

Brazil Legal Provisions

Compiled by:
Swiss-Brazilian Chamber of Commerce, São Paulo
November 2019



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1. Introduction

Brazil is large by almost any standard. It is the fifth largest country in the world, with an area of 8,514,877 sq km, which is equivalent to almost half the entire South American continent. It borders all South American countries except Chile and Ecuador. Brazil comprises 26 states and the Federal District of Brasília, the capital city.

The population is about 210 million, 56% of them live in the south and south-eastern region, the wealthiest and best-developed area of Brazil, responsible for over 70% of the Brazilian GDP.

Characterized by large and well-developed agricultural, mining, manufacturing and service sectors, Brazil's economy outweighs all other South American countries and is expanding its presence in world markets. Today, Brazil is the 9th largest economy in the world.

Brazil is Switzerland's major trading partner in the region: 38% of Swiss exports to South America go to Brazil.

With the largest economy and population in Latin America, Brazil still presents considerable export opportunities, particularly in areas such as energy generation, construction, infrastructure, safety and security equipment.

Despite liberalization, complexities of the Brazilian business environment still create substantial obstacles for exporters. Doing business in Brazil can be a real challenge and requires deep knowledge of the local environment. Tariff barriers, although reduced over the last ten years, are still high, and companies face a very difficult customs system, a very high and unpredictable tax burden with a legal system that is overburdened and is often unable to be an effective enforcer of business law.

Nevertheless, most companies find that opportunities outweigh the risks and the known and hidden costs of doing business here (referred to as the "Brazilian Cost" (*Custo Brasil*)).

The current Government's commitment is to create a more attractive business environment. In August 2019, the trade agreement between Mercosur and Efta was signed. In July 2019, Brazil has acceded to the international trademark system (Madrid Protocol) that will lower the costs of doing business in the country. A reform in the pension system, that represents a significant step forward in Brazil, was approved in October 2019. A new labour law took effect in 2017 to modernize Brazil's outdated regime and to encourage job creation.

2. Import / Export

In general, imports to Brazil can only be registered by authorized companies. The permission is granted by SECEX, the Secretary for Foreign Trade. Individuals normally do not get this permission.

For each import, the importer or its representative (customs agent – *despachante*) need to apply for an import license/declaration (*Declaração de Importação – DI*) through the SISCOMEX online system (see also 2.1).

Through the SISCOMEX system, an integrated foreign trade system, different government entities (Federal Revenue and Customs Administration, Health and Agricultural Ministry

and Central Bank, amongst others) are linked and able to perform fiscal, administrative and foreign exchange controls.

All information included in the registration, from the cargo input until customs clearance, are constantly surveyed to avoid price dumping and illegal foreign exchange transfers.

2.1 Import licenses - automatic and non-automatic procedure

For all imports, an import license is needed. For many products, a so called "automatic import license" (*licenciamento automático*) is sufficient. The importer may request it online through the foreign trade system SISCOMEX. Automatic licenses are normally issued within five days of application. Goods must be shipped within 180 days from issuance of the import licenses.

In other cases, a non-automatic license is necessary. The importer can check the SISCOMEX system about the required licenses and the granting government agencies.

In general, non-automatic import licenses are needed for the following products: living animals, meat, seafood, milk and milk products, eggs and honey, fruits and vegetables and several other animal and vegetable products, mineral water, tobaccos, minerals, chemicals and petrochemicals, rubber, herbicides and pesticides, medical and pharmaceutical products, vitamins, human blood, plastics, furs, wood, textiles, shoes, iron and steel, machines and devices, electro technical goods, automobiles, optical instruments, measuring instruments, weapons and munitions, nuclear material, furniture and toys.

Different government bodies are responsible for issuing of import licenses, depending on the goods.

As a general rule, all food imports to Brazil are subject to a sanitary control through the Ministry of Agriculture, Livestock, and Supply (MAPA) or through the Brazilian Health Surveillance Agency (ANVISA).

Importation of products from animal origin is conditioned to prior approval of the exporting establishment in Switzerland by a MAPA inspector according to decree 183 of October 9, 1998 (<http://www.agricultura.gov.br/assuntos/sanidade-animal-e-vegetal/saude-animal/importacao>). Travelling costs (flight, accommodation and local expenses) must be paid by the Swiss company. The approval has no expiration date and does not have to be renewed in the future. Nevertheless, for each export, a sanitary certificate is needed.

