Tuesday, October 2, 2012
11:00 AM - 12:30 PM

605 – Doing Business in Brazil, the Sixth Largest Economy in the World

Alexandre D' Ambrosio
General Counsel and Managing Director
Votorantim Group

Marco Antonio de Gregorio
Legal Director for Latin America
Reckitt Benckiser

José Diaz
Partner
Demarest e Almeida

Eduardo Loyo
Chief Economist
BTG Pactual

Celso Xavier
Partner - Litigation
Demarest e Almeida

Faculty Biographies

Alexandre D'Ambrosio

Alexandre S. D'Ambrosio is general counsel and executive director of Votorantim Industrial, the holding company of the Votorantim Group which controls all industrial activities of the conglomerate, with leading positions in the manufacture of cement, energy, metallurgy and mining, steel, cellulose and frozen concentrated orange juice. In such capacity, he manages a team of over 150 professionals, comprising the legal departments of the holding company and of all industrial units, including divisions in Brazil and another 22 countries.

Marco Antonio de Gregorio

Marco Antonio de Gregorio is currently regional legal director for Latin America and Brazil at Reckitt Benckiser, responsible for leading the legal function in all Latin America countries and for the legal department in Brazil. His responsibilities include corporate law, contracts, tax, consumer law, litigation management, competition law, environmental law, intellectual property, labor law and all other legal areas. He is also responsible for implementing the policies linked to company's compliance program in Latin America.

Prior to joining Reckitt Benckiser, Mr. de Gregorio worked for British American Tobacco, Royal Dutch Shell, and Ipiranga Oil Company, always acting as in-house legal counsel or head of the legal area.

He acted as vice-chairman of the Anti-Unfair Competition Committee at the Brazilian Bar Association and as member of the Legal Committee of the Brazilian Institute for Ethical Competition - ETCO.

Mr. de Gregorio graduated in law at Universidade Federal Fluminense and is post-graduated in tax law. He obtained his MBA degree at Fundação Dom Cabral (Brazil) and completed his post MBA at Kellogg School of Management (Northwestern University). He also holds a master degree in regulation and competition law.

José Diaz

The survey with clients made by Chambers Latin America 2010 and 2012 appoints Mr. Diaz as "a really terrific corporate lawyer" and "highly recommended for their outstanding service and experience." He was also nominated as "leading lawyer in his field" by IFLR 2010, 2011 and 2012, Which Lawyer 2009 and Who's Who Legal 2009 and 2010. He is the vice-chair for Latin America and the Caribbean of the Agribusiness practice group of Lex Mundi.

Mr. Diaz graduated from Universidade de São Paulo Law School. Earned an LLM in international law from Universidade de São Paulo Law School. Took part in a training program for young attorneys in the Brazilian Mission in Geneva, Switzerland, at the World Trade Organization.

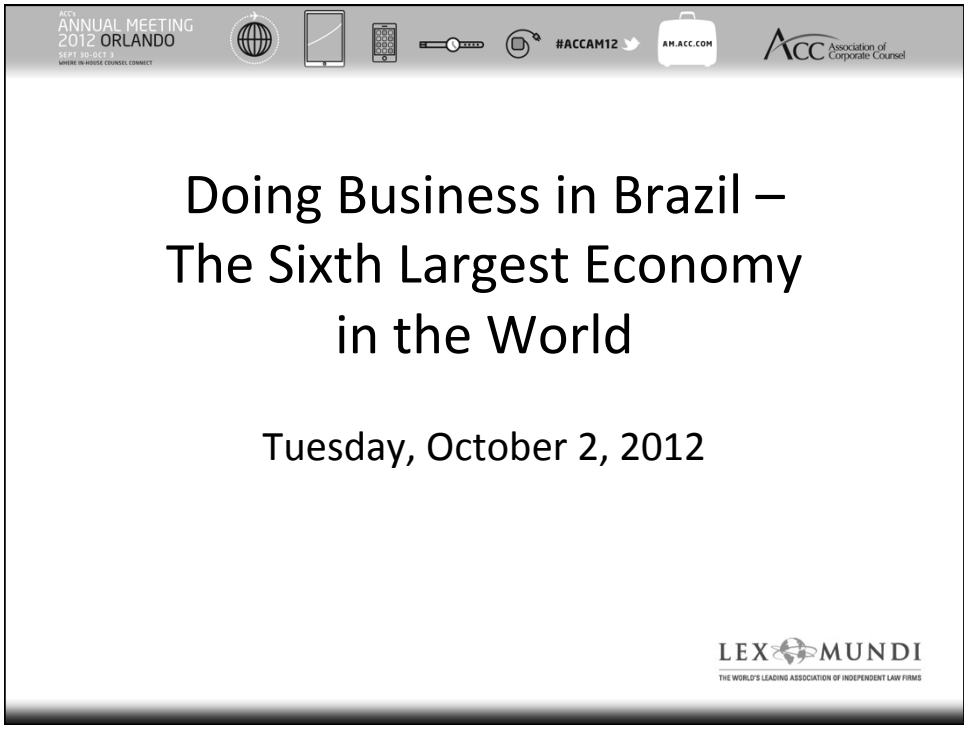
Eduardo Loyo

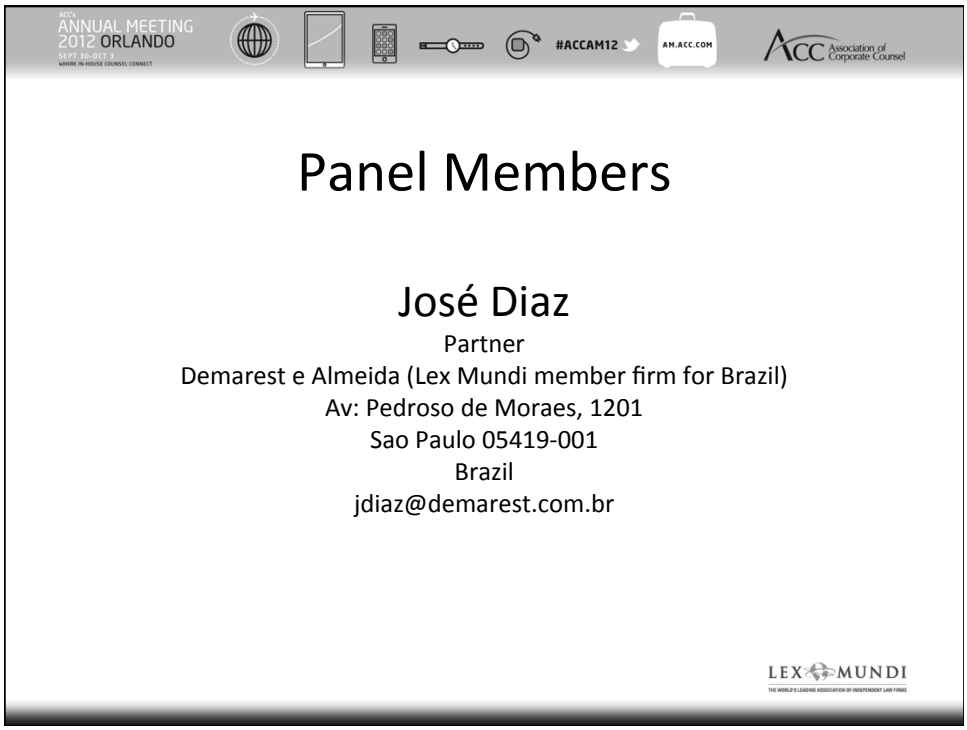
Eduardo Loyo is a managing partner and the chief economist at BTG Pactual. In addition to his responsibilities for economic research and analysis, he is a member of the firm's Latin American Executive Committee.

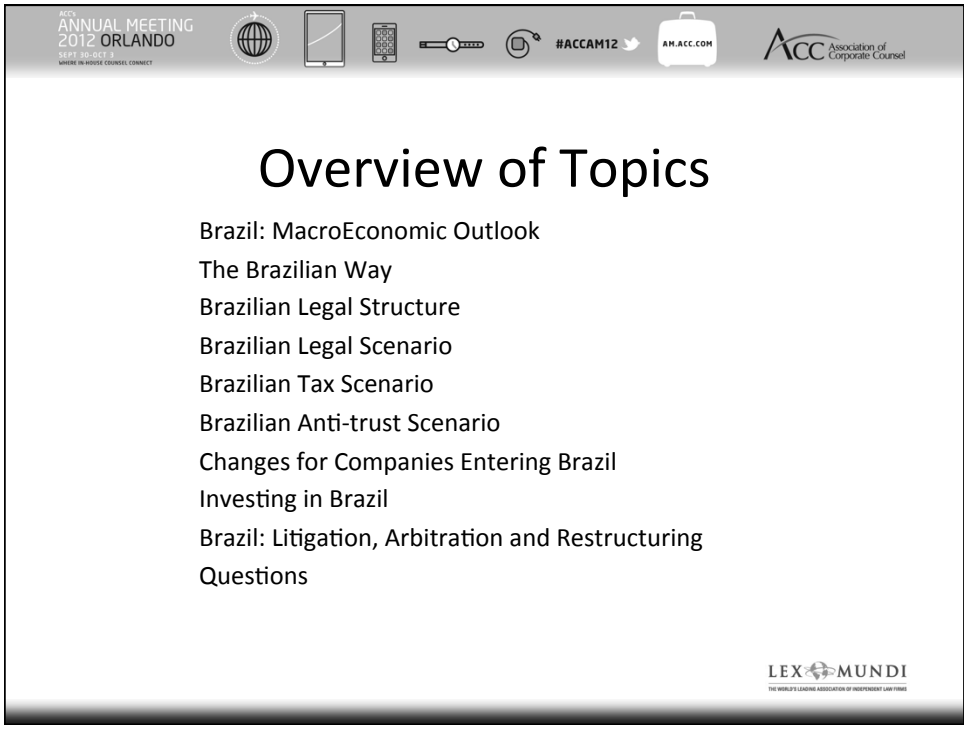
Dr. Loyo joined the firm as managing director and chief economist for Latin America for UBS Pactual. Previously, he served as executive director of the International Monetary Fund, elected by Brazil, Colombia and seven other western hemisphere countries. Prior to that, he served as a deputy governor of the Central Bank of Brazil, being in that capacity a voting member of the bank's Monetary Policy Committee. Prior to that, he held faculty positions at the department of economics of the Pontifical Catholic University of Rio de Janeiro (since 2001), at Columbia Business School (2003), at INSEAD (2002), and at Harvard University's Kennedy School of Government (1998-2003).

Dr. Loyo received a bachelor's and a master's degree in economics from the Pontifical Catholic University of Rio de Janeiro, and an economics PhD from Princeton University.

Celso Xavier
Partner – Litigation
Demarest e Almeida



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The Brazilian Way
Brazilian Legal Structure
Brazilian Legal Scenario
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Brazilian Anti-trust Scenario
Changes for Companies Entering Brazil
Investing in Brazil
Brazil: Litigation, Arbitration and Restructuring
Questions
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Brazil: MacroEconomic Outlook
Eduardo Loyo
Chief Economist
BTG Pactual
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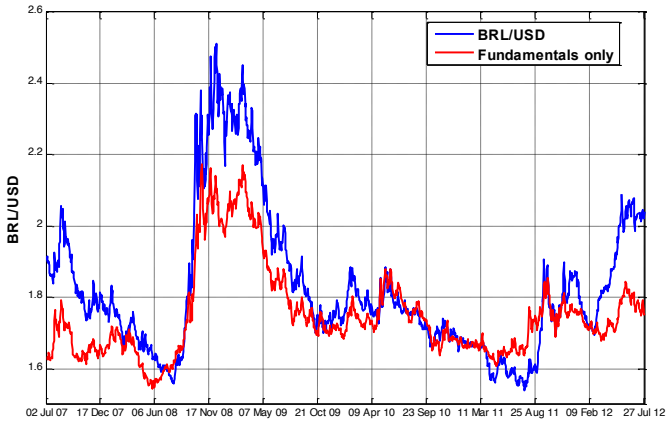
BRL/USD vs. Fundamentals



Source: Central Bank of Brazil and BTG Pactual SA.

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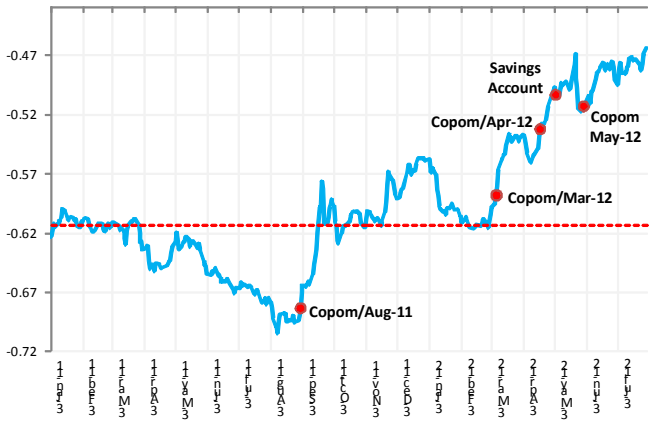
BRL/USD: Deviation from Traditional Model



Source: Central Bank of Brazil and BTG Pactual SA.

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1-year Interest Rates

Source: Central Bank of Brazil and BTG Pactual SA.

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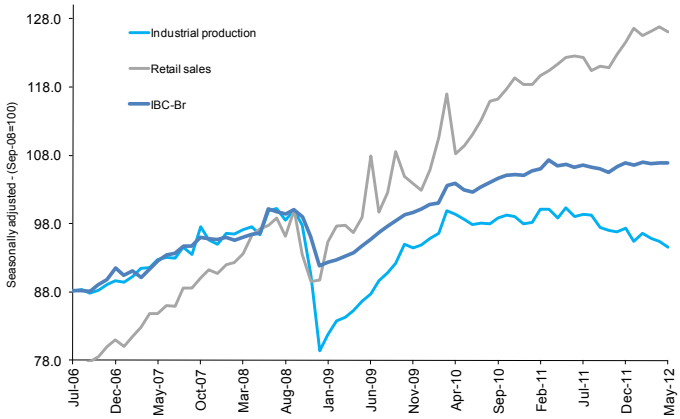
Retail Sales, Industrial Production and GDP Proxy



Source: IBGE, Central Bank of Brazil and BTG Pactual SA.

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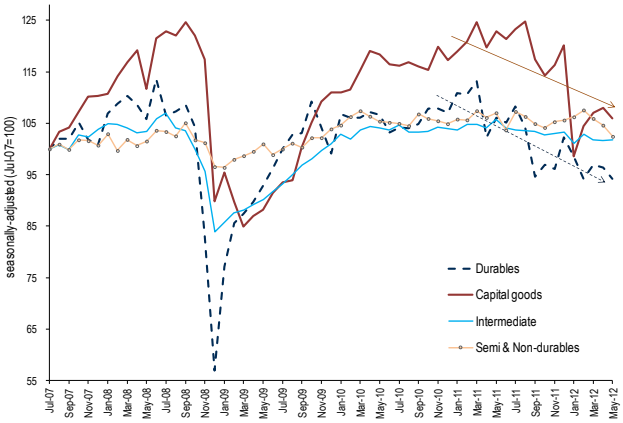
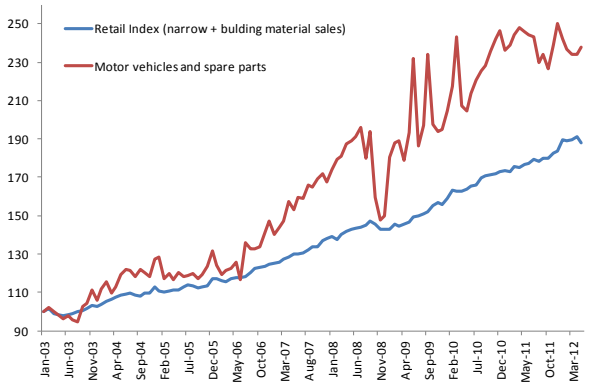
Industrial Production



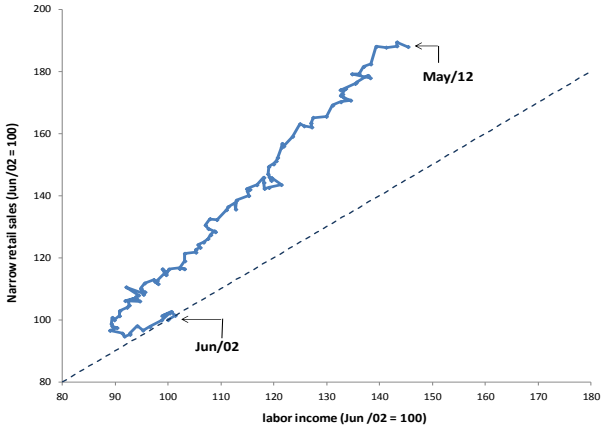
Source: IBGE and BTG Pactual SA.

Retail Sales



Source: IBGE and BTG Pactual S.A.

Retail Sales vs. Income Bill



Source: IBGE, Central Bank of Brazil and BTG Pactual SA.

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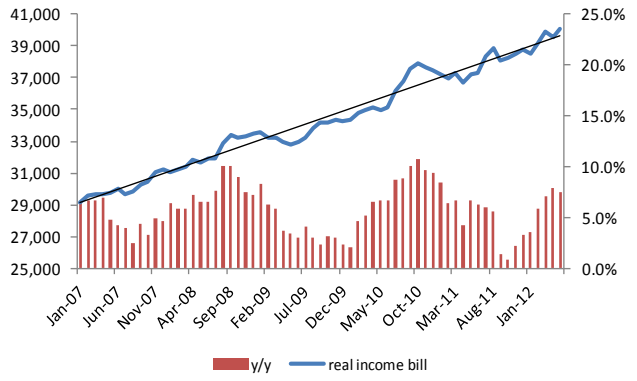
Income Bill



Source: IBGE and BTG Pactual SA.

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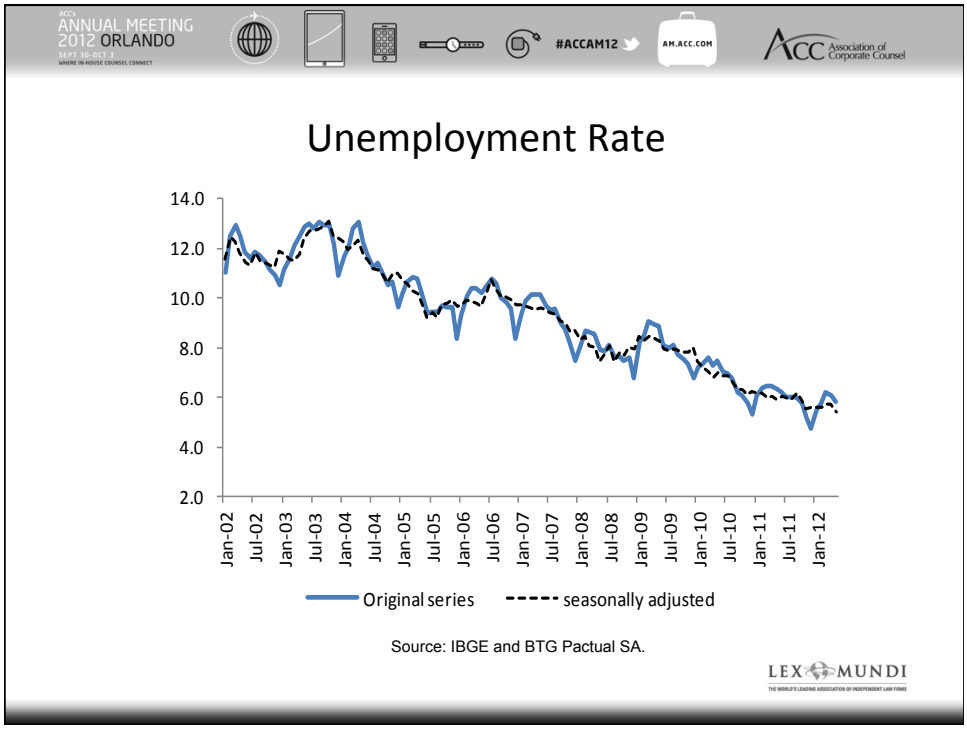
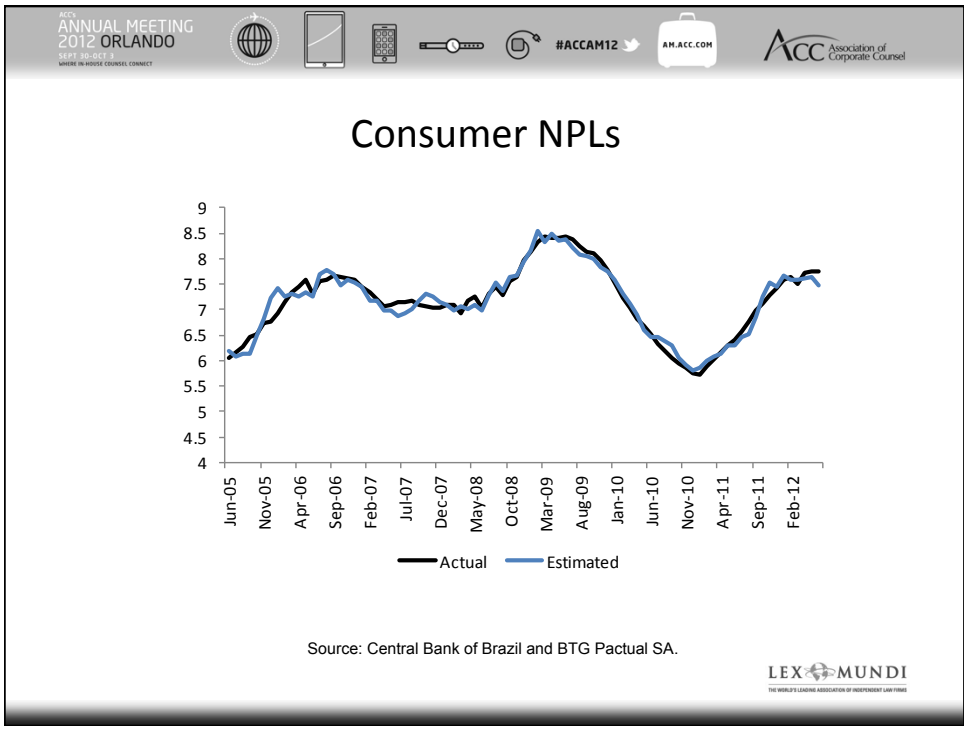
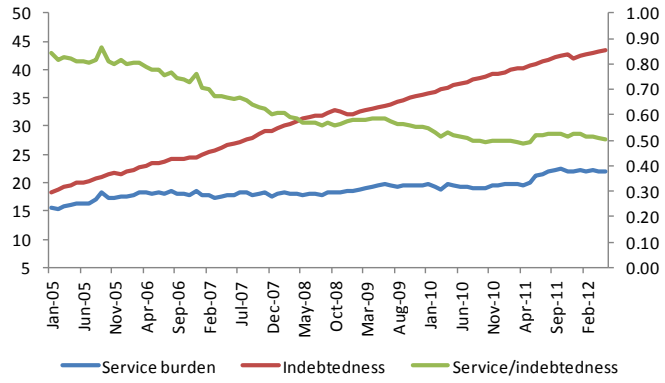




Consumer Debt



Source: Central Bank of Brazil and BTG Pactual SA.

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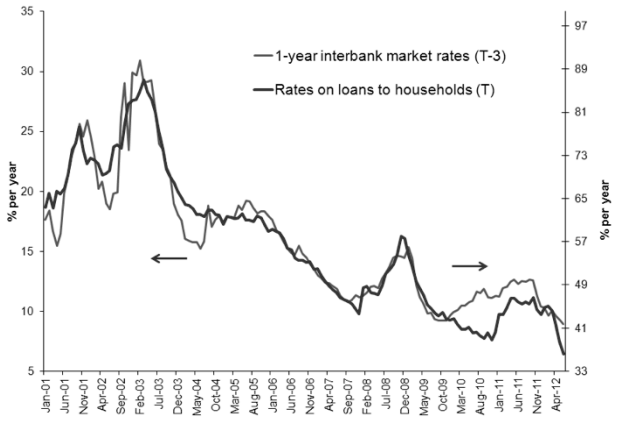
Interbank Rates and Household Loan Rates



Source: Central Bank of Brazil and BTG Pactual SA.

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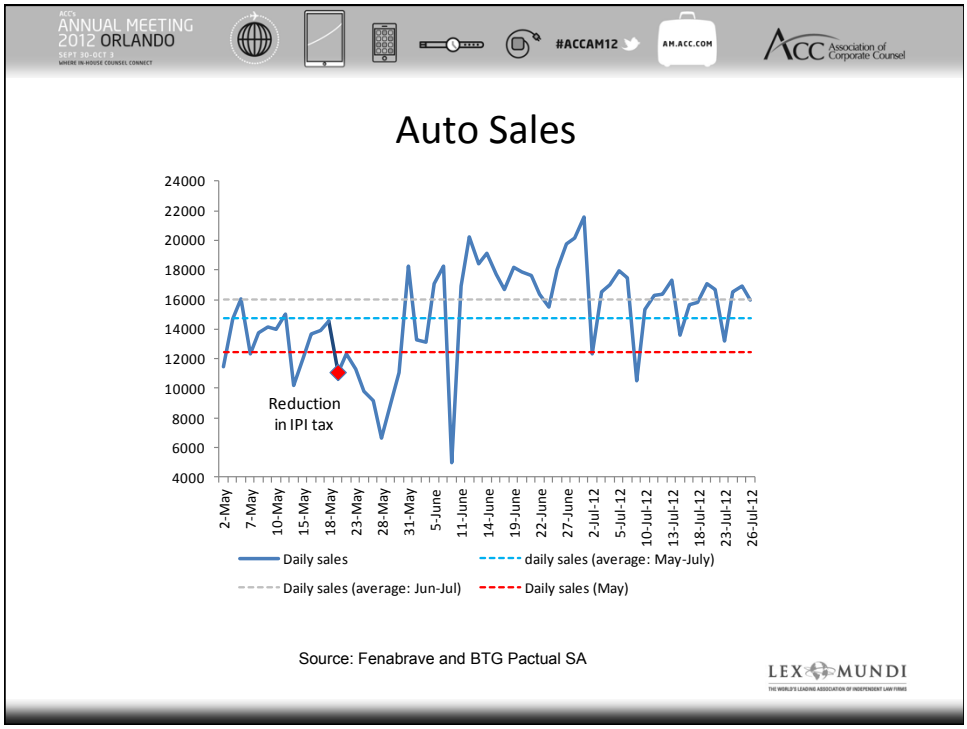

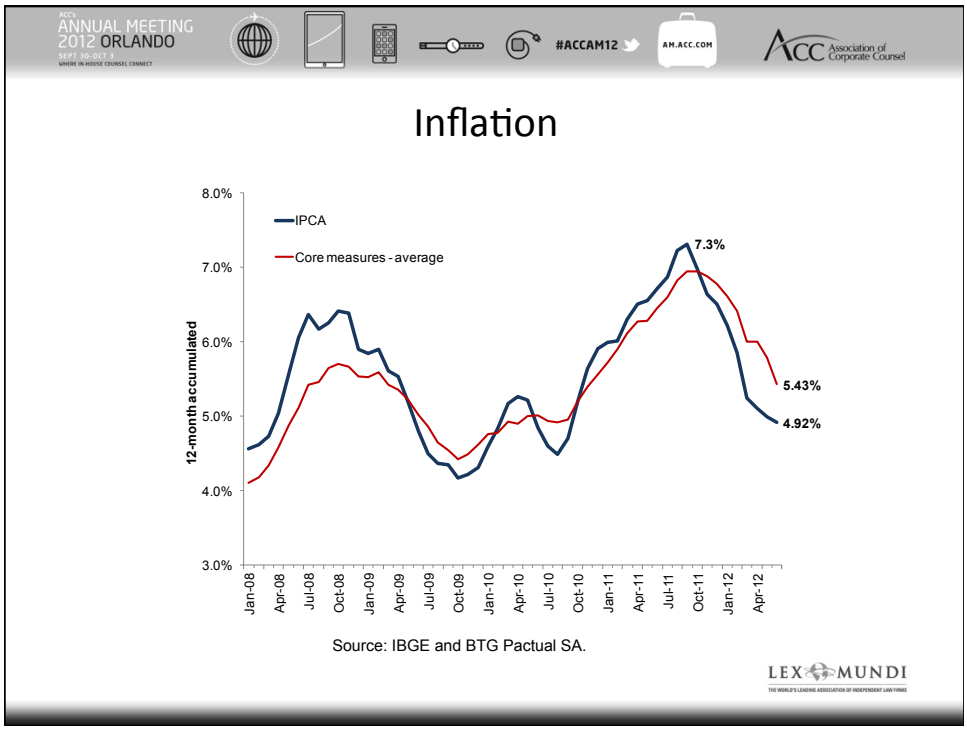

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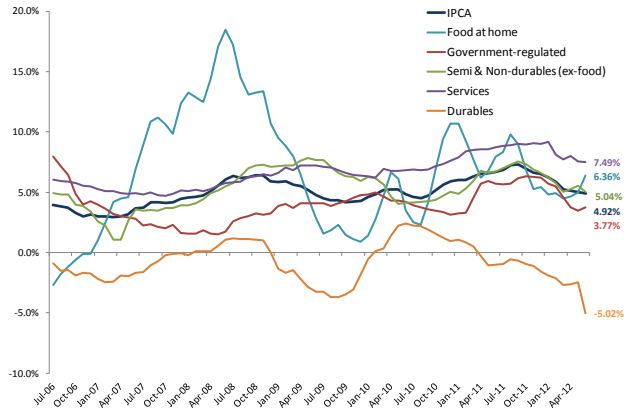
Inflation Breakdown



Source: IBGE and BTG Pactual SA.

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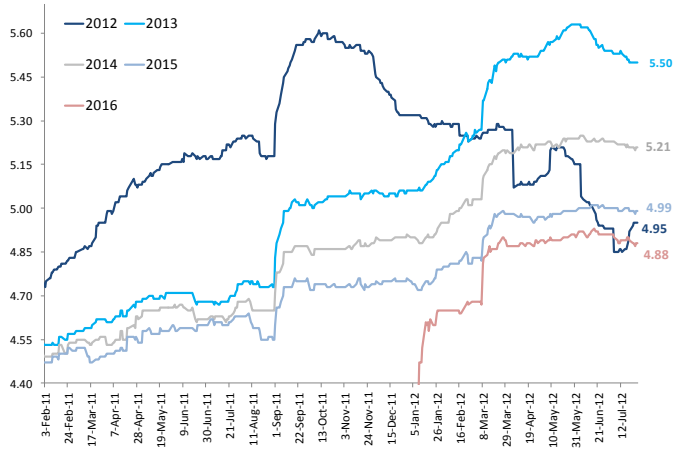
Inflation Expectations



Source: Central Bank of Brazil and BTG Pactual SA

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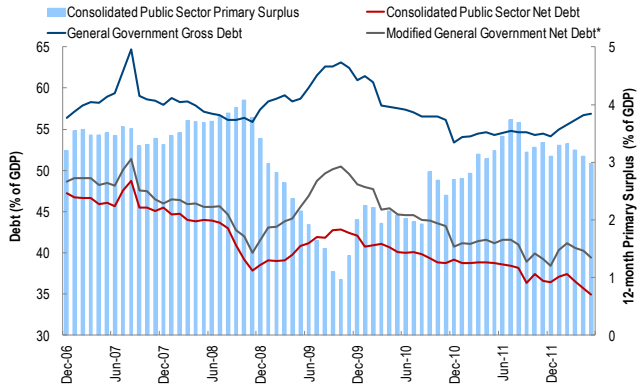
Public Debt



*General Government Gross Debt including International Reserves.

Source: Central Bank of Brazil and BTG Pactual S.A.

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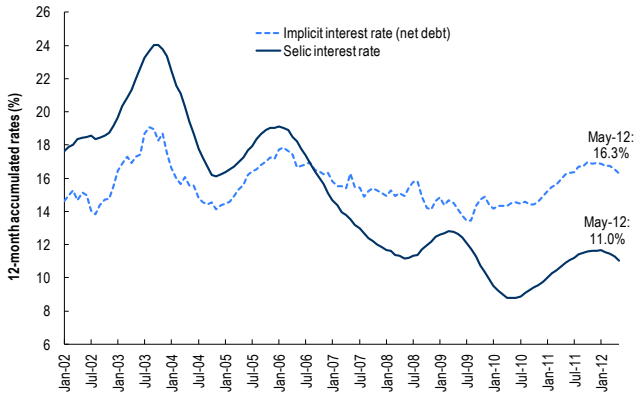
Interest Rates on Public Debt



Source: Central Bank of Brazil and BTG Pactual S.A.

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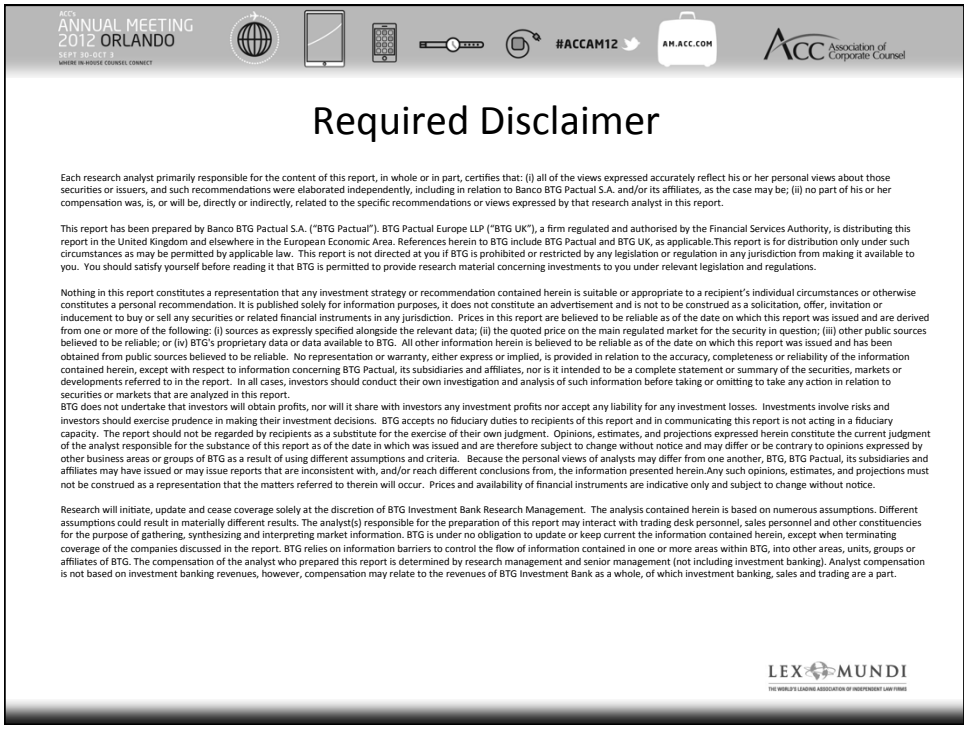

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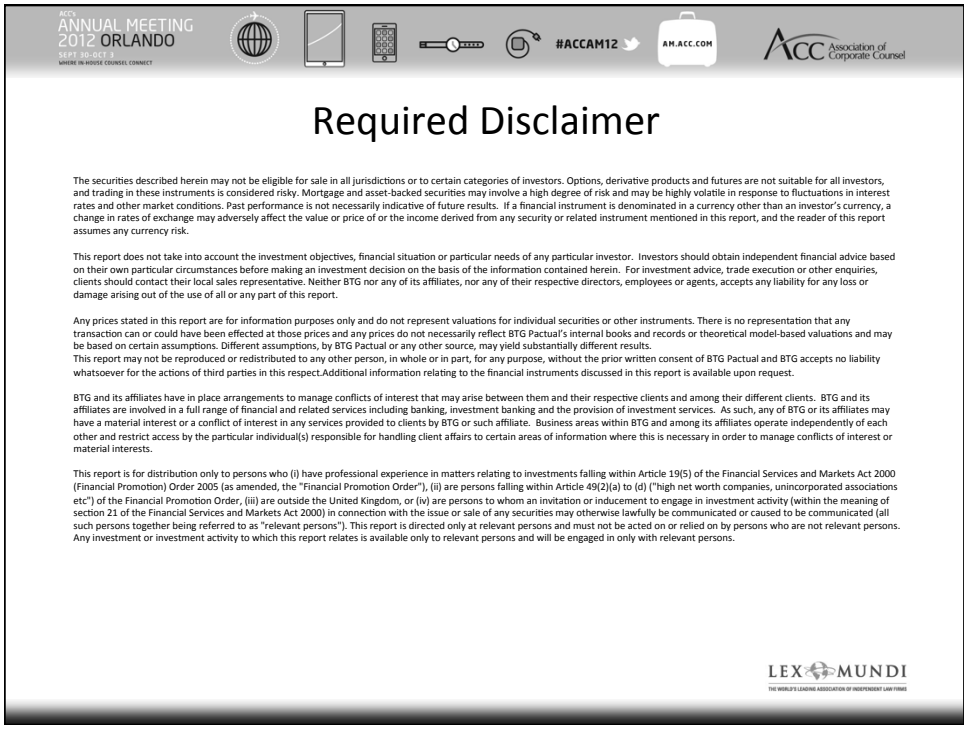

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Brazilian Legal and Judicial Structure

Marco Antonio de Gregorio
Legal Director for Latin America
Reckitt Benckiser

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Reckitt Benckiser

- A Consumer Goods Global Leader In Health, Hygiene And Home
  - 2011 Net Revenue of £9.458bn
  - Over 20 million consumer units sold a day, 7.3 billion a year
- A Global Business made up of Multinational Teams
  - 7 different nationalities in our executive committee of 9 and 49 nationalities amongst the T400
  - Operations in 60+ countries, sales in nearly 200 countries
  - 49 manufacturing facilities world-wide, C 32,000 employees
- Power Brands are Global # 1 or #2 in all of our fast-growing categories
  - Represent 70% of RB net revenue
  - Driven by innovations - on average, 30% of our net revenue is products developed in last 3 years
- A Track Record Of Outperformance Delivering Outstanding Returns For Investors:
  - Since 2000 revenues have more than doubled and market cap has quadrupled
  - 11 years high quality, above the market growth

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Reckitt Benckiser

Dettol & Lysol global #1 germ kill
Veet global #1 depilatory
French's global #1 mustard
Clearasil a leader in clear skin treatment
Strepsils global #1 medicated sore throat
Mucinex global #2 cough relief
Durex global # 1 sexual wellbeing
Gaviscon local leader stomach remedies
Finish global #1 automatic dishwashing
Vanish global #1 fabric treatment
Scholl global #1 foot care
Calgon global #1 water softener
Woolite global #2 garment care
Harpic with Lysol global #1 toilet care
Air Wick global #2 air care
Mortein global #2 pest control

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The Brazilian Way

People who want to achieve their goals despite the adversities or even limitations.

