

Dismissal for cause allows the employer to terminate the employment contract without extra cost (e.g. payment of severance pay, percentage on FGTS deposits, 13th wage and vacation, etc.).

In case of dismissal without cause, the employee will have the right to, among other things, receive ordinary amounts, including: notice period, proportional 13th wage, vacations due, proportional vacations plus the additional 1/3 set forth in the Constitution, 40% of the FGTS deposits and any other amounts as set out in the collective agreement.

The termination of employment contracts with a duration period of more than one year shall be homologated by the Ministry of Labor and Employment (MTE) or by the workers' union of the category to which the employee belongs.

7.7. Labor Union / Trade Association Law

The core business activity of the company and the number of trade associations existing in its geographical

area are what will determine the trade association to which a given company will belong.

The respective employees' labor union will represent all the employees of the company, with the exception of those belonging to officially recognized professional categories, such as secretaries, drivers, economists and journalists, who will be represented by their own particular unions.

Both the employees and the companies shall, necessarily, pay the union contributions to the respective labor union/trade association.

As a rule, negotiations are held annually between the trade association of the company and the labor union of the employees of the same category. The collective labor agreements resulting from these negotiations are filed with the Ministry of Labor and Employment and have force of law.

7.8. Social security

There is more than one social security regime in Brazil:

(i) The General Social Security Regime: concerning the INSS (Brazilian Social Security Institute) for the private sector;
(ii) Specific Social Security Regime: concerning the social security regime that regulates public Federal, State and City government officials and those hired by government agencies and foundations;
(iii) Private Social Security Regime: the purpose of this regime is to supplement the pensions from the official social security regime.

The contribution to social security for which the company is responsible, is:

(i) 20% of the total compensation paid, due or credited, for any reason, during the course of the month, to insured employees and free-lancers;

(ii) 20% of the total remunerations or compensations paid or credited during the course of the month to the insured individual taxpayer;

(iii) 15% of the gross amount of the tax invoice or service bill, with respect to the services rendered thereto by cooperative members (through workers' cooperatives);

(iv) 2.6% of the total gross revenue derived from the sale of rural production when involving a corporate entity that has only the rural production activity as its corporate purpose .

There are also other contributions that must be paid on the total compensations paid or credited to employees, namely:

(i) Contribution for the financing of occupational accidents: consists of the degree that the company provides for the event of incapacity for work resulting from the environmental risks of the work. The percentage of this contribution varies from 1% (low risk) to 3% (high risk).

(ii) Third party contribution: are obligatory contributions imposed on the payroll that are earmarked for private social service and professional training entities linked to the union system, whose rates vary from 0.2% to 5.8%;

(iii) Education salary contribution: consists of a contribution to the Federal Government

(União Federal) for the financing of elementary and middle school (ensino básico). The education salary rate is 2.5%.

The total charges for the company correspond, on average, to 35.8% (the index for industry). These contributions are paid directly to the INSS, which transfers the contributions that do not pertain thereto to the entitled entities.

7.9. Occupational safety and hygiene

As a rule, companies that have more than 20 employees must have an Internal Commission for the Prevention of Accidents (CIPA).

A medical exam is obligatory, both at the time of hiring and upon termination, which shall be at the expense of the employer. In addition, depending on the type of work performed, some employees may be subject to regular and special medical exams from time to time.

Unhealthy activities or operations are those activities that, due to their nature, condition or methods of work, expose workers to agents that are harmful to health, beyond the tolerance limits fixed in the law.

Hazardous activities or dangerous operations are those that, due to their nature or method of work, imply the worker's permanent contact with inflammable products or explosives, under highly risky conditions.

All companies are required to maintain their occupational medicine and safety programs renewed, annually, especially those determined by the Ministry of Labor and Employment (MTE), namely:

(i) Environmental Risk Prevention Program (Programa de Prevenção de Riscos Ambientais – PPRA);
(ii) Occupational Health Medical Control Program (Programa de Controle Médico de Saúde Ocupacional – PCMSO);
(iii) Technical Report on the Environmental Conditions at the Workplace (Laudo Técnico de Condições Ambientais no Trabalho – LTCAT);
(iv) An occupational health and safety risk assessment (Perfil Profissiográfico Previdenciário – PPP).

7.10. Outsourcing

Outsourcing is defined as the act of transferring the responsibility for the service from one company to another.

Notwithstanding the absence of specific legislation on the matter, the practice of outsourcing in Brazil is steadily on the rise. Its great attraction is that of transferring the company's non-core activities to third parties.

Companies are adopting outsourcing as a means of cutting costs and enhancing performance in the short and medium term.

Companies that outsource their non-core activities are secondarily liable for the labor and social security obligations of the employees of the company that renders the respective service.

# 8. INFORMATION TECHNOLOGY

8.1. General Information

The Brazilian Government has been developing numerous actions, especially since the 90s, with a view to the competitive insertion of the Brazilian information technology industry in the competitive market. The policy for the sector is based on three development fronts: (i) hardware, seeking technological innovation; (ii) software, and (iii) the microelectronics sector.

The past history of changes in the information technology policy relates directly to the preoccupation with providing support to the industry established in the Country and the requirement of creating an attractive climate for foreign capital, culminating in the approval of Law 8,248, of 23 October 1991, as amended (Information Technology Act), concerning information technology tax incentives.

The Information Technology Tax Incentives Policy, in particular for the development of hardware is provided for in the Information Technology Act, and in the legislation concerning the Manaus Free Trade Zone (Law 8,387/91 and Decree Law 288/67), which have undergone various alterations over the years (latest alterations: Laws 11,452/2007 and 11,482/2007, the latter amended by Provisional Measures 451 of 2008 and 528 of 2011; Law 11,945/2009; Law 12,469/2011; Law 12,507/2011). As a general rule, information technology goods and services produced in the Country are benefited with the gradual reduction of the IPI (Excise Tax) due up to December 2029, when the benefit will be extinguished, in accordance with the table below and their fiscal classification:

| Reduction of IPI due | Date |
|---|---|
| 100% | Until 12.31.2000 |
| 95% | 01.01 to 12.31.2001 |
| 90% | 01.01 to 12.31.2002 |
| 85% | 01.01 to 12.31.2003 |
| 80% | 01.01.2004 to 12.31.2024 |
| 75% | 01.01.2025 to 12.31.2026 |
| 70% | 01.01.2027 to 12.31.2029 |

For information technology and automation goods produced in the Mid-West Region and in the regions of influence of SUDAM – Superintendência de Desenvolvimento da Amazônia (Amazon Development Superintendence) and SUDENE – Superintendência de Desenvolvimento do Nordeste (Northeast Development Superintendence), there is an IPI reduction, as shown in the table below (art. 4, §1 of the Information Technology Act):

| Reduction of IPI due | Date |
|---|---|
| 95% | 01.01.2004 to 12.31.2024 |
| 90% | 01.01.2025 to 12.31.2026 |
| 85% | 01.01.2027 to 12.31.2029 |

The maintenance and use of IPI credit relating to raw materials, intermediary products and packaging material employed in the industrialization of goods that enjoy the benefit is guaranteed.

The above percentages do not apply to portable microcomputers and to small-capacity digital processing units based on microprocessors, priced at up to R$ 11,000.00 (eleven thousand reais), equivalent to

US$ 2,800.00 (two thousand eight hundred US dollars), and to magnetic and optical disk units, printed circuits with electric and electronic assembled components, cabinets and power supplies, recognizable as exclusively or mainly designed for such equipment, which have a specific IPI reduction, but also with the planned extinguishment of the benefit on 31 December 2029.

The tax benefits of the Information Technology Act are not granted to a company generically, but rather to certain products manufactured locally by the company. The list of information technology and automation goods that may enjoy the tax benefits is contained in Decree 5,906/06 (amended by Decree 6,405/08, the Exhibit I of which was amended by Decree 7,010/2009 in regard to information technology and automation goods), which regulates Law 10,176/01 (amended by Laws 10,664/2003, 11,007/2004, and 13,023/2014), which also alters the Information Technology Act.

Moreover, the granting of the tax benefits of the Law is contingent on the satisfaction of the following requirements – set forth in the Law and regulated by Decree 5,906/06, amended by Law No. 8,072/2013:

a) the information technology and automation goods shall be manufactured in Brazil, in accordance with a basic production process (processo produtivo básico) established product-by-product by the Executive Branch;

b) there must be investment, on the part of the applicant company, in Research and Development (R&D), specifically in the information technology field, as mentioned below;

c) the applicant company is required to institute a quality system, as defined by the Executive Branch;

d) the applicant company is required to adopt an employee profit or income sharing program.

The qualification of a company applying for the enjoyment of tax benefits occurs by means of the publication of a joint administrative act of the State Ministers of Science, Technology and Innovation, and of the Development, Industry and Foreign Trade, following an analysis process of the proposed project at the Ministry of Science and Technology. Decree 5,906/06 establishes, among other provisions, the rules relating to the submission of the project, the obligations relating to R&D in information technology and the procedures for fixing and complying with the basic production process of products eligible for incentives. In addition, it contains the appropriate instructions and a roadmap to be followed, in accordance with an Administrative Rule of the Science and Technology Ministry and Development, Industry and Foreign Trade Ministry, for submitting the application and proposed R&D project.

Concurrently with the application for final qualification, the company may apply for a provisory qualification for the enjoyment of tax benefits, provided that (I) it submits a project proposal to the Ministry of Science, Technology and Innovation; (II) it submits certificates proving that it has paid all due taxes; (III) it is in compliance with the investment requirements for research and development with the Ministry of Science, Technology and Innovation or submits a research and development plan, if applicable; (IV) the basic production processes of the applied products are appropriate; (V) the company was granted final qualification during the preceding 24 months or a prior inspection in the production structure was conducted and the report was positive; and (VI) at lease one of the company's activities included in the National Registry of Companies – CNPJ is an eligible manufacturing activity applicable to the products included in the application.

If the application for final qualification is granted, the provisory qualification will end and the effects of such provisory qualification will be ratified. If the application for final qualification is rejected, then the effects of the provisory qualification will no longer be valid and the company is obliged to pay the taxes related to the tax benefits it has enjoyed plus any legal additions and applicable penalties.

The consideration for the benefit is annual investment in R&D in information technology. This research shall occur in the Country, in a minimum sum of 5% of the gross revenues of the company applying for the benefit, derived from the sale, in the domestic market, of information technology and automation goods. For the purpose of the calculation of gross revenues, the taxes imposed on the said sale, and the purchase cost of the products eligible for the incentive shall be deducted, pursuant to law.

The law and its regulation stipulate in detail the method of allocating resources to be invested in R&D by the applicant company of the benefit, including establishing minimum percentages to be earmarked for agreements with official or accredited research and teaching centers and entities.

The investment percentage in R&D will be reduced progressively, as shown in the table below:

| Reduction of Investments in R&D | YEAR |
|---|---|
| 20% | 01.01.2004 to 12.31.2014 |
| 25% | 01.01.2015 to 12.31.2015 |
| 30% | 01.01.2016 to 12.31.2019 |

When involving investments related to information technology goods produced in the Mid-West Region and regions of influence of SUDAM and SUDENE, the reduction of the investment percentage in R&D will observe the following criteria:

| Reduction of Investments in R&D | YEAR |
|---|---|
| 13% | 01.01.2004 to 12.31.2014 |
| 18% | 01.01.2015 to 12.31.2015 |
| 23% | 01.01.2016 to 12.31.2019 |

The beneficiary companies of the incentives shall submit to the Science and Technology Ministry, on an annual basis, descriptive reports to evidence observance of the investment percentages required by law. If the beneficiary company fails to observe the legal requirements, the benefit may be suspended, without prejudice to the reimbursement of already enjoyed benefits, adjusted and increased by arrears interest and fines.

The producer companies of information technology and automation goods, whose plants are located in the Manaus Free Trade Zone, shall also invest at least 0.8% of their gross revenues in R&D annually, in exchange for the tax incentives granted. The funds shall be earmarked for research in the Amazon, in accordance with the project to be submitted by each company to SUFRAMA and to the Science and Technology Ministry. The granting of tax benefits for the information technology sector in the Manaus Free Trade Zone is currently regulated by Decree 5,906/06.

CATI – Comitê da Área de Tecnologia da Informação (Information Technology Area Committee) was set up in February 2002 with the mission of managing the resources collected with the companies benefited by the information technology legislation. These resources are earmarked for Information Technology research and development activities.

8.2. Special Taxation Regime for the Information Technology Services Export Platform - Repes

In addition to the above benefits, Law 11,196, of 21 November 2005, which was regulated by Decree 5,602/05 and amended by Laws 11,482/07 (amended by Provisional Measures 451/2008 and 528/2011, Law 11,945/2009, Law 12,469/2011, Law 12,507/2011), 11,487/07, 11,488/07 (amended by Provisional Measures

413/2008 and 472/2009, Law 11,727/2008, Law 1,933/2009, Law 12,249/2010, Decree 7,212/2010) and 11,727/08, 12,712/2012, 12,715/2012, 12,716/2012, 12,859/2013, 12,865/2013, 12,995/2014, 13,097/2015, 13,137/2015, 13,161/2015, 13,241/2015 and by Complementary Law 150/2015, created the Special Taxation Regime for the Information Technology Services Export Platform – Repes, in relation to goods and services intended for the development of software and information technology services in Brazil.

The REPES suspends the obligation to pay:

I – The PIS/PASEP and COFINS contributions on gross revenue:
a) generated from the sale of new goods, whenever such goods are purchased by a legal entity that is a beneficiary of the regime;
b) ascertained by the service provider, whenever such services are provided to a legal entity that is a beneficiary of the regime;

II – the PIS/PASEP-Import and the COFINS-Import contributions on:
a) new goods, whenever such goods are imported directly from a legal entity that is a beneficiary of the regime for incorporation into such company's fixed assets;
b) services imported directly by a legal entity that is a beneficiary of the regime; and

III – the Industrialized Product Tax (IPI) levied on the import of new goods, with no domestic like goods, whenever such import is carried out directly by a legal entity that is a beneficiary of the regime, for incorporation into such company's fixed assets.

These benefits are extended to the legal entities that are primarily engaged in software development activities or provision of information technology services and that, upon selection of the Repes option, assume the commitment to export at least 50% (fifty percent) of their annual gross revenue generated from the sale of the goods and services covered by the law.
Law 11,196/2005 also created the Digital Inclusion Program – canceled by Provisory Measure 690/2015 – which provided for the exemption of the PIS/PASEP and COFINS contributions on the gross revenue generated from the retail sale of certain products.

8.3. Software

Law 9,609, of 19 February 1998, protects computer program-related rights, such as the copyright, for a period of 50 years, reckoned from January 1 of the year subsequent to the computer program's release year, or, in the absence thereof, of its creation. This protection does not depend on the registration of the program, which can, however, at the owner's discretion, be registered with INPI (Brazilian Patent and Trademark Office).

The aforesaid rights are also guaranteed to foreigners domiciled abroad, provided that the program's country of origin grants Brazilians and foreigners domiciled in Brazil equivalent rights.

A foreign company may license a program directly for the exclusive use of the end user in the Country or may license it to a company that will distribute it in the market. Moreover, the remuneration for the use or distribution of the software may be freely established by the parties.

With respect to the marketing of software in Brazil, the law merely establishes that the use of computer programs in the Country shall be the subject of a licensing contract. However, in the event of the absence of such license, the tax document relating to the acquisition or licensing of the program copy will be sufficient to prove the regularity of its use. In the case of licensing agreements for the rights to market computer

programs of foreign origin, such agreements shall establish the responsibility for the payment of imposed taxes and charges. These acts and agreements will also establish the remuneration of the owner of the computer program rights residing or domiciled abroad. The entity remitting the foreign currency amount, in payment of the said remuneration, shall keep in its possession, for a period of 5 years, all the necessary documents to evidence the lawfulness of the remittances.

In the cases of the transfer of computer program technology (specifically in cases involving the delivery of source codes), the Brazilian Patent and Trademark Office will register the respective agreements, in order for them to produce effects in relation to third parties

In the fiscal sphere, there are many doubts with respect to the applicable taxation, which is an issue that needs to be analyzed on a case-by-case basis.

# 9. INVITATIONS TO BID AND PUBLIC AUTHORITY CONTRACTS

9.1. General Information

According to a provision of the Brazilian Constitution, as a rule, public works, services, purchases, sales and leases, on the part of the Public Authorities, must be procured by an invitation to bid, to ensure that the most advantageous proposal for the Public Administration is selected. Within the federal sphere, the matter is disciplined by Law 8,666 of 21 June 1993, which also establishes the general rules for the direct and indirect public administration, spanning all governmental spheres.

It is important to note that invitations to bid for the concession of public services are regulated by laws 8,987 of 13 February 1995 and 9,074 of 7 July 1995 ("Public Service Concession Acts"), due to the high relevance for the execution of the public policies of the Brazilian Government and to the peculiarities involving private investments in this sector. Therefore, the Bidding Law is applicable only on a subsidiary basis.

In accordance with the Constitution and Bidding Law, there are some situations where the invitation to bid is dispensed with or not required, such as when the bidding process is objectively inconvenient to public interest, owing to the singularity of the intended object - i.e. without equivalents in the market or because of the uniqueness of the offerors, or further, on account of an emergency situation of the Public Administration.

According to the Constitution and to the Bidding Law, invitations to bid shall, in general, abide by the following informative principles: a formal procedure, equal conditions for all bidders, publicity of the acts, administrative integrity, compliance with the notice or invitation to bid (which is the internal law of each invitation to bid), confidentiality at the time of the submission of proposals, objective judgment criteria and compulsory award to the successful bidder.
An invitation to bid may be of distinct kinds, namely: a) competitive bidding, b) price quotation, c) invitation, d) contest, and f) auction. There is also a method called live floor auction, which is provided for by Law 10,520, of 17 July 2002.

The price quotation, invitation and contest types have simplified procedures, due to the limitation of the value of the subject matter to be put up for bid. The live floor auction type applies solely to invitations to bid organized by the Public Administration for the purchase of common goods and services, i.e., goods with objectively established quality and performance standards practiced in the market, regardless of the estimated contracting value.

Law 8,666/93 also determines that purchases made by the Public Administration should, whenever possible, be processed through a Price Registration System (Sistema Registro de Preços – SRP), which permits the rapid and immediate operation of the Public Administration, with due regard to the isonomy principle and guaranteeing the objective pursuit of the most advantageous contracting. The SRP is currently regulated by Decrees 3,931, of 19 September 2001 and 4,342 of 23 August 2002.

International invitations to bid, thus defined in the notice itself, permit the participation of Brazilian and/or foreign companies either individually or in a consortium, as established in the document. In order for foreign companies without operations in Brazil to qualify, they must submit documents that are as equivalent as possible to the documents required from Brazilian companies, duly certified and authenticated by the respective consulates, when necessary, and translated by a certified translator. Furthermore, they must have a legal representative in Brazil, with express powers to receive service of process and answer administratively and judicially for the principal.

