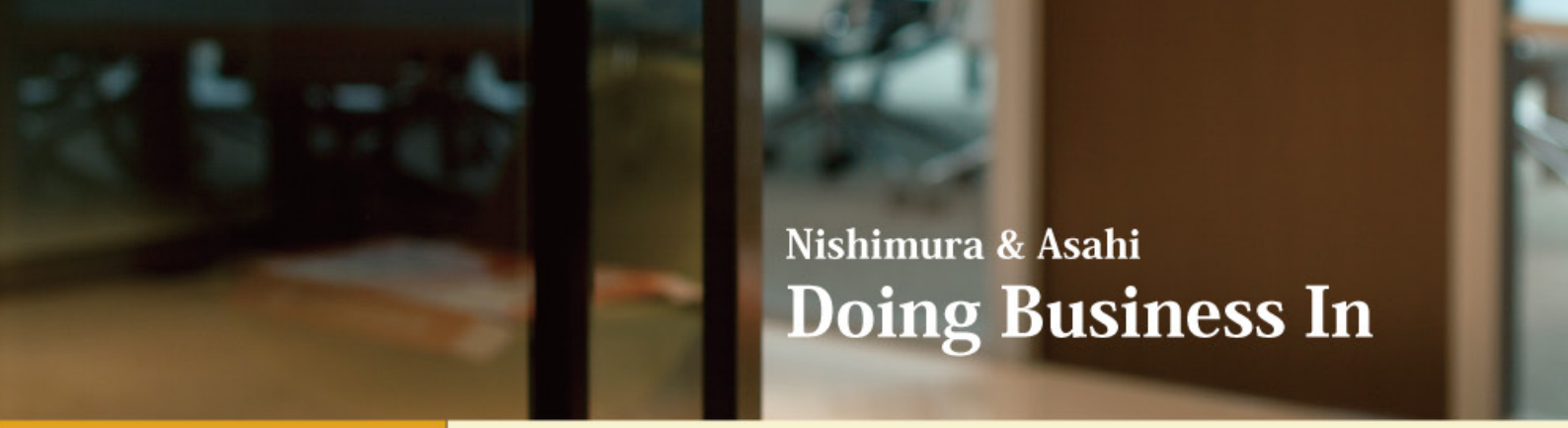

Brazil

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1. INTRODUCTION

1.1. Please give a brief outline of the legal system in Brazil. Is it based on common-law, civil-law, or some other system?

Brazil is a civil law country, and the legal system derives from the Brazilian Federal Constitution, which provides for the organization of the Executive, Legislative and Judicial branches[1].

Federal law is the source of the majority of issues, such as civil, commercial, criminal, procedural, aeronautical, maritime, telecommunications and radio broadcasting, environmental, capital markets, monetary system (this last issue meaning financial matters such as banking law, securities act, etc.), energy amongst others.

Certain matters, such as environmental law, consumer protection, education and tax are subject to concurrent authority for legislation, which allows the States, Municipalities and the Federal District to pass their own bills, provided that they abide by the general principles and guidelines arising out of the Federal Constitution and applicable federal laws.

As a civil law country, Brazilian law is based on a statutory system, with the main legal rules compiled in codes. For instance, the main civil and commercial rules are set forth in the Civil Code[2], and procedural rules are provided for in the Civil Procedural[3] and Criminal Procedural Codes[4].

Court decisions must be rendered with full compliance of the existing legislation and its best interpretation. In the absence of a specific applicable statute, court decisions should be grounded on

1 See Articles 44 to 126 of the Federal Constitution.

2 Federal Law n. 10.406/02.

3 Federal Law n. 5.869/73.

4 Law -Decree n. 3.689/41.

analogy, customs and general principles of law[5].

Due to the strict civil law nature of the Brazilian legal system, judicial precedents and case law in general are not binding, except for certain specific rulings issued by the Supreme Court on constitutional matters, which shall have binding effect over the other bodies of the Judiciary Power and over the direct and indirect public administration, at federal, State and municipal levels[6]. Notwithstanding such non-binding nature, relevant precedents of Superior Courts are in most part respected by Lower Courts.

1.2. How are the Courts organized in Brazil?

Broadly speaking, the Brazilian courts have jurisdiction over any litigation somehow connected with the Brazilian territory. The Brazilian Judicial Branch is divided into federal and state courts.

The federal courts have exclusive jurisdiction over any lawsuit in which the federal government or any of its agencies or quasi-governmental bodies is a party to, as well as over cases involving foreign states or international agencies. Labor, military and electoral courts exist within the federal system but have their own specialized courts.

The State courts have "residual" jurisdiction, that is, jurisdiction over any matter which does not fall within the federal system. All private commercial litigation takes place before State courts, unless the parties have chosen arbitration.

Regardless of the system, 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 Court System, on the other hand, is comprised by 5 (five) Circuit Court of Appeals. As mentioned above, labor, electoral and military systems have their own Court of Appeals.

In a higher layer the judicial structure has 2 (two) superior courts, namely 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. The former has jurisdiction over any case decided by State or Federal Court of Appeals, if the decision rendered by any of these courts violates any federal law or international treaties. The latter has jurisdiction over Constitutional issues and can also revisit decisions rendered by any court if the Brazilian Constitution happens to be violated.

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5 See Article 4 of the Law-Decree n. 4.657/42.

6 See Article 103-A of the Federal Constitution.

1.3. How are lawyers organized in Brazil?

Lawyers are organized under the Brazilian Bar Association (*Ordem dos Advogados do Brasil*), which has a specific chapter for each State of the country.

To be admitted as a lawyer, the candidate must have a Brazilian law degree and be admitted by passing the Brazilian Bar exam. Generally speaking, once admitted in any chapter of the Brazilian Bar, the lawyer may practice Brazilian law in any Court of the country, subject to very few restrictions.

Brazilian bar rules prevent international law firms from practicing Brazilian law. Therefore, the international law firms that have offices in Brazil work only as consultants in foreign law (and even so they must be registered with the Brazilian bar).

1.4. What types of legal fee arrangements are common in Brazil?

The Brazilian Bar Association has set minimum fees for certain types of legal services. Such minimum threshold, however, is quite low compared to the fees charged by Brazilian top law firms. Such law firms usually charge their fees on an hourly basis. Nevertheless, other types of arrangements are also very common, such as (i) hourly rates with certain limits for projects or litigation; (ii) fixed fees; (iii) success fees; (iv) a mix of the prior alternatives.

2. STRUCTURES FOR DOING BUSINESS

2.1. Is it necessary to set up a business organization in Brazil to provide services or sell goods in Brazil?

As a general rule, it is not necessary to incorporate a company in Brazil to provide services or sell goods in Brazil, since the import of goods and services is permitted. However, for the rendering of certain services, it may be necessary to have a physical presence in Brazil (i.e. civil construction, rendering services for or selling goods to certain public bodies and governmental entities, selling services or goods required to have a local content under Oil & Gas law, obtaining concession rights over public services); therefore, in those cases it will be required to have a company incorporated in Brazil.

Notwithstanding the above, the absence of a business organization in Brazil does not exempt foreigners from being taxed by virtue of their activities in Brazil. It is therefore advisable to always have a Brazilian lawyer verify the specifics of the situation.

2.2. What forms of business organizations can be set up in Brazil?

The legal forms of business organizations in Brazil are:

- Limited liability companies (*sociedade limitada*)
- Corporations (*sociedade por ações*)
- Simple partnerships (*sociedade simples*)
- General partnerships (*sociedade em nome coletivo*)
- Limited partnerships (*sociedade em comandita simples*)
- Limited partnerships with share capital (*sociedade em comandita por ações*)

The two corporate structures that are by far the most common in Brazil are limited liability companies (*sociedade limitada*) and corporations (*sociedade por ações*). Depending on certain business circumstances, other corporate structures may become attractive for some investors.

2.3. What is the process, time required and cost for setting up each?

Limited liability companies (*sociedade limitada*)

The Brazilian limited liability company, which resembles an American limited liability company (LLC), is by far the most common type of company in Brazil, being the corporate structure of choice for an estimated 90% to 95% of the total number of companies organized in Brazil. They range from small enterprises with few partners to some of the largest Brazilian companies. The LLC is the simplest alternative for the formation of a company, considering that very few formalities are required for operation.

A limited liability company requires at least two partners, regardless of their nationality, who may each be individuals or legal entities. [No, this means that both individuals and legal entities may participate freely as partners in a Brazilian LLC]. Each partner's liability is limited to the amount of its participation in the company's capital stock, if it is fully paid-in; otherwise, the partners are jointly liable before third parties up to the total amount of subscribed capital stock. As a general rule, no minimum corporate capital is legally required.

A limited liability company differs from a corporation due to the absence of certain formalities, concerning its incorporation and lack of publicity for its operations, for example. This corporate type may not issue any type of securities and hence can only be held privately. Most subsidiaries of foreign companies currently operating in Brazil, which do not plan to issue securities in the Brazilian stock

exchange are set up as limited liability companies.

The incorporation of a limited liability company begins with the filing of its articles of association with the board of commerce[7], along with the following documents and basic information:

- power of attorney to be granted by each one of the foreign partners (regardless if the foreign partner is an individual or a legal entity). The power of attorney must contain special powers authorizing the grantee to receive services of process on behalf of the grantor;
- company's name (which must contain the type of activity to be carried out by the company);
- identification and full qualification (name, age, marital status, profession, taxpayer ID and residential address) of the partners;
- company's full address and corporate purposes;
- total amount of the corporate capital and total number of quotas (shares);
- form and time frame for the paying in of the corporate capital;
- number of quotas (shares) to be held by each partner; and
- manager's name and full qualifications (the manager must be an individual resident in Brazil).

The cost for incorporating a *limitada* should not exceed a few thousand dollars, and would take approximately 20 business days after filing with the board of commerce.

Corporations (*sociedade por ações*)

Brazilian corporations, like U.S. corporations, are companies in which decisions are generally taken by majority vote and management is separate from the shareholders. It is a corporate structure utilized for ventures capable of gathering concentrations of financial resources from a large number of investors.

The capital of a corporation is divided into shares (common, preferred, convertible, or founders'). The shares may be represented by stock certificates and are transferred through annotations on the corporation's shares register book and shares transfer book, which are mandatory for this kind of company.

