

Doing Business Guide

Brazil

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Apsis Consultoria Empresarial

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About This Booklet

This booklet has been produced by Apsis Consultoria Empresarial, M/Legate Contadores, Auditores e Consultores and Promissor Consultoria e Contabilidade – all independent members of Morison International, for the benefit of its clients and associate offices worldwide who are interested in doing business in Brazil.

Its main purpose is to provide a broad overview of the various aspects that should be considered by organisations considering setting up business in Brazil.

The information provided cannot be exhaustive and – as underlying legislation and regulations are subject to frequent changes – we recommend anyone considering doing business in Brazil or looking to the area as an opportunity for expansion should seek professional advice before making any business or investment decision.

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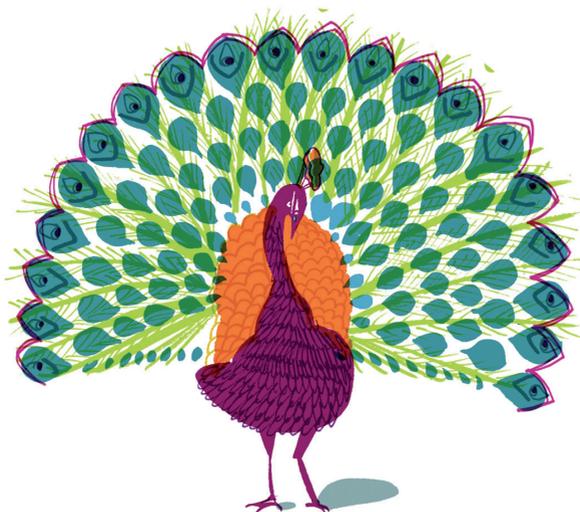
While every effort has been made to ensure the accuracy of the information contained in this booklet, no responsibility is accepted for its accuracy or completeness.

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Introduction

With abundant natural resources, a high degree of economic diversification and a strong consumer market, combined with a well-regulated financial system and strategic trading partners, Brazil has emerged as an important global player. Foreign direct investment is high, with plenty of business opportunities such as in the oil and gas, mining, agribusiness, retail and infrastructure sectors. For these and other reasons, Brazil has become an attractive target for many foreign investors. However, before engaging in operations or making any investment decisions, it is important to consider the existing issues and challenges of this emerging economy. This booklet provides an overview of some key aspects.



Geography and Population

The Federative Republic of Brazil is the largest country in Latin America and the world's fifth largest country, considering its geographical area of 8.5 million square miles and estimated population of almost 200 million.

São Paulo and Rio de Janeiro are Brazil's largest cities, with populations of approximately 19.2 million and 11.2 million, respectively, taking account of their greater metropolitan areas. Other major capitals with populations over 1 million are Brasília, Belém, Belo Horizonte, Porto Alegre, Curitiba, Fortaleza, Salvador, and Recife.

Brazil has a coastline of 7,491 km (4,655 miles) bounded by the Atlantic Ocean on the East, and bordered by Venezuela, Guyana, Suriname, French Guiana, Colombia, Bolivia, Peru, Argentina, Paraguay and Uruguay – all South American countries, except for Ecuador and Chile.

Although its climate is mostly tropical, due to its vast territory the country experiences a wide range of weather conditions; ranging from tropical humid areas and the semi-arid north-eastern region to temperate climates in the southern states and mountain regions. The country also comprises different ecosystems – including the Amazon rainforest, considered to have the greatest biological diversity in the world.

The official language is Portuguese, Brazil having been discovered by Portuguese explorers in 1500; it was a colony of Portugal until its independence on 7 September 1822.

Political Structure

Upon achieving independence from Portugal in 1822, Brazil was governed by a constitutional monarchy until 15 November 1889, when the Republic was proclaimed by a military *coup d'état*.

The current Constitution, enacted in 1988, defines Brazil as a Federal Republic, establishing a presidential system with three separate branches: executive, legislative and judiciary, under a system of checks and balances. The federation is administratively divided into 26 states and the Federal District, Brasília.

Voting is compulsory for the literate population between the ages of 18 to 70, and optional for illiterates and those aged between 16 and 18 or beyond 70. Members of the executive and legislative branches are elected directly, while judges and other judicial officials are appointed after passing entry exams. The president is elected by direct vote for a 4-year term, with the possibility of re-election, and is both head of state and head of government. The president has a broad range of powers, including the right to appoint ministers of state and key members of administrative, political and higher court positions.

The legislative branch comprises the National Congress, a bicameral institution that includes the Chamber of Deputies, and the Federal Senate, whose members are elected on a proportional representation basis that favours the less populated states.

The judiciary branch is comprised of the Federal Supreme Court, the Superior Court of Justice and several lower federal and state courts.

At state level, governors are elected for 4-year terms, with the possibility of re-election for a second term. The legislative branch includes state representatives, also elected for 4-year terms. Finally, at municipal level, mayors are elected for 4-year terms, re-election also being permitted; and city legislative councillors are also elected for four-year terms.

Legal System

Brazilian law is based on Roman-Germanic traditions, and civil law prevails over common law practice. The legal system is based on the Federal Constitution, enacted on 5 October 1988, which is considered the supreme and fundamental law. All other legislation, state constitutions and court decisions are considered hierarchically inferior and must conform to its rules.

Most of the legislation is codified, although non-codified statutes play a complementary role. Court decisions and doctrinal works of academic jurists establish guidelines for interpretation and have strong influence in law creation and cases.

With the exception of the municipalities, the federal and state levels are composed of executive, legislative, and judicial branches. The federal judicial branch is entirely independent from the state branches, with specialist divisions, such as for labour or military justice systems. Decisions proclaimed by the legislative and executive branches may be challenged in court with respect to their compliance with the Constitution and/or the law.