The purpose of the invitation to bid is to guarantee, among other things, the observance of the constitutional principal of isonomy, the selection of the most advantageous proposal for the administration and the promotion of sustainable national development.

The judgment of the proposals shall be objective, having as its criteria the lowest price, the best technique or the combination of technique and price, according to the type of invitation to bid.
It is prohibited to establish differentiated treatment of a commercial, legal, labor, social security or any other nature, between Brazilian and foreign companies, including as regards the currency, modality and place of the payments, even when the financing of international agencies is involved.

As a tiebreaker criterion, under equal conditions, preference will be ensured, successively, to the goods and services: produced in the Country, produced or rendered by Brazilian companies and produced or rendered by companies that invest in technology research and development in the Country.

In invitation to bid processes a margin of preference may be established for manufactured products and for domestic services that meet Brazilian technical standards.

The margin of preference will be established on the basis of studies reviewed periodically, at intervals of no more than five (5) years, which take into consideration: the generation of jobs and income, the effect on the collection of federal, state and municipal taxes, technological development and innovation conducted in the Country, additional cost of products and services, and, in their reviews, the retrospective analysis of results.

For the manufactured products and domestic services resulting from the technological development and innovation carried out in the Country, an additional margin of preference to the one provided on the basis of the criteria listed above, may be established.
The preference margins by product, service, group of products or group of services, will be defined by the federal Executive Branch. The sum of the margins cannot exceed the sum of 25% of the price of the foreign manufactured products and services.
The above provisions do not apply to the goods and services whose production or rendering capacity in the Country is less than: the quantity to be purchased or contracted.

The margin of preference may be extended, totally of partially, to the goods and services originating from the Member States of Mercosur – Southern Cone Common Market.

In the case of a consortium between a foreign company and Brazilian company, the Brazilian company will necessarily assume leadership, regardless of the origin of its capital (national or foreign).

At the discretion of the Public Administration, guarantees may be required for the contracting of works, services and purchases, which shall not exceed 5% of the contract value, with the exception of cases involving sizeable contracts, of a highly technical complexity and considerable financial risks, for which this percentage may reach 10%. The guarantees may be:

a) escrow in money or public debt securities;
b) insurance guarantee;
c) bank guarantee.

Laws 11,972/09 and 12,188/10 altered the conditions for the sale of goods of the Public Administration (subject to the existence of duly justified public interest) and cases of the waiver of invitations to bid.

On 5 August 2011, Federal Law 12,462/2011 was published originally with the purpose of regulating

government bids and public procurement in connection with the major sports events that were held (Confederations Cup and World Cup) and that will be held in Brazil in the coming years (Olympic Games and Paralympic Games). This law introduced the so-called Special Public Procurement Regime (Regime Diferenciado de Contratações Públicas - RDC). However, after coming into effect, the scope of the RDC was broadened to include projects that are part of the government's growth acceleration program (Programa de Aceleração do Crescimento – PAC) (added by Law 12,688/2012), engineering services and works in connection with the Unified Health System (Sistema Único de Saúde – SUS, added by Law 12,745/2012) and engineering services and works in connection with the public school system (added by Law 12,722/2012).
The main innovation of the RDC regime was that it repealed the provisions of the Bidding Law except in the cases expressly provided in the RDC law. The result of this new legal framework is that the RDC introduced some changes in relation to the Bidding Law, such as: shorter time periods for bidders to submit their proposals; preference given to electronic bidding; a single appeals stage; introduction of a new contracting method ("Integrated Contracting"), whereby the winning bidder is required to prepare both the basic and the executive projects, etc. The constitutionality of the RDC law is being questioned in two actions of unconstitutionality filed with the Supreme Federal Court (Supremo Tribunal Federal – STF). Judgment is pending on both.

9.2. Concessions

Brazilian Law allows the State to delegate the provision of public services to third parties by means of concessions, conducted via invitation to bid procedures, whereby the Public Authority awards to private enterprise the right to build or reform the necessary structure to be able to provide the service, exploit it commercially and receive remuneration by charging user fees.

Hence, the concessionaire invests in place of the State, at its own expense and risk under the conditions established and unilaterally modifiable by the Granting Power, but under the contractual guaranty of economic-financial equilibrium, receiving remuneration from the exploitation of the service, in general by means of rates charged directly from its users.
Law 8,987/95 fixes the policies for the delegation of the provision of public services at the federal, state and municipal levels, establishing that any corporate entity or consortium of companies may be a concessionaire of public services, with due observance, however, of the specific regulations of each sector.

It should be noted that, in the event of a tie between Brazilian and foreign companies, and without prejudice to the application of the provisions of the Bidding Act, preference will be given to the Brazilian company, which may be of foreign capital.

The following criteria will be taken into consideration for the judgment of proposals:

a) the lowest rate value of the public service to be rendered;
b) the highest offer, in cases involving payment to the granting power for the concession grant;
c) the two-by-two combination of the criteria described in items a, b and g;
d) the best technical proposal, with its price established in the bid notice;
e) the best proposal in relation to the combination of the best rate value of the public service to be provided and best technique criteria;
f) the best proposal in relation to the combination of the best offer for the concession grant and the best technique criteria; or
g) the best payment offer for the grant following the qualification of technical proposals.

On the subject of PPPs, further details can be found in the following chapter 10 of this study.

# 10. PUBLIC-PRIVATE PARTNERSHIPS IN BRAZIL (PPP)

Public-Private Partnerships (PPPs) are designed for undertakings that would not be otherwise economically attractive, i.e., projects that do not have a natural cash flow that directly permits the structuring of Project Finance, or other form of conventional financial structure.

The general invitation to bid and procurement rules for PPPs within the ambit of the direct and indirect public administration, of the three spheres of government are established in Law 11,079/04 (the PPP Act), which structures the PPP as a new form of concession, which are substantially more dynamic when compared with those provided in the Bidding Act and Public Service Concession and Permission Acts.

The PPP Act innovated with respect to guarantees and other provisions. The main aspects of this act are:

a) Definition and Object

A public-private partnership is construed as an administrative agreement with the purpose of:

(i) the concession of public services or public works referred to in Law 8,987/95, when they necessarily involve, in addition to the rate charged from the users, also pecuniary remuneration from the public partner to the private partner; it is the so-called Sponsored Concession;
(ii) the rendering of services of which the Public Administration is the direct or indirect user, even when involving the execution of works or supply and installation of property; it is the so-called Administrative Concession.

The following PPPs are prohibited: (i) in amounts of less than R$ 20 million (equivalent to approximately US$ 11.12 million), (ii) whose service rendering term is less than 5 years or (iii) when intended solely for the supply of labor, the supply and installation of equipment or the execution of public works.

The following guidelines shall be observed in the contracting of PPPs: (i) efficiency; (ii) respect of the interests and rights of the end users of the services and of the private entities in charge of their execution; (iii) non-delegability of the regulation and jurisdictional functions, of the exercise of policing power and of other activities that are exclusive to the State; (iv) tax liability; (v) transparency; (vi) objective sharing of risks between the parties; (vii) financial sustainability and social-economic advantages of the partnership project.
b) Agreements

In addition to the essential clauses set forth in Law 8,987/95, PPP agreements shall also determine:

(i) a validity term that is compatible with the amortization of the investments made, which shall not be less than 5 years or more than 35; this provision solved the problem of the term established in the bidding act, which cannot exceed 5 years;

(ii) the penalties applicable to the Public Administration and private partner in case of breach of contract, established in a manner that is proportionate to the seriousness of the fault committed and to the obligations assumed;

(iii) the sharing of risks between the parties, including those concerning acts of God, force majeure, factum principes and an area beyond extraordinary economic control;

(iv) the types of remuneration and adjustment of contractual amounts;

(v) the mechanisms for the preservation of the modernity of the service rendering;

(vi) the facts that characterize the monetary default of the public partner, the regularization methods and term and the method of enforcement of guarantees, when applicable;

(vii) the objective evaluation criteria of the performance of the private partner;

(viii) the offering, by the private partner, of execution guarantees that are sufficient and compatible with the onus and risks involved, with due regard to the pertinent legal provisions;

(ix) the sharing, with the Public Administration, of the effective economic gains of the private partner, resulting from the reduction of the credit risk of the financing used by the private partner; this provision demonstrates the real partnership, in which, in the case in question, both parties will benefit from any gains that the private partner obtains from its financing entity;
(x) the inspection of reversible property, in which the public partner may retain payments to the private partner, in the amount necessary to cure any detected irregularities.

Optionally, the agreements may additionally determine:

(i) the requirements and conditions concerning the transfer of control of a special purpose company (SPC) to its financing entities, with the objective of promoting its financial restructuring and ensuring the continuity of the service rendering;

(ii) the possibility of the issuance of a pledge on behalf of the financing entities of the project in relation to the pecuniary obligations of the Public Administration, which procedure is of great interest to the financing entities;

(iii) the legality of the financing entities of the project to receive compensation for the early extinguishment of the agreement, as well as payments made by the guarantor funds and state owned companies of PPPs, which provision is also of interest to the financing entities.

It is relevant to mention that, at the end of the agreement, the ownership of the property, as set forth in the notice with invitation to bid and agreement, shall be of the Public Administration.
c) Remuneration

The PPP Act determines that the agreements may establish the payment, to the private partner, of variable remuneration, related to its performance in the execution of the agreement, according to the quality and availability goals and standards defined in the agreement. This procedure is a stimulant for the private partner.

The remuneration payable by the Public Administration to the private partner may be paid either at the investment stage (“Public Financing”) or during performance of the service subject of the agreement (“Pecuniary Obligation”).
Payments due by the Public Administration may be made by bank order, the assignment of non-tax credits, grant of rights before the Public Administration and grant of rights over public property, as well as other means permitted by legislation.

d) Guarantees

Without prejudice to other guarantees contemplated in legislation, such as the surety insurance, the Law

determines the following guarantees for PPP agreements, to be granted by the Public Administration in favor of the private partner:

(i) lien of revenues, with due regard to the legal exceptions;
(ii) institution or use of special funds provided in law;
(iii) surety insurance agreements executed with insurance companies that are not controlled by the government;
iv) guarantees provided by international organizations or financial institutions that are not controlled by the government;
v) guarantees provided by guarantee funds or state-owned companies created for this purpose;
vi) other mechanisms provided by law.

It is relevant to mention the existence of the Guarantor Fund (Fundo Garantidor - FGP), which is of a private nature and will have separate assets to those of its quota holders and is formed by the contribution of assets and rights made by the quota holders, consisting of cash, government securities, immovable property of public domain, movable property, including shares of federal government-controlled (private) companies or other rights with an asset value.

The FGP was formalized by Decree 5,411/05, which authorized the initial transfer, to the said Fund, of the blue chip shares of 15 state or private companies, which were in the possession of the Federal Union, representing approximately R$ 4 billion (US$ 2.42 billion). Banco do Brasil S.A., which is controlled by the Federal Union, was designated to manage and represent the FGP.

The guarantees to be granted by FGP, whether to the private partner, or to insurance companies, financial institutions and international organizations, may be classified into the following types, considering the assets of the FGP:

(i) surety, without a benefit of order to the surety;
(ii) pledge of immovable property or of rights;
(iii) mortgage of immovable property;
(iv) chattel mortgage;
(v) other agreements that produce a guarantee effect;
(vi) secured or personal guarantee.

Moreover, bearing in mind that, in principle, it will be up to the private partner to obtain the most significant portion of the resources to finance the PPP project, the agreement may provide for the issuance of pledges relating to the obligations of the Public Administration, in favor of the financing entity, that is to say, the remuneration, directly in the name of the financing entity, and the legality of the financing entity to receive payments through said funds. It is a true subrogation, since, once the private partner has received its remuneration directly from the administration, the financing entity succeeds to this receipt. This innovative procedure, which is unprecedented in the current Bidding Act, will give the financial entity a greater guarantee for the amortization of the amounts financed to the private partner. This mechanism also applies to Common Concessions under the Concession of Public Services Laws.

The private partner may also grant guarantees to the financing entity, without prejudice to others, represented by receivables, i.e., rate revenues and remuneration originating from the public authority, as the case may be.

Furthermore, the Public Administration may require from the private partner with the purpose of guaranteeing its performance, the guarantees set forth in the Bidding Act, comprising an escrow in cash or government

securities, surety insurance or a bank guarantee, limited to 10% of the agreement amount, when involving works, services or substantial volume supplies, or to five percent (5%), for smaller volume agreements.

With the enactment of Law 12,024/2009, it was determined that the Union shall not grant guarantees and make voluntary transfers to the States, Federal District and Municipalities if the sum of expenses of an ongoing nature incurred by the series of partnerships already contracted by such entities has, in the previous year, exceeded three percent (3%) of net current revenue for the year or if the annual expenses of the contracts in force during the ten (10) subsequent years exceed three percent (3%) of the net current revenues projected for the respective years.

e) SPC – Special Purpose Company

Prior to signing the agreement, the private partner shall incorporate a SPC, which may be publicly or closely held, with the purpose of implementing and managing the PPP object. The SPC will be the owner of the property arising from the investment that the private partner makes during the agreement term, and shall abide by the standards of corporate governance and adopt standard accounting and financial statements, according to regulations.

It is prohibited for the Public Administration to hold the majority of the voting capital of a SPC, except when involving a financial institution controlled by the Government, in case of default of financing agreements.

f) Invitation to bid

The invitation to bid process shall be preceded by the administrative procedures set forth in Law, among which authorization from the competent authority, based on a technical study, a budgetary forecast for the project during the years of its execution, its inclusion in the Government's multiyear plan, a public consultation for the supply of information and receipt of suggestions and, finally, a prior environmental license or issue of rules for the environmental licensing of the undertaking. The fulfillment of these requirements will strengthen the security, for the private partner, of the effective performance of the PPP agreements by the Public Administration.

Sponsored concessions in which more than 70% of the remuneration of the private partner is paid by the Public Administration will depend on specific legislative authorization.

The contracting of PPPs will be the subject of an invitation to bid of the competitive type.

The notice with invitation to bid may establish:

(i) the agreement proposal and execution guarantees, to be offered by the bidder;

(ii) the remuneration guarantees of the public partner to be offered to the private partner;

(iii) the use of arbitration, to be held in Brazil, in Portuguese;

The bidding process for the contracting of PPPs will abide by the current legislation on invitations to bid and administrative contracts and also the following:

(i) the judgment may be preceded by a qualification phase of the technical proposals, disqualifying bidders that do not attain minimum points scores;

(ii) the judgment may adopt as criteria, (i) the lowest rate amount of the public service to be rendered,

(ii) the best proposal by reason of the combination of the technical proposals and offer of payment for the grant, (iii) the lowest remuneration amount to be paid by the Public Administration, (iv) the best proposal by reason of the combination of the criterion of item (iii) with that of the best technique, in accordance with the weights established in the notice.

The notice will define the submission method of economic proposals, permitting written proposals in sealed envelopes or written proposals, followed by open outcry bids.

g) Management Committee

As provided in Law 11,079/04, a collegium Management Committee was instituted by Decree 5,385/05. This Committee is formed by representatives from the Planning, Budget and Management Ministry, the Finance Ministry and Cabinet of the President of the Republic and will be responsible, within the sphere of the federal Public Administration, for establishing the procedures for the contracting of PPPs, defining the services considered top priority to be performed under the partnership regime, authorizing the opening of an invitation to bid process for the contracting and examination of the execution reports of the agreements. Other prerogatives of the State, Federal District and Municipality will not be confined to this body, inasmuch as they shall legislate to that effect.

It will be incumbent on the Ministries and Regulatory Agencies, in their respective areas of authority, to submit the notice with invitation to bid to the Management Committee, conduct the bidding procedure, and monitor and supervise the PPP agreements.

It will be incumbent on the Brazilian Monetary Council to establish the rules for the extension of loans to finance PPP agreements.

# 11. ELECTRIC POWER SECTOR

## 11.1. Structuring of the Sector

The Brazilian electricity sector is basically divided into (i) generators, in charge of generating electricity; (ii) transmitters, in charge of transporting high-voltage electricity from generators to power consumption points; (iii) distributors, in charge of delivering electricity to consumers; (iv) retailers, in charge of buying and selling electricity on the free market; (v) free customers, who are free to choose their electricity supplier and are today required to have an installed capacity above a certain voltage; and (vi) captive customers, who are allowed to purchase electricity from their local distributor only. The sector is organized around the following main offices and entities: (i) the Ministry of Mines and Energy (Ministério de Minas e Energia – MME), responsible for establishing policies and granting concessions; (ii) the Energy Research Company (Empresa de Pesquisa Energética – EPE), responsible for planning and providing studies in the electricity sector; (iii) the Brazilian Electricity Regulatory Agency (Agência Nacional de Energia Elétrica – ANEEL), which regulates and supervises the activities in this sector; (iv) the National Grid Operator (Organizador Nacional do Setor Elétrico – ONS), who controls the physical dispatch of electricity; and (v) the Power Trading Chamber (Câmara de Comercialização de Energia Elétrica – CCEE), which is responsible for accounting and settlements in the free energy market.

## 11.2. Competition

There are two power trading environments, namely: the Regulated Market (Ambiente de Contratação Regulada – ACR) and the Free Market (Ambiente de Contratação Livre – ACL). In the Regulated Market, ANEEL creates and CCEE holds public auctions where distributors purchase the power necessary to supply their consumers. In these auctions, generators announce the amount of energy and prices and whoever offers the lowest price is the winner. Distributors are allowed to purchase energy only in these auctions, and the prices they pay are passed on to their consumers. In the Free Market, there is freedom to negotiate the purchase of energy and continuous negotiations are entered into between generators, traders and free customers.

## 11.3. Main Segments

### 11.3.1 Generation

Brazil has a very particular power generation situation, inasmuch as it has the largest hydrographic basin of the planet and a great unexploited hydroelectric potential in the Country.

Nevertheless, alternative electric power generation sources are being exploited more and more, be it to minimize the restrictions imposed by irregular rain patterns, or to protect the environment against the impact of flooding caused by the hydroelectric plant's dam reservoirs. A number of incentives have been offered to encourage energy generation through alternative sources, including, but not limited to, discounts on the use of and connection to systems that transport energy from alternative sources and reductions on the minimum installed capacity required for consumers to be allowed to freely purchase energy directly from such sources. The possibility of conducting energy auctions according to the energy source is also being considered.

Electric power plants may be isolated (i.e., not connected to the National Interconnected System – Sistema Interligado Nacional - SIN), integrated (electrically interconnected to the System and with power dispatched by the National System Operator (Operador Nacional do Sistema – ONS) and interconnected (interconnected

to the SIN, without dispatch by the ONS).