It is worthwhile mentioning that most import licenses must be issued before shipping.

2.2. Prohibited imports

Prohibited imports include certain narcotics; obscene, immoral and seditious products and some herbicides. Importation of used cars is prohibited. Certain quotas apply for the import of new cars and meat.

In general, importation of used consumer products for commercial proposes is forbidden.

2.3. Import regulation for used machines

Used machines can only be imported under certain circumstances. They are generally subject to a prior analysis by the Foreign Trade Secretariat (SECEX). SECEX verifies if a similar product is manufactured in Brazil or if the machine could be replaced for another comparable product.

Exceptions apply, among others, to temporary imported machines or machines imported within the scope of an international agreement.

2.4. Import regulation for wood packing material

Brazil signed the International Plant Protection Convention (IPPC) of the Food and Agriculture Organization (FAO). Since 2004, Brazil requires compliance with the IPPC standards for wood packing material, Standard N.15 ("Guidelines for Regulating Wood Packaging Material in International Trade").

2.5. Labelling and packing regulations

The Brazilian Customer Protection code states that imported products can be sold in their original packaging provided that an additional label is attached to the product with the following information in Brazilian Portuguese:

- product description;
- weight, according to local standards;
- product composition;
- validity;
- country of origin;
- name and address of the importer;
- special warnings on risks to health or security
- in case of food and beverages (excluding alcoholic), the nutritional value

Usually this label is placed on the product in Brazil by the importer. Special label regulations apply to imported pharmaceutical specialties, antiseptics, disinfectants, cosmetics, beauty and hygienic preparations, alcoholic beverages, foodstuff. See also chapter 5.

When an instruction manual accompanies a product, it must also be provided in Brazilian Portuguese.

2.6. Temporary import

Since 2016, Brazil recognizes ATA Carnet issued by other countries, according to Normative Instruction SRF 1639. The prior temporary admission regime remains in force in the country, according to Normative Instruction SRF 1600 from December 15, 2015. Within this regime, temporary imports are limited to 180 days, but can be extended on the customs authority's discretion. Application for an extension must be justified to the customs authority (Receita Federal) and submitted prior to the limit date.

To compare both regimes, a summary is available at http://idg.receita.fazenda.gov.br/orientacao/aduaneira/manuais/carne-ata/topicos/arquivo-de-imagens/quadro-comparativo_in-1600-e-in-1639.pdf (Portuguese only).

2.7. Import of samples and catalogues

Commercial samples without commercial value (parts or fragments of goods in the required amount to present their nature, type and quantity) can be carried to Brazil in the luggage without payment of import tax. Some samples may require previous authorization from specific government departments (especially health-related products).

Samples, whether they have a commercial value or not, which are sent to recognized importers, need the same documentation as ordinary commercial shipments, including an import license. Documents for samples should be marked as "sample, not for sale" (*amostra grátis*). No more than one sample of each product should be sent.

Catalogues can be sent to Brazil without paying tax if the parcel is declared as without commercial value "*documentos sem valor comercial*".

2.8. Mail order imports

The weight limit on imports by mail is 30 kg. Mail order imports of up to US\$ 3,000 are subject to a 60% import duty. Exemptions are granted in case of medicine and imports under US\$ 50, provided that they are performed between individuals or it is intended for the individual's use. Also exempt from import taxes are books, newspapers and magazines. Alcoholic beverages and smoking products do not benefit from this import regime.

Mail-order imports via courier (express transportation) pay additionally an average of 18% of ICMS, taxes vary depending on the state.

2.9. Import duties

Brazil, Argentina, Paraguay and Uruguay, the Mercosur members, implemented in January 1995 a common nomenclature (NCM) for custom classification of imported products. The first 6 numbers are equivalent to the Harmonized System (HS) known in Switzerland.

Import taxes are published in the Common External Tariff (TEC), see below.

Customs duties

Import taxes are set between 0 and 35% and levied over the CIF value (FOB price plus insurance and freight). Exact rates can be found on: <http://www.mdic.gov.br/comercio-exterior/estatisticas-de-comercio-exterior-9/arquivos-atuais>

Exemptions or reductions on import duties are granted to:

- certain capital goods (marked on the previous mentioned list with BK),
- information and telecommunication goods (marked with § or BIT) and
- other goods (marked with # or **) considered of particular importance to the Brazilian economy, if there is no similar local manufactured product.

Duties may also be suspended on goods imported for re-export, for further processing prior to export or for use in preparing other products for export (drawback).