Regarding corporate law and business entities, two statutes require particular attention: the Civil Code Introductory Law (*Lei de Introdução ao Código Civil*; LICC) and the 2002 Brazilian Civil Code. The LICC sets forth general legal interpretation rules and international private law. The Brazilian Civil Code establishes, among other topics, rules on legal capacity, private contracts, business entities, torts, and family law.

International treaties ratified by the National Congress acquire the status of law in Brazil.

Military

Brazil's armed forces are the largest in Latin America, comprising the army, navy and air force, with a total of almost 400,000 active personnel.

The states' military police force is established by the Constitution as an ancillary force of the army, but under control of each state government.

Brazil has not been subject to invasion since the Paraguayan War (1865), and the country has no contested territorial disputes with any of its neighbouring countries.



Foreign Policy

Article 4 of Brazil's Federal Constitution sets forth the guiding principles concerning international relations, namely: non-intervention, self-determination, international cooperation and the peaceful settlement of conflicts.

The National Congress reviews and considers diplomatic nominations, international treaties and legislation concerning Brazilian foreign relations, and the president has ultimate authority over foreign policy.

Brazil is a member of a wide range of international organisations, including the United Nations, the Organization of American States (OAS) and the World Trade Organization (WTO).

Brazil is also a member of MERCOSUR (Southern Common Market, or *Mercado Comum do Sul*), an economic and political agreement with the purpose of promoting free trade and circulation of goods, people and currency, whose members currently include Brazil, Argentina, Paraguay and Uruguay; Bolivia, Chile, Peru, Colombia, Ecuador and Venezuela are associated countries.

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

Economy

Brazil is the largest national economy in Latin America, with one of the most diversified industrial parks in the world and abundant natural resources.

Currently ranked as the world's seventh largest economy in terms of Gross Domestic Product (GDP),¹ Brazil is considered to be among the most desirable destinations for foreign direct investment. According to the 2012 A. T. Kearney FDI Confidence Index Survey,² investors are increasingly turning to the developing countries mainly for their large and rapidly growing consumer markets than for their lower-cost labour; and Brazil now ranks third in the top-ranked destinations by foreign investors, behind only China and India.

Brazil is a member of MERCOSUR, in which tariffs are abolished and the circulation of labour, goods and services is unrestricted.

In 2012, the country's GDP was 2,252,628 (US\$ million) and international reserves reached 373,147 (US\$ million); see Table 1.³

Table 1. Main economic indicators and trends.

Indicators	2009	2010	2011	2012
GDP (US\$ million)	1,625,636	2,143,921	2,475,066	2,252,628
Real GDP GROWTH (% per year)	(0.33)	7.53	2.73	0.9
Unemployment rate (as% of labour force)	6.8	5.3	4.7	4.6
General price index – IGP-DI (% per year)	(1.43)	11.30	5.00	8.10
Consumer price index – IPCA (% per year)	4.31	5.91	6.50	5.84
Exchange at rate year's end (US\$/ R\$)	1.7412	1.6662	1.8758	2.0435
Public sector deficit (% of GDP)	3.34	3.28	2.61	2.47
Public sector debt (% of GDP)	42.1	39.1	36.4	35.1
Goods exported (US\$ million)	152,995	201,915	256,040	242,580
Goods imported (US\$ million)	127,722	181,768	226,246	223,149
Trade balance (US\$ million)	25,272	20,147	29,794	19,431
Current account balance (US\$ million)	(24,302)	(47,273)	(52,480)	(54,246)
International reserves (US\$ million)	238,520	288,575	352,012	373,147
Foreign direct investments (US\$ million)	25,949	48,506	66,660	65,272
Total foreign debt (US\$ million)	277,563	351,941	404,117	428,382

*Source: Brazilian Central Bank at <http://www.bcb.gov.br/?INDECO>.

1. International Monetary Fund Database: <http://www.imf.org/external/data.htm>.

2. www.atkearney.com/documents/10192/fdaa84a5-a30a-4e4e-bc36-453375d6596f.

3. Brazilian Central Bank (BACEN): <http://www.bcb.gov.br/?INDECO>. Fundação IBGE.

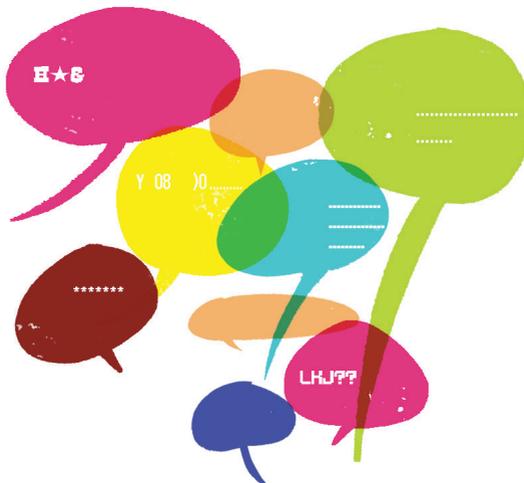
Additionally, Brazil is the biggest exporter of sugarcane, coffee, soybeans and orange juice. Other important products include corn, tobacco, cocoa, cotton, maize and beef.

The country is also the largest eucalyptus fibre producer in the world, and holds a significant position in the chemical, textile, and paper industries. In addition, Brazil is also known for its extensive mineral resources, including large iron and manganese reserves, carbon-based fossil fuels, deposits of nickel, tin, chrome, bauxite, beryllium, copper, lead, tungsten, uranium, zinc, gold, silver, precious and semiprecious stones and rare minerals.

Among the major industries, the automobile sector has grown to become one of the world's largest vehicle manufacturers. Other noteworthy industries include footwear, cement, computers, aircraft and consumer durables.