The feasibility of the construction of new plants is managed by ANEEL, which avails itself of the grants disciplined by the Administrative Law for this purpose, which can be summarized as follows:

(i) exemption of grants for small-scale activities;

(ii) need of an authorization grant for medium-scale activities, and

(iii) need of a concession grant for large-scale activities.

The agents that operate in the electric power generation sector include the (i) Independent Electric Power Producer (PIE) figure, which can be both a corporate entity or a group of companies united in a consortium that receives a concession or authorization from the federal government (Granting Power) to produce electric power to be partially or fully commercialized, at its expense and risk; and the (i) Electric Power Self-producer figure, which is a corporate entity or individual or companies united in a consortium that receives a concession or authorization to produce electric power for its own exclusive use and has the right to sell the unused, excess electricity, subject to certain rules.

Also concerning generation, it is relevant to mention: (i) the existence of mechanisms for the optimization of the system's operation, by means of the guaranteed and secondary electric power of the plants, and (ii) the existence of the Electric Power Reallocation Mechanism (Mecanismo de Realocação de Energia - MRE), which operates in the compensation of electric power among the generators, and also, (iii) the strong growth in the generation of alternative electric power sources, notably co-generation, principally from biomass, wind generation, solar power, and power from Small Hydroelectric Centers (Pequenas Centrais Hidrelétricas – PCHs), which are hydropower plants with a capacity of less than 30MW. As stated above, the federal government has been actively encouraging the use of alternative energy sources by reducing the burdens on those who buy alternative energy, facilitating the purchase of alternative energy by free customers (known as "special" free customers), reducing taxes on equipment, among other measures.

Co-generation is an example of this growth. This activity consists of a heat and electric power production process, along with another undertaking, from one single fuel that is common to or a sub-product of the latter. For example, the burning of natural gas or organic waste (biomass) generates thermal energy (heat) and, at the same time, drives the generators.

This activity allows companies to become self-sufficient in the production of energy with the help of gas or of the industrial waste itself. The material that was previously discarded by the pulp industry, for example, is now used as fuel to heat the boilers.

Companies that wish to invest in co-generation must obtain qualification from ANEEL for the implementation of their projects, as regulated by an ANEEL resolution.

Brazil currently has 106 wind farms in operation. The production of wind power doubled in 2012, with an installed capacity of 2.4GW.

Today, 125 wind farms with a total of 3.4GW installed capacity are under construction. They are expected to start operating by 2015, which shows a growing investment interest in this alternative, clean and unlimited energy source. New technologies have also been used. Among other improvements, the height of wind turbines has been increased to better capture the wind.

Solar power is also an attractive investment opportunity, given Brazil's geography (high solar incidence) and the fact solar power generation is still in an infant stage. Investors have been trying to develop local equipment because dependence on foreign technology is still high, which hinders access to cheaper loans offered by government banks.

Finally, energy from Small Hydroelectric Centers also represents an investment opportunity, due to the above-mentioned government incentives, the shorter amount of time needed for construction and operation, and the fact that they do not require large dams and reservoirs – they can use the course of the abundant Brazilian rivers instead.

11.3.2. Transmission

Transmission is the transportation of the electric power generated in high current and voltage by means of conductors.

This and the generation activities are regulated by the federal government, known as Granting Power (Poder Concedente), since they involve a public service.

Essentially, it is possible to affirm that the transmission facilities are those that are designed to form the basic network of the interconnected systems, whose voltage is above 230 kV, usually connecting free consumers, generators and distributors.

These definitions are relevant, since only the transmission facilities that make up the basic network of interconnected electric systems are the object of a concession, granted through an invitation to bid. High voltage transmission facilities (below 230kW) are considered subtransmission facilities that form an integral part of the distribution concession. And the transmission facilities of the restricted interest of generating centers are considered component elements of the respective concessions, licenses or authorizations, e.g. subtransmission lines intended solely for the use of independent production.

With the increase in the number of generation plants in various regions of the country – e.g. the construction of large hydroelectric power plants such as Belo Monte, Jirau, Santo Antônio, Teles Pires (all located in the North of Brazil) and the wind farms mentioned above – the tendency is for the number of transmission lines put up for bid by ANEEL to grow, so as to guarantee the transportation of power and avoid power transmission "bottlenecks", which will result in the increase of investments in this segment.

It is relevant to mention, also, that those who wish to connect to the transmission system must sign a transmission system use agreement (Contrato de Uso do Sistema de Transmissão – CUST) regulating the rights and obligations of the system users, and a transmission system connection agreement (Contrato de Conexão ao Sistema de Transmissão – CCT) regulating the technical issues related to the connection point and maintenance thereof. The revenues of transmission concessionaires come from payments of the tariff for the use of the transmission system (Tarifa de Uso do Sistema de Transmissão – TUST), and concessions are subject to readjustment and tariff reviews.

11.3.3. Distribution

Transmission lines transport high-voltage electricity to substations, where power is reduced to lower voltages and then delivered to end consumers through distribution lines. Therefore, the owners of the utility poles and power networks located in the cities are the electric power distributors. They are also the ones that have a direct relationship with end consumers.

The provision of public electric power distribution service depends on the granting of a concession by the federal government, acting as the Granting Power. Electric power distributors must provide free consumers and electricity suppliers hired by free consumers with access to their network. In this case, even though the electric power distributor does not receive any money for the power itself, it is entitled to a so-called distribution system use tariff (Tarifa do Sistema de Uso de Distribuição – TUSD). Those who access its network must sign a distribution system use agreement (Contrato de Uso do Sistema de Distribuição – CUSD) and a distribution system connection agreement (Contrato de Conexão ao Sistema de Distribuição – CCD), similar to the CUST and CCT agreements mentioned above.

The electricity distribution market is serviced by 64 state or private concessionaires whose concession areas are geographically divided. The presence of national and foreign companies in the control groups of various private concessionaires can be verified. The opportunities for investment in electric power distribution are a result of the growing energy demand caused by economic growth and natural increase of the population, especially in border areas such as the Midwest, North and Northeast regions of Brazil.

Similarly to transmitters, electric power distributors are also subject to tariff readjustments according to ANEEL's rules and procedures. Their main source of revenue is electricity supply tariffs and tariffs for the use of their distribution system.

11.3.4. Trade

This segment of the Brazilian electric power sector includes energy trading under the ACL system, i.e. free trading by customers who are not required to purchase energy from distributors. In order to qualify as a regular free customer, one must have a demand of at least 3,000kW. Recently, the concept of "special" free customer was introduced. "Special" free customer are those who have an installed capacity of 500kW or above, provided that their energy is purchased only from alternative sources, as a way to promote the use of this type of energy. They enjoy a 50% reduction in the tariffs for the use of transmission and distribution systems. This market includes generators and traders authorized by ANEEL and free customers. Electric power agreements signed in the Free Market as well as generating agents must be registered with the CCEE. In addition to buying, selling or just acting as an intermediary in energy transactions, energy traders often represent free customers with the CCEE when these customers are not interested is setting up a structure to meet all requirements and monitor the fulfillment of the rules on the recording and trading of electricity in the Free Market.

11.4. Relevant Market Information

There are no regulatory restrictions in Brazil that prevent free foreign ownership in the capital of electric power companies. However, one of ANEEL's concerns in the regulation of the electric power sector is to limit the concentration of economic groups that might jeopardize the country's competitive environment.

It is relevant to mention that in spite of proposals to amend the Federal Constitution, the restriction remains for private foreign or Brazilian capital in the exploitation of nuclear services and facilities, which is a direct prerogative of the Federal Government.

11.5. Investment opportunities

The recent crisis and slowdown in the world economy affected the electric power sector in a more positive than negative way, since the growth in the demand for power was signaling a possible collapse in supply due to the absence of available power for sale.

There are already signs indicating that power generation, transmission and distribution activities will be expanding in the next few years, as well as the energy efficiency goals and diversification of the Brazilian energy mix, in order to keep pace with the growth that is expected from the Country and avoid a power supply crisis. These signs are largely associated with the federal government's awareness that investments in the sector are needed – given today's dependence on rainfall, in a sector in which the predominant matrix is hydropower, and given the prospect of economic growth.

One of the main challenges facing the sector will be to come up with a solution that promotes the development of Brazilian industry and, at the same time, permits the entry of Brazilian and foreign investors to add knowledge, technology and capital.

This solution should be based on clear rules, security in the performance of signed contracts, guarantee of alternative dispute resolution methods and, above all, on the strengthening of partnerships that can enhance the benefits obtained both by Brazilian and foreign investors, whether public or private.

The attractiveness of the power sector stems, fundamentally, from the following factors: (i) an expanding free and captive consumer market; (ii) new policies designed to diversify the Brazilian power mix; (iii) unexploited or underexploited natural potentials and technological divides (example: wind, solar and nuclear power); (iv) Brazilian industry with a solid base; (v) the existence of incentive programs for investors especially designed to reduce taxes and promote alternative energy sources (example: PAC, REIDI, reduction of fees charged on the use and connection to distribution and transmission systems, and others); and (vi) other factors, including consolidated democracy, foreign exchange stability, commitment to controlling inflation and the outlook of the Country's growth over the coming years.

11.6. Financing

BNDES has played an important role in financing the expansion and modernization of the electric power sector. This has allowed for the execution of projects that call for long maturation periods and substantial investments. BNDES' activities in this sector are aimed at guaranteeing the supply of electric power with quality, security and affordable rates, meeting the needs of the economy and of society as a whole.

Important aspects in the generation segment are not only the financing extended to the hydroelectric power plants, but also the pursuit for the development of alternative sources of energy (Small Hydroelectric Centers (Pequenas Centrais Hidrelétricas – PCHs, solar, wind and biomass), with lower interest rates on loans, provided that a minimum local content percentage and other requirements are fulfilled.

In addition to the BNDES, other domestic financing sources may be used, such as the regional fostering agencies, the commercial banks and investment and equity funds.

Lastly, it is relevant to mention, among the foreign loan and financing sources without governmental guaranties, the Interamerican Development Bank (IDB) and World Bank (IBRD), both of which are operating in Brazil in the electric power sector.

# 12. ENVIRONMENT AND SUSTAINABILITY

Regulation through environmental policies is primarily aimed at directing the behavior of entrepreneurs and business organizations and guiding public environmental management. The National Environmental Policy (Política Nacional do Meio Ambiente) (Federal Law 6,938/1981) is one of the key legal instruments for guiding existing and future initiatives on the environment, particularly regarding economic processes and productive sectors that either rely on natural resources or are deemed polluters or potential polluters.

In addition to the federal guidelines laid down by the National Environmental Policy, the state and local governments are granted by the 1988 Constitution the same power to pass laws on environmental control as the federal government, as well as the power to monitor within the limits of their respective interests, pursuant to the Constitution and supplementary laws.

This is a complex legal framework that may comprise, at all three government levels (federal, state and local), a number of subject-specific rules and public policies on air quality, flora, fauna, ground, water resources, basic sanitation, health, solid waste, health surveillance, environmental education, quality of urban life, cultural heritage, protected areas, biodiversity, sustainable development of indigenous peoples and communities, and climate change, in addition to regulations enacted by the entities and bodies in charge of implementing the actions set out in the mentioned policies, especially those comprising the National Environmental System (Sistema Nacional do Meio Ambiente).

Also worth noting is the development of the environmental permitting system, which has become increasingly complex, especially due to the enhancement of control systems (assessments, zoning and specific permits) and the introduction of cultural (archeology) and social (affected communities, such as Indians and quilombolas) aspects in the permitting process.

To ensure compliance with such vast legislation, which is based on command and control instruments, there are specific laws regulating civil (strict) liability, administrative liability and criminal liability for environmental violations, such as Law 6,938/1981 and Law 9,605/1998.

Besides legislation, the financial architecture of projects – particularly infrastructure projects – requires compliance with sustainability policies and indexes used by financial institutions (Equator Principles, for example), and sustainability reports have been using international methodologies (Global Reporting Initiative) as reference. Another market initiative worth noting is the creation of the Business Sustainability Index (Índice de Sustentabilidade Empresarial – ISE), which introduced a tool that allows for a comparative analysis of the performance of companies listed on the BM&FBOVESPA based on economic efficiency, environmental balance, social justice and corporate governance.

In practical terms, it is important for entrepreneurs and investors to carry out their business in Brazil aware of the environmental laws applicable to their activities – whether due to the need to previously assess the viability and risks involved or due to the inevitable need to review the applicable permitting system before implementing a project (applicable licenses, authorizations and environmental assessments, besides interfaces with other regulatory authorizations), or to adapt to new or updated environmental laws, even when the respective project or activity already has an operating license. In addition, successor liability arising from the acquisition of a company (whether through the acquisition of control or purchase of assets) that has environmental liabilities requires an environmental audit to be conducted prior to the transaction – both from a legal and from a technical point of view – including in the event of transfer of environmental permits as a result of a purchase of assets.

In the field of solid waste management, there are excellent investment opportunities in landfills and/or waste reuse facilities. A market for recycling is already in place, and a market for reverse logistics (pesticides, consumer electronics, tires, batteries, lamps, medications and lubricants) is beginning to take shape. The Brazilian economic sectors are already discussing and adapting to this new reality.

In the field of water resources management, there are business opportunities in the field of water treatment and opportunities to develop territorial business plans in order to minimize the effects of the current water crisis. Another initiative that may be undertaken in the field of water resources is to provide monetary and/or non-monetary remuneration for environmental services to individuals and companies that adopt conservation practices (e.g., protection of forests in the surroundings of headwaters, for example).

There have been discussions on the possibility of transferring the management of protected areas to the private sector, as well as on public forest concessions already provided for in the law but not widely disclosed and implemented. The list of goods and services allowed to be exploited under concession may include wood products, such as logs; non-wood products, such as oil, fruit, resin, ornamental and medicinal plants; residual wood material; and forest services, such as lodging, adventure sports, nature watching and visiting. It is important to highlight that the law allows for the sale of carbon credits in case of reforestation of degraded areas or conversion of areas to another use. Therefore, where the government allows, forest concessions may be used as a tool for the implementation of sustainable development projects aimed at reducing greenhouse gas emissions. The Annual Plan for Forest Concessions (Plano Anual de Outorga Florestal - PAOF) has identified approximately 3.4 million hectares of forest – located throughout the states of Amazonas, Pará and Rondônia – for concession in 2015.

Lastly, in the urban field, the law allows for institutional agreements and urban consortiums for the purpose of implementing a number of interventions and measures coordinated by the local government with the participation of owners, residents, permanent users and private investors, with the aim of implementing structural urban changes, social improvements, and environmental valuation in and for a specific area, resulting in the requalification of urban areas.

With this regard, we highlight the possibility to invest in works in the fields of water supply and sewage collection, transport, treatment and final disposal, so that the goals set out in the National Basic Sanitation Plan (Federal Decree 8,141/2013) can be met. Investments in basic sanitation can be made through public-private partnerships that can operate beyond the municipal level according to the provisions of the Metropolis Statute, created by Federal Law 13,089, of 12 January 2015.

# 13. MANAUS FREE TRADE ZONE (ZONA FRANCA DE MANAUS - ZFM) AND EXPORT PROCESSING ZONES (ZONAS DE PROCESSAMENTO DE EXPORTAÇÃO - ZPEs) AND AREAS OF FORMER SUDENE AND SUDAM

13.1. Manaus Free Trade Zone (ZFM)

The Manaus Free Trade Zone (ZFM) is a free trade area for imports and exports, located in the Western Amazon Region, with three activity centers, applying to both the domestic and international markets: commercial, industrial and agribusiness (DL 288/67, art. 1). The legal lifetime determined for the ZFM is until 31 December 2023 (EC 42/03 and article 94 of Decree 7,212/2010).

The industries established in ZFM enjoy the following fiscal benefits (with the exclusion of firearms and ammunition, tobacco, alcoholic beverages, passenger cars, perfumery products and toiletries and, with some exceptions, cosmetic compounds and preparations), in accordance with art. 3, paragraph 1 of DL 288/67, with the alterations of Law 8,387/91, with a view to the substitution of imported goods for nationally manufactured goods:

a) Import Duty: exemption (art. 3 of DL 288/67), whereas the goods brought into ZFM may, even if used, be subsequently exported overseas, with the maintenance of the exemption of the duties assessed on the importation (art. 127 of Law 11,196/05). For some sectors the exemption is partial, of 88% of the import duty.

b) Export Duty: exemption (art. 5 of DL 288/67);

c) Excise Tax (IPI): exemption for imported products consumed in ZFM and for products that though industrialized in ZFM are to be sold in another point of the Brazilian territory, except for products that are industrialized through packing or repacking, in which case they will be subject to IPI and also to the import duty related to raw materials (RIPI – Excise Tax Regulation, art. 81, II), intermediary products and the imported packaging materials employed therein (art. 7 of DL 288/67 with the alterations of Law 8,387/91).

d) State Vat (ICMS): exemption, barring a few exceptions, on the issue operations of industrialized products of domestic origin for sale or industrialization in the Municipalities of Manaus, Rio Preto da Eva and Presidente Figueiredo in ZFM, provided that the goods are consumed locally and satisfy other legal requirements (RICMS – State VAT Regulation, art. 84 of Annex I);

e) Non-rebatable Corporate Income Tax (IRPJ) and surtaxes levied on the profit of the exploitation of the undertaking: for the projects approved as of 1 January 1998 a reduction is granted, observing the following percentages: 75% from 1 January 1998 to 31 December 2003, 50% from 1 January 2004 to 31 December 2008 and 25% from 1 January 2009 to 31 December 2013, providing that the provisions of the labor and social security legislation and the environmental protection and control legislation is observed by the beneficiary company (RIR – Income Tax Regulation, art. 554, paragraph 4). These benefits do not apply in relation to tax periods ending as of 1 January 2014 (RIR, art. 554, paragraph 5). This fiscal benefit may be used for up to ten (10) years from the tax period in which the undertaking enters into the operating phase (art. 557 of the RIR); and

f) PIS (Contribution to the Social Integration Program) and COFINS (Contribution for Funding of Social Welfare Programs): the rates imposed on sales revenue from goods intended for consumption or industrialization in the Manaus Free Trade Zone – ZFM, by a corporate entity established outside the ZFM are reduced to zero, barring the exceptions set forth in Law 10,996/04.

Law 11,196/05 brought the reduction to zero of the PIS and COFINS rates imposed on sales made by producers, manufacturers or importers established outside of the ZFM, of products subject to differentiated

taxation designed for consumption or industrialization in ZFM (art. 65).

The law also instituted tax substitution on the resale of products within the ZFM.

The suspension of PIS and COFINS was also introduced on imports, by establishment located in the ZFM, of goods intended for industrialization, such as raw material, intermediary products and packing material, as well as new machines, apparatus, instruments and equipment for incorporation into the fixed assets of the importer corporate entity (art. 50 of Law 11,196 and paragraph 1 of art. 14 of Law 10,865/04).