Brazilian corporations may be either publicly held or closely held. Publicly held corporations must be registered with, and subject to the supervision of, the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*), and may have securities publicly offered or traded on organized

[7] The official name in Portuguese is "Junta Comercial," which is usually translated as "trade board" or "board of commerce." The equivalent in the US is generally called a Division of Corporations (e.g. in Delaware and New York), but may vary in name depending on the state's nomenclature (e.g. Corporations Division, Corporations and Charities Division, etc.).

securities markets, allowing them to raise funds from the public. The stock of closely held corporations is not publicly traded. Closely held corporations gather capital from its shareholders or subscribers and may have simpler accounting and management systems.

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 solely through their bylaws, which are approved by the first General Meeting of the Shareholders and must comply with corporate law. Thereafter, amendments to the bylaws of the corporation must be approved by an extraordinary general meeting of shareholders. To hold a general meeting upon first call, shareholders representing at least two-thirds of the voting capital must be present; but if this quorum is not met, then on a second call, any number of shareholders is sufficient to hold the general meeting.

In closely held corporations, the bylaws may restrict the circulation of shares, whenever it does not prohibit their transfer. This mechanism is basically the right of first refusal that current shareholders may have in the acquisition of the company's shares.

As a general rule, no minimum corporate capital is legally required. It is usually suggested that the amount of the corporate capital be consistent with the initial operational needs of the company. In the event that a greater amount is needed, the partner may increase the corporate capital amount by means of an amendment to the articles of association, provided that the initial corporate capital has been fully paid-in.

The shareholders may pay in the corporate capital in cash, credits, or assets. The rendering of services in order to pay in the corporate capital is not allowed. The partners are jointly liable for the estimated amount of the assets used to pay in the corporate capital up to five years, counted as of the filing of the company.

The cost for incorporating a corporation should not exceed a few thousand dollars (although 10% of the total capital is required as a deposit), and would take approximately 20 business days after the opening of the corporation's books and filing of its bylaws with the board of commerce.

2.4. Are there any fetters on the business activities that can be carried on by business organizations in Brazil?

Generally, no.

2.5. What are the ongoing obligations in relation to each of the forms of business organizations?

Both LLCs and corporations must hold a partners/shareholders meeting within the first trimester of each year to approve the accounts of the previous year (until such approval takes place, the managers remain liable for the operations in the period). In addition to the approval, corporations must also publish their financial statements.

3. CORPORATIONS

3.1. What are the different types of Company in Brazil?

Please refer to Section 2.2.

3.2. What is the process for the incorporation of a Company?

Please refer to Section 2.3.

3.3. How can a minority shareholder protect its interests?

Based on the proportion of share capital or the number of shares held by shareholders, the law gives the following basic rights for minority shareholders:

Holders of at least 5% of capital are entitled to;

- request information from the Audit Committee on matters that are under its jurisdiction (Article 163(6) of Law No. 6.404/76);
- request a court order for a complete view of all the company's books, where there are violations of any law or statute, or when there is a founded suspicion of serious irregularities caused by any of the organs of administration of the company (Article 105 of Law No. 6.404/76);
- convene the General Assembly when administrators do not meet within eight days of a reasonable request, to convene the assembly, indicating the matter to be discussed (Article 123(1)(c) of Law No. 6.404);

- obtain compensation for damage caused by any director or officer[8] of the company for losses it has caused to its assets if the General Assembly has chosen not to request such compensation (Article 159(4) of Law No. 6.404/76).

As in most other jurisdictions, additional rights may be guaranteed by a Shareholders' Agreement.

3.4. Are there any corporate governance norms?

The corporation must be managed by an executive board comprising at least two officers, who must be Brazilian residents, and may also be overseen by a board of directors, whose members may be resident in Brazil or abroad. Corporations with open capital stock must have a board of directors, while closed capital corporations may provide for a board of directors at their discretion.

Public companies may have additional corporate governance norms (tag-along rights, limitations on preferred shares, guaranteed seats on the board of directors, etc.) according to the level of registration they have in the São Paulo stock market (BOVESPA).

3.5. Are there any restrictions on a foreign-owned Brazilian company from raising capital/debt from Brazilian markets?

According to the Brazilian Federal Constitution, in principle, participation of foreign capital in the following activities is prohibited, since their implementation is under the responsibility of the federal government:

- development of activities involving nuclear energy;
- health services;
- businesses located on international borders[9] and ownership of rural real estate properties;
- post office and telegraph services;
- airlines with concessions of domestic flight routes; and,
- aerospace industry.

Also, according to a constitutional amendment to the Federal Constitution, at least 70% of the total capital and of the voting shares of newspapers, magazines, and other periodicals must belong to, directly or indirectly, a Brazilian national. Therefore, foreign investment is limited to 30**%** of the total

[8] An officer is an executive of the company; a director (member of the board of directors) oversees the activities of a company under powers granted by the shareholders.

[9] Foreigners may not participate in businesses owning property or doing business on land adjoining Brazil's international boundaries.

and voting shares of such entities.

3.6. Can a Brazilian company have foreign directors?

Managers or officers of a company can be foreigners or Brazilians but they must be Brazilian residents (in the case of foreigners, they must hold a valid resident visa). The manager/officer is in charge of the company's management and representation and is entitled to bind the company and to perform managerial duties within the company's purposes, with due observance of the limits established in the articles of association or bylaws.

The members of the board of directors must be individuals (either foreigners or Brazilians) and hold at least one share of the company. Members who are not residents in Brazil must appoint an attorney-in-fact in Brazil with powers to represent them in corporate matters in general and receive service of process.

3.7. Are there any norms for the sharing of profits?

The general rule applicable for corporations is that the dividends shall be distributed to the shareholders in proportion to their equity participation.

3.8. What type of shares can a company issue?

A corporation can issue common shares and/or preferred shares. They must all be nominative (there are no bearer shares), but the issuance of a physical certificate is optional following mandatory registration in the company's corporate books (see question 2.3 above). The corporation may contract with a financial institution authorized by the CVM for it to render the service of keeping and custody of its share register books, share transfer books and the issue of its share certificates. The company may also issue different classes of shares, each with their own rights and restrictions.

3.9. Are there any requirements in relation to the frequency and mode of holding board meetings?

There are no such requirements for either the executive board or the board of directors, except for those provided in the company's bylaws.

3.10. What responsibilities and liabilities do company directors have?

As a general rule, the company, not the officers and directors, is liable for acts performed by its officers and directors within the regular course of business, in accordance with the law and their management powers under the company's bylaws.

If the officers or directors abuse their powers, acting in excess of their mandates or in violation of the law, two different effects should be considered: the first effect stemming from the legal relationship between officers or directors and the shareholders, and the second stemming from the legal relationship between the company and third parties including administrative agencies.

4. LIQUIDATION

4.1. Please give a brief outline of the procedure involved in the winding up or liquidation of a company in Brazil. Are there any requirements specific to Brazil?

As mentioned in item 2.3 above, limited liability companies are by far the most common type of company in Brazil,

In Brazil, there are two ways whereby the partners of a limited liability company may carry out the liquidation of the legal entity: through a one-step or through a two-step procedure.

The one-step liquidation procedure is used by companies with few assets to be disposed of and few pending debts or liabilities towards third parties. Such procedure is less complicated and may be accomplished in one single corporate act, the execution of an Articles of Dissolution (*Distrato Social*) by the company's partners, after all pending issues are duly solved (i.e., when all pending liabilities have been paid and all outstanding assets have been sold).

Before the execution of the Articles of Dissolution, the company shall draw up a final balance sheet showing that the company has no further liabilities. The Articles of Dissolution shall appoint a person (preferably an accountant) to keep the books and documents of the company for the term of the statute of limitations of each kind of the company's liabilities, and shall declare that the company has been liquidated.

If, however, the company has relevant assets to be disposed of and/or outstanding liabilities, a two-step liquidation procedure would be recommended, since it will officially put the company into liquidation and will enable the appointment of a liquidator in charge of the process.

In that case, the partners should first convene a meeting and resolve (a) to dissolve the company (i.e., from that date forward, the company should no longer operate), (b) to commence the liquidation process, and (c) to appoint a liquidator to manage the company until all the pending liabilities are paid and assets are sold.

Minutes of the meeting shall be filed with the Board of Commerce of the State where the company is headquartered, within 30 days from the date of its execution, and shall be published in the official gazette of the Union or the State, and in another newspaper of large circulation in the city of the head-office of the liquidating company.

The liquidator shall be in charge of liquidating the company, and, after all the pending issues have been duly resolved, the company shall draw up a final balance sheet.

The partners shall then convene again and execute an Articles of Dissolution, appointing a person to keep the books and documents of the company for the term of the statute of limitations of each kind of the company's liabilities, and declare the company to be extinct.

In both cases (in one-step and two-step liquidation procedures), the Articles of Dissolution, accompanied by the certificates required bylaws, shall be (a) filed with the Board of Commerce of the State where the company has its headquarters within thirty (30) days from the date of the execution of such document; and (b) published in the official gazette of the Union or the State, in accordance with the location of the head office of the company, and in another newspaper of large circulation in the city of the head-office of the liquidating company.

The winding-up of a corporation in Brazil, as provided by Law No. 6.404, dated December 15, 1976, may be performed (i) in the form of law: (a) upon the end of the term of the corporation; (b) in the events set forth in the corporation's bylaws; (c) by resolution of the general shareholders' meeting, as required by law; (d) except as provided for in Article 251 of Law No. 6.404, by the existence of only one (1) shareholder verified at an annual general shareholders' meeting, if the minimum of two (2) shareholders is not recomposed until the meeting of the following year; (e) by termination, as provided for by law, of the corporation's license to operate; (ii) by a judicial decision: (a) when its incorporation is considered null in a lawsuit filed by any of its shareholders; (b) when it has been proved in a lawsuit filed by shareholders representing five percent (5%) or more of the capital stock that the corporation may not accomplish its purposes; (c) in the event of bankruptcy, as provided by the applicable law; or (iii) upon the decision of a competent administrative authority, in cases provided by special law.

In case the corporation's bylaws do not provide otherwise, in the events provided for in item (i) above,

a general shareholders' meeting shall determine the method of liquidation and appoint a liquidator and a Fiscal Council to act during the period of liquidation. Such liquidator may be removed at any time by the body which has appointed it.

A corporation which has a Board of Directors shall be entitled to maintain it and such board shall appoint the liquidator. In this case, the Fiscal Council shall act permanently or at the request of the shareholders, as established in the bylaws.