Exemptions or reductions are normally only granted temporarily, but renewals are frequent.

Other taxes and duties

Additionally to the import tax (II), federal value-added excise tax (IPI), contributions (PIS and COFINS), state value-added sales and services tax (ICMS), as well as a seaport tax (AFRMM, 25% on sea freight costs), are levied on imports.

The Brazilian system is cumulative, that means IPI is calculated on the basis of "custom value + II", ICMS on the bases "custom value + II + IPI" etc. An example of how calculating import costs can be found in chapter 2.12.

Port and dock taxes and charges are high when comparing with international standards.

2.10. Preferable import taxes

Brazil is a member of the Latin American Integration Association (ALADI). ALADI members grant preferential duty treatment to one another. The ALADI community includes Argentina, Bolivia, Brazil, Chile, Cuba, Colombia, Ecuador, Mexico, Panamá, Paraguay, Peru, Uruguay and Venezuela.

Brazil is also a member of the Southern Common Market (Mercosur - Argentina, Brazil, Paraguay and Uruguay.). In theory, Mercosur is functioning as a free trade zone and a customs union; in practice, many special import taxes apply on textiles, computers, automobiles, sugar and capital goods.

A trade agreement has also been signed between Mercosur and Chile and Bolivia where import tax reduction is granted for most goods and a free trade agreement with Mexico covering a limited number of goods.

On Jun 28, 2019, Mercosur and the European Union concluded negotiations for a free trade agreement between the two blocs. In August 2019, member countries of Efta (European Free Trade Association) and Mercosur signed a free trade agreement in Buenos Aires. The agreement still awaits approval of the respective countries parliaments to enter into force.

2.11. Manaus free trade zone

The free trade zone of Manaus is designed to encourage manufacturing for export and local sales in the Amazon area up to 2073. Raw materials, parts and components imported in the Manaus free trade zone enjoy deferment of customs duties and exemption of federal excise tax (IPI).

2.12. Example of calculation of import costs

The following spreadsheet provides an overview of import costs in Brazil for the following Mercosul Tariffcode (NCM):

- **18.06** Chocolate e outras preparações alimentícias que contenham cacau (*Chocolate and other food preparations containing cocoa*)
- **1806.20.00** Outras preparações em blocos ou em barras, com peso superior a 2 kg, ou no estado líquido, em pasta, em pó, grânulos ou formas semelhantes, em recipientes ou embalagens imediatas de conteúdo superior a 2 kg (*Other preparations in blocks or bars, weighing more than 2 kg, or in liquid form, paste, powder, granules or the like, in immediate containers or packages of a content exceeding 2 kg*).

Number of Containers per shipment - DRY 20, 40, HC 40, OT 20, OT 40, flat rack		1
Number of BLs per shipment		1
Description	% Taxes	US\$
Exchange rate US\$ / BRL reference July 2018	3,77	
FOB Value European Seaport		100,000.00
International Sea Freight - estimated		2,000.00
International Insurance Door to Door	0.3% of FOB and Freight	306.00
CIF Value Brazil - basis for the calculation for taxes and charges		102,306.00
Federal and State Taxes for import (Generic, depending on the HS - Harmonized Code)		US\$
Import Tax - II - Federal	18% on CIF*	18,415.08
Tax on Industrialized Products - IPI – Federal	0% on (CIF+II)*	0,00
Program for the Social Integration - PIS – Federal	2.10% on (CIF+II+IPI) adjusted*	2,148.43
Contribution for the Financing of Social Security - COFINS – Federal	9.65% on (CIF+II+IPI) adjusted*	9,872.53
Tax on the circulation of goods - ICMS – State	18% on (CIF+II+IPI+PIS+COFINS)*	29,138.50
Total Costs after Tax - this value must be declared on the receipt (<i>nota fiscal</i>) and kept for tax reasons		161,880.53
Charges at any southern Brazilian Seaport for imports		
Seaport charge - AFRMM	25% on freight	500.00
THC - Terminal Handling Carrier - per container		140.58
Seaport Warehouse - 10 days	0.90% on CIF	920.75
Warehouse – optional	0.90% on CIF	920.75
Removal to warehouse - optional		92.84
Handling / load / unload / container		104.10
Customs broker		1,023.06
Syndicate of the customs broker (<i>despachantes</i>) – SDA		320.00
Bill of Lading clearance		145.00
Exchange Bank Tax		80.00
Registration on SISCOMEX system		80.00
Road transport - hypothetical		850.00
Total Expenses		5,179.09
Total Costs after Taxes and Charges		167,059.62
Total Value / FOB		1,6706
*São Paulo	Source: Elotrans	