A considerable number of foreign capital companies are established in the ZFM, on account of the numerous incentives granted and the absence of restrictions on foreign capital (except for those indicated in this study). There are also other incentives, such as the exemption of IPTU (Municipal Property Tax), some financial credits and similar incentives, which vary in accordance with the venue of the company's registered office, industrial production sector and other items.

13.2. Export Processing Zones (ZPE)

ZPE zones are free trade zones designed to encourage the establishment of companies that produce goods for export. They are considered "primary" zones for customs control purposes.
ZPE zones receive tax, foreign exchange and administrative benefits, with terms of up to 20 years (art. 8, main section and respective paragraphs, of Law 11,508/07).

Generally speaking, from a tax perspective, companies authorized to operate within a ZPE enjoy the suspension of duties and contributions levied on imports and domestic purchases of goods and services.

There are no restrictions on foreign capital, or foreign exchange or customs barriers in the ZPE.

There are, however, some limitations: prohibition of the establishment, in an ZPE, of companies whose projects evidence the simple transfer of industrial plants already established in the Country (art. 5 of Law 11,508/07), and the prohibition of the sale and manufacture of certain products (firearms and others) (art. 5, sole paragraph of Law 11,508/07).

The creation, in the Country, of 14 ZPE was authorized: Cáceres (MT); Rio Grande (RS); João Pessoa (PB); Corumbá (MS); Barcarena (PA); São Luís (MA); Maracanaú (CE); Parnaíba (PI); Macaíba (RN); Suape (PE); Araguaína (TO); Itacoatiara (AM); Nossa Senhora do Socorro (SE) and Ilhéus (BA) (Law 7,993/90 and Law 8,015/90).

13.3. Former SUDENE and SUDAM Areas (Law 11,196/05, art. 31)

Without prejudice to any other applicable benefits, for the goods purchased as of calendar year 2006 and up to 31 December 2018, the corporate entities that have approved installation, expansion, modernization or diversification projects in economic sectors that are considered priority for regional development, in less developed micro-regions located in the operating areas of the extinct SUDENE and SUDAM, will be entitled to:

a) accelerated depreciation incentive, for purposes of the calculation of income tax; and

b) discount, during the period of twelve (12) months from the acquisition, of certain PIS and COFINS credits, in the event of the purchase of new machines, apparatus, instruments and equipment, listed in regulations, to be incorporated into their fixed assets.

The applicable micro-regions, as well as the limits and conditions for the enjoyment of the aforesaid benefit,

will be defined by regulation. The enjoyment of this benefit is contingent on the enjoyment of the benefit referred to in art. 1 of Provisional Measure 2,199-14, of 24 August 2001: a 75% reduction on the corporate income tax (IRPJ), calculated based on the profits from the exploration, subject to fulfillment of the applicable conditions and requirements.

The accelerated depreciation incentive consists of full depreciation, during the actual year of purchase. The accelerated depreciation quota, corresponding to the benefit, will constitute exclusion from net income for purposes of the determination of taxable income and will be written up in the tax accounting ledger.

Total accumulated depreciation, including normal and accelerated, may not exceed the purchase cost of the asset. As from the tax period in which this limit is attained, the normal depreciation amount, posted in the accounting records, will be added to net income for the purpose of the determination of taxable income.

With regard to PIS and COFINS, the credits will be calculated through the application, each month, of the PIS and COFINS rates of 1.65% and 7.6%, respectively, on the amount corresponding to one twelfth (1/12) of the purchase cost of the asset.

Except as expressly authorized by law, these tax benefits cannot be enjoyed cumulatively with others of the same nature.

# 14. FISCAL INCENTIVES

14.1. Technological Innovation Incentives

Law 11,196/05 ("Law of Good"), originated from Provisional Measure 252/05, provides for technological innovation incentives.

This Law repealed Law 8,661/93, which previously provided for the fiscal incentives for the technological capacitation of industry and agriculture.

The Industrial Technological Development Programs (Programas de Desenvolvimento Tecnológico Industrial – PDTI) and Agribusiness Technological Development Programs (Programas de Desenvolvimento Tecnológico Agropecuário – PDTA), and the projects approved on or before 31 December 2005 will continue to be regulated by the legislation in force on the publication date of Provisional Measure 252/05, though migration to the regime set forth in Law 11,196/05 is authorized, as disciplined in the regulations.

Currently, corporate entities can benefit from the following fiscal incentives:

(i) deduction, for the purpose of the calculation of net income, of the amount corresponding to 160% to 180% of expenditures incurred during the tax period with technological research and the development of technological innovation classifiable as operating expenses by the Corporate Income Tax (IRPJ) legislation or as payment to universities and educational institutions, as set forth in paragraph 2 of article 17 of the law;

(ii) reduction of 50% of the Excise Tax (IPI) levied on equipment, machines, apparatus and instruments, as well as spare accessories and tools that accompany these products, to be used in technological research and development;

(iii) full depreciation during the year when the new equipment, machines, apparatus and instruments for use in technological research and development of technological innovation are purchased for the purpose of calculation of the Corporate Income Tax (IRPJ) and Social Contribution on Profit (CSL);

(iv) accelerated amortization, via the deduction as cost or operating expense, during the tax period in which they are incurred, of expenditures relating to the purchase of intangible goods, related exclusively to technological research and technological innovation development activities, classifiable in the beneficiary's deferred charges, for the purposes of the determination of IRPJ;

(v) reduction to zero of the withholding income tax rate on remittances made overseas for the registration and maintenance of trademarks, patents and cultivars.

Law 11,196/05 and further regulations also define the concept of technological innovation and the benefit conditions.

Finally, we point out that these benefits do not apply to corporate entities that use the benefits dealt with in Laws 8,248/91, 8,387/91 and 10,176/01, mentioned in chapter 8 of this guide.

14.2. Export incentive programs – REPES and RECAP

Law 11,196/05 also created the Special Taxation Regime for the Information Technology Service Export Platform (Regime Especial de Tributação para a Plataforma de Exportação de Serviços de Tecnologia de

Informação – REPES) and the Special Regime for the Purchase of Capital Goods for Exporter Companies (Regime Especial de Aquisição de Bens de Capital para Empresas Exportadoras – RECAP), with the objective of fostering exports through the granting of fiscal benefits.

REPES benefits corporate entities that execute predominantly software development activities or provide information technology services, cumulatively or otherwise, provided that they assume an export commitment of more than or equal to 50% of their annual gross revenues derived from the sale of goods and services, excluding the taxes and contributions assessed on the sale.

Companies that opt for the SIMPLES (Integrated System for the Payment of Taxes and Contributions by Small and Very Small-sized Companies) are excluded from the benefit.

The benefits granted through REPES are:

a) in the case of the sale or importation of new goods to be used for the development, in the Country, of software and information technology services, the following enactments are suspended: (i) of PIS and COFINS imposed on the gross revenue derived from sales in the domestic market, when the respective goods are purchased by a corporate entity, beneficiary of REPES for incorporation into its fixed assets, and (ii) of PIS/Import and COFINS/Import, when said goods are imported directly by a corporate entity, beneficiary of REPES for incorporation into its fixed assets, according to the terms and conditions set forth in law;

b) in the case of the sale or importation of services to be employed for the development of software and information technology services in the Country, the following enactments are suspended: (i) of PIS and COFINS imposed on the gross revenue received by the service provider, when the recipient is a corporate entity, beneficiary of REPES, and (ii) of PIS/Import and COFINS/Import, for services imported directly by a corporate entity, beneficiary of REPES, according to the legal terms and conditions.

In accordance with the annex of Decree 5713/06, the goods and services benefited by the suspension are: data storage, management, processing and transmission; software development; technical support in information technology equipment, communication systems and software; maintenance and update of information technology equipment, communication systems and software; digital certification and network management.

The above suspensions will be converted into a zero rate after the company attains 50% of its annual gross revenue in exports within the legal term: 3 years maintaining an average 50% of the annual gross revenues derived from exports.

The RECAP regime benefits any legal entity that is primarily an exporter, i.e., a legal entity whose gross revenue arising from exports during the calendar year immediately preceding the adhesion to the RECAP regime was at least 50% of the company's total gross revenue arising from the sale of goods and services during that period, and that agrees to keep such percentage for 2 calendar years. Any legal entity that has recently started operating or that did not reach such 50% export revenue in the preceding year can adhere to the RECAP regime as long as it agrees to have its gross revenue arising from exports reach at least 50% of its total gross revenue arising from the sale of goods and services, during 3 calendar years.

As to RECAP benefits in case of sales or imports of new machines, apparatus, instruments and equipment provide for the suspension of the following enactments: (i) of PIS and COFINS imposed on gross revenues derived from sales in the domestic market, when the said products are purchased by a corporate entity, beneficiary of RECAP for incorporation into its fixed assets, and (ii) of PISP/Import and COFINS/Import,

when the said products are imported directly by corporate entities, beneficiaries of RECAP for incorporation into their fixed assets.

This benefit is regulated by Decree 5,649/05 and may be enjoyed for up to 3 years from its authorization.

14.3. REIDI

The General Infrastructure Development Regime (Regime Geral de Desenvolvimento da Infraestrutura REIDI) was instituted by Provisional Measure 351/07, which was converted into Law 11,488/2007 and regulated by subsequent rules.

The benefit granted by the REIDI regime consists of a suspension of the collection of:

a)Social contributions (PIS and COFINS) levied on the revenues arising from: (i) the sale of new machines, apparatus, instruments and equipment purchased by a legal entity that is a REIDI beneficiary for incorporation into the infrastructure work to be incorporated into its fixed assets; (ii) the sale of building materials purchased by a legal entity that is a REIDI beneficiary for use or incorporation into the infrastructure work to be incorporated into its fixed assets; and (iii) the provision of services by a legal entity incorporated in Brazil to a legal entity that is a REIDI beneficiary, when the services are related to the infrastructure work to be incorporated into its fixed assets; and

b) Social contributions (PIS Import and COFINS Import) levied on: (i) ) the purchase of new machines, apparatus, instruments and equipment for incorporation into the infrastructure work to be used in its fixed assets, when the importer is a legal entity that is a REIDI beneficiary; (ii) the purchase of building materials for use or incorporation into the infrastructure work to be incorporated into its fixed assets, when the importer is a legal entity that is a REIDI beneficiary; and (iii) the payment for services imported by a legal entity that is a REIDI beneficiary, when the services are related to the infrastructure work to be incorporated into its fixed assets.

Law 13,043/2014 established that these benefits also apply whenever the revenue that those legal entities that win a contract to provide public-utility services recognizes during the execution of infrastructure works eligible for the REIDI has as a corresponding entry an intangible asset that represents an exploitation right or a financial asset that represents an unconditional contractual right to receive cash or to receive another financial asset. The scope of the provision was extended to include ongoing projects, already qualified before the Federal Revenue Department.

The REIDI regime applies to companies that have an approved project for infrastructure work in the following areas: (i) transport, including the acquisition of coaches and locomotives and construction of pipelines; (ii) ports, including port facilities for private use; (iii) energy, including co-generation and distribution of electricity;(iv) water supply & sewage; (v) irrigation; and (vi) production and processing of natural gas

14.4. REPENEC

The Special Incentive Regime for the Development of the Oil Industry Infrastructure in the Northern, Northeast and Central West Regions (Regime Especial de Incentivos para o Desenvolvimento de Infraestrutura da Indústria Petrolífera nas Regiões Norte, Nordeste e Centro-Oeste - REPENEC) was instituted by Provisional Measure 472/09, converted into Law 12,249/10. This fiscal incentive is intended for corporate entities established and domiciled in the Northern, Northeast and Central West regions that have approved projects for the implementation of infrastructure works in the petrochemical, oil refinement and natural gas-based ammonia and urea production sectors.

Corporate entities benefited by REPENEC will be entitled to the suspension of PIS/PASEP, COFINS, PIS/Import, COFINS/Import, Excise Tax (IPI), and Import Duty (II), at the time of the sale in the domestic market or importation of new machines, apparatus, instruments and equipment, and construction materials for use or incorporation in infrastructure works intended for property, plant and equipment.

14.5. REPETRO

The Special Customs Regime for the Export and Import of Goods to be Used in the Research and Exploitation of Oil and Natural Gas (Regime Aduaneiro Especial de Exportação e Importação de Bens Destinados às Atividades de Pesquisa e Lavra de Jazidas de Petróleo e Gás Natural – REPETRO – Decree No. 6,759/09, art. 458 et seq.; RFB Normative Resolution No. 1,415 ) grants Brazilian and foreign manufacturers tax incentives for the import of goods to be used directly in oil and natural gas activities, i.e., exemption of federal taxes.

Such regime allows the use of the following special customs regimes, depending on the situation:

(i) "Fictitious" export, when the good is not actually shipped abroad, but the temporary admission regime is applied in relation to goods manufactured domestically and sold to a person located abroad;
(ii) "Fictitious" export, when the good is not actually shipped abroad, but the temporary admission regime is applied in relation to components and spare parts of goods previously admitted under the same temporary admission regime;
(iii) Import under the drawback regime, concerning the suspension of duties in relation to raw material, semi-finished or finished goods and parts and components to be used in the production of goods to be exported according to item (i) above; and
(iv) Temporary admission of foreign or denationalized goods coming from abroad.

By allowing the combination of these three regimes – i.e., fictitious export, temporary admission and drawback – the REPETRO regime grants exemption of taxes levied on export revenues and suspends all federal customs duties levied on import, namely: (ii) Import Duty; (ii) Excise Tax (IPI); (iii) PIS Import; (iv) COFINS Import; and (v) Freight Surcharge for Renovation of Merchant Marine (AFRMM).

At the state level, the REPETRO regime also grants tax incentives in relation to the Tax on the Circulation of Goods and Services (ICMS) levied on oil and natural gas extraction and production activities.

14.6. RETAERO

The Special Tax Incentive Regime for the Brazilian Aeronautical Industry (Regime Especial de Incentivos Tributários para a Indústria Aeronáutica Brasileira - RETAERO) was instituted by Provisional Measure 472/09, which was then converted into Law 12,249/10. The RETAERO regime is designed to stimulate the expansion of the Country's aeronautical sector and the greater nationalization of aircraft. In accordance with this special tax regime the collection of taxes levied on the sale in the domestic market and importation of parts and equipment and other materials to be employed in the maintenance and manufacture of aircraft are suspended.

Within this scenario, in transactions conducted in the domestic market, the RETAERO regime includes the suspension of PIS and COFINS levied on the revenue of corporate sellers and of the IPI levied on the issue from the industrial establishment. In the case of imports, the suspension applies to the IPI and PIS Import and COFINS Import.

14.7. PROUCA and RECOMPE

The One Computer per Student Program (Programa Um Computador por Aluno - PROUCA) and Special Regime for the Acquisition of Computers for Educational Use (Regime Especial para Aquisição de Computadores para uso Educacional - RECOMPE) were also instituted by Provisional Measure 472/09, which was then converted into Law 12,249/10.

The objective of the PROUCA program is to promote the inclusion, in state schools, through the acquisition of computers, software and technical assistance in information technology. To help lay the groundwork for this program, RECOMPE was created, with the purpose of granting fiscal benefits to those who wish to supply the mentioned information technology products and services.

Companies interested in obtaining the aforesaid benefits need to first qualify for the RECOMPE, which guarantees the suspension of such taxes as IPI, PIS and COFINS on the sale of raw materials, intermediary products, equipment and services related to the information technology sector that are designed for the system of state schools. RECOMPE also includes the suspension of IPI, PIS Import COFINS Import, Import Duty and Cide Royalties, levied on the import operations of the respective raw materials, intermediary products, equipment and services.

14.8 REINTEGRA

Created by Law 12,546/11 and regulated by Decree 8,415/15, the Special Regime for the Reinstatement of Taxes for Exporters (Regime Especial de Reintegração de Valores Tributários para as Empresas Exportadoras – REINTEGRA) allows for significant incentive to exports. The main purpose is the partial or full reimbursement of the so-called residual cost of tax (credit) incurred during the production chain of goods for export.

This incentive involves the return of credits as PIS/PASEP and COFINS, according to the following rates:

(i) 0.1% until 31 December 2016;
(ii) 2% from 1 January 2017 to 31 December 2017; and
(ii) 3% from 1 January 2018 to 31 December 2018.

REINTEGRA benefits are extended to legal entities that export goods which: (i) have been industrialized in Brazil; (ii) are classified under a code of the Industrialized Product Tax Table (Tabela de Incidência do Imposto sobre Produtos Industrializados - TIPI) and (iii) involve a total cost of imported inputs not superior than a certain percentage of the export price, which is 40% for most products.

The credit can be used in the set off of the company's own debits derived from taxes managed by the Federal Revenue Department or as reimbursement (payment in cash). The company must inform in the statement of set off or in the request for reimbursement that the total amount of imported inputs did not exceed the limit set out in the regulation. The company is only allowed to make the set off statement or request for reimbursement after the end of the calendar quarter during which the relevant export and annotation of dispatch occurred.

# 15. ACQUISITION OF COMPANIES

The total or partial acquisition of a Brazilian company by a foreign company may occur especially through:

a) the acquisition of shares or quotas corresponding to the respective capital;
b) the subscription of a capital increase in the company involved;
c) the acquisition of an establishment;
d) other means involving those listed above, but within a tax planning or corporate reorganization.

An acquisition may be conducted directly by a company domiciled abroad or by its duly established subsidiary in Brazil.

The transaction may or may not involve the payment of a premium. The possibility of setting off the premium paid by the acquirer with a view to its amortization and allocation as deductible expense must be analyzed by a skilled professional, particularly when it comes to assessing the tax risks involved. For the purpose of setting off premiums, the acquisition must be made by the Brazilian subsidiary or by a company incorporated in Brazil by the latter.

Whatever method is adopted for the acquisition, special care should be taken by the foreign investor, with respect to the following:

a) choice of a prospective local partner (in the case of a joint venture), based on an in-depth analysis of its financial conditions among other factors;

b) analysis of the financial, accounting, market and legal status of the company involved;

c) appraisal of the intended transaction, especially in relation to any premium to be paid;

d) analysis of the company's legal and accounting situation, particularly: tax registrations, licenses for opening and operating establishments, environmental licenses, possible special authorizations, depending on the company's area of activity and its corporate, tax, labor and fixed asset status, and its situation in relation to judicial proceedings, contracts, environmental requirements, real estate (owned and leased), trademarks, patents, technology, the consumer protection code and sanitary surveillance legislation, etc.; and

e) assessing whether it is necessary to submit the transaction to the Brazilian antitrust authorities.

Among the issues listed above, the prior study of the financial situation of the company or prospective partner, and analysis of the company's position in the market, and appraisal of the transaction are generally carried out by a local investment bank or specialized company with experience in this type of transaction.