In addition to the events provided for in item (ii) above, liquidation shall take place upon a judicial order, as follows: (a) at the request of any shareholder, if the managers or the majority of shareholders fail to facilitate the liquidation or oppose it, in the events mentioned in item (i) above; (b) in case provided for in sub-item (e) of item (i) above, at the request of the public prosecutor's office, by virtue of communication from any competent authority if the corporation, within thirty (30) days following its dissolution, fails to initiate its liquidation or if, after initiating it, the proceedings remain interrupted for more than fifteen (15) days. In this case, the rules of civil procedure shall govern the judicial liquidation and the liquidator shall be appointed by a judge.

4.2. Please give a brief outline of the bankruptcy proceedings in Brazil. Are there any requirements related to the filing specific to Brazil?

Bankruptcy and reorganization of business enterprises in Brazil (i.e., either in the form of a corporation or as a limited liability company) have been regulated since February 2005 by Law No. 11101 (the "Bankruptcy and Reorganization Law"), which was modeled after U.S. Chapters 7 and 11 of the U.S. Bankruptcy Code. Such legislation provides for both the bankruptcy proceedings and the so-called judicial and extrajudicial ("out-of-court") reorganizations of legal entities. Such law is not applicable, though, to certain activities, such as the ones concerning public entities, financial institutions, financial leasing companies, insurance and private healthcare companies.

As per the Bankruptcy and Reorganization Law, bankruptcy is a liquidation process, whereby the creditors of a legal entity are paid as the entity's assets are sold, upon suspension of the company's activities.

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

The Bankruptcy and Reorganization Law lists the requirements upon which bankruptcy can be requested by its creditors, as follows: (i) failure to provide payment of any liquid obligation derived from a credit instrument already taken to the notary's office in an amount exceeding 40 minimum wages (as

of 2012 R$ 24.880,00); (ii) failure to proceed with payment under any enforcement action grounded on the charge of any pecuniary obligation, whatever the amount may be; (iii) initiation of an irregular liquidation proceeding of its assets or make use of destructive or fraudulent ways to perform payments; (iv) performance of a fictitious transaction or alienation of all or substantially all assets to a third party, creditor or otherwise, attempted or actually performed in prejudice of a creditor; (iv) simulation of transfer and assignment deal of its main place of business aiming at posing difficulties to the satisfaction of any of its creditors' rights; (v) transfer of its business to any third party, whether a creditor or not, without the consent of all other creditors and without keeping sufficient assets to perform its obligations; (vi) unjustified absence of the principals without appointment of an attorney-in-fact to carry out his or her representation, and lack of sufficient resources for payment of debts; (vii) abandonment of the business by the principals or attempts to hide from the domicile or main place of business.

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

The Bankruptcy and Reorganization Law establishes a credit ranking for the payment of creditors, as follows: (i) credits arising out of labor relationship of up to 150 minimum wages (as of 2012 R$ 93.300,00) per creditor and those resulting from labor accidents; (ii) credits *in rem* guaranteed (by properties or other assets) 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 (such as (a) regarding the rescued asset, the expenses for the rescue; (b) regarding the fruits, the creditor for the seeds etc.); (v) general privilege credits (such as (a) court fees; (b) expenses for collecting credits of the bankrupted company etc.; (vi) unsecured credits; (vii) contractual penalties and monetary penalties due to breach of criminal or administrative law, including tax penalties; and (viii) subordinated credits.

Judicial and extrajudicial reorganizations are inspired by U.S. Chapter 11 and are also governed by the Bankruptcy and Reorganization Law. These mechanisms are aimed at providing the legal entity with the opportunity to restructure its operations upon the establishment of a business reorganization plan.

Reorganization procedures enable debtors and creditors to discuss the company's activities going forward. With that, the law intends to spur the attainment of positive results towards the establishment of a debt and liabilities reorganization plan that might provide the debtor with better conditions to sort out momentary economic difficulties.

Judicial and extrajudicial reorganizations may be requested by (i) the debtor itself, which may be an individual (who does business in his or her own name in an organized manner) or a business entity, (ii)

the surviving spouse, (iii) the debtor's heirs and successors, and (iv) the administrators or remaining partners.

In order to be entitled to benefit from the judicial reorganization bail-out structure, the indebted company (i) must prove it has been in operation for over two consecutive years at least; (ii) must not have been declared bankrupt before, or, if so, must have obtained a final discharge court decision relative to its previous responsibilities; (iii) must not have obtained judicial reorganization benefits over the last 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.

Upon the approval of the judicial reorganization request, all legal actions whereby payment of certain outstanding amounts is sought as possibly initiated against the debtor, including enforcement actions, are 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 the implementation of the 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 must be accompanied by a financial report of the company's situation.

Extrajudicial reorganization has different effects in comparison to the judicial one, particularly in the sense that it does not stay the enforcement actions initiated by creditors against the debtor, as occurs in judicial reorganization.

5. FOREIGN INVESTMENT REGULATIONS

5.1. What are the sources of law regulating foreign investment in Brazil?

The basic law regulating foreign investments in Brazil was enacted in 1962 (Law No. 4131) and was amended in 1964 (Law No. 4390). The stability of the Brazilian foreign investment legislation is a clear indication of the country's desire to attract overseas investors.

The Central Bank of Brazil ("Central Bank") is the agency responsible for: (i) managing the day-to-day control over the flow of foreign capital 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 investments and cannot restrict the remittances of funds resulting from risk capital or loans, which are registered with the Central Bank, through its Electronic System of Registration. In the event of a serious balance of payment deficit, the Central Bank may limit profit remittances 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.

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 Central Bank. The choice of one market or another was mandatory and depended on the nature of the remittance of funds to be made.

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

5.2. What are the various methods in which foreign investment in Brazil is possible?

Aside from direct investment in kind and loans, foreign investments may also be made through capital contribution of assets and equipment intended for the local production of goods or services.

The investment (capital stock/risk capital and loans) must be registered with the Central Bank. Such registration provides the investor with the right to remit dividends and interest, to repatriate the investment and to make other payments by using the commercial exchange rate for currency conversion.

In addition to direct investments, foreign investments are also allowed through the financial and capital markets (which must follow a specific regulation for registration with the Central Bank) and other types of debt such as issuance of bonds.

5.3. What is the current foreign direct investment policy?

Foreign direct investments must be registered with the Electronic System of Registration of the online

data system of the Central Bank (i.e., the SISBACEN Data System).

The amount registered with the Central Bank 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 profit reinvestments, in the cases when the shareholders of a Brazilian subsidiary decide to reinvest the profits, increasing their equity participation, instead of receiving cash abroad . This aggregate amount constitutes the basis for repatriation of capital and computation of any eventual capital gains tax.

Foreign investments represented by debts (loans or bonds) must also be registered with the Central Bank through SISBACEN, in order to enable re-payment of principal, interests and other costs. The referred registration, contrary to direct investments represented by capital stock, must be made before any inflow of funds occurs.

Investments made in the financial and capital markets must also be registered with the Central Bank through SISBACEN, and such registration must be carried out by a financial institution representing the foreign investor.

Profit Remittance

Profits paid by a Brazilian company to a foreign investor are currently not subject to any withholding tax. The foreign currency to be remitted has to be purchased at the then market rate directly from any commercial bank, upon presentation of the corporate act declaring the dividends, the relevant financial statements, and the registration of the distribution of dividends in the Electronic System of Registration of the Central Bank, in Foreign Direct Investment mode. No further approval or consent of the Central Bank is necessary and there is no limitation on the amounts to be remitted if the original investment has been registered with the Central Bank as described above.

Repatriation of Capital

As long as no losses are booked by the Brazilian subsidiary, foreign capital invested in Brazil may be repatriated at any time and there is no minimum period of investment.

Repatriation of the investment amount registered in the Foreign Direct Investment Mode of the Electronic System of Registration of the Central Bank may be made free of any tax or authorization. In principle, if a Brazilian subsidiary makes a remittance to its foreign investor in excess of the "registered amount", the difference between such registered amount and the amount to be remitted will be treated as a capital gain, generally subject to a 15% withholding tax (such rate is increased to 25% in the case

of investors residing in tax havens).

In accordance with an unwritten rule of the Central Bank, whenever the total or partial repatriation of capital is sought upon the sale of an investment, the book value of the foreign investment (based on the financial statements of the company which received the investment) will be compared with the amount registered in foreign currency. If the book value is lower than the registered foreign investment, the remittance abroad of any amount exceeding the book value may be deemed by the Central Bank to be a capital gain, and, as such, generally subject to 15% withholding tax.

5.4. What are the circumstances under which regulatory approval is required?

Foreign investments are 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). Foreign participation, however, is limited or forbidden in a few areas of activity.

Foreign capital may be freely invested in Brazil, and it enjoys the same treatment granted to Brazilian capital, with the few exceptions noted below.

Acquisition of Rural Real Estate Properties

The acquisition of rural real estate property by (i) foreign individuals residents in Brazil; or (ii) foreign legal entities authorized to act in Brazil; or (iii) Brazilian companies in which foreign individuals or entities have majority participation in its corporate capital, by any means, is governed by Law No. 5709/71[10] and its regulatory Decree No. 74.965/74. This piece of legislation is based on three main issues:

- The general prohibition against any individual or legal entity residing/domiciled abroad acquiring rural real estate properties;
- Foreign individuals residing in Brazil, foreign legal entities authorized to act in Brazil and Brazilian companies which majority capital owned by foreign individuals or legal entities, by any means, are allowed to acquire limited extensions of rural real estate properties , respecting the limitations established in the applicable law and upon prior official authorization of certain public authorities, as the case may be; and

[10] Law No. 5709, as amended. Diário Oficial da União [D.O.U.], October 7, 1971.

- The granting of the authorization above mentioned will depend on the approval by the competent authorities of the agricultural, livestock, industrial or colonization projects to be performed in the properties..

Please find below the main limitations provided for in Law 5.709:

(i) An authorization by the National Institute of Colonization and Agricultural Reform - INCRA is required for the acquisition by foreign individuals of rural property with more than 3 (three) and less than 50 (fifty) rural units[11];

(ii) The legal limit of 25% of land in the same County ("*Município*") owned by foreign individuals, foreign companies and/or Brazilian companies of foreign capital can not be surpassed;

(iii) The legal limit of 40% of land in the same County ("*Município*") owned by foreign individuals, foreign companies and/or Brazilian companies of foreign capital of the same nationality can not be surpassed; and

(iv) An authorization of the Brazilian Congress is required for the acquisition over the limits of (ii) and (iii) above.