Brazil is also known for its oil and gas exploration capabilities in 'ultra-deep water'. Brazil's oil reserves are ranked among the 20 largest worldwide, especially considering the 'ultra-deep pre-salt reservoir' and Petrobras, the fourth largest oil production company in the world. Petrobras' recent oil and gas discoveries could place Brazil among the top oil-exporting nations worldwide.

Moreover, it is also worth mentioning that Brazil has the most extensive fluvial network in the world, comprising the largest volume of fresh water, and placing the country among the leading producers of hydroelectric power, which also provides most of the country's electricity.



Legal Structures of Business Entities

Because the formation by a foreign company of a branch in Brazil is a lengthy procedure that requires authorisation granted by presidential decree, most foreign companies choose to set up business using subsidiaries or affiliated companies. Additionally, establishing a branch in Brazil presents certain adverse tax impacts and other liabilities.

Corporate entities in Brazil are regulated by the Brazilian Civil Code (Law No. 10.406/2002) and by the Brazilian Corporate Law (Law No. 6.404/1976). These legislations establish several types of entities; the most widely used are the limited liability company (*sociedade limitada* – Ltda) and the joint stock corporation (*sociedade anônima* – S.A.).

In both types of entity, the liability of partners is restricted to the amount they contributed for their quotas or shares to pay up the company's capital. In principle, the partners are not held liable for any amount exceeding such contributions, except in the case of illicit actions.

In the case of fraud or illicit acts, the theory of the 'piercing of the corporate veil' may be applied by the Brazilian courts, disregarding the corporate entity and holding partners directly liable for the entity's obligations.

Moreover, both types of companies require at least two partners, which may be individuals or legal entities, and not necessarily domiciled in Brazil. However, foreign-based partners must be enrolled with the Federal Revenue and have an attorney-in-fact duly vested with powers to represent them in Brazil.

In addition, neither entity requires a minimum capital, and the capital stock may be allocated between the partners at their own will.

As for taxation of corporate entities, tax rates are generally determined proportionally, based on their size and not on their corporate type.

Limited liability company (*sociedade limitada*)

Limitadas are similar to limited liability companies, closely held companies or limited partnerships under US law. In Brazil, *Limitadas* are governed by the Civil Code and, in a subsidiary manner, by corporate law.

A *limitada* is established by the articles of association, which must include:

- Name and qualifications of each quota holder
- Company name, clearly stating its objective and containing the expression 'Limitada' or 'Ltda'
- Company purpose
- Address of company headquarters
- Duration
- The company's quota capital and its apportionment and payment conditions.

The *Limitada* has only one class of partners: limited liability quota holders. All quota holders are held jointly and severally liable for the entirety of the quota capital until it is fully paid. Once the capital is paid, liability is then limited to the amount that each quota holder paid for their respective quota.

The corporate capital is therefore divided into quotas that may be representative of money, credits, rights or assets (payment with services is not permitted) contributed by the quota holders for the formation of the company. Both the ownership and number of quotas are established in the articles of association, and any transfer of quotas requires an amendment, signed by all quota holders; or, at least, the quota holders representing three-quarters of the corporate capital.

Amendments to the articles of association or other corporate documents do not need to be published, except in the case of mergers, spin-off, capital reduction or consolidation. The articles of association, however, are public documents that must be registered before the Board of Trade and available to third parties that wish to obtain copies.

The management of a *Limitada* may be performed by one or more individual quota holders or by a third person appointed by the quota holders in the articles of association or by a separate resolution. Foreigners with a valid permanent visa and domiciled in Brazil may also be appointed for management positions. Despite the appointment of management positions, the quota holders may retain control over certain decisions by reserving certain rights and imposing restrictions concerning management actions in the articles of association.

In case the company has over 10 quota holders, resolutions concerning the following matters are made at a partners' meeting known as the 'General Assembly' (*Assembleia Geral*):

- Approval of management accounts
- Appointment, dismissal and compensation of managers
- Amendment to the articles of association
- Appointment and dismissal of liquidators, and a decision on their accounts
- Merger, winding-up and consolidation, or ceasing of liquidation status
- Filing for bankruptcy.

If the *Limitada* has 10 or fewer quota holders, the partner's meetings are more flexible and do not have to comply with all the rules of the Assembly set forth by the Law.

Joint stock company (*sociedade anônima*; S.A.)

The *Sociedade Anônima* (S.A.) is the corporate entity type that most resembles a joint stock company or corporation. It is, by nature, a business corporation with its corporate objective being the earning of profits to be distributed to the shareholders.

The bylaws (*estatuto social*) of a S.A. must state the company's subscribed capital and may also establish an authorised capital, which is a limit for the increase of the subscribed capital by resolution of the board of directors, without the need for an amendment to the bylaws.

The S.A.'s corporate capital is divided into shares that represent fractions of the corporate capital. Such shares may be common or preferred capital shares, depending on the rights ascribed to their holders, and may be split into different classes and series.

Generally, common shares entitle the holder to the rights of common shareholders, while preferred shares have special rights and/or privileges that may include the right to elect certain members for the administrative bodies, even if these preferred shares grant no other voting rights.

Shares may be paid up in cash or in assets that are capable of being valued in cash. Therefore, the appraisal of assets is mandatory, and the appraisal report must be approved by the shareholders in a general meeting.

As opposed to a *Limitada*, where the ownership of quotas is set forth in the articles of association, an S.A. is required to keep a record of its shareholders in its own proper corporate books.

The S.A. must have at least two shareholders, which are liable only to the extent that the capital stock for which they have subscribed remains unpaid. An S.A. may be formed by public or private subscription of capital. In both cases, all shares must be subscribed, and at least 10% of the capital must be paid up on its incorporation.

The company formation by private subscription may take place at a general meeting of the incorporators, or by a public deed of incorporation drawn up simultaneously with subscription for the shares. If any shares are paid up other than in cash, then a general meeting must be called in order to appraise such assets contributed.