S.D.A	2%	on CIF Value 2046,12
Min.	170,00	MAX. 320,00

2.13. Documentation and procedures on imports

Most of import problems in Brazil are due to missing, incomplete or incorrect documentation. Brazilian customs officers are rigorous: If the dates in the transport and customs documentation do not comply with the sent goods (especially weight and quantity), custom clearance will be delayed or interrupted. In addition to delays and fines, it is even possible for the shipment to be lost.

The following documents are required:

- Original shipping documents (BL or AWB), mandatory for all imports;
- Original commercial invoice, in English or Portuguese, in dual version - mandatory for all imports;
- Packing list, thoroughly prepared - mandatory for all imports;
- Import Declaration (DI) for all imports - must be organized by the importer through the SISCOMEX system;
- Phytosanitary Certificate - where applicable or
- Health Certificate - where applicable
- Certificate of origin - where applicable

Although importers may clear merchandise through Brazilian customs themselves, this is often delegated to a customs agent ("*despachante*") or a freight forwarder.

Despachantes are organizations that provide a wide range of services with the purpose of expediting the customs clearance process. The customs clearance fees charged by these organizations are controlled by their union. *Despachantes* are employed not only because they can clear goods through customs faster, but also because they eliminate the need for permanent staff in the importing company to handle such matters.

2.14. Export regulations

Brazil encourages exports by offering a number of export-related incentives:

- Import tax exemptions or reductions for imported materials (II) that are incorporated into exported products (Drawback);
- Tax exemption or credit on different local taxes (ICMS, IPI, PIS and COFINS);
- Special (low cost) financing arrangements.

Exporters must be registered with SECEX.

For more information, please refer to chapter 7: Taxes

Export taxes (IE)

At the moment export taxes on cigarette and arms are in force.

Further information (only in Portuguese): <http://www.siscomex.gov.br/wp-content/uploads/2019/10/Portaria-SECEX-n-23-de-14-07-2011-Alterada-pela-42-de-2019.pdf>

Methods of quoting and payment

The Brazilian currency Real (plural Reais, symbol R\$ or BRL) is not freely convertible. Brazilian importers and exporters are not allowed to pay bills or get payment in local currency (BRL). Normally, imports must be paid within 180 days, but can be extended in some special cases up to 1 year. Imports with a payment period over 1 year are considered as a financed transaction and need special registration (ROF). For exporters, receiving payments overseas is forbidden.

Quotations in FOB and CIF (Incoterms 2010) are common, but all other INCOTERMS are also possible. The most used currencies are US\$ and € but it is also possible to quote/invoice in Swiss Francs. Payment terms can be in advance, collection (payment terms are freely negotiable, averaging 360 days), with or without a letter of credit coverage.

Sources Chapter 2:

Elotrans Spreadsheet Import Cost Calculation

GTAI Germany Trade and Invest – Gesellschaft für Außenwirtschaft und Standortmarketing mbH

International Plant Protection Convention (IPPC) - Standard No.15

www.ippc.int/en/publications/640/

Market Access Map www.macmap.org

MDIC Ministry for Development, Industry and Foreign Trade www.mdic.gov.br

3. Currency Regulations / Restrictions / Profit Transfer

3.1. The Brazilian currency

The Brazilian monetary unit is the Real (R\$ or BRL, plural Reais) which is divided in 100 cents, called centavos. Exchange rates on October 30th 2019: 1 USD = 3,994 BRL, 1 CHF = 4,0185 BRL. Current exchange rates can be found on:

<https://www.bcb.gov.br/conversao>

The Brazilian Real is not freely convertible. Purchase and sale of foreign currency in Brazil, performed through authorized agents, is subject to governmental control. The Brazilian Central Bank allows the exchange rate to float freely, but may intervene occasionally "to ensure smooth functioning of the foreign exchange market" by means of swaps auctions and selling foreign currency in the spot market.

More information about the historical evolution of the Brazilian foreign exchange market and the current foreign exchange system modernization at:

[https://www.bcb.gov.br/content/config/Documents/Simplification Measures in the Foreign Exchange Area.pdf](https://www.bcb.gov.br/content/config/Documents/Simplification%20Measures%20in%20the%20Foreign%20Exchange%20Area.pdf). There is also an openly used, although illegal, parallel exchange market. Traditionally, this rate has been higher than the commercial rate.