A foreign individual residing abroad may not acquire land in Brazil.

The request seeking the necessary authorization shall be submitted to INCRA, duly accompanied by the following documents: (i) documentation related to the real property; (ii) the corporate documents of the company interested in the acquisition; and (iii) the project to be implemented in the envisaged real property.

The acquisition of rural real estate properties located at frontiers and shores by foreign individuals residing in Brazil, foreign legal entities authorized to act in Brazil and Brazilian company in which majority of the capital stock is owned by foreign individuals or legal entities shall be submitted to the approval of INCRA or the National Congress (depending of the size of the area) as well as of the National Defense Council once such areas are considered as of national security interest.

Press and Broadcasting

Management by non-residents is forbidden and ownership is restricted to 30% of the total capital of the company.

[11] Rural unit is a dimensional measurement determined for each region of the country with similar economical and ecological characteristics and for the type of agricultural exploitation possible in said area.

Banking and Insurance

Opening of new foreign bank and insurance companies, or of new branches by foreign banks already operating in Brazil is frozen until a new law regulating financial activities is enacted (such prohibition may be circumvented by a presidential decree authorizing the investment).

5.5. Can a foreign company set up a wholly owned subsidiary in Brazil?

Yes, foreign companies can incorporate a wholly owned subsidiary in Brazil. We refer to section 5.4. for specific restrictions.

5.6. How long do regulatory approvals take?

Please see item 2.3 above.

5.7. Are there any restrictions on foreign ownership of land?

Please see item 5.4 above.

6. LABOR

6.1. What are the principal regulations governing rights and obligations of employees?

The principles that govern employment relationships in Brazil are primarily established by the Brazilian Constitution and the Consolidated Labor Code ("CLT").

Although the CLT was enacted in 1943, through the years the Brazilian legal system has been modified with the creation of laws, decrees and regulations governing certain issues. With the enactment of the new Federal Constitution in 1988, new labor rights were added to the CLT.

There are other sources of regulations, which are respected by the Brazilian legal system, such as: (a) Collective Bargaining and Collective Labor Agreements; (b) Precedents of the Superior Labor Court (so called "Tribunal Superior do Trabalho"); and (c) Norms issued by the Ministry of Labor.

One of the most significant characteristics of the Brazilian labor system is that, to a great extent, it preemptively regulates labor management relations. However, negotiations between employers and

employees, resulting in Collective Bargaining and Collective Labor Agreements, are already a strong alternative, ensuring more flexible rules and regulations.

6.2. Are there any maximum working hours prescribed for employees?

As defined in the Federal Constitution, a legal work day in Brazil is eight (8) hours long, and the maximum weekly schedule is forty-four (44) hours per week (8 hours per day during the week and 4 hours on Saturdays). Meal breaks for employees with daily working schedules with more than six (6) hours must be at least one (1) hour and at the most two (2) hours long. One (1) hour meal breaks are the most common.

The time worked past the normal work schedule established by law or contract constitutes overtime, and cannot exceed two (2) hours a day beyond regular working hours.

In general, Brazilian companies establish a weekly work schedule (either by law or contractually) running from Monday through Saturday, of 8 hours per day. Saturday hours may be offset with extra work during the week, exempting the employer from paying overtime. Such offsetting must be established in writing between the employer and the employee.

The law forbids work on Sundays and holidays, except for certain activities, or when the company obtains an express authorization from the Labor Ministry. When work is performed on Sundays and holidays, it may be offset with days off on other week days, and an agreement toward this end must be established.

If days off are not compensated, time worked on Sundays and holidays will be paid double, or in a higher percentage set forth in a Collective Bargaining Agreement.

6.3. How can the services of an employee be terminated?

The Brazilian labor legislation provides that employment agreements may be terminated under the following circumstances:

Termination of employment without cause

The employer may terminate an employee at anytime without cause, in cases where the employee is not entitled to any job stability, as provided by law (pregnant employees, employees who integrate Internal Commissions for Accidents Prevention, union leaders, employees who returned from leave due to occupational accident, etc,), as well as by the applicable collective agreement (employee on the

eve of retirement, etc). If an employer wants to terminate an employment agreement without cause, it must provide the employee with a 30 to 90 days prior notice (depending on the time of work at the company), which can be worked or indemnified. Some Collective Bargaining Agreements may establish longer notice periods.

In the event of a worked notice period, the employee is allowed to leave two (2) hours before the end of his/her regular work day or be absent for seven consecutive days at the end of the prior-notice period. Whichever alternative the employee chooses, it must be expressly stated upon the delivery of the dismissal letter.

A dismissal letter is considered a legal formality. Severance pay shall be made: (i) within ten (10) days as from the date of termination of employment, if compensation is given in lieu of notice; or (ii) on the first day after the end of the worked notice period.

The employees must also submit to a dismissal medical exam, in order to verify if he/she is able to provide his/her services in other companies.

Mentioned medical exam must be performed until the ratification of the employment agreement's termination by the responsible Union or by the Labor Regional Office, which is mandatory in cases of dismissal of employees who have worked for more than one (1) year.

Termination of employment with cause

Dismissals with cause are those derived from the violation by the employee of any legal or contractual obligation, giving to the employer the right to terminate the existing employment contract.

Misconduct events which might give support to a cause must be classified under the situations set forth by law, pursuant to Article 482 of the Brazilian Labor Code (C.L.T.), as follows:

- dishonest act;
- lack of self-restraint or improper conduct;
- regular negotiation on his own account or for a third party without permission of his employer, or when the same is in competition with the company for which he/she works, or is prejudicial to his work;
- criminal conviction of the employee, in final judgment, provided that the execution of the penalty has not been suspended;
- sloth in the execution of his/her duties;
- habitual drunkenness or drunkenness during working hours;

- violation of company's rights regarding trade secrets and confidential information;
- indiscipline or insubordination act;
- abandonment of employment;
- act injurious to the honor or reputation of any person, committed during working hours, as well as physical violence carried out under the same conditions, except in the case of legitimate self defense or defense of other persons;
- act injurious to the honor or reputation of his/her employer or superior ranking, or physical violence against them, except in the case of legitimate self defense or defense of other persons; and
- constant gambling.

Employers should seek legal instruction as soon as they get wind or are suspicious of any act that could be considered a cause for dismissal, because although the employer may consider that a fault was committed by the employee, depending on the evidence, that fault may not justify termination for cause.

In the event of a dismissal with cause, it is important that the employer has full and unquestionable material evidence of employee's misconduct, otherwise such dismissal may be challenged in court, and may even give rise to a claim of moral damages by the dismissed employees, as well as differences in severance payments, as if the employee was terminated without cause.

In turn, as per the Labor Code, employees may consider their employment agreement terminated due to a misconduct of the employer, and demand severance compensation applicable for a dismissal without cause, in the following situations:

- work demanded from an employee is beyond his/her strength, is forbidden by law, is contrary to proper conduct, or is not included in the clauses of the employment agreement;
- the employee is treated with excessive severity by his/her employer or by his/her superiors;
- the employee is in evident danger of suffering an injury;
- the employer fails to comply with the obligations of the employment agreement;
- the employer or his/her representatives commit any act injurious to the honor or reputation of the employee or of any member of his/her family;
- the employer or his representatives use physical violence against the employee, except in the event of legitimate defense;
- the employer decreases the employee's work (when remunerated by work performed), to a degree that considerably affects the amount of the employee's salary.

Employee's resignation

The employee may resign at his/her own will. For that purpose, the employee will provide a handwritten resignation letter (legal formality), and must provide the employer with thirty (30) days notice, who may decide whether or not to exempt the employee from working during this period.

Other events of termination

There are other events that may lead to the termination of an employment agreement, such as (i) employees' death; (ii) company's extinguishment or closing; (iii) company's and employee's mutual fault; among others.

The main difference in these events is the amount of severance that will be paid.

Are there mandatory requirements for grant of leave or public holidays?

Upon completion of each twelve (12) month work period (vacation acquisitive period), employees are entitled to a paid vacation period of up to thirty (30) calendar days, to be enjoyed within the twelve (12) subsequent months to the completion of each vacation acquisitive period.

In addition to the above, employees are also entitled to receive a vacation bonus equivalent to one-third of the employee's monthly salary.

The official granting of the vacation period will be formalized upon written notice to the employee at least thirty (30) days in advance. The employee is required to give receipt for said notification. The vacation period will be annotated on the employee's Employment Booklet, and on the book of personnel records.

The vacation period will be that most suitable to the employer's interests, but the members of a same family working for the same employer will be entitled to enjoy their vacation in the same period if they wish to do so, and if that does not result in any losses to the employer.

If vacations are not granted within the twelve (12) subsequent months to the completion of each vacation acquisitive period, the employer must pay the vacation period in double.

At least two (2) days before the enjoyment of the vacation, the employer is required to pay the vacation period plus a 1/3 bonus as set out in the Brazilian Constitution.

Employers may also grant "collective vacations", that is, vacations that involve a whole group of workers of a company taking vacation at the same time. Hence, they may cover the entire company or only some sectors of the company or establishment.

The granting of collective vacation is not mandatory and requires fulfillment of certain administrative acts by the party granting the vacation. These procedures refer essentially to some notices concerning the vacation granted, further to the specific payments related to this labor right.

In this context, the employer is required to inform the local office of the Ministry of Labor of the dates of beginning and end of the vacation period and the establishments or sectors covered by it at least fifteen (15) days in advance. The employer has the same period to inform the unions representing the respective occupational categories. In addition, the employer has the same period to affix a notice corresponding to that vacation at the respective workplaces.

Holidays

There are National, State and Municipal holidays in Brazil. Law forbids work on holidays, except upon the Labor Ministry's previous authorization. Worked holidays may be compensated with days off, always upon an agreement to this effect; otherwise, the company will have to provide compensation with an additional premium equivalent to 100%. These percentages may also be higher, whether as a result of the applicable collective bargaining agreement, employment contract or the company's practices.

6.5. Can employment contracts contain restrictive covenants such as non-compete clauses?

Yes. The most common restrictive covenants are the following:

Non-compete

Non-competition provisions are very controversial in the Brazilian legal system. Based on the principle established by the Brazilian Federal Constitution, specifically regarding the freedom of work, the Labor Courts have ruled that any agreement containing a clause prohibiting individuals from working even for competitors after their termination is considered a contractual condition that limits the employees' freedom of work granted by the Federal Constitution, and therefore would be considered a null and void condition.