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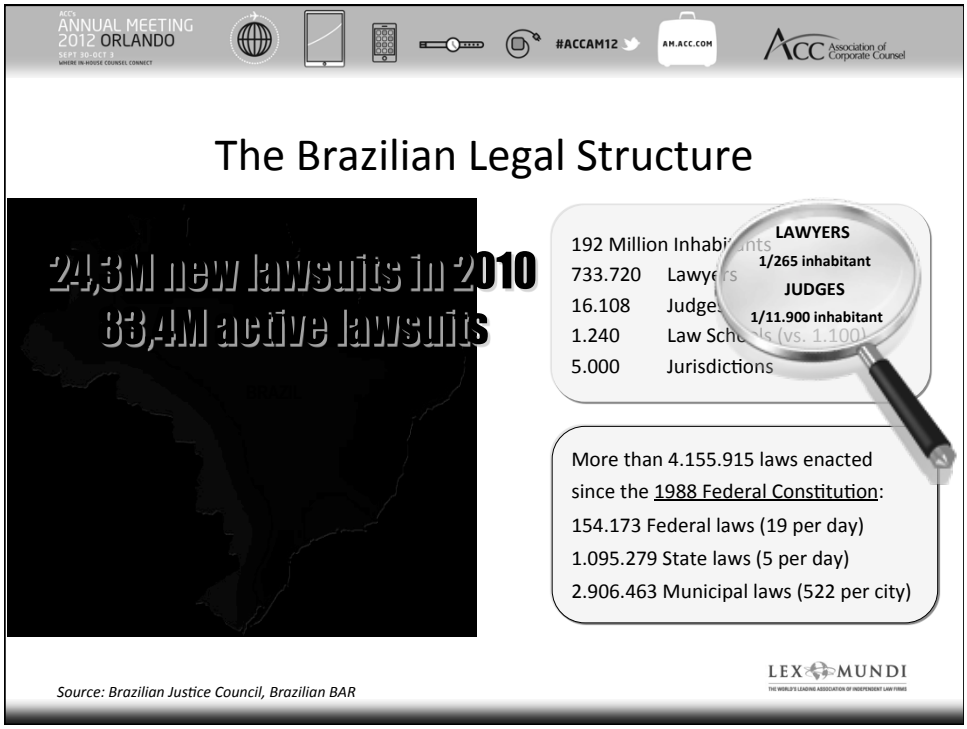

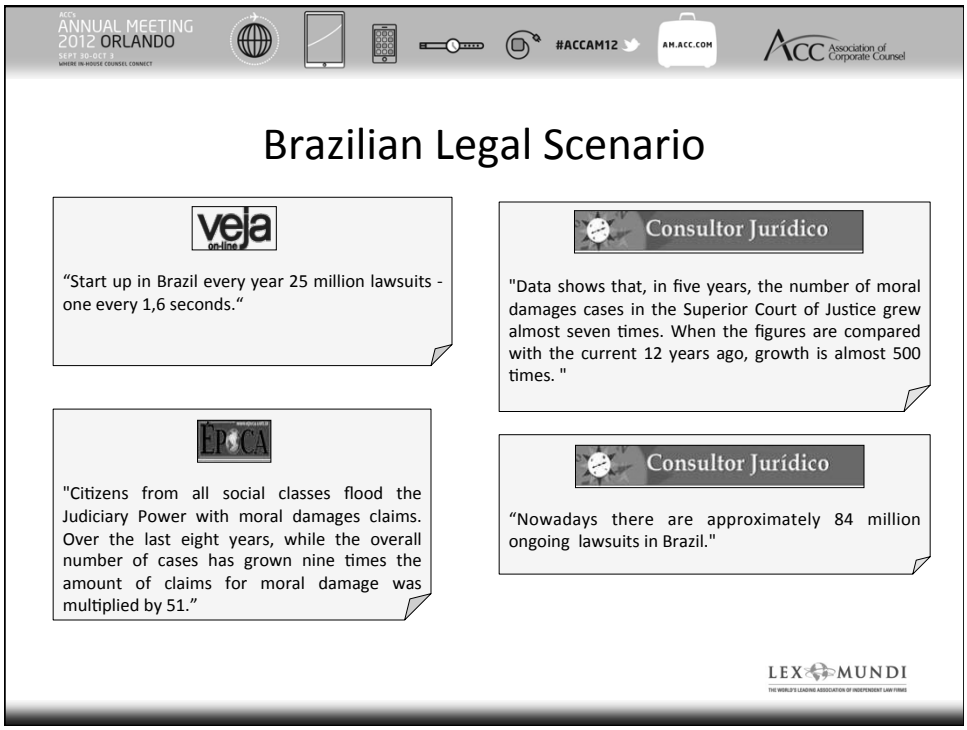

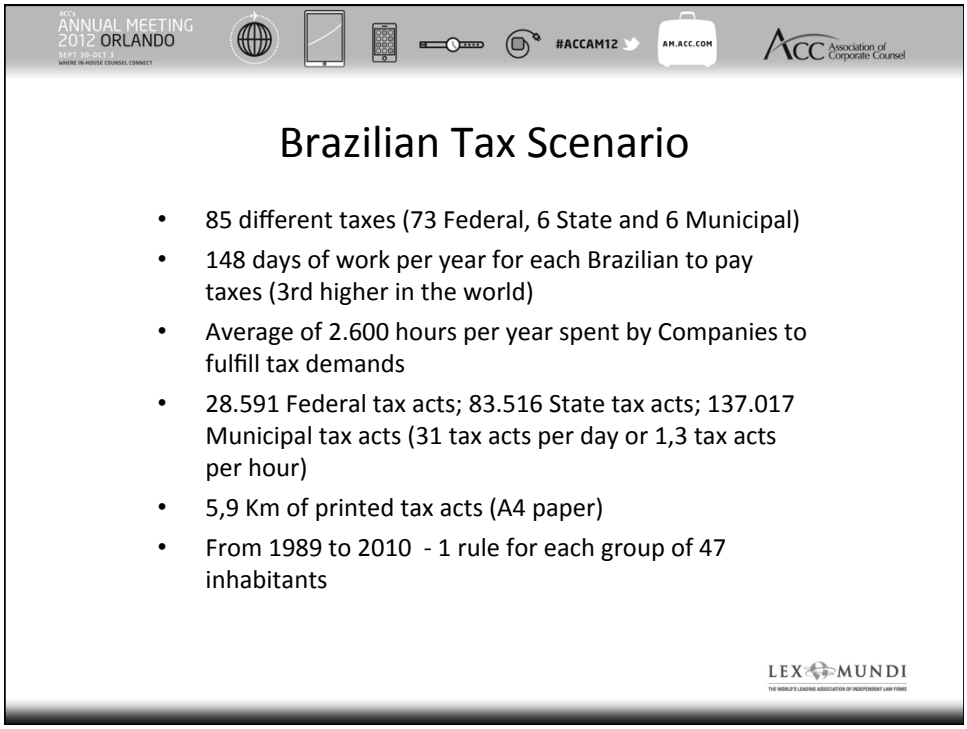

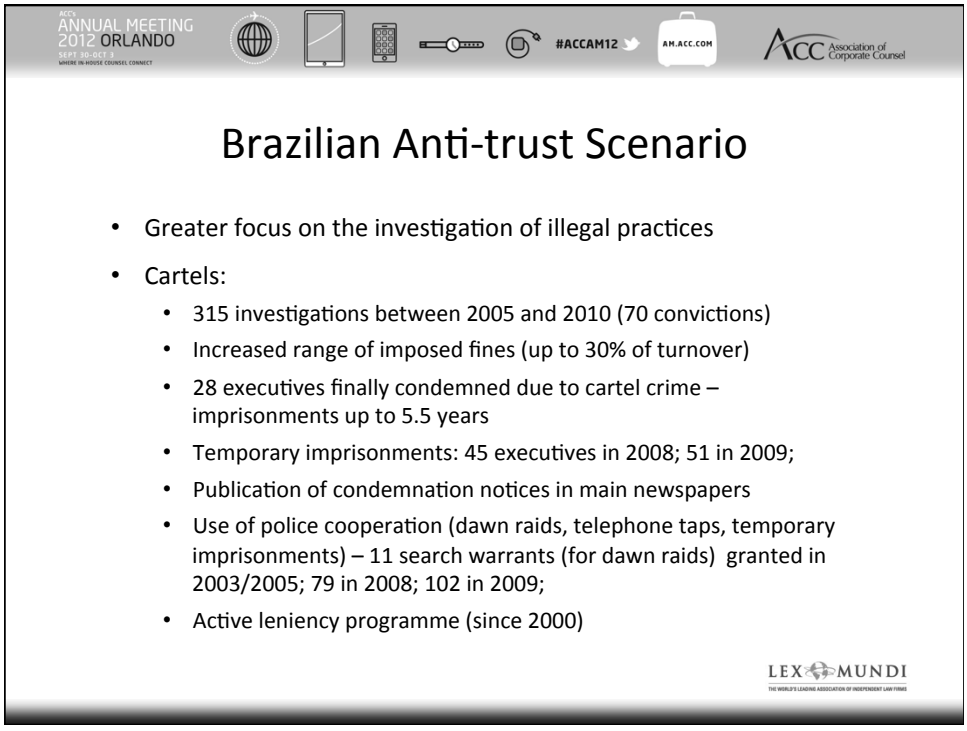

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Ease of Doing Business Index

The World Bank
IBRD & IDA: Working for a World Free of Poverty

Economy	Ranking	Starting a Business	Dealing w/ Permits	Protecting Investors	Paying Taxes	Enforcing Contracts
Singapore	1	4	3	2	4	12
Hong Kong	2	5	1	3	3	5
New Zealand	3	1	2	1	36	10
United States	4	13	17	5	72	7
Denmark	5	31	10	29	14	32
Norway	6	41	60	24	27	4
UK	7	19	22	10	24	21
Korea	8	24	26	79	38	2
Iceland	9	37	34	46	35	3
Ireland	10	13	27	5	5	62
China	91	151	179	97	122	16
Russia	120	111	178	111	105	13
Brazil	126	120	127	79	150	118
India	132	166	181	46	147	182

From a list of 183 countries

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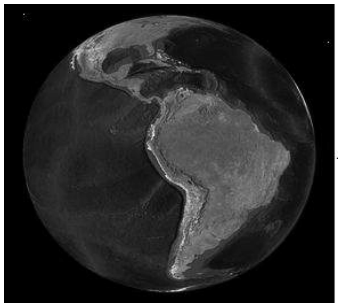
Summary

- Democracy with great diversity of people (races, ideas, interests, etc) living in harmony
- Solid institutions
- Civil Law country
- Culture of Litigation
- Some level of legal uncertainty in few areas
- Personal relationship is highly significant
- "Brazilian Way"
- Strict Laws protecting workers, consumer and other categories (but not the tax payers!)



This presentation does not represent in any form Reckitt Benckiser's views or opinions

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Companies Entering Brazil

Alexandre D'Ambrosio
General Counsel and Managing Director
Votorantim Group
Rua Amauri, 255 - 13 andar
Sao Paulo 01448-000
Brazil

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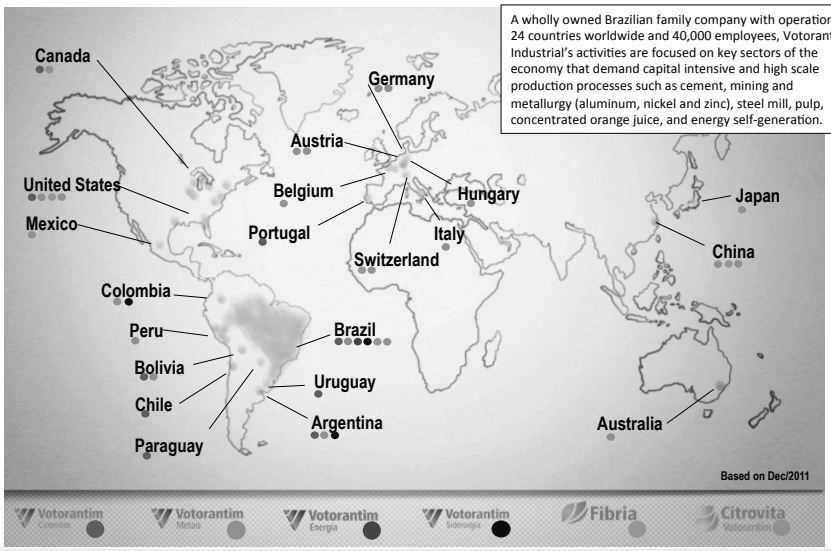
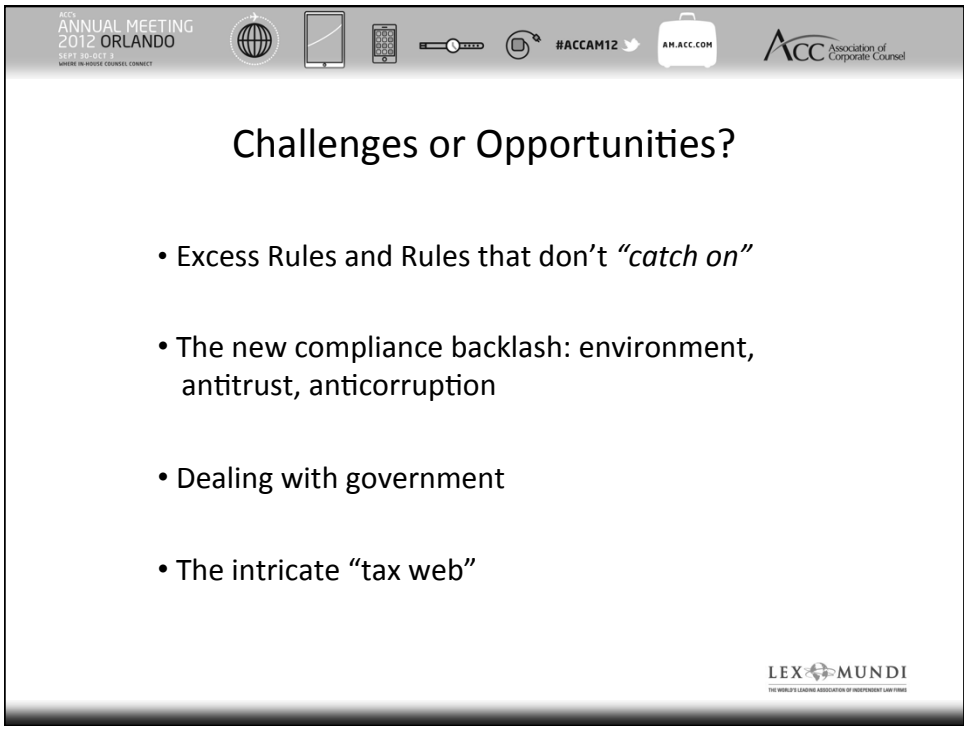
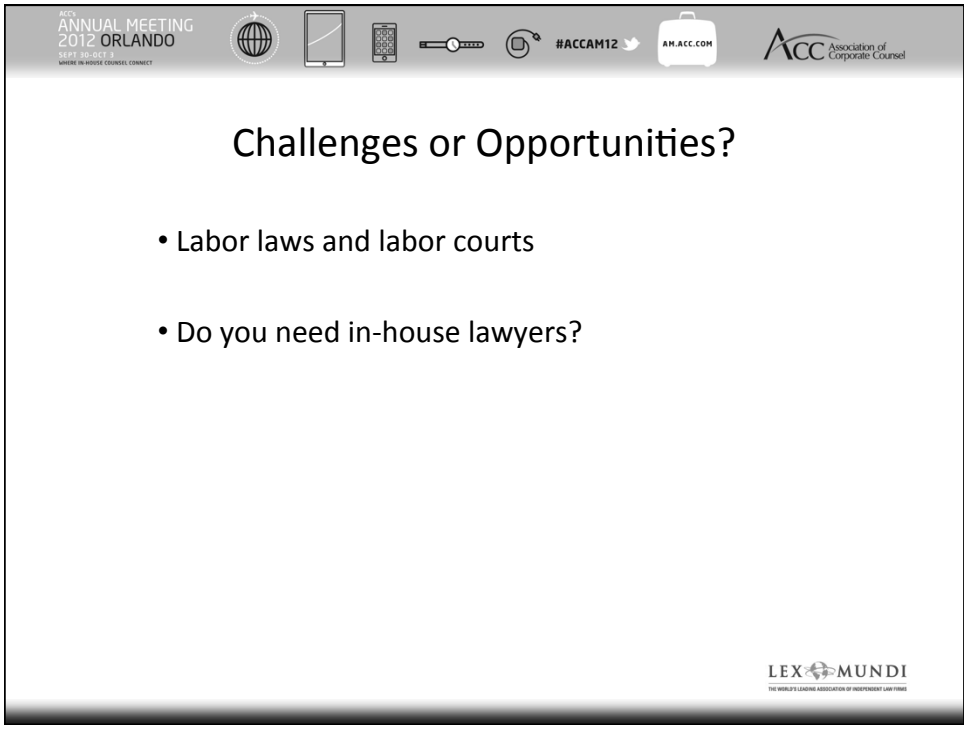
Votorantim Industrial S/A

A wholly owned Brazilian family company with operations in 24 countries worldwide and 40,000 employees, Votorantim Industrial's activities are focused on key sectors of the economy that demand capital intensive and high scale production processes such as cement, mining and metallurgy (aluminum, nickel and zinc), steel mill, pulp, concentrated orange juice, and energy self-generation.



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Challenges or Opportunities?
• Labor laws and labor courts
• Do you need in-house lawyers?
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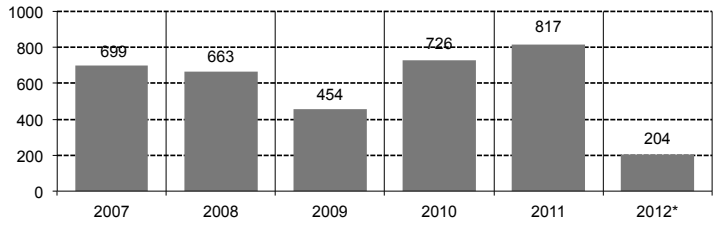
Investing in Brazil
José Setti Diaz
Partner
Demarest e Almeida Advogados
(Lex Mundi member firm for Brazil)
LEX MUNDI

Brazil M&A activity remains strong

Total number of transactions per year



* Until March 31

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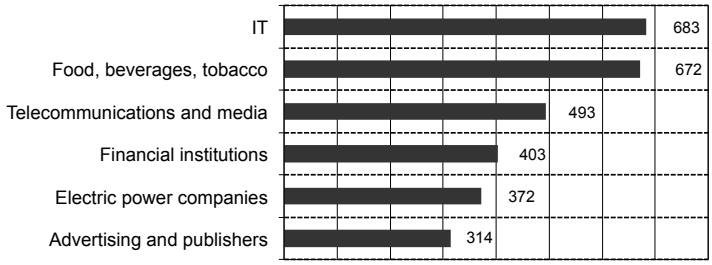
Brazil M&A activity remains strong

Transactions by industry (1994 to 2011)



Source: KPMG

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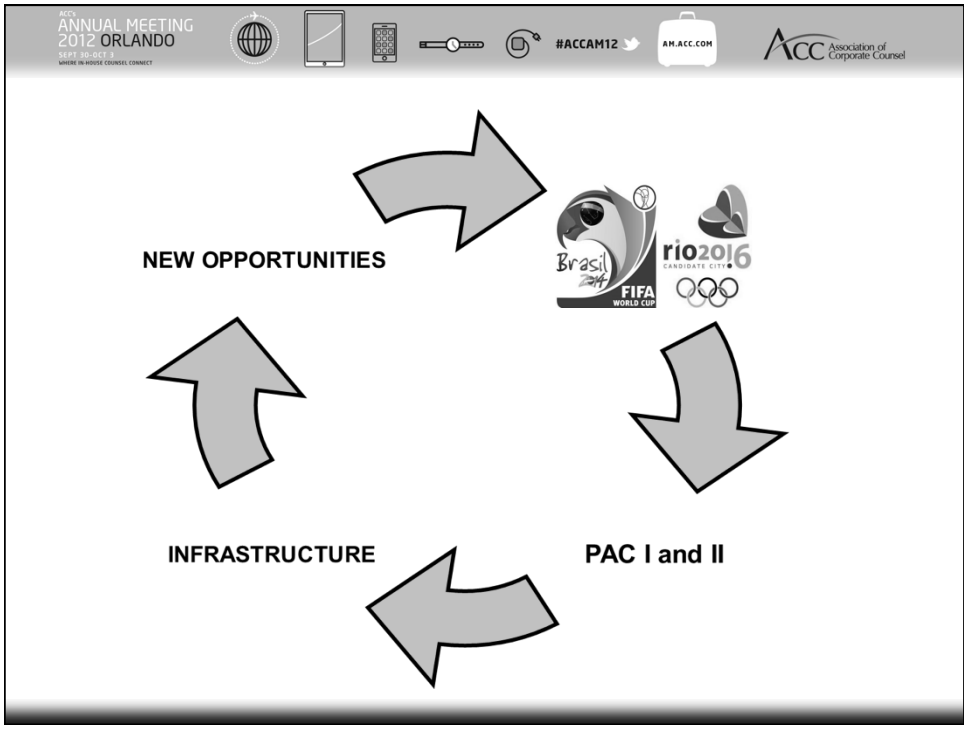

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Main Forms of Equity Investment

1. Forming a New Company
   a) Choice of Corporate Structure: *Limitada* x *S.A.*
   b) Basic Requirements and Registrations for New Companies
   c) Corporate Governance in *Limitadas*
   d) Capitalization and Central Bank Regulations

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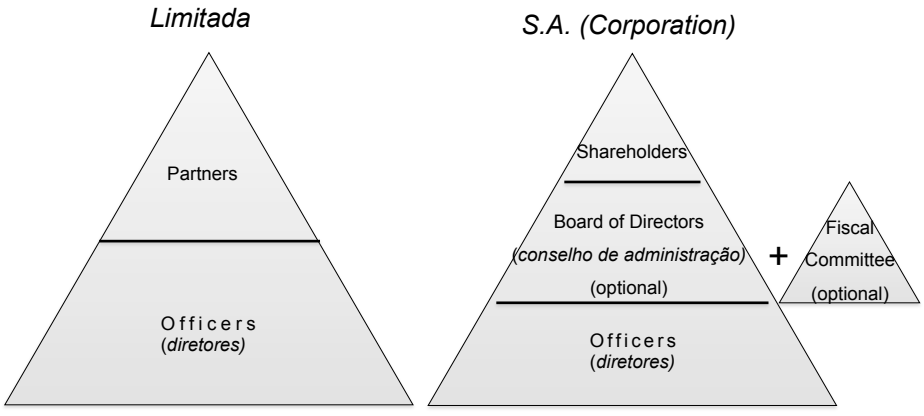
Forming a New Company – Choice of Corporate Structure: Limitada x S.A.



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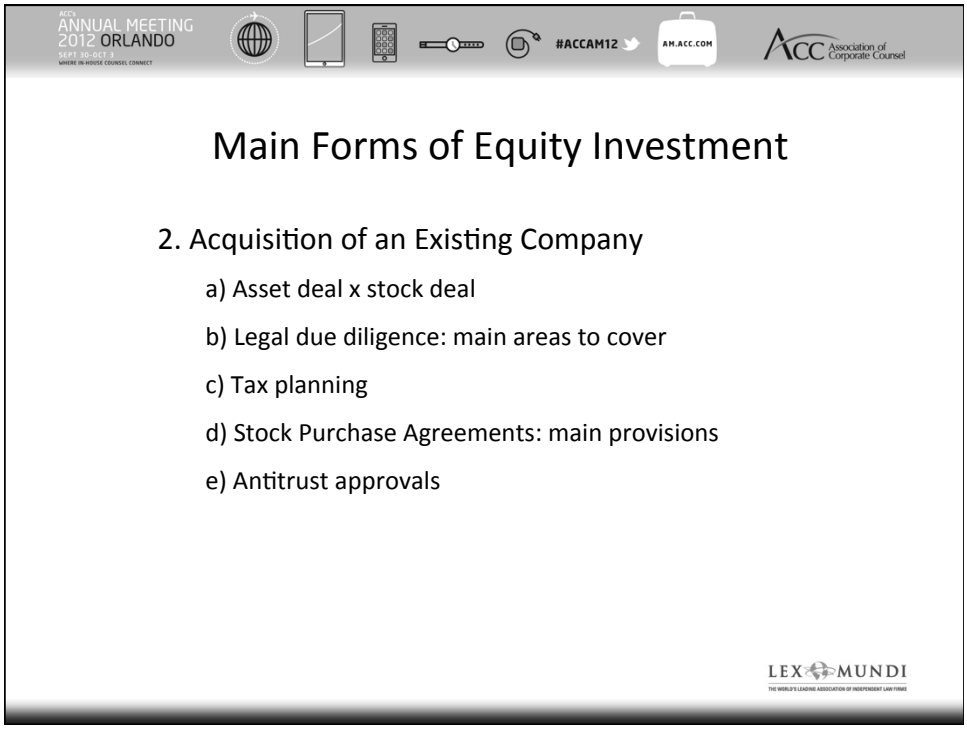

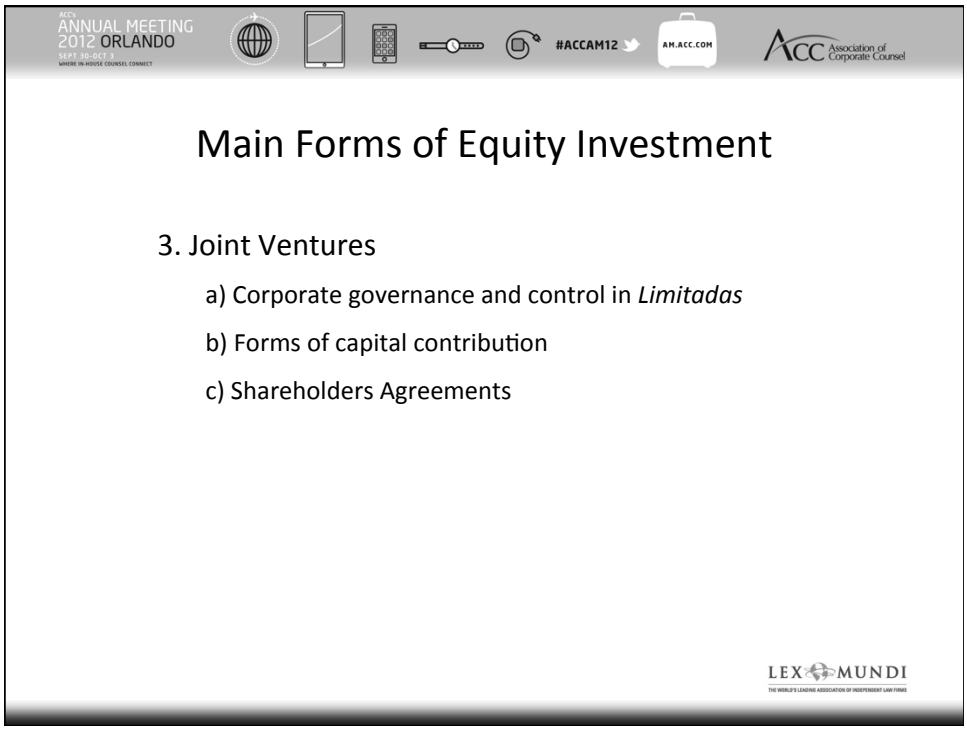

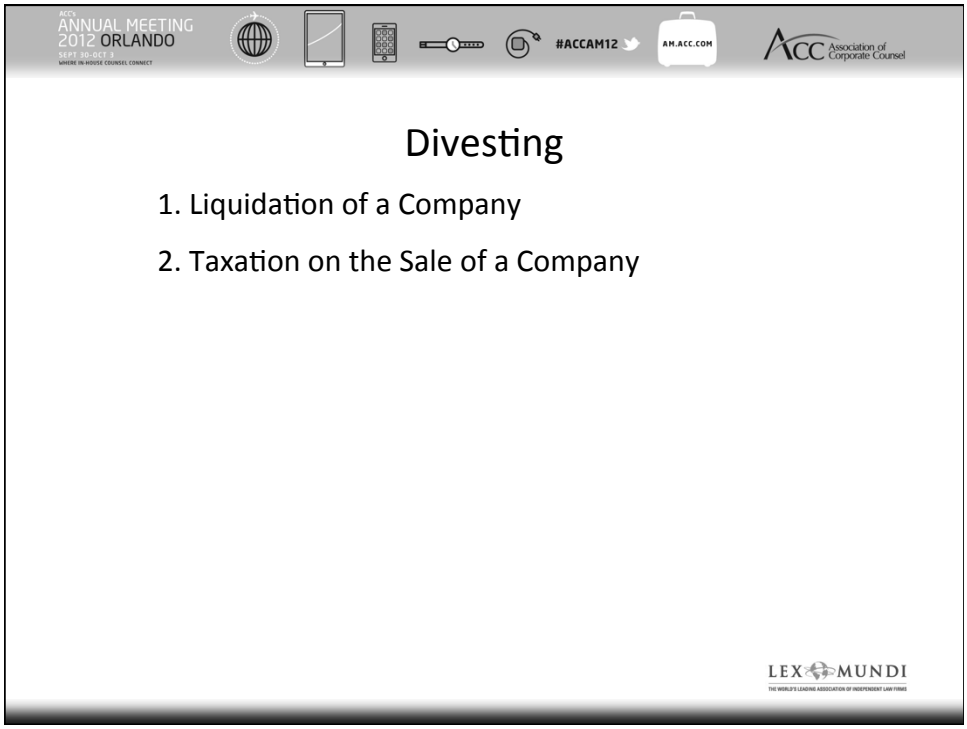

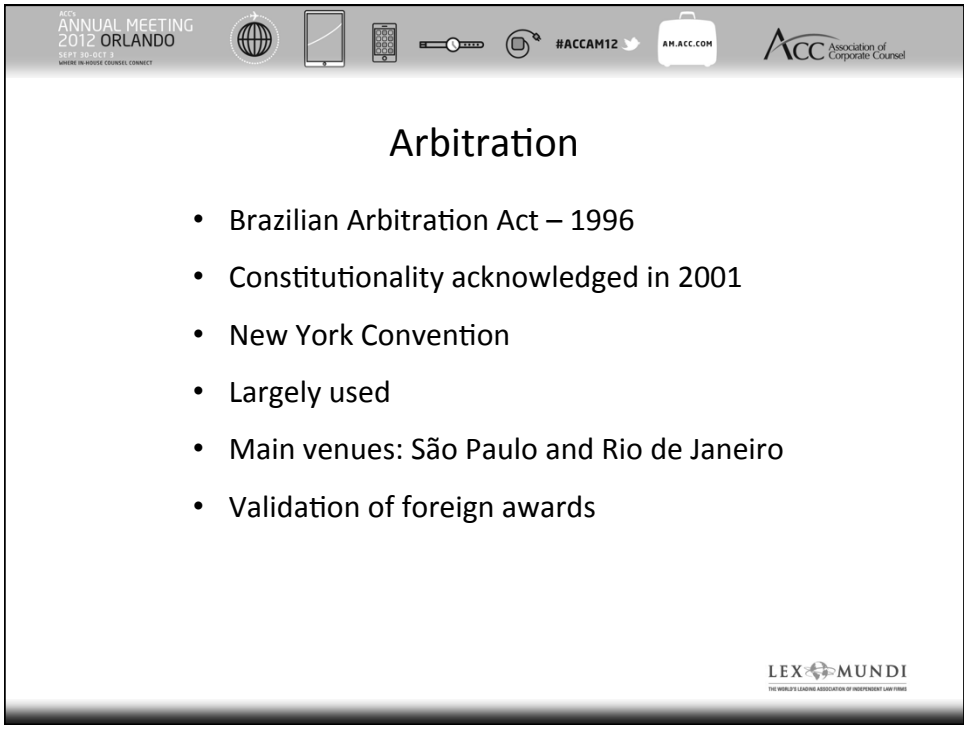

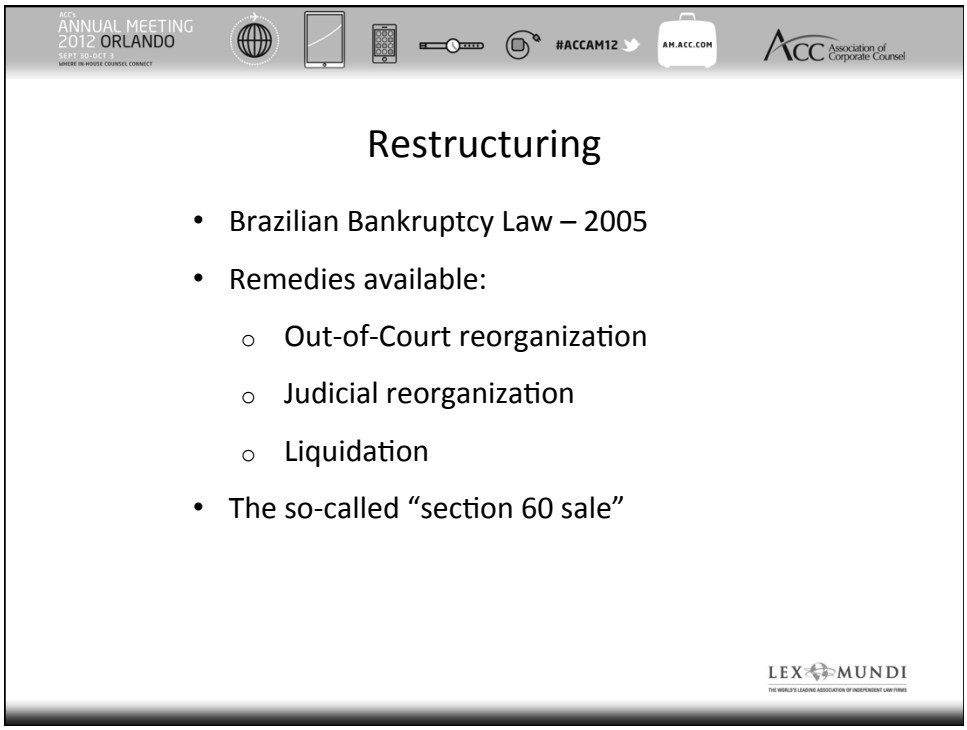

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Book: "Business Laws of Brazil"

- Demarest e Almeida wrote this book (now in its second edition) about the most relevant legal aspects to be taken into consideration when doing business in Brazil
- The book is published by WestThomson and is available at Amazon and WestThomson websites

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Demarest e Almeida

Demarest e Almeida is one of the leading business law firms in Brazil, with nearly 65 years of experience in assisting clients from all over the world. At the heart of our continuing success lies our pre-eminent traditional, solid and client-driven posture.

Our firm has a team of approximately 280 highly qualified lawyers, 250 legal trainees (law students) and a professional administrative staff proud of their commitment to excellence and efficiency in client services. Demarest e Almeida is regarded as one of the top law firms in Brazil and Latin America, and is recognized as a true full-service law firm.

With offices in the most important cities of Brazil (São Paulo, Campinas, Rio de Janeiro and Brasília) and in New York, Demarest e Almeida also has strong contacts with other independent law firms throughout Brazil, providing a complete and integrated services network for our clients.

We are the Brazilian member of Lex Mundi, the world's largest organization of independent law firms, with 160 member firms operating in more than 150 countries. The firm is also a member of The Interlex Group and the Employment Law Alliance. These associations allow us to provide our clients with worldwide legal assistance from a single point of contact.

Demarest e Almeida is consistently pointed out by legal publications and directories such as Chambers and Partners, International Finance Law Review, Who´s Who Legal and Brazilian *Análise Advocacia* as one of the largest and most recognized law firms in Brazil, and many of our attorneys are named leaders in their fields.

Our more than 3,000 active clients are mostly multinational companies, including 15% of Fortune 500 companies, and many of the largest Brazilian groups.

Please visit our website WWW.DEMAREST.COM.BR to learn more about our practice and our people.

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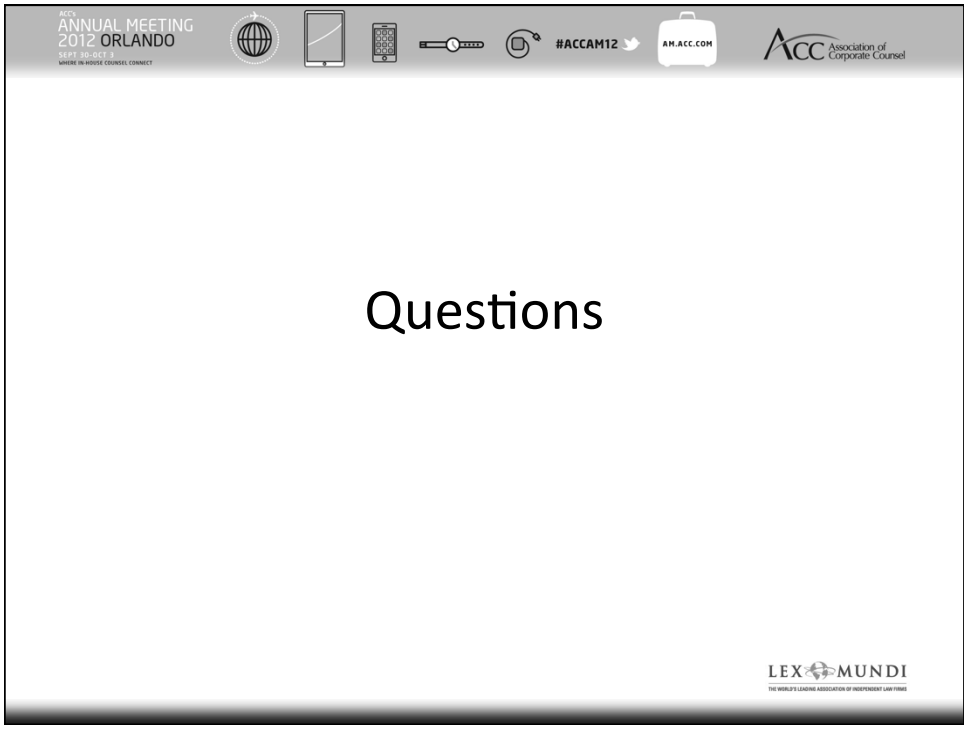

Legal Aspects of Doing Business in Brazil

DEMAREST & ALMEIDA advogados

MEMBER LEX MUNDI
THE WORLD'S LEADING ASSOCIATION OF INDEPENDENT LAW FIRMS

June, 2012

DEMAREST & ALMEIDA advogados

DEMAREST E ALMEIDA

In April of 1948, **João Batista Pereira de Almeida**, a Brazilian, and Kenneth E. Demarest, an American, both attorneys dedicated to the legal profession, combined their expertise to establish what would become one of the leading law firms in Brazil and one of the largest in Latin America. Over time, other attorneys joined the firm, bringing diverse legal backgrounds and specialties, and contributing to the development and growth of the full service firm that it has become today.

After nearly 65 years providing first-class professional services, Demarest e Almeida continues to grow. Today, this highly respected law firm has much to offer to the community, to its satisfied clients, and to its dedicated professionals.

With offices in São Paulo, Campinas, Brasília, Rio de Janeiro, and New York, Demarest e Almeida is progressing into the future with talented professionals and state-of-the-art technology.

The firm handles highly complex and progressive areas of law, as well as traditional corporate, commercial, banking, civil, tax and labor law. It takes pride in its commitment to professional excellence and efficiency in providing services to clients.

Demarest e Almeida has developed many long-term relationships with valuable clients, from multinational corporations to small and medium-sized businesses.

The philosophy of this success is simple. Demarest e Almeida invests primarily in people, sponsoring graduate education programs in Brazil and worldwide, and internships at leading international law firms. Demarest e Almeida's lawyers are accomplished professionals; they are individuals of integrity, committed to upholding the highest standards of excellence and ethics.

The firm shares institutional values based on democracy and participation, which stimulate teamwork and cultivate the spirit and the principles that inspired its founders. The firm is responsive and creative in developing viable approaches, which enable its clients to achieve their objectives and to meet their challenges. For more information about Demarest e Almeida, please visit www.demarest.com.br.

Welcome to Demarest e Almeida

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Notice

This material is for informational purposes only and should not be construed as a legal opinion.

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I - BRAZIL: BUSINESS, REGULATORY, AND LEGAL OVERVIEW

1. Political Structure

Brazil is a Federative Republic, consisting of the Federal District, 26 states, and over 5,000 municipalities. The country's capital is Brasília, located in the Federal District.

The Brazilian legal order makes part of Civil Law system and is based on codification and legislation enacted by the appropriate legislative powers at the federal, state and municipal levels.

The basic law of the country is the Federal Constitution, which establishes (i) the system of government; (ii) the attribution of competencies to the Legislative, Executive and Judiciary powers; and (iii) the legislative authority of the federal, state, and municipal administrations.

In 1990, through implementation of a National Privatization Program ("Privatization Program"), the Brazilian government started to withdraw from activities that had been constitutionally reserved for it or other areas in which free enterprise would hopefully perform more efficiently than the government.

As consequence of the Privatization Program, many regulatory agencies were created aiming to regulate all activities that are considered essential for the country economy and population. Therefore, all Brazilian regulatory agencies develop a crucial role on regulating the development of activities that involves, for example, Health, Agriculture, Food Supply and Live Stock, Telecommunications, Energy, Oil & Gas, land, air and waterway Transportation, Mining, Water resources, etc.

In respect of agreements entered into with the Public Administration, the Law 8666/93 (Public Bidding Law) is the main legal instrument which regulates all agreements entered into between private parties and the Public Administration. The Law 8666/93 establishes a series of principles, procedures and requirements that must be observe by the private party and Public Administration body involved on the public bidding process.

Another important aspect of Brazil regulatory system is that, any individual or legal entity who intends to develop commercial activities (Industries, General Commerce and Services Providers) must obtain a series of registers and licenses to legal operate. The registers and license are analyzed and granted by public administration bodies from the Federal, State and Municipal level. Such enrollments will vary according to the develop activity and locality.

2. Judicial Structure

The Brazilian Judiciary system is organized by Brazil's Federal Constitution, which divides the judicial structure into federal and state courts. In general terms, Brazilian courts have jurisdiction over any litigation in any way related to Brazilian territory. Federal courts have exclusive jurisdiction over any lawsuit where the federal government or any of its agencies or quasi-governmental bodies is a party to or has an interest in, as well as over cases involving foreign states or international agencies. All labor and electoral courts are also under federal jurisdiction. Nonetheless, the bulk of all private commercial litigation is entertained before the state courts.

Regardless of whether a lawsuit is filed in a federal or a state court, the parties have a constitutional right to appeal to an appellate court. In the state system every federation unit has its own state court of appeals. The federal appellate system, on the other hand, consists of five (5) circuit court of appeals.

At the next level, the judicial structure has two superior courts, which are called the "*Superior Tribunal de Justiça*" (Superior Court of Justice) and the "*Supremo Tribunal Federal*" (Brazilian Supreme Court), both located in Brasília. Broadly speaking, the former has jurisdiction over any case decided by state or federal courts of appeals if the decision rendered by any of these courts violates federal law. The latter has jurisdiction over constitutional issues and may also revisit decisions rendered by any court if the Constitution happens to have been violated.

Brazil is a civil law jurisdiction and decisions are based on the application of statutory laws. Where there is no specific statutory provision, the courts may decide either on the basis of analogy and general uses and practices, or by applying general principles of law. In general, precedents are not binding but tend to be respected by lower courts.

All civil procedure rules are federal and applicable throughout the country, allowing attorneys to practice nationally. Civil procedure emphasizes oral testimonies and concentrates much of the evidence gathering in the judge's hands. Brazil grants more powers for judges to control proceedings and to obtain evidence than one normally finds in civil-law countries. Hence, discovery is not allowed, and attorneys, for instance, cannot privately collect depositions or make requests for admission or ask questions addressed to the opposing party. In addition, the Brazilian system permits a multiplicity of appeals, particularly interlocutory appeals that can delay proceedings for lengthy periods. Finally, all decisions are made by judges. Jury trials are only permitted in crimes committed against a person's life, such as cases of first-degree murder and abortion.

3. Arbitration

In Brazil, enforcement of domestic arbitration decisions has been provided for by specific legislation since 1996. However, only in 2001 did the Brazilian Supreme Court uphold the constitutionality of the Brazilian statute validating contractual arbitration provisions, thus removing lingering doubts in that regard. Arbitration, however, is only permitted with regard to negotiable rights, which cover most commercial transactions.

Foreign arbitration awards are also enforceable in Brazil. However, despite Brazil having ratified the New York Convention on Enforcement of Foreign Arbitral Awards, foreign arbitration awards must still be ratified by the Brazilian Superior Court of Justice in order to be enforced in Brazil.

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II - BANKING AND FINANCE

1. Economic Overview

Brazil has become a real alternative for investors worldwide. Its solid economy has had a reasonable performance during the current economic turmoil. For the next few years, forecasts remain promising, as the country builds a pre-salt oil-regulatory framework and hosts the next World Cup and Olympic Games.

Despite these difficult times for export economies, Brazilian consumer spending has proved to be an important engine of growth and cushion for the economy. In the long run interest rates are expected to drop and inflation to remain under control.

GDP in 2012 is expected to grow at approximately 3%.

Direct foreign investment peaked in 2011, at US$ 66,6 billion, according to the Central Bank of Brazil.

In 2011, the inflation rate (IPCA) reached 6.5% (six point five percent). For 2012, the inflation rate target currently announced by the Government is 4.5% (four point five per cent).

GDP figures for 2011 had not yet been released as of the date of this work. In January, 2012, however, the U.S. Central Intelligence Agency (CIA) announced the expectation that Brazil will reach a US$2,284 trillion GDP in 2011, which number would be subdivided as follows: (i) 5.8% from the primary sector (agriculture and cattle raising), 26.9% from the secondary sector (industry) and 67.3% from the tertiary sector (services).

Brazil has an open economy in which international trade plays a vital role. The country is currently classified as the third largest exporter of agricultural products in the world, in accordance with the World Trade Organization.

Driven by strong market players, and seeking to improve investor confidence, Brazil has approved major changes to its legal and regulatory framework in recent years. Although bureaucracy is still said to be a restraint in certain circumstances, safe and expeditious mechanisms for foreign investment are currently in place, as well as open currency-exchange rules.

2. Investment Policies

Brazil generally welcomes foreign investment, which is an important source of capital for the development of strategic sectors of the Brazilian economy.

The main statute governing the allocation of foreign investment and remittance of funds abroad was enacted in 1962 (Law No. 4131, as amended).

Brazil has a number of agencies devoted to investment promotion, in most cases governmental. The main ones are the National Bank of Economic and Social Development (Banco Nacional de Desenvolvimento Econômico e Social - BNDES), the Agency for Industrial Financing (Agência Especial de Financiamento Industrial - FINAME), the Amazon Development Agency (Agência de Desenvolvimento da Amazônia - ADA), and

the Northeastern Development Superintendence (*Superintendência do Desenvolvimento do Nordeste* - SUDENE).

According to Brazil's Constitution, foreign capital is prohibited in the following activities:

(i) Development of activities involving nuclear energy. The Brazilian federal government has a monopoly over exploring, exploiting, processing, industrializing, and selling radioactive minerals and their byproducts, with only a few exceptions in relation to radioisotopes in certain circumstances. This restriction applies to both domestic and foreign private investment (Federal Constitution, Article 21, item XXIII);

(ii) Development of activities involving oil and natural gas. The Brazilian federal government has a monopoly over research and exploration of natural deposits of oil and natural gas, as well as over their refining and transportation. The importation and exportation of oil and natural gas byproducts are also a monopoly of the Brazilian federal government. These restrictions apply to both domestic and foreign private investment. However, the federal government may engage public or private companies in developing the aforementioned activities, provided that they abide by the conditions set out in law (Federal Constitution, Article 177, items I, II, III and IV); and

(iii) Health services. Brazil's Constitution prohibits the direct or indirect participation of foreign companies or foreign capital in health care in the country, except under those circumstances provided for by law (Federal Constitution, Article 199, Paragraph 3).

Foreign investment is permitted with certain restrictions in the following sectors:

(i) Ownership and management of newspapers, magazines, and other periodicals, radio and television networks. At least 70% of the total capital and the voting capital of newspapers, magazines, and other periodicals must be held by Brazilian residents, with foreign investment therefore limited to a maximum of 30% thereof (Federal Constitution, Article 222, First Paragraph);

(ii) Airlines with concessions for domestic flight routes. At least 80% of the voting capital of companies offering public air services must be held by Brazilian residents, with foreign investment therefore limited to a maximum of 20% of said voting capital (Law No. 7565 of November 19, 1986, Article 181, item II);

(iii) Financial institutions. Foreign direct investments in the capital stock of financial institutions domiciled in Brazil require the prior authorization of the federal government through international treaties or governmental interest or reciprocity (Federal Constitution, Article 52 of the Act of Transitory Constitutional Provisions);

(iv) Mineral resources. The research and extraction of mineral resources, as well as the use of potential of hydraulic energy may only be carried out

upon the authorization or concession of the Federal Government, by Brazilians or companies incorporated under Brazilian law having their head offices located in Brazil (Federal Constitution, Art. 176, paragraph I); and

(v) Rural properties. Federal Law No. 5709/71 provides restrictions for foreign individuals and foreign companies authorized to operate in Brazil to own rural properties in Brazil. Recently the Brazilian General Attorney's Office released an opinion whereby it interprets that those restrictions should also apply to Brazilian companies directly or indirectly controlled by foreigners.