The formation of a company by public subscription, on the other hand, requires the following:

- Preliminary registration of the issue of shares before the *Comissão de Valores Mobiliários* (CVM; Brazilian Securities and Exchange Commission)
- The intermediation of a financial institution
- Appraisal of any assets transferred to the company as payment for shares
- Approval of the company's incorporation by a general meeting called by the subscribers.

All constituent documents must be filed with the Board of Trade and published in the *Official Gazette* and in other widely circulated newspapers where the company maintains its principal business location (not necessarily its headquarters).

Furthermore, the corporation may be publicly or closely held. A publicly held company must be registered with the CVM and must have securities traded on the stock exchange or over-the-counter markets, while the securities of a closely held company are not available to the general public on the stock market.

Publicly held corporations may also issue participation certificates, subscription warrants and bonds (debentures). Although these securities do not compose the corporate capital, rules concerning ownership and the circulation of shares also apply.

The shareholders of a S.A. may enter into a shareholder's agreement to govern the purchase and sale of shares, pre-emptive rights and exercise of voting rights or controlling power. A shareholder's agreement filed at the company's headquarters is binding and enforceable by its signatories.

The decision-making bodies of the S.A. consist of the Shareholder's General Meeting (*Assembleia de Acionistas*), the Board of Directors (*Conselho de Administração*), the Executive Office (*Diretoria*) and the Fiscal Board (*Conselho Fiscal*).

Registration requirements

Both S.A. and *Limitadas*, legally defined as commercial companies, must file their acts of incorporation, as well as any incorporation documents and amendments, with the Board of Trade in the state of the company's headquarters.

Foreign legal entities that own stocks or quotas of Brazilian legal entities or other goods and rights in Brazil are required to register with the Federal Taxpayer's Registry of Legal Entities (*Cadastro Nacional de Pessoas Jurídicas*; CNPJ). A CNPJ number may be obtained upon registration of the investment before the Central Bank of Brazil.

As for foreign individuals domiciled abroad who own stocks or quotas of Brazilian legal entities or other goods and rights in Brazil, including investments, they must register with the Federal Taxpayer's Registry of Individuals (*Cadastro de Pessoas Físicas*; CPF). Such registration of non-residents can be requested in Brazil by an attorney-in-fact, or at the nearest Brazilian Embassy or Consulate.

Brazilian Securities Market

The Brazilian securities market is regulated and monitored by the *Comissão de Valores Mobiliários*; CVM (similar to the US Securities and Exchange Commission), an agency vested with independent administrative authority, as well as financial and budgetary autonomy, created by Law No. 6.385/16.

Both Law No. 6.385/76 and Corporate Law No. 6.404/76 govern the capital markets and their participants, such as public companies, financial institutions and investors.

The CVM has powers to discipline, rule and supervise the activities of all market participants. Its regulatory activities include all matters related to the Brazilian securities market, such as:⁴

- Securities trading and intermediation
- Mutual funds management and securities custody
- Suspension or cancellation of registries, permissions, or authorisations
- Suspension of the trading, issuance, or distribution of securities
- Suspension of stock exchange operations.

The law also provides that the CVM has the authority to investigate, judge and punish any irregularities that may occur in the securities market. In the event of any suspicious activities, an administrative inquiry may be conducted to collect information, formal statements and material evidence in order to identify any illegal practices. The Board of Commissioners has the authority to judge securities law offenders. Penalties range from warnings and fines to disaccreditation.

A company that wishes to become publicly held, so as to be able to offer its securities on stock exchanges or over-the-counter markets, must apply to the CVM for registration, presenting a number of documents and complemented by a registration for public offering to distribute securities in the market.

In addition to obtaining authorisation from the CVM, in order to trade shares on the stock exchange, companies must also be listed at BM&FBOVESPA (*Bolsa de Valores, Mercadorias & Futuros de São Paulo*), the stock exchange located in São Paulo, a company that manages the securities and derivatives markets, providing registration, clearing and settlement services. BM&FBOVESPA acts as a central counterparty, guaranteeing financial liquidity for the trades executed.⁵

The stock exchange offers a wide variety of products and services, such as spot FX, equities and fixed-income securities trading, as well as trading in derivatives contracts based, among other things, on equities, financial securities, indexes, rates, commodities and currencies. BM&FBOVESPA offers a diversified and integrated trading model, with a complete custody system. Trading takes place in an exclusively electronic environment.

4. www.cvm.gov.br/ingl/indexing.asp

5. www.bmfbovespa.com.br/en-us/intros/intro-about-us.aspx?idioma=en-us

Labour and Employment

Brazilian labour and employment rules are governed by the applicable provisions set forth by the 1988 Federal Constitution, the Consolidation of Labour Laws (*Consolidação das Leis do Trabalho*; CLT) and also by collective bargaining agreements and collective labour conventions entered into by employees' and employers' unions.

Under Brazilian labour laws, all workers are granted a number of rights, including, but not limited to: protection against arbitrary dismissal, unemployment insurance, maternity and paternity leave, minimum wage, insurance for occupational accident, work period not to exceed 8 hours daily or 44 hours weekly, overtime compensation of 50% of regular time wages and vacation time with additional bonus payment equal to one-third of the monthly wage. Furthermore, the Constitution prohibits any sort of employment discrimination such as race, sex, colour, religion or marital status.

Employment contract

It is important to emphasise that although employers and employees usually enter into written contracts, a formal written agreement is not required under Brazilian law for the purposes of characterising the employment relationship, considering that the law is guided by the principle of primacy of reality.

As a general rule, employment contracts are entered into for an undetermined period of time. Exceptionally, a contract for a fixed term may be applied in the following situations provided by the CLT:

- i. When the nature of the services justifies establishing a predetermined period
- ii. When the company's activity is temporary by nature
- iii. In case of a probation contract.