Notwithstanding the above, there are already decisions issued by the civil courts clearly favorable to

the validity of non-compete covenants provided that they establish reasonable limitations of time, territory, core business and a reasonable financial compensation for the non-competition. As financial compensation, the non-compete term multiplied by the employee's monthly salary or wage is considered a reasonable amount.

Confidentiality

There is no specific law in Brazil dealing with confidential information, except for intellectual property law, which defines illegal competition as the disclosure of confidential information of a company as a result of an employment relationship or contractual relationship.

Notwithstanding, a duty of confidentiality exists on account of the duty of loyalty that the employee is expected to observe during the course of the employment relationship.

The scope of the duty of loyalty is fairly broad and comprises the employees' duty not to breach the employer's confidence.

To enforce the protection of confidential information, the employer may establish rules and requirements regarding confidentiality, whether by internal policies or specific clauses in employment agreements.

Clauses with confidentiality obligations during and after termination of employment are also valid. In the event of any breach of confidentiality by the employee, the employer must have strong material evidence on said breach to enforce the confidentiality obligation.

Non-solicitation

There is no specific law in Brazil dealing with non solicitation, for which employers have to seek this protection by internal policies or specific clauses in employment agreements.

Non-solicitation provisions applicable during and after termination of employment are considered valid. In the event of any breach of a non-solicitation obligation by the employee, the employer must have strong material evidence of said breach to enforce the contractual obligation.

6.6. Can the employment contract compel employees to work for an establishment for a minimum period of time?

The employer cannot force the employee to work for it, so the employee may resign at anytime. If a

company is interested in having the employee working for a determinate period, the company may execute a contract for a definite term.

According to labor legislation, employment contracts may be executed for an indefinite term, which is the general rule for hiring, or for a definite term. The second alternative is only applicable in the following circumstances: (a) services whose nature or temporary need justify the pre-establishment of a term; (b) transitory corporate activities; and (c) the probationary period of an employment contract.

The employees hired for a definite term have the same rights as regular employees, however, as a result of the expected termination of the contracted services, the severance amounts to be paid to such employees will be less burdensome to the employer, in case the contract is terminated within the expected term.

The following rules must also be observed in the execution of a contract for a definite term:

- maximum term of duration: cannot exceed 2 years;
- extension: when a term shorter than two (2) years is established, one sole extension is permitted, limited to the maximum term of two (2) years;
- more than one extension: if the contract term is extended more than once, it will be effective for an indeterminate term;
- early termination: in the event of early termination caused by the employer, the employer must indemnify the employee in an amount equivalent to half the remuneration to which the employee would be entitled for the period between the separation date and the expected end of the contract (only if there is no clause securing the reciprocal right to terminate before the expiration of the established term).
- In the event of early termination caused by the employee, without cause, the employee must indemnify the employer for the losses arising there from, limited to the amount to which the employee would be entitled in identical conditions; and
- mandatory recording in the employee's work booklet of the existence of employment contract term.

6.7. Are women employees entitled to maternity leave?

Employees that just gave birth are entitled to a remunerated leave of 120 days. The employee must leave 4 weeks (or 28 days) before the date foreseen for her child's birth. In exceptional cases, this period may be extended.

The maternity leave benefit is paid by the companies, considered as basis for social security

contributions, and later offset by the company with the amounts to be paid to the social security upon its payroll.

A law recently enacted establishes that employers may extend maternity leave for an additional two (2) month period, provided that the employer pays the employee's salaries during this additional period. Employers granting this benefit to their employees are entitled to a tax benefit.

6.8. Are male employees entitled to paternity leave?

According to Brazilian legislation, fathers are entitled to 5 calendar days of paid statutory paternity leave which are usually calculated as from the day subsequent to the birth of his child or the date of delivery if the employee was absent from work that day.

6.9. What are the requirements for the issuance of shares by a Brazilian company to its employees/directors?

From the labor law point of view, the issuance of shares/stocks (stock options, purchase stocks, restricted stock units, etc) in Brazil is extremely controversial, and as yet with no conclusive disposition by the Brazilian Labor Courts on whether the monetary earnings deriving from the trading of shares are part of the beneficiary employee's remuneration or not.

Those who deem the earnings from participation in "stock option" plans as part of the salary base their opinion on decisions of the Superior Labor Court (TST) under which any and all benefits offered to employees (fully or partially subsidized) should integrate their remuneration for labor and social security purposes.

Those who understand that such benefit is not salary argue that these earnings are made in the capital market, and are not directly paid by the employers. They argue that in this case there is a contract similar to a business contract, governed by specific rules.

In this sense, the employees' earnings from their participation in a Stock Purchase Plan and in Stock Option plans do not have a salary nature provided that: (a) they concern a transaction of a business nature, different from an employment contract; (b) the transaction has a cost (the employee joins the plan, pays for the purchased shares and will have to pay for the stock broker's services); (c) any earnings made by the employees are not directly related to the services provided by them, but rather to the fluctuation of the stock value in the capital market; and (d) in case they make earnings from stock trading, the corresponding amounts are paid by the capital market, not by the employer.

In view of the above, it is important to have a specific plan with the rules for issuing such stock, to avoid any future controversies on how they will be granted, as well as on their nature.

6.10. Can employees of a Brazilian company be granted employee stock options in a foreign company?

Employees of the Brazilian company can be granted stock options of a foreign company. However, an employee's decision to participate in the stocks plans of a foreign company must be recorded in a specific document, issued by the foreign company, mentioning that it is the individual's decision to participate or not in the stock plan and that such participation is out of scope of the individual's employment agreement, as well as that it is not binding to any individual's compensation, remuneration or performance.

6.11. Are employee stock options eligible for favorable tax treatment?

From a tax point of view, assuming it is a stock options plan according to the Brazilian legislation, the grant of options is not a taxable event in Brazil. There are no tax consequences at this moment and taxes will be levied only upon the sale of shares.

According to Brazilian law, individuals are taxed on a cash basis, meaning that the mere granting of stock options by the company or even their exercise by the employees is not a taxable event. As a general rule, a taxable event will only occur when the employee sells the stock and realizes a gain on this sale, or when he/she receives income by reason of his/her shareholding.

7. INTELLECTUAL PROPERTY

What types of intellectual property rights are protected in Brazil?

Intellectual property rights protection in Brazil include protection of trademarks, patents, industrial designs, software, copyrights, geographic indications, integrated circuit designs, plant varieties (cultivars) and repression of unfair competition.

Trademarks

Trademarks in Brazil are regulated by Law No. 9279/96 (the Brazilian Industrial Property Law). In order to be registered before the Brazilian Patent and Trademark Office - BPTO, the trademark must be licit, visually perceivable, new, cannot be similar or identical to previous applications or registrations, and also cannot be an expression of common use or a generic expression.

A trademark registration is valid for a period of ten (10) years, and is renewable for successive ten (10)-year periods. The extension must be requested during the last year in which the registration is in effect (called the ordinary term) or within a six (6)-month period after the ordinary term (called the extraordinary term), against payment of an overcharge. Law No. 9279/96 provides legal protection and registration on product or service trademarks, certification trademarks and collective trademarks.

On March 1, 2000, Brazil adopted the International Trademark Classification for Products and Services as approved by the Nice Agreement. As per these new rules, products and/or services to be associated with the intended trademarks must be specified and generic identification of products and/or services listed for an entire class is not acceptable.

The protection of trademarks in Brazil is obtained by registering the trademark before the BPTO. However, Law No. 9279/96 introduced an exception to this rule: for well-known trademarks, including service marks. Special protection is granted for well-known trademarks, regardless of whether or not they have been registered in Brazil. This provision is aimed at protecting from piracy the holders 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.

Brazil is a signatory of the Paris Convention. 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 the priority claim, as established in the Paris Convention (within six months from the foreign application), the priority protection derived from the Paris Convention for the interim period of time before application in Brazil will not be granted.

A trademark registration shall be extinguished on a forfeiture proceeding filed by any person having a legitimate interest in the event it is not used for five (5) years from the date of its registration, or if its use is interrupted for more than five (5) consecutive years.

Patents

Law No. 9279/96 establishes two (2) types of patents: patents of invention and utility models. For both kinds of patents, the mentioned Law requires that the object or the process subject to the grant of a patent implies in an inventive procedure, be new and have an industrial application.

An invention is considered “new” when it is not encompassed by the "state of the art", which includes

all data and information available to the public in Brazil or abroad, written or verbally prior to the filing or priority date. It includes the contents of patents in Brazil and abroad.

Patent protection is obtained by registering the patent before the BPTO. The registration is valid for a period of twenty (20) years, if related to inventions, or fifteen (15) years, if related to utility models, both as of the filing date of the patent. In any case, the total validity period will be no less than ten (10) years for invention patents and of seven (7) years for utility model patents, counted from the date on which the patent is actually granted, unless the BPTO may evidence that it was unable to proceed with the examination of the patent due to a judicial act or a force majeure event.

Once the patent application is filed, it will remain under secrecy for an 18-month period. As soon as the secrecy period is finished, the BPTO shall publish the application in the industrial property gazette. As of the publication, any interested party may request a copy of the application. Please note that the applicant may request the anticipation of patent's publication., which means that the secrecy period will be less than 18 months. From such publication, the applicant must request the initiation of the examination of the application within a 36-month period, under penalty of having the application definitively dismissed by the BPTO.

Beginning in the third year following the date of the filing of the patent application, and until the final validity period of the patent, the applicant or the owner (in case the patent has already been granted) must pay an annual patent maintenance fee.

The patent holder must use the patent in the Brazilian territory within three (3) 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 exercises his rights therein in an abusive manner or if he uses it to abuse economic power according to the law in force, under the terms of an administrative or judicial decision, or whenever the sales volume of the patented products does not meet the local market requirements.

It is important to mention that Brazil is a member of the Patent Cooperation Treaty (PCT), which entered into force in the country on April 9th, 1978. For non-PCT applications (that is, applications that are directly filed in Brazil and do not enter Brazil through the PCT route), Brazilian's traditional patent system applies.

Industrial Designs

Any ornamental shape of an object, or the ornamental combination of outlines and colors applicable to a product, which results in a new visual effect can be considered an industrial design.

The granting of an industrial design, contrary to the patents regulation, is not subject to prior examination by the BPTO with regard to its merits. The registration is immediately published and granted by the BPTO if the application complies with all the legal requirements. However, the applicant may, at any time, request an examination by the BPTO with regard to the novelty and originality of its industrial design.