3. Brazil's National Financial System

3.1. The CMN and the BACEN

Brazil's National Financial System consists of the following regulatory and supervisory bodies: (i) the National Monetary Council (CMN); (ii) the Central Bank of Brazil (BACEN); (iii) the Brazilian Securities and Exchange Commission (CVM); (iv) the Superintendence of Private Insurance (SUSEP); and (v) the Office of Supplementary Pensions.

The CMN, in conjunction with the BACEN and the CVM, regulates the Brazilian banking industry. The main activities of the CVM, which oversees capital markets, are summarized under section VI of this report.

Financial and monetary policy in Brazil is the CMN's responsibility. It supervises monetary, credit, budgetary, fiscal, and public debt matters. The CMN sets out regulations on (i) credit; (ii) lending and capital limits; (iii) issuance of Brazilian currency (*Real*); (iv) gold and foreign exchange reserves; (v) savings, foreign exchange, and investment policies; and (vi) capital markets. The BACEN and the CVM, in turn, are responsible for the markets' actual implementation of said regulations and for supervision.

The law states that the BACEN shall (i) execute the currency and credit guidelines established by the CMN; (ii) regulate and supervise Brazilian financial institutions, both public and private; (iii) control the flow of foreign currency inbound and outbound; and (iv) supervise Brazilian financial markets.

The BACEN oversees compliance by market players, with minimum capital requirements, mandatory reserve requirements, and operating limits. The BACEN also authorizes corporate changes, reviews and approves submissions for changes to ownership of financial institutions, financial statements, credit, foreign exchange, import and export transactions, and other related activities.

3.2. Main Types of Financial Institutions

Brazilian law defines financial institutions as entities that perform activities that involve raising, brokering, or investing their own financial resources or those of third parties, in domestic or foreign currency, and the custody of financial assets owned by third parties. They may be public or private.

Either the BACEN authorizes, or the Executive Branch issues a decree (when foreign), for financial institutions to begin operations, as well as for any campaigns designed to raise funds from the general public.

The public financial sector consists primarily of the following entities:

(i) Banco do Brasil, a listed, private and public joint-stock company, controlled by the federal government and currently one of the largest commercial banks operating in the country. Banco do Brasil acts as a financial agent for the federal government, specifically implementing the official rural credit policy;

(ii) National Bank of Economic and Social Development (BNDES), whose capital is fully held by the federal government. The BNDES is the government's development bank, primarily engaged in providing medium and long-term financing (either directly or through other public and private financial institutions) to the private sector, mainly for manufacturing;

(iii) Federal Savings Bank (CEF), also a state-owned financial institution, which is responsible for implementing the federal government's policy regarding low-income housing and low-income workers.

The private financial sector consists of multiple-service banks; commercial banks; investment banks; investment, finance, and credit companies (*financeiras*); leasing companies, securities brokerages and securities dealers.

Foreign exchange banks and brokers, mortgage companies, credit cooperatives, cooperative banks, associations for savings and loans, and microcredit institutions are also regulated and supervised, respectively, by the CMN and the BACEN.

3.2.1. Multiple-service banks

Multiple-service banks must be incorporated with at least two of the following portfolios, one of which has to be a commercial or investment portfolio: commercial; investment or development (the latter exclusively for public banks); housing loans; credit, financing, and investment; and/or leasing.

3.2.2. Commercial banks

The core business of commercial banks is the supply of funds for trade, industrial, service companies' and individual's short and medium-term financing; demand and time deposits; management of securities portfolios; drafts; special rural credit; foreign exchange and trade transactions; customer on-lending of official funds provided by public sector credit institutions; issuance and management of credit cards.

3.2.3. Investment banks

The core business of investment banks is (i) investments in companies by holding temporary equity interests therein; (ii) financing production by supplying fixed and working capital; (iii) management of third-party resources; (iv) purchase and sale of precious metals on the physical market, on its own and on third-parties' behalf, and of any

securities on the financial and capital markets; (iv) trading on futures stock exchanges as well as on organized over-the-counter markets, on its own and on third-parties' behalf; (v) participating in the process of issuance, subscription for resale, and distribution of securities; (vi) foreign exchange transactions (only upon specific authorization granted by the BACEN); and (vii) coordinating companies' reorganizations and restructurings by rendering advisory services, holding equity interests, and/or lending.

Investment banks may also render management-advisory services to businesses whose corporate purpose is directly tied to financial-market transactions, including bookkeeping, asset and liability management, and custody.

3.2.4. Investment, finance, and credit companies (*financeiras*)

Investment, finance, and credit companies (*financeiras*) loan money to finance goods and assets for individuals and legal entities, or/and provide working capital to the latter.

3.2.5. Leasing companies

Leasing companies engage in leasing activities, with special tax treatment, related to national or foreign movable assets, and to real properties acquired for own use by the leaseholder.

4. Bank Accounts

Only Brazilian legal entities are required to maintain a bank account in the country to receive funds from a foreign investor or a financial institution. As a general rule foreign investors are not required to have a bank account in the country in order to invest in Brazilian companies.

For sophisticated investment structures and instruments, however, a case-by-case analysis must be conducted to identify whether a bank account is required.

The minimum requirements for opening a bank account in Brazil are:

(i) For individuals: enrollment with the Brazilian Federal Revenue Service to obtain an Individual Taxpayer Number (CPF), identification, and proof of residence.

(ii) For companies: enrollment with the Brazilian Federal Revenue Service to obtain a Corporate Taxpayer Number (CNPJ), and copies of the Articles of Association or By-Laws, as applicable.

Foreign entities or nonresident individuals are allowed to open and maintain accounts denominated in Brazilian currency at authorized Brazilian banks. Accounts denominated in foreign currency are only available for residents and nonresidents in a few specific cases.

5. Lending

Brazilian banks provide financing through various types of credit transactions such as revolving credit facilities, forfeiting trade notes and receivables, working capital

financing, loans, consumer loans, vendor/compror financing, checking accounts, credit assignments, leasing, export finance, real estate finance, rural credit transactions, and others.

Corporations are able to obtain financing domestically and internationally. International loan transactions must be registered with SISBACEN (the Electronic System of Registration of the BACEN) through the Financial Transaction Registry (*Registro de Operações Financeiras* - ROF).

Government and governmental agencies do not support foreign investors directly. However, since the federal Constitution assures equality of rights between nationals and foreigners residing in the country, BNDES requires that borrowers have headquarters and administration in Brazil regardless of whether their capital stock is held by foreign investors.

With limitation to the foregoing in terms of BNDES loans, there is no general restriction for an investor residing outside of the country to receive loans from financial institutions domiciled in Brazil.

6. Export Financing

6.1. Export Prepayment Financing

Export prepayment financing basically consists of the importer or a financial institution prepaying for exports. The exporter assumes the commercial debt, which shall be repaid upon export of the products sold, without the need for further financial flows in the future.

In practice, usually the payment is advanced by a financial institution located outside of the country; i.e., the bank makes the payment in foreign currency to the exporter prior to the latter shipping the purchased products.

The importer is notified to pay the agreed-upon purchase price directly to the bank into a collection account located outside of Brazil.

The agreed-upon interest is paid from Brazil by the exporter.

The exporter must ship the goods within 360 days from the date when the exchange agreement is executed. Transactions with terms longer than 360 days require prior registry with the BACEN.

In the event that goods are not shipped, the credit from the original transaction may be converted into a direct investment or currency loan.

Export prepayment financing may be structured as a club deal, allowing for credit risk to be shared among various participants.

6.2. Advance on Exchange Contracts (*Adiantamento sobre Contratos de Câmbio* - ACC)

An ACC consists of partial or total advance of payment in Brazilian currency equivalent to the foreign currency purchased by exporters in the forward market. In other

words, an ACC is an advance of national currency to exporters financed through a foreign facility.

The purpose of this form of financing is to provide advanced funds to the exporter to produce and to sell goods to be exported in the future.

According to current regulations, ACCs can be provided for up to 360 days prior to shipping goods.

The CMN permits financing secured through ACCs from local banks to be swapped with export prepayment financing from foreign banks, with no time limitation for the actual export of goods.

6.3. Advance on Delivered Shipping Documents (*Adiantamento sobre Cambiais Entregues* - ACE)

The ACE mechanism is similar to an ACC, except for the timing when the funds are provided to the exporter: an ACE can be provided once the goods are manufactured and shipped.

6.4. Brazilian Government Export Financing Program (*Programa de Financiamento às Exportações* - PROEX)

PROEX is a program created by the federal government to provide conditions equivalent to those available on international financial markets for Brazilian export transactions.

Banco do Brasil is the financial agent in charge of managing PROEX.

The two types of financing under PROEX are: (i) PROEX *Financiamento* ("financing"); and (ii) PROEX *Equalização* ("equalization").

PROEX *Financiamento* is provided by the Brazilian government at below-market interest rates.

This type of financing is allocated to exporters (supplier credit) and to importers (buyer credit) exclusively through Banco do Brasil, with funds supplied by the National Treasury.

PROEX *Financiamento* finances 85% of exports in any incoterm modality in transactions with a financing period from two to ten years. The other 15% has to be paid by the importer, on demand, or financed by an offshore bank. In transactions with a financing period limited to two years, the financed percentage can reach 100%.

PROEX *Equalização* allows financial institutions to equalize financing rates for export transactions of certain qualified Brazilian goods, services, and software, thereby reducing the financial costs of such transactions. Through equalization, ultimate interest rates paid in export financing transactions can reach levels similar to those charged on international markets.

Under PROEX *Equalização*, an entity financing Brazilian exports may receive from the Brazilian Treasury the difference between the interest rate charged in the export

financing transaction and part of the interest rate it would normally charge in the event that the export transaction was not being financed under PROEX.

This benefit is paid by the National Treasury (*Tesouro Nacional*), allowing Brazilian exporters to have access to financing conditions similar to those available to non-Brazilian exporters on international markets. This makes Brazilian exports more competitive internationally.

6.5. BNDES - Exim Credit Facilities for Foreign Trade

BNDES also offers a few credit facilities designed to create competitive conditions for the internationalization of Brazilian companies.

Financing to export goods and services falls into two categories:

(i) Pre-shipment: finances the production of internationally competitive companies established under Brazilian law; and

(ii) Post-shipment: finances goods and services abroad either by refinancing the exporter or through the buyer's credit category, in accordance with international standards.

Available guarantees are the same as those offered by export credit agencies (ECAs) to facilitate access to export credit. For instance, a transaction may include export credit insurance as a guarantee, covering commercial, political and extraordinary risks. In Brazil, these guarantees are offered by private insurance companies in the short term and by the federal government in the long term.

Requests may also be made to foreign banks that provide international guarantees for financing operations.

The information provided in this section, and further information about BNDES-Exim, can be found on BNDES's website at www.bndes.gov.br.

6.6. Export Credit Insurance and Guaranties

Brazilian exporters and financial institutions can benefit from export credit insurance provided by the federal government through the *Seguradora Brasileira Crédito à Exportação* (SBCE) for export credit transactions against commercial, political and extraordinary risks that may affect Brazilian exports and/or the production of goods and the rendering of services related to Brazilian exports.

Export credit insurance policies provided by the SBCE may be covered by the Export Guaranty Fund, an accounting-type fund within the Ministry of Finance.

As such, the federal government and the SBCE provide greater competitiveness to Brazilian exports.

The SBCE has the following shareholders: Banco do Brasil, BNDES, and Coface (*Compagnie Française d'Assurance pour le Commerce Extérieur*).

The export credit insurance policies issued by the SBCE are also used as guarantees for export financing.

SBCE acts either on its own or on behalf of the federal government in the latter case through a public bidding process.

Operationally, exports are divided into two groups, short term and medium/long term, depending on the payment term given to the importer.

Further information about the SBCE's export credit insurance products can be found on SBCE's website at www.sbce.com.br.

7. Security

The principal types of security interests available to lenders in Brazil are mortgages (in Portuguese, *hipoteca*), pledges (in Portuguese, *penhor*), and fiduciary transfers/assignments (in Portuguese, *alienação/cessão fiduciária*, respectively).

It is important to note that in theory any contractual provisions that authorize a lender to keep assets that are given to secure a loan are null and void. Only if the borrower and the lender so agree, upon default the borrower may transfer said assets to the lender as payment in kind of the outstanding debt.

Also, upon judicial and (in certain cases) extra-judicial enforcement of security, the lender is allowed to become the definitive owner of the asset given as security (in Portuguese, *adjudicação*).

7.1. Mortgage

A mortgage is the appropriate type of security for real properties, their accessories, railways, natural resources, ships and airplanes. Mortgages can only be created by a public deed (in Portuguese, *escritura pública*) prepared by a notary public (in Portuguese, *Tabelião de Notas*), except in certain cases where the law expressly authorizes a lien to be created within a private credit instrument or certificate (in Portuguese, *hipoteca cedular*). The maximum term for a mortgage according to the Brazilian Civil Code is 30 years, although it may be renewed through a new public deed.

Whenever a real property (the most common asset subject to mortgages) is mortgaged, both legal title to and possession of the property remain with the mortgagor (borrower). If the mortgaged property deteriorates or depreciates, and the borrower does not offer additional collateral, the loan accelerates. If the borrower makes proper repayment upon maturity of the loan, then the loan is terminated, and the mortgage, which is accessory to the loan, is also considered automatically terminated. A release document is signed and registered at the appropriate Real Estate Registry Office for effectiveness with before third parties.

In a bankruptcy scenario (similar to U.S. Chapter 7), a loan secured by a mortgage is only subordinated to labor credits (up to a limit of 150 times the minimum monthly wage per employee - currently about R$ 93,300.00 or US$ 54,314.00). That does not mean, however, that the lender is entitled to the full amount of the mortgaged property. The property is sold to benefit the bankrupt estate, and the lender is granted priority (with

other creditors secured by mortgages and pledges) in sharing the proceeds thereof, as well as the proceeds from the sale of the bankrupt estate's other assets.

7.2. Pledge

A pledge is a form of security granted on movable assets. Stocks, personal movable assets, receivables and bank accounts can all be subject to a pledge.

Conventional subsets of pledges, as set out by law, include rural pledges (in Portuguese, *penhor rural*, where pledged assets are agricultural machinery and equipment, crops, inventories or animals), industrial and mercantile pledges (in Portuguese, *penhor industrial e mercantil*, for industrial machinery, materials, instruments, raw materials and manufactured products), pledged rights and credit instruments (in Portuguese, *penhor de direitos e títulos de crédito*, for receivables, rents, credits or credit instruments) and pledged vehicles (in Portuguese, *penhor de veículos*).

Whenever a pledge is created, title to the pledged asset remains with the pledgor (borrower), but possession may or may not be temporarily transferred to the lender's domain. If the pledged asset is sold, deteriorated or modified, the loan accelerates. If the borrower makes proper repayment upon maturity of the loan, then the loan is terminated, and the pledge, which is accessory to the loan, is also considered automatically terminated. A release document is then signed and registered at the appropriate Registry of Deeds and Documents, Real Estate Registry Office, or traffic/transport/licensing department(s), as the case may be, for effectiveness with third parties.

A pledge is ranked the same as a mortgage for bankruptcy purposes. In a bankruptcy (similar to U.S. Chapter 7 - liquidation) scenario, a loan secured by a pledge over the borrower's assets is only subordinated to labor credits (up to a limit of 150 times the monthly minimum wage per employee - currently about R$ 93,300.00 or US$ 54,314.00. That does not mean, however, that the lender is entitled to the full amount of the pledged assets. These are sold to benefit the bankrupt estate, and the lender is granted priority (with other creditors secured by mortgages and pledges) in sharing the proceeds thereof, as well as the proceeds from the sale of the bankrupt estate's other assets.

7.3. Fiduciary Lien

Fiduciary types of liens – generally also applicable to stocks, real properties, personal assets, receivables and bank accounts – give a lender fiduciary ownership of an asset or right. Either a pledge or a fiduciary lien can be created on stocks, personal assets, receivables and bank accounts. Mortgages or fiduciary liens are alternatives for real properties.

If payment is properly made by a borrower upon maturity of the loan, title automatically reverts to the original owner (borrower).

When a fiduciary lien is created, possession of the asset is deemed to be split into direct possession, held by the borrower, and indirect possession, held by the lender.

Under Brazilian law, the following types of fiduciary liens are possible: (i) fiduciary transfer of non-fungible movable assets; (ii) fiduciary transfer of fungible assets – to domestic financial institutions only; (iii) fiduciary transfer of bank accounts; (iv) fiduciary transfer of real properties; and (v) fiduciary assignment of receivables.

In general terms, the advantage of fiduciary forms of security compared to pledges and mortgages is that the lender typically enjoys greater protection in the event of a borrower's bankruptcy (similar to U.S. Chapter 7 - liquidation). A lender may take possession of an asset *de pleno jure*, while the borrower's other creditors have to abide by the terms and other conditions of a bankruptcy proceeding. That is, since ownership is deemed to be transferred to the lender, the asset is not in theory considered part of the bankrupt estate for the purposes of apportioning among creditors in a bankruptcy proceeding.

In addition, in the event of judicial recovery (in Portuguese, *recuperação judicial*) (similar to U.S. Chapter 11), a lender secured by a fiduciary lien is not subject to the recovery plan.

A lender secured by a mortgage or a pledge is subject to the recovery plan approved by the creditors, but cannot be forced to release or to sell the mortgaged or pledged property.

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III - FOREIGN INVESTMENT

1. General Rules

Foreign investment has been welcomed in Brazil for a long time and it constitutes an important source of capital for the development of the Brazilian economy. The basic law governing the matter was enacted in 1962 (Law No. 4131) and was amended in 1964 (Law No. 4390). The stability of Brazilian foreign investment legislation is a clear indication of the country's desire to attract overseas investors.

Foreign investment is not subject to government approvals or authorizations, and there are no requirements regarding minimum investment or local participation in capital (except in very limited cases such as in financial institutions, insurance companies, and other entities subject to the regulating authority of the Central Bank of Brazil). Foreign participation, however, is limited or forbidden in the few areas of activities explained later in this chapter.

The Central Bank of Brazil (BACEN) is the agency responsible for: (i) managing the daily control over foreign capital flows in and out of Brazil (risk capital and loans under any form); (ii) setting forth the administrative rules and regulations for registering investments; (iii) monitoring foreign currency remittances; and (iv) allowing repatriation of funds. It has no jurisdiction over the quality of the investment and cannot restrict the remittances of funds from equity or loans, which are based on registration with the BACEN through its Electronic System of Registration. In the event of a serious balance of payment deficit, the BACEN may limit remittances of profits and prohibit remittances as capital repatriation for a limited period of time. This limitation, however, has never been applied even during Brazil's most difficult balance of payments problems.

Foreign investments in currency must be officially channeled through financial institutions duly authorized to deal in foreign exchange (commercial banks). Foreign currency must be converted into Brazilian currency and vice-versa through the execution of an exchange contract with a commercial bank. Foreign investments may also be made through the contribution of assets and equipment intended for the local production of goods or services.

2. Foreign Exchange Market

There used to be two official exchange-rate markets in Brazil (the commercial and floating rate markets), both of which were regulated and monitored by the BACEN. The choice of one market or another was mandatory and depended on the nature of the remittance of funds.

In March 2005, the BACEN unified both markets extinguishing the differences between them, and it enacted more flexible exchange rules. As a consequence, remittances of funds in and out of Brazil must now flow through one single exchange market regardless of the nature of payments.

3. Foreign Investment Registration

Foreign investments in currency or in assets and equipment must be registered with the BACEN. Such registration grants the foreign investor the right to remit dividends and interest and to repatriate the investment.

Since August 2000, foreign investments in capital have had to be registered with the Electronic System of Registration of the online data system of the BACEN . As for foreign loans, they also became subject to registration in the Electronic System of Registration of the BACEN, as of February 2001.

The amount registered with the BACEN as foreign investment includes the sum of (i) the original investment (whether in cash or in kind); (ii) subsequent additional investments (including the capitalization of credits); and (iii) eventual reinvestment of profits. This aggregate amount constitutes the basis for repatriation of capital and computation of any eventual capital gain tax, as explained below.

4. Remittance of Profits

Since January 1996, profits paid by a Brazilian company to a foreign investor are not subject to withholding taxes. The foreign currency to be remitted has to be purchased on the exchange market directly from any commercial bank, upon presentation of a corporate act declaring dividends, relevant financial statements, proof of the tax payment, and registration in the Electronic System of Registration of the BACEN, in the Foreign Direct Investment (*Investimento Externo Direto* - IED) mode. No further approval or consent of the BACEN is necessary, and there is no limitation on the amounts to be remitted if the original investment has been registered with the BACEN as described above.

5. Repatriation of Capital

Foreign capital invested in Brazil may be repatriated at any time, and there is no minimum period of investment.

Repatriation of the investment up to the amount stated in the Foreign Direct Investment mode of the Electronic System of Registration of the BACEN may be made free of any tax or authorization. As a general rule, any surplus over the registered amount will be treated as a capital gain, subject to a 15% withholding tax (this rate goes up to 25% for investors domiciled in tax havens).

6. Other Forms of Funding Brazilian Subsidiaries

Brazil's foreign-debt challenges, combined with other circumstances, have forced the market to find other ways to fund Brazilian companies through note/bond issues and commercial papers placed outside Brazil under private and public placements. In recent years, the BACEN has authorized a large volume of bonds, fixed-rate notes, floating-rate notes, commercial papers and fixed- or floating-rate certificates of deposit, to be traded abroad. Nonetheless, currently foreign loans with an average maturity term of up to three years are subject to a 6% financial transactions tax ("IOF"). Interest paid to foreigners is subject to a 15% withholding tax (which rises to 25% for creditors domiciled in tax havens). Another source of funding has been the issuance of ADRs - American Depositary Receipts, and IDRs - International Depositary Receipts.

7. Restrictions on Foreign Ownership of Companies

Foreign capital may be freely invested in Brazil, and it enjoys the same treatment granted to Brazilian capital, with the few exceptions noted below. There is a strong trend in the Brazilian Congress towards lifting restrictions on foreign investments.

Thus, most of the following restrictions are expected to be removed from the 1988 Constitution. Restrictions on mining, telecommunications, oil, coastal, health services and river shipping have already been removed:

(i) **Ownership of Rural Land**: any purchase of rural land by non-residents requires, in principle, prior approval by the National Institute for Colonization and Agrarian Reform (INCRA);

(ii) **Media and Broadcasting**: management by non-residents is forbidden, and ownership is restricted to 30% of the company's total capital; and

(iii) **Banking and Insurance**: opening new foreign banks and insurance companies, or new branches by foreign banks already operating in Brazil, is frozen until a new law regulating financial activities is enacted (this prohibition may be circumvented by presidential decree authorizing the investment).

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IV - FORMS OF BUSINESS ORGANIZATIONS

In Brazil, there are two main corporate structures commonly used for most business operations: limited liability company and corporation.

In general terms, a limited liability company offers a number of practical advantages. It is recommended if the partners desire simplicity and flexibility in the corporate structure, lower maintenance costs, and the inapplicability of several legal formalities that are mandatory in the case of a corporation. It is usually appropriate in the case of wholly owned subsidiaries or restricted joint ventures.

In the event, however, that the new company has plans to issue debentures or other securities in the future, become a publicly held company, or admit other groups of investors, then the adoption of a corporation structure is preferable. A corporation is also preferable for ventures having a larger number or different groups of shareholders.

There are two kinds of public registry of companies in Brazil: civil registries of legal entities and boards of commerce. Both have state jurisdiction. Corporate documents related to commercial entities must be filed with the board of commerce of the state where the company's head office is located; while corporate documents related to civil entities (such as simple partnerships, associations, and foundations) must be filed with the civil registries of legal entities.

1. Limited Liability Company

A Brazilian limited liability company, which resembles an American limited liability company (LLC), is the most common type of company in Brazil. Nowadays, it accounts for an estimate 90% to 95% of all companies organized in Brazil. They range from small enterprises with few partners to some of the largest businesses in the country.

With a limited liability company, the characteristics of each partner are given considerable weight and mutual trust. It is the simplest alternative for starting up a business, considering that very few formalities are required for operation.

A limited liability company requires at least two partners. The partners may be legal entities or individuals, Brazilians or foreigners. If the partners are not Brazilian residents, they must have an attorney-in-fact in Brazil with powers to represent them in corporate matters in general and to receive services of process on their behalf.

According to Brazilian laws, the company's assets are not linked to the partners' net worth. The partners will only be held liable if they abuse their powers or violate the law or the articles of association.

In the event that the company's assets are not sufficient to bear the company's obligations, and the capital stock has not been fully paid-in, the partners shall be jointly liable up to the amount of capital stock. If the subscribed capital stock has been fully paid-in by the partner, the partners will be solely liable up to the amount of their respective interest in the capital stock.

A Brazilian limited liability company is organized through the articles of association, which is a written agreement among the partners that must be prepared in accordance with the Brazilian Civil Code and clearly contain the partners' intentions.

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In order to validly exist, the articles of association of a Brazilian limited liability company must be filed at the board of commerce of the state where the company's head office is located.

Amendments to the articles of association require the approval of partner(s) representing at least 75% of capital stock and must be also submitted to the board of commerce.

After registration at the board of commerce, the company needs to obtain certain standard records, and depending on the type of business, it may be required to have other specific licenses and registrations for the company to operate (for instance, a license to be issued by the Sanitation Authority- ANVISA, or a license issued by the Foreign Trade Department, if the company imports/exports).

Only after the company is duly enrolled with the National Register of Legal Entities and receives a corporate taxpayer identification number (CNPJ) it will be allowed to open bank accounts in Brazil and execute contracts.

Limited liability companies must adopt an accounting system, which consists of regular bookkeeping of commercial and financial information related to their activities.

Any remittance of funds to Brazil by foreign partners, either as an investment or as a loan, must be registered with the Central Bank of Brazil's Electronic System. This registration is essential for future payment of profits to foreign partners, repatriation of capital (for capital investments), and/or payment of interest and principal (for loans).

All foreigners that hold equity in Brazilian companies must be registered with the National Register of Legal Entities to obtain a corporate taxpayer identification number (CNPJ) if they are a legal entity, or an individual taxpayer identification number (CPF) if they are an individual.

The capital stock of a limited liability company is divided into quotas, which may be assigned and transferred. The number and ownership of quotas must be identified in the articles of association.

Transfers of quotas to third parties are allowed, unless partners representing more than one-fourth of capital stock do not agree with the transfer. The other partners will have the right of first refusal with the transfer of company quotas whenever provided for in the articles of association or in the partners' agreement.

As a general rule, no minimum capital stock is legally required. Capital stock should be consistent with the company's initial operational needs. In the event that more is needed, the partners may increase their capital at any time, provided that the existing capital stock has been already paid in, by amending the articles of association.

The partners may pay in capital stock in cash, credits, or assets, and there is no legal time frame set forth by law for payment thereof. Services may not be rendered in lieu of paying in capital stock. Capital increases will only be allowed after full payment of the previously subscribed amount.

Decisions regarding the company are made during a partners' meeting. Decisions made by the partners in accordance with the law and the articles of association

are binding upon all partners, even if they were absent from the meeting or dissented.

A limited liability company may be managed by one or more persons, partners or not, Brazilian citizens or foreigners, provided that they are residents in Brazil. The manager will be in charge of the company's management and representation.

The articles of association may establish different levels of control for the company and determine which matters depend on the partners' prior authorization, in addition to the matters already provided by the law.

As a general rule, the managers of the company are not liable for acts performed within the regular course of business.

The restrictions imposed on management powers, as set out in the articles of association duly filed with the competent registry, are also imposed on third parties negotiating with the company. For this reason, if the current articles of association impose clear limits on the manager's powers, the third party contracting with the company must observe the rules in this corporate document for the business to be effective.

2. Corporation

The main purpose of the Brazilian corporation (*sociedade anônima*), like U.S. corporations, is to make profits to be distributed as dividends to their shareholders.

A corporation's equity interest is represented by shares, which may be of different types, according to the advantages, rights and restrictions attributable to the shareholders. The two major types of shares are common and preferred. Corporations are also allowed to issue debentures.

Publicly held corporations must be registered with, and subject to the supervision of, the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários - CVM*). Corporations may also be privately held.

Only publicly held corporations may issue depositary receipts (“DRs”), which are certificates representing shares in the corporation. DRs are traded on foreign markets, enabling the company to raise funds outside of Brazil.

Brazilian corporations are organized through bylaws, which are written documents that must abide by Corporations Law. Corporations' bylaws must be approved by the inaugural general meeting and may be amended by a special general meeting.

To validly exist, a corporation must file certified copies at the board of commerce of the minutes of this inaugural shareholders' meeting and the approved bylaws, a complete list of all the subscribers of the capital stock, and if the capital is paid in cash, the bank receipt for the initial 10% (ten percent) payment.

As a general rule, after submitting the relevant documents to the board of commerce, filing usually occurs within 5 (five) days, unless the board of commerce orders a change to the documents or requests additional information.

Like limited liability companies, corporations need to obtain standard registrations and others that might be necessary, depending on the type of business to be

carried out. In the same way, a corporation's partners, whether legal entities or individuals, must be enrolled with the CNPJ or the CPF, as the case may be.

Corporations must adopt an accounting system that consists of standard bookkeeping of commercial and financial information related to their activities, in addition to a ledger of nominative shares; a ledger of nominative share transfers; a ledger of minutes from the general meeting of shareholders; a ledger of shareholder attendance; a ledger of minutes from executive board meetings; and a ledger of opinions and minutes from the oversight council's meetings.

Unless otherwise provided for by law or bylaws, shareholder decisions require a simple majority of votes, without abstentions being taken into account.

The corporation may be managed by a board of officers and a board of directors (only required in certain cases of publicly held corporations and authorized-capital corporations), or just by a board of officers.

The board of directors is a collective decision-making body that consists of at least three members, appointed at the shareholders' general meeting. If the members of the board of directors are not residents of Brazil, they must appoint a representative who is a Brazilian resident to receive services of process in legal proceedings, according to Brazilian Corporations Law.

A board of officers is the corporation's executive body, consisting of at least two officers who need to be Brazilian residents. The officers represent the corporation and perform all acts necessary for its normal operation.

As a general rule, officers and directors are only personally liable for their acts when they involve an abuse of power, excess of mandate, or violation of the law.

Corporations also have an oversight council whose basic function, when installed, is to oversee the acts of management.

Most of the corporate documents of a corporation, such as its bylaws, minutes of shareholder meetings and board of officers' meetings, annual reports, balance sheets, and other financial statements must be published in the Official Gazette and in another widely read newspaper.

An important recent modification in Brazilian laws has established that the abovementioned rules previously applicable only to corporations, related to the booking and preparation of financial statements as well as independent audits, are also applicable to companies, or a group of companies under common control, that had in the previous financial year assets greater than R$ 240 million or annual gross revenue greater than R$ 300 million. This means that if a company incorporated under a limited liability company (or any other corporate type) meets those requirements, the rules previously applicable only to corporations, and among them, the obligation to publish the financial statements, will be applied to this company as well.

This issue has been subject to several debates among Brazilian attorneys, since some Brazilian attorneys understand that the publication is not mandatory for limited liability companies considering that there is no express mention related to the need of publishing the financial statements. There are many good arguments in favor and against

both interpretations. A recent decision in a lawsuit ordered that the publication of the financial statements was mandatory; however, even after this judicial decision, the Boards of Commerce have not been requested the confirmation that the financial statements had been published in order to file corporate documents of companies that meet the requirements set forth in the law.

3. Other Legal Entities

There are other legal entities set forth in Brazilian laws, such as simple partnership (*sociedade simples)*, secret partnership (*sociedade em conta de participação*), general partnership (*sociedade em nome coletivo*), limited partnership (*sociedade em comandita simples*) and associations. However, those types of legal entities are not commonly adopted unless there is a specific business decision or operational reason that justifies adopting these types of organization.

Recently, a new type of corporate structure has been created, the *Empresa Individual de Responsabilidade Limitada* -EIRELI (which is an individual limited liability company). The EIRELI is formed only by one person, which must be an individual, Brazilian citizen or foreigner (as soon as the law which created EIRELI was enacted, there was a discussion whether a legal entity could form an EIRELI; however, this discussion no longer exists, considering some rules were issued afterwards clarifying that EIRELI could be formed only by an individual).

To validly exist, the EIRELI's charter shall be filed before the board of commerce of the state where it is located.

The EIRELI shall have a minimum capital of one hundred (100) times the higher minimum wage in force in Brazil, which shall be totally subscribed and paid in on the date of its incorporation, and its owner shall be liable for its obligations up to the amount of its capital stock. The assignment and transfer of EIRELI's ownership is allowed. However, it is not allowed that an individual be the owner of more than one EIRELI.

The rules applicable to a limited liability company shall be applied, *mutatis mutandis*, to an EIRELI.

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V - MERGERS, ACQUISITIONS, JOINT VENTURES AND PRIVATE EQUITY

1. General Overview

The Brazilian market offers many opportunities for companies that wish to expand their activities in Brazil by acquiring or merging with local companies, or even by teaming up with local partners.

As a general rule - except for certain regulated sectors such as telecommunications, aviation and energy - there are no limitations on the percentage of capital stock of a Brazilian company that may be held by a foreign investor, or special prior approvals to be obtained. On the other hand, transactions involving companies that (i) have had over R$ 400 million in gross revenue in Brazil the previous year or (ii) that account for more than 20% of the Brazilian market, must be submitted to and approved by the Administrative Council for Economic Defense ("CADE") (for more details on these rules, please see Chapter XII below – *Competition Law*).

2. Legal Framework

Acquisitions. The most common way for a foreign investor to expand activities in Brazil is the direct acquisition of one or more existing Brazilian companies, often using a pre-existing Brazilian holding company as the acquisition vehicle, which receives direct investment from the foreign entity and is used as the vehicle for acquisition, and if necessary, for arranging funding.

As a general rule, Brazilian companies are acquired using the same mechanisms generally used internationally. Buyers and sellers execute an agreement setting forth terms and conditions of the acquisition, including the usual representations and warranties relating to the business being acquired. The accuracy of these representations and warranties and the general situation of the business are determined prior to closing through due diligence reviews by accountants, lawyers and experts appointed by the buyer.

Upon acquisition, the buyer is free to dismiss directors and officers of the acquired company and to appoint new directors and officers (the latter, as executives of the company, have to be residents of Brazil) of its choice.

Pursuant to Brazilian tax laws, capital gains from the sale of assets (including shares or quotas of capital) located in Brazil by a non-resident are taxable in Brazil, even if both seller and acquirer are non-residents. The tax is due on the date of the sale and/or payment thereof, and the acquirer or its attorney-in-fact in Brazil is the party responsible for withholding the applicable capital gains tax when the acquirer is a non-resident (for more details on these rules, please see Chapter IX below – *Taxation*).

Acquisition of public-company shares must be preceded by an analysis of the actual share dispersion of the company's shares. Depending on the amount of shares on the market (free float), a public offer to purchase shares from the market will be required, and minority shareholders may have the right for a tag-along at up to 100% of the price paid by the shares of the controlling block.

Except for certain regulated sectors (such as telecommunications, aviation and energy) and CADE (if the transaction triggers legal thresholds), there is no need for regulatory approvals to carry out the acquisition.

Pursuant to Brazilian tax laws, the sale of a majority of capital triggers the requirement for certain tax "clearance" certificates of the target company, which will be required for filing acquisition documents.

Mergers. Brazilian law provides rules for the merger of two or more companies resulting in a new company (*fusão*), spin-offs (cisão), and a merger of one company into another (*incorporação*). In the context of an acquisition, a *fusão* is seldom used (usually regarded as a too troublesome with virtually no gains over the *incorporação*). A *cisão* is often used to reorganize a company prior to selling its shares, separating assets and liabilities that are not to be included in the sale. An *incorporação*, in turn, is used when a portion of the purchase price is to be paid with stock of the acquiring company (an *incorporação* results in the former partners of the sold company receiving newly issued stock of the acquiring company).

Prior to deciding on a *fusão*, *cisão* or *incorporação*, the company to be sold should be analyzed to verify if it will be able to produce debt clearance certificates from the tax authorities – a requirement under Brazilian law for any company that intends to merge with/or into another company, or to undergo a spin-off.

As in the case of acquisitions, mergers also require certain tax "clearance" certificates of the target company, which will be required for filing merger documents.

Joint Ventures. Apart from incorporating a new company or acquiring an existing one, foreign investors may also consider entering into joint ventures with Brazilian parties or other foreigners. Joint ventures in Brazil are usually structured in the form of a *limitada* or a *sociedade anônima*. The rights and obligations of the joint venture's partners are typically regulated by joint venture agreements, articles of association, by-laws, shareholder' agreements, and applicable corporate law.

Private Equity. Typically, private equity organized in Brazil takes the form of a private equity investment fund – "*Fundo de Investimento em Participações*" or "FIP". The FIP is organized and exists pursuant to the rules of the Brazilian Securities and Exchange Commission ("*Comissão de Valores Mobiliários*" or "CVM"). An FIP is authorized to invest in stocks, debentures, warrants, and other securities that are convertible or negotiable in stocks of privately or closely held corporations, where the FIP actually participates in the invested company's decision-making process, by virtue of: (i) interest in the controlling block; (ii) shareholders' agreement; or (iii) other agreements or proceedings which assure the FIP's influence on the company's strategy. The FIP must be managed by a legal entity authorized by the CVM to do so, including financial institutions. An FIP is most commonly used due to its tax advantages (for more details on these rules, please see Chapter IX below – *Taxation*).

3. Practical Issues

A question often asked by foreign investors interested in acquiring a Brazilian company is whether they should acquire assets or stock. While in other countries an asset may provide far better insulation from the liabilities of the company selling the assets, in Brazil that may not always be the case, in particular with respect to tax and labor liabilities.

Brazilian tax law stipulates that the assets that once belonged to a company may be targeted by tax authorities to cover tax liabilities if the company selling the assets does not have sufficient funds to pay off such liabilities. In addition, if the purchasing company also "inherits" the employees of the company selling the assets, labor courts often declare the

purchasing company a successor in interest of the selling company, thereby exposing the purchasing company to great potential risk of having to pay out severance packages, social security and other labor liabilities incurred by the employees prior to the transfer of their labor agreements from the selling company.

Hence, although an asset deal may in fact provide some insulation from the selling company's past liabilities, each situation should be analyzed on a case by case basis, not only to make sure that the structure makes sense from a tax perspective, but also to verify if the asset deal is ultimately worth the additional efforts involved in comparison to a stock deal.

4. Trends and Developments

It is likely that the number of M&A deals in 2011 has surpassed that of 2010, with 800 transactions, involving approximately US$100 billion. This is evidence that the turbulences in the European and American markets did not affect the appetite for growth in Brazil. Due to the current economic stability, solid growth of the middle class and the demanding infrastructure, Brazil's drives for growth tend to continue to push for more foreign direct investment and continued consolidation in many different segments. For such reason, although the future of the international markets still remain unclear at this point. It is likely that Brazil will continue to shine in 2012 as one of the leading hot spots for mergers and acquisitions around the globe.

In terms of the regulatory environment, we expect to see Brazilian GAAP continuously revised and applied according to IASB standards. In addition, we expect improvements on the regulatory framework for certain sectors involving infra-structure (such as airports, ports, waterways, railroads, etc.) and other key sectors for Brazil, such as agriculture. On the other hand, certain issues around ownership of rural land by foreigners tend to have some instability in the near future.

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VI - CAPITAL MARKETS

1. Publicly-Held Corporations

1.1. General Overview

Law 6404/76, as amended ("Brazilian Corporations Law"), classifies Brazilian corporations into closely and publicly held. The latter are registered with and subject to the supervision of the CVM, as provided for in the Law 6385/76, as amended ("Securities Law"), and may have securities publicly offered or traded on organized securities markets.

1.2. Managerial structure

Publicly held corporations are subject to stricter rules on managerial structure, namely the need of a board of directors (which is not generally required for closely held corporations) and an Investor Relations Officer.

1.2.1. Board of directors

The board of directors is responsible for defining general business policies and overall guidelines, including long-term strategies, and for controlling and monitoring the company's performance. The duties of the board of directors include, among other things, electing or removing executive officers and supervising the management team.

In accordance with Brazilian Corporations Law, non-controlling shareholders of a listed company, whose interest represent, for at least the three preceding months, a minimum of 15% or 10% of the voting shares or the capital stock, respectively, have the right to elect one director. Should such percentages not be met, voting and non-voting shareholders may add their equity participation and elect a director if the aggregate percentage amounts to 10% of the company's capital stock.

The Brazilian Corporations Law has been recently amended by Law 12431/11 on requirements for the election of Board members. As from this rule, the individual no longer needs to become a company's shareholder be nominated as a Board member.

1.2.2. Board of executive officers

Executive officers are responsible for the day-to-day management and are elected by the board of directors. They have individual responsibilities established by the by-laws and the board of directors. One of the officers of a publicly-held company is designated the Investors Relations Officer and is responsible for providing information to the company's shareholders, the CVM, and to the organized securities market where the securities are traded.

1.2.3. Oversight council

Under Brazilian Corporations Law, the oversight council (in Portuguese, *Conselho Fiscal*) must be an independent corporate body. The primary responsibilities of an oversight council include monitoring management activities, reviewing the company's financial statements, and reporting its findings to the company's shareholders. The oversight council may be permanent or ad-hoc, in which case it will be installed at the request of shareholders whose interests represent at least 10% or 5% of the voting shares

or the non-voting shares. Additionally, in a publicly-held company these percentages may vary according to the company's capital stock, as per applicable CVM regulation.

1.3. Disclosure of material information

1.3.1. Periodic and occasional disclosure of information

Publicly-held corporations are subject to the reporting rules established by Securities Law, which require the company to provide periodic information to the CVM and the organized securities market where the securities are traded, including the Shelf-Document Report (as defined below), standardized financial statements, the annual and quarterly information, quarterly management reports, and independent audit reports. In addition, the company is required to file all shareholders' agreements, call notices, and copies of minutes from shareholder meetings with the CVM.

Since 2010, in replacement of the previous IAN form (similar to the US 20-F-based Form), the CVM introduced a shelf-document report (in Portuguese, *Formulário de Referência,* "Shelf-Document Report"), which must be presented and submitted to complete update annually, or whenever the specific events set forth by CVM Regulation 480/09 occur. Based on the "shelf registration system" developed by the International Organization of Securities Commissions —IOSCO, this Shelf-Document Report must follow an offering note whenever a public offering of securities is conducted. Shorter and simpler than the former model of prospectus, the offering note only provides information relating to the offer and the issuer's current market conditions, since cross-reference to the Shelf-Document Report will be sufficient to provide all other information about the company.

1.3.2. Disclosure of trading of shares by the company, controlling shareholders, directors, officers and oversight council members

Pursuant to CVM rules, directors and officers, members of the oversight council, if installed, as well as members of the audit committee or any other technical or advisory committee, are required to disclose, to the company, the CVM, and the organized securities market where the securities are traded, within the timeframe and with the specific information required by the proper regulation, the number and type of securities issued by the company or publicly-held subsidiaries held by them or by persons related to them, as well as any change to their respective interests.

1.3.3. Disclosure of material trading

According to CVM Regulation 358/02, as amended, ownership by an investor of 5% or more of outstanding shares or securities entitling rights to such shares, including Brazilian Depositary Receipts (defined below), issued by a publicly-held company in Brazil, triggers the investor's disclosure obligation, which must report such ownership to the company that for its part will notify the CVM by the timeframe and with the specific information required by proper regulation. Percentage shares, or rights thereon, held by investors, related parties, and any other person acting together or representing the same interest - namely entities under common control and funds managed by the same entity or related party - also count toward this threshold. Increases or decreases in ownership of 5% or more, or trading resulting in 5% of the outstanding shares or securities entitling rights to such shares, including Brazilian Depositary Receipts (defined below), also subject investors to further reporting requirements.