The contracts for a determined period in (i) and (ii) cannot exceed 2 years, while probation contracts cannot exceed a period of 90 days. In these specific cases, a written contract is required.

The conditions established in the employment agreement cannot be modified or amended without the employee's consent and, even if made with consent, may be considered legally null and void before the Brazilian Labour Courts if they are conflicting, in any way, with the employees legal and constitutional rights.

Temporary workers

'Temporary work' is defined by law as the service rendered by an individual on a short-term basis in order to replace the regular permanent staff (i.e. vacation or maternity leave), or as a result of an extraordinary increase in business. Therefore, temporary workers are not considered employees of the company; rather, they are employees of a third company that supplies workers to other companies. As such, these specialised companies are held liable for

the labour rights of these temporary workers. These agreements have a maximum of 90-day terms, with the possibility of extension for 90 days further.

Basic employee rights

Salary and other remuneration

Under Brazilian law, wages are generally paid monthly and cannot be lower than the minimum wage established by the government or less than the floor wage level (*piso salarial*) for the specific professional category.

In addition to the wage itself, remuneration includes any other benefits provided by the employer on a regular basis, such as food, housing and clothing. Therefore, these benefits should all be included in the total remuneration amount for the purposes of calculating the contractual and severance payments, such as the 13th salary, vacations, employee severance fund (FGTS), income tax and social security contribution. Once these benefits are provided to the employee, they are considered part of the employment contract for all legal purposes; they become permanent, and can no longer be withdrawn by the employer.

Weekly remunerated rest period (*descanso semanal remunerado*; DSR)

All employees have the right to one remunerated rest period, which should preferably be on a Sunday. Employees who receive their salaries on a monthly basis shall have the paid rest days included in the monthly salary.

Vacations

All employees are entitled to 30 vacation days, after completing 1 year's service (the so-called 'acquisition period'), considering that the employee has not been absent from work for more than 5 unjustified days during that period. The salary must be paid, at the latest, 2 days before the beginning of the vacation period. Also, vacation should be granted during the year following the acquisition period, otherwise the employer may be required to pay double the vacation period amount.

All workers under Brazilian law are also entitled to receive a one-third bonus in addition to the normal monthly salary, as a bonus payment at the time of their annual vacation leave.

13th salary ('Christmas bonus')

At the end of the year, the employer shall pay the employee a salary bonus known as the 'Christmas bonus' or 13th salary, corresponding to an extra payment equal to the employee's monthly wage.

Prior notice of termination

An employment contract for an undetermined period may be terminated at any time. However, if an employer wishes to terminate the contract without a just cause, the employer must either

give the employee an advance notice of 30 days or indemnify the employee for the equivalent period. During the notice period, the employee shall receive full salary but the working day shall be reduced either by 2 hours/day or by 7 consecutive days, based on the fact that the employee will most likely need time to look for a new job. Lack of prior notice by the employer entitles the employee the right to receive the payment corresponding to such period.

Likewise, if the employee wishes to terminate the agreement, the prior notice period or the indemnification should also be granted to the employer.

Unhealthy work conditions, risk and night premium

In case the nature of the activities performed by the employee is considered by law as hazardous, the employee will be entitled by law to an additional monthly allowance as compensation for such risky work conditions. Such allowance will be equivalent to 10%, 20% or 40% of the minimum wage, depending on the hazard level. In the case of dangerous activities such as those involving contact with explosive or flammable materials, an additional payment in compensation for the risk involved will be paid by the employer based on 30% of the employee's salary.

Further, employees who work between 22:00 and 05:00 are entitled to receive an additional allowance as compensation for night-time work of at least 20% higher than the regular hourly daytime rate.

Work day and overtime

As a general rule, employees work a maximum of 8 hours daily and 44 hours weekly, with a 1-hour break during the work day for meals and rest. Also, a minimum rest period of 11 consecutive hours is granted between work days.

Any work performed beyond the time frame provided by law is considered overtime, and the minimum compensation for overtime hours is 50% higher than the normal hourly rate.

Employee Guarantee Fund

The 1988 Constitution established the *Fundo de Garantia por Tempo de Serviço* (FGTS) system, in which the employer must deposit the equivalent of 8% of each employee's salary into a blocked bank account created in the name of the respective employee. In the event of termination of the employment agreement by the employer without a just cause, the employee will be entitled to withdraw the total FGTS deposits in their FGTS account; plus the employer will be required to pay an additional 50% over all FGTS deposits carried out during the employment period (40% will be destined to the employee and 10% to the government).

Unions

According to Brazilian Law, union membership is mandatory and generally defined according to the company's principal economic activity and location. Employees and companies must pay annual labour union contributions to their respective union.

While collective bargaining agreements are characterised by voluntary negotiations between the company and the union that represents the company's employees, collective labour conventions are compulsory negotiations between the trade union and the employers' association for a specific category. Collective labour conventions essentially establish the work conditions that will be applied to that category, and they are binding to the company and all the employees in that category, union-member or non-members.

Occupational Accident Prevention Commission

The Occupational Accident Prevention Commission (CIPA) is required for companies with over 50 employees, with the purpose of preventing occupational accidents and diseases, by controlling risks involved in the work environment. The CIPA is composed of representatives of the employer and of the employees, and the number of representatives depends on the number of total employees and on the level of occupational risk.

Fringe benefits

Some employers may choose to provide benefits such as medical care, meals, transport and private pension plans. However, voluntary benefits usually constitute a significant additional cost for employers. In some cases, authorities may require special facilities to be made available. For example, if there are more than 300 employees, the employer is required to maintain a canteen on the premises. Employers must also provide transport vouchers/ cards for employees, who will contribute with the equivalent of 6% of their monthly salary for the cost of the vouchers. It is important to note that if any of such benefits are not granted according with the law requirements, they will be considered fringe benefits (part of the remuneration) and, therefore, must be registered and subject to payroll taxes and contributions.