The registration is valid for a period of ten (10) years as of the filing date, and can be extended for three consecutive five (5)-year periods.

Software

Software is regulated by Law No. 9609/98 ("Brazilian Software Law"), which contains provisions regarding the copyright protection for software and the rules for marketing software.

“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 automatic machines for treatment of 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 (50) 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 respect of protection to 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.

Law No. 9609/98 establishes that the authorship of the software is already assured, regardless of its registration. However, the author may pursue registration of the software with the BPTO in order to enable the shift of burden of evidence in civil procedures. Registration can be requested on a secret or non-secret basis.

Finally, please note that according to Brazilian Software Law, software belongs to the employer or contracting party if the employee or contractor was hired to develop the software, or if the development of the software is a result of the nature of the services carried out by him. Notwithstanding, if the software is totally independent of the duties related to his activities, the employee or the contractor, as the case may be, will be entitled to be the single owner of the software.

Copyrights

Copyright is regulated by Law No. 9610/98 (Copyright Law), which protects and regulates all creative works of inspiration. Additionally, Brazil is signatory to two (2) other major international treaties, the Berne and Geneva Conventions.

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.

The author has rights of extremely specific and personal nature, which, under Brazilian law, may not be transferred to third parties or even waived by the author himself. These rights are called “moral rights” and basically cover the right of the author to have his name linked to the work as the creator of said work, to warrant the integrity of the work and to oppose any alterations as well as the right of the author to alter the work and to withdraw it from circulation in the event of affronting circumstances to his reputation or image. The author may, however, assign the rights of utilization and of economic exploitation of the work (economic rights), to third parties. The assignment of economic rights must be effected in writing and must specify the conditions under which the assignment is being effected.

Copyright ownership vests in the author of the work (or contributors if developed jointly). The duration of a copyrighted work is for the whole life of its author and seventy (70) years as from the first of January of the year following his death. If the work is created by two or more authors, the duration of seventy (70) years starts after the death of the last surviving joint author.

Copyright registration is not a prerequisite for obtaining protection. Registration is always helpful to prevent 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.

Geographical Indications

Geographical indications shall be defined as the geographic name of a country, city, region or locality in its territory, which has become known as the center of extraction, production or manufacture of a given product or of the provision of a given service. Law No. 9279/96 does not comprise a definition for geographical indications, but establishes their species, that are, "Source Indication" and "Origin Designation". Geographical indications protection is obtained by registration granted by the BPTO, which shall establish the conditions for registration.

Integrated Circuit Designs

Topographies (layout designs) of integrated circuits (chips) protection is regulated by Law No. 11484/07, which instituted programs to support technological development in the semiconductor and digital TV equipment industries. The protection of integrated circuits is conditioned on registration granted by the BPTO. The protection is valid for a period of ten (10) years counted from the filing date or from the first use, whichever occurred first. This means that if an integrated circuit design has been commercially exploited in Brazil before the filing of the application within the BPTO, the protection will be granted for 10 years counted from this first commercial exploitation.

Plant Varieties

The right of protection for plant varieties is instituted in accordance with the provisions of Law No. 9456/97 (the Plant Varieties Law). As per section 2 of the mentioned law, "*the protection of intellectual property rights relative to plant varieties is effected by the grant of a plant variety protection certificate, considered to be chattels for all legal purposes and the sole form of protection of plant varieties and of rights which can prevent the free use in the country of plants or their parts of vegetative reproduction or multiplication*".

The National Service for Plant Variety Protection ("SNPC" Brazilian acronym) of the Ministry of Agriculture is competent for the protection of plant varieties. For purpose of commercialization of plant varieties, registration with the National Registry of Plant Variety ("RNC") is also necessary.

The term of protection of cultivars is fifteen (15) years, except for fruit trees, forest trees, ornamental trees and vines, which have an eighteen (18)-year term, from the grant of the provisional certificate of protection.

On expiry of the term of the protective effectiveness of the protection right, the plant varieties will fall into the public domain and no other rights can prevent the free utilization thereof.

Unfair Competition

Unfair competition is a violation of the free and fair competition principles by the practice of activities with the objective of occasioning confusion among customers. It is prohibited by Law No. 9,279/96, which provides civil and criminal penalties thereto.

7.2. Are there any international treaties regarding intellectual property that Brazil is not a party?

Brazil is not a party to the following international treaties regarding intellectual property:

IP Protection

(i) Brussels Convention[12]
(ii) Patent Law Treaty[13]
(iii) Singapore Treaty on the Law of Trademarks
(iv) Trademark Law Treaty
(v) Washington Treaty
(vi) WIPO Copyright Treaty - WCT
(vii) WIPO Performances and Phonograms Treaty - WPPT

Global Protection System

(viii) Budapest Treaty
(ix) Hague Agreement
(x) Lisbon Agreement
(xi) Madrid Agreement (Marks)
(xii) Madrid Protocol

Classification

(xiii) Locarno Agreement
(xiv) Nice Agreement
(xv) Vienna Agreement[14]

7.3. Are there any regulations or guidelines by public institutions, such as the Fair Trade Commission or some other competition authority, in regard to intellectual property licenses?

There are regulations/guidelines for the recording of technology transfer agreements before the BPTO,

[12] Brazil signed on May 21st, 1974, but, up to now, has not ratified it.

[13] Brazil signed on June 2nd, 2000, but, up to now, has not ratified it.

[14] Brazil signed on December 11th, 1973, but, up to now, has not ratified it.

as described below.

As a general rule, technology agreements (use/exploitation of patents, use of trademarks, technology supply or technical assistance) must be approved by and recorded with the BPTO for the following purposes:

- Remittance of royalties abroad, in which case the agreement must also be registered with the Central Bank;
- Deductibility of payments as operational expense for Brazilian income tax purposes. In this case, registration with the Central Bank is also necessary; and
- Enforcement of the obligations vis-à-vis third parties.

In addition, the BPTO entered into a teaming agreement with the Administrative Council for Economic Defense and the Federal Government on June 7th, 2010, in order to reprehend abuses related to industrial property rights that could affect competition. This partnership promotes operational and technical cooperation for the defense of economic order.

License of Trademarks

In order to be licensed in Brazil, trademarks must be registered or applied for registration in Brazil. Licensed trademarks must be expressly identified in the agreement (including their serial numbers). Generic references are not accepted by the BPTO.

In the event that the Agreement is executed between corporate related parties, the royalties for the trademark license are limited to one percent (1%) of net sales of the products or services identified by the trademark. In addition to that, please note that royalty payments are only allowed for trademarks duly registered in Brazil.

License of Patents

In order to be licensed in Brazil, patents must be registered or applied for registration in Brazil. Licensed patents must be expressly identified in the agreement (including their serial numbers). Generic references are not accepted by the BPTO.

In the event the agreement is executed between corporate related parties, the royalties for the patent license are limited from one per cent (1%) to five per cent (5%) of net sales of the products encompassed by the patent, depending on the field of activity.

In addition to that, please note that royalty payments are only allowed for patents registered in Brazil, but it is possible to pay retroactively to the filing date of the agreement with the BPTO after the patent application is issued .

Transfer of Technology

The norms regulating the transfer of technology and technical assistance agreements (for technical services related to the repair of equipment, or through which a certain technical know-how is transferred to the contracted party) are basically encompassed by the Industrial Property Law and by some regulatory acts issued by the BPTO.

The basic premise of the Brazilian rules with regard to the use of technology by a Brazilian party has been that technology is subject to a "transfer" to a Brazilian party rather than to a "license". In other words, technology may be "sold" but not "licensed".

In consideration for 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 the expiration of the agreement. For the same reason, the BPTO usually does not accept the obligation of the recipient to maintain secrecy for an undetermined term, and has questioned the clauses that limit the use of unpatented technology by the recipient after the expiration date of the contract, provided the recipient of the technology has paid all amounts due to the supplier and that the contract has not been terminated previously by fault of the recipient.

In the event that the agreement is executed between corporate related parties, the royalties for the know-how are limited from one per cent (1%) to five per cent (5%) of net sales of the product and service encompassed by the technology, depending on the field of activity.

The BPTO has traditionally approved technology transfer agreements for a five (5)-year period. The payment of fees as well as the deduction thereof for tax purposes is restricted to the five (5)-year period of the Agreement. Such term may be extended for an additional five-year period upon the BPTO' s approval, which requires a reasonable justification for the extension.

Software Licenses

Software licenses are not subject to approval and registration by the BPTO, unless unless the source code and related manuals and materials become available to the licensee. There is no limit fixed by law for payment of a software license.

Franchise Agreements

In accordance with Article 2 of Law No. 8955, enacted on December 15, 1994 (the Franchise Law), franchising includes any system where a franchisor licenses to a franchisee the right to use a trademark or patent, along with the right to distribute products or services on an exclusive or semi-exclusive basis, possibly including the right to use technology or operating systems related to the establishment and management of the business, in exchange for compensation. A "commercial franchise" specifically excludes employment relationships between the employees of a franchisee and the franchisor.

It is required that an offer circular containing general information regarding the business, as well as information about the required abilities of the franchisor and the franchisee to conduct the franchise business and other issues, be delivered by the franchisor to the franchisee, at least 10 days prior to the signature of the franchise agreement or to the payment of any fee by the franchisee to the franchisor.

Failure by the franchisor to supply such a disclosure document at least ten (10) days prior to the execution of the agreement or payment by a franchisee of any amount possibly renders the agreement null and penalizes the franchisor with the refund of all amounts paid by a franchisee in connection with the franchise, plus recovery of damages. For this reason, franchisors tend to be conservative in relation to this requirement as local law provides for a severe penalty in the event of default on this legal obligation.

The BPTO shall record the franchise agreement, for the purpose of allowing payments to be made abroad, as the case may be, and permit that the payments connected with the agreement be deducted by the franchisee for income tax purposes.

According to the Brazilian Industrial Property Law, registration of such Franchise Agreements with the BPTO is also necessary for the validity of the agreement before third parties.

8. EXCHANGE CONTROL

8.1. Are there any restrictions on the amount of local or foreign currency that may be brought into or taken out of Brazil?

Unlimited amounts of Brazilian Reais or foreign currency may be brought into Brazil and any amount may be sent abroad without requiring the prior permission of the Central Bank.