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1.3.4. Disclosure of material information by the company

Pursuant to the CVM and Securities Law, a publicly-held company is required to inform the CVM and the organized securities market where the securities are traded of any material developments relating to the company or its business. A material development consists of an event with the potential to affect the price of securities, the decision of investors to buy, sell, or hold such securities, or their decision to exercise any of the rights inherent to such securities.

1.4. Public offering for acquisition of securities

1.4.1. Mandatory offerings

According to CVM Regulation 361/02, as recently amended by CVM Regulation 492/11, public offerings for acquisition of securities (in Portuguese, *Oferta Pública de Aquisição de Ações*, "OPA") are generally required: (i) for delisting a publicly-held company in the organized securities market; (ii) as a result of disposal of the controlling interest of a publicly-held company or resulting from by-laws-related provisions; or (iii) in other situations, as described in item 1.4.2 below.

1.4.2. General rules

Such OPAs are generally (i) subject to registration with the CVM; (ii) intermediated by a financial institution; (iii) based on an appraisal report of the target company prepared by a specialized company, if launched by the company itself or its controlling shareholder and if required by the applicable regulation; and (iii) pursued through an auction in the organized securities market on which the securities are traded.

(i) Delisting procedure**.** The procedure for delisting a publicly-held company (i) must be launched by the controlling shareholder or by the company itself, in which case reserves will be required; (ii) is required to seek for the acquisition of all shares issued by the company; and (iii) requires the agreement of two-thirds of the free float, as defined by the CVM, for the company to be delisted. After the offering, if the free float drops to 5% of all shares issued by the company, a general meeting may authorize the redemption of such free float shares for the price of the offering.

(ii) Disposal of controlling interest. Other disclosure and public-offering-related obligations may apply if a significant percentage acquired by an investor results, under Brazilian Corporations Law, in disposal of the company's controlling interest. More specifically, investor must launch a public offering to be approved by CVM to acquire the remaining voting shares issued by the company, at a price of at least 80% of the price paid for each controlling voting share (legal tag-along right).

This price is applicable to any publicly-held company in Brazil, except for corporations listed in special listing segments Level 2 (in Portuguese, *Nível 2*) and the New Market (in Portuguese, *Novo Mercado*) of the São Paulo Stock Exchange (in Portuguese, *BM&FBOVESPA S.A. – BOLSA DE VALORES, MERCADORIAS E FUTUROS,* "BM&FBovespa"), for which additional tag-along rights rules apply, as described in 1.5 below.

(iii) Other offerings. A public offering for acquisition of shares is also mandatory should the controlling shareholder of a publicly-held company, or a party related thereto, reduce liquidity of a class of shares acquiring (i) more than one-third of the free float shares of any given class (common or preferred) and subclass; or (ii) 10% of the free float shares of any given class, if the controlling shareholder already holds more than 50% such class of shares and CVM understands that, within the following six (6) months, acquisition reduces liquidity of the shares.

Also, according to the CVM Regulation 361/02, as amended, an investor may acquire the controlling interest of a company through a public offering for acquisition of shares, either hostile or not. Such voluntary offering is generally not subject to registration with the CVM, except if the offering involves exchange of securities.

1.4.3. Other rules

For the purposes of execution of any sort of public offering for the acquisition of shares, the offeror must hold confidential any information regarding the offer until it is duly released to the market, as well as ensure that its directors, employees, advisors and other related third parties comply with the same duty.

When hired to intermediate the OPA, the securities broker-dealers, the securities distribution agents or the financial institution with investment portfolio shall not negotiate with the shares issued by the referred company, as well as of making researches and public reports about the company and the operation.

The restrictions above do not apply in the following cases: (i) trading on behalf of third parties; (ii) transactions clearly intended to monitor stock indexes, certificates or receipts of securities; (iii) transactions for hedge purposes regarding total return swaps contracted with third parties; (iv) transactions as market maker in accordance with CVM rules; or (v) discretionary management of third parties' portfolio.

During the OPA period, the offeror and its related parties are prohibited (i) to sell, directly or indirectly, shares of the same class and subclass of the ones subject to the OPA (this prohibition, however, do not prevent the offeror to sell its own shares to third parties in auction); (ii) to acquire shares of the same class and subclass of the ones subject to the OPA, in the case of a partial OPA; and, finally (iii) to perform operations with derivatives based on shares of the same class and subclass of the ones subject to the OPA.

1.4.4. Voluntary offerings

According to CVM regulations, an investor may acquire controlling interest of a company through a public offering for acquisition of shares, whether hostile or not. Such an offering is generally not subject to registration with the CVM, unless the offering involves an exchange of securities.

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1.5. Special listing segments on the BM&FBovespa

1.5.1. Level 1, Level 2, and the New Market

The BM&FBovespa has three special listing segments, known as Level 1 (in Portuguese, *Nível 1*), Level 2 (*Nível 2*), and the New Market (*Novo Mercado*). Such classification was originally created to foster a secondary market for securities issued by Brazilian corporations with securities listed on the BM&FBovespa, encouraging such corporations to follow good practices of corporate governance. The listing segments were designed to trade shares issued by corporations voluntarily agreeing to abide by additional corporate governance practices and disclosure requirements along with those already imposed by applicable Brazilian law. These rules generally increase shareholders' rights and enhance the quality of information provided to shareholders.

To become a Level 1 company, in addition to the obligations imposed by applicable law to be a publicly-held corporation, the issuer must agree to: (i) ensure that shares of the issuer representing at least 25% of its total capital are effectively available for trading; (ii) adopt offering procedures that favor widespread ownership of shares whenever making a public offering; (iii) comply with minimum quarterly disclosure standards; (iv) follow strict disclosure policies with respect to transactions by its controlling shareholders, members of its board of directors, and its executive officers involving securities that it has issued; (v) make a schedule of corporate events available to shareholders; and (vi) submit to BM&FBovespa, within the final term of May 10, 2012, a Code of Conduct and a Policy of Negotiation of Company's Securities, applicable, at least, to the controlling shareholders and to the company's management members and staff.

Also, the chairman of the Board and the Chief Executive Officer may not be the same person. The listed companies have the maximum term of three years to rearrange their management structure, as applicable, to comply with such new requirement.

To become a Level 2 company, in addition to the obligations imposed by applicable law to be a publicly-held corporation, an issuer must agree to: (i) comply with all of the listing requirements for Level 1 corporations; (ii) grant tag-along rights for all shareholders in connection with a transfer of control of the company offering the same price paid per share of the controlling block for all non-controlling shareholders, regardless of the type of share; (iii) grant voting rights to holders of preferred shares in connection with certain corporate restructurings and related-party transactions, such as (a) any transformation of the company into another corporate form; (b) any merger, consolidation or spin-off of the company; (c) approval of any transaction between the company and its controlling shareholder or parties related to the controlling shareholder; (d) approval of any valuation of assets to be delivered to the company in payment for shares issued in a capital increase; (e) appointment of an expert to ascertain the fair value of the company in connection with any deregistration and delisting tender offer from Level 2; and (f) any changes to these voting rights, which will prevail as long as the adhesion contract to the Level 2 regulation with the BM&FBovespa is in effect; (iv) have a board of directors consisting of at least five members out of which a minimum of 20% of the directors must be independent, and limit the term of all members to two years, reelection permitted, or three years without the possibility of reelection, under exceptional cases in which the company does not have a controlling shareholder holding more than 50% of the company's capital stock; (v) prepare annual financial statements in English, including cash flow statements, in accordance with international accounting standards; (vi) if it elects to delist from the Level 2 segment, conduct a tender offer by the company's controlling shareholder (the minimum

price of shares to be offered to all shareholders will be the economic value determined by an independent firm with requisite experience); and (vii) adhere exclusively to the Market Arbitration Chamber of the BM&FBovespa (in Portuguese, *Câmara de Arbitragem do Mercado*) for resolution of disputes between the company and its investors, or arising from the Level 2 regulation.

Among the recent amendments to the Level 2 regulation, some prohibitions were included to impose (i) qualified quorum rules or limit voting rights for shareholders representing less than 5% of the company's capital stock (exception made for denationalized companies with preferred shares), and (ii) liabilities to shareholders voting in favor of any changes in the company's by-laws.

Finally, among other specific changes, the execution of any tender offer of the company's shares will require prior written opinion by the board of directors, which will not bind the final decision, to be defined at a shareholders' meeting.

To be listed in the New Market, an issuer must meet all of the requirements for Level 1 and Level 2 corporations and, in addition, the issuer must issue only common shares, except in cases of denationalization of the company, which might admit preferred shares to grant specific political rights to the denationalized entity.

1.5.2. BOVESPA MAIS

This is a segment of the organized over-the-counter market created to increase the opportunities for new, smaller and medium-sized publicly-held corporations to trade their shares on the BM&FBovespa, as this segment also adheres to advanced standards of corporate governance practices.

2. Insider Trading

2.1. Introduction

Insider trading rules in Brazil are very similar to those applicable in the United States, and apply either to the source of information (i.e. *tippers*, such as the managerial bodies of the relevant company) or to individuals to whom the information is presented and who misappropriate said information, trading based on it (i.e. *tippers*, such as lawyers and financial advisors). Brazilian legislation prohibits trading of securities based on privileged information1 and imposes administrative, civil, and criminal penalties, depending on the degree of the infraction and position of individuals involved. These three penalties may be imposed either individually or collectively.

Administrative penalties may be imposed by the CVM and include, as provided for in article 11 of the Securities Law: (i) warnings, (ii) fines, which vary according to the relevant transaction, (iii) suspension up to 20 years to exercise the position of director or audit committee member of a publicly-held company or any other entity registered before CVM, (iv) cancellation of authorization to operate in capital markets, and (v) temporary prohibition, from 10 to 20 years, to operate directly or indirectly in one or more types of transaction in the securities market. Depending on the public interest, this law authorizes

1 Privileged information: any non-disclosed information that may affect the regular course of business.

the CVM to reach settlements to suspend administrative proceedings arising from violation of securities laws and regulations in general, which, once the relevant party complies, will result in the proceeding being filed by the CVM. Note that the effects of settlements with the CVM are limited to administrative penalties, and do not prevent civil and criminal penalties.

Civil penalties usually come as indemnification lawsuits brought by individuals or by the state prosecutor to recover damages or losses suffered due to insider trading.

Criminal penalties range from 1 to 5 years in prison, and fines that can reach up to three times the illegal gain resulting from insider trading.

3. Securities Transactions in Brazil

The National Monetary Council (in Portuguese, *Conselho Monetário Nacional,* "CMN") supervises both the financial market — which is regulated by the Central Bank of Brazil — and the securities market, including derivatives contracts, regulated by the CVM. Accordingly, securities transactions are subject to CVM regulation. The main activities related to these transactions are described below.

3.1. Public Offerings

3.1.1. Public Offering

Any public offering of securities in Brazil, by an offshore or onshore entity, generally requires (a) prior registration with the CVM of the offering (articles 19 and 21 of Securities Law) and, if applicable, the issuer, (b) intermediation by an institution which is part of the Brazilian SDS (defined below) (articles 15 and 16 of Securities Law), and (c) listing the offered securities on a Brazilian organized securities market ("Public Offering").

3.1.2. Definition of Public Offering

An offering of securities in Brazil is deemed to be public if: (a) any sales efforts (meaning the use of any form of communication directed at the general public for direct or indirect promotion of subscription or disposal of securities) is conducted in Brazil designed for the "general public"2; or (b) not designed for the general public, Brazilian investors have access to the information about the offering, and no precautions are taken to allow this access only to investors in countries, or locations where the offering is authorized.

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2 The meanings set out by the CVM for the expressions "sales effort" and "general public" are as follows: (a) "general public" means a class, category, or group of people, even if the target market may be identified, whether residing, domiciled or incorporated in Brazil, except for those having *close, regular and prior* commercial, credit, corporate or labor relations with the *issuer*; and (b) "sales effort" means the use of public communication channels: (i) lists or sales or subscription bulletins, leaflets, booklets or advertisements of any kind or form aimed at the general public; (ii) full or partial pursuit of undetermined subscribers or purchasers for the securities, even if attempted through standard communications sent to individually identified addressees by employees, representatives, agents, or any person or legal entity, part or not part of the securities distribution system, or consultation of the offering's feasibility or securing investment commitments by subscribers or undetermined purchasers, even if in non-compliance with the provisions of CVM Regulation 400 of 2003; (iii) transactions held in stores, offices, or establishments available for the general public and intended, in whole or in part, for subscribers or undetermined purchasers; or (iv) use of oral or written marketing, letters, advertisements or notices, especially through mass or electronic media (pages or documents on the worldwide web or other opened e-mail and computer networks), meaning any form of communication sent to the general public seeking direct or indirect promotion of subscription or disposal of securities.

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3.1.3. Silence Period and Lock-up Period

During the "Silence Period" (in Portuguese, *Período de Silêncio*), the issuer, the underwriter — since its hiring —, and the managers of all institutions involved in a public offering, within sixty days before filling the public offering registration, or on the date of approval of the public offering, whichever occurs last, are prohibited from publicly disclosing any information regarding the offering or the issuer, except for information related to the corporation's ordinary activities. In addition, the issuer and the intermediary institutions involved are subject to a "Lock-up Period", until publication of the notice of closing, during which they may not perform any transaction with securities of the relevant issuer, or securities referenced therein, except in cases expressly provided for in relevant regulation.

3.1.4. Exemption upon request

Except as described in 3.1.6 below, the CVM has not enacted to date any general rule waiving registration of a public offering of securities, even if issued abroad[3]. However, CVM Regulation 400/03 expressly allows the CVM to waive registration of the issuer and/or the securities offering, or some of its requirements (such as prospectus, offering initial notice, etc.). In granting such a waiver, the CVM will consider, among other aspects: (i) the securities par value or total amount of the offering; (ii) conforming of different procedures for offering securities in more than one jurisdiction, as long as equality of treatment with local investors is assured; (iii) the plan for distribution of securities; (iv) the marked aimed at by the offering, including geographic location and quantity; and/or (v) if the offering aims only at Qualified Investors (defined below). Such regulation does not specify the details for each of these situations, leaving analysis to the CVM on a case-by-case basis.

3.1.5. Definition of qualified investors

Under Brazilian securities regulation, qualified investors are: (i) financial institutions; (ii) insurance companies and capitalization companies; (iii) private publicly or closely-held organizations; (iv) individual or legal entities that hold financial investments in excess of R$ 300,000 (three hundred thousand *reais*) (around US$ 172,000) and that additionally certify in writing their qualified investor condition; (v) investment funds designed exclusively for qualified investors; and (vi) portfolio managers and securities advisors authorized by the CVM, in relation to their own funds("Qualified Investors").

3.1.6. Automatic exemption

In accordance with the rules set forth by CVM Regulation 476/09, certain public offerings of securities are automatically exempt from registration if placed with limited sales effort. This exemption requires: (a) the offering to seek no more than 50 Qualified Investors; (b) the securities to be acquired, or subscribed, by no more than 20 Qualified Investors; (c) the securities offering not to be pursued through a public sales effort; (d) all material information to be disclosed to investors — although there is no need for a prospectus; (e) no public offering of the same security to occur within the following four

3 There is no similar rule in Brazil to Rule 144A — enacted in the US — which provides for a general exemption in certain circumstances for qualified institutional buyers.

months after the exempted offering; (f) the securities offered must be (i) issued in Brazil; (ii) limited to commercial notes, bills of credit, non-convertible debentures, closed-end shares of investment funds, certificate of agribusiness- or real estate-related receivables, financially-settled agribusiness notes (CPR-F), agribusiness-related certificates of deposit and certain financial notes; (iii) traded only among Qualified Investors and after the ninetieth day after completion of the exempted offering; and (g) the issuer to (i) have audited its annual financial statements; (ii) disclose such statements on its website within 3 (three) months after the fiscal year; (iii) disclose material information reports; and (iv) not trade its securities based on material, non-disclosed information.

For the purposes of this automatic exemption, Qualified Investors are as described above, provided, however, that: (i) any investment fund (including if offered to non-qualified investors) is a qualified investor; and (ii) the individuals and legal entities referred to above invest at least R$ 1,000,000 in the exempted offering (around US$ 571,500).

3.1.7. EGEM

"Issuers with Major Market Exposure" (in Portuguese, *Emissores com Grande Exposição ao Mercado*, "EGEM"), inspired by the American version Well-Known Seasoned Issuers — WKSI, are able to automatically register their public offerings with the CVM. A corporation will be qualified as an EGEM provided that it meets the following requirements: (i) publicly traded for at least three years; (ii) timely compliance with CVM requirements for the last 12 months; and (iii) has a free float equal to or greater than R$ 5 billion (about US$ 2,857,500,000).

To benefit from the EGEM's automatic registration, the issuer and leading distribution underwriter must submit a request to the CVM, submitting, among other documents, a specific application declaring qualification as an EGEM and a standard prospectus. Following CVM approval, the offering registration takes effect within five business days. However, the CVM may, at any time, convert this application into a standard registration procedure, if these requirements are not strictly observed.

3.1.8. Primary and secondary public offerings

Public offerings may be pursued in the primary or secondary markets or both.

3.1.9. Securities distribution program

Publicly-held corporations that have already carried out public offerings of their securities may file a securities distribution program with the CVM for distribution of securities within two (2) years after such filing.

3.1.10. Additional lots

Securities regulations authorize an offering to be increased without having to change the registration statement (i) by a decision of the underwriter (greenshoe) should the demand be greater than expected or (ii) by a decision of the offering party. Such increases are limited to 15% or 20% of the number of securities initially offered, respectively, and may be individually or collectively exercised.

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3.1.11. Brazilian Depositary Receipts

Issuance, public offering, and trading of Brazilian Depositary Receipts ("BDRs") are all subject to CVM supervision. Similar to the general rule described above, an offering of BDRs may also require the issuer and offering to be registered with the CVM.

According to the applicable regulations, only foreign publicly-held or similar companies are authorized to issue the underlying assets of BDRs. As per CVM's regulations, the qualifications of a foreign issuer comprises, in addition to the location of the company, the sum of assets that the company owns abroad, in the target market, rather than the source of domestic revenue for the respective issuer. Accordingly, assets held by foreign entities in Brazil shall be considered in order for it to be qualified as a foreign publicly-held corporation.

There are two levels of BDRs: (i) sponsored, which are offered by a depositary entity hired and/or authorized by the issuing company (classified in Levels I, II or III) and (ii) non-sponsored, under which issuer is not related and/or authorized by the issuing company (Level I only).

Recently, CVM Regulations 332/00 and 409/04 were amended in order to introduce a specific investment fund for BDRs (sponsored or not), as well as to allow closed pension funds (*entidades fechadas de previdência complementar*) and individuals or non-financial entities with investments higher than a R$ 1,000,000.00 (about US$ 560,000.00) to invest in certain levels of sponsored BDRs.

3.1.12. Other Depositary Receipts

Brazilian publicly-held corporations are also authorized to publicly offer depositary receipts ("DRs") (e.g. *ADRs* and *GDRs*) abroad, provided a DR facility is approved by the CVM, custodian and depositary institutions are hired, and other procedures set forth by applicable governing law, regulations, and self-regulations are followed.

3.2. Intermediation

3.2.1. Securities Intermediation

Intermediation of securities transactions in Brazil, or the performance of intermediation activities in Brazil, including over the Internet, requires the intermediaries to be part of the Brazilian Securities Distribution System ("Brazilian SDS"), and to be registered with the CVM. The Brazilian SDS consists of institutions responsible for, or engaged with, the following activities with respect to securities: (i) distribution; (ii) purchase and resale for their own account; (iii) mediation (trading by an intermediary); (iv) stock exchanges; (v) organized over-the-counter markets; (vi) commodities brokers, special operators and the commodities and futures exchanges; and (vii) clearing and settlement.

The intermediation of securities offerings in Brazil is usually done by securities broker-dealers (in Portuguese, *Corretoras de Valores Mobiliários*), securities distribution agents (in Portuguese, *Sociedades Distribuidoras de Valores Mobiliários*), and other financial institutions, such as multiple, commercial, and investment banks, duly authorized by the Central Bank. Accordingly, a foreign company that wants to broker securities in Brazil would, among other conditions, have to (a) be headquartered in Brazil (through a

subsidiary) and obtain specific authorization by the Central Bank and the CVM; or (b) obtain specific authorization from the federal government (Ministry of Development, Industry and Foreign Trade) to work in Brazil, in addition to those referred in the item above, which will require setting up a branch in Brazil; or (c) hire an institution that is part of the Brazilian SDS duly authorized to perform such activities.

3.2.2. Authorized activities without registration

Intermediation of securities transactions offered exclusively outside Brazil, aimed at Brazilian investors, is not a violation of Brazilian laws and does not require the authorizations referred to above, provided that (i) prospective client activities are conducted exclusively outside Brazil, and (ii) the brokered transaction (e.g. relevant underwriting, placement or purchase/sale of securities) does not constitute a public offering of securities in Brazil.

3.3. Securities analysis

3.3.1. Analysis activities

According to the recent CVM Regulation 483/10, analysis of securities disclosed to the general public in Brazil is subject to CVM supervision. Accordingly, an individual intending to professionally perform this job in Brazil must be certificated by a self-regulated entity registered with the CVM, which will also be able to monitor these activities and assess penalties in the event of violation of provisions in regulation or it's the code of conduct previously approved by the CVM. The requirements for certification are: (i) a university degree; (ii) passing technical exams approved by the CVM; and (iii) unconditional adhesion to the code of conduct.

3.3.2. Reports

There are certain restrictions and mandatory disclosure for analysis reports, including: (i) being written in clear objective language, differentiating interpretations from facts; (ii) naming a primary accredited analyst to prepare the report; (iii) adding a disclaimer to alert that the analysis contains personal opinions and that they were independently developed; and (iv) disclosing any potential conflict of interests by any member of the analysis team. Securities analysts are required to send the report to the self-regulated entity within three days of distribution, and to keep a copy for at least five years.

3.4. Asset Management

3.4.1. Introduction

Asset management of third-party assets in Brazil is subject to CVM supervision. Accordingly, an individual or legal entity intending to professionally perform this job in Brazil must be previously authorized by the CVM, pursuant to certain experience-related requirements. Asset-management activities generally include advice to third parties on which securities to invest in and the investment decision itself (purchase and sale of securities).

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3.4.2. Individuals

Authorization to manage assets in Brazil requires the individual to be a resident in the country; hold a bachelor degree in Brazil or abroad; and have three years of experience in financial markets managing third-party assets, or five years in capital markets. Under certain circumstances, the CVM may exempt the individual from (i) the bachelor degree-related requirement, in which case the experience referred to above would have to be for a longer period, or (ii) the experience-related requirement, provided the individual can prove considerable knowledge of asset management.

3.4.3. Legal entity

Asset management by legal entities requires (i) the entity to be headquartered in Brazil and have in its by-laws or articles of association a provision authorizing this activity; (ii) designation of at least one individual registered with the CVM for such activity; and (iii) a research department to be maintained or hired by the entity. Also, a "Great Wall" must be maintained between asset management and others departments of the legal entity, to prevent conflicts of interest.

3.4.4. Ongoing obligations

Ongoing obligations that asset managers are required to comply with include: (a) general reporting obligations; and (ii) obligations specifically provided for in the particular regulation or by-laws of the portfolio under management, which vary according to the markets targeted by the manager. Asset managers are also required to (i) keep documentation for at least five years related to activities — or an additional period if an agreement, or an administrative proceeding, requires otherwise; and (ii) keep confidential all activities performed with third-party funds.

4. Investment Funds

4.1. Funds in general

4.1.1. Introduction

The offering, trading, and management of investment funds ("Funds") in Brazil is subject to the supervision of, and registration with, the CVM. Funds are non-corporate condominiums aimed at trading financial assets by an asset manager.

4.1.2. Management services

Management services include those related directly or indirectly to Fund maintenance, which are provided by an asset manager or a third party duly authorized to do so.

The asset manager is the primary party responsible for the Fund’s transactions and is also required to provide shareholders with material information affecting the Fund's activities.

Management services include: (i) management of the Fund’s portfolio; (ii) investment advice; (iii) securities treasury, control, and processing activities; (iv) distribution of shares; (v) book-entry share activities; (vi) custody; and (vii) rating activities. Third

parties do not have to be hired to provide management services, except for the services described in "iii" to "vi" above, for which the manager is required to have special authorization.

4.1.3. Forms of incorporation

According to the Fund's by-laws, the Fund may be incorporated as (i) an open-end condominium, under which voluntary transfer of shares is not allowed, but redemption of shares is permitted, or (ii) a closed-end condominium, under which redemption occurs upon expiry of the Fund or the class of shares, but voluntary transfer of shares is generally allowed. For both forms the amortization of shares is permitted, in accordance with the provisions of the Fund's by-laws.

4.1.4. Distribution

As a general rule, distribution of shares issued by Funds requires intermediation by institutions in the Brazilian SDS (as defined above), and delivery to investors of a copy of the Fund's by-laws and prospectus describing the offering. Distribution of shares issued by closed-end Funds also depends on prior registration with the CVM, provided that in such distributions it is possible to have automatic exemption if the requirements detailed in section 3.1.6 above are met.

4.1.5. Classification and limits

The portfolio's mix is the basis for the following types of Funds: (i) short-term; (ii) referenced; (iii) fixed-income; (iv) stock; (v) currency exchange; (vi) foreign debt; and (vii) multi-market. Funds classified as "Referenced", "Fixed-Income", "Currency Exchange", "Foreign Debt" and "Multi-Market" may also be classified as "Long-Term" if the average portfolio term exceeds 365 days and the portfolio consists of federal government or private bonds, which are fixed-income bonds, or bonds indexed to the SELIC basic interest rate, price or currency-exchange indexes, or matched transactions linked to the aforesaid federal government bonds.

Investment in foreign securities by Funds are restrictedly permitted as follows: (i) Foreign Debt Funds and Funds having only qualified investors with a minimum investment per investor of R$ 1 million may invest all of their equities abroad; and (ii) Multi-Market Funds and other Funds are allowed to invest up to 20% and 10%, respectively, of their equity abroad.

4.1.6. Concentration

Regardless of their classification, the funds shall observe the following concentration limits per issuer: (i) up to 20% (twenty percent) of the Fund's equity when the issuer is a financial institution authorized by the Central Bank of Brazil; (ii) up to 10% (ten percent) of the Fund's equity when the issuer is a publicly-held company; (iii) up to 10% (ten percent) of the Fund's equity when the issuer is a Fund; and (iv) up to 5% (five percent) of the Fund's equity when the issuer is an individual or a privately-held company. There are no limits when the issuer is the federal government.

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4.1.7. Qualified Investors

Funds targeting Qualified Investors (defined above) are generally authorized to implement flexible structures, including higher concentration limits, payment and redemption of shares with financial assets and exemption of prospectus.

4.1.8. Disclosure of material information

All material information related to the Fund's investment policy and the risks involved must be included in the prospectus and the Fund's by-laws, and also during the Fund's activities, in a specific report.

4.1.9. By-laws

A Fund's main corporate documents are its by-laws, which contain information related to its management, investment policy, risks, duration, and description of shares.

4.2. Special Funds

In addition to the rules described above, the CVM supervises other Funds, some of which are described below, designed to be the vehicle for certain transactions.

4.2.1. Private Equity Investment Fund ("FIP")

FIPs are created under a closed-end condominium and designed for investing a minimum amount of 90% of its net equity in shares, debentures, warrants, and other titles and securities that are convertible or tradable in shares of closely- and publicly-held corporations, in which the FIP effectively participates in the decision process. FIP investors must be Qualified Investors and must subscribe a minimum of R$ 100.000,00 (around US$ 56,000,00).

4.2.2. Real Estate Investment Funds ("FII")

Federal Law 8668/93, as amended, provides for FIIs, which are non-corporate vehicles managed by financial institutions. FIIs are closed-end funds that invest most of their equity in real estate or related rights. Since the Fund has no corporate veil, the manager is the fiduciary owner of the underlying assets, separated from the manager's assets.

FIIs must distribute at least 95% of profits to their shareholders based on balance sheets dated June 30 and December 31 of each year. Additionally, FII shareholders do not have any "*in rem*" right to real estate and projects invested in by the FII, and are not personally liable for any legal or contractual obligation concerning the FII real estate or projects or its manager, except for the obligation to pay in all subscribed shares.

4.2.3. Receivables Investment Funds ("FIDCs")

FIDCs are either closed- or open-end Funds that invest more that 50% of their equity in receivables that are realized or to be realized, backed by financial or commercial transactions, including those involving property financing and services. Only Qualified Investors are authorized to subscribe or acquire shares issued by FIDCs.

Additionally, the CVM provides for a subtype of FIDC, called a Non-Standardized Receivables Investment Funds ("FIDC-NP"). The FIDC-NP is authorized to invest in certain receivables which increases the risk assumed by investors, such as receivables (i) due with payments pending, (ii) from public entities, (iii) related to ongoing lawsuits, (iv) whose existence or assignment to the FIDC-NP may be challenged, (v) originated by companies under bankruptcy or similar proceedings; (vi) that haven't been realized, with unknown face value; and (vi) any other type of receivable not covered under CVM regulations.

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VII - LABOR ASPECTS

One of the most significant features of Brazil's labor system is that the laws regulate the details of labor/management relations to a much greater extent than in the United States. In addition, the concept of collective bargaining is also very strong in Brazil.

Most of employee rights are compiled in what is known as the Brazilian Labor Code, or the CLT ("*Consolidação das Leis do Trabalho"*). The basic labor rights granted to employees in Brazil are as follows:

(i) Legal limit of regular working hours: Brazilian legislation stipulates that working hours in Brazil are limited 44 hours per week or eight hours per day (item XIII, article 7 of the Brazilian Constitution), unless provided for otherwise through a convention or an agreement entered into with the relevant labor union;

(ii) Vacation: Upon completion of each period of twelve months of work, employees are entitled to paid vacation of up to thirty calendar days, plus an additional payment equal to one-third that amount;

(iii) Minimum Wage: Employees in Brazil are entitled to a mandatory minimum monthly wage, which is adjusted annually by the Brazilian government. Some Brazilian states also set a regional minimum wage, which must be complied with by a company carrying out its activities in that state;

(iv) 13th salary: Employees in Brazil are entitled to an annual gratification, called the 13th salary ("*13º salário*"), usually paid at the end of the year, on the basis of one-twelfth of their December earnings for each month worked that year. The employer may pay 50% of the 13th salary in advance if the employee takes his/her vacation between February and November of the same year;

(v) Profit/Results Sharing: Employees in Brazil are entitled to participate of a profits/results sharing plan of the company, implemented by a specific program negotiated between employers and employees, pursuant to Federal Law 10101/00;

(vi) Overtime pay: Employees in Brazil are entitled to overtime pay of at least 50% the hourly rate;

(vii) Maternity leave: Employees in Brazil are entitled to paid maternity leave of 120 days (the amount paid by the employer is offset by social security contributions). A law recently enacted establishes that employers may extend maternity leave for an additional two-month period, provided that the employer pays the employee's salaries during this additional period and the employee has joined a program of the federal government called "*Empresa Cidadã*" ("Citizen Company"). Employers granting this benefit to their employees are entitled to a tax benefit;

(viii) Paternity leave: Employees in Brazil are entitled to five days of paternity leave;

(ix) Prior notice period: In cases of dismissal without cause, the employer must grant the employee prior notice of dismissal of at least thirty days, which may be worked by the employee or indemnified by the employer. A law recently enacted increased the proportionality of the prior notice period. It provides for a minimum of thirty days for employees who have worked up to one year for the company, whereas three days will be added to those thirty days for each year of work for the company, limited to sixty days, therefore totaling ninety days (minimum of thirty days plus additional period limited to sixty days = ninety days); and

(x) Remunerated weekly day off: Employees in Brazil are entitled to a 24-hour rest period for each week of work, preferably on Sundays. There are, of course, certain economic activities which are authorized to work on Sundays, depending on their specific activities. This authorization is granted by the Labor Ministry.

Companies are also subject to the following social contributions or charges:

(i) Social Security (*"Instituto Nacional de Seguridade Social"* - "INSS"): companies must pay 20% to 31.8% of payroll to the INSS; additionally, employees have 8% to 11% of their monthly earnings deducted from salaries and withheld by the company for the INSS, subject to the limits provided for by law.

Payment of certain labor-intensive services (*e.g.*, outsourcing, construction) is subject to an 11% withholding tax assessed on the total amount invoiced. The amount withheld may be offset against the social-security tax to be paid by the service provider.

(ii) Unemployment Savings Fund ("*Fundo de Garantia do Tempo de Serviço"* - "FGTS"): every month, an amount equivalent to 8.0% of the employee's monthly earnings must be deposited by the employer into the employees' Unemployment Savings Fund, in a blocked account at the "*Caixa Econômica Federal"* (Federal Savings Bank). If an employee is dismissed without cause, the employee is entitled to withdraw deposits made into the FGTS account during his/her employment with the company. The employer will also have to pay a fine of 50% of the total amount deposited into the employee's account. Of this 50%, 40% goes to the employee and 10% to the government. The employee also has access to the Fund upon retirement.

Mandatory severance pay for termination of employment contracts in Brazil varies according to the type of termination, as follows:

(i) Termination without cause, employer's initiative

- Prior notice (30 days - (equivalent to one monthly salary) plus three days for each year of service in the same company as of the second full year of employment contract, up to a maximum of ninety days of prior notice period);
- Balance of wages from the termination month;
- Unused earned vacations plus additional one-third payment;
- Pro-rated vacation plus additional one-third payment;

- 13th salary (or pro-rated 13th salary, depending on the termination date);
- FGTS deposits: deposit in employee's blocked account (equal to 8% of employee's pay) in the termination month, based on the balance of wages, as well as prior notice and 13th salary;
- Fifty-percent (50%) FGTS fine based on the amount deposited in employee's FGTS account;
- Any other labor right related to termination provided for under the current Collective Bargaining Agreement;
- Any other compensation or benefit contractually agreed with the employee.

If the employee is not required to work during the notice period, the payments above must be made within 10 days of the date when notification of dismissal was served. If the employee worked during the notice period, then termination dues must be paid on the first business day after the employee's last day of work.

(ii) Termination with cause, by employer's initiative

- Balance of wages in the termination month;
- Earned vacation plus additional one-third payment;
- FGTS deposits: deposit in employee's account (equal to 8% of employee's pay) in the termination month.

Permitted circumstances for dismissal with cause are set out in article 482 of the Brazilian Labor Code. Such circumstances entitle the employer to terminate the employee's employment immediately, without notice and without making payment in lieu of notice.

(iii) Termination as a result of employee's resignation

- Balance of wages in the termination month;
- 13th salary (or pro-rated 13th salary, depending on termination date);
- Earned vacation plus additional one-third payment;
- Pro-rated vacation plus additional one-third payment;
- FGTS deposits: deposit in employee's account (equal to 8% of employee's pay) in the termination month, as well as on 13th salary.

(iv) Resignation based on constructive dismissal ("indirect termination") due to serious fault committed by employer.

If an employee feels that his or her employer has committed a fundamental breach of the employment contract, he or she may request indirect termination of his or her employment contract citing the employer's fault. In this situation, the employee must seek an order from the court recognizing indirect termination and ordering payment of all sums due on termination of the employment contract, along with any other outstanding payments that may have been the cause of the indirect termination, such as previously unpaid wages.

In the employee wins the case, the same amounts due on dismissal without cause shall be paid.

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VIII - VISAS AND INDIVIDUAL INCOME TAX

Currently, Brazilian authorities maintain a strict immigration policy in defense of Brazilian workers and the Brazilian economy. The Ministry of Labor must give prior approval to labor contracts with foreigners, and subsequently the Ministry of Foreign Affairs issues visas through Brazilian Consulates. The Ministry of Justice and the National Immigration Council are also sometimes involved.

Visas that allow foreign individuals to work in Brazil are as follows: (i) Permanent visas; (ii) Temporary visa "item V", upon employment agreement with a Brazilian Company (valid for 2 years, and renewable for an additional 2 years); (iii) Technical visa - 90 days (renewable for a further 90 days); and (iv) Technical visa - (valid for 1 year, and renewable for 1 more year). Below is a summary of the main aspects of each kind of visa:

1. Permanent Visas

Permanent visas are usually granted to foreigners transferred to Brazil from foreign companies to work in their subsidiaries or affiliates as officers or directors.

The Brazilian company in which the foreigner will hold the position of director or officer must prove that:

(i) the foreign affiliate has invested at least US$ 600,000 paid into the capital stock of the Brazilian company for each foreign citizen appointed to hold the position of director or officer of the company; or

(ii) the foreign affiliate has invested at least US$ 150,000 paid into the capital stock of the Brazilian company for each foreign citizen appointed to hold a position of director or officer of the company. In this case, the Brazilian company must also generate ten new jobs within two subsequent years of the foreign director or officer being hired in Brazil.

Under this visa, the Immigration Department does not require foreigners to execute an employment contract with the Brazilian company; however, on transfer to Brazil said employee will be required to earn the same (or higher) salary (bonus not included) as that earned in his/her home country.

2. Temporary visa "item V", with employment contract with Brazilian Company

Temporary visas may be granted for a maximum of two years to foreigners who will work in Brazil under an employment contract with a Brazilian company. To obtain this visa, the foreigner must prove his/her previous professional experience with the work to be done in Brazil. These visas are renewed once for an additional two-year period upon authorization by the Ministry of Justice. Thereafter, the temporary visa holder may apply for transformation of his/her visa into a permanent visa, provided all legal conditions are met.

Regarding salary, the same rule for permanent visas is also applicable to temporary visas "item V"; that is, upon transfer to Brazil the foreigner must earn the same (or higher) salary (bonus not included) as that earned in his/her home country.

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3. Technical visa - 90 days, without employment contract with Brazilian Company

This visa is usually granted to foreigners sent to Brazil on a temporary basis to render technical support or technology-transfer services. To be granted, the following requirements must be met: (i) the foreigner is not allowed to receive any remuneration from the Brazilian Company; (ii) the company must prove the foreigner's professional experience of at least three years in such activities; (iii) the company must prove that it will prove the foreign worker with health insurance for the period that he/she remains in Brazil.

4. Technician visa - 1-year term, renewable for 1 more year - without employment contract

This visa is also granted to foreigners sent to Brazil on a temporary basis to render technical support or technology-transfer services. The main difference between this visa and the previous one is basically the length of services to be rendered in the country.

Under this type of visa, the Brazilian company needs to present to immigration authorities a service supply agreement and a training program for the Brazilian team in order to justify the longer period of the visa.

5. Citizens from Mercosur countries (Brazil, Argentina, Uruguay and Paraguay), Chile and Bolivia

As a result of an agreement among Mercosur countries (Brazil, Argentina, Uruguay and Paraguay), Chile and Bolivia, the citizens of these countries may obtain a permit to live in any of them, and consequently have the same rights as those of the nationals of the country where they live, including the right to work.

In this sense, the citizens of the countries above that intend to live and work in Brazil do not need a work visa, but rather a residence permit to work in Brazil.

This permit is valid for 2 years and may become permanent if its renewal is requested within 90 days prior to expiration.

6. Individual Income Tax

Upon arrival in Brazil, foreigners holding a permanent visa or a temporary visa "item V" with an employment contract with a Brazilian company are deemed taxpayers and subject to the same income tax laws applicable to other residents of Brazil.

As a taxpayer in Brazil, his/her worldwide income will be subject to Brazilian income taxation. A tax credit may be granted to income taxes paid in other countries, provided that certain conditions are met.

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IX - BUSINESS OPERATION TAXES

Taxation in Brazil is a vast and complex field, comprising numerous federal, state and municipal taxes. The main taxes are:

(i) **Federal Taxes**: Corporate Income Tax, Import Duties, Export Tax, Tax on Manufactured Products (*"Imposto sobre Produtos Industrializados"* - "IPI"), Tax on Financial Transactions (*"Imposto sobre Operações Financeiras"* - "IOF"), Social Contribution on Profits (*"Contribuição Social sobre o Lucro")*, Contribution to the Social Integration Plan ("*Contribuição ao Programa de Integração Social* – "PIS"), Contribution to Finance Social Security ("*Contribuição para Financiamento da Seguridade Social"* – "COFINS"), and Contribution for Intervention in the Economic Domain (*"Contribuição de Intervenção no Domínio Econômico"* – "CIDE ");

(ii) **State Taxes**: Sales Tax on the Circulation of Goods and Services (*"Imposto sobre a Circulação de Mercadorias e Serviços"* - "ICMS"), Tax on Vehicle Ownership ("*Imposto sobre a Propriedade de Veículos Automotores"* – "IPVA"); and Tax on Donation and Inheritances ("*Imposto sobre Heranças e Doações*"); and

(iii) **Municipal Taxes**: Service Tax (*"Imposto sobre Serviços"* - "ISS"), Real Estate Transfer Tax (*"Imposto sobre Transmissão Inter Vivos"*) and Property Tax ("*Imposto sobre a Propriedade Territorial Urbana"* – "IPTU").

1. Federal Taxes

Corporate Income Tax (*"Imposto sobre a Renda da Pessoa Jurídica - "IRPJ"*) – The taxable profit is levied at the basic rate of 15% plus an additional rate of 10% on taxable profit that exceeds R$ 20,000.00 per month.

Basically there are two methods of calculating the taxable profit: (i) real-profit basis (a method for calculating taxable based on the accounting result with some adjustments established by tax law, including transfer pricing and thin capitalization adjustments); and (ii) presumed-profit basis (a method for calculating taxable profits based on a percentage of gross revenue).

Companies with total gross revenue in excess of R$ 48 million a year, and others required by law, must calculate real profits based on quarterly or annual balance sheets. They are not allowed to calculate this tax based on presumed profits.

If taxation is based on a quarterly balance sheet, payment of taxes will be definitive, and all rules for calculating annual profits will apply to such quarterly profit (rates, additions, provisions, offsetting losses, etc.). Income tax, in this case, may be paid in three equal, successive, monthly installments or in a single installment in the month subsequent to the quarter.

If the company opts for payment based on yearly profits (the most common and generally adopted system), these profits will be calculated from the profit-and-loss statement prepared in December, covering earnings for the entire calendar year, but the tax must be pre-paid monthly. Monthly pre-payment may be lowered or suspended if the taxpayer has

accounting evidence that the pre-paid value until that month exceeds the tax value calculated based on real profits.

Taxes assessed every month have to be paid by the last business day of the following month.

Contribution to Finance Social Security (*"Contribuição para Financiamento da Seguridade Social"* - "COFINS") – Since 1998 this tax was levied on gross revenue from the sale of goods, provision of services, or results of transactions on third parties' account at a 3% rate. As of February 1999, the taxable basis was widened to include all gross revenue (including financial income, income from varying exchange rates, etc). However, to determine COFINS, gross revenue does not include canceled sales or services and unconditional discounts, among other amounts stipulated by law.

As of February 2004, the COFINS rate applicable to most companies that calculate Corporate Income Tax on real-profit basis was raised from 3% to 7.6%. Moreover, this contribution became a non-cumulative tax, allowing taxpayers to deduct 7.6% of specific costs and expenses determined by law (inputs used to make goods, electricity used on the legal entity's premises, and others).

Some economic sectors, companies that calculate Corporate Income Tax based on presumed profits, and specific types of revenues are still subject to the cumulative COFINS system at a rate of 3%.

Social Contribution on Profits (*"Contribuição Social sobre o Lucro"* - *"CSLL"*) - This tax is owed at a rate of 9% on adjusted net income calculated monthly or annually (depending on the taxpayer's income-tax option) and is not deductible from income tax. While the basis of this tax is similar to that of corporate income tax, adjustments to calculate the taxable basis of the CSLL are sometimes different.

Tax on Financial Transactions (*"Imposto sobre Operações Financeiras"* - "IOF") – The IOF is levied on general financial transactions (i.e. those involving currency, securities, credit, gold and/or insurance). IOF tax rates vary according to the nature of the taxable transaction.

Contribution to Social Integration Plan (*"Contribuição para o Programa de Integração Social"* - "PIS") - Starting in 1998, this tax was levied on gross revenue from the sale of goods, provision of services, or results of transactions on third parties' account at a 0.65% rate. As of February 1999, the tax base was widened to include all gross revenue (including financial income, varying exchange-rate income, etc). However, to determine the tax, gross revenue does not include canceled sales or services and unconditional discounts, among other amounts stipulated by law.