Brazilian Tax System

The 1988 Brazilian Federal Constitution sets out the general principles and guidelines for the current tax system, granting power to the union, states, federal district, and municipalities to institute and collect taxes. The political and administrative autonomy, characteristic of Brazil's Federative system, allows each level of government the right to institute taxes, fees, contributions and compulsory loans. Taxation is regulated by the National Tax Code (*Código Tributário Nacional*; CTN); federal, state and municipal tax laws; international tax treaties and government decrees.

The national tax system is guided by the following fundamental constitutional principles:

- **Principle of legality** – A tax may only be levied, or have its rate increase, by a law that has been duly approved by the National Congress
- **Principle of non-retroactivity** – A tax cannot be applied to events that occurred prior to the enactment of the law creating the tax, or have its rates increased
- **Principle of equality** – Taxpayers who are in equivalent situation must be treated equally for tax purposes
- **Principle of predictability** – Taxes cannot be collected in the same fiscal year in which the law that instituted them was enacted
- **Principle of non-confiscation** – Taxes should not establish confiscatory effects.

Federal taxes are implemented through congressional legislation and also through provisional measures (*medidas provisórias*; MPs) issued by the president. The president has authority to issue legal provisions to regulate issues considered urgent. Consequently, MPs are equivalent in hierarchy to federal law. However, an MP will be effective until final approval by the National Congress, which must occur within a maximum period of 120 days, otherwise being automatically revoked.

The federal taxes consist of the following (see Table 2):

- i. Income tax
- ii. Social contribution on net profits (CSL)
- iii. Tax on manufactured products (IPI)
- iv. Tax on financial transactions (IOF)
- v. Profit participation program contribution (PIS) and the social security financial contribution (COFINS)
- vi. Contribution on economic activities (CIDE)
- vii. Import tax (II)
- viii. Export Tax (IE).

Table 2. Summary of the main Brazilian taxes, considering their respective basis of calculation and rates.

Tax	Basis of calculation	Rate
Corporate income tax (IRPJ)	Actual profits; estimated profits; profits determined by the tax authorities	15% on income below R\$ 240,000 per year
Corporate income tax (IRPJ) surcharge	Actual profits; estimated profits; profits determined by the tax authorities	10% on the portion exceeding R\$ 240,000 per year
Withholding income tax (IRF) – <i>overseas remittances</i>	Income and capital gains earned by non-residents from Brazilian paying sources	15% or 25% (depending on type of income)
Tax on manufactured products (IPI)	Sale price of the industrialised product when the product leaves the industrial establishment, or upon import	Variable, based on product classification
Tax on financial transactions (IOF)	Credit, foreign exchange, currency, insurance and securities transactions	Variable, based on type of transaction (0–5.38%)
Social contribution on profits (CSL)	Adjusted net profit	9% (corporations) or 15% (financial institutions)
Profit participation program contribution (PIS) – deductible	Revenue (the company's gross income)	1.65% (under the non-cumulative regime) or 0.65% (under the cumulative regime)
Social security financing contribution (COFINS) – deductible	Revenue (the company's gross income)	7.6% (under the non-cumulative regime); 3% (under the cumulative regime); or 4% for financial institutions
Contribution on economic activities on royalties (CIDE-Royalties) – <i>overseas remittances</i>	Remittance of royalties and fees for technology transfer and payment for technical services	10%
Contribution on economic activities on fuels	Fuel sales/marketing and imports	Variable, based on type of fuel
Tax on distribution of goods and services (ICMS)	Transaction value	7–25%
Tax on services (ISS)	Service price	2–5%
Import duty (II)	Value of imported product	0–35%, according to product

Export duty (IE)	Value of exported product, made or cleared in Brazil, as per Brazilian Foreign Trade Chamber Act	Generally 30% but may vary according to product type (capped at 150%)
Real Estate Property and Donation Tax (ITCMD)	Value of assets or rights transferred by donation or legal succession	2% and 6%, according to state legislation
Inter-Vivos Transfer Tax (ITBI)	Transfer of title to real properties and related rights	Up to 8%, according to municipal legislation
Urban Land and Building Tax (IPTU)	Ownership of urban properties	Variable, according to each municipal legislation and characteristics of property

Source: Pinheiro Neto Advogados. *Company Formation in Brazil*. pg. 191. October, 2008.

Income tax

Federal income tax is paid by the natural person or legal entity that obtains earnings or any sort of income (taxpayers). In specific cases, however, the law determines the responsibility to withhold the income tax at source, although the burden remains on the taxpayer.

A company may choose to pay corporate taxes based on a presumed profit method (*lucro presumido*) or based on actual taxable income (*lucro real*).

Foreign entities conducting business activities in Brazil are considered regular taxpayers and subject to the same taxation rules.

Corporate taxable income is carried out under a unitary system in which a single tax rate is applied. Currently, the rate is 15%, with a surcharge of 10% on taxable income over a certain level, and tax must be calculated and paid on a monthly or quarterly basis.

A holding company is subject to the same taxation system as corporations. In this case, income tax is payable only on direct income earned by the holding company, considering that indirect income has already been subject to the corporate income tax.

As a rule, the income, capital gains and other earnings paid by a Brazilian source to a foreign-based individual or legal entity are subject to withholding income tax (IRF), as follows:

- At a generic rate of 15%
- At a rate of 25% on income reported by employees or service providers
- At a rate of 25% on income paid to a person residing at low tax jurisdictions (i.e., blacklisted countries that do not tax income or impose maximum tax rate below 20%)
- At a rate of 0% on capital gains associated with stock, commodities and other similar exchange market transactions
- At a specific rate established in the double taxation treaties signed by Brazil.