The other conditions are analyzed by lawyers and auditors, through a due diligence to be conducted in their respective sectors of expertise. In the environmental area, the work of the lawyers can be accompanied by specialized technical consultants who will analyze the industrial practices of the target company, in order to determine the existence of any environmental liability of the target company. Note that various cases recently verified in Brazil, relating to contamination generated several decades ago and that have only now started to produce direct consequences, indicate the need for a rigorous environmental audit prior to an acquisition. These professionals will issue reports presenting the results of their respective assessments.

With respect to due diligences in the field of competition law, special attention should be given to the assessment of compliance by the target company and the study of any administrative proceedings involving the target company that are pending with the Brazilian Competition Defense System (Sistema Brasileiro de Defesa da Concorrência – SBDC), as well as the existence of distribution contracts and any contracts or agreements entered into with competitors of the company, and other issues.

Depending on the transaction, letters of intent, acquisition instruments, shareholder or associate agreements and other documents will have to be negotiated between the parties to contract, possibly involving the creation of new companies and/or the transformation of the existing company into a different type of company.

It is customary in such operations to obtain guaranties from the sellers of the target company for contingent liabilities/contingencies and asset inconsistencies, among which the most common are: mortgage, bank, pledge of shares, and personal guaranties and the retention of a portion of the price through an escrow agreement (depósito).

All the foregoing precautions are important, especially in tax planning and corporate reorganization operations conducted by company sellers, in view of the tax succession and succession of operations issues, with a view to avoiding the occurrence of capital gain by the sellers. These structures may have a negative impact on the purchaser and the target company.

With regard to the acquisition of establishments, the Brazilian Civil Code contains the following provisions on the negotiation of a business establishment: a) the need for the publication of contracts, as well as the registration of their terms alongside the Commercial Registration of the transferor company, in order for them to produce effects against third parties; b) the requirement of the payment of all creditors or the express or tacit consent thereof in case the seller is left with insufficient assets to settle all of its liabilities; c) the responsibility of the acquirer for the debts prior to the transfer, with the joint and several liability of the transferor for one year, and d) the prohibition of competition on the part of the transferor for the period of five years, unless there is express authorization for such.

Moreover, certain provisions of the new Bankruptcy and Company Reorganization Act (Law 11,101/05) and Complementary Law 118/05, with respect to the acquisition of branches and production units and the joint or separate acquisition of assets, belonging to companies undergoing judicial reorganization or even to the debtor companies, deserve mention.

Indeed, in either of these cases, the subject of the transfer during the course of the judicial proceeding will be free of any encumbrance and there will be no succession of the buyer to the obligations of the debtor, including those of a tax, labor and occupational accident nature.

# 16. FOREIGN INVESTMENT IN THE FINANCIAL MARKET

Foreign investments in the financial market are any type of investment available to residents and that allow free migration from one type of investment to the other. Under the rules of the Brazilian Securities Commission (Comissão de Valores Mobiliários – CVM), certain operations depend on prior authorization.

Foreign investments are allowed to be made through the application of foreign funds remitted to Brazil by a non-resident investor or through funds, in the Brazilian currency, available in an account held in Brazil by a resident domiciled or with head office abroad,

The individual or collective foreign investor may be corporate entities, natural persons, funds or other collective investment entities, resident, based or domiciled abroad. It is important to note that financial movements with foreign countries, resulting from such investments, may only be conducted through the contracting of foreign exchange. Since 2005 the foreign exchange rules have suffered considerable alterations, and as a result of the unification of the floating and free exchange rate markets, today there is one single market for foreign exchange operations.

Resolution 4,373 issued by the National Monetary Council expressly allows for the occurrence of an exchange transaction and an international transfer of sums in Reais with no actual delivery of funds, simultaneously, regardless of prior authorization by the Central Bank, in the following events: (i) when the interest of non-residents is converted into investments in the capital or financial markets, (ii) when the application of a non-resident investor is transferred by means of depositary receipts to direct foreign investment and/or application in the capital and financial markets (iii) when the application of a non-resident investor is transferred to the capital and financial markets as direct foreign investment and vice versa.

However, all the foreign investments in question must be submitted to declaratory registration via electronic means at BACEN, which is obligatory for any financial movements with foreign countries, there being no minimum time limit for the permanence of said investments in Brazil.

However, this investment system calls for the satisfaction of the following prerequisites by the investor: (i) the establishment of at least one representative in the Country, which must be a financial institution or an institution allowed to operate by BACEN; (ii) the completion of a form to be submitted to CVM and BACEN, (iii) the obtainment of the investor's registration with CVM, and. (iv) the appointment of one or more custodians authorized by the CVM.

In addition, all natural persons and corporate entities domiciled, resident or based abroad that have investments in the Brazilian financial and capital markets are required to register in the Federal Register of Individual Taxpayers - CPF (in the case of individuals) or Federal Register of Corporate Taxpayers - CNPJ (when involving corporate entities).
With respect to the taxation applicable to investments in the financial market please refer to paragraph 6.1.1.3 above.

# 17. REMITTANCE OF PROFITS AND DIVIDENDS TO INVESTORS DOMICILED ABROAD

Once the foreign capital has been registered with Central Bank of Brazil (BACEN), profits may be freely remitted to the foreign investor abroad, in proportion to its holdings in the paid-up capital of the Brazilian company and always limited to the stake registered with SISBACEN, RDE-IED Module. Remittances must also have their movement registered with BACEN and will be exempt from any taxation, except the rate of 0,38% corresponding to the IOF – Tax on Financial Operations levied on the amount to be remitted abroad.

# 18. REPATRIATION OF INVESTMENT

Capital and reinvestments registered with BACEN may be repatriated to the investor's country without incurring income tax, up to the total foreign currency amount stipulated in the Consolidated Investment Statement available on the BACEN RDE-IED System.

Therefore, with due observance of the ownership interest of the foreign investor in the capital stock of the Brazilian company, the allocation of resources determined in the sale of ownership interests, reduction of capital for the reinstatement of shareholders or liquidation of companies, shall be registered with BACEN.

The differences in excess of amounts registered as brought into the Country - such as the case of a premium verified on the sale of shares or quotas - will be considered "capital gain" and, as a rule, be subject to the levy of income tax at the rate of 15%.

The Brazilian legislation provides that the capital gain on the sale of shares or quotas must be calculated based on the difference between the capital inflow expressed in foreign currency and the remittances abroad, also expressed in foreign currency. However, we note that the tax authorities have been interpreting this rule differently, calculating capital gains based on the difference between the capital inflow and the outflow both in Brazilian currency (real).

BACEN may, if it deems necessary, ask for the presentation of an appraisal report, as well as other elements it considers relevant for the perfect characterization of the operation and verification of the reasonability of the amounts involved.

# 19. INTERNATIONAL TRADE TREATIES

In 2015, the major global trade agreement was signed: the Trans-Pacific Partnership, also known as TPP, to which Brazil is not a signatory. The agreement was signed by 12 Pacific region countries (USA, Japan, Canada, Mexico, Peru, Chile, Singapore, Australia, Brunei, Malaysia, New Zealand and Vietnam) and poses a threat to Brazilian exports.

This is why it is so important to know which treaties have been signed by Brazil as well as the benefits that they offer. Among the most important international treaties signed by Brazil in the trade area we may mention:

19.1. Latin American Integration Association (ALADI)

a) Establishment: Montevideo Treaty, of 1980.

b) Members: Argentina, Bolivia, Brazil, Colombia, Chile, Cuba, Ecuador, Mexico, Panama, Peru, Paraguay, Uruguay and Venezuela.

c) Objective: formation of a Latin American common market, favoring the creation of an economic preference area in the region, which is achieved through 3 mechanisms:

(i) area of regional tariff preference in relation to non-member countries;
(ii) agreements of a regional scope with the participation of all member countries;
(iii) agreements of a partial scope with the participation of some countries from the area.

The Aladi serves as an “umbrella” organization for various trade agreements between its members. Under the Aladi, goods manufactured in Brazil have a margin of preference between 8% to 20% when exported to other members of the bloc.

Among the agreements signed by Brazil under the Aladi, it is worth highlighting the Mercosur agreement, Auto Accords with Argentina and Mexico and Preferential Trade Agreements (PTAs) with all South American countries, Mexico and Cuba.

It is interesting to note that the Aladi member countries are of strategic importance to Brazil’s exports, as they are the countries to which the largest amount of manufactured goods are exported.
Thus, the PTAs signed under Aladi are important trade instruments for Brazilian exports of industrial goods.

With respect to investments, it is important to mention the Agreement on Reciprocal Payments and Credits (CCR) signed by the central banks with the purpose of promoting the financial relations among the region countries, facilitating expansion of reciprocal trade, and creating a system for mutual consultations in monetary, exchange and payment matters.

19.2. Southern Cone Common Market - MERCOSUR

a) Establishment: Asunción Treaty, of 1991.

b) Members: Argentina, Brazil, Paraguay, Uruguay and Venezuela. Bolivia is in process of accession[1].

c) Associates: Chile, Peru, Colombia, Ecuador, Guyana and Suriname.

[1] On 7 December 2012, Bolivia signed an Accession Protocol to the Mercosur. Its approval is contingent upon the approval of the other members of the Bloc.

d) Objective: eliminate all customs tariffs and other barriers that may hinder the free circulation of goods and services originating from their respective territories.
Even though they are not associate States, in 2012 Guyana and Suriname began to enjoy forms of participation in Mercosur meetings.

e) Headquarters: Montevideo, Uruguay

f) Characteristics:

Mercosur represents one of the world's largest trade blocs, uniting more than 275 million people.

In January 1995 the first stage of the integration process was carried to completion: the institution of a free trade area between the four countries. With respect to imports from non-member countries, the Common External Tariff (CET) came into force, with a basic tariff ranging from zero to 20%, but with the maintenance of a list of exceptions whereby the countries have the right to apply the national tariff. Nevertheless, there is a convergence mechanism up to the levels of the CET, in a linear and automatic manner.

Besides negotiations for the establishment of a customs union between the Mercosur Member States, the bloc also has extensive regulation covering many topics, including judicial cooperation, migration, foreign exchange swap agreements, industrial policy integration, government procurement, infrastructure, energy, non-tariff barriers and services. This vast regulatory framework may have a significant impact on companies that wish to do business within intraregional boundaries.

Mercosur signed a few agreements with non-member countries, economic blocs and international organizations with a view to laying the groundwork for investments and the establishment of free trade, namely: the Andean Community, India, Southern African Customs Union (SACU), Egypt, Morocco, Gulf Cooperation Council (GCC), European Free Trade Association (EFTA) States (Island, Liechtenstein, Norway and Switzerland), Trinidad, Tobago, Guyana, Singapore, Canada, Russian Federation, Mexico, Israel and Palestine. An agreement with the European Union is under discussion.

Within the ambit of Mercosur two treaties were also signed regarding the protection of investments: the Colony Protocol for the Reciprocal Promotion and Protection of Investments in Mercosur (CMC Dec 11/93), and the Buenos Aires Protocol for the Promotion and Protection of Investments Originating from the Non-member Countries of Mercosur (CMC Dec 11/94). However, these Protocols have not yet completed the necessary procedures for their internalization into the Brazilian legal system.

In August 2010, The Mercosur Customs Code (Código Aduaneiro) was approved. The aforesaid code aims to harmonize and standardize the methods and legislations in relation to the free circulation of goods through their territories. Its implementation was scheduled for January 2012, but has not occurred yet. The code aims to ensure that the trade of finished products – those that have received no other components – will be taxed only at origin. Today, it is taxed at the time of the export and at the time of the sale in the country of destination (double charging of the Common External Tariff (CET)).

In practice, this means that a product imported by Brazil, for example, pays a charge per operation. If this same product with no Certificate of Origin from Mercosur is resold to Uruguay, it is taxed again. The code would put an end to this double taxation. Decision No. 10 of the Council of the Common Market (CCM), adopted in 2010 at the same meeting that approved the Customs Code, established a schedule to eliminate the double charging of the CET. The decision, which complements prior decisions on the same topic (CCM No. 54/04 and CCM 37/05), provides for three stages that are yet to take place.

g) Dispute Resolution:

The Olivos Protocol (signed in 2002), which introduced certain modifications in the original dispute resolution system in Mercosur established by the Brasília Protocol (signed in December 1991), came into force in 2004. These modifications included the creation of the Mercosur Permanent Review Tribunal, with its headquarters in Asunción, Paraguay.

Private entities are allowed to use the dispute resolution system within Mercosur. However, first they must make a claim with the Common Market Group (CMG) in their country of origin (Mercosur Member State) and demonstrate the violation to the bloc's rules and the (potential or actual) harm incurred. Therefore, even though the system permits direct access by private entities, the government's approval is still necessary in order to proceed with a claim.

During the validity period of the Brasília Protocol (from 1992 to 2003), 10 arbitral awards were issued. As of 2004, with the advent of the Olivos Protocol, 6 awards were issued, 3 of which concerning retreaded tires. However, Mercosur's dispute resolution system has been avoided by Member States in the past years. Only one award has been issued by the Permanent Review Tribunal since 2008.

h) Latest Developments:

The accession of Venezuela as a Mercosur Member State in 2013 offered the prospect of integrating a significant consumer market to the Customs Union and the expansion of intra-bloc trade. However, the serious economic crisis that the country has been facing – similarly to Argentina – has caused difficulties to Brazilian exporters, placing – although in the short term – tough restrictions on the commercial development of the bloc. Today, investors have been making unfavorable comparisons between Mercosur and the Pacific Alliance[2] trade bloc, which has been considered more dynamic and more commercially open than Mercosur.

Venezuela's payment difficulties caused by the restrictions introduced by CADIVI and the import license requirements (DJAI) imposed by Argentina are examples of trade balance control policies that hurt Brazilian exports within the bloc.

In 2014, Mercosur once again considered the possibility of signing an agreement with the European Union, but the negotiations did not evolve due to the lack of consensus among Mercosur members. Because of Mercosur's organizational and decision-making structure, Brazil can only sign bilateral agreements with non-member countries if it extends the benefits to all Mercosur members, which has been hindering the progress of Brazil's international relations.

19.3. Union of South American Nations – UNASUR

UNASUR is formed by twelve countries of South America (Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela). Mexico and Panama attended as observers. The treaty that formed the organization was approved during the Extraordinary Meeting of Heads of State and Government, held in Brasília, on 23 May 2008. The 12 countries have already deposited their ratification instruments, completing the minimum number of necessary ratifications for the entry into force of the Treaty on 11 March 2011.

The main objectives of UNASUR are the political, economic and social coordination of the region.
According to the language of the Treaty, its institutional structure comprises: a) Council of Heads of State and Government; b) Council of Foreign Ministers; c) Council of Delegates; and d) General Secretary. There is the possibility of the constitution of a Ministerial Council and of Working Groups. Every instance is already

[2] Established in 2012, the bloc has Chile, Colombia, Mexico and Peru and seeks to promote trade integration between the region and Pacific countries.

operational. In 2014, UNASUR inaugurated its headquarters in Quito, Ecuador.
Currently, UNASUR has twelve ministerial councils and two working groups: a) Financial Integration; and b) Investment Disputes Resolution, in which the possibility of creating an arbitration mechanism is being considered, as well as a Legal Assistance Center and a code of conduct for arbitral tribunal members.
The ministerial councils worth highlighting are the Infrastructure and Planning Council (COSIPLAN) and the Energy Council, with high levels of activity. A number of ambitious infrastructure integration and regional energy production projects have been carried out through these councils, most of them with the support of the Brazilian Development Bank (BNDES), creating business opportunities especially for companies located in Brazil.

19.4. World Trade Organization - WTO

a) Establishment: the WTO was created in 1995, during the Uruguay Round, under the form of a secretariat to administer the General Agreement on Tariffs and Trade (GATT).

b) Members: 162, including Brazil and other Mercosur member States.

c) Headquarters: Geneva, Switzerland.

d) Objective: Regulating multilateral trade relations between the Members and eliminating all trade barriers, keeping the import duty as the only mechanism to protect markets (but one that must also be gradually reduced). The following are functions of the WTO: managing the trade rules, discussing and negotiating them; settling trade disputes; monitoring the trading policy of each Member and providing technical assistance and cooperating with other international organizations. Special attention must be given to its role as an international trade court, function bestowed upon the Dispute Settlement Body. At a first level, disputes are settled through consultation between the Members and decisions are made by a panel of experts, and at a second level, by the Appellate Body. The great importance of this body is that its decisions are binding, under penalty of application of retaliatory measures, making the WTO the most efficient court among all international organizations.

e) Agreements Covered: The WTO members assumed the commitments set forth in the following multilateral agreements: General Agreement on Tariffs and Trade – GATT, General Agreement on Trade and Services – GATS, Trade Related Aspects of Intellectual Property Rights – TRIPS, and also agreements on Agriculture, Sanitary and Phytosanitary Measures, Textiles and Wearing Apparel, Technical Trade Barriers, Trade-Related Investment Measures - TRIMs, Anti-dumping, Customs Value, Pre-shipment Inspection, Rules of Origin, Import License, Subsidies and Countervailing Measures, Safeguards, Understanding on Dispute Resolution and Trade Policy Review Agreement; Trade Facilitation Agreement; the latter approved in Brazil in March 2016, but still pending certain international ratifications in order to be valid worldwide.

f) Dispute Resolution: To date, a total of 503 disputes have been taken to WTO's Dispute Resolution Body. The majority of the disputes are settled at the initial phase of the procedures (consultations), approximately 35% are finalized at the panel phase and roughly 25% reach the appeal phase.

Brazil has always worked in a broad and dedicated manner within the ambit of the WTO, not only in multilateral negotiations, but also in various disputes y before the Dispute Resolution Body. With the submission of trade litigations to the Dispute Resolution Body, Brazil aims, above all, to confer greater effectiveness on international trade agreements, furthering and defending the interests of the national economy. Up to February 2016, Brazil participated in a total of 142 disputes. In 27 it was the Claimant – the most recent is DS484 against barriers imposed by Indonesia on Meat of Fowls from Brazil –, in 99 cases it was a third party

of interest and in 16 cases it was the Respondent. The most recent case, initiated by Japan, challenges the Brazilian government's tax incentive policy, just like the dispute initiated by Europeans against Brazil (electronics and automotive industries, and exports in general).

Thus, taking into consideration Brazil's strong participation in this forum, it has become increasingly more important to be well informed about Brazil's positions in the international trade area, not only at the time of making investments in Brazil in specific sectors, but also to expand its trade flow, delegitimize barriers that affect its exports or even impose barriers that are admissible under the WTO rules for the protection of its domestic industry.

g) Latest developments: Unfortunately, WTO members have not managed to reach a consensus to finalize the Doha Round (launched in 2001, in which amendments to the agreements covered and other subjects are discussed). In late 2015, agreements encompassing agriculture (subsidies to exports and cotton) and special treatment for least developed countries were signed in Nairobi, Kenya.