As of December 2002, the PIS tax rate applicable to most companies that calculate Corporate Income Tax based on real profits rose from 0.65% to 1.65%. Moreover, this contribution became a non-cumulative tax, allowing taxpayers to deduct 1.65% of specific costs and expenses determined by law (inputs used to make goods, electricity used on the legal entity's premises, and others).

Some economic sectors, companies that calculate Corporate Income Tax based on presumed profits, and specific types of revenues are still subject to the cumulative system of the PIS contribution, at a rate of 0.65%.

Contributions for Intervention in the Economic Domain - CIDE (*"Contribuições de Intervenção no Domínio Econômico"* – "CIDE") – According to the Brazilian Constitution, the government has created several contributions for intervention in the economic domain (CIDEs):

- CIDE for the Universal Telecommunications Service Fund (FUST);
- CIDE on remittances abroad of royalties and payment of services;
- CIDE levied on the importation and marketing of petrol, oil products, natural gas and its byproducts, ethylic alcohol and ethylic alcohol fuel;
- CIDE for the Development of the Cinematographic Industry; and
- CIDE for the Telecommunications Technological Development Fund – FUNTTEL.

Import Duty – This is levied on the customs value of imported goods at different rates according to the goods tariff code in the Mercosur Tariff Schedule (TEC), which is based on the Harmonized System of the World Customs Organization (WCO). The customs value of imported goods is determined in accordance with the Customs Valuation Agreement of the World Trade Organization (WTO). As a general rule, the customs value corresponds to the invoiced value of imported goods, plus the cost of international freight and insurance. Brazil has entered into preferential trade agreements with almost all Latin American countries, and as such, imports from those countries may benefit from reduction or exemption of the import duty. Imports from other member countries of the Southern Common Market are duty free, as long as the imported item has a certificate of origin from one of those countries.

Export Tax – Only a few products are subject to the export tax, such as (i) raw hides and the skins of bovine (including buffalos), equine, sheep, or lamb; (ii) cigarettes containing tobacco (when exported to the Caribbean, Central and South America); (iii) weapons and ammunition (when exported to South America, except Argentina, Chile, Ecuador and Central America, including the Caribbean Islands). The tax is calculated on the export price of the goods.

IPI – This tax is similar to an excise tax. It is levied on most manufactured products, whether made in Brazil or imported. Although the IPI is ultimately passed on to the final consumer, it is charged on each production step or phase of independent manufacturers.

The IPI is usually levied *ad valorem*. The rates are based on the type of product. The IPI is a value-added tax. A tax credit is allowed for the tax that has been paid in the purchase or importation of the raw material and components that are used in the manufacturing process of the product to be taxed or on the resale of the imported product. In the case of imported products, the IPI is calculated on the customs value, plus the import duty.

Taxpayers with an IPI credit balance accumulated for three months may ask the Brazil Federal Revenue Department for reimbursement in cash of the accumulated amount, or its use to offset other federal taxes.

2. <u>State Taxes</u>

ICMS – The ICMS is a value-added tax. It is levied on imported and domestic products at the time the goods leave the business premises. The ICMS due on each transaction is based on the price of products sold, and a tax credit is granted for ICMS paid on the purchase or importation of the products, as it is for the IPI.

Currently, ordinary rates in the sate of São Paulo are 12% on transportation services, 18% on products imported, sold, or transferred within the state, and 25% on communication services. Other rates may also apply depending on the specific product, service or state in which the transaction occurs. Rates may also vary for interstate transactions: they are usually 12% but can be 7% depending on the state of destination; the rationale is the following: the more developed the state, the higher the rate. Interstate transactions involving products for non-taxpayers (individuals or entities not involved in merchandise commerce) trigger the ICMS at the regular internal rate of the state to which the product is being shipped.

The ICMS is also imposed on interstate and inter-municipal transportation services and communications services.

For certain products, the ICMS is due according to the tax substitution regime *("Substituição Tributária do ICMS - ICMS/ST")*, in which case the tax due on the entire commercial chain of the product shall be collected at once at the beginning (as a rule, by the manufacturer or the importer) based on estimated values determined by the government to be applicable to future taxable events.

As a rule, this system is implemented through a state agreement *("Convênio ICMS")* signed by all Brazilian states and the Federal District and is valid throughout Brazilian territory (except if one or more states decide not to implement the rule within its territory) or throughout specific protocols *("Protocolo ICMS")* signed by two or more states, in which case the system will only be valid for taxpayers located in the territory of each signatory state. However, there are cases in which one state, through a state law, may implement the ICMS/ST system for transactions within their territory or shipping products to taxpayers located in their territory.

ITCMD – The Tax on Donations and Inheritances is levied on the transfer of personal assets or rights resulting from legal or testamentary inheritance and donations. Rates vary from 1% to 8% of the fair market value of the transferred asset or right.

3. Municipal Taxes

ISS – The ISS is a municipal tax levied on all services listed in Supplementary Law 116/2003 *("Lei Complementar - LC 116/2003")*, except those subject to state taxation through the ICMS. Rates vary from 2% to 5%, depending on the municipality.

Real Estate Transfer Tax (assessed on transfers for value) – This tax is assessed on property transfers at a progressive rate that varies depending on the property value on all transfers for value of any nature, except in cases of contribution to capital stock.

Property Tax – The property tax (IPTU) is a municipal tax levied annually at a 1% rate on the appraised value of the real estate; rates vary by municipality.

It is important to mention that there is a tax reform underway that may change several aspects of tax law in Brazil.

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X - FOREIGN TRADE

1. Brazilian Customs System

1.1. Introduction

The Ministry of Development, Industry, and Foreign Trade (MDIC), a federal entity, is the governmental body in charge of setting Brazil's foreign-trade policy. Through its Foreign Trade Department (DECEX), it runs SISCOMEX, an electronic foreign-trade system that is used for all import/export transactions.

DECEX also controls the commercial aspects of foreign-trade operations. Among its activities are the analysis of import licenses and administration of the special drawback regime, which is explained below.

The Federal Revenue Department (RFB) is the main governmental body in charge of customs control and focuses primarily on customs clearance procedures and the collection of duties. Under the RFB, customs activities are managed by the Coordination of Customs Administration (COANA).

Imported goods may be subject to inspection by other governmental bodies during customs clearance procedures if they are subject to import-licensing requirements. The main governmental bodies in charge of import-licensing activities are the Ministry of Health, the National Health Surveillance Agency (ANVISA), and the Ministry of Agriculture, Livestock and Food Supply (MAPA).

Please note that Brazilian customs authorities require strict compliance with customs regulations. Even formal or minor unintentional mistakes may lead to the assessment of severe penalties.

2. Importing goods

2.1. Before you ship

2.1.1. Qualification as an importer/exporter

Prior to engaging in foreign trade, Brazilian companies must qualify as importers/exporters with the RFB. Importers and exporters have access to SISCOMEX.

In order to qualify as an importer/exporter, the company must submit an application to RADAR in the ordinary or the simplified mode. RADAR is an internal electronic system of the RFB in which the company's customs and tax information are registered. This system is used for risk management of foreign trade.

When applying for RADAR under the **ordinary mode**, a company must submit information about its operations and a forecast of the imports and exports it intends to carry out in the next six months. Based on this information, customs authorities assess whether the company has the financial capacity to execute the intended imports and exports. If their findings are positive, the company qualifies as an importer/exporter.

Companies that apply for RADAR in the **simplified mode** are not required to submit a forecast of import/export operations, and no analysis of their financial capacity is

performed by customs authorities. Companies are allowed to apply for RADAR using the simplified mode if they:

(i) were incorporated as public joint stock companies, with shares traded on the open market (stock exchange);

(ii) qualify for the Blue Line program;

(iii) exclusively place orders for importing goods with third-party importers;

(iv) only intend to import equipment (fixed assets); and

(v) intend to import goods over the next six months worth less than US$ 150,000 and to export goods during the same period worth less than US$ 300,000.

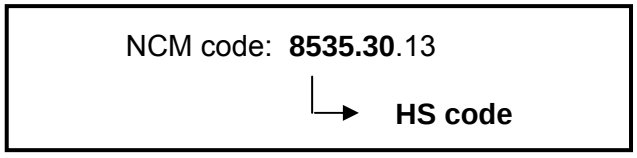
The procedure and alternatives to be qualified as an importer/exporter are provided for in RFB Normative Instruction 650/2006[4].

Please note that the individual responsible for the company at the RFB may access SISCOMEX directly and record import and export operations. Another alternative is to inform the Individual Taxpayer Registration Number (CPF) of a company's employee or a customs broker, who will have access to the system to report the operations.

2.1.2. Tax classification of imported goods

As a general rule, prior to importing goods, the importer must classify them in the Mercosur Common Nomenclature (NCM). Import licensing requirements, import duties, and IPI rates are determined based on the classification of imported goods in the NCM.

NCM is an eight-digit nomenclature based on the Harmonized System (HS) of the World Customs Organization (WCO). Hence, the first six digits of NCM are equivalent to the first six digits of any other nomenclature that is also based on the HS.



Classification of goods in the NCM is done in accordance with the General Rules for Interpretation of the Harmonized System and the Explanatory Notes of the Harmonized System.

In the event of doubts about classification of goods in the NCM, importers may file a request for ruling with the RFB. The requirements for this request are provided for in RFB Normative Instruction 740/2007[5].

[4] RFB Normative Instruction 650/2006 (http://www.receita.fazenda.gov.br/legislacao/Ins/2006/in6502006.htm).

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2.1.3. Import licensing requirements

Prior to authorizing the shipment of goods abroad, a Brazilian importer must verify import licensing requirements in SISCOMEX, which are determined in accordance with the type of importation and the imported goods' classification in the NCM.

As a general rule, imports are not subject to any import licensing. In the event that an import license becomes necessary, licensing will either be automatic, with registration of the operation in SISCOMEX (after arrival of the goods), or non-automatic (registration of the operation depends on licensing prior to shipment of the goods abroad).

The general rules on import licensing are provided for in SECEX Ordinance 25/2008[6].

2.2. Entry procedures

2.2.1. General

Import operations must be reported on Import Declarations registered in SISCOMEX. This declaration must list the customs value of the goods, the respective classification in the NCM, and other information about the import operation. Duties are calculated by the system and transferred online from the importer's bank account to the national treasury.

After the operation is reported in SISCOMEX, the importer must give the customs authorities documents that support the operation (commercial invoice, bill of lading, packing list, and certificate of origin, if applicable), and the goods are then selected for one of the channels for customs clearance.

The following channels exist for imports:

(i) the green channel, in which the goods are released without further examination;

(ii) the yellow channel, in which the documents are examined and if no problems are identified, the goods are released;

(iii) the red channel, in which the documents and the goods are examined and if no problems are identified, the goods are released; and

(iv) the grey channel, in which the goods are submitted to a special examination procedure. If no problems are identified, the goods are released.

The customs clearance procedures for importation are set out in detail in Brazilian Customs Regulations[7] and in the RFB Normative Instruction 680/2006[8].

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[5] Normative Instruction 740 of May 2, 2007. (http://www.receita.fazenda.gov.br/Legislacao/Ins/2007/in7402007.htm)

[6] SECEX Ordinance 23/2011, articles 12 to 29 (http://www.mdic.gov.br/arquivos/dwnl_1311100642.pdf).

[7] Decree 6759 of February 5, 2009, articles 542 to 579. (http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6759.htm).

(b) Indirect importation

Brazilian companies may import goods directly or indirectly (through other companies). Goods can be imported directly in the following cases:

(i) imports of goods that shall be booked as fixed assets of the importer;

(ii) imports of inputs to be used in the manufacture of products by the importer; and

(iii) imports of goods to be distributed in the country by the importer to clients.

Brazilian legislation provides for two kinds of structure to import goods through other companies: **(i)** importation on behalf of another company ("*importação por conta e ordem*"); and **(ii)** importation of goods pre-ordered by other companies ("*importação por encomenda*").

When importing on behalf of another company, the importer is just a service provider in charge of customs clearance and does not acquire title to the imported goods. The purchaser of the imported goods may advance funds to the importer to cover payment of import duties, customs expenses, etc, and shall pay the exporter directly.

On the other hand, when goods pre-ordered by a third party are imported, the importer acquires title to the goods. The company that has pre-ordered the importation may not advance funds to cover import duties, customs expenses, etc, and the importer will pay the exporter.

In both cases, it will be necessary to file at customs authorities the contracts executed between the companies prior to the first importation (service agreement in the case of imports on behalf of other companies, and a purchase and sale agreement in the case of imports pre-ordered by other companies). All companies must apply to RADAR and be qualified as an importer/exporter.

Each of the structures mentioned above to import goods is subject to a different tax treatment.

2.2.3. Blue Line ("*Linha Azul*")

The WCO Framework was the WCO's response to the threat of terrorism. Its goal is to enhance international supply-chain security in a way that does not impede, but on the contrary facilitates the movement of goods. This goal is to be achieved through increased cooperation between customs administrations in importing and exporting countries and between customs administrations and businesses.

The partnership of customs administrations and businesses consists of granting benefits, such as faster processing of goods by customs through reduced examination rates, for companies that meet minimal supply-chain security standards and best practices.

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[8] RFB Normative Instruction 680 of October 2, 2006. (http://www.receita.fazenda.gov.br/Legislacao/Ins/2006/in6802006.htm)

These companies were called "Authorized Economic Operators" within the WCO Framework. These benefits translate into savings in time and costs to companies and allow the customs authorities to focus on other companies' operations. According to the WCO Framework, each customs administration must create its own program to establish this partnership with the private sector. In Brazil, this program has been named “Blue Line”.

In order to qualify for the Blue Line, companies must undergo due diligence carried out by a private independent auditor, which must attest to the company’s compliance with customs regulations and the security standards provided by Blue Line regulations. Companies that qualify for Blue Line must present a new due diligence report every two years. The benefits are faster processing of goods by customs through reduced examination rates and the possibility of applying for the special customs program called “RECOF”, explained below.

2.3. Import Duties, Taxes, and Fees

As a general rule, goods imported into Brazil are subject to the following taxes, which must be paid by the importer upon registration of the Import Declaration:

(i) Import Tax (II): levied on the customs value of the imported good at different rates depending on the good’s classification in the Mercosur Common Nomenclature ("NCM");

(ii) Excise Tax (IPI): levied on the customs value of the imported good plus the Import Duty. The IPI rate also varies in accordance with the good’s classification in the NCM;

(iii) State Value-Added Tax (ICMS): levied on the customs value of the imported good plus the II, the IPI, and the social contributions PIS/COFINS-importation;

(iv) PIS/COFINS-importation: levied on the customs value of the imported good, plus the ICMS, normally at a combined rate of 9.25%. Some goods are subject to different rates; and

(v) Freight Surcharge for Renovation of Merchant Marine (AFRMM), calculated at a 25% rate over the cost of international ocean freight.

The customs value of imported goods is determined in accordance with the provisions of the Customs Valuation Agreement of the World Trade Organization (WTO), which states that the customs value, as a general rule, is the transaction value. If the transaction value cannot be used, alternate valuation methods provided by the Customs Valuation Agreement will be applied. Please note that, according to Brazilian legislation, international insurance and international freight costs are included in the customs value of imported goods.

The ICMS is a state tax owed on local sales and import operations. Its rates vary in accordance with the state in which the taxable event takes place, the goods being sold or imported, and the type of operation performed.

The IPI and the ICMS are normally creditable taxes. This means that, as a general rule, amounts paid in prior transactions may be offset against taxes due on

subsequent transactions. The PIS/COFINS-importation may also be creditable if the importer collects the social contributions PIS/COFINS levied on local transactions, under the non-cumulative system.

2.4. Tax Incentives

2.4.1. "Ex tarifário"

Capital goods, such as machinery and equipment, information and telecommunication goods are entitled to a reduction of the Import Duty rate to 2%, if there is no local production of similar products. This reduction can be granted only to goods classified in tariff codes marked in the Mercosur Tariff Schedule (TEC) as BK (for capital goods) and BIT (for information and telecommunication goods). It is granted through the creation of an exception ("Ex tarifário") to the TEC. The application for this reduction must be filed by the importer prior to importation, at the Secretary of Production Development ("SDP") of the Ministry of Development, Industry and Foreign Trade ("MDIC"). After the exception has been granted, it remains valid for two years, and anyone that imports such good benefits from the reduction of the Import Duty rate.

2.4.2. Drawback

The special drawback customs program is an export incentive applied under:

(i) suspension: inputs are imported with suspension of import duties. These inputs must be used to make goods that must later be exported;

(ii) exemption: the interested company shows that it has imported inputs with regular collection of taxes and has used these inputs to make goods that have already been exported. This company is allowed to import inputs with exemption of import duties in the same quantity and quality of those imported previously; and

(iii) refund: like the exemption option, the interested company shows that it has imported inputs with regular collection of taxes and has used these inputs to make goods that have already been exported. This company is refunded the import duties levied on the imported inputs.

The first two options in the program - suspension and exemption - are regulated and administered by the Foreign Trade Secretariat (SECEX). These are the most commonly used options by Brazilian companies. The third option, refund, is under the Federal Revenue Department's administration and is not currently being used owing to a need for additional regulation.

An interested company must request the special drawback program prior to importing goods with suspension or exemption of duties. In order to obtain this export incentive, a certain percentage (around 60%) of local content in the exported goods is required.

2.4.3. RECOF

Companies from the (i) aviation, (ii) automotive, (iii) computer and semiconductors, and (iv) electronic-components industries may benefit from the special

industrial bonded warehouse program (RECOF). Companies that were granted RECOF have a bonded area in their own facilities that allow them to import inputs with suspension of import taxes. These inputs must be used primarily to make products to be exported, even though 20% may be sold on the local market upon payment of all suspended taxes. In order to apply for RECOF, companies must have a specific electronic system certified by RFB to control the imports, exports, and local sales of products imported under this special regime.

2.4.4. Manaus Free Trade Zone (ZFM)

The Manaus Free Trade Zone was created to attract industries and trade to the Amazon region. All imported goods are exempt of taxes, provided that they are consumed within the free trade zone or exported abroad. Sales or transfers of these goods to other parts of Brazil result in payment duties suspended at the time of importation. Sales from other parts of Brazil to the Manaus Free Trade Zone are treated as exports.

Additionally, companies that have their industrial project approved by SUFRAMA (Superintendence of the Manaus Free Trade Zone) and perform the minimum manufacturing operations required by SUFRAMA in the zone, may sell the manufactured goods to other parts of Brazil with an 88% reduction of the Import Duty triggered on the importation of inputs. In addition to a lower Import Duty, these sales are exempt of IPI and benefit from lower rates of PIS and COFINS social contributions.

The aforementioned benefits are valid through 10/05/2023.

Companies established in the Manaus Free Trade Zone may also benefit from a 75% reduction of Corporate Income Tax (IRPJ) for a 10-year period. This benefit is granted by SUDAM (Superintendence for the Amazon Development).

These tax benefits are also applicable to certain specific areas of the Western Amazon region, which covers the states of Acre, Amazonas, Amapá, Rondônia and Roraima.

3. Regional Trade Agreements

Brazil is a member of the Latin American Integration Association (ALADI)[9], which was instituted in 1980 through the Montevideo Treaty to "promote economic and social development, harmony and balance throughout the region" (Preamble of the 1980 Treaty). As an ALADI member, all Brazilian exports to other ALADI members are granted with a minimum tariff preference, called the Regional Tariff Preference. Additionally, Brazil has entered into free trade agreements, so-called Economic Mutual Assistance Agreements ("ACE"), with several ALADI members in which higher tariff preferences were negotiated.

Brazil also executed the MERCOSUR Treaty on March 26, 1991, in Asuncion, Paraguay, which intended to constitute a common market between Brazil, Argentina, Paraguay and Uruguay. Chile, Bolivia (both since 1996), Peru (2003), Venezuela, Colombia and Ecuador (the last three in 2004) are all associate members. Venezuela has asked to join MERCOSUR as a full member, and their request is being analyzed by the member countries.

[9] Current ALADI members: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

Through Economic Mutual Assistance Agreements, the goal is to establish a free-trade zone throughout MERCOSUL and with all associate members.

Since January 1, 1995, there have not been any tariff barriers between MERCOSUR member countries, which means that products originating in one member country, sold in the other countries, are not subject to customs duties. Additionally, a customs union was established to take effect on January 1, 1995. As such, a Common External Tariff (TEC) was established with the goal of preventing cash-flow deviations in trade.

As with the European Union, the TEC is expected to act as the bedrock for the MERCOSUR integration process. This tariff will cover the majority of products imported from countries that are not MERCOSUL members, with the exception of those considered "sensitive" in their respective countries, such as capital assets, information technology, and telecommunications in Brazil.

Mercosur and India signed an Fixed Tariff Preference Agreement, which was enacted by Brazil in June 2009. Also in 2009, Mercosur signed a Trade Preference Agreement with the South African Customs Union (SACU).

Brazil, as a member of Mercosur, enacted its first free trade agreement with a non-Mercosur member, Israel. It has also signed a FTA with Egypt and more recently a FTA with Palestine. Currently, it is negotiating FTAs jointly with other Mercosur members with Jordan, and the EU.

4. Trade Remedies

After institution of the WTO in 1995, Brazil has firmly adopted the trade remedies provided by WTO Agreements. Among such trade remedies, the most commonly used in Brazil were anti-dumping measures, applied in 181 cases through December 2010. In the same period, countervailing measures were applied in ten cases and safeguard measures in six.

Brazil has also adopted the rules regarding Transitional Safeguard Measures against Chinese products, provided by the Protocol on the Accession of The People's Republic of China to the World Trade Organization. That instrument aims to limit imports of Chinese origin that enter Brazil in such increased quantities or under such conditions as to cause or threaten to cause market disruption to domestic producers of like or directly competitive products. However, for political reasons, this instrument has not yet been used.

Another instrument negotiated with Argentina is the Competitive Adaptation Mechanism ("Mecanismo de Adaptação Competitiva"), which allows limits on imports from the other country when said imports are causing or threatening to cause major injury to the domestic producers of like or directly competitive products. However, this mechanism is not yet in force, since it has not been ratified by Brazil or Argentina.

4.1. Anti-Dumping Measures

In Brazil, the imposition of anti-dumping measures is set out by Law 9019, dated of March 30, 1995, and Decree 1602, dated of August 23, 1995, which abides by the rules set forth by Article VI of the GATT 1947 and the WTO Anti-Dumping Agreement (ADA).

According to these regulations, dumping occurs when a foreign company exports products to Brazil at less than their normal value, i.e. if the export price of the exported product is less than the comparable price in the ordinary course of trade for a like product when shipped for consumption in the exporting country. If such dumping causes or threatens to cause material injury to an established industry in Brazil or materially retards the establishment of a domestic industry, Brazilian authorities may impose anti-dumping measures to offset the effects of dumping.

A dumping investigation in Brazil starts when local producers or business associations file a written petition at the Trade Remedies Department (DECOM) of SECEX (Foreign Trade Secretariat) setting out evidences of possible dumping practices of a certain company or companies in their exports to Brazil. Once accepted, the merits of the petition will be reviewed and an investigation will be initiated. Investigations must be concluded within one year from the start date, subject to an additional six-month extension under special circumstances.

Prior to conclusion of the proceeding, but never before sixty days from the initiation of investigations, national authorities may impose provisional measures on imports of the product under investigation, providing that: (i) all parties have expressed their opinions about the petition; (ii) dumping and injury to the domestic industry are affirmatively determined on a preliminary basis; and (iii) authorities understand that such measures are necessary to prevent any injury during the course of the investigation.

During the investigation, the exporter may undertake satisfactory obligations to adjust prices or to cease exporting at dumping prices. SECEX should accept and CAMEX (Foreign Trade Chamber) must approve this undertaking. In this case the dumping proceeding may be terminated or suspended with no imposition of duties.

Anti-dumping duties and price undertakings proposed by exporters will remain in force only as long as the need exists to mitigate dumping and the resulting injury. However, these duties will cease five years following imposition, subject to extension if there is evidence that extinction of such duties could result in dumping and injury to domestic industry.

4.2. Safeguard Measures

The imposition of safeguard measures in Brazil is governed by Decree 1488, dated of May 11, 1995, which abides by the rules set forth by Article XIX of the GATT 1947 and the WTO Agreement on Safeguards (SG Agreement).

As provided for in GATT Article XIX, a safeguard measure may be imposed on a product only if that product is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to domestic industry. Unlike anti-dumping, safeguard measures seek to protect national industry irrespectively of any unfair any trade practice and its origin. It is applied when the domestic industry shows no competitiveness compared to foreign products.

During a safeguard investigation the interested parties will have the opportunity to submit any evidence that might be relevant to the investigation. Moreover, hearings may be scheduled.

Safeguard measures will remain in force only to the extent necessary to prevent or to remedy serious injury and to facilitate adjustment of the domestic industry. However, such

measures will cease four years following imposition. These measures may be extended if there is evidence that: (i) they are still necessary to prevent or to remedy serious injury, and (ii) the domestic industry is not adjusting in accordance with the agreements settled with the government.

4.3. Subsidies and Countervailing Measures

The application of countervailing measures in Brazil is governed by Law 9019, dated of August 23, 1995, which is based on the WTO Agreement on Subsides and Countervailing Measures (ASCM).

Countervailing measures seek to offset subsidies granted by a state to certain companies or sectors that end up artificially lowering their production costs. The imposition of countervailing duties depends on the conclusion, during an investigation, that the subsidy granted by another state results in injury to domestic industry.

Countervailing duties remain in force only as long as needed to mitigate or to prevent material injury. However, these duties will cease five years following imposition, subject to extension if there is evidence that the extinction of such duties could result in injury to national industry.

4.4. Anti-Circumvention

Recent legislation[10] has created the possibility of extending antidumping or countervailing measures to other countries, and to parts and components of the products under those measures, if circumvention is determined.

According to this Resolution, circumvention is considered to be: (i) the introduction of parts, pieces or components whose industrialization results in a product alike in all aspects to the product subject to the trade remedy measure or to another product, which although not alike in all aspects, has characteristics closely resembling those of the product subject to the trade remedy measure; (ii) the introduction of a product resulting from manufacturing operations, in third countries, of parts, pieces and components originated in or from the country subject to the trade remedy measure; and (iii) the introduction of the product with minor modifications which do not alter its use or final destination.

A manufacturing operation will be considered circumvention when: (i) after the initiation of the procedure that resulted in the application of the trade remedy measure in force, it is observed the beginning of an industrial operation, or its substantial increase, with parts, pieces or components of the product originated in or from the country subject to the trade remedy measure; and (ii) the parts, pieces or components originated in or from the country subject to the trade remedy measure in force represent 60% (sixty per cent) or more of the total value of the parts, pieces or components of the product. Circumvention shall not be considered to be taking place when the value added in the manufacturing operation is greater than 25% (twenty five per cent) of the cost of manufacture.

The circumvention investigation can be initiated by request of any interested party of the original investigation, such as the domestic industry, producers, the

[10] CAMEX Resolution 63, 17 August 2010 and SECEX Administrative Ordinance 21, 25 October 2010.

government of the exporting country, Brazilian importers, companies responsible for the manufacturing operation, other parties defined by DECOM, or by SECEX.

Once accepted, the merits of the petition will be reviewed and an investigation will be initiated. The investigations must be concluded by DECOM within six months from the start date, subject to an additional three-month extension under special circumstances.

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XI - INVESTMENT INCENTIVES

1. SUDENE Area

Investment in the northeast of Brazil using an agency called SUDENE ("*Superintendência do Desenvolvimento do Nordeste"*) may be made based on an investor's own project or a third party's project. Industrial and agricultural companies seeking to establish a business venture in the SUDENE area must submit a proposal to the agency, which, after approval, will entitle them to the following financial and tax incentives:

(i) Financial support from the Northeast Investment Fund ("*Fundo de Desenvolvimento do Nordeste*");

(ii) Income tax reduction;

(iii) Import Duties and IPI exemption or reduction in imports; and

(iv) State and municipal incentives.

Legal entities are allowed to invest a portion of their corporate income tax in shares of the Northeast Investment Fund instead of making payments to the federal government. Said Fund will then invest in the subscription of shares of companies installed in the SUDENE area. A legal entity or group of legal entities that individually or jointly control the voting capital of a company located in the ADENE area may allocate its income tax reduction as investment to that controlled company.

2. SUDAM Area

Investment in the area of the agency called SUDAM ("*Superintendência do Desenvolvimento da Amazônia")* is similar to that in the SUDENE area. SUDAM is located in the north of Brazil, primarily in the Amazon region, and has the financial support of the Amazon Investment Fund ("*Fundo de Desenvolvimento da Amazônia*").

3. Manaus Free Zone

It is possible for any company to establish an affiliate in the Manaus Free Zone, which may benefit from an exemption of Import Duties on imported goods for internal consumption in the Free Zone, and for any level of industrialization and storage of imported goods that are subsequently exported.

Depending on SUFRAMA's prior approval of a specific project, it is also possible to import raw material, parts, and components without paying import duties and IPI, provided that said goods are used to make products listed in the manufacturer's project in accordance with the basic productive process established by the tax authorities for said products. When the final product leaves the Manaus Free Zone to be traded into the country, the import duty due to import raw materials, parts, and components is paid with an 88% reduction.

4. Tax Incentives for Technological Innovation

There are federal tax incentives in Brazil created by the government to stimulate research and development of technological innovation in the country.

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For such tax incentives purposes, the law considers technological innovation the conception of a new product or industrial process, as well as the inclusion of new features or characteristics into the product or industrial process involving incremental improvements and effective gain in quality or productivity, resulting in more competitiveness in the market.

Some of the main federal tax incentives for technological innovation established by the Brazilian tax legislation (mainly Law 11196/05) are commented below:

a) Special deduction of expenditures with technological research and development of technological innovation for corporate taxes (IRPJ and CSLL) purposes (i.e. deduction of more than 100% of the effective expense).

b) 50% reduction of IPI (Federal Excise Tax) on equipment, machinery, devices, instruments and spare parts and tools related to such goods, to be used in research and technological development.

c) Accelerated depreciation in relation to new machinery, equipment, devices and instruments to be used in research and technological development, for corporate taxes (IRPJ and CSLL) purposes

d) Accelerated amortization of expenditures with the purchase of intangible assets exclusively related to the technological research and development of technological innovation for IRPJ purposes.

e) Zero Rate of Withholding Income Tax (WHT) - Trademarks, Patents and Cultivars: zero rate of WHT levied on remittances abroad for the registration and maintenance of trademarks, patents and cultivars.

f) Deduction of donations destined to projects carried out by Scientific and Technological Institutions (ICT): exclusion of the net profit, for corporate taxes purposes (IRPJ and CSLL), of up two and a half times the expenditures of money with scientific and technological research and technological innovation projects carried out by ICT. Note: such tax incentive may not be combined with the tax incentives mentioned in items "a" to "e" above and with other specific deductible donations allowable by law.

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XII - COMPETITION LAW

1.1. Introduction

The new Brazilian Antitrust Law, enacted under no. 12,529 on November 30, 2011, was published in the Official Gazette on December 1st, 2011. After a long period of discussions, the Bill submitted to Congress in 2004 was finally sanctioned by the President.

The main changes implemented by the new law aim to update the Brazilian competition system to international standards, expediting the course of the administrative proceedings, providing more legal certainty to the business environment and contributing to the economic and social development of the country.

The new Brazilian Competition Law thus creates the so called *SuperCADE*, which unifies the discovery and trial duties currently shared by the Secretariat of Economic Monitoring (SEAE), the Secretariat of Economic Law (SDE) and the Administrative Council for Economic Defense (CADE). Within the new framework, SDE's activities will be carried out by the General Superintendence, while SEAE will become responsible for competition advocacy. With the duties' unification, CADE will be comprised of the Administrative Tribunal of Economic Defense, the General Superintendence and the Economic Studies Department, as well as the Federal Prosecuting Attorney's Office with activities connected to the Tribunal.

In line with the former diploma, the new Brazilian Competition Act applies to all individuals and legal entities that conduct business in the Brazilian territory and those abroad, to the extent that their conduct may produce any effect in the Brazilian market.

1.2. Merger control

The most significant change to the implementation of the new law lies in the modification of the merger control system, which formerly required notifications *ex post*, to a pre-merger notification system, following the trend in most jurisdictions that adopt competition defense legal regimes. Thus, the companies must submit their transactions to CADE and wait for a favorable decision before taking any measures aiming the implementation of the deal.

With regard to the revenue criterion for mandatory submission of transactions to CADE, although the approved text preserved the threshold of R$ 400 million by the former law for one of the groups involved, it introduced a *de minimis* exception, whereby at least another group involved in the transaction must have a revenue of R$ 30 million, in Brazil. The market share criterion for submission has been finally abolished. In addition, on May 31, 2012, a Joint Ordinance of the Ministry of Finance and Ministry of Justice determined an increase in the thresholds for mandatory submission to R$ 750 million and R$ 75 million, respectively.

Thus, the new Brazilian Competition Act provides that it shall be submitted to CADE, by the involved parties in the transaction, any economic concentration acts in which (i) any of the entities involved, or the respective group of companies to which they belong, had minimum sales or volume of business in Brazil, during the preceding fiscal year, equal or in excess of R$ 750 million, cumulatively with (ii) minimum sales or volume of business in Brazil, by any other entity involved, or their respective group of companies, during the preceding fiscal year, equal or in excess of R$ 75 million.

The new law sets forth that the maximum term for the analysis to be carried out by the competition authorities is of 240 days, which could be extended for up to 60 days at the parties' request, or up to 90 days at CADE's request. CADE's Internal Ruling provides for the automatic approval of transactions which are not reviewed within the legal period referred herein.

With respect to merger reviews, the General Superintendent is also entitled to grant clearance on transactions which do not pose competition issues without their submission to CADE's Tribunal. Under such circumstances, the Tribunal's right to arrogate jurisdiction and review the transaction is preserved, as well as third parties' right to challenge the decisions from the Superintendent before the Tribunal.

The new Brazilian Competition Act also provides for a clear definition of what is to be considered a "concentration act" under the new regime, and therefore, must be submitted to CADE's review: (i) the merger of two or more independent companies; (ii) the acquisition of one or more companies, directly or indirectly, through a purchase or exchange of shares, quotas, bonds or securities convertible into shares, or assets, tangible or intangible, through a contract or otherwise, the control of the interest in one or more companies; (iii) the takeover by one or more companies of another company; and (iv) the association, consortium or joint venture between two or more companies, except when such contracts are entered into for a specific enterprise and for a determinate period, or in cases of public bids.

The new legislation determines that concentration acts subject to mandatory submission to the authorities may not be implemented prior to CADE's decision, under penalty of nullity. Failure to respect the mandatory waiting period shall result in a fine ranging from R$ 60,000.00 to R$ 6,000,000.00, in addition to the administrative proceeding to review the competition aspects of the transaction. Thus, submissions must be performed, preferentially, after the execution of a binding document between the parties and prior to its implementation, and the parties shall maintain unaffected the physical structures and competitive conditions between them. The parties are therefore prevented from promoting any assignment of assets or exercise of influence from one to another, as well as sharing of sensitive information which are not strictly necessary for the execution of the binding documents.

Nevertheless, it shall be possible for the parties to request a precautionary authorization from the Reporting Commissioner for the implementation of the transaction, provided that the circumstances of the case so require and the conditions for the preservation of the reversibility of the transaction are maintained.

Concentration acts which may result in the exclusion of competition on a substantial part of the relevant market, or which may create or strength a dominant position or result in the domination of a relevant market, shall be prohibited. Nevertheless, a transaction may be authorized provided that the strict limits required for the achievement of the following objects are observed, alternatively or cumulatively: (i) increase of productivity or competitively; (ii) increase in the product or service quality; or (iii) the increase of efficiency and technological and economic development, a relevant part of which shall be shared with consumers. While analyzing the transaction, the SBDC will take into consideration any of such efficiencies.

Finally, in case where potential anticompetitive effects are identified, it shall be noted that CADE's tradition is to conditionally approve transactions rather than simply blocking them, requiring the parties to execute a so-called *Performance Commitments Term* (TCDs).

1.3. Competition Infringements

The Brazilian Competition Act sets forth, in its article 36, that any act, intended or otherwise, able to produce the following effects, even if any such effects are not achieved, shall be deemed a violation of the economic order: (i) to limit, restrain, or in any way harm free competition or free enterprise; (ii) to control a relevant market of a certain product or service; (iii) to increase profits on a discretionary basis; or (iv) to abuse a dominant position in a certain market. Conduct is analyzed on a case-by-case basis using a rule-of-reason approach.

In turn, paragraph 3 of article 36 of the same law provides for a non-exhaustive list of conducts that may constitute a violation of the economic order to the extent that they may produce any of the effects mentioned in article 36 referred to above, such as: (i) price fixing; (ii) territorial and client-base restrictions; (iii) exclusivity agreements; (iv) refusal to deal; (v) tie-in arrangements; (vi) price discrimination, among others.

The Brazilian Competition Act sets forth fines for the involved companies ranging from 0.1% to 20% of the revenue in the business activity segment involved, in the year prior to the opening of the administrative process. CADE's Resolution No. 3, published on May 31st, 2012, provides for a list of the business activity segment which shall be taken into consideration for the application of article 37 of the law.

With respect to personal administrative fines for managers, the new law provides for a range of fines from 1% to 20% of the fine applied to the company. Also, in the case of associations, the applicable fine ranges from a minimum of R$ 50,000.00 and a maximum amount of R$ 2,000,000,000.00.

In addition to the pecuniary fines set forth above, and considering the gravity of the violation, the following may also apply: (i) at the violator's expense, half-page publication of the summary of the sentence in a court-appointed newspaper for two consecutive days, from one to three consecutive weeks; (ii) ineligibility for official financing or bidding processes involving purchases, sales, works, services or utility concessions with the federal, state, municipal and the Federal District authorities and related entities, for a period equal to or exceeding five years; (iii) compulsory licenses for patents held by the violator; (iv) the company's spin-off, transfer of corporate control, sale of assets, partial discontinuance of activities; among others.

A plea agreement (*Agreement for Cease of Conduct* – TCC) may also be entered into with CADE to anticipate termination of the administrative proceeding. The settlement may include acknowledgment of guilt and the obligation to assist the authorities in pursuing co-participants. The defendant may also be required to pay a contribution in exchange for conclusion of the investigations.

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1.4. Criminal Aspects

In addition to the Competition Act, Law 8137/90 (the "Criminal Act") states that a crime against the economic order occurs in the event of abuse of economic power through domination of the market or elimination of competition in part or in full, by means of agreements or alliances among competitors, with the purposes of (a) artificially fixing prices or outputs; (b) regionally controlling the market by company or group of companies; and (c) obtaining control of the distribution or supply network to the detriment of competition.

Thus, the new Brazilian Competition Act decriminalizes several conducts formerly listed under article 4 of the Criminal Act, limiting criminal enforcement to collusive practices – cartels - in line with relevant jurisdictions. The penalties under the Criminal Act range from two to five years of imprisonment, plus a pecuniary fine.

1.5. Leniency Programs

The Leniency Program, first introduced in Brazil in 2000, may be entered into by any individual or legal entity involved in competition infringement practices and results in full or partial immunity.

Leniency settlements are increasingly being negotiated in Brazil concurrently with other jurisdictions. This is the result of increasing cooperation between authorities, as they have enlarged information sharing, especially with respect to international cartels. Increasing fines are also calling companies' attention to the Brazilian Leniency Program.

The requirements for granting full immunity under Brazilian law are similar to those observed under the North American legislation. The main conditions for full immunity are: (i) the company or individual ("Beneficiary") shall be the first to inform the violation; (ii) the Beneficiary shall cease his/her involvement in the infraction completely, as of the date of the proposal; (iii) SDE shall not have sufficient evidence to file charges against the companies or individuals at the time of the proposal; (iv) the Beneficiary must admit participation in the violation and provide full/permanent cooperation with the investigation; and (v) the Beneficiary shall cooperate with the investigation in ways to identify all other co-participants and collect information and documents to prove the violation.

In the event that all legal requirements mentioned above are met, the Beneficiaries, companies, or individuals shall be granted full immunity (including from administrative and criminal penalties). If requirements are partially met, partial immunity will be granted (varying from one- to two-thirds of the applicable penalty).

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XIII - INTELLECTUAL PROPERTY RIGHTS

1. General Overview

Intellectual property in Brazil denotes not only industrial property rights but also other rights related to creations of the mind, such as copyright and software.

Industrial property rights in Brazil encompass trade and service marks, certification marks and collective marks, patents of invention, and utility model patents, technology transfer, industrial designs, franchising, technical and scientific services, protection against unfair competition, and other rights following the definition of "industrial property" introduced by the Paris Convention.

Industrial property is mainly regulated by the Brazilian Industrial Property Law (Law 9279 of 1996), the Paris Convention, and its Stockholm Revision, several norms issued by the National Institute of Industrial Property ("*Instituto Nacional de Propriedade Industrial*" - "INPI"), and the Central Bank of Brazil. Industrial Property Law 9279 of 1996, which entered into force on May 15, 1997, consolidated the various rules governing the subject and introduced changes to the current protection of industrial property rights in Brazil.

The INPI is the federal agency in charge of regulating and registering patents, trademarks, and industrial designs as well as of approving licensing agreements and any other agreements involving industrial property rights as mentioned above.

2. Trademarks

As stated, Brazil is a signatory of the Paris Convention, and therefore, trademarks which have been registered with the appropriate governmental agencies of other signatory countries have priority in being granted local registration and protection. However, if a foreign holder applies for registration of a trademark in Brazil without a priority claim, as established in the Paris Convention (within six months of the foreign application), then priority protection from the Paris Convention for the interim period of time before application in Brazil will not be granted.

In order to be registered, the trademark must be new, lawful, and cannot be similar or identical to previous applications or registrations, nor may it be an expression of common use or a generic expression.

Trademark protection in Brazil is obtained by registering the trademark with the INPI. However, Law 9279 introduced an exception to this rule: for well-known trademarks, including service marks, special protection is granted, regardless of whether or not they have been registered in Brazil. This provision is aimed at protecting holders from piracy of well-known trademarks that are registered outside of Brazil, but not in Brazil. It also reinforces the protection of Article 6 *bis* of the Paris Convention, which has long granted protection for well-known trademarks regardless of their registration.

Registration of a trademark is valid for a period of ten years and is renewable for successive ten-year periods. The extension must be requested during the last year in which registration is in effect (called the ordinary term) or within a 6-month period after the ordinary term (called the extraordinary term) against payment of a surcharge. A trademark

registration may be cancelled if it is not used for five years from the date of its registration, or if its use is interrupted for more than five consecutive years.

Trade names in Brazil are not governed by the Industrial Property Law, and therefore are not subject to registration with the INPI. Trade names are regulated by the Paris Convention, which assures protection to the owner of a trade name in all signatory countries, without filing or registration obligation, as well as by specific regulations issued by the National Department of Commerce Registry (*"Departamento Nacional do Registro do Comércio")* which require the registration of trade names with the Commercial Registry. Even though the Paris Convention demands that the protection of trade names shall be afforded throughout Brazilian territory, the new Brazilian Civil Code in force since January 11, 2003, states that protection of corporate names is limited to the Brazilian state where the company is registered. However, there is a special provision of law that allows a company to expand its trade name protection to other states in Brazil by submitting special requests at the commercial registries of each state where protection is desired.

2.1. Trademark Licensing Agreements

Trademarks may be subject to licensing agreements, provided that they are registered or in the process of registration with the INPI in the name of licensor.

3. Patents

Industrial Property Law establishes two types of patents: patents of invention and utility model. For both kinds of patents, the law requires that the purpose or the process to be patented results in an inventive procedure, is new, and has an industrial application.

Patent protection is obtained by registering the patent with the INPI. Registration is valid for a period of twenty years for inventions, or fifteen years for utility models, both as of the filing date of the patent.