However, as mentioned in item 5.1. above, any inflow or outflow of funds must be officially channeled through financial institutions duly authorized to deal in foreign exchange (commercial banks), considering that foreign currency must be converted into Brazilian currency and vice-versa through the execution of an exchange contract with a commercial bank.

Nevertheless, depending on the situation, the corresponding registration with the Central Bank shall be provided in order to allow the inflow and/or outflow of the funds.

8.2. Are there any restrictions on the inflow or outflow of foreign exchange?

Please see the restrictions stated above.

9. M&A AND PRIVATE EQUITY

9.1. What are the various methods of mergers and acquisitions available to Brazilian companies?

Two methods of mergers and acquisitions ("M&A") are commonly utilized in Brazil: share acquisition and asset acquisition.

Share Acquisition

The most common structure for a foreign investor that wishes to expand its activities in Brazil is a direct acquisition of stock in existing Brazilian companies, often using a Brazilian holding company as the acquisition vehicle. The reason is that Brazilian law allows for amortization of the premium in stock acquisitions for tax purposes, provided that the acquiring company is merged with the acquired company after the acquisition.

Asset Acquisition

While in certain jurisdictions an acquisition of assets may provide for better insulation from the liabilities of the company selling the assets, in Brazil, that is not always the case, particularly with tax and labor liabilities.

Brazilian tax and labor laws generally favor the concept of a business's legal succession in situations where the main elements that constitute a business (clients, assets, trademark, employees, etc.) are being transferred from one legal entity to another in an asset deal. Therefore, in an asset acquisition, it is very likely that even if the legal entity is not wholly purchased, if most of the elements that constitute

its business are transferred, then the acquiring entity will likely succeed the selling entity in all of its labor, tax, environmental, and other civil liabilities.

9.2. What is the process and timing for each method?

An asset or stock purchase agreement (SPA) in Brazil generally resembles SPAs commonly used internationally in cross-border transactions in other jurisdictions. Given the influence of common law agreements, SPAs in Brazil also tend to describe the relevant aspects by which the purchase and sale are implemented, including details of the purpose of the acquisition and the respective price and payment conditions; and the general framework of indemnities that will govern the relationship of the buyer and seller following the acquisition--which is usually made based upon representations and warranties by the seller in connection with the purchase of the sale and its condition.

The SPA should provide a timeline of actions related to the purchase and sale of stock. This timeline can be divided into three main stages: the signing, which is the date when all terms and conditions of the purchase and sale are agreed upon; the conditions precedent stage, which is the period between the signing and the closing, in which the parties take certain steps to achieve a definitive transfer of stock; and the closing which provides for all the acts that constitute the effective transfer of stock, such as signing a stock-transfer document and paying the acquisition price.

9.3. What are the criteria for determining which method is most suited to a particular case?

The main criteria for determining the suitable method in a particular case include: (i) taxes applicable to each method; and (ii) debts and existing or potential liabilities of the company, such as pending lawsuits, tax audits, labor disputes, etc.

9.4. What are the additional requirements, if any, if one of the companies involved in the restructuring is listed on one or more of the stock exchanges in Brazil?

Acquisitions involving publicly held companies are subject to regulation by the Brazilian Stock Exchange Commission (Comissão de Valores Mobiliários, or CVM) and by the *BM&FBOVESPA S.A.--Bolsa de Valores, Mercadorias e Futuros* (Securities, Commodities and Futures Exchange, BM&FBOVESPA) in accordance with the segment on which these companies' stocks are traded.

Another important feature involving the acquisition of publicly held companies is the possibility of a target company being subject to poison-pill clauses in its bylaws. For instance, many recently listed

companies have set out a requirement in their bylaws of a public offering aimed at all shareholders should anyone secure ownership over a relevant share of the company (for example, 20% or more of the company's stock).

9.5. What are the regulations restricting the acquisition of a certain percentage of shares in a company and when do compulsory takeover regulations apply?

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 a company that have had over R$750,000,000 in gross revenues or volume of business in Brazil in the previous year, cumulatively with revenues or volume of business of R$ 75,000,00 by any other company involved, must be submitted before the Administrative Council for Economic Defense ("CADE") and wait until CADE's final approval to proceed with the closing or any action towards the implementation of the transaction.

9.6. Would the above forms of restructuring also be available to foreign companies?

Yes. Both the share acquisition method and the asset acquisition method are available to foreign acquirers as are the methods involving mergers.

9.7. Is there any legislation or other form of regulation which applies to restrict the potential anti-competitive results of a sale or acquisition of a business or company within Brazil?

Yes. Please see item 9.5 above.

10. TAX

10.1. What determines the extent of a company's liability to pay corporate income tax in Brazil?

According to Brazilian tax legislation, companies domiciled in Brazil are subject to corporate income tax on their worldwide income.

10.2. How is residence treated for tax purposes?

A company shall be considered a resident in Brazil if its headquarters are located in the country. The incomes, profits, earnings and capital gains made by branches or subsidiaries of international companies incorporated in Brazil are subject to the corporate income tax as applied to the Brazilian legal entities.

As a general rule, a foreign company is not considered a resident in Brazil for tax purposes. However, if a foreign company develops informal activities in Brazil on a regular basis, without meeting the legal requirements, such foreign company may be penalized by the Brazilian tax authorities, which could try to tax the profits obtained in Brazil by the foreign company.

10.3. What is the corporate tax rate and how is it applied?

Corporate income tax (IRPJ) is levied at a rate of 15% applied to the total taxable profit and an additional rate of 10% that applies to the part of the taxable profit that exceeds R$240.000,00 per year. As it will be addressed here below, corporate taxation also comprises the social contribution on profit (CSLL) at a general rate of 9% (except for financial institutions and insurance companies which are subject to a 15% rate).

In general, the companies may adopt one of the following two systems to accrue the taxable profit: the real profit system and the presumed profit system. Basically, they can be summarized as follows:

Real Profit System

Taxable profits are determined based on accounting profits, adjusted by additions and exclusions determined in the tax legislation. In case the company accrues a tax loss, it can be used in the following tax periods under certain conditions and limits.

Presumed Profits System

Taxable profits are determined by the application of a legal fixed percentage on the gross revenue obtained by the company. For the IRPJ, the percentage varies from 1.6% to 32% according to the type of activity developed by the company (e.g., for services in general, the percentage is 32% and for the sale of goods it is 8%). For the CSLL, the percentage will be 12% or 32%, depending on the type of activity developed by the company (for services in general, the percentage is 32% and for the sale of goods it is 12%). Any other revenues (financial revenues, non operating revenues, capital gains)

obtained by the company must be added in their entirety (100% of its amount) to the operational result determined according to the presumed profit rules.

Please note that the deductibility of expenses is only important for the real profit system, as the taxable profit under the presumed profit system is calculated solely based on gross revenue. The rational behind this is that the legal fixed percentages adopted in the calculation of tax results in the presumed profit system, in fact, represent the "presumed margins of profitability" of each activity.

Finally, it is important to mention that the companies classifiable as a micro enterprise or a small-size company are entitled to join the SIMPLES regime, which is a more beneficial tax treatment that encompasses the unified payment of several taxes in Brazil, and a more simplified procedure for the company's commercial bookkeeping.

10.4. What is the tax rate applicable to foreign companies on their income earned in Brazil?

As mentioned above, as general rule, foreign companies may be subject to withholding income tax levied on the incomes derived from Brazilian sources, depending on the nature of the income.

10.5. What other taxes are payable in Brazil?

Taxation in Brazil is a vast and complex field, comprising numerous federal, state, and municipal taxes. Please find below a short summary of such taxes, in addition to the corporate taxes (IRPJ and CSLL) already mentioned in the previous questions:

Federal taxes:

PIS and COFINS contributions

Basically, such contributions are charged on all kind of revenues accrued by a Brazilian company, but there are some exceptions (e.g., income deriving from exportation of services). For these taxes, there are also two systems of calculation: the non-cumulative and the cumulative system. As general rule, the non-cumulative system (PIS/COFINS) has to be adopted when the company is subject to the real profit system (IRPJ/CSLL), while the cumulative system (PIS/COFINS) must be used when the company is subject to the presumed profit system (IRPJ/CSLL). Please note that this general rule does not apply for some economic sectors, which have to adopt the cumulative system independently of the system of its taxation on profit. Please see below a summary of the cumulative and non-cumulative systems:

Non-cumulative system: The basis of calculation is the gross revenues with some few exclusions or exemptions and the applicable joint rate of these taxes is usually 9.25%. On the other hand, the applicable legislation authorizes Brazilian companies to take PIS and COFINS credits to be offset against the PIS and COFINS due. Such credits are calculated on certain costs and expenses incurred by the companies subject to the non-cumulative system, at a 9.25% rate. The costs and expenses that generate PIS and COFINS credits are listed under Brazilian law.

Cumulative system: the basis of calculation is the gross revenues with some few exclusions or exemptions and the applicable joint rate of these taxes is usually 3.65%, but no tax credit is permitted.

Tax on financial transactions (IOF)

This is a tax levied on general financial transactions involving exchange, securities, credit, gold, and insurance. IOF tax rates vary according to the nature of the taxable transaction.

Contribution taxes for intervention in the economic domain (CIDE tax)

Based on the Brazilian Federal Constitution, the government has created several contribution taxes for intervention in the economic domain (CIDEs), namely:

- 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).

PIS/Import and COFINS/Import taxes

PIS/Import and COFINS/Import taxes are levied as a general rule at a joint 9.25% rate on the importation of foreign goods and services. Taxpayers are Brazilian individuals and Brazilian legal entities engaged in importation (regardless of the taxation system adopted by them regarding to the *internal/local PIS and COFINS* mentioned above: non-cumulative or cumulative).

If the importer is a Brazilian legal entity under the *local PIS and COFINS* noncumulative system, the PIS/Import and COFINS/Import taxes collected may offset the *local PIS and COFINS* accruing on the importer's monthly revenues. However, such importer will only be entitled to this credit if the imported

services are regarded as inputs in the sales of goods or rendering of services. Inputs are understood as services or goods used or consumed directly in the main/core activity of the company.

Import Duty

This tax is levied on the customs value of imported goods at different rates according to the goods classification in the Mercosur's Common Nomenclature (NCM). The customs value of the 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 invoice value of the imported goods, added to the cost of international freight and insurance. Brazil has entered into preferential trade agreements with almost all the Latin American countries and, thus, imports from such countries may benefit from a reduced import duty or an exemption from import duties. Imports from other member countries of the Southern Common Market ("MERCOSUL", as it is called in Brazil or "Mercosur", as it is called in Spanish-speaking countries) are free of import duties, as long as the imported item has a certificate of origin from one of such countries.