It should be noted that the Brazilian Ambassador Roberto Azevedo is the current Director-General of the WTO.

19.5. Multilateral Investment Guarantee Agency - MIGA

The purpose of this agency, which was created by a Convention within the sphere of the World Bank, is to encourage foreign investment and increase the flow of capital from the developed countries to the lesser-developed countries in a secure manner, complementing the activity developed by the International Bank for Reconstruction and Development and the International Finance Corporation. The aforesaid Convention was formalized in 1985, in Seoul, came into force in Brazil in 1992 and today has 181 member countries.

MIGA promotes foreign direct investments in developing countries, guaranteeing investors against political risks, advising governments to attract investment, sharing information through on-line investment information services, and the mediation of disputes between investors and governments.

MIGA offers guarantees against noncommercial risks to protect the transborder investment of member developing countries. The organization aims to protect investors against the risks of currency inconvertibility and transfer restrictions, and expropriation, war, civil commotion and terrorism.

Among the guarantees granted by MIGA are those concerning coinsurance and re-insurance against noncommercial risks, related to investments made by one member country in another member country. To this effect, the investing country and the recipient country of the investment may jointly request non-commercial risk coverage, with the exception of monetary devaluation or depreciation.

This includes new investments, and the investments associated with expansion, modernization or financial restructuring of existing projects, or when the investor demonstrates the benefits of development, and a long-term commitment to the project. Acquisitions of new investors, including the privatization of state-owned companies can also be eligible. The projects that MIGA cannot guarantee are described in the MIGA exclusion list.

With due regard to certain requirements, both individuals and corporate entities may benefit from the guarantees granted by the Agency. It can be noted that the holder of a guarantee granted by MIGA shall, prior to seeking indemnification from the Agency, try other pertinent administrative remedies that are permitted by the laws of the recipient country of the investment, though said entity cannot guarantee a sum in excess of 150% of its subscribed capital and available reserves.

MIGA had ceased operations in Brazil for over 10 years before returning in 2014 to assist in the financing of a project for sustainable transport in São Paulo (reconstruction and maintenance of 650 highway kilometers located around the Tiete River and implantation of highway connecting bridges and of a lighting system to improve users' safety).

In addition to operating in the area of the mitigation of risks for investments in lesser-developed countries, MIGA has a sector for the mediation of disputes, technical assistance and disclosure of information.

19.6. Agreements on the Reciprocal Promotion and Protection of Investments

Brazil signed 14 Bilateral Investment Treaties (BITs)[3] in the period of 1994-1999, but none of these is in force nowadays due to the lack of approval by the National Congress. In 2015, Cooperation and Investment Facilitation Agreements were signed with Mozambique and Angola.,

Such agreements provide for the protection against expropriation, by limiting the conditions on which the country receiving the investment can expropriate an investment coming from another country. The treaties require the states to pay a fair, adequate compensation in case expropriation. The compensation must be calculated based on the market value of the investment. In addition, the signatories must treat foreign investors as they treat domestic investments, in conditions "no less favorable". Additionally, the new Brazilian BITs promote transparency and cooperation for the implementation of local laws and regulations. They also allow for the transfer of funds between the countries, subject to the states' right to adopt regulatory measures during balance-of-payment crises.

19.7. Treaty for International Legal Cooperation in Civil, Commercial, Labor and Administrative Matters

Brazil has various Treaties for Legal Cooperation in Civil, Commercial, Labor and Administrative Matters with Mercosur countries, Spain, France, Italy, Japan Belgium and Portugal. Among them, we may mention the treaty between Brazil and France, promulgated through Decree 3,598/00.

The most important point of this treaty is the abolishment of the legalization or analogous formalities of all public acts issued in the territory of either signatory State, defining such as documents that emanate from judicial or notary entities, marital status certificates and official certificates, such as registration transcriptions, visas with definite dates and the certification of signatures affixed on private documents. The legalization of the respective documents with the diplomatic authorities of each signatory country is thus dispensed with in such cases.

In 2015, Brazil approved, through Legislative Decree 148, the wording of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, signed in Hague on 5 October 1961. This allows other countries to be released of the massive bureaucracy that existed in Brazil until recently in order for foreign documents to be valid.

It is also worth mentioning that Brazil has signed a number of international treaties with a view to exchanging financial information (not only concerning taxes, but bank information too). This is due to an effort of the OECD (Organization for Economic Cooperation and Development) and the US to ensure greater transparency to relations between countries. In 2015, through Decree 8,506, Brazil enacted the Foreign Account Tax Compliance Act – FATCA.

[3] The BITs signed by Brazil and filed to the National Congress are: Portugal (February 9, 1994), Chile (March 22, 1994), United Kingdom (July 19, 1994), Switzerland (November 11, 1994), France (March 21, 1995), Germany (September 21, 1995). The following BITs have not been filed to the National Congress: Finland (March 28, 1995), Italy (April 3, 1995), Denmark (May 4, 1995), Venezuela (July 4, 1995), Korean Republic (September 1, 1995), Cuba (June 26, 1997), Netherlands (November 25, 1998) and Belgium-Luxemburg (January 6, 1999).

19.8. United Nations Convention on Contracts for the International Sale of Goods

The United Nations Convention on Contracts for the International Sale of Goods ("CISG"), for international purposes, came into force in Brazil on 01 April 2014, in accordance with Article 99 (2) of the Convention.

The Convention contains 101 articles, divided into four parts: Part I deals with its scope and general provisions; Part II provides rules on contract formation; Part III deals with the rights and obligations of the seller and buyer and Part IV refers to the reciprocal obligations between States.

The Convention was adopted on 11 April 1980 and currently has 81 signatory states, including Brazil, representing over 80% of world trade. The most important trading partners of Brazil, China, the USA United States and Argentina, are part of the Convention, as well as most members of the European Union.

# 20. ENTRY OF FOREIGN WORKERS INTO BRAZIL

Law 6,815/1980, regulated by Decree 86,715/1981, defines the legal status of the foreigner in Brazil and creates the National Immigration Council.

There are different types of visas for foreigners, their spouses and economically dependent children, the most common of which are:

20.1. Visa for Business Travelers

The visa for business travelers, which can be obtained from any Brazilian Consulate, enables the foreigner to come to Brazil for acts of commerce, the dissemination of products and market research. This modality also permits participation in trade shows, events, meetings, seminars, conferences and similar events, for the short term and with no intent of residence.

The business visa is normally granted for up to five years, permitting multiple entries for citizens of countries that offer, on a reciprocity basis, similar conditions to Brazilian citizens. This period, however, refers to the validity of the visa.

The first entry in the country should occur within up to 90 days of the issuance of the visa and the maximum permitted stay in the country is for up to 90 days, extendible for an equal period. However, the foreigner's total stay cannot exceed 180 days per year, as from the date of first entry into Brazil. Remuneration of the visitor is forbidden.

Foreigners who are not required to take out a visa for a business trip may enter Brazil by presenting their passports and informing business purpose on the immigration card distributed during international flights to the country.

20.2. Temporary Work Visa

Temporary work visas will be granted to foreigners who come to Brazil to work for a Brazilian company in the capacity of employees, i.e., with an employment relationship and upon remuneration by the Brazilian company, but without representation powers of the company. This visa will be granted for a maximum period of 2 years. After such period, the temporary visa may be transformed into a permanent visa, provided that certain legal requirements are met. If the temporary visa is originally granted for a period of less than 2 years, then it may be renewed up until it reaches such 2-year period.

In accordance with Normative Resolution 99/2012, of the National Immigration Council (Conselho Nacional de Imigração), to apply for a temporary visa, the foreigner shall evidence professional qualification and experience compatible with the activity he or she will be performing, by presenting diplomas, certificates or declarations from entities in which the employee performed his or her activities, evidencing the satisfaction of one of the following requirements:

(a) 1 year experience in the practice of a high level profession, counted from the completion of the first academic degree that qualified the professional for this practice, or

(b) 2 years experience in the practice of a mid level profession, with minimum schooling of 9 years; or

(c) conclusion of graduate studies, with a minimum of 360 hours, or completion of a master's or higher degree course that is compatible with the activity that the professional will be performing.

As determined by labor legislation, the Brazilian company shall justify the use of foreign labor and observe the required proportion of 2/3 of Brazilian employees both in relation to the total staff and the corresponding payroll, and the salary offered in Brazil must be higher than the one paid by the company for the same position. This rule suffers criticism on the part of some legal scholars, who consider it unconstitutional due to violating the isonomy principle.

20.3. Temporary Technical Work Visa

The temporary technical work visa, set forth in Normative Resolution 61/2004, will be granted to foreigners that come to Brazil to provide services to Brazilian companies under no employment relationship and that, for that purpose, are paid abroad based on a Technology Transfer Agreement, Technical Assistance Services Agreement or an agreement for technical cooperation signed between a Brazilian company and a foreign company.

In this case, the visa is granted for one year and may be extended for an equal period, provided that there is proof that such extension is needed. This visa cannot be converted into permanent visa. There is also the temporary technical work visa set forth in Normative Resolution 100/2013, which will be granted to foreigners that come to Brazil to provide services to a Brazilian company under no employment relationship. Application for this type of visa is made directly to the Brazilian Consulate abroad and may be granted for a period of ninety (90) days every one hundred and eighty (180) days.

For both types of visa, the foreigner must have at least three (3) years of experience in the relevant area and services in the administrative, financial and management areas are excluded.

20.4. Permanent Visa – Administrator of a Legal Entity

According to Normative Resolution 62/2004 in conjunction with Normative Resolution 95/2011, the permanent visa will be granted to the employee of a foreign company who is to be transferred to a company of the same Group, based in Brazil, to hold the position of officer, administrator, or member of the Board of Directors of such company, with administration and representation powers, as long as the position is provided for in the company's bylaws or charter documents.

A Brazilian company wishing to indicate a foreigner to discharge the duties of administrator must, in addition to the documents evidencing its regularity before the tax, labor and social security authorities, present the following to the Labor Ministry:

a) Minimum investment: proof of foreign direct investment (in currency, transfer of technology or of other capital goods), by the foreign company that wishes to indicate a foreigner for the position of administrator of the Brazilian company, in the minimum amount of:

(i) BRL 600,000.00, for each foreign administrator, by means of a copy of the Consolidated Foreign Direct Investment Statement, obtained directly from SISBACEN (Central Bank of Brazil Information System) following registration of such investment, or of the Foreign Exchange Contract and the respective contractual or bylaw amendment, duly registered at the competent agency, in order to evidence payment of the investment in the recipient company; or

(ii) BRL 150,000.00 for each foreign administrator, with due regard to the aforesaid documentation, whereas, in this case, evidence shall be produced of the generation of, at least, 10 new jobs, during the two years subsequent to the administrator's entry into the country, observing, in both the aforesaid situations,

such proportion of 2/3 of Brazilian employees as set forth in Brazilian labor legislation;

b) Salary structure: the present salary of the foreigner appointed to occupy the administrator position in the Brazilian company shall be informed, and also the salary that this person will receive once he or she has taken office. Finally, there must also be indication of whether the foreigner will continue receiving any remuneration from abroad, in addition to receiving a salary in Brazil.

The type of visa set out in "i", "a" above may be granted for up to five (5) years, depending on the maximum term of office of the management position, as defined in the articles of organization or bylaws of the company. After such period, the visa will be reassessed with the Federal Police, so that the relationship with the Brazilian company that applied for the visa is ended. The type of visa set out in "ii", "a" above may be granted for a maximum period of 2 years, and may be extended.

The possible transfer of the foreigner to another company of the same business group shall be communicated and justified with the Labor Ministry. For a change of job and/or addition of other new functions to those already discharged by the foreigner, the local company shall present justification and an amendment to the contract to the General Immigration Coordination Department of the Labor Ministry.

Concomitant jobs in two or more companies from the same business group must also be authorized by the pertinent authority. Likewise, it is important to mention that for the period during which the permanent visa is linked to the company, any appointment of a foreigner to a position as a non-employee for the same company will be first requested to the Labor Ministry.

The change of employment of the foreigner to another company that does not belong to the business group where the foreigner was discharging his/her duties shall be the subject of prior authorization from the competent authorities. In this case, such authorization must be requested to the Ministry of Justice, and the Labor Ministry will issue its opinion on the subject.

20.5. Permanent Visa for the Foreign Investor – Individual

According to Normative Resolution 118/2015, the permanent visa will be granted to foreign individuals who wish to settle in Brazil by investing their own resources, of foreign origin, in productive activities. In this case, the investor should work as a partner of the Brazilian company, being also authorized (after obtaining the visa) to occupy the position of administrator of that same company.

The requirements for obtaining this type of visa are:
(i) Evidence of foreign direct investment (in currency, foreign), in the minimum amount equivalent to R$ 500,000 (five hundred thousand reais), through the presentation of a copy of the Consolidated Foreign Direct Investment Statement, obtained directly at SISBACEN (Central Bank Information System), and the respective contractual or bylaw amendment registered with the competent body, in order to evidence the payment of the investment in the Brazilian recipient company of the investment;

(ii) Submission of the investment plan that attests the social interest.

The granting of permanent visa will be conditional on:

(i) The verification of the social interest in accordance with the number of jobs generated in Brazil;
(ii) The amount invested and the region of the country where it will be applied;
(iii) The economic sector where the investment will occur; and
(iv) Contribution to the increase of productivity.

The General Immigration Coordination Department may authorize the granting of a permanent visa to an individual investor whenever the amount of the investment is lower than the amount set out in the resolution (BRL 500,000.00), provided that such amount is not lower than BRL 150,000.00 (one hundred and fifty thousand) and the company's activities are fully intended for the areas of innovation, basic or applied research, whether or not of a scientific or technological nature.

The first foreigner's ID card (Cédula de Identidade do Estrangeiro – CEI) will be granted with as 3-year validity term. Upon expiration, a new CEI may be issued by the Federal Police and, at such opportunity, the Federal Police will fix a new expiration date for the CEI, provided that there is evidence of the fulfillment of the Investment Plan and creation of jobs and generation of revenue in Brazil.

20.6. Residency Visa based on the Brazil-Mercosur, Bolivia and Chile agreementThe Mercosur, Bolivia and Chile have agreed that the territory of all such countries constitute a Free Residence Area where their citizens will have the right to work. In this case, no requirement other than nationality will be made.The Free Residence Area was created in the Brasíliasummit of the Heads of State through the "Residence Agreement for the Nationals of the Mercosur Member States, Bolivia and Chile", signed on December 6, 2002.

This Mercosur Residence agreement is now valid for the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. The agreement determines that the nationals of all such countries can reside in any of the signatory countries, regardless of their migration condition, and they can work in any position and hold management positions in Brazilian companies.

The citizens of such countries, whether native-born or through naturalization (occurred more than 5 years), will follow a simplified process to obtain temporary residency for up to two (2) years in another country of the bloc. The requirements are: valid passport, birth certificate, certificate attesting no history of a criminal record and, depending on the country, medical certificate issued by the immigration department.

The conversion of temporary residency into permanent residency is also a simple process and does not require any visa or bureaucracy. After the visa period is lapsed, the only requirement for such conversion is the proof that such individual has sufficient lawful means to support himself and his family.

# 21. ARBITRATION

Since the effective date of Law 9,307/96, known as the Arbitration Act, and declaration of its constitutionality by the Supreme Court of Brazil (Supremo Tribunal Federal – STF) in 2001, and the ratification of the New York Convention in 2002, foreign investors have been able to safely use arbitration to resolve their disputes.

Arbitration offers the possibility of the resolution of disputes by experts, in a confidential manner, with greater celerity and within a more flexible procedure, and also overcomes language barriers and misgivings about the partiality of the state courts. If an arbitration seat is in Brazil, the arbitral award is in itself considered an enforcement order in the Brazilian territory, and is valid as a final and unappealable judgment or court decision.

Today, the Brazilian legal scenario is even more favorable to arbitration. The Arbitration Act was recently amended by Law 13,129/15 and the new Code of Civil Procedure, which enters into force on March 18, 2016 and promotes the use of arbitration in Brazil, has been eagerly anticipated.

One of the most significant contributions that the New Code of Civil Procedure (the "New CPC") brings to arbitration is the creation of the arbitral letter. Incidentally, art. 22-C of the recently amended Arbitration Act, by supplementing of the new CPC, determines that the issue of an arbitral letter will be ordered "so that the authority of the Judiciary, within its jurisdiction, carries out or orders compliance with the act which is the subject matter of the request for judiciary cooperation made by the arbitral court, including those involving provisory relief."

The arbitral letter will be used for the enforcement in Court of the orders issued by the arbitral tribunal or the sole arbitrator, including with respect of urgent reliefs.

In the subject of urgent reliefs, it has been settled since before the amendment of the Arbitration Act, that prior to the beginning of the arbitration, i.e., prior to the constitution of the arbitral tribunal or the appointment of the sole arbitrator, the parties are allowed to seek provisional or urgent relief from the Courts. Chapter IV-A of Law 13,129/15 provides for such – already settled – practice in relation to urgent reliefs sought before the Courts prior to the beginning of the arbitration.

As from the time when the arbitral tribunal gains jurisdiction over the matter, only the arbitral tribunal may keep, modify or cancel the relief granted by the Courts.

Another significant contribution to arbitration brought – although indirectly – by the New CPC was the inclusion of interlocutory foreign decisions in the list of instruments enforceable in court. Art. 515, "IX" of the New CPC determines that in order for an interlocutory foreign decision to be enforced, an exequatur (i.e., an authorization and request for enforcement of rogatory letter) issued by the Superior Court of Justice (Superior Tribunal de Justiça – STJ) will suffice.

After the granting of the exequatur by the STJ, the rogatory letter will be sent to the relevant Federal Court for performance. This procedure is, without a doubt, much faster than the entire process for the homologation of foreign decisions, which many arbitral awards must undergo in order to be enforced in Brazil.

In its turn, the homologation of foreign arbitral awards, which will also occur with the STJ, will be used in those cases where the arbitration seats outside Brazil and the arbitral award must be enforced in Brazil. This option is in line with the Federal Constitution and in compliance with the provisions of Amendment 18 of the STJ, as published on December 19, 2014, as well as the New York Convention and the Brazilian law

(based on the UNCITRAL Model Law).

Arbitration has also been playing an important role in the Public Sector, being frequently elected as a dispute resolution method in contracts signed between particulars and the Government. Besides the several legislations regulating specific sectors, the Concessions Law (Law n. 8,987/95, as amended by Law n. 11,196/2205) and the law of Public-private Partnership (Lei das PPPs) expressly provided for the use of arbitration whenever the Government is a party to the case.

After Law 13,129/15, the use of arbitration by the Government was confirmed by law. Art. 1 of the Arbitration Act was amended to expressly allow for the Government to have the option to use arbitration as a means to resolve disputes involving freely negotiable property rights.