As informed above, to be patentable an invention must be new and capable of use in industry. An invention is considered new when it is not part of the "state of the art". The "state of the art" includes all data and information made available to the public in Brazil or abroad written or verbally, by use or by any other means, before the filling or priority date. It includes the contents of patents in Brazil and abroad. An invention is capable of industrial use when it can be made or used in industry, including agricultural industry.

The patent holder must use the patent in Brazilian territory within three years from the grant date in order to avoid the possibility of having its patent subject to mandatory licensing to a third party. A patent can also be subject to mandatory licensing if its owner exerts his rights in an abusive manner or whenever the sales volume of the patented products does not meet local market requirements.

3.1. Patent Licensing Agreements

Patents may be the subject of a licensing agreement if they are registered with the INPI or in the process of registration in the name of licensor.

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4. Industrial Designs

Any ornamental shape of an object, or the ornamental combination of outlines and colors applicable to a product, which result in a new visual effect, may be considered an Industrial Design.

Granting an industrial design, unlike patent regulation, is not subject to prior examination by the INPI regarding its merit. Registration is immediately published and granted by the INPI if the application complies with all legal requirements. However, the applicant may, at any time, request examination by the INPI as regards the novelty and originality of its industrial design.

Registration is valid for a period of ten years as of the filing date, and can be extended for three consecutive five-year periods.

4.1. Industrial Design Licensing Agreements

Industrial designs may be subject to a licensing agreement if they are duly registered with the INPI or in the process of registration in the name of licensor.

5. Technology Transfer

Technology in Brazil is defined as know-how not protected by a patent. The basic concept of the Brazilian rules with regard to the use of technology by a Brazilian party has been that technology is subject to "transfer" to a Brazilian party rather than to a "license", since 1975 due to the former (and revoked) INPI Normative Act 15. In other words, technology may be "sold" but not "licensed". In consideration of the "sale", the supplier may be entitled to certain fees during the term of the agreement, but the recipient should be free to use the technology after expiration of the agreement.

The INPI has traditionally approved technology-transfer agreements for a five-year period. Payment of fees as well as the deduction thereof for tax purposes is restricted to the five-year period of the agreement (see Article 354, § 1 of the Income Tax Regulation instituted by Decree 3000/1999). This term may be extended for an additional period of five years upon the INPI's approval and authorization from the National Monetary Council.

6. Franchising

Franchising is defined as a system by which a franchisor grants a franchisee the right to use a trademark or patent, along with the right to the exclusive or semi-exclusive distribution of products or services, and possibly also the right to use the technology of implementation or management of related business or operational system developed or retained by the franchisor.

Law 8955, enacted in 1994, known as the Franchising Law, regulates the terms of a franchising agreement in a generic way, clarifying the relationship between franchisor and franchisee. This legislation created what is called the "Franchise Offering Circular". This document discloses to the potential franchisee a more-detailed description of the franchise in which the franchisee intends to engage, as well as information about the franchisor, both of which are crucial elements for the franchisee to consider whether or not to engage in the business investment.

A franchisee may cancel the franchising agreement even after it is signed if the Franchise Offering Circular procedure is not observed. In this regards, for instance, it is required that an offer letter be delivered by the franchisor to the franchisee at least ten days prior to signing the franchise agreement or payment of any fee by the franchisee to the franchisor.

6.1. Franchising Agreements

Franchising agreements executed between a local franchisee and a foreign franchisor must be registered with the INPI to receive the benefits described below, if they contain trademark licenses and/or patent, technical assistance, and/or other forms of technology transfer that would be necessary to achieve the objectives of the agreement.

7. Registration

As a general rule, agreements relating to industrial property rights must be approved by and registered with the INPI for the following purposes:

(i) Remittance of royalties abroad, in which case the agreement must also be registered with the Central Bank;

(ii) Deductibility of payments as operational expenses for Brazilian income tax purposes. In this case, registration at the Central Bank is also necessary; and

(iii) Enforcement of the obligations *vis-à-vis* third parties.

As regards item (iii) above, registration of a licensing agreement with the INPI is not mandatory for documents issued by the licensee to prove the use of licensed trademarks or patents to be accepted as proof of actual use by the INPI, in the event of cancellation on the grounds that lack of use is requested by a third party.

8. Software

Software is regulated by Law 9609, known as the Software Law, enacted on February 19, 1998. The law contains provisions regarding: (a) copyright protection for software; (b) the rules for marketing software; and (c) the penalties imposed in case of infringement of software copyrights and marketing.

“Software” or “computer programs” are defined as "the expression of an organized set of instructions in natural or codified language embedded in physical media of any nature to be necessarily used in automated machines to handle data, devices, peripheral instruments or equipment, based on digital or analogous techniques to make them operate in a specific manner and for specific purposes."

The law grants authorship protection for software programs for fifty years from the first of January of the year following the software’s publication or, in the absence of publication, fifty years from the date of the software's creation.

In terms of protection for foreigners, the law applies the international principle of reciprocity. Protection is extended to foreigners domiciled outside Brazil, as long as the country where the software was created grants the same rights to Brazilians.

The aforementioned Software Law 9609 determines that authorship of the software is already assured, regardless of its registration. However, the author may pursue registration of the software with the INPI in order to allow the shift of burden of proof in civil procedures. Registration can be requested on a secret or non-secret basis.

9. Copyright

Copyright protection extends to original works of authorship in any tangible form of expression, such as books, letters, conferences, music compositions, cinematography works, photographs, translations and any other kind of transformation of the original works, drawings, paintings, printings, sculptures and other tangible forms thereof.

Copyright is regulated by Copyright Law 9610, enacted on February 20, 1998, which protects and regulates all creative works of inspiration. Additionally, Brazil is a signatory to two other major international treaties, the Berne and Geneva Conventions.

Copyright ownership is vested in the author of the work (or contributors if developed jointly). The duration of a copyrighted work is for the entire life of its author, and seventy years thereafter. If the work is created by two or more authors, the duration of seventy years starts after the death of both authors.

Copyright registration is not a prerequisite for obtaining protection. Registration is always helpful to deter piracy, and as proof of ownership in case of litigation. In this case, the author may register his/her work with specialized entities in accordance with the nature of the work.

10. Tax Aspects

10.1. Withholding Income Tax (IRRF)

As a general rule, the payment (credit, delivery, employment or remittance) of royalties or fees abroad under intellectual property rights agreements are subject to withholding 15% in income tax (or a 25% rate if the beneficiary is domiciled in a "low tax jurisdiction" as defined by Brazilian tax law).

The IRRF is an ordinary burden on the beneficiary of the payment abroad, and, as a rule, it is deducted from the amount to be paid. Nevertheless, the parties may formally agree that the Brazilian payer will assume the burden of the IRRF owed by the beneficiary domiciled abroad. In this situation, Brazilian tax legislation establishes that the Brazilian payer must gross up the IRRF tax basis.

Amounts withheld in Brazil as IRRF may generate credits for the beneficiary domiciled abroad that may offset its foreign income tax, if such provision is contained in a treaty to avoid double taxation between Brazil and the beneficiary's country, or if it has been provided for in the legislation of the country to which remittance is being sent.

10.2. Contribution for Interference with the Economic Order (CIDE)

CIDE is levied on the payment (or credit, delivery, remittance or employment) of remuneration to parties domiciled abroad, related to **(i)** supplying technology, **(ii)** providing technical support (i.e., technical support services or specialized technical services) with or without technology or know-how transfer, **(iii)** transferring and licensing trademarks and **(iv)**

transferring and licensing to exploit patents; **(v)** administrative assistance and those of similar nature; and **(vi)** royalties of any kind.

CIDE is not levied on payments related to software licenses, unless the source code of the software is provided to the payer (in which case the agreement is considered technology transfer, according to the Brazilian legislation).

Payment of the CIDE is incumbent on the company domiciled in the country, given that, unlike the IRRF, this contribution is due by the payer domiciled in Brazil and not by the foreign beneficiary.

Amounts paid on account of royalties for use of trademarks or patents are benefited with a credit of 30% of the CIDE paid, to be used in further operations of the same nature. Such credit is valid until the end of 2013.

10.3. PIS/COFINS-Importation

The PIS/COFINS-Importation is levied on the importation of services (and also importation of goods) at a joint rate of 9.25%. Services subject to these taxes include those performed in Brazil or abroad, whose results are verified in Brazil. The taxable basis of PIS/COFINS-Importation taxes is the amount paid (or credited, delivered, used or remitted) abroad before the withholding income tax (IRRF) deduction, plus the Services Tax (ISS) and the PIS/COFINS-Importation tax amounts. If the Brazilian company is under the non-cumulative system and if the "services" imported could be regarded as inputs used or consumed in the company's core business, then PIS/COFINS-Importation collected may be offset against PIS and COFINS accruing on the Brazilian company's monthly revenue.

The levy of PIS/COFINS-Imports on payments abroad as intellectual property rights used to be a controversial matter in Brazil. Because most of the agreements involving intellectual property rights does not involve a "to do" obligation (but the mere license of rights), there are legal grounds to sustain at courts that these specific transactions do not characterize a service rendering and should not subject to the levy of PIS/COFINS-Imports.

Just recently tax authorities rendered an administrative decision to unify the understanding of tax authorities regarding the levy of PIS/COFINS-Imports on payments of royalties abroad (Decision Cosit nr. 11/11). According to such decision agreements involving the payment of royalties are not subject to PIS/COFINS- Imports, provided that the amount of royalties charged in the respective agreement is segregated from other amounts charged as technical services technical assistance and other services rendered under the same agreement

10.4. Services Tax (ISS)

The Services Tax (ISS) is a municipal tax levied on the provision of services at a range of 2% to 5%, depending on the nature of the service and the location (municipality) of the Brazilian company. The ISS is also levied on imported services, in which case the payer is responsible for collecting ISS due on service importation. Some intellectual property rights were included in the list of services subject to ISS (such as trademark license, software license and franchising). Because these agreements in general do not involve a performance obligation (but the mere licensing of rights), there are legal grounds to sustain in court that the ISS should not be due in these cases.

10.5. IOF tax

Currency transactions to pay royalties or fees abroad are subject to the Tax on Financial Transactions (IOF) at a 0.38% rate. The IOF taxpayer is the Brazilian company that pays the funds abroad, but the Brazilian bank in charge of the currency exchange is responsible for collection and payment.

10.6. Deductibility

As a general rule (applicable to any and all expenses), only necessary, usual and regular expenses made in connection with a company's business may be deducted from the tax basis of Corporate Income Tax (IRPJ) and the Social Contribution on Net Income (CSLL).

In addition to the general deductibility rule above, Brazilian income tax legislation establishes specific conditions and limits for the deductibility of certain intellectual property rights expenses. These specific conditions for tax deductibility should be analyzed on a case-by-case basis. But as a general rule, the deduction of royalties for the use/exploitation of patents, technology supply (including software licensing agreements with assignment of the respective source code considered technology transfer) or technical support, is limited to 1% to 5% of the net sales price of the product (or services) connected to the patent, technology supply, or technical support. This 1% to 5% limit varies in accordance with the business and the essentiality of the product/service to the Brazilian economy, as per Finance Ministry Ordinance 436 of 1958 (and amendments). Royalties deductions for the use of trademarks are limited to 1% of the net sales price of the products (or services) bearing the trademark, when the trademark is not connected to technology supply, technical support, or patent exploitation. The deduction of royalties for the use/exploitation of patents, trademark, technology supply, or technical support also depends on registering the respective agreement at the National Institute of Industrial Property (INPI) and the Central Bank of Brazil. Please note that deduction of the royalties mentioned herein is not subject to Brazil's transfer pricing rules.

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XIV - ENVIRONMENTAL LAW

1. Overview of Environmental Law

Historically, Brazilian regulations of environmental protection were created to address the various spheres of economic activity in the country. Consequently, there were regulations regarding the use and exploitation of core natural resources such as forests (Brazilian Forestry Code - Law 4771/65); minerals (Mining Code – Decree-Law 227/67); Fisheries (Decree-Law 221/67); hunting in general (Hunting Code - Law 5197/67), water usage (Water Code - Decree 24643/34) and a national policy for the use of water resources (Law 9433/97). Several states adopted legislation to further regulate the use of water resources, imposing payment for such use.

The development of environmental concerns worldwide and the enactment of numerous international agreements resulted in a growing consciousness in Brazil bringing about the adoption of a National Policy Law for the Environment (Law 6938/81), which was crowned with the approval in the Brazilian Constitution of 1988 of a whole chapter addressing environmental issues. One could say that environmental protection as it is mirrored in legislation countrywide was ultimately consummated with the enactment of the National Environmental Criminal and Administrative Law (Law 9605/98), which was further regulated in 2008 by Decree 6514/2008.

In 1985, another important law was enacted: Law 7347/85, which created Public Civil Actions. Similar to American class actions, the Brazilian law allows the public prosecutors to file lawsuits aimed at protection of the environment, and it bestows standing to non-governmental agencies to bring suits under its terms.

At present, regulations regarding environmental protection in the country abound. They range from nuclear-damage penalties to coastal-management rules or from the creation of conservation units to the requirement to implement environmental-education systems in schools, among others. Additionally, the states and sometimes the municipalities (when there is a local and specific interest) throughout the country are empowered to implement their own regulations regarding environmental protection and the use of natural resources at state and local levels.

2. Main requirements applicable to industrial activities

With regard to industrial activities, applicable regulations generally require environmental licenses and permits *prior* to the commencement of a company's activity.

As for pollution-control systems, they are implemented to a large extent in industrialized centers like the states of São Paulo and Rio de Janeiro. Both the lack of environmental permits and the act of polluting can be deemed criminal acts and trigger criminal sanctions in addition to administrative penalties (warnings, fines, interdiction of the company's activities among others), and civil sanctions (obligation to recover or compensate environmental damages).

3. Environmental Liability

Environmental liability, under Brazilian law, may occur in three different independent levels: (i) civil, (ii) administrative, and (iii) criminal.

It is said that the three spheres of liability mentioned above are "different and independent" because, on the one hand, one sole action by the offender may generate environmental liability at the three levels: civil, administrative, and criminal, and applicability against it of three different sanctions. On the other hand, the absence of liability in one of those spheres does not necessarily exempt the offender from liability in the others.

Environmental civil liability results from action or omission of the offender that results in environmental damage of any kind and is characterized as a modality of strict liability. Such liability results in the civil penalty of repairing or indemnifying for the damage caused to the environment and consequent damage to third parties.

Administrative liability results from an action or omission of the offender that involves violation of a rule of environmental protection, irrespective of fault or actual occurrence of environmental damage.

Finally, criminal liability depends on a finding of fault or malice of the offender, and occurs by the action or omission of an individual or legal entity that is typified in criminal law.

With regard to environmental liability, two more national rules are worth mentioning: strict liability and joint liability. The general provisions concerning environmental liability in Brazil provide for strict liability, i.e., sanctions are imposed regardless of fault. Joint liability will be mostly acknowledged in circumstances of outsourcing the transportation and final disposal of waste/residues, or in case of contaminated areas when there is more than one agent responsible for the same environmental damage.

Specifically in connection with licensing, on 2011 became effective the Supplementary Law No. 140/2011, which has established new parameters regarding jurisdiction, setting the roles of each federative entity at federal, state and municipal levels. The new legislation determines, for instance, that environmental licensing shall be an unique proceeding, which jurisdiction on federal, state or municipal level shall rely on certain criteria, as follows: (i) Federal, depending on the location (i.e., involvement of two or more states) or subject matter (i.e., production of radioactive material); (ii) Municipal, for activities which licensing causes local impacts; and (iii) State, in residual manner, in connection with activities not subject to licensing by Federal and Municipal authorities. Also, it brings provisions in connection with environmental infractions, ascribing the responsibility for issuing infraction notices, and bringing administrative actions to the entity responsible for its licensing or authorization procedure.

4. Management of contaminated areas

The state of São Paulo was the first in Brazil to enact a law focused on the management of contaminated areas. State Law 13577/2009 lays down procedures for identification and mapping of contaminated areas and implementation of mechanisms for remediation. This law makes it possible not only for the party at fault and/or the owner of the property to be held liable for the contamination, but also the tenant, the holder of the effective title, and the economic beneficiaries of the area. Earlier, the state program on management of contaminated areas, which is a reference in Brazil, was operating by means of administrative rules of the São Paulo State Environmental Agency (CETESB), but those procedures were encompassed by the aforementioned law in 2009. On the

federal level, CONAMA Decision 420/2009 was published, covering numerous aspects of the framework brought by the Sao Paulo state law.

5. Post Consumption Liability

Recent federal regulations establish the liability of manufacturers of certain products classified as generators of significant environmental impact (such as tires, batteries, electronics, and fluorescent lamps) for relevant post-consumption waste. In 2010, Law 12305/2010 was enacted creating the National Policy on Solid Waste. One of the major innovations of this law is the acknowledgment of shared responsibility for the product life cycles as a basic principle of solid waste management in Brazil. The law imposes on manufacturers, importers and retailers of certain high-impact products the obligation to implement a reverse logistics system aimed at cradle-to-grave management of the products and waste. The law also provides for the elimination of all dumps in the country and substitution by proper landfills by 2014.

6. International Law

Finally, it should be noted that Brazil is a party to numerous multilateral environmental agreements, such as the Climate Change Convention, the Biodiversity Convention, the Basel Convention on the Movement of Hazardous Waste, the Montreal Protocol, and UNCLOS, among many others. Rules reflecting such agreements are being enacted at the national level so as to comply with relevant international obligations.

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XV - CONTRACT LAW

The Brazilian Civil Code, in force since January 11, 2003, provides for the general principles of Contract Law and rules regarding most legal agreements; e.g. distribution, agency, lease, free lease; whereas the remaining contractual types are either governed by specific statutes or have no legal system, in which case the agreement must comply with the general assumptions and requirements set out by the Brazilian Civil Code.

Therefore, it is necessary to determine whether a given agreement falls within one of the regulated frameworks (either the Civil Code or a specific statute) before its execution in order to ascertain if it meets the formal and substantial requirements set forth by Brazilian legislation.

The following are the requirements for a contract to be enforceable in Brazil: qualified party, lawful scope, and proper or not-legally-forbidden form. However, certain agreements may require further essential elements, according to their nature. As an example, the price is an essential element in a purchase and sale agreement.

As a general principle, the parties (Brazilian or foreign citizens) are free to enter into agreements with each other and to set mutual obligations at will (principle of free will). As long as an obligation is not unlawful, in conflict with the law, immoral, or impossible to be enforced, it is considered valid. Moreover, there must be some balance between the mutual obligations set in a contract, i.e. a contract cannot set evidently disproportional encumbrances on one party, while granting extreme advantages to the other.

Under the Brazilian legal system, the principles of contractual effectiveness, good faith, and the social role of contracts are used for the purposes of interpreting agreements, subject to some limitations. Indeed, the contractual conditions must neither diverge from nor infringe statutory rules, which in most cases prevail over the mutual agreement between the parties.

According to the Introductory Law to the Brazilian Civil Code, the law applicable to international agreements is the law of the place where the obligations are established, which is the domicile or principal place of business of the proposing party. Hence, in principle, in Brazil, the parties are not allowed to choose the governing law of a contract, based on which the contract shall be analyzed and interpreted.

If one of the parties is foreign, foreign law may apply to the contract through the mechanisms of private international law, although Brazilian legal culture is still averse to doing so. In short, if an action is filed and the court considers itself legitimate to rule on the dispute, then Brazilian law is very likely to be applied.

Finally, it is important to point out that under article 224 of the Brazilian Civil Code, documents drafted in any foreign language must be translated into Portuguese in order to have legal effect in Brazil. When a contract is submitted to court, article 157 of the Brazilian Civil Procedure Code establishes that its sworn translation must be attached to the case records.

It should be also noted that consumer relationships are regulated by the Brazilian Consumer Code, which, in article 51, I, states that contractual clauses concerning the sale or supply of goods and services shall be deemed void and unenforceable if they prevent, exempt, or reduce the seller’s or suppliers' liability for defects of any kind in goods/services or imply a renouncement or a waiver (by the consumer) of relevant rights. Such clause also states that "in consumer relations between supplier and corporate-entity consumers, the amount of indemnity may be limited in justifiable situations".

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XVI - LITIGATION/ARBITRATION

1. Litigation in Brazil

The Brazilian Judiciary is organized by the Brazilian Federal Constitution, which divides the judicial structure into federal and state courts. In general, Brazilian courts have jurisdiction over litigation in any way connected with the Brazilian territory.

The federal courts have exclusive jurisdiction over any lawsuit that the federal government or any of its agencies or quasi-governmental bodies is party to or has interest in, as well as over cases involving foreign states or international agencies. All labor and electoral courts are also subject to federal jurisdiction. On the other hand, all private and commercial litigation is subject to being heard and decided on by state courts.

In general, civil procedure rules are federal and applicable throughout the country, which allows attorneys to practice everywhere in Brazil. All decision are taken by judges, and jury trials are only permitted in crimes committed against someone else's life, such as cases of first-degree murder and abortion.

A lawsuit begins with a written complaint to the competent court setting out the pertinent facts leading to litigation, as well as the respective claims by the plaintiff. Apart from that, the complaint must also indicate any evidence that is intended to be produced to support claims, a request of service of process upon the defendant, as well as the amount in dispute corresponding to an economic assessment of the claim.

Brazilian service of process is very formal and conducted entirely by a judge, resulting from constitutional guarantees of due process of law and a full right to a fair defense. Thus, any failure related to the service of process may cause an entire proceeding to be considered null and void.

After service of process, the defendant has several remedies and alternatives that can be used to support its defense in connection with the respective proceeding selected by the plaintiff. In addition to presenting a formal written defense, rejecting the claim on merit, the defendant may also challenge formalities not fulfilled by the plaintiff, present a countersuit, plea due to lack of jurisdiction, challenge the economic assessment of the claim, or even the authority or impartiality of the court.

The Brazilian Civil Procedure Code states that evidence may be collected through documents (including all kinds of media), examinations carried out by judicial experts, direct inspections, witness and parties depositions, and other means. As a rule, the burden of proof falls on the party that alleges a fact. Thus, the plaintiff must present evidence that supports the claim and its grounds, while the defendant must prove the counter-facts that impair, modify or terminate the lawsuit. Some exceptions do apply, especially in claims related to consumer relationships or the environment. In such cases, Brazilian law stipulates that the burden of proof is reversed.

It is important to emphasize that Brazil grants more powers to judges to control the proceedings and to obtain evidence than one normally finds in civil-law countries. Hence, discovery is not allowed, and attorneys, for instance, cannot privately collect depositions or make requests for admission or ask questions addressed to the opposing party.

After having produced all evidence, the parties present their final briefings, with a summary of facts and the solution that ought to be given to the dispute in question, opening the phase for the lower-court judge to render his/her final decision.

Regardless of whether the lawsuit is filed in federal or state court, the parties have a constitutional right to appeal to an appellate court. In the state system, every state has its own state court of appeals. The federal appellate system, on the other hand, consists of five circuit courts of appeal.

In addition, the Brazilian system allows an enormous multiplicity of appeals, particularly interlocutory appeals that can delay proceedings for lengthy periods.

At a higher level, the judicial structure has two superior courts that are called the "*Superior Tribunal de Justiça*" (Superior Court of Justice) and the "*Supremo Tribunal Federal*" (Brazilian Supreme Court), both located in Brasília, the capital of Brazil. Broadly speaking, the former has jurisdiction over any case decided by a state or federal court of appeals if the decision rendered by these courts violates any federal law. The latter has jurisdiction over constitutional issues and may also revisit decisions rendered by any court if the Brazilian Constitution happens to be violated.

As a civil-law jurisdiction, all decisions in Brazil must be based on statutory laws. Where there is no specific statutory provision, the courts may decide based on analogy and general uses and practices, or by applying the general principles of law. In general, precedents are not binding but tend to be respected by lower courts and are usually used to support claims and arguments.

Finally, it is important to mention that, since 1996, Brazil has an arbitration act, admitting the possibility of resolving civil and commercial litigation, not bearing inalienable rights, through arbitration.

In the beginning, there was a controversy of whether this act was constitutional, as it puts aside the judicial structure. However, in 2001, the Brazilian Supreme Court upheld the constitutionality of the act, validating contractual arbitration provisions, thus removing lingering doubts in that regard.

In view of this fact, both domestic and foreign arbitration awards are fully enforceable in Brazil. Foreign arbitration awards, however, need first to be ratified by the Brazilian Supreme Court, despite the fact that Brazil has ratified the New York Convention on the Enforcement of Foreign Arbitral Awards.

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XVII - CORPORATE CRIMINAL LAW

1. General overview of criminal liability

Brazilian criminal law operates under culpability or subjective responsibility, according to which the chain of causation must be present as a condition for establishing criminal liability. Criminal liability is personal, which means that only the person who is directly related to the unlawful act may be held liable for the crime.

Under Article 29 of the Brazilian Criminal Code, a corporate entity cannot be held criminally liable for its actions, with the exception of environment-related offenses. Its employees, managers, officers and legal representatives, however, can be held liable for any criminal act committed, even if acting on behalf of the company.

As previously mentioned, though, the chain of causation is a prerequisite for the establishment of criminal liability; therefore, only the employees, managers, officers and legal representatives who took part in the offense may be criminally sued.

Any charges filed must describe the unlawful conduct of each defendant, clarifying their participation in the criminal act for them to be held criminally liable for the alleged offense. Strict liability cannot be accepted in relation thereto.

It is important to stress that those taking part in an offense committed through a corporate entity are subject to varying degrees of culpability.

2. Tax-related crimes and consequential criminal liability

Tax evasion consists of undue suppression or reduction of taxes, as well as any accessory charges through any of the following conduct: (i) omitting information or providing false statements to treasury authorities; (ii) defrauding tax investigators by providing imprecise elements, or omitting transactions of any kind in a document or ledger required by tax law; and (iii) falsifying or altering any document related to a taxable transaction. This offense is punishable by imprisonment of two to five years, plus a fine to be defined by the court.

Submitting a false declaration or omitting a declaration of earnings, assets, or facts, or employing fraud to exempt oneself in part or in full from paying taxes, as well as failing to withhold taxes or social contributions owed by the legal deadline, are also punishable by six months to two years of incarceration.

It is worth noting that the Federal Supreme Court has established that, where tax crimes that require a result in order to be considered consummated (material crimes) are concerned, a criminal investigation or proceeding is only possible as of the conclusion of the administrative proceeding that precedes criminal charges. Therefore, one may only be held criminally liable for such a crime after conclusion of due administrative proceedings.

In accordance with the provisions set forth under article 9, paragraph 2, of Law 10684/03, payment at any time of taxes owed and their accessories extinguishes punishment for the crimes set forth under Law 8137/90.

Paying installments of the debt from tax evasion/omission, however, does not extinguish punishment. It merely suspends it until payment has been made in full, at which time punishment will actually be lifted.

Where a company is concerned, its managers at the time of the offense are to be held criminally liable for tax evasion and crimes against the economic order as provided for in Law 8137/90 if they omit or provide false information to tax authorities with the purpose of suppressing or reducing taxes owed, or if they provide incorrect or untrue data or neglect operations of any kind in a document or book required under tax laws.

It is important to note that during the course of investigations involving tax-related crimes, there may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding. Even though the Brazilian Constitution does not provide specifically for a right to bank confidentiality, this right can be inferred from a general provision concerning privacy and intimacy, as set forth in article 5, item X, of the Constitution.

3. Labor-related crimes and consequential criminal liability

Brazilian legislation sets forth ample protection for workers, both through common legislation and the Constitution. Compliance with labor laws demands great attention in order to avoid claims in labor or criminal spheres.

Labor relations in Brazil are regulated by the Consolidated Labor Laws (CLT), which establish a complete system to protect workers, their rights and guarantees.

Where crimes against labor organization in Brazil are concerned, the Brazilian Criminal Code sets forth as a crime, in article 203, the frustration, through fraud or violation, of a labor right assured by existing labor laws, punishable with imprisonment from 1 (one) to 3 (three) years.

Within the context of subjective responsibility, the manager responsible for failure to comply with such labor laws may be held criminally liable for the offense resulting from lack of compliance.

Although not mentioned in the chapter of the Brazilian Criminal Code that sets forth crimes against labor organization, a few other offenses related to labor issues are also worth mentioning.

The crime of diminishing an employee to a condition similar to that of a slave by submitting him/her to forced labor, exhausting working hours, demeaning labor conditions, or restricting his/her freedom in any way through debt contracted with the employer, as set forth in article 149 of the Brazilian Criminal Code, is punishable by incarceration of two to eight years, plus a fine to be defined by the court.

Exposing one's life or health to direct and imminent danger is also considered a crime, as set forth in article 132 of the Brazilian Criminal Code, punishable by incarceration of three months to one year, if a greater injury doesn't accrue from such endangerment. The applicable penalty is increased by one-sixth if exposure to such danger is due to the transportation of people, in violation of rules set forth by law, with the purpose of rendering services at any establishment.

Concerning occupational accidents, the individual that gave cause to such accident may be held liable for bodily injury or even involuntary manslaughter.

Regarding bodily injury, an offense provided for under article 129 of the Brazilian Criminal Code, the applicable penalty is incarceration of three months to one year for unintentional injuries.

In the event of involuntary manslaughter, the applicable penalty is incarceration of one to three years, which may be extended by a third if the crime occurs due to failure to comply with professional technical regulation; if the agent fails to provide immediate aid to the victim or doesn't seek to mitigate the consequences of his/her act or flees to avoid being caught in the act.

4. Bankruptcy Law violations and consequential criminal liability

Law 11101/05 (hereinafter, Bankruptcy Law), which regulates bankruptcy and judicial and extra-judicial restructuring in Brazil, provides for crimes related to this matter in articles 168 to 178, for which the applicable penalties vary from incarceration of two to six years to detention of one to two years, plus a fine to be defined by the court.

Article 179 specifically stipulates that the company's directors, managers, officers, councilors and even its trustee shall be held equivalent to the debtor or bankrupt party for criminal purposes.

Under article 180, the court order that grants judicial or extra-judicial restructuring is a condition precedent to criminal liability where the aforementioned crimes are concerned.

5. Crimes against the environment and consequential criminal liability

Regarding environmental laws, important statutes are Decree 6514/08 and Law 9605/98. Decree 6514/08 provides for administrative infractions against the environment and sets forth the administrative proceeding for investigation of such infractions as well as applicable penalties.

Law 9605/98, the Federal Law concerning crimes against the environment, provides for offenses committed against fauna and flora, urban order and historical sites, as well as the environment as a whole. Under this law, the emission of gas, liquid, or solid waste in violation of legal standards is punishable with severe penalties, such as imprisonment for up to five years, plus a fine to be defined by the court, if the local ecosystem or human health is comprised from said pollution.

Lack of proper licensing is also considered a serious offense, which may result in the suspension of the company’s activities when operating without required environmental licenses, as well as imprisonment of the responsible individuals. The environmental agencies issuing such licenses are also criminally liable if the licenses are issued to companies that do not comply with environmental laws.

Crimes against the environment are the sole exception to subjective responsibility in Brazilian criminal law, allowing a corporate entity to be held criminally liable for such offenses.

Criminal liability is imputed in accordance with the agent's degree of fault and is ascribed not only to the agents directly involved with the environmental damage but also to any party cognizant of the criminal conduct and negligent in impeding such offense from being committed, despite being able to do so.

A company may be held criminally liable for a crime against the environment notwithstanding the possibility of personally penalizing the individuals involved with such offense.

In situations in which the existence of a legal entity becomes an obstacle to the recovery of damages caused to the environment, Law 9605/98, in article 4, provides for piercing corporate veils. Where penalties are concerned, individuals may face deprivation of freedom (imprisonment or confinement), as well as restrictions of rights (rendering services to a community, temporary limitation of rights, partial or total interruption of activities, fine, house confinement), which may replace a penalty that deprives freedom, provided that the conditions set forth in article 7 of Law 9605/98 are met.

Legal entities, in compliance with the dispositions set forth in article 21 of Law 9605/98, are subject to fines, restrictions of rights (partial or total interruption of activities, temporary interdiction of the commercial establishment/activity, banishment from public-private partnerships, as well as any government subsidies or grants) and rendering services to a community.

6. Consumer-relations crimes and consequential criminal liability

Federal Law 8078/90 instituted the Brazilian Consumer Protection Code, which establishes the legal principles and requirements applicable to consumer relations in Brazil.

The Consumer Protection Code provides, among other things, for regulations and liabilities on products and services provided to consumers and it sets forth the rules and applicable sanctions on administrative, civil, and criminal proceedings resulting from failure to comply with consumer laws.

Articles 61 to 74 provide for consumer-related crimes, most of which involve violation of the manufacturer's or service provider's duty to inform certain aspects of the commercialized products/services, either by omitting or rendering false or incorrect information on labels, casings, packages or advertising, thus misleading the consumer.

The penalties applicable for such offenses vary from incarceration of one month to two years, plus a fine to be defined by the court, to restrictions of rights alternatively or cumulatively (rendering services to a community, temporary limitation of rights, broadcasting in popular media of the terms in which the offender was found guilty, at the expense of the offender).

Law 8137/90, in article 7, also sets forth crimes against consumer relations, punishable by incarceration of two to five years, or a fine.

Last but not least, Law 8884/94 also provides for consumer-related offenses, typifying as administrative offenses, among others, (i) the sale or display, with the purpose of sale, of merchandise with labels, casings, or packages in violation with regulations set forth by competent authorities; (ii) inclusion of illegal interest fees on the price charged for commercialized products; and (iii) the sale, display or housing of products or merchandise under conditions the make them improper for consumption.

Where penalties are concerned, under Law 8884/94 legal entities may face a fine, as will its managers, if directly or indirectly responsible for the offense. Other applicable sanctions are set forth in article 24 and may be imposed cumulatively with the previously mentioned ones or individually.

Regarding criminal liability, in terms of subjective responsibility, consumer-related crimes can only be attributed to individuals. The company manager may be held liable for consumer-related crimes that he/she causes, contributes to or knowingly allows.

7. Crimes related to economic laws and consequential criminal liability.

Law 8137/90 provides for acts considered crimes against the economic order in its articles 4, 5, and 6, among which are: (i) abuse of economic power with the intent to dominate the market by eliminating competition in part or in full; (ii) creation of an arrangement, convention, agreement, or alliance among offering parties, with the goal of artificially setting prices or quantities sold or produced, therefore exercising regionalized control over the market; (iii) selling merchandise or services below fair-market value with the intention of harming competition; and (iv) price rigging by taking advantage of a dominant market position. These offenses are punishable by imprisonment of two to five years, or a fine.

Law 8884/94 also provides for administrative infractions against the economic order in articles 20 and 21, according to which conduct is to be considered a violation of the economic order when its performance has the goal or possibility of limiting, distorting or harming, in any way, free competition, or if it shows evidence that the economic agent is exercising its market power in an abusive way.

On the subject of crimes against the economic order, cartels require special attention. Cartels are an association of business owners who enter into an agreement concerning variables significant to market competition.

Where penalties are concerned, under Law 8884/94 legal entities may face a fine, as will its managers, if directly or indirectly responsible for the offense. Other applicable sanctions are set forth in article 24 and may be imposed cumulatively with the previously mentioned ones or individually.

Law 8884/94 also provides for a deferral (leniency) program, set forth in article 35-C, according to which, where crimes against the economic order, provided for under Law 8137/90, are concerned, execution of a leniency agreement, in compliance with the conditions set forth by law, results in suspension of the statutes of limitation on such crimes and prevents criminal charges. Furthermore, if the deferral program is duly complied with, the leniency agreement leads to dismissal of punishment for its participant.

Repression to antitrust offences takes place both in the administrative and criminal spheres.

In the administrative sphere, the occurrence of a violation of the economic order takes place regardless of its agent's malicious intent, even if harmful effects are merely potential and have not yet materialized. In the criminal sphere, there must be proof of the agent’s intent (malice), as well as proof of damage caused to the economic order.

During the course of investigations involving crimes against the economic order, there may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

8. Crimes involving the National Financial System and consequential criminal liability

Informally known as the "white collar crime law", Law 7492/86 provides for crimes against the financial system and crimes damaging the country's economic order. It seeks to protect both individual and collective interests from such crimes, a concept in which market organization, the regularity of its instruments, as well as the confidence required from them, and the security of business transactions performed are of a special substantiality.

The white collar crime law thus addresses harmful or dangerous acts that attack goods or interests affiliated with the state's financial policy, which is to say, funding, administration, and disbursement, as well as any other conduct violating individual interest and wealth.

Article 1 of Law 7492/86 defines financial institutions as legal entities of public or private law that have as their main or accessory activity, whether cumulative or not, the funding, intermediation, or application of third-party funds, or those institutions that deal with securities. The concept of financial institutions may also encompass those that take on or manage insurance, exchanges, consortiums, capitalization, or any other type of third-party savings or fund, as well as individuals who perform any of these activities.

Crimes against the national financial system are set forth in articles 2 to 23 of the white collar crime law. Applicable sanctions are imprisonment of one to twelve years, plus a fine to be defined by the court.

Given the extensive list of possible agents, in light of the broad concept of a financial institution, and the fact that such characterization is essential to impute any of the crimes set forth under the white collar crime law, each criminal charge must be carefully examined.

In accordance with subjective culpability, legal entities cannot be held liable for white collar crimes. Therefore, in compliance with article 25, agents deemed to be directors, managers, and controllers, as well as receivers, liquidators, or trustees of the financial institution, are to be held criminally liable for the offenses set forth under Law 7492/86.

During the course of investigations involving white collar crimes, there may be a breach of bank confidentiality, which must be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding.

9. Money laundering crimes and consequential criminal liability.

Law 9613/98, informally known as the "money laundering law", lists transactions defined as money-laundering-related crimes.

Money laundering consists of activities or operations seeking to provide a legal appearance to the economic product of a crime previously committed, with the intention of

allowing such product to enter the formal economy, and, therefore, making it available for use by the perpetrator of the crime preceding the money laundering.

It is important to note that only the crimes exhaustively set forth by the money laundering law, in article 1 listed herein, may be considered antecedent to money laundering: (i) drug trafficking, (ii) terrorism and its funding, (iii) contraband or arms trafficking, (iv) extortion through kidnapping, (v) crimes against the government, (vi) crimes against the national financial system, (vii) crimes perpetrated by a criminal organization, and (viii) crimes perpetrated against the foreign public administration.

In addition to the legal assets affected by previous crimes, what is intended through punishment of money laundering is to prevent the agent from using the spoils of the previous crime as if they were legal, which would be destructive to the economy, the financial system, taxation, and a series of legal assets that may be included within the protection of the social order and society itself.

The law, in article 14, also provides for locating and seizing assets and amounts resulting from preceding crimes as a means of discouraging said offenses.

In Brazil, money laundering is fought against by the Department for the Recovery of Assets and International Legal Cooperation (DRCI), affiliated with the National Justice Secretariat (SNJ), which, in turn, is part of the Ministry of Justice that coordinates integrated actions for more than 50 federal, state, and municipal agencies, in addition to being party to international partnerships.

The money laundering law also created the Council for the Control of Financial Activities ("COAF"), which has the purpose of governing and applying administrative penalties, as well as examining and identifying activities suspected to be illegal, as set forth in the money laundering law, notwithstanding the jurisdiction of other agencies or entities.

Regarding criminal liability, any individual legally responsible for a legal entity that hides or disguises assets, rights, or money resulting from the criminal activities set out by law as crimes antecedent to money laundering may be punished with incarceration of three to ten years, plus a fine to be defined by the court.

In accordance with subjective culpability, legal entities cannot be held liable for money laundering crimes. The agent who committed the conduct set forth by law as money laundering is criminally liable.

It is important to note that during the course of investigations involving money laundering crimes a breach of bank confidentiality may be authorized to determine whether the crime was committed or not. Such breach has to be authorized by a judge during any sort of police/administrative inquiry or judicial proceeding, because, even though the Brazilian Constitution does not provide specifically for a right to bank confidentiality, this right can be inferred from a general provision concerning privacy and intimacy, as set forth in article 5, item X, of the Constitution.

10. Crimes against Social Security and consequential criminal liability.

Regarding crimes against the social security system, two specific offenses are worthy of mention: tax evasion of social-security contributions and undue appropriation of social-security contributions.

Where tax evasion of social security contributions is concerned, the provisions are those set forth under article 337-A of the Brazilian Criminal Code. Evasion of social security contributions consists of suppressing or reducing social security and any accessory contributions through conduct such as fully or partially omitting revenue or profits earned, payments made or credited, as well as any other social-security contribution generating event.

In terms of undue appropriation of social-security contributions, article 168-A of the Brazilian Criminal Code states that it consists of a failure to transfer contributions withheld from employees to the social security administration in compliance with the rules and deadlines set forth by law or a specific contract.

Both crimes are punishable by incarceration of two to five years, plus a fine to be defined by the court.

In accordance with the provisions set forth under article 9, paragraph 2, of Law 10684/03, payment, at any time, of the owed taxes and their accessories extinguishes punishment for evasion of social-security contributions and undue appropriation of social-security contributions.

Where tax evasion of social-security contributions is concerned, paying installments of the debt does not extinguish punishment. It merely suspends it until payment is made in full, at which time the punishment is actually lifted.

11. Crimes against intellectual property rights and unfair competition and consequential criminal liability

Law 9279/96, informally known as "industrial property law", governs the rights and obligations of industrial property. Protection of rights related to industrial property takes place through the concession of invention patents and utility models, as well as the concession of registry for industrial designs and trademarks, in addition to the repression of unfair competition.

The industrial property law also sets forth crimes against intellectual and industrial property rights, in articles 183 to 194.

Applicable punishment for such crimes varies from imprisonment of three months to one year, or a fine, in the event of (i) unauthorized use or manufacturing of products whose application for a patent is pending, (ii) reproduction or alteration of a trademark, or (iii) manufacturing products whose application for industrial design has been approved; and imprisonment of one to three months for other cases, such as (i) use of trademark or advertisement expression to indicate false origin of a product, or (ii) use of false geographical indication.

If the violated trademark is a famous, certified, or collective mark, or if the violating party is a sales representative, an authorized individual, company, partner or employee of the industrial property owner or its licensee, the aforementioned penalties may be increased by a third to a half of the originally imposed punishment.

Law 9279/96 also provides for crimes related to unfair competition, set forth under article 195. Unfair competition occurs under questionable means through the use of incorrect and harmful methods, seeking to modify proper, healthy competitive relationships.

Unfair competition is viewed as a crime due to the use of illegitimate means or methods to modify the normal competitive relationship, resulting in undeniable harm to its victims and interfering in the development of activities involving the creation and use of intellectual work.

Some of the conduct listed as unfair competition includes: (i) unauthorized use of a third party's corporate name or confidential information, (ii) diversion of clientele, (iii) deliberately misleading consumers, (iv) disclosure or employment of fraudulent means or false statements concerning a competitor with the intention of obtaining a competitive advantage, among other types of fraud.

All practices related to unfair competition share an undercurrent of the agent's specific malice. The agent acts with the intention of harming a competitor or obtaining an improper advantage, deliberately violating the law.

Crimes related to unfair competition are punishable by incarceration of three months to one year, or a fine.

The practices set forth as unfair competition are subject to civil liability, and during the course of a civil lawsuit, the harmed party may be entitled to financial compensation due to losses and damages arising from such practices.

The Brazilian Criminal Code also provides for violation of copyrights under article 184, according to which partial or total reproduction of copyrighted material, without the author's specific and express authorization, with an economic purpose, constitutes a crime punishable by incarceration of three months to one years, plus a fine to be defined by the court, or imprisonment of two to four years, plus a fine to be defined by the court, depending on specific aspects of the offense.

12. Corruption related crimes and consequential criminal liability.

The Brazilian Criminal Code provides for crimes committed against the government, whether by private individuals or public officials. Among such crimes are those of corruption (active and passive), set forth under articles 333 and 317, respectively, corruption in international transactions, set forth under article 337-B, and graft, set forth under article 316.

Active corruption consists of offering or promising an undue advantage to a public official, to lead him to perform, omit or delay the performance of an act inherent to his position. The applicable penalty is imprisonment of two to twelve years, plus a fine to be defined by the court.