Companies resident in Brazil are taxed on worldwide income. Profits of foreign branches and subsidiaries are both taxed as earned. Brazil has signed various treaties against double

taxation. Moreover, any fees and other expenses paid in Brazil relative to services rendered abroad are usually subject to withholding tax at the following rates: 15% if the service is technical, 25% if the service is not technical or a lower treaty rate.

Individual taxpayers are generally required to pay income tax on a monthly basis. The progressive income tax rates for individuals are 0%, 7.5%, 15%, 22.5% and 27.5%. A resident individual's taxable income is computed on a worldwide basis and tax is generally deducted at source on remuneration, earnings and gains. Employees are subject to tax withholding on remuneration received, based on a pay-as-you-earn system. An annual tax return must be filed each year by the end of April, stating the income of the previous calendar year.

Social contributions

Brazilian companies and financial institutions are subject to the social contribution on net income (CSL), which is based on the net income adjusted by the additions, exclusions and offsetting events prescribed by tax laws, created with the purpose of financing the social security system. The tax base may be decreased (up to 30%) by carrying over the negative tax bases reported in past periods.

The CSL tax base is subject to the worldwide income taxation principle and, as a result, all profits, income and capital gains earned abroad by Brazilian companies are subject to CSL.

The CSL is currently assessed at a rate of 9% for legal entities in general and 15% for financial and insurance institutions, on the net income for the financial year. Also, CSL assessments do not qualify as deductible expenses when determining the book taxable income.

According to Law No. 9718 of 17 November 1998, all companies (including financial institutions) as of 1 February 1999 are subject to the profit participation program and civil servant's investment program (PIS/PASEP) and to the social security financing contribution (COFINS). Both social contributions are levied on the company's operating revenues.

Law no. 10.637 of 30 December 2002 introduced the PIS non-cumulative system, and Law 10.833/03 determined the non-cumulative system for COFINS. Both PIS and COFINS are levied on the gross revenues earned by the company at 1.65% and 7.6%, respectively. Under the non-cumulative system the company is allowed to use credits, mostly relating to the acquisition of products and services required for the entity's activities to be offset with the PIS and COFINS liability.

However, not all companies qualify for the non-cumulative system, depending on the type of activity and revenue earned; some must still pay PIS/PASEP at 0.65% and COFINS at 3% (in both cases under the cumulative system).

As of 2004, the levy of PIS and COFINS was extended to importations of foreign products and services, known as 'PIS imports' and 'COFINS imports'. Such taxes are levied on:

- Entry of foreign goods into Brazilian territory
- Payment, credit, delivery, use or remittance of funds to foreign-based persons in payment for services.

PIS/PASEP imports and COFINS imports are paid by:

- The importer that brings foreign goods into the Brazilian territory
- Individuals or legal entities that retain services from foreign-based persons
- The service beneficiary, if the principal is also resident or domiciled abroad.

The PIS/PASEP and 5 contributions qualify as deductible expenses when determining the tax base of corporate income tax and CSL.

Contribution on economic activities

The contribution on economic activities (CIDE) is levied on foreign remittances relating to payment of copyrights, royalties on trademarks and patents, technical services, etc. As a general rule, CIDE is owed by the Brazilian entity and is levied on the amounts paid abroad, at a maximum rate of 10%.

Currently, contributions on economic activities are levied on remittance of royalties to abroad (*CIDE royalties*) and on fuels (*CIDE combustíveis*).

Sales taxes

Sales taxes are payable on goods and services. There are two types of sales tax, which vary according to the nature of the transaction: the tax on manufactured products (IPI) and the tax on the distribution of goods and services (ICMS).

IPI is a federal tax levied on the domestic manufacture of products and the import of foreign products, payable by the respective manufacturers or importers of foreign products. IPI rates vary based on the nature of the products and degree of essentiality, according to the product's tariff codes. For instance: products considered non-essential such as cigarettes, beverages and cosmetics are subject to higher rates, while food products in general are exempt.

It is important to note that IPI rates may be changed at any time by federal decree; product specifications can be found in the Table of Excise Tax Levy (TIPI).⁶

ICMS is a state tax similar to IPI. It is imposed on transactions involving the distribution (sale) of goods, including import, inter-state and inter-municipal transport and communications services. ICMS is thus payable at all stages of the chain of sales, from the manufacturer to the final consumer. ICMS is paid by the manufacturer and/or the trader. Intra-state rates vary from 7% to 25%, according to the product sold or service provided.

Additionally, for interstate sales to ICMS taxpayers, the rate is 7% or 12%, depending on the location of the acquirer. For interstate sales to non-ICMS taxpayers, the ICMS rate of the state of the seller must be applied. For interstate transactions with imported goods, the ICMS rate is set at 4%, provided that such products, after customs and clearance, are not industrialised. In case industrialisation occurs, the import content must exceed 40% of the value of the final good.

Tax on services

The tax on services (ISS) is a non-cumulative tax levied on the rendering of certain services provided by a company or independent contractor, according to a list of services provided by Federal Supplementary Law No. 116 of 31 July 2003.⁷

ISS is generally calculated at a rate of 2–5% on the service value; it is levied on service imports and services initiated abroad. In such cases, if ISS cannot be charged directly to the foreign service provider, the service beneficiary will be responsible for the payment of the tax.

Tax on financial transactions

The tax on financial transactions (IOF) is a federal tax levied primarily on transactions involving foreign exchange insurance, loans or financing, and on securities transactions, such as the following:

- Credit transactions carried out by financial institutions
- Credit transactions carried out by companies engaged in the cumulative and ongoing provision of services inherent to credit advice, market research, credit management, risk selection, management of payables and receivables, acquisition of credit rights resulting from term sales or services (factoring)
- Intercompany loans, and loans between companies and individuals
- Exchange transactions
- Insurance transactions by insurance companies
- Securities transactions
- Deals in gold as a financial asset, or currency instruments.