With respect to the polemic topic that the confidential nature of arbitration may conflict with the public nature of the Government's interests, paragraph three of article one of the new Arbitration Act prescribes that: "any arbitration involving the government will at all times respect the principle of publicity."

In addition, arbitration has been confirmed by important rulings from the Country's various Courts. The combination of a favorable law correctly interpreted by the Judiciary Power gives Brazil the status of an important center for seating arbitrations, especially international trade arbitration procedures.

Various Brazilian Arbitration Chambers have demonstrated competence to manage national and international arbitrations, such as the Chamber of Mediation and Arbitration of São Paulo (Câmara de Mediação e Arbitragem de São Paulo), linked to the Center of Industries of the State of São Paulo (CIESP), the Arbitration Center of the Brazil-Canada Chamber of Commerce (Centro de Arbitragem da Câmara de Comércio Brasil-Canadá-CCBC), the Chamber of Mediation and Arbitration of the American Chamber of Commerce AMCHAM, the EuroChambers' Mediation and Arbitration Chamber (Câmara de Mediação e Arbitragem das Eurocâmaras – CAE), and others. The Brazilian Arbitration Committee (Comitê Brasileiro de Arbitragem- CBAr) has also played an important role, uniting some of the greatest experts on the subject, in the scientific development of arbitration.

Arbitration in Brazil has become even more recognized with the new regulations to corporate law.

According to the Brazilian corporate law (Lei das S.A.), corporations can put arbitration agreements in their by-laws, which is new for the Brazilian legal system. With the new regulations to be listed in the Novo Mercado (a listing level which makes high demands in terms of Corporate Governance in the Brazilian stock exchange), arbitration became compulsory to all of the conflicts related to the regulations of the Novo Mercado as well as with the contracts regulating the participation in the Novo Mercado. Other regulatory measures, such as the CVM Instruction 391, consider arbitration a good form of governance and create incentives to investments in corporations with such characteristic.

With the new Arbitration Act, which also amended the Brazilian corporate law (Lei das S.A.), the option to choose arbitration as a dispute resolution method with respect to corporate matters pursuant to art. 136-A of Law 13,129/15 was reinforced, especially concerning minority shareholders. This provision prescribes that the inclusion of the agreement to arbitrate in the articles of organization must be approved by a qualified quorum (of at least half the number of voting shares or other higher quorum), in which case the dissenting shareholder will have the right to leave the company and be paid the amount of his shares.

The inclusion of the agreement to arbitrate will only be effective after 30 days from the publication of the Minutes of the Shareholders' Meeting. If the inclusion of the agreement to arbitrate is a condition for the company to be listed in a Stock Exchange, then the dissenting shareholder will not be allowed to leave the

company, including when the company is a publicly held company whose shares enjoy market dispersion and liquidity.

Based on the above, one can say that the reform the Arbitration Act and the new provisions of the Code of Civil Procedure regulating and promoting the use of arbitration brought great advances to the Brazilian legal system. The scope of application of arbitrations was broadened in view of the possibility of the use of arbitration in agreements signed with the Government; and the effectiveness of arbitration was improved with the creation of arbitral letters and the use of exequatur for the enforcement of interlocutory arbitral awards.

This new legal system also consolidates issues that have been settled by courts over the years, such as the possibility of partial awards, the possibility for an arbitrator to revoke pre-arbitral provisional remedies granted by judges and others.

Finally, it is important to mention that Brazil has adhered to other important International Conventions on the subject, including: the Agreement on International Trade Arbitration of Mercosur (Buenos Aires, 1998) and the Interamerican Convention on International Trade Arbitration (Panama, 1975).

# 22. HEALTH UNDER BRAZILIAN LAWS

22.1. Basic Principle – Health as a Right of All and a Duty of the Government

The first law we need to mention when talking about this topic is without a doubt the Brazilian Constitution. Enacted in 1988, the Constitution guarantees the right to universal, equal access to actions for the promotion, protection and recovery of health (article 196) and states that this is a right of all Brazilian citizens that must be guaranteed by the Government.

Still based on the Constitution, health actions and public health services integrate a regionalized and hierarchical network and constitute the Unified Health System (Sistema Único de Saúde - SUS), which is financed by the Federal, State and Municipal Governments and the Federal District, among other sources.

In 1990, Law 8,080 was enacted to regulate article 196 of the Constitution. Law 8,080 determined the conditions under which health is to be promoted, protected and recovered and how related services are to be organized and run. Article 2 of this Law states that “health is a fundamental right of human beings, and the Government must provide the basic conditions for it to be fully enjoyed”.

It is Law 8,080 that regulates the health actions and services throughout the country, whether such actions and services are conducted individually or collectively, on a permanent or provisional basis, by individuals or legal entities governed by public or private law, giving life to what we know today as the Unified Health System (Sistema Único de Saúde - SUS). The SUS comprises a set of health actions and services conducted or provided by federal, state and local public institutions and entities in any way belonging or related to the government.

Although public health actions and services are to be conducted within the scope of the SUS, it is important to mention that Law 8,080/90 authorizes participation of the private sector on a complementary basis.

The direction of the SUS is unified and must be conducted at the federal level by the Ministry of Health. At the State and Municipal levels and for the Federal District, the direction of the SUS is conducted by the relevant Departments of Health (Secretarias de Saúde) or similar entity.

The list of duties and purposes of the SUS is very extensive. Among the SUS’s duties is the duty to carry out sanitary surveillance actions and to assist people by carrying out actions to promote, protect and recover health, both through assistance and preventive care. Another duty is the creation of policies concerning drugs, equipment and immunobiologicals and other products of interest to health and the participation in their production.

Law 8,080/90 determines what is to be known as and the scope of sanitary surveillance: a set of actions capable of eliminating, reducing or preventing the risks to health. Sanitary surveillance may also intervene in sanitary issues concerning the environment, the circulation of goods and provision of services of relevance to health, including:

I- To control any consumer goods directly or indirectly related to health, in all stages and processes, from manufacturing to consumption; and
II- To control the provision of services directly or indirectly related to health.

22.1.2 - Sanitary Surveillance

This topic is generally regulated by Law 6,360 of 23 September 1976 as amended from time to time. Law

6,360 determines which products, inputs and services are subject to sanitary surveillance.

A few months after the enactment of Law 6,360/76, a Decree regulating such Law was enacted. It was Decree 79,094, of 25 January 1977, which was revoked in August of 2013 by Decree 8,077.

According to the laws mentioned above, when subject to sanitary surveillance, medicine, pharmaceutical inputs, drugs and the like, cosmetics, hygiene products, perfumes and the like, sanitizing products, products for use in aesthetic correction among others will only be extracted, produced, manufactured, packaged or repackaged, imported, exported, stored, shipped or distributed in accordance with such laws.

It is important to point out that in order to conduct any business activity that is subject to sanitary surveillance, companies must first be granted an operating permit by the federal sanitary surveillance authority and obtain all authorizations with the local sanitary surveillance authorities. Once the company has all such permits and authorizations, then it is in good standing for sanitary purposes and apt to do business.

It is worth noting some concepts that, among others, help us understand the subject:

- Permit: Granted exclusively by the competent department of the Ministry of Health (Ministério da Saúde - MS) (federal sanitary authority) to authorize companies to carry out such business activities that are subject to sanitary surveillance, upon evidence of fulfillment of specific technical and administrative requirements.

- Authorization: Granted exclusively by the health department of the relevant state or local government or the Federal District to authorize establishments carrying out any business activities subject to sanitary surveillance to operate.

- Certificate of Compliance with Good Manufacturing and Control Practices (Certificado de Cumprimento de Boas Práticas de Fabricação e Controle - CBPF) : A document issued by the federal sanitary authority attesting that the establishment is in compliance with good manufacturing and control practices.

- Company: A legal entity that, according to the prevailing trade laws, is engaged in a business activity or industrializes a product that is subject to sanitary laws.

- Establishment: the Company's unit where the activity subject to sanitary surveillance is carried out.

Any Operating Permit (Autorização de Funcionamento – AFE) issued will be valid nationwide.

Authorizations, in turn, must be issued to each establishment separately (an independent, specific authorization), even when there is more than one establishment for the same company at the same location. In terms of operation, whenever an establishment industrializes or markets different types of products or products for different uses, then such establishment must use different premises to manufacture and store materials, substances and finished products.

In relation to the requirements that must be met in order for an establishment to carry out the business activities subject to the above laws, if an establishment wishes to manufacture, industrialize or import products subject to sanitary laws, it must operate under the assistance and responsibility of a technician.

This is why companies engaged in the business activities subject to sanitary surveillance are required to have and keep, in each establishment, a sufficient number of technically responsible professionals with

proper skills, so that all different types of productions are covered.

Besides the operation permit and the relevant authorizations, the company must check if it is required to register its products with the competent authority. No product covered by the above laws – not even imported products – can be industrialized, offered for sale or provided for consumption without proper registration.

In particular, drugs, medicine and pharmaceuticals coming from abroad must first be registered in their country of origin in order to be registered in Brazil. It is important to point out that if a drug is not composed of effectively beneficial substances – from a clinical or therapeutic point of view – it cannot be registered in Brazil.

Technical specifications and requirements for the registration of products under the sanitary laws vary according to the type of product (drugs, inputs, cosmetics, etc).

Sanitary authorities will control any and all products subject to sanitary surveillance, including those whose registration is not mandatory and related products, as well as the establishments used in manufacturing, distributing, storing and marketing such products and the vehicles used to transport them. Such control also covers product and brand advertising – by any means of communication – promotion and labeling.

22.3 - Brazilian Sanitary Surveillance Agency - ANVISA

The Brazilian Sanitary Surveillance Agency (Agência Nacional de Vigilância Sanitária – ANVISA) was created by Law 9,782 of 26 January 1999. The Law also established the Brazilian Sanitary Surveillance System (Sistema Nacional de Vigilância Sanitária - SNVS).

ANVISA is a government agency governed by a special regime. ANVISA is an administratively and financially independent agency linked to the Ministry of Health, with financial autonomy. It is headquartered in Brasília and was incorporated for an indefinite period of time and with nationwide reach. ANVISA is managed by a Collegiate Board of Directors (Diretoria Colegiada) composed of five members and chaired by a Director-President (Diretor Presidente).

It is the duty of ANVISA to protect and promote public health through the health control of the production and marketing of products and services that are subject to sanitary surveillance, including the environments, processes, inputs and technology related to such products and services, and also through the control of ports, airports and borders.

ANVISA's duties include:

(i) To coordinate the Brazilian Sanitary Surveillance System;
(ii) To manage and collect the sanitary surveillance fee;
(iii) To permit the operation of companies engaged in the manufacture, distribution and import of the products referred to below and in the marketing of drugs;
(iv) To register products according to the rules applicable to each business activity;
(v) To grant and cancel the certificate of good manufacturing practices;
(vi) To monitor the evolution of prices of drugs and health services, equipment, component and inputs;
(vii) To control, supervise and follow up on the advertising and promotion of products that are subject to sanitary surveillance, from a sanitary law perspective.

The role played by ANVISA is an important one, as ANVISA has the power to control and monitor the products and services that may pose risks to health.

For the purposes of Law 9,782/99, goods and products subject to ANVISA's health control and sanitary surveillance include:

(i) Human drugs, active ingredients of human drugs and other inputs, their processes and technologies;

(ii) Food products, including beverages, bottled waters and related inputs, packaging materials, food additives, organic contaminant levels, veterinary drugs and pesticide waste;

(iii) Cosmetics, personal care products and perfumes;

(iv) Sanitizing products to be used in the clearing, disinfection or pest management in homes, hospitals and collective environments;

(v) Sets, reagents and inputs to be used in diagnosis;

(vi) Medical, hospital, dental, hemotherapeutic and diagnostic imaging equipment and materials;

(vii) Immunobiologicals and the related active ingredients, blood and blood products.

Services subject to ANVISA's health control and sanitary surveillance are any services related to emergency or routine ambulatory care. Inpatient laboratory testing, therapy and diagnosis support services and services involving the use of new technology are also included.

Facilities, equipment, technology, environments and procedures involved in all stages of the production process of goods and services subject to health control and sanitary surveillance are also subject to ANVISA's control.

But ANVISA's scope of action is not limited to the products and services described above. ANVISA also has the power to regulate other products and services with the purpose of controlling any risks to human health under the SNVS.

Some of ANVISA's primary duties are to grant companies operating permits (autorização de funcionamento de empresa - AFE) and register products (drugs/cosmetics/healthcare products/food).

Registration of such products must be made exclusively by ANVISA, who is also responsible for making any change in or revalidating, suspending or cancelling such registrations (art. 7, IX, paragraph 1 of Law 9,782/99).

As a general rule, all such products must be registered. However, some exceptions are made. Products that are easy to be compounded in pharmacy laboratories, for example, are exempt from registration.

Experimental drugs to be used under medical supervision are exempt from registration as well, as long as all specific legal requirements are met. Such drugs may even be imported, if expressly authorized by the relevant agency.

Drug registrations with ANVISA are valid for up to ten (10) years and can be renewed, including through a simplified procedure for drug registration renewal, provided that all legal requirements are met.

According to the prevailing laws, the holder of a drug registration – which must necessarily be a legal entity – holds the rights in such product and is responsible for this product until it reaches the end consumer.

A drug registration will only be granted after the compliance with all legal, administrative, technical and scientific requirements is assessed for the product's efficacy, safety and quality so it can enter – and, consequently, be marketed and consumed in – the Brazilian market.

Another important point is that ANVISA's registrations and revalidations will only start producing effects on the date they are published in the federal gazette (Diário Oficial da União – DOU).

Requests for revalidation must be filed with ANVISA within the period of time determined in the law; otherwise, such requests will be considered null.

22.4 - Violations of sanitary laws

This subject is generally regulated by Law 6,437 of 20 August 1977, which contains provisions concerning the violation of federal sanitary laws and the relevant penalties, among other things.

Under such law, violations of sanitary laws are subject to the following penalties – in addition to any applicable civil or criminal penalties that may be imposed on an alternative or cumulative basis:

- Warning;
- Fine;
- Seizure of products;
- Product destruction;
- Product ban;
- Suspension of sales and/or manufacture of products;
- Cancellation of product registration;
- Prohibition to advertise;
- Cancellation of the company's operating permit.

When imposing fines, ANVISA will take into account the violator's financial capacity. In case of recurrent violations, fines will be doubled.

When deciding the amount of the fine, ANVISA will also take into account any aggravating and mitigating factors. Examples of aggravating factors are: - The violator has committed more than one violation - The violator forced a third party to commit the violation.

Violations are classified as minor, serious or very serious. The penalty for violating sanitary laws will be imposed on the person who gave rise to or who helped committing such violation.

Examples of violations of sanitary laws include:

- To omit to provide information, provide false information, provide information not in accordance with sanitary rules or rules that govern corporate transactions, in which case ANVISA has the power to cancel the registration of products involved in the transfer of title;

- To advertise products subject to sanitary surveillance, food and other products in violation of sanitary laws;

- To modify the manufacturing process of products subject to sanitary surveillance, modify such products' basic components, name or any other registered element without ANVISA's authorization.

22.5 - The opening of the healthcare industry to foreign investments

Among other things, Law 13,097, of 19 January 2015, altered article 23 of Law 8,080/1990 and allowed foreign companies to enter the healthcare industry. It even allowed them to own a majority share that can give them control over the invested healthcare entity.

The direct or indirect participation of foreign companies or foreign capital is allowed in Brazil in the following cases:

- Donations from international organizations connected to the United Nations (UN), from technical cooperation entities and from financing entities;
- Legal entities aiming to install, operate or exploit:

a) general hospitals, including philanthropic hospitals, specialized hospitals, policlinics and general or specialized clinics and;

b) family planning actions and research.

- non-profit healthcare services maintained by companies to assist employees and their dependents without any cost to the Brazilian public healthcare system; and
- other cases provided for in specific laws.

This Law has also added a new article (53 A) to Law 8,080/1990, authorizing the participation of foreign companies and of foreign capital in health support activities such as human genetics laboratories.

# 23. MINING

## 23.1. Legal and regulatory framework

Under the Brazilian Federal Constitution, all Brazilian mineral resources belong to the federal government. In addition, the Constitution provides that mineral resources are separate from the soil for exploration and exploitation purposes and grants concession holders ownership of the extracted minerals.

The federal government has exclusive power to legislate on mineral resources and mineral exploitation and to enact federal laws regulating mining activities.

Nevertheless, the federal government and the states (including the Federal District) have concurrent power to legislate on environmental matters involving mining activities. Cities can complement these laws according to local needs, when applicable.

Under the Brazilian Constitution, exploration and production of government assets can only be carried out by Brazilians or companies incorporated under the Brazilian law with head office and management in Brazil. However, these companies can be controlled by a foreign individual or company – except in case of border areas, as explained below.

Mining activities are regulated principally by Decree-law 227, published on 28 February 1967 with the status of law ("Mining Code"); Decree 62,934, published on 2 July 1968 to regulate the Mining Code; and further regulations issued by the National Department of Mineral Production (Departamento Nacional de Produção Mineral – DNPM).

## 23. 2. DNPM / MME

Under the Mining Code, mineral rights are granted either by the Ministry of Mines and Energy (Ministério de Minas e Energia - MME) or by the General Director of the DNPM – a federal department linked to the MME – depending on the type of rights granted.

In addition, the DNPM is responsible for supervising all activities related to mining, marketing and industrialization of mineral raw materials and also for regulating mining activities, subject to the limits of the applicable laws and with a view to promote environmental conservation and sustainable development.

## 23. 3. Priority

In Brazil, mineral rights are granted under a priority regime.

Under the priority system, once a party files a legal and valid application with the DNPM claiming an area that is free for exploration and free from any burden, the claimed area is blocked in relation to other interested parties. This ensures the applicant exclusive access to the owned area, for the purpose of exploiting resources or mineral ores .

According to the priority system, anyone interested may submit an application for research claiming an area that is free for exploration and free from any burden, ensuring the applicant exclusive access to the area for research and eventual mining deposit.

## 23. 4. Systems

[1] Marcelo Gomes de Souza (coordinator), Direito Minerário Aplicado, Ed. Mandamentos, Belo Horizonte - 2003

The Mining Code provides for different mineral exploitation systems, namely: (i) Concession System, applicable in the cases where a concession issued by the Ministry of Mines and Energy is required; (ii) Authorization System, applicable in the cases where an authorization issued by the General Director of the DNPM is required; (iii) Licensing System, applicable in the cases where a license issued by a local administrative office and registered with the DNPM is required; (iv) Small-Scale Mining Permission System, applicable in the cases where a permit issued by the DNPM is required; and (v) Monopolization Regime, applicable in the cases where federal government intervention is required by virtue of a special law.