Passive corruption consists of soliciting or receiving for oneself or another party, directly or indirectly, even if not holding the position or prior to holding it, however by reason of it, an undue advantage, or accepting a promise of such advantage. The applicable punishment is imprisonment of two to twelve years, plus a fine to be defined by the court.

Corruption in international business transactions consists of promising, offering or giving directly or indirectly an undue advantage to a foreign public official, or a third party, to lead him to perform, omit or delay the performance of an act inherent to his

position and related to the international business transaction. Punishment for this offense is imprisonment of one to eight years, plus a fine to be defined by the court.

Graft consists of demanding for oneself or another party directly or indirectly, even if not holding the position or prior to holding it, however by reason of it, an undue advantage. It is a crime punishable with imprisonment of two to eight years, plus a fine to be defined by the court.

On the subject of corruption, it must be noted that Brazil is also a signatory to four international treaties concerning this matter, all of which have been enacted by Legislative Decrees 3678/00, 4410/02, 5015/04 and 5687/06, and all of which intend to ensure that no public servant is corrupted in their relationship with private entities.

Decree 3678/00 resolves issues regarding offenses related to the corruption of foreign public officials and the measures that must be adopted by the signatory states.

Decree 4410/02 aims to strengthen the mechanism needed to prevent, detect, punish, and eradicate corruption, in addition to defining in precise terms the acts of corruption in international transactions.

Decree 5015/04 has the main purpose of reiterating the criminalization of corruption, as well as establishing measures against such practices and the liability of the legal persons involved.

Decree 5687/06 defines measures that must be adopted by the laws of the signatory states regarding bribery of national and foreign public officials, and public international organization employees.

Law 8429/92, otherwise known as the Administrative Misconduct Law, is not one of criminal content, but it contains certain legal provisions establishing civil penalties on companies involved with corrupt practices.

In terms of the crimes mentioned herein, it is important to note that Brazilian courts have jurisdiction solely if the crime has been committed in Brazilian territory, or if the results thereof have taken place in Brazilian territory.

Regarding criminal liability, both the public official involved in the corruption and the individual who perpetrated the aforementioned offenses are subject to criminal sanctions, plus a fine to be defined by the court.

The sanctions on legal entities are provided for in the Administrative Misconduct Law, which is not criminal in nature.

13. Securities Law violations and consequential criminal liability.

Law 6385/76, which regulates the stock market and creates the Brazilian Securities and Exchange Commission (CVM), provides, in its articles from 27-C to 27-F, for crimes against the stock market.

As set forth under such provisions, the practices of market manipulation, insider trading, and illegally engaging in an occupation, activity, or function, are subject to criminal liability, notwithstanding administrative or civil punishment, if applicable.

Market manipulation consists of performing simulated or embezzlement-related operations with the purpose of artificially altering the securities market functioning structure, in order to obtain undue advantage or profit, or to cause damage to third parties. It constitutes an offense punishable by imprisonment of one to eight years, plus a fine of up to three times the amount of improper advantage obtained as a result of the crime.

Insider trading consists of using relevant confidential information that is not, and should not, be made available to the general public, due to its potential to provide undue advantage in negotiations. This crime is punishable with imprisonment of one to five years, plus a fine of up to three times the amount of improper advantage obtained as a result of the crime.

Illegally engaging in an occupation, activity, or function consists of holding any office or acting on the securities market as an institution, individual, or collective manager, independent auditor, or securities analyst, without proper authorization or registration at the appropriate administrative authorities, as required by law or regulation. This offense is punishable with imprisonment of six months to two years, plus a fine to be set by the court.

Concerning criminal liability, in observance of subjective responsibility, only individuals may be held liable for the aforementioned offenses.

Specifically regarding insider trading, it must be noted that, as set forth by Law 6385/76, the duty of confidentiality is a condition precedent for criminal liability. Theoretically, only those legally bound can be found guilty of insider trading.

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XVIII - INSOLVENCY/BANKRUPTCY

1. Investor liability in the event of insolvency or bankruptcy

Bankruptcy in Brazil is governed by Law 11101, dated February 9, 2005, (the "Bankruptcy and Reorganization Law") and seeks preservation and optimization of the productive use of a company's assets and other resources, whether tangible or not, upon suspension of the company's activities.

A preliminary clarification is necessary. For the purposes of this Section XVIII, the term "bankruptcy" shall be understood as the liquidation procedures similar to "Chapter Seven" in the US.

A bankruptcy request can be filed by the company, its shareholders or partners, or any of its creditors.

Bankruptcy and Reorganization Law lists the requirements upon which bankruptcy must be requested by its creditors, some of which are as follows: (i) failure to provide payment of any liquid obligation when owed in a credit instrument in an amount higher than 40 minimum monthly wages; (ii) arbitrarily anticipating the liquidation of assets or making payment in a damaging or fraudulent way; (iii) simulated deal or alienation of all or substantially all assets to a third party, creditor or otherwise, attempted or actually performed; and (iv) transfer of establishment to third parties, creditors or otherwise, without the consent of all other creditors and without keeping sufficient assets to fulfill its obligations.

A bankruptcy decree entails two important matters concerning credits: (i) acceleration of all company indebtedness, and (ii) conversion of foreign currency-denominated debts into national currency ones.

Bankruptcy and Reorganization Law establishes a credit ranking for the payment of creditors, as follows: (i) credits owed for labor relationships up to 150 minimum monthly wages per creditor and those resulting from labor accidents; (ii) credits *in rem* guaranteed up to the amount of the guaranteed asset; (iii) tax credits, regardless of their nature and time of constitution, except for tax penalties; (iv) special privilege credits; (v) general privilege credits; (vi) unsecured credits; (vii) negotiated penalties and monetary penalty due to breach of criminal or administrative law, including tax penalties; and (viii) subordinated credits.

Certain credits are not placed in the hierarchy of the bankruptcy credits and must be paid before any of the abovementioned credits. Such credits are: (i) remuneration of the judicial manager or labor credits related to the period after the bankruptcy decree; (ii) amounts provided by the creditors after the bankruptcy decree; (iii) costs, fees and taxes related to the bankruptcy decree or incurred after the bankruptcy decree; (iv) credits for money, products, labor or services granted during the reorganization period; and (v) credits excluded by law from such hierarchy, such as credits secured by "*alienação fiduciária*" (chattel mortgages) and credits resulting from advances in export foreign trade agreements.

Subordinated credits, last in the credit ranking, shall be considered as ones qualified as such by law or contract, as well as credits held by the indebted company's partners or its managers without an employment relationship. Such credits shall only be

paid after all other debts (including unsecured debts) held by the debtor have been duly satisfied.

This provision intends to ensure the partner's (and thus the equity investor's) legal liability to the company's debts.

After a bankruptcy decree, the indebted company's partners are prevented from withdrawing from the company.

In a limited liability company, each of the partners shall be liable to the extent of the value of respective amount of their quotas, but all of the company's partners are jointly and severally liable for the total paid-in capital stock.

Thus, in the event of bankruptcy of a limited liability company, and if any of its partners has failed to pay in the relevant amount of their quotas, all partners shall be jointly liable for the payment of such unpaid amount.

In a corporation (*sociedade anônima*), capital stock is divided into shares, with each of the shareholders liable to the extent of the issue value of their acquired and subscribed shares.

It is worth noting that the personal liability of each of the indebted company's partners or shareholders is subject to the court's analysis.

If a presiding judge verifies that any of the company's partners or shareholders has acted in a fraudulent manner to the detriment of the company's assets, the judge shall be entitled to freeze the partners' assets up to the amount of verified damage.

It is not uncommon that partners' and managers' local personal bank accounts and other local personal assets are seized on account of tax and labor liabilities.

2. Options for Business Restructuring

Bankruptcy and Reorganization Law contains certain provisions that resemble bankruptcy under U.S. Chapters 11 and 7. It governs bankruptcy proceedings and also provides for the reorganization of legal entities by way of both judicial and extrajudicial reorganization proceedings.

As provided for in Bankruptcy and Reorganization Law, judicial and extrajudicial reorganizations are mechanisms which seek to provide the legal entity facing insolvency the opportunity to restructure its operations upon establishment of a business reorganization plan.

Reorganization proceedings enable debtors and creditors to discuss the future of the company's activities. With that, the law intends to encourage positive results to establish a debt and liability reorganization plan that might provide the debtor with better conditions to sort out momentary economic difficulties.

Judicial and extrajudicial reorganizations may be requested by the debtor, which may be an individual (who does business in his or her own name in an organized manner) or a business entity.

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In order to be entitled to benefit from a judicial reorganization bail-out structure, the indebted company (i) must prove that it has been in operation for at least two consecutive years, (ii) must not have been declared bankrupt before, or, if so, must have obtained a final discharge court decision regarding its previous responsibilities; (iii) must not have obtained judicial-reorganization benefits over the past five years preceding the request, and (iv) must not have had its managers or controlling partners sentenced for any type of bankruptcy crime, as defined in the Bankruptcy and Reorganization Law.

As soon as the judicial-reorganization request has been approved, all legal actions in which payment of certain outstanding amounts is sought as possibly initiated against the debtor, including enforcement actions, will be suspended for a period of 180 days in such a way that only the reorganization remains in place.

Within 60 days of the court's authorization for implementation of judicial reorganization, the respective plan must be filed by the debtor with the court to prove the feasibility of the indebted company's proposed restructuring.

The reorganization plan must set out a detailed description of the alternatives that the company will follow to implement the reorganization, its economic viability, and it must be accompanied by a financial report on the company's situation.

In the general creditors meeting, the creditors shall be represented by fully empowered attorneys-in-fact charged with carrying out discussions about the features of the reorganization plan, as well as challenging and proposing amendments to the reorganization plan, as necessary.

The creditors' representatives are also responsible for deliberating on the implementation of a fully revised reorganization plan.

This general creditors meeting evolves based on a three-class credit ranking, as follows:

(i) Class One encompasses the holders of credit rights from labor legislation or indemnities owed due to labor accidents;

(ii) Class Two creditors are those holding credit rights secured by *in rem* collateral (i.e. mortgages, pledges etc.), and

(iii) Class Three contains unsecured creditors, as a whole.

Except for deliberations regarding the approval of the reorganization plan or any terms thereof, each creditor's vote is to be considered proportionally to the respective credit for the sake of deliberations during the general creditors meeting.

In the event of deliberations regarding the terms of the reorganization plan, respective approvals shall be granted upon reckoning of favorable votes from each of the three classes, based on the amount of the credits and number of creditors in classes Two and Tree, and based solely on the number of creditors in class One.

If the reorganization plan is not approved in all three classes, the court shall decide on the approval, provided that the following conditions are met: (i) there is a favorable vote of the credits representing more than half of the amount of the credits

attending the creditors meeting, regardless of classes; (ii) there is the approval in 2 of the classes; and (iii) in the class where the reorganization plan was rejected, at least 1/3 of the creditors (amount and number) have voted for the reorganization plan.

It is worth noting that, although the stakeholders of the indebted company's capital, as well as its affiliates, controlled and parent company, or any other company holding 10% or more of the capital of the indebted company, may take part in the general creditors meeting, they shall not have the right to cast votes on any matter related to the features of the reorganization plan or any other subject.

On the other hand, the indebted company's partners are not prevented from speaking out during the meetings. However, they are only allowed to discuss and act in the interest of achieving the objectives of the general creditors meeting.

If at the close of the general creditors meeting the plan is approved, for a period of two years the indebted company must comply with all the reorganization plan features, under the joint supervision of the presiding judge, the designated judicial trustee (who is appointed by the presiding judge), and the creditors committee, if installed.

Upon expiration of this two-year period: (i) the court will declare an end to reorganization; and (ii) in case of violation of any surviving provision of the reorganization plan, any creditor may file for specific performance of such provision or request conversion of reorganization into bankruptcy.

The reorganization may be turned into a bankruptcy case in the following situations:

(i) in the event that the general creditors decide to reject the proposed reorganization plan;

(ii) if the indebted company fails to file the reorganization plan in a timely fashion; or

(iii) if the indebted company breaches any of its covenants under the approved reorganization plan during the two-year period following the plan's approval.

In the event of extrajudicial reorganization, the reorganization plan has to be submitted to the creditors by the debtor.

If the plan is approved by three-fifths of creditors whose credits are subject to the extrajudicial reorganization, the plan is considered approved and the minority (two-fifths or less) will be bound by it.

The approved plan has to be submitted to the presiding judge for validation.

Extrajudicial reorganization has different effects in comparison to judicial reorganization, in particular in the sense that it does not stay the enforcement of legal actions initiated by creditors against the debtor, as it takes place in judicial reorganization situations and it does not bind labor creditors.

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XIX - REAL ESTATE

1. Introduction

Issues regarding real estate matters are governed in Brazil by the law of the country where the real estate is located. Therefore, real-estate issues are primarily governed by the Brazilian Civil Code and other specific local laws (i.e. Federal Law 4591/64 Real Estate Developments; Federal Law 8245/91 Lease Law; and Federal Law 6766/79 Parceling of Real Property and others).

According to the Brazilian Civil Code, real estate may be acquired by (i) adverse possession (*usucapião*); (ii) accession; (iii) acquisition; and (iv) succession rights.

Real estate may be owned jointly by more than one person. Joint ownership of buildings is very common in urban residential and office buildings, where such interests are registered in the same way and have the same legal force as absolute freehold interests. There are two main forms of joint or common ownership: "*Condominio*" and "*Condomínio Edilício*".

Easements confer limited rights in favor of one person's land over another's land and may be either positive, permitting the owner of the "dominant" land to exercise certain rights over the "subservient" land (e.g. a right of way); or negative, prohibiting the subservient owner from exercising one of its ownership rights (e.g. building over a certain height).

Surface rights (*"Direito de Superfície")* confer to a person the right to build or to plant in another's land, for a determined term. The concession of surface rights may be paid or gratuitous and must be granted by a public notarial deed.

Usufruct gives a person the temporary right to use and to profit from another person's property (excluding the right to sell). It is a temporary right, hence its maximum duration is for the life of the usufructuary if the beneficiary is a natural person, or for 30 years if the beneficiary is a legal entity.

In general, Brazilian law considers that foreigners (individuals and companies) have the same rights to acquire real estate under the same conditions applied to Brazilian citizens and Brazilian companies. However, there are some restrictions that will be addressed below.

2. Acquisition of Real Property

Title to real property may be acquired by means of adverse possession (*"usucapião"*); accession, purchase, or succession law.

2.1. Acquisition by adverse possession (*"usucapião"*)

Adverse possession is a form of acquisition of real estate by extended possession, according to certain legal requirements. The rationale of this institution is to guarantee the stability and security of the real property, establishing that after a certain period of time that no one may contest the possession of said real property, any defects of title, or the lack of proper title to the property.

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2.2. Acquisition by accession

Accession may be defined as a way of original acquisition of real estate through which everything that is incorporated or attached to the real estate becomes a part thereof, such as islands, addition of land by geological accidents, the acquisition by superposition o addition of pieces of land, and the plantations and constructions, because all constructions and plantations existing on the property are presumed to be made by the owner and at his expense, unless proven otherwise.

2.3. Acquisition by succession law

Acquisition of real estate by succession law occurs at the passing of the owner of the real property, with domain over the real estate transferred to the owner's successors upon recording a deed of partition of the deceased's assets, duly confirmed by a court of law.

2.4. Acquisition (Purchase and Sale, Donation, Exchange, etc.)

Acquisition of real property occurs when two parties (legal entities or individuals) execute an agreement through which one transfers to the other a certain property, whether by purchase and sale, donation, exchange, or any other type of agreement provided for in Brazilian legislation.

Except with regard to transfer of title by certain corporate acts, which may be directly annotated with the Real Estate Registrar, Brazilian law requires that all transfers of title to real estate be performed by the parties' execution and recording of a public deed.

However, it is very common in Brazil for the parties to agree that payment will be made in installments. Therefore, prior to execution of the public deed, the parties execute a private agreement through which both parties commit to sell and to purchase the real estate, and upon payment of the last installment, the public deed is executed and presented for recording at the Real Estate Registrar.

3. Recording Title at the Real Estate Registrar

In order to acquire real estate in Brazil, it is mandatory that transfer of title be recorded at the appropriate Real Estate Registrar.

Real estate registries record all deeds and/or contracts involving real estate rights to real property (ownership, condominium, trusts, mortgages, easements, usufructs, possession rights, lease agreements, etc.). The legal effect of recording is the effectiveness of the ownership/possession against third parties. Recording a deed/contract also creates priority against third parties. Real Estate Registry Offices also record any attachments or injunctions to a particular property when ordered by a Brazilian court.

Transfer of title to the real estate is subject to the Tax on the Transfer of Real Estate (*"Imposto sobre a Transferência de Bens Imóveis"*). The rate varies from 2% to 6% of the economic value of the transfer.

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4. Guarantees of Real Estate Properties

A real estate guarantee grants the right to obtain payment of a debt using the value or profits from the real estate, applied specifically to pay off the credit of the guarantee holder.

Mortgages and bank guarantees are the most commonly used devices for protection of lenders or investors in connection with real estate.

Brazilian Federal Law 9514/97 lists certain types of "right in *rem*" guarantees to secure real estate financing transactions as follows: (i) mortgage; (ii) fiduciary assignment of credit rights deriving from real estate sale agreements (or commitments); (iii) pledge of either credit or purchase rights under real estate sale agreements; and (iv) fiduciary transfer of title to a real property ("*Alienação Fiduciária de Coisa Imóvel"*).

4.1. Mortgage

A mortgage is a civil real estate guarantee that subjects an asset (real property or any other property that the laws considers subject to a mortgage right) owned by the debtor or a third party, without transmission of possession of the asset to the creditor, and it grants the latter with a right to require judicial sale of the asset upon failure to pay, with a preference right to proceeds from the sale.

If properly created, a mortgage secures the debt principal and all costs, taxes, and expenses, such as damages and interest, for which the debtor may become liable if the debtor fails to comply with the terms of the underlying credit agreement. The public deed must contain: (i) the name of the parties, identifying ownership of the assets on which the mortgage is granted and on behalf of whom; (ii) the amount of debt; and (iii) a full detailed description of the assets and their individual identification, without which title to the mortgage would be void.

Registration of title to the mortgage at the Real Estate Registrar is mandatory and essential for the title's validity. After registration, title to the mortgage may be enforceable against creditors of the debtor, third parties who acquired the asset, or even to an unregistered mortgage title holder.

4.2. Fiduciary transfer of title to real property

Under fiduciary transfer of title to real property, called *"Alienação Fiduciária em Garantia"*, the borrower transfers title to its real property to the lender to secure payment of a loan or other financing agreements. The relevant fiduciary agreement must be recorded at the Real Estate Registry and transfer of title to the real property thereunder will be subject to a "termination clause", which means that, upon full payment by the borrower of the loan, the borrower shall be entitled to receive title to the real property in return.

It is in fact a transaction consisting of two operations: (i) the obligation by which a debt is created; and (ii) a real estate guarantee right, reflected in the temporary transfer of an ownership right to the asset. Transfer is mainly characterized as temporarily because the creditor receives the domain of the asset which must be returned after the debt has been paid off.

So long as the guarantee is in effect, the borrower will remain in actual possession of the real property while the lender will obtain constructive possession of it. If the borrower fails to settle its debt, subject to certain procedures to be taken by the lender (including notification), the Real Estate Registry will record the property exclusively in the lender's name, and the lender, within thirty (30) days thereafter, must hold a public auction to sell the real property, using the proceeds to pay off amounts due under the agreement, plus any expenses, costs, charges and fees, including attorney's fees and legal expenses, insurance premiums, and taxes incurred by the lender in connection with its remedies.

To grant this guarantee, a public deed must be executed at a notary public office and registered at the Real Estate Registrar. Without this registration there would only be a credit against the owner of the asset, and it would not be enforceable against third parties.

5. Acquisition of Real Property by Foreigners

Acquisition of rural property by foreign residents in Brazil or foreign legal entities authorized to trade in Brazil is governed by Federal Law 5709/71. This piece of legislation focuses on three main issues:

(i) A general prohibition on any individual or legal entities residing abroad to acquire rural properties;

(ii) Foreign individuals residing in Brazil, and foreign legal entities authorized to trade in Brazil, are allowed to purchase limited tracts of rural property, according to certain percentages of the national territory; and

(iii) The acquisition described above is subject to actual use of the land, in accordance with projects to be presented to governmental authorities.

The three conditions described above only apply to rural land, as opposed to urban properties, that may be used for agricultural purposes. As such, the acquisition of land for urban developments has no restrictions.

Federal Law 5709/71 states that a foreign individual residing in Brazil may only own land of up to 50 rural units, a dimension determined for each region with similar economic and ecological characteristics and for the type of agricultural use possible in said area. A foreign individual residing abroad may not acquire land in Brazil; however, this limitation is not applicable to acquisition of land by succession law.

Restrictions on the acquisition of rural land by Brazilian legal entities controlled by foreign capital have been under analysis since the 1995 Amendment to the Brazilian Constitution eliminated the classification between Brazilian entities and Brazilian entities controlled by foreign capital. This amendment also gave rise to an understanding in doctrine almost generally accepted that stated that the restrictions imposed by Federal Law 5709/71 were no longer applicable to Brazilian legal entities controlled by foreign capital (since they were considered Brazilian companies) and therefore should be disregarded by such companies.

The Federal Attorney General's Office (AGU), corroborating this understanding of doctrine, issued Opinion AGU/LA – 01/97, published in the Federal Official Gazette on January 22, 1999, stating that this legal provision had been revoked.

On the face of that Constitutional Amendment, the alternative for foreign investors to acquire lands in Brazil was to incorporate a Brazilian company, which is undoubtedly a much less bureaucratic and faster means to meet the requirements set out by Federal Law 5709/71.

However, foreign investors' increasing interest in acquiring properties in Brazil's rural areas, and the global shortage of natural resources, have resulted in the government revisiting the issue of acquisition of rural properties by foreigners.

In this sense, on July 13, 2010, the National Justice Council ruled that Real Estate Registry Offices must send, every three months, to the Local Internal Affairs Offices (which, in turn, will send to the National Internal Affairs Office and INCRA), a list of all acquisitions of rural properties by foreigners, whether legal entities or individuals, in their respective jurisdictions. This order also requires the Local Internal Affairs Offices to regulate the Real Estate Registry Offices' timely sending of the list of previous acquisitions.

On August 19, 2010, the AGU issued a new opinion (Opinion AGU/LA - 01/2010), contrary to Opinion AGU/LA – 01/97 (that has been observed for the past 13 years) in the context of several articles published in the Brazilian media, whereby the Brazilian government has indicated the need for more control over acquisition of rural land in Brazil by foreigners.

Although the AGU's opinion is not a final binding interpretation on the public in general - and as such its accuracy and legality may be disputed in Brazilian courts - it is binding on all bodies of the executive branch of the federal government.

The issue discussed in the AGU's recent opinion is related to continuous application of Federal Law 5709/71 and a change in previous interpretation of the AGU's opinion, which had declared in the past that Federal Law 5709/71 was not admitted by the Constitution.

The law provides that foreign companies may only acquire rural lands to develop and to implement agricultural, industrialization, and/or colonization projects, and authorization will only be granted if the project is a part of the corporate purpose of the foreign legal entity buying the land. Projects must be approved by the Ministry of Agriculture, or by the Department of Commerce and Industry of Brazil, on a case by case basis.

In cases were such acquisition is important for the development of projects in the national interest, the President may authorize said acquisition by means of a presidential decree.

Federal Law 8629/93 provides that the restrictions imposed by Law 5709/71 are also applicable to leases of rural properties.

Recently, the Federal Government has created a subcommittee to study and propose measures regarding the process of acquisition and use of rural land in Brazil by foreign individuals and entities. Such subcommittee's work has resulted in a draft bill that was submitted to the vote of the Agriculture Committee which will work on it and decide whether or not to put it up for vote in the House of Representatives. From there on the draft bill should be subject to the regular legislative process.

The abovementioned draft bill proposes less strict limitations and parameters to be applied to national entities owned by foreign capital, so changes in this field are expected to occur, although there is still a long way to go.

5.1. Special real estate properties: Borders and Shores

The acquisition of land, by foreign individuals or legal entities, located in areas considered to be part of national security is subject to prior approval by the National Defense Council ("*Conselho de Defesa Nacional*"), as provided for by Federal Law 5709/71 and Federal Decree 74965/74. Brazilian legislation states that the areas considered to be part of national security are: (i) public vacant properties (pieces of land under the public domain with no specific purpose); and (ii) the land within the Border Strip ("*Faixa de Fronteira*"), which is a 150-km parallel area along the terrestrial border of Brazilian territory.

Regarding shores, the right to use said properties is granted by the federal government under the condition of not deteriorating properties and paying an annual royalty. Decree-Law 2490/40, with Decree-Law 3438/41, states that Brazilian citizens, Brazilian nationals by birth, and foreigners, will be subject to royalties managed by the federal government when using: (i) shores; and (ii) the land used to access the shores, whether on the main land or islands.

As such, Decree 9760/46 states that lands located (i) in the Border Strip; (ii) along the shore; or (iii) within a 1320-meter circumference around fortifications and military establishments, may only be sold to foreign individuals or legal entities when authorized by the President.

6. Leasing Real Estate

The legal framework for leasing urban property is provided for by Federal Law 8245, enacted in 1991 (the "Lease Law").

The Lease Law provides for a right of first refusal for the tenant. Thus, if the owner wants to sell a property to a third party, the tenant of the property has a right of first refusal to buy the property before any other potential buyer.

The Lease Law does not provide for a minimum or maximum lease term, but if the term is ten (10) years or more, the landlord's spouse must consent to execution of the lease agreement in writing.

With regard to residential leases, it is advisable that the lease term be set at thirty (30) months. If the property is not vacated after said term, the landlord has thirty (30) days to initiate an eviction lawsuit; otherwise the lease term is considered extended for an indeterminate term. In that case, in the event the landlord intends to terminate the agreement, it must give tenant a thirty (30) days prior written notice to the to vacate the property. If the property is not returned to landlord, an eviction lawsuit may be filed.

In the cases above, during the lease term, the landlord may only recover the property after expiration of the term. The tenant, on the other hand, may terminate the agreement before expiration of the term, provided that he/she pays a fine as contractually agreed, which shall be paid proportionally to the actual term of occupancy. If the lease agreement does not stipulate a fine, a judge must set it.

With lease agreements for commercial purposes, the tenant may, upon filing a lawsuit, extend the term of the agreement for an equal term, provided that all of the following conditions are met: (i) the lease agreement must be executed in writing and for a set period of time; (ii) the minimal term of the agreement, or sum of the terms of continuous and uninterrupted occupancy of the property, must be five (5) years; (iii) the tenant must have been using the property to do the same business for at least the last three (3) years; and (iv) the landlord must request extension of the term at least six (6) months in advance.

The Lease Law expressly prohibits landlords from requiring more than one kind of guarantee for the same agreement.

Sale of the leased property does not in and of itself cause termination of the lease agreement, but the purchaser of a leased property has the right to resolve the agreement in the event that it is not duly recorded with the Real Estate Registry Office with an express clause providing that the term of the lease shall be respected by the purchaser.

7. Taxes related to Real Property in Brazil

Under Brazilian law, there are specific taxes related to real property.

7.1. Real Estate Tax – IPTU (Municipal Tax)

The tax on ownership of urban real estate is levied annually on the value attributed by tax authorities to said real estate (usually close to market value). The rates vary according to the municipality where the real property is located.

7.2. Tax on Ownership of Rural Land - ITR (Federal Tax)

This tax is levied annually on the value of the land itself (without crops, constructions etc.). The rates vary in accordance with the size and degree of use of the property. The company may be subject to this tax if it acquires rural land.

7.3. Real Estate Transfer Tax (Onerous Transfers) - ITBI - (Municipal Tax)

This tax is assessed at a variable rate (depending on the value of the property) on all onerous transfers, of any kind, of real estate, except in cases of contribution to the capital of companies.

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XX - INSURANCE, REINSURANCE AND SUPLEMENTARY PENSION PLANS

1. Supervision

The Brazilian Private Insurance Council (*Conselho Nacional de Seguros Privados*), known as the CNSP, is the regulatory body in charge of enacting the rules that regulate the establishment, organization, operation and transaction of insurers, reinsurers, brokers, and open private pension plan, while the Superintendent of Private Insurance (*Superintendência de Seguros Privados*), known as SUSEP, is the agency in charge of enforcing and regulating these rules, as needed, and monitoring the market as a whole. Both are under the aegis of the Ministry of Finance.

Pension funds (or "closed private pension funds"), which are more closely related to the establishment of a benefits plan by specific sponsoring companies, are regulated by the National Supplementary Pension Plan Council (*Conselho Nacional da Previdência Complementar* - CNPC) and supervised by the Superintendent of Supplementary Pension Plan (*Superintendência de Previdência Complementar* - PREVIC) affiliated with the Social Security Ministry.

The Supplementary Health Care System is a supplement to the Brazilian public health care system and is regulated by the Supplementary Health Care Council (*Conselho de Saúde Suplementar*), known as CONSU, and the Brazilian Private Health Care Agency (*Agência Nacional de Sáude Suplementar*– ANS), which is responsible for the establishment, organization, and supervision of the health-insurance market and companies in that sector (for instance, cooperatives, group health care, and self-management).

2. Legal Framework

Most legal rules applicable to insurance and reinsurance contracts are set forth in the Civil Code, while property, casualty, and life insurance are subject to specific regulations. In the context of the Supplementary Health Care System, contracts and the supplementary pension plans are subject to specific laws and regulations.

To the extent that these contracts involve “consumers” (as a rule, entities tending to fall under this concept, such as small businesses), they are also subject to the Consumer Protection Code, which establishes guidelines and principles that are highly protective of consumers' rights.

3. Licensing Process

The incorporation, transfer of controlling shares, or restructuring (among other acts) of insurers, reinsurers, capitalization companies, open private pension companies, and health care companies in Brazil involve a series of procedures set forth in legislation and the authorization of SUSEP and ANS, including presentation of business plans and identification of shareholders.

In order to operate in Brazil, an insurance company must necessarily be incorporated in Brazil as a joint-stock company. There is no restriction on foreign-capital interest in the ownership of Brazilian insurance companies.

The minimum capital stock of an insurance or open private pension company consists of its base (fixed) capital and additional risk-based capital.

The base capital to operate in Brazil is R$ 15,000,000.00. In the event that an insurance company does not operate throughout the country, there is a fixed amount of R$ 1,200,000.00 and a variable amount determined in accordance with the region where the insurance company has been authorized to operate.

There are very detailed and specific rules regarding both calculation of additional capital and the procedures necessary for adopting corrective and recovery plans.

4. Selling Insurances and Certification

An insurance or reinsurance broker, who may be an individual or a legal entity, is the facilitator legally authorized to intermediate sales of insurance and reinsurance contracts.

According to Brazilian law, an insurance company may not incorporate a sister brokerage company, In fact, brokers must not be owned by insurance companies. However, some financial groups do have both insurance companies and insurance brokers (the latter linked to a holding company or a bank, but never to an insurance company).

More recent regulation addresses the need to certify insurance-company employees and similar persons at insurance companies accredited by SUSEP, whenever these firms operate in (i) average regulation and settlement, (ii) internal control systems, (iii) customer service, and (iv) direct sales of insurance products, capitalization, and open supplementary pension funds.

5. Reinsurance

Brazilian legislation provides for three types of reinsurers: local, admitted, and occasional. Admitted and occasional reinsurers are foreign companies, whereas local reinsurers are companies incorporated under Brazilian legislation with head offices in Brazil, and organized as joint stock companies.

As a general rule, subject to the technical, contractual, operating and risk peculiarities, and provisions of the insurance regulatory agency, insurance regulation applies to reinsurers.

A local reinsurer must have at least R$ 60 million in capital and must also meet risk-based capital and solvency-margin requirements.

Admitted and occasional reinsurers are foreign companies registered at SUSEP that have net equity of least US$ 100 million and US$ 150 million, respectively, a power-of-attorney[11] appointing an individual attorney-in-fact domiciled in Brazil, and have submitted numerous documents, including their financial statements.

[11] Exceptionally, upon consultation, SUSEP may authorize an insurance company or a local reinsurer to act as the attorney of an occasional reinsurer.

Admitted reinsurers must also establish a representative office in Brazil, authorized in advance by SUSEP and named as such, with the sole business of representing the admitted reinsurer. The representative must be domiciled in Brazil and may also hold power-of-attorney.

The representative office may be a Brazilian company or a branch office. A company registered as an admitted reinsurer is currently required to own at least four-fifths of the representative office's capital, and there is no exception for reinsurance groups.

An admitted reinsurer must also keep an account with SUSEP worth a minimum of US$ 5 million; or if it works solely with life reinsurance, US$ 1 million. These amounts may be higher depending on the reinsurer's rating and the volume of operations in the country, an issue that will be addressed later in this chapter.

Lloyd's has been recognized as an admitted reinsurer, with a representative office located in Rio de Janeiro, and its Central Fund can be accepted as net equity for the purpose of the aforementioned minimum indices.

Rating requisites for admitted and occasional reinsurers are set out below:

ADMITTED	
Risk Rating Agency	Minimum Level Required
Standard & Poor	BBB-
Fitch	BBB-
Moody's	Baa3
AM Best	B+

OCCASIONAL	
Risk Rating Agency	Minimum Level Required
Standard & Poor	BBB
Fitch	BBB
Moody's	Baa2
AM Best	B++

There are two clear advantages that a local reinsurer has over admitted and occasional reinsurers: a market reserve of 40% of each contract and exclusivity to reinsure coverage for survival in life-insurance and supplementary pension fund transactions.

In comparison to admitted reinsurers, an occasional reinsurer is not required to have a representative office or to keep reserves under any circumstances in Brazil, but it may not be headquartered in tax havens[12] and its operations will be subject to the maximum limit of 10% of reinsurance cessions (when the cedents are Brazilian insurance companies) and 50% of retrocessions (when the cedents are local reinsurers), set by the Executive Branch.[13]

Calculation of this limit is based on all of the insurance company's operations in the calendar year (January 1st to December 31st).

[12] Tax havens are countries or dependencies that do not tax income or that tax it at a rate of less than 20%, or whose internal laws provide relative secrecy as to the owners of corporations or their representatives.
[13] Decree 6499, July 1, 2008 (Braz.)

In addition, admitted reinsurers must maintain premium and claim reserves. However, a system was set up whereby depending on the reinsurer's rating, it will not have to keep any reserves in Brazil at all, save for the minimum balance in the account tied to SUSEP.

Premium and claim provisions or benefits related to liabilities assumed by admitted reinsurers, weighted by a factor related to the reinsurer's risk-rating level, must always be covered and guaranteed by funds required in Brazil and deposited into the account tied to SUSEP.

Admitted and local reinsurers must maintain a proper internal control system. There is no minimum structure for such purpose, but there are minimum elements that should be considered when setting up the internal controls of each admitted reinsurer, listed by regulation[14].

In turn, the size and complexity of such structure depends on the complexity each company's operations. This way, all minimum elements and procedures may be contained in an extremely simple structure of one or two people, and in specific reports.

In terms of reporting information to SUSEP, admitted reinsurers are also required to submit an FIP (Periodic Information Form) every month, which is a set of tables to be completed by each company with information on its structure and operations.

6. Reinsurance Contracts

Brazilian insurers and local reinsurers may only assign risks in reinsurance and retrocession transactions to local, admitted, and occasional reinsurers, with or without the intermediation of reinsurance brokers.

Because Brazilian law was set up for establishing and developing a strong local reinsurance market, it provides local reinsurers with a market reserve.

In effect, a Brazilian insurer must offer 40% of every cession of risk to local reinsurers. They will have five days (for automatic contracts) and 10 days (for optional contracts) to formalize their interest on the full or partial acceptance of the risk, with silence construed as refusal.

The obligation to place risks with local reinsurers will be considered satisfied when (i) all local reinsurers have been consulted, but do not show interest in full or partial acceptance of 40% of the risk, or (ii) 40% of the risk has been transferred to local reinsurers.

The market reserve does not apply to retrocession by local reinsurers, which, for their part, as well as insurers, may only transfer 50% of premiums issued for risks that they have underwritten in each calendar year. Brazilian cedents (insurance companies and local reinsurers) are also not allowed to cede more than 20% of each placement to foreign reinsurers of the same group of the cedent.Exceptions to these rules apply to the following fields: surety bond, export credit, rural credit and domestic credit.

[14] SUSEP Circular 249, February 20, 2004, Art. 2, items I to VII, art. 3, items I to VIII (Braz.) (amended by SUSEP Circular 363, May 21, 2008)

In terms of the retrocession limit, SUSEP may also authorize cessions in specific cases at a percentage greater than 50%, provided that it is for a technically justifiable reason, and it may indicate, in additional general rules, other fields or insurance lines to which this limit does not apply.

SUSEP must also be informed whenever a cedent concentrates its reinsurance or retrocession transactions (ceded premiums and claims recoverable) at a single admitted or occasional reinsurer, depending on the reinsurer's rating.

As for contracts, regulations set forth a few requisites when writing and structuring contractual documents, such as (i) an insolvency clause, and (ii) prohibition of direct-payment clauses (except in cases of the cedent's insolvency, provided that payment of indemnity has not been made from the reinsurer to the cedent or from the cedent to the insured party, when a contract is optional, or in all other cases when there is a clause that, in this case, calls for direct payment).

If there is intermediation, the intermediation clause may not limit or restrict the direct relationship between cedents and reinsurers, nor may it grant powers to reinsurance brokers beyond those needed and appropriate to perform their jobs.

The contract must stipulate whether the broker has authorization or not to receive money for indemnity and premiums, whereby payment of indemnity to the broker will not represent fulfillment of the reinsurer's obligation until received by the cedent, and payment of premiums to the broker must be considered immediate release from the cedent's obligation.

Regulations additionally set out that, among other requisites:

(i) Contractual formalization of reinsurance transactions must take place within 270 days. After this period, if not formalized, reinsurance will be construed as non-existent from the outset; and

(ii) Contracts seeking protection of risks located within domestic territory must stipulate submission of any disputes to Brazilian legislation and jurisdiction, allowing for an arbitration clause, which, according to specific legislation, calls for the application of foreign law;

Lawsuits and arbitration proceedings resulting from reinsurers' refusal to pay indemnity must be reported to SUSEP within 30 days of the date that the proceeding begins.

Supplementary Law 137, of August 26, 2010, amended paragraph 4, article 9 of Supplementary Law 126. The CNSP is allowed to provide for risk transfers in reinsurance and retrocession transactions with persons not covered by items I and II of the lead paragraph in article 9, that is, registered and occasional reinsurers.

This issue is of the utmost significance. The provision is applicable to any type of reinsurance and retrocession and entails the legal possibility of risk transfers to reinsurers and unauthorized or unregistered entities, upon proof of an insufficient capacity offer from SUSEP authorized and registered reinsurers.

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XXI - OIL & GAS

1. Brazilian Oil & Gas Sector

In Brazil, according to our Constitution, the exploration and production of petroleum, natural gas, and other fluid hydrocarbons (E&P) is a federal-government monopoly, as are refining, import and export, and maritime shipping of crude oil, and pipeline transport.

In 1995, Constitutional Amendment 9 was enacted softening the state monopoly and allowing the federal government to contract private and state-run companies to perform these activities. Until this amendment, these activities could only be done by the federal government, which used to manage them through the state-owned Petróleo Brasileiro S.A. – Petrobras.

Amendment 9 opened the upstream segment to private domestic and foreign companies. In 1997, Federal Law 9478 (known as the Petroleum Law) was passed, establishing a new regulatory framework (a "Concession System") for oil and gas activities and creating the National Petroleum Agency (ANP) to promote the regulation, contracting, and monitoring of economic activities related to the oil and gas industry.

This change to the law, and successive annual bidding rounds organized by the ANP, attracted the leading international E&P players to Brazil. According to the ANP, in 2011 there were 79 companies in the E&P segment, of which 40 were foreign. Despite the sector's opening to private companies in the late 1990s, Petrobras is still the dominant player in the country's oil sector, holding prominent positions in upstream, midstream, and downstream activities.

2. Concession System

Under this system, E&P business is governed by concession contracts preceded by calls-to-bid organized by the ANP. Through these concessions contracts, the Government grants companies or consortiums, incorporated under Brazilian law, the exclusive right to explore, develop, and produce hydrocarbons in a certain block and normally for a 30-year period, at their own expense and risk. Production (of oil and/or gas) is entirely owned by the concessionaires.

In return, the Petroleum Law establishes certain government participations to be paid out by the concessionaire, namely:

(i) *subscription bonus*: sum offered by the bidding company in the auction. The minimum value is established in the tender protocol of the bidding round.

(ii) *royalties:* financial compensation owed by the concessions holders of E&P activities, corresponding to 5% to 10% of the output value from each field**.**

(iii) *special profit-sharing*: special compensation owed by the concession holders, collected only in the event of large production volumes or high profitability from the field.

(iv) *payment for occupation or retention of the land*: an amount to be paid annually by the concession holders, beginning on the signing date of the concession contract, as set forth in the tender protocol and the concession contract.

In addition to these stakes owed to the Brazilian government, the Petroleum Law calls for payment of a percentage of production (usually 1%) to the owners of the land.

The tender protocol for a specific round of bidding sets out, among other provisions: (i) the areas to be offered, (ii) the minimum exploration program to be performed in each area, (iii) the minimum local content requirements for acquisition of equipment and services, and (iv) the technical, financial, and legal qualification criteria for candidates to be eligible to participate in the bidding.

Moreover, competing bids for oil and gas concessions are evaluated on a grading system, with scores awarded according to the bidders' proposed signing bonus, minimum exploration program, and local content.

As a matter of national policy, the ANP includes in its bidding process minimum requirements of local content which may vary from round to round, depending on the location and respective material, equipment, or services to be supplied. For example, some of the total local content percentages in the 10th bidding round were 70% to 80% during the exploration phase and 77% to 85% during the production phase.

Concessionaires may request a waiver or amendment of their local content in relation to the procurement of specific items or sub-items in certain limited circumstances (e.g. where bids for the supply of local goods and services are excessively high or could result in a delay to the development schedule, or when new technology that was not available at the time of bidding is only available from foreign suppliers). However, this waiver or amendment will not affect the total local content commitment.

Finally, the bidders that are awarded concessions rights must obtain certain environmental licenses from the environmental protection agency for E&P activities in the awarded areas.

3. Downstream Overview

3.1. Refining

Like E&P activities, the refining of domestic or foreign petroleum is a federal-government monopoly. When authorized by the state through a specific process at the ANP, petroleum refining and natural-gas processing can be carried out by private companies incorporated under Brazilian law.

Currently, Brazil has an installed refining capacity of about 2,052,000 barrels per day, divided among 15 refineries, 11 of which are owned by Petrobras, with the other 4 privately held.

Both Petrobras and the two private-sector groups are expanding and/or modernizing their refineries. Petrobras, which has already adapted some of its units to process heavier oils, expects to expand its refining capacity to around 3.5 million barrels a day by the end of 2016.

3.2. Transportation

The federal government also has a monopoly over maritime shipping of crude petroleum of domestic origin or petroleum by-products produced in the country, as well as general pipeline transportation.

The Petroleum Law states that any company or consortium of companies created under Brazilian law may receive authorization from the ANP to build facilities and to engage in any type of transportation of petroleum, its derivatives and natural gas, whether for domestic supply, import or export.

Petrobras is the main player in this business mainly through its subsidiary, Petrobras Transportes S.A. (Transpetro). Transportation includes, among other things, (i) the transport and storage of petroleum, its derivatives and natural gas over pipelines, at terminals or on ships, either by Petrobras or third parties; and (ii) the construction and operation of new pipelines, terminals, or ships. An additional Petrobras subsidiary was created for the construction and operation of the Bolivia-Brazil gas pipeline: Petrobras Gás S.A. (Gaspetro), along with private parties.

4. New Legal Framework

Current findings in the so-called “Pre-Salt” areas, and the huge potential of these new oil and natural gas reservoirs, in addition to the sheer volume, the quality of the oil, considered a light crude oil with high commercial value, and the fact that the reserves found so far indicate that exploration risks are relatively low, have motivated the government to rethink the country’s oil system.