IOF rates vary based on the type of transaction involved (generally 0.38%), and are decreased or increased frequently, according to the legislation in force. It is worth mentioning that IOF rates have been changed several times in recent years, mostly due to the world financial crisis and the appreciation of the Brazilian Real.

Customs duties

Import duty (*imposto de importação*) is usually levied on an *ad valorem* basis, on the CIF (cost, insurance and freight) value of the product. The Brazilian Foreign Trade Council may apply specific tax rates or establish reference prices in order to protect local products or to apply a heavy tax on non-essential items, but the invoice value is generally the basis for calculating customs duty. The MERCOSUR Common External Tariff (TEC) also determines tables classifying the goods.

In particular cases, reductions or exemptions on import duties may be granted to specific industries or enterprises considered of particular importance to the economy, such as regional issues, nature of the product and use of local materials.

The Manaus Free Trade Zone (ZFM) is regulated by Law No. 3.173/1957 and was created with the purpose of maintaining and promoting an industrial, trade and agribusiness centre in the Amazon region. Imports into this free trade zone shall be duty free if they are consumed or manufactured within the zone or are exported abroad.

Given the complexity of the Brazilian tax system as well as its ever-changing legislative environment, and considering that it is frequently used as a tool to boost the economy at federal, state and municipal levels, we recommend seeking professional tax advice prior to engaging in any investment projects in Brazil.

Banking and finance

The national financial system (SFN) is composed of the following normative and supervising entities: The National Monetary Council (CMN), the Central Bank (BACEN), the Private Insurance Regulator (SUSEP), Complementary Pensions Department (SCP) and the Securities and Exchange Commission (CVM).

The Central Bank (BACEN) is responsible for carrying out traditional central banking functions, such as controlling and monitoring interest rates, capital limits, foreign investment and foreign exchange market, as well as implementing CMN policies, among other attributions.

Entities operating in the financial market may be either controlled by government or private institutions. Some of the main government institutions include the following:

- **National Bank for Economic and Social Development (BNDES)** – Implements the government’s investment policy by granting loans and supervising financing plans
- **Bank of Brazil** – A mixed-capital federal company that handles all federal receipts and payments for the government. Also a commercial and agricultural bank
- **Federal Saving and Loans Association (CEF)** – A savings and mortgage bank. Also administers the employee severance indemnity fund (FGTS), social integration taxes (PIS/PASEP) and national lotteries.

Private financial institutions include commercial banks, investment banks, foreign exchange banks, credit cooperatives, financing and investment companies, brokerage companies and securities dealerships.

6. Table of Excise Tax Levy: <http://www.receita.fazenda.gov.br/aliquotas/tabincidipitipi.htm>

7. List of Services (ISS) – Complementary Law 116/2003: http://www.planalto.gov.br/ccivil_03/leis/lcp/lcp116.htm

Statutory Requirements

Statutory audits are only required for entities operating in the banking and financial sectors, publicly traded corporations and insurance companies, as well as for large-sized closed-capital corporations and limited liability companies. The law provides that large-sized companies are defined as those with total assets worth more than R\$ 240,000,000 or annual gross revenue higher than R\$ 300,000,000. Such companies must be audited by an independent auditor registered with the Brazilian Securities and Exchange Commission (CVM).

Financial institutions and other entities under the jurisdiction of the Central Bank, as well as insurance companies, are required to prepare annual and semi-annual audited financial statements.

As of January 2007, Federal Decree 6022 implemented the public digital bookkeeping system (SPED), a tool that unites the activities of receipt, validation, storage and authentication of documents and books that integrate the taxpayer's commercial and fiscal bookkeeping through a single computerised flow of information and use of digital certification.



Investment Incentives

The Brazilian government offers several federal programs designed to promote economic development and, particularly, for underdeveloped regions in the northeast and Amazon.

Local state governments also offer incentives to attract local and foreign investments. Foreign investments are viewed positively, especially considering the creation of new jobs, development of new technology, among other benefits to the local economies.

The federal government does not offer tax concessions specifically for foreign investors, since the available federal tax concessions are offered equally to both local and foreign investors, with the purpose of accelerating the development of poor regions or industries of strategic economic importance.

The granting of regional incentives requires approval by the federal government agencies SUDAM (Amazon region) and SUDENE (northeast region), which are responsible for assessing the project's feasibility according to the region's economic situation.

As for non-tax incentives, companies in the northeast and Amazon regions are entitled to low-cost loans or guarantees, granted by the following government banks: the National Bank for Social and Economic Development (BNDES), the Amazon Bank (BASA), and the Bank of Northeast Brazil (BNB).

Other incentives include special tax regimes provided by Brazilian tax law in order to promote specific economic activity sectors, such as incentives for automobile and auto parts industries located in certain regions, the digital inclusion programme, innovation, and incentives for the technological industry.

Useful Resources

CVM – Securities Commission
www.cvm.gov.br

Receita Federal – Federal Revenue
www.receita.fazenda.gov.br

BACEN – Central Bank
www.bcb.gov.br

BM&FBOVESPA – Stock Exchange
www.bmfbovespa.com.br

BNDES – National Bank of Economic and Social Development
www.bndes.gov.br

SUSEP – Private Insurance Regulator
www.susep.gov.br

INPI – National Institute of Industrial Property (trademark and patent registration application information, fees, etc.)
www.inpi.gov.br

CAIXA ECONÔMICA FEDERAL (CEF) – Federal Saving and Loans Association
www.caixa.gov.br

ANEFAC – National Association of Finance, Administrative and Accounting Executives
www.anefac.com.br

CFC – Federal Accounting Council
www.portalcfc.org.br

AMCHAM – American Chamber of Commerce – Brazil
www.amcham.com.br

The Next Step

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