23. 5. Exploration Permit

Exploration activities (including but not limited to geological surveys, sample collection, physical and chemical analyses, etc.) can be carried out by Brazilian individuals or companies with head office and management in Brazil upon the authorization of DNPM's General Director.

The application for an exploration permit must be accompanied by, among other documents, a description of the relevant area, a designation of the mineral substance intended to be explored and a work plan.

If the DNPM verifies that the area is free – according to the priority system stated above – it will issue an Exploration Permit for a maximum period of 3 years, with the possibility of extension for the same period.

The mining company must pay DNPM a fee for each requested permit, in addition to the so-called Annual Fee per Hectare (Taxa Anual por Hectare - TAH), calculated according to the size of the explored area.

During the period of validity of Exploration Permit, the mining company must submit to the DNPM a detailed research report containing all studies, quantities and quality of the explored minerals and evidence of the technical and economic feasibility of mining the deposit ("Final Exploration Report").

23. 6. Mining Concession

After obtaining DNPM's approval of the Final Exploration Report, the mining company must submit the application for a Mining Concession to the MME along with the Economic Development Plan, within 1 year after approval of the Final Exploration Report.

Mining Concessions can be rejected if the federal government finds that it is contrary to public interest. In this case, the mining company is entitled to compensation for the costs incurred during the exploration stage.

If a Mining Concession is granted, it will be valid until the mineral deposit is exhausted. The mining company will have the ownership of the extracted minerals, as long as it fulfills the duties and obligations set forth in the Mining Code.

In addition, holders of mining rights are required to pay landowners a monthly share in the mining results due to the occupation of the area, and a compensation for any damages caused by the mineral exploration and/or extraction activities. The obligation to pay for the land occupancy and to compensate landowners for any damages caused exist in the exploration stage as well.

It is worth noting that the mining company must obtain all environmental permits needed in order to carry out mineral exploration activities.

23. 7. Small-Scale Mining Permit

The Small-Scale Mining Permission System is applicable whenever a mineral deposit is – due to its nature, size and location – capable of being exploited immediately (without prior exploration). In this case, requirements set by the DNPM, in charge of issuing the respective permit, must be met.

Small-Scale Mining Permits are issued for up to 5 years, subject to extension at DNPM's discretion. Both Brazilian individuals and small-scale mining cooperatives are entitled to apply for small-scale mining permits.

23. 8. Border Areas / Indigenous Peoples' Land

Border Areas are areas within the national territory that border other countries. They can be up to 150 km wide. Therefore, they are essential for national security, and their occupation and use are regulated by law.

The prospection, extraction, exploration and exploitation of mineral resources on border areas require the prior authorization of the National Defense Council.

Only Brazilian individuals or companies controlled by Brazilians with management in Brazil and predominantly Brazilian staff can be authorized to carry out activities on border areas.

Mining activities on indigenous peoples' land require express authorization of the National Congress, pursuant to the Brazilian Constitution. However, the exploration and exploitation of mineral resources on indigenous peoples' land are not yet regulated.

23. 9. New Regulatory Framework

The currently discussed proposal for a new regulatory framework is a result of comprehensive studies on regulation in Brazil and other countries, feedback from entities from the mining industry and a continuous search for new investments with a view to stimulate the industry's development.

Among the proposed changes is the creation of the National Council for Mining Policy (Conselho Nacional de Política Mineral) to advise the President on the creation and implementation of a mining policy. In addition, regulation and supervision activities, which are currently carried out by the DNPM, will be transferred to a Regulatory Agency.

The new regulatory framework is expected to introduce bidding procedures for the acquisition of mining rights through the public offering of areas. The bidding procedures will replace the current "availability of areas" procedure. In addition, the new regulatory framework will create special mining areas considered strategic for the country.

Another innovation is the setting of a period of 30 years – with the possibility of extension for successive periods of 15 years – for extraction as well as the extension of the exploration permit to 6 years.

Finally, the new regulatory framework is expected to establish a minimum investment in the area subject to exploration. Also under discussion is the creation of a special participation – similar to the one due in the oil and gas industry – payable to the cities in case of highly productive mineral deposits.

The mining regulatory framework is still being analyzed by the National Congress.

23. 10. Opportunities

Brazil has some of the world's largest mineral deposits and exports high quality mineral resources. Therefore, the Brazilian mineral production occupies a privileged position in relation to the rest of the world in regard to many types of minerals.

In the last few years, the Brazilian mining industry experienced significant growth due to major social, economic and infrastructure changes in the country. As a result of the urbanization process and increasing strength of global economies, the Brazilian mineral production is expected to continue growing from 2% to 5% during the next 2 years.

Even though Brazil's mining potential is high, it is still under-explored. According to IBRAM, less than 30% of the Brazilian territory has been subject to geological surveys on an adequate scale for this activity. Therefore, a lot of opportunities are open for mining companies interested in investing in this sector.

A good opportunity for the exploration of uranium may arise in Brazil in the next few years with the Government relaxing its monopoly for the research, mining, enrichment, reprocessing, industrialization and trade of this mineral.

If approved the the National Congress, the relaxation of the uranium monopoly will generate opportunity for private investments, which can make Brazil become a global player in producing and trading uranium.

# 24. OIL & GAS

## 24.1. The Monopoly

Law 2,004/1953 created a monopoly in the oil industry by providing that no activities related to the oil sector could be carried out other than by the federal government or state-owned companies. The granting of concessions or permissions to private companies was not allowed. This law also provided that the National Oil Council (Conselho Nacional de Petróleo - CNP), created in 1938, would be responsible for directing and supervising oil and gas exploration and production activities, and that the monopoly over oil activities would be exercised by a company created specifically for this purpose – Petróleo Brasileiro S.A (Petrobras), a government-controlled company.

Years later, with the 1973 and 1979 oil crises, Petrobras was allowed to sign "risk contracts" – service agreements containing a risk clause – with foreign companies. This was an effort to reduce Brazil's dependence on foreign oil and maintain a regular supply of fuel in the domestic market.

## 24.2. Relaxation of the Monopoly and the Petroleum Act

In 1995, Constitutional Amendment 09/95 "relaxed" the federal government's monopoly, allowing oil and natural gas activities to be carried out not only by state-owned but also by privately-held companies incorporated under Brazilian laws, with head office and management in Brazil, under agreements with the federal government. This opened the way for investments by Brazilian and foreign private companies.

To regulate this "relaxation", a law known as the "Petroleum Act" (Law 9,478/1997) was enacted. It ratified the federal government's ownership of oil and natural gas reserves and regulated the new concession regime introduced in Brazil. In fact, the Petroleum Act regulated Brazil's energy policy, among other things, and established the legal framework that governs concessions to explore, develop and produce oil and natural gas under public tenders and the legal framework that governs authorizations to refine, process, transport, import and export oil, oil products and natural gas.

The Petroleum Act also introduced the National Council for Energy Policy (Conselho Nacional de Política Energética) and the National Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustível).

## 24.3. The National Council for Energy Policy (Conselho Nacional de Política Energética - "CNPE")

The CNPE is an advisory entity linked to the Presidency and presided by the Ministry of Mines and Energy (Ministério de Minas e Energia – MME). It is responsible for proposing to the President national policies and specific measures designed especially to encourage the rational use of Brazil's energy resources.

The CNPE also has the power to lay down rules for the import and export of oil, natural gas and gas condensate and for the use and conservation of energy and natural resources and review of Brazil's energy matrix.

## 24.4 The Natural Agency of Petroleum, Natural Gas and Biofuels (Agência Nacional do Petróleo, Gás Natural e Biocombustíveis - ANP)

The ANP is a federal government agency directly linked to the MME and in charge of regulating the oil industry. Its head office and jurisdiction are in the Federal District, but its central office is in Rio de Janeiro.

As Brazil's oil industry regulator, ANP is in charge of regulating, engaging and supervising the economic activities involved in the oil, natural gas and biofuel industries based on the guidelines issued by CNPE, on public interest and on the country's needs.

Although it was created under the Petroleum Act, the ANP was actually implemented by Decree 2,455/1998, which provides details on its structure and operation.

### 24.5. The Concession Regime for the Exploration and Production of Oil and Natural Gas

Today, the exploration and production of oil and natural gas is done under concession contracts, always preceded by a bidding process. The blocks offered in the bidding rounds are selected by the ANP and subject to the CNPE's approval. Any company that meets the technical, financial and legal requirements set out in the applicable laws may qualify to participate in the bid and to submit proposals for the concession of exploration blocks.

Both Brazilian and foreign companies may qualify for the bid and submit their proposals individually or as a consortium. However, the concession contracts can only be signed by companies organized and existing according to the Brazilian law, with head office and management in Brazil. Therefore, if the qualified bidder is a foreign company, it must incorporate a Brazilian company in accordance with the applicable laws.

In Brazil, the criteria used to determine the winning bidders in the Bidding Rounds conducted by ANP are: (i) local content (concessionaire's commitment to purchase goods and services from local suppliers); (ii) the minimum exploration program (investments in geology and geophysical survey and drilling); and (iii) the signature bonus (minimum amount, set out in the tender notice, payable upon execution of the concession contract).

When a concession is granted, the concessionaire must conduct exploration activities at its own risk and expense and, if successful, produce oil or natural gas in a certain block/field. Under a concession agreement, the federal government grants the concessionaire the exclusive right to control the entire process – from exploration to sales – within a fixed area and for a certain period of time (usually 20 to 30 years). As a result, the concessionaire will have the ownership of the oil once it passes through the measuring point, and will pay the respective government's takes.

The last Bidding Rounds of Blocks for Exploration and Production of Oil and Natural Gas under concession contracts were conducted by the ANP in May and November of 2013, the 11th and the 12th Bidding Rounds, respectively. The 11th Bidding Round offered 289 blocks (123 onshore and 166 offshore), stretching over an area of 155.8 thousand km² and located in 11 sedimentary basins, both mature and on new frontier areas, namely: Barreirinhas, Ceará, Espírito Santo, Foz do Amazonas, Pará-Maranhão, Parnaíba, Pernambuco-Paraíba, Potiguar, Recôncavo, Sergipe-Alagoas and Tucano Sul. 71 companies expressed interest in this bidding round, 64 of which were enabled to participate in it and 30 were successful – 12 Brazilian and 18 foreign ones. They acquired 142 blocks in 22 sectors of the 11 sedimentary basins offered, totaling 100,372 km².

The 12th Bidding Round, in its turn, offered 240 onshore exploration blocks with potential for exploration of natural gas. 110 of these blocks are located in new frontier areas in the basins of Acre, Parecis, São Francisco, Paraná and Parnaíba. 130 are located in the mature basins of Recôncavo and Sergipe-Alagoas. 26 companies expressed interest in this bidding round, 21 were enabled to participate in it and 12 were successful – 8 Brazilian and 4 foreign ones. They acquired 72 blocks, totaling 47,427.60 km².

### 24.6. Government and Third Parties' Takes

Government and third parties' takes include (i) a signature bonus; (ii) royalties; (iii) a special participation; (iv) payment for area occupation and retention; and (v) payment to landowners.

Royalties are a financial compensation payable by concessionaires per field, on a monthly basis, according to the amount of production. They range from 5% to 10%.

Special participation is a special financial compensation payable by concessionaires only in case of substantial production volumes or high profitability. It is payable per field of a given concession area as from the quarter on which the respective production begins.

The payment for area occupation and retention is due on an annual basis. It is specified in the concession contract and assessed per square kilometer of the block.

Finally, if the awarded exploration block is located onshore, a payment must be made to the landowners at a rate that may vary from 0.5% to 1% of the oil and natural gas production, at ANP's discretion.

### 24.7. New regulatory framework: The Pre-Salt

Recently, Law 12,351/2010 ("Pre-Salt Act") introduced a new regulatory framework for the exploration and production of oil, natural gas and other fluid hydrocarbons located in the pre-salt layer and other areas designated as strategic. These areas are subject to a production sharing regime. The Pre-Salt Act assigned new duties to the ANP, MME and CNPE under this new regime. It also created a social fund to invest the federal government's revenues from the pre-salt fields.

Two other laws further regulate the sector. Law 12,304/2010, which authorized the creation of Pré-Sal Petróleo S.A. (PPSA) and defined the roles of the state-owned company that will act on behalf of the government to manage the production sharing agreements between the Ministry of Mines and Energy and oil companies and the contracts of sale of oil and natural gas from the pre-salt areas.

Law 12,276/2010, in turn, authorized the onerous assignment by the federal government to Petrobras of the right to carry out oil exploration and extraction activities in pre-salt areas with up to 5 billion barrels of oil equivalent, in return for the government's right to buy additional shares in Petrobras.

### 24.8. Pré-Sal Petróleo S.A. (PPSA)

Decree 8,063 of August 1st, 2013, created Empresa Brasileira de Administração de Petróleo e Gás Natural S.A. (Pré-Sal Petróleo S.A. or PPSA, for its acronym in Portuguese), a state-owned company in the form of a closed corporation (sociedade anônima de capital fechado) linked to the Ministry of Mines and Energy.

The purpose of PPSA is to manage the production sharing agreements executed by the Ministry of Mines and Energy and the contracts of sale of oil, natural gas and other hydrocarbon fluids belonging to the federal government, with the aim of maximizing the economic result of such contracts.

According to the articles of incorporation of PPSA, as approved by Decree 8,063, the corporation's capital is 50 million reais, divided into fifty thousand registered common shares without par value, fully owned by the federal government.

PPSA is managed by a Board of Directors, with decision-making functions, and by an Executive Board.

The Executive Board is the collective body responsible for the general direction of the corporation and is comprised of four officers appointed by the President of Brazil, upon recommendation of the Minister of Mines and Energy. The officers are appointed for a three-year term. Reappointment is allowed.

The Board of Directors is comprised of five members appointed by the President of Brazil for a four-year term. Reappointment is allowed.

### 24.9. The Production Sharing Regime

One of the main features of production sharing agreements (PSA) is the fact that the ownership of the extracted mineral resources is retained by the government, whereas under the concession regime, the ownership of the extracted minerals is held by the concessionaire.

Under the production sharing regime, the oil company carries out exploration, appraisal, development and production activities in a certain block/field at its own risk and expense, in addition to performing technical obligations, paying for the costs and allocating the investments and resources required for the activity.

Therefore, in case of commercial discovery, the oil company is entitled to a share of the production as compensation for the investments and other costs incurred in connection with the oil production – the so-called “cost oil”. The exceeding amount of the oil and/or natural gas production (i.e. after deduction of the “cost oil” and any amount of oil used in the operation itself) is shared with the federal government according to the provisions of the production sharing agreement (the so-called “profit oil”).

Under the production sharing regime, Petrobras acts as the sole operator of the blocks with a minimum 30% equity interest. Other companies are allowed to participate as non-operators.

On September 3, 2013, in a special edition of the federal gazette, the ANP published the tender notice and the draft production sharing agreement of the 1st Pre-Salt Round, both approved by the Ministry of Mines and Energy.

The 1st Production Sharing Bidding Round was held on October 21, 2013, offering the block of Libra, located in Santos Basin. The contract was signed on December 2, 2013, by the winning bidder, a consortium formed by the following companies: Petrobras (10%), Shell (20%), Total (20%), CNPC (10%) e CNOOC (10%). The winning bidder offered 41.65% of the profit oil to the federal government. Petrobrás, which will operate Libra, has a 10% stake in the consortium and also a minimum stake of 30% in the block of Libra.

### 24.10. The Gas Act

Under the Petroleum Act, activities related to the gas industry – except local distribution – were subject to an authorization regime which allowed any interested company to request the right to build and explore infrastructure needed for the activity. From a regulatory point of view, ANP’s role was only to control the entrance of new players in the market.

As the use of natural gas gained importance for electricity generation and the ways to use gas increased, a specific regulatory framework for gas became necessary. As a result, in 2009, Law 11,909/2009 (“Gas Act”), regulated by Decree 7,382/2010, established the new legal framework for the natural gas industry.

The Gas Act introduced rules governing the exploration of economic activities of transportation of natural gas through pipelines and the import and export of natural gas as referred to in art. 177, III and IV, of the Federal Constitution, and the exploration of the activities of treatment, processing, storage, liquefaction,

regasification and marketing of natural gas. However, it must be noted that the exploration and production of natural gas are still regulated by the Petroleum Act.

24. 11. Local Distribution of Gas

Pursuant to article 25, paragraph 2, of the Federal Constitution, the states have the exclusive power to explore local services of piped gas, whether directly or under concession. Therefore, it is up to each state to pass and implement a state law providing for the terms and conditions of this activity.

24.12. Opportunities

The 1st Bidding Round for the Transportation of Natural Gas.

The Gas Act introduced a new regime for the concession of the natural gas transportation activity, which must be preceded by a bidding process. The authorization regime must be used only in specific and exceptional circumstances.

Thus, on September 13, 2013, the Ministry of Mines and Energy published Ordinance 317 in the federal gazette. This ordinance provides for the construction of a gas pipeline from Itaboraí to Guaipimirim, both in the State of Rio de Janeiro. On December 13, Ordinance 450 was published, establishing the guidelines for the bidding of this pipeline.

The bidding process for the concession of the activity of natural gas transportation will be coordinated by ANP's Bidding Promotion Superintendency (Superintendência de Promoção de Licitações - SPL), while ANP′s Natural Gas Movement and Commercialization Superintendency (Superintendência de Comercialização e Movimentação de Gás Natural - SCM) will coordinate the public call to hire the capacity.

The Ministry of Mines and Energy released, on January 13, 2014, the preliminary version of the Ten-Year Plan for the Expansion of the Gas Pipeline Transportation Network (local acronym PEMAT), 2013-2022 cycle, for public consultation. The PEMAT is a result of studies carried out by the Energy Research Company (Empresa de Pesquisa Energética - EPE), based on the expected demand for natural gas, on the forecasts for production and supply and on the existing infrastructure conditions to meet the future demand in a 10-year period. The PEMAT also presents proposals for designs, compression systems, and the location of city gates, as well as an estimate of the investments in the pipelines.

# About L.O. Baptista, Schmidt, Valois, Miranda, Ferreira, Agel

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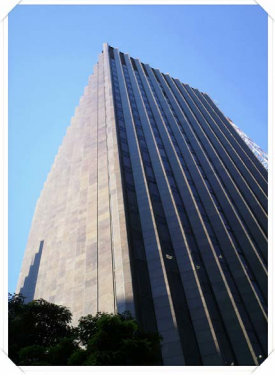

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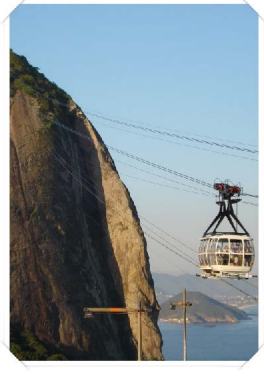

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