The new legal framework consists of four pieces of legislation. The first is the intended main pillar of the new oil and gas framework and is designed to regulate E&P of oil, gas, and other hydrocarbon fluids on “production sharing” basis in the Pre-Salt and other strategic areas. Under this framework, in the event of commercial findings, the productioner would reimburse the contractor for all costs incurred with exploration (known as Cost Oil), and the federal government would receive a share of the surplus oil and gas produced (known as Profit Oil), with the contractor receiving the other share. The contractor would bear the risks of exploration and development.

In addition, Petrobras will be the operator of all areas granted by the federal government under production sharing. Accordingly, Petrobras will participate in all consortiums to be formed with at least thirty percent equity. The federal government may execute production-sharing agreements either directly with Petrobras or through a public bidding procedure involving an auction. Finally, another aspect introduced in Pre-Salt legislation is that Petrobras is entitled to participate in public biddings, which could extend its minimum thirty percent interest in the consortiums.

The second piece of legislation authorizes the federal government to assign Petrobras the areas located in the Pre-Salt that have up to five billion barrels of equivalent oil, waiving the requirement of public bidding, subject to a payment which shall be made by Petrobras with government bonds. The concession of these areas involves Petrobras’s assumption of all risk, with ultimate ownership of the output.

With respect to public bidding required in cases where Petrobras is not directly contracted by the federal government, the new regulatory framework also provides for

some additional mandatory elements, such as minimum local content, which must be observed by bidders, and the value of the subscription bonus. Moreover, the criterion for awarding an agreement to a bidder, under the proposed system, is the offer with the highest percentage of surplus oil to the federal government. Foreign companies participating in public bids will also be required to organize a local company under Brazilian law if they are awarded a contract.

The third piece of legislation, enacted in August, 2010, authorizes the creation of a public company, Pré-Sal Petróleo S.A. (PPSA), with the purpose of governing production-sharing agreements and agreements for trading hydrocarbon fluids, owned by the federal government. The PPSA will have a voting majority on operating committees.

The last pillar of the new framework is the creation of a Social Fund. This Social Fund will be created to serve as a regular source of financing for social projects in Brazil.

5. Tax Benefits

Brazilian legislation establishes tax incentives and special taxation customs systems for upstream, midstream, and downstream activities, and provides for the possibility of companies benefitting from a temporary release from taxes usually levied on oil exploitation and surveying, on the purchase and importation of crude oil, raw materials, finished or semi-finished goods, equipment, machineries, tools, devices, spare parts and pieces directly related to those activities.

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XXII – MARITIME LAW

1. General Rules

Maritime law is traditionally known as the oldest branch of law, and in Brazil this isn't too far from the truth. The basic law governing the matter was enacted in 1850 (Law 556), and is known as the Brazilian Commercial Code.

As a general rule, the Code sets out the entire private structure of relationships around ships, as well as the people involved in shipping activity, the main contracts, insurance, loss due to collision, gross average, and liabilities.

Alongside the issues treated by the Imperial Act, there are important other laws dealing with specific issues of maritime law, such as Marine Mortgage, Special Brazilian Records, Oil Spills at sea, etc. Moreover, decrees and normative rules were enacted in order to adapt such an old Code to the requirements of the maritime current commercial scenario.

The navigation safety is a fundamental issue to the steady development of the marine activity and, therefore, in Brazil, this issue is remain under the competence of the Maritime Authority, duly exercised through the Navy Directors of Ports and Coasts.

Besides the investigative powers of the Maritime Authority, exercised through the Port Captaincies distributed throughout Brazil, the law entitles it to regulate the activity in regards to navigation safety aspects and their relationship with other uses of the sea, such as cable installation, submarine scientific research, etc.

However, the said regulatory competence is, in fact, exercised by the Maritime Authority through the NORMAMs (Maritime Authority Rules), which also deal with the vessels´ certification, classification societies, the foreign vessels in transit in Brazil, pilot services, works, ships ballast water, maritime meteorology and others.

To better demonstrate the development of the maritime activity in the country, it is appropriate to describe the main institutions and their role in the maritime systematic and the Brazilian navigation.

2. The Port Captaincy

The Port Captaincy plays a fundamental role in marine-traffic regulation, seeing that it is the means by which the Maritime Authority makes effective its rules. Its authority is set out by Federal Law 9537/1997, which governs, among other items, the safety at sea into Brazilian jurisdictional waters.

The Port Captaincy is part of the federal administration, a subset of the Ministry of Defense, and it operates in Brazilian territory as the Maritime Authority through its representatives located in all organized ports and seaside locations. It has authority to make rules on a wide range of issues related to safety at sea. The Maritime Authority also regulates pilot services, determines the minimum safety crew required for each ship, determines the equipment to be carried on board ships and platforms, establishes the limits of domestic navigation, and sets out rules related to naval inspections and surveys.

Given its authority in regulating and controlling safety at sea, the provisions of Federal Law 2180/1954, which governs the Maritime Tribunal's establishment, entitle the Port Captaincy to investigate the marine accidents within the scope of its authority.

3. The Maritime Tribunal

Considering the technical approach of issues related to the Maritime field, Federal Law 2180/54 regulates the proceedings of investigation and judgment of administrative infractions related to accidents and relevant facts observed at sea.

The proceedings start with the Port Captaincy's investigation whose conclusions when duly referred to the Maritime Tribunal will grant due judgment and imposition of fines.

Although defined as a tribunal, the institution that is a subset of the Navy consists of an administrative body, and composed by (seven) technical members, four of which are naval officers, including the President and three civilian experts in insurance, maritime and international law.

After receiving investigation records, the Maritime Tribunal analyzes all evidence gathered and decides whether the Port Captaincy report on the accident is sufficient for judgment of the case, or if it needs to gather further evidence to ground its adjudication. For that purpose, there is a Special Navy Prosecutor at the Tribunal with authority to review the entire investigation, referred by the Port Captaincy and request whatever is necessary to judge the case. Pending the Maritime Tribunal’s review and judgment, there is no statute of limitation on tort claims.

The Maritime Tribunal, as mentioned, is an administrative body whose decisions are guidelines for state and federal courts’ adjudication. Its judgments are limited to the technical aspects of the case, enforcement of which results in the imposition of administrative penalties, such as fines, suspension of seafarer's certificates, licenses etc.

4. The Specialized Judicial Body in the State of Rio de Janeiro

To improve judicial adjudication of Maritime issues, the state courts of Rio de Janeiro have created specialized bodies for maritime cases.

Maritime judicial adjudication is now done by judges in charge of bankruptcy and all corporate issues, considering this area is comprised into the Commercial Code.

Maritime activity is commonly governed by customary and written rules in a mix of sources from Common Law and Civil Law systems which require expert judges familiarly related to all those questions to try accordingly.

For this reason the state of Rio de Janeiro has include maritime cases under the authority of these bodies dedicated to hearing corporate and commercial matters .

5. The Brazilian Agency of Waterway Transport - ANTAQ

Brazil's waterway transport market has been regulated by the Brazilian Agency of Waterway Transport (ANTAQ) since adoption of Federal Law 10233/2001. Part of the Brazilian Ministry of Transportation, this agency plays a fundamental role in the market by

regulating, supervising, and controlling maritime transport services rendered by private entities, including the exploration of port infrastructure.

Under waterway transport rules, ANTAQ is entitled to authorize companies to offer maritime services within Brazilian ports and/or with Brazilian cargo, authorize foreign vessels to be chartered by Brazilian Shipping Companies, control Shipbuilding procedures, approve proposal for revision/adjustments of port rates, make rules for the Port Authorities, organize BID process for the concession of Organized Ports or for the authorization of Terminals for Private Use, among other important functions of the maritime and port activity.

ANTAQ is also responsible for implementing the policies of the Ministry of Transportation and the National Council for Integration of Transport Policies (CONIT).

With the advent of ANTAQ, the entire industry came to be organized, supervised and regulated by it. ANTAQ´s role is essential, not only to the operation of vessels in Brazilian jurisdictional waters, but also to foreign ships chartering, and ether activities related to the organized ports and terminals of private use.

It's undeniable the recent importance of the Regulatory Agency for the waterway transport sector and its infrastructure.

6. Ship Registration

To address maritime issues, one must focus on the ship. Under Brazilian law, many parts of Brazilian maritime activity such as domestic transport, and the transport of Brazilian State cargo and a percentage of importing cargo, even on an oceangoing way, in principle, shall be performed with a Brazilian registered ship.

According to the terms of Federal Law 7652/88 and amended by Law 9774/98, Brazilian ships are those duly registered with Brazil’s Maritime Authority at the location of the owner’s residence or wherever the ship is supposed to be operated.

Vessels' registration is also important for the delimitation of Brazilian Law's extraterritoriality, since those rules are always applicable to every act performed on board of ships flying Brazilian flag and which are registered here.

Vessels with more than 100 tons of gross tonnage must be registered at the Maritime Tribunal in Rio de Janeiro, otherwise, the registration is simple and remain into the competence of the Port Captaincy.

Registration may also take place abroad at any Brazilian embassy or consulate, which will issue temporary registration valid until the ship's arrival in the port where it will be registered definitely.

A ship may not be registered to foreigners who do not reside in Brazil, except for boats used for sport and recreation.

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7. Brazilian Special Registry - REB

In times of great scarcity of jobs in the marine sector, the Special Brazilian Registry was created as a tool to promote the maritime industry and the Brazilian maritime activities as a whole.

It is important in the maritime context to mention the Special Registry of Ships at the Maritime Tribunal, which enables the ship owner and/or carrier to obtain tax exemptions, increase the number of foreigners in the crew, hire insurance abroad, and receive financial aid from the Merchant Marine Fund.

This registration was created by Federal Law 9432/97 and is regulated by Federal Decree 2256/97.

Every Brazilian ship operated by Brazilian shipping companies is eligible for this registry. Foreign vessels might be eligible if bare boat chartered by Brazilian shipping companies with due flag suspension.

8. Tax incentives for building, maintaining/repairing, and converting ships and port modernization

In order to push forward the naval industry in Brazil, the Brazilian Customs Code has provided some important tax exemptions on the importation of spare parts to maintain and repair ships. The same treatment is provided for the importation of spare parts and equipments for ship modernization and conversion.

A few requirements must be fulfilled for the Treasury to grant these exemptions: a) the beneficiary must be registered with the Treasury for that purpose; b) transportation of imported goods must be done in ships flying the Brazilian Flag or chartered by Brazilian shipping companies; and c) for ship modernization or conversion, it must be registered with the Maritime Tribunal in the Brazilian Special Registry.

Other tax exemptions may be granted to import bunker oil to be used in domestic transport and in the context of port and offshore support.

There is also a tax system for importing parts and equipment to be used in the shipbuilding process or to replace a part and equipment already imported and used in the shipbuilding chain.

Law 11033/2004 established a tax system for the Modernization and Growth of Port Infrastructure (REPORTO), which is intended to expedite the acquisition of capital goods by the beneficiaries thereof. This system was established on 8/9/2004, and it was initially intended to be in effect until 12/31/2007. This term was extended until 12/31/2011 by Law 11726/2008 and until 12/31/2015 by Provisional Measure 556, which has status of Law, as enacted by the President of Brazil on 12/23/2011.

REPORTO suspends the levying of several taxes (IPI, PIS, and COFINS) on domestic sales of machines, equipment, spare parts and other goods to be used as fixed assets of companies that benefit from this system, for exclusive use in ports for loading, unloading, and cargo-transfer services, dredging services, and in professional training centers for worker training and education.

When the REPORTO beneficiary is the direct importer of the goods, it will also benefit from suspension of import duties, IPI, PIS, and COFINS taxes on the transaction. However, suspension of the Import Duty will only apply to machines, equipment and other goods for which there is no similar domestic product.

The REPORTO system provides for the possibility of converting suspension of those taxes by applying a zero tax rate.

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XIII - AVIATION

1. General Rules

Aviation activity in Brazil is governed primarily by the Brazilian Aviation Code, adopted by Federal Law 7565/86, which applies the principles and rules adopted by the Warsaw System and remains in force today with those of Montreal.

The Code provides an overview of concepts that apply to Brazilian air navigation, air traffic, aeronautical infrastructure, aircraft, crew, and services directly or indirectly related to flight.

Given the depth of private relationships related to flight, a code of laws regulating those issues was necessary to unify the legal system of civil aviation activity. Among the issues address above, the code deals with the concept of Brazilian air space, construction and operation of airports, air safety, aircraft, certification, registry, liabilities, and many other important topics to transporting people and cargo by air.

To provide an overview of the aviation scenario in Brazil, a few considerations of relevant aviation institutions and topics are required.

2. Brazilian Civil Aviation Agency - ANAC

Brazil's air transport market has been regulated by the Brazilian Civil Aviation Agency (ANAC) since the adoption of Federal Law 11182/2005. A subset of the Brazilian Ministry of Defense, the agency plays a fundamental role in the market by regulating, supervising, and controlling air transport services rendered by private entities, including the operation of airports.

ANAC authorizes companies to render air services at Brazilian airports by issuing a Certificate of Approval of Air Transport Company (CHETA) and recognizing those applicable to foreign Air Carriers. ANAC is also responsible for conceding air services on specific routes and for authorizing flight times for all airlines flying in and/or to Brazil by issuing Transport Approval (HOTRAN).

Note that the agency also plays a special role into the legislative process of technical issues related to the field and is empowered to enact biding rules addressed to the players of the sector involved into the air activity.

The agency also works as an administrative dispute settlement body for air carriers and airport operators. The entire public airport infrastructure is controlled by INFRAERO and regulated by ANAC.

3. Air Companies

Following the same principles of Maritime Law, domestic air transport in Brazil may only be performed by Brazilian Air companies.

Brazilian aviation law allows foreigners to invest in Brazilian Air companies, but their investment is limited to 20% of capital stock.

Open-skies systems are also applicable to foreign companies interested in having their registration countries linked to Brazil. To be eligible to flight to Brazil, the foreign airline must be designated by its country and if so, duly authorized by the Brazilian Agency of Civil Aviation. After the completion of legal requirements before ANAC the company may set up a branch office in Brazil that require due registration at commercial institutions.

After the completion of commercial requirements for registration, airline must request an authorization to operate in Brazil before the Civil Aviation Agency, and have its flights duly authorized by the same body.

After ANAC authorization and certification, if applicable, Brazilian and foreign companies must abide by all technical and legal regulations issued by the agency, subject to imposition of fines.

4. Aircraft Registration

The most important element of aviation activity is the aircraft itself. As such, the aircraft's nationality is a relevant point to be considered when providing air services.

According to the terms of the Brazilian Aviation Code, Brazilian aircraft are those duly registered at the Brazilian Aviation Authority in its registry sector, also called the Brazilian Aeronautical Registry (RAB), located in Rio de Janeiro.

Registration concludes when the aircraft's nationality and matriculation certificate have been issued.

Every contract related to the aircraft, such as leasing agreements and mortgages, must be registered with the Brazilian Aeronautical Registry in order to guarantee its legal effects against third parties.

To every aircraft registered before the Brazilian Registry is applicable the Brazilian law, even they are flying foreign territories and in cases international law does not provides otherwise.

5. Tax Benefits for Aircraft Maintenance and Repair

In order to push forward the aviation industry in Brazil, the Brazilian Customs Code has provided some important tax exemptions for the importation of spare parts for aircraft maintenance and repair.

Law 12249/2010 established the Special Tax Incentive System for the Brazilian Aircraft Industry (RETAERO), which suspends the following taxes on the sale of inputs in the domestic market or importation of goods: (i) PIS and COFINS taxes on the seller's income, when the buyer is a legal entity beneficiary of RETAERO; (ii) PIS-Importation and COFINS-Importation taxes, when the importer is a legal entity beneficiary of this system; (iii) IPI on the shipment of goods from the manufacturing or similar establishment where the buyer in the domestic market is a legal entity beneficiary of the system, and (iv) IPI on imports, when the importer is a manufacturing establishment owned by a legal entity beneficiary of the system.

The RETAERO system provides for the possibility converting suspension of those taxes by applying a zero rate.

Companies may qualify for RETAERO for up to five (5) years as of 6/14/2010. Benefits under the system, in turn, may be enjoyed on acquisitions and imports within a five-year period of the date of qualification for RETAERO.

NEW COMPETITION DEFENSE SYSTEM CHANGES PROCESSES AND IMPACTS ON INVESTMENT FUNDS

*Antonio Carlos Mazzuco and Danilo Mininel**

On May 29, Law No. 12.529/2011 came into force, reformulating the Brazilian Antitrust System, attributing to CADE (Administrative Council for Economic Defense) the duty of regulation and decision on antitrust conducts, especially concentration acts.

The new law was followed by approval by CADE of its new Internal Regulations, as well as of three other Resolutions that define fundamental rules for submission of concentration acts, new classification of business activities and recommendation for technical opinions. Furthermore, on May 30 an Inter-Ministerial Ordinance was enacted by the Ministry of Justice and Ministry of Finance, raising the minimum amounts of annual gross revenue for the need for submission of concentration acts to the CADE.

As a result, under the new system, any transaction deemed an act of concentration (amalgamation, acquisition, merger or partnership) in which at least one of the groups involved has gross revenues or a volume of business in Brazil over the last fiscal year equal to or greater than R$ 750 million and at least another group involved recorded gross revenue or a volume of business in Brazil over the last fiscal year equal to or greater than R$ 75 million shall be submitted to the approval of CADE prior to consummation, subject to penalty of nullity and imposition of a fine ranging from R$ 60 thousand to R$ 60 million.

For the companies, it should be pointed out that the CADE established the definition of economic group for determining compliance with the criteria of revenue of volume of business required for submission of transactions to the CADE, as well as for supply of information for analysis. As a result, companies under common control and those in which said companies hold at least 20% of the total or voting capital stock total shall be treated as a party of the same economic group.

Furthermore, for investment funds, the following shall be deemed members of the same economic group (i) funds under the same management, (ii) the manager, (iii) the shareholders directly or indirectly holding more than 20% of the shares of at least one of the funds under the same management and (iv) the companies that form part of the portfolio of the funds in which they hold more than 20% of the total or voting capital stock. A summary is presented in the figure below.

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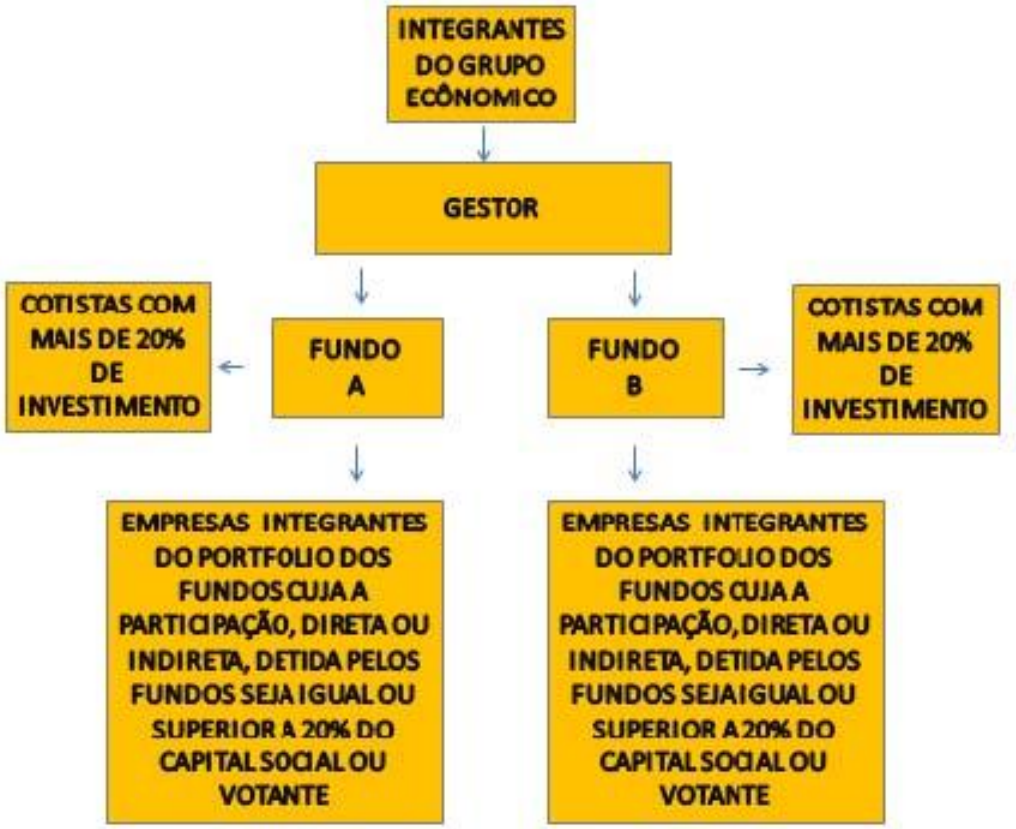

[Legend]
Integrantes do grupo economico: Members of the economic group
Gestor: Manager
Cotista com mais de 20% de investimento: Shareholders holding more than 20% of investment
Fundo A: Fund A
Fundo B: Fund B
Cotista com mais de 20% de investimento: Shareholders holding more than 20% of investment
Empresas integrantes do portfolio dos fundos cuja a participação, direta ou indireta, detida pelos fundos seja igual ou superior a 20% do capital social ou votante: Companies that form part of the portfolio of the funds, the direct or indirect interest in which, held by the funds, is equal to or greater than 20% of the capital stock or the voting capital

As seen, the new rules ended up expanding the concept of economic group when it comes to business involving investment funds. However, that matter is still subject to changes or clarifications by the CADE and is already giving rise to discussions among lawyers specialized in the area and funds managers.

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Brazil: The challenging of developing a Gas market

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Law nº 11,909 dated March 4th, 2009 (The Gas Law)

1- Introduction

Law 11,909/2009 known as "The Gas Law" was published on March 3rd, 2009. Although it is still pending further regulation, the new law establishes the main legal and Institutional framework to be applicable to the natural gas transportation, treatment, processing, storage, liquefaction, regasification, and trade. Until then, these activities were intrinsically linked to the oil industry, which, however, has its own and distinct characteristics.

This law alters the well-known Oil Law (*Lei do Petróleo*) but, most importantly, it creates the so expected legal framework for the gas sector. Considering the recently discovered significant natural gas reserves in the Brazilian coast[1], the expectation is that the new rules provide a favorable atmosphere for investors through the increase of natural gas offer and the reduction of the Bolivian gas dependence. However, as it will be further discussed this achievement will depend on coming regulations to be issued and ultimately on how much competition the legal framework will be able to effectively establish.

In the Brazilian case, the regulatory power regarding the natural gas is concentrated in ANP – *Agência Nacional de Petróleo*, which is the same regulatory body for the Oil industry[2]. Facing the challenge of developing a gas market as well as providing an efficient security mix for the electricity market primarily based on hydro sources, the success of the ANP´s regulation shall depend on its ability to articulate with other bodies, such as the antitrust authorities, the electricity and environmental agencies as well as with the state regulatory agencies. Notwithstanding the enormous challenge ahead and although the Law alone will not be sufficient to achieve the expected goals, the new legislation constitutes an essential progress towards the establishment of the Institutional conditions required to successfully develop a market which are: establishing clear rules of governance that define the relation of competition, rules of exchange under which transactions can be carried out and property rights defining the rules of ownership. Based on those aspects the Gas Law has strengthened the regulator's role – ANP – and brought the following discussed innovations:

2- With regard to gas transport activity:

Upon the enactment of this new Law, the gas transport suffers significant changes. Taking into consideration the example of the Brazilian power sector

[1] Jupiter and Tupi discovered respectively in 2008 and 2007 with estimated reserves between 176 Billion and 256 Billion m^3.
[2] This is a different experience if compared to other countries such as United Kingdom – OFGAS/OFFER, which created a regulatory body for natural gas and electric energy.

reform, the rationale behind the new legal framework for the transport segment is to allow a transition period towards a more competitive market environment through the establishment of an open access to the transport segment, which is recognized as a natural monopoly, ensuring, however, a proportionate control of tariff increase. This goal, however, will very much depend on the developments of further regulations. For achieving the so expected positive effects in the development of the natural gas secondary market, it is paramount that the regulator – ANP – act independently so as to enact regulations which shall improve and allow actual enforcement of the principles theoretically set forth in the law.

According to the new rules, transport pipelines shall now be operated through 30 years' concession agreements, preceded by public tenders, except for transport pipelines in connection with international agreements. The criteria for declaring the winning bidder shall be that of the lowest annual revenue.

As a condition precedent for granting the concession, the ANP will carry a tender offer for contracting the pipeline capacity, aiming at identifying potential carriers and measuring the actual demand. ANP will then set forth the maximum tariff to be charged from these carriers and they shall execute an irrevocable undertaking to acquire the pipeline capacity. Such document shall then become part of the subsequent public tender for the purpose of granting the concession for pipeline transport.

Currently, competition in the transport segment under Brazilian laws is based on the principles of unbundling, need of legal entity segregation and free access. As an exception to the free access principle, however, the regulation preserves the needed incentive to attract new investment in transport infrastructure by entitling a period of exclusive exploration to initial carriers. Though the extent of this period is still to be further defined by the Ministry of Mines and Energy and may raise some discussion. In this regard, one shall stress that this period needs to be carefully determined as it needs to be sufficient to allow the construction/expansion of the pipeline infrastructure without creating a barrier for entrance of new players. Slips in this regard can result in establishing incentives to feed monopoly behavior in the segment what would frustrate the main purpose of the new law, which is to achieve competition in the market through free access to the transport segment. Therefore, the trade-off between the incentive to be granted to the first players and the creation of a competitive market shall probably be the major challenge of the new framework.

As seen, the interaction between the sector-specific regulation for the gas and the general competition rules is a crucial aspect to be considered and that will need further clarification. Other grey zone regarding the allocation of competence between ANP and the antitrust authorities concerns the jurisdiction to approve transactions which implicate in the concessionaire's spin-off, merger, transformation, consolidation, capital reduction or transfer of corporate control. Under the Brazilian legal system, both the ANP (the Gas regulator) and the antitrust body share competence to approve transactions in the sector which may have some effect on the effective or potential competition in the market. Therefore, it is of extreme importance that the exercise of these competencies

shall be duly coordinated by these two bodies as to avoid the generation of additional costs and uncertainties to the investors. Currently there is an agreement executed by these agencies providing for their articulation in connection with these matters which potentially might be able to provide the needed parameters. Nevertheless, the effectiveness of such agreement will depend on its future application which should give special consideration to the reduction in the level of barriers to entrance in the still premature gas market.

3- The treatment given to preexisting pipelines on the date of publishing of the Gas law:

Taking into consideration the basic principle of respect for contracts and preexisting rights, the new legislation preserved the regime applicable to pipeline licenses already granted by ANP as well as the rules applicable to environmental licenses pending decision at the date of the law's publishing. Moreover, the new legislation ratified all licenses already granted by ANP as well as the transport tariffs and tariff review criteria already established until the date of the law's publishing.

Respect for the contracts and acquired rights is a well established principle in the Brazilian legal system, however, in order to achieve a more competitive environmental some adjustment will be needed to level the played field by placing all the players under equal conditions. In that sense and as to conciliate the respect for preexisting contracts with the demand for a competitive framework, the gas law foresees that further regulation shall impose certain obligations to be complied by these preexisting players. Although adjustments involving preexisting rights are always controversial and debatable, it has to be said that for the market to thrive it is of vital importance to equalize the market conditions between established players and new comers and, therefore, competition will depend on how the regulator will properly place and enforce these obligations in way to mitigate any potential adverse effects of dominant positions in the market.

With respect to the remaining term of these licenses, the law determines the following: (i) licenses already granted shall be renewed for 30 years as of the date of law's publishing and, (ii) in the case of projects pending environmental licensing on that same date, 30 years as of the date of ANP actually grants the license. Finally, as to the exclusivity, the initial carriers for these pipelines will have an exclusivity period of 10 years counted as of the pipeline's commercial operation date.

4- Import and Export Activities

With respect to import and export activities, the competency to grant licenses was transferred from ANP to the Ministry of Mines and Energy. This measure reinforces the idea of adopting a more centralized planning in regard to the activities listed in art 177 of the Brazilian Constitution.

5- With regard to storage and packaging activities:

Regarding these particular areas, the main objective of the new legislation is to bring them under a coordinated sector-specific regulation, observing, nevertheless, a more flexible degree of regulatory control. According to the new law, storage shall mean the storage of natural gas in natural or artificial reservoirs and packing shall mean the confinement of natural gas in gas, liquid or solid status for the purpose of its transport or consumption. The law grants different treatment to these activities with regard to licensing, to wit: the storage shall be operated through concessions granted by ANP, preceded by public tenders; while packaging is subject to ANP licensing (no prior public tender is needed). In both cases, ANP shall be incumbent upon supervising these activities, including with respect to compliance with the free access principle. The decision on whether these activities deserve regulation, as well as the different degree of regulation applied to each of them seems to be defined by a strategic governmental policy oriented to regulate the gas sector as a whole balancing the use and the preservation of reserves of a natural recourse which is, at the same time, essential and non renewable.

With regard to processing, treatment, liquefaction and regasification of Natural Gas:

It is worth noting that the Brazilian legislation distinguishes between processing and treatment activities of those of Natural Gas' transport[3]. Under Brazilian law, the processing and treatment activities shall mean all activities aimed at allowing the Natural Gas' transport, distribution and use. These activities, as well as the construction and operation of liquefaction and regasification facilities are subject to ANP licensing and are exempted from allowing the free access.

Planning of the Grid Expansion and Gas Supply Contingencies' Situations:

The Law assigns to the Ministry of Mines and Energy the authority to plan the pipeline grid expansion. Until the enactment of the law, the grid was expanded pursuant to private parties' interests, without any planning. A more centralized planning in this aspect can be perceived as a progress as it may allow more efficiency to the system. Decisions in this regard, however, will once again demand a very transparent and independent position from the central government as to produce the right signals to the potential investors. Finally, the law confers legal treatment to supply contingencies.

As to what the natural gas distribution and commercialization is concerned:

Another specificity of the Brazilian scenario is that according to the federative Pact, competencies were shared between the states and the Union, and commercialization and distribution became a monopoly of the federative states. Therefore, ANP actions shall be coordinated with the state regulatory bodies. This particular aspect imposes additional complexity to the gas sector-specific regulation. Although multiplicity of regulatory institutions may have some

[3] In the United Kingdom for instance the concept of pipeline shall encompass the processing facilities.

positive impacts in terms of approaching problems at a more local level, it also carries some burdens such as to increase the regulatory differences among the federative states regarding the gas pricing to industries what can be used as tool to compete for investments potentially leading to the deepening of already existing differences among the Federal regions in connection with their level of development. That considered, aiming at gradually promoting more competition between distributors without instigating a war among them, the gas law created new possibilities by introducing the following new players to the natural gas market : "**free consumers**" which shall be consumers allowed to acquire natural gas *directly* from any supply agent, importer or trader, as per federative states regulation (to be further issued); "**self-producers**" which shall be the agent engaged in E&P gas activities which uses part or the totality of the gas in its own industrial activities; and "**self-importers**" which is the agent that carries a license for importing natural gas and applies part or the totality of such imported product in its own industrial activities.

Under the new regulation, these players can construct and install gas facilities and pipelines whenever the state-owned gas distribution utilities are unable to meet their needs and provided that they enter into operation and maintenance contracts with these utilities, upon payment of O&M tariffs to be set forth by the state-owned regulators. Facilities built according to these rules shall be, however, reverted to the state-owned gas distribution utilities upon payment of the correspondent indemnification. Furthermore, the state-owned utility can request these players to construct facilities large enough to allow their use by other consumers, negotiating additional cost increases with such players upon arbitration of the state regulatory bodies. This mechanism is to allow balancing the private needs of particular users with the pace of previously planned expansion. However, this mechanism will still need to be harmonized with state legislation and with the concession agreements of the state-owned utilities. These issues indicate that the actual success of the new regulatory framework to be driven by the ANP will depend on developing a well coordinated policy with the state's regulatory bodies.

The system adopted by the Gas Law aimed at reconciling the interests of large consumers with the Brazilian constitutional principle pursuant to which the States shall have the monopoly of gas distribution. The original law project intended to permit the delivery of gas without intermediation of the state-owned utilities (the so-called by pass), but this alteration was rejected for its alleged violation of the Federative Pact which is considered a fundamental constitutional principle under Brazilian legal framework and provides for the strict respect for the constitutional allocation of competencies between states and Federation. Allegedly the so-called *bypass* could break the Federative Pact by enlarging the competence of the Union to the detriment of the state's one what would be contrary to the Brazilian Constitution which in its art 25 provides for the monopoly of the States in connection with the distribution of natural gas.

With regard to Arbitration:

As an attempt to improve environmental security for new investors and especially for potential foreign investors, the law expressly authorizes for

adherence of state-owned companies to arbitration. Although not sufficient alone as Arbitration ultimately depends on enforcement, the express acceptance of arbitration as a possible Dispute Resolution Mechanism for the sector is an important progress as it is perceived to be a rapid, impartial and specialized path to solve controversies over the always long term projects. Moreover, it is also important to attract investment to the projects, considering that external creditors mainly require arbitration clauses as a condition for granting financing and there has always existed a controversy over whether or not state-owned companies were allowed to submit their claims to arbitrations without express legal authorization.

Conclusion:

Overall, the new legislation has been welcomed and perceived as a progress by the market as an essential starting point to the development of an effective gas market in Brazil. Notwithstanding this positive reception, it is also clear that most parameters still needed to be established and that the effectiveness of the initial designed institutional and regulatory framework will mostly depend on the future decisions to be taken by the regulatory agency in terms of promoting competition and setting the right incentives for newcomers to invest. As a final remark on the Gas Law, it has to be said that, theoretically, the success of measures designed to achieve regulation of a market is not generally an exclusive responsibility of one specific agent's performance; instead, it may depend more on how different policy objectives are coordinated in terms of setting priorities and allowing proper time and space for players to find efficient solutions within clearly established parameters. This article has discussed some of the regulatory challenges ahead. ANP's actions shall be coordinated with those of the antitrust authorities and, moreover, several federative state regulatory agencies. Therefore, as to what the ANP's role is concerned in the initial steps of creation of Natural Gas' regulatory framework, the adoption of a coherent regulatory regime based on strong theoretical basis still allowing for the needed flexibility to adjust the market conditions is a crucial aspect to be duly considered and that will constitute an essential tool to achieve effective regulation.

International Tax REPORT

The monthly guide to international tax planning

Brazil introduces new anti-avoidance rules on international transactions

Thin capitalisation

Economies across the globe have evolved anti-avoidance practices to address the issue of thin capitalisation. Restriction on debt-to-equity ratio is one of the most popular methods for curbing thin capitalisation. Countries have generally pegged a maximum debt-to-equity ratio beyond which excess interest paid may be disallowed; or penalty may be imposed; or interest may be reclassified as debt. The limit of permissible debt to equity ratio is popularly referred to as 'safe harbour' limit, avoiding excessive tax deduction of interests while a reasonable amount of dividends that is usually proportional to equity would be subject to tax on distribution.

The debt-to-equity ratio can be proved by a considerable amount of evidence about the forms of financing which are in fact used in particular cases in the open market. Much would obviously depend, in the operation of such an approach, on the judgement of the tax authorities in the first place and, in the last resort, on the judgement of the courts or tribunals deciding appeals against the decisions of the tax authorities. Nevertheless, these methods of deciding questions which follow from such a facts and circumstances approach are clearly consistent, and is considered by the OECD, consistent with the arm's length principle to the extent that they use evidence of transactions between independent persons and apply this evidence in a reasonable manner. Another approach is to deem non-deductible, payments of interest if the debt/equity ratio of the paying company exceeds a fixed ratio. Such a ratio is bound to be arbitrary to some degree, even though it might be fixed by reference to the kind of ratio commonly found in the open market.

While these rules differ from country to country, a general characteristic is that interest deduction is limited if the debt-to-equity ratio of an affiliate is above a certain threshold. More precisely, interest payments associated with an excess leverage are generally not deductible from taxable profit. In the USA, for example, corporations whose debt-to-equity ratio is in excess of 1.5:1, and which pay interest on debt owed to, or guaranteed by, certain non-US affiliates are subject to the so-called earnings stripping limitation of interest deduction.

In this context, with the main purpose of reducing international tax avoidance, the Brazilian Federal Government has published MP 472/2009 which brings in new rules regarding capitalisation of domestic companies, remittances to tax havens and fiscal residence.

Under the new rules, remittances overseas regarding payments of interest are only deductible from the local corporate taxes (income tax at 25% and social

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contribution on profits at 9%) as long as they are proven to be necessary for the company's activities, and the following requirements are met cumulatively:

- the debt does not exceed two times the equity investment of the foreign related affiliate (specific 2:1 D/E);
- the total debt amount does not exceed two times the total equity investment of all foreign related companies (general 2:1 D/E);
- the debt is not greater than 30% of the equity of the Brazilian company when creditors are located in a low tax jurisdiction or 'privileged tax regime'; and
- the total debt with entities located in a low tax jurisdiction or 'privileged tax regime' is not greater than 30% of the equity of the Brazilian company.

A few countries such as Canada and Portugal have adopted the same restricted fixed ratio as Brazil (2:1), while other jurisdictions such as Australia, Japan, South Africa, Korea, New Zealand, Turkey, Poland, Romania, Russia and Netherlands have adopted a higher debt-to-equity ratio of 3:1.

Therefore, the above-mentioned rules, by providing limits to debt/equity ratios, regulate for the first time thin capitalisation in Brazil, where interest is deductible at 34% income tax and social contribution and dividends are exempted unless remitted to tax havens. This new rule seems to make more sense when it covers remittance to tax havens or jurisdictions with privileged tax regimes. If a foreign parent company is not set up in a tax haven jurisdiction, the distribution of dividends from its subsidiary in Brazil is exempted from tax as the law stands since 1996. There are various reasons why companies decide to invest abroad with their own or third parties capital through either equity or debt, such as the differences between their guarantees against default, foreign exchange variation and other economic factors. The tax regime is just one of them, sometimes the most predominant, and in the case of Brazil – as dividends are exempted – the new tax rules appear to target the excessive debt that has the advantage to be fully deductible whereas dividends do not for corporation taxation purposes.

Moreover, MP 472/2009 makes clear that the application of such rules does not prevent the application of Brazilian transfer pricing rules to intercompany loans, which instead of using an arms' length reference, grants full interest deductibility if the loans are registered with the Central Bank or if the fixed limit rate of Libor rate plus annual spread of 3% is respected.

This means that it would possible be for interest expenses regarding a financial operation between resident and non-resident related companies, although considered deductible under Brazilian transfer pricing regulations, to be disallowed under thin capitalisation rules.

Brazilian rules v OECD's commentaries

It is a fact that there is an interplay between tax treaties and domestic rules on thin capitalisation relevant to the scope of art 9 (Associated Enterprises) of the OECD Model Tax Convention (the OECD Model). In relation to this issue in its Commentary on art 9, the OECD recommends that where a treaty exists between two countries, for domestic thin capitalisation rules to apply, it must be proved that the transactions are not conducted on an arm's length basis. For example, when the domestic rule does not permit a D/E ratio of more than 2:1 and the subsidiary has a D/E ratio of 3:1 from the holding company – if it is proved that the transactions are on an arm's length basis- the provisions of thin capitalisation will not apply.

In this respect, the Report on Thin Capitalization[1] of the OECD's Committee on Fiscal Affairs (adopted by the OECD Council on 26 November 1986) considers that: (i) art 9 does not prevent the application of domestic thin capitalisation rules to the extent relevant for determining the actual cost/profit to the borrower enterprise in an arm's length situation; (ii) it is also relevant to determine the nature of the transaction ie, debt or equity (reclassification); and (iii) the rules of domestic thin capitalization should not increase the profits of the enterprise beyond the arm's length profit.

In the Report, the OECD's Committee of Fiscal Affairs also emphasises that the application of rules designed to deal with thin capitalisation ought not normally to increase the taxable profits of the relevant domestic enterprise to an amount greater than the profit which would have accrued in the arm's length situation, and that this principle should be followed in applying existing tax treaties.

However, regarding art 24 of the OECD Model (Non-discrimination), the Commentary requires non-partisan treatment for the interest, royalty etc paid by a resident of the source country to a resident of the other state, subject to the arm's length principle. It also clarifies that art 24 does not prohibit application of thin capitalization rules as long as they adhere to the arm's length principle.

All 29 [2] tax treaties signed by Brazil that are still in force contain a general non-discrimination clause for

the deduction of expenses similar to the one established in art 24 of the OECD Model. Therefore, since the current Brazilian law does not apply thin-capitalisation rules to interest payments made to a Brazilian lender, then the application of the non-discrimination clause may be an important issue that would be worth analysing more carefully.

However, out of those treaties, six (ie, those entered into with South Africa, Chile, Israel, Mexico, Peru and Portugal) specifically include a clause (usually in the Protocol) stating that the provisions of the treaty should not be interpreted to prevent the application by a contracting state of thin-capitalisation provisions provided for in its internal law.

Although Brazil is not an OECD member, it has concluded several tax treaties, some of which are based on the OECD Model. Therefore, the OECD Model and its corresponding Commentaries should be taken into account by tax authorities and by taxpayers at least as a guide when applying simultaneously thin-capitalisation and transfer pricing rules.

Interest on net equity

As an alternative, it should be noted that Brazilian law also provides for the payment of interest attributable to shareholders' equity by Brazilian companies, which is similar to Belgium's notional interest deduction.

Under this system, resident companies may deduct interest paid or credited to a resident or non-resident shareholder or partners as a return on the capital owned by that shareholder or partner (interest on net equity), subject to certain limits. Interest on net equity (JCP) is a special type of payment to shareholders, calculated on the company's net worth account, limited to the central bank's long-term interest rate and to the greater of: (1) 50% of the corporate profits; or (2) 50% of the accumulated profits or profits reserves. Interest on net equity paid to resident or non-resident beneficiaries is subject to withholding tax at the rate of 15% (25% in the case of interest on net equity paid to beneficiaries located in low-tax jurisdictions). Besides, the net amount of these payments will be deemed to fulfil the mandatory dividend distribution to shareholders.

Further, the Belgian notional interest deduction, interest on net equity (JCP) is calculated on 'adjusted' equity capital, while in Brazil the equity capital is adjusted by deducting the revaluation surpluses reserve. This tax benefit also provides flexibility, because under certain circumstances it is possible to carry forward any unused amount of the deduction.

Other provisions of MP 472/2009

The newly enacted legislation also establishes restrictions on the deduction of amounts paid, for any reasons, to individuals or entities in tax havens. Such restrictions include the necessity to identify the payment's beneficiary, to prove the operational capabilities of the foreign entity, to prove the payment and respective transfer of assets and rights, as well as the effective fruition of services. Although such restrictions could be already found in the tax law this new provision makes clear that foreign transactions must have substance in order to the regarded by tax authorities, particularly when a low tax jurisdiction is involved.

In addition, individuals domiciled in Brazil who move their legal domiciles to tax havens are, for tax purposes, regarded as being also domiciled in Brazil, unless they prove to be *de facto* residents in the foreign jurisdiction. *De facto* residency requires residents to spend at least 183 days within each 12-month period in their alleged new domicile or to prove that such is their families' habitual residence and the location of greater part of their estate. Again, although such restrictions could be already found in the tax law this new provision makes clear that substance shall prevail over form.

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Endnotes

1. The OECD's April 2000 publication. This report considers the issues of financing and thin capitalisation, discusses the international effects of the various national approaches and analyses to what degree unjustifiable double taxation may be relieved with the assistance of tax treaties. As part of the 1992 update, this report resulted in changes in the Commentary on arts 9, 10, 11, 23A and 23B, 24 and 25.
2. Brazil has signed DTTs with 29 countries which are in force in January, 2010: Austria, Argentina, Belgium, Canada, China, Korea, Denmark, Ecuador, Philippines, Finland, France, Hungary, India, Italy, Japan, Luxemburg, Norway, Spain, Sweden, The Netherlands, Czech and Slovak Republic, Ukraine, South Africa, Chile, Israel, Mexico, Peru and Portugal.