Export tax (IE)

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

Value added tax (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 along 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, which is to say that a tax credit is allowable for the IPI 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 based on the customs value, plus the import duty.

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

State and municipal taxes:

Value-added sales and transportation tax (ICMS)

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.

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

For certain products, the ICMS applies 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 of the commercial chain (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 regime may be implemented throughout a States Agreement ("*Convênio ICMS*") signed by all the Brazilian States and the Federal District and is valid throughout the entire 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 regime will only be valid for taxpayers located in the territory of each signing State. However, there are cases in which one State, through a State Law, may implement the ICMS/ST regime for transactions concluded within its territory or products destined for taxpayers located in its territory.

Vehicles ownership tax (IPVA)

The IPVA is a state tax. Rates vary depending on the year that the vehicle was manufactured.

Tax on donation and on inheritances (ITCMD)

The ITCMD is levied on free of charge transfers of assets and/or rights (inheritance and/or donations) made by individuals and companies. Its rates are variable according to the provisions of each State Legislation related to such tax. On the other hand, its basis of calculation should correspond to the fair market value of the transferred asset or right.

Service tax (ISS)

The ISS is a municipal tax levied on all services listed in Supplementary Law No. 116/2003, except for those subject to State taxation through the ICMS. Rates vary from 2% to 5%, according to the municipality.

Real estate transfer tax (ITBI)

This municipal tax is assessed on property transfers (e.g., sale) at a progressive rate, which varies depending on the value of the property on all transfers for value, of any nature, except in the case of subscription of company capital.

Real estate property tax (IPTU)

The real estate property tax is a municipal tax levied annually on the appraised value of real estate. IPTU rates vary in each municipality.

10.6. Is there a tax on dividends?

Dividends related to accounting profits accrued from 1996 onward are tax-exempt from Brazilian income tax, regardless of whether the beneficiary is domiciled in Brazil or abroad.

Additionally, the remittance of dividends to a beneficiary domiciled abroad is subject to IOF tax (tax on exchange transactions) on the respective amount. However, currently the applicable IOF tax rate is zero in this case.

10.7. Are payments subject to withholding tax?

Withholding income taxes apply to various categories of income paid to individuals or legal entities domiciled abroad and in Brazil.

The amount of tax to be withheld depends on the category of income and the tax status of the beneficiary (e.g., resident or non-resident).

Also Brazil has executed Tax Treaties to Avoid Double Taxation on Income with some countries (including Japan), which may have a more favorable tax treatment on income of a certain nature and/or other conditions than the one usually applicable in Brazil.

10.8. Is capital gains tax payable in Brazil?

Yes, assuming that the assets sold are located in Brazil.

In this sense, even if the seller and/or the buyer are domiciled abroad, it is necessary to check whether or not there is capital gain when the sold asset is located in Brazil.

The taxable capital gain corresponds to the positive difference between the sale price and the respective acquisition cost of the sold asset.

Usually, individuals domiciled in Brazil or non-residents (individuals or legal entities) are subject to income tax on capital gains at the rate of 15% (or 25% if the non-residents are located in a low tax jurisdiction). The Tax Treaties to Avoid Double Taxation signed by Brazil may contain a more favorable tax treatment (e.g., the treaty with Japan states that tax-exemptions in Brazil apply to residents in Japan regarding capital gains derived from a sale of equity of a Brazilian company).

Capital gains accrued by a legal entity domiciled in Brazil should be included in its taxable profit, which is taxed by the corporate taxes at the combined rough rate of 34% mentioned in question 10.3.

11. DISPUTE RESOLUTION

11.1. Please give a brief outline of the civil procedure in Brazil.

Any civil litigation in Brazil commences with a complaint, which has to be filed before the court with jurisdiction to decide the subject matter of the case. Provided that the plaintiff has met certain procedural formalities, the court will determine the defendant to be served on the process. Once service of process is validly completed, the defendant may submit a statement, besides a few other motions and defenses, including a counter-claim and/or a cross-claim (in case a third party has to be joined in the lawsuit). The plaintiff may respond to the statement, motions and other defenses raised by the defendant, as well as submit an answer to the any counter-claim. Generally speaking, documental evidence has to be submitted during the aforementioned initial phase of the lawsuit.

Upon completion of such phase, the parties have to identify any additional evidence they would be interested in gathering before the case is decided. Then, the court will schedule a hearing whereby such request for evidence will be assessed, as well as any arguments raised in the statement as to procedural reasons why the case should be immediately dismissed. If there is no reason for a procedural dismissal, the court will deliberate about the request for evidence submitted by the parties, determining which pieces should be gathered. If no request for additional evidence has been made by

the parties, or if the court believes such additional evidence is not needed, summary judgment may be entered.

Assuming additional evidence will be gathered, an evidential phase will commence, in which the court may appoint experts, determine the submission of additional documents and/or set up hearings for collecting testimonies. Upon completion of this phase the parties may submit their final arguments and a judgment on the merits will be handed down.

The decision on the merits is subject to a motion for clarification and to an appeal. The former has to be decided by the Trial Court, and the latter is addressed to the Court of Appeals. Such appeal, after being responded to by the opposing party, will be decided by a panel comprised of 3 Appellate Court judges. The threshold to be met for filing such appeal is quite low, so that it could be said that in most of the cases the Trial Court's verdict is revisited by the Court of Appeals before becoming final.

The opinion to be handed down by the Court of Appeals may also be subject to motions and appeals. However, the thresholds of such motions and appeals are higher. For instance, if the opinion violates federal law, an appeal addressed to the Superior Court of Justice (the highest court which decides federal law issues) may be admissible. If a constitutional right is violated, and provided that the opinion has a broad repercussion, an appeal addressed to the Supreme Court is viable. Most cases, however, do not reach such courts.

Once an award becomes final (*res judicata*), an enforcement action has to be started in case the losing party refuses to voluntarily comply with it. In this regard, it is worth mentioning that the Brazilian legislation sets forth a few subpoenas for non-monetary obligations, as well as allows the creditor of monetary obligations to go after the debtor's assets in order to be paid off.

The aforementioned summary is related only to the most common type of civil proceedings in Brazil. However, there are other types of proceedings with different timeframes. Therefore, it is worth highlighting the following: (i) preliminary injunction is a remedy available in Brazil and very commonly used for urgent matters; (ii) most of the interlocutory decisions made during lawsuits are subject to appeals; (iii) due process of law, in a very broad sense, is a constitutional clause; (iii) foreign parties are perfectly entitled to sue Brazilian companies in Brazil, having only to post a bond in case they do not have assets in the country.

11.2. How are foreign judgments enforced in Brazil?

Brazilian law provides for specific treatment of foreign judgments subject to enforcement before Brazilian courts. For a foreign award to be enforced in Brazil (*exequatur*), it must first be ratified by the

Superior Court of Justice (*Superior Tribunal de Justiça*) based in Brasília, the Brazilian capital.

Brazilian law requires that foreign judgments meet the following conditions in order to be ratified and enforced in Brazil: (i) they have to be rendered by a competent authority (before the foreign jurisdiction must not fall into one of the cases in which Brazilian law provides for exclusive jurisdictions of national courts); (ii) the parties have to be appropriately summoned or default has to have been legally verified; (iii) the decisions have to be final (*res judicata*); (iv) the judgments have to be submitted in Brazil with authentication by the Brazilian consulate and accompanied by a translation prepared by a sworn translator in Brazil; (v) foreign judgments shall not offend national sovereignty or public order (the term "public order" includes compliance with the rules related with judicial summons by rogatory letter, due process of law and jurisdiction). The same requirements, with the natural adjustments, apply to the ratification of foreign arbitration awards.

The party intending to enforce a foreign judgment in Brazil must apply for validation of the foreign judgment before the Superior Court of Justice. Once the proceeding is filed, the Chief Justice of the Superior Court of Justice is to order that the defendant be summoned to challenge the request for ratification based upon the lack of the aforementioned conditions.

If the defendant challenges the application for validation, a reporting judge, amongst the list of judges of the Superior Court of Justice will be appointed to conduct the proceeding and will, if necessary, conduct discovery. After that, the Public Attorney's Office must be notified to give a non binding opinion as to whether or not the foreign decision is eligible for ratification. Once the opinion is given, the application for validation is heard on the merits by a panel of judges from the Superior Court of Justice. Such decision is subject to appeal.

Although the duration may differ according to specific circumstances, these proceedings can last from six (6) to twenty (20) months before reaching a final decision. Once a foreign judgment is validated it gets the same status of a final judgment made by any Brazilian court and can be enforced accordingly.

11.3. What are the alternative methods of dispute resolution available in Brazil?

Arbitration is the most common alternative method of dispute resolution in Brazil and has been widely used by Brazilians and foreigners. Arbitration is set forth by Federal Law No. 9307/96. It is important to mention that Brazilian courts have been repeatedly upholding the validity of arbitration clauses and arbitration awards. Mediation is also an available means for certain types of dispute but its use has not been as widely used as arbitration.

11.4. How are the arbitral awards enforced in Brazil?

By virtue of law, arbitration awards handed down in the country have the same status of any final judgment rendered by any Brazilian court. Hence, if the losing party does not voluntarily comply with the award, the winning party may enforce the arbitration award with all the remedies it would have available if a court judgment had to be enforced.

11.5. What are the grounds on which an arbitration award can be challenged in the courts in Brazil?

Federal Law No. 9.307/96 – the Brazilian Arbitration Act – sets forth the very limited cases when an arbitration award may be deemed void by a Brazilian court, namely:

- the arbitration clause which has given rise to the arbitration is deemed void;
- the arbitration award is handed down by an arbitrator who could not exercise such position (i.e., causes of personal impediment);
- the arbitration award does not have a summary of the case and/or a reasoning and/or a decision on the merits and/or the place and date where it has been handed down;
- the arbitration award has dealt with issues out of the arbitration boundaries established by the parties;
- the arbitration award has not decided the whole subject matter of the arbitration;
- it has been evidenced the existence of bribery or any other kind of corruption during the arbitration;
- the arbitration award has been handed down after the deadline established by the parties for the award to be rendered.

The party seeking to invalidate an arbitration award has to file a specific lawsuit in this regard within 90 days as of the date on which the parties have been served the arbitration award.

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(As of August 2012)