3.2. Foreign capital and investment restrictions in Brazil

General policy is to admit foreign capital and treat it in the same way as local capital. However, there are some restrictions on foreign investment in certain sectors (see below).

Foreign investments in Brazil must be registered with the Central Bank to enable foreign remittance or reinvestment of profits and/or interest on equity and repatriation of foreign capital invested in Brazil. The Brazilian government seeks to progressively encourage foreign capital investments in Brazil and is eliminating restrictions. In October 2018, Presidential Decree 9,544/18 recognized the government interest in up to 100% of foreign participation in direct lending companies (SCD) and peer-to-peer lending

companies (SEP), also known as credit fintechs, provided that they are authorized to operate by the Central Bank of Brazil (Bacen). In June 2019, Law 13,842/2019 increased from 20% to 100% the participation of foreign capital in Brazilian airline companies.

Except as noted below, 100% foreign ownership of local enterprises and joint ventures is normally permitted.

Sectors that are still subject to certain foreign capital restrictions or government permission:

- Banks and financial institutions;
- Exploitation and use of deposits, mines and other mineral resources;
- Coastal navigation for transport of products, with some specific exceptions;
- Ownership and administration of journalistic, TV and radio broadcasting companies;
- Purchase of rural real estate or property alongside border areas;
- Health plans, except for some specific cases.

3.3. Registration of foreign investment with the Central Bank

The registration of foreign investments is currently performed by electronic format. The electronic registration statement, module RDE-IED (Electronic Registration Statement – Direct Foreign Investment) is effectuated through the Central Bank's computerized system, abbreviated "SISBACEN".

The registration of incoming money must be performed within thirty (30) days from the transaction date by the representative of the Brazilian company or investor that receives the investment. Non registration may result in fines that may total BRL 125,000.00 per transaction.

3.4. Foreign direct investment

Remittance of funds to Brazil as a capital contribution does not require a prior authorization of Brazilian authorities and the resources may be transferred to Brazil whenever the Brazilian company may need them. In order to access the funds, the Brazilian company must convert them into Brazilian currency. The foreign investor must have the taxpayer identification number (CNPJ for companies and CPF for individuals).

3.5. Reinvestment or remittance of profits and/or interest on equity

The profits and/or interest on equity payable by the investor partner or shareholder established abroad may be reinvested in their Brazilian company or in a third-part Brazilian company.

The remittance of profits abroad is subject to two prerequisites: (i) the foreign investments must have been duly registered in the SISBACEN system; and (ii) the Brazilian company must yield a profit. The same applies to the payment of interest on equity (*juros sobre capital próprio*).

The remittance of dividends is not subject to withholding income tax since 1996, even when distributed to non-resident parent companies. On the other hand, the amount paid as profit distribution cannot be deducted as an expense of the Brazilian company for tax

purposes. Additionally, the Tax on Financial Transactions (IOF) levied on the remittance of profits abroad is currently reduced to a rate of zero percent (0%).

Interest on equity intends to remunerate the investment on the basis of the equity. Opposite to dividends, payment of interest on equity is a tax-deductible expense. The payment or credit of interest on equity to the partner/shareholder is taxed by the withholding income tax at the rate of 15%. If the beneficiary of this payment is located in a tax haven (see 7.5.), the income tax rate is increased to 25%. The total value of interest on equity payable or credited to the partners shall not exceed 50% of the accrued profits or fiscal year, whatever is greater.

3.6. Capital repatriation

The capital that may be repatriated free of taxes is up to the amount of the foreign currency indicated in the SISBACEN system. The amount that exceeds the registered investment cost characterizes a capital gain and causes withholding income tax at the rate of fifteen percent (15%), or twenty-five percent (25%) in case the beneficiary is located in a low-tax jurisdiction.

3.7. Foreign Currency Loans

Loans contracted in foreign currency extended to Brazilian companies must be electronically registered with the Central Bank in the SISBACEN, ROF module. The payment conditions of the principal and the interest rates cannot be considered excessive according to the Central Bank's policies in force at the time of the loan.

Although the payment of the principal is not subject to taxation, the payment of interest accrued thereto is subject to Withholding Income Tax at the rate of 15% (tax haven: 25% - tax haven see also 7.5.).

Currently, the remittance of the principal amount of the loan to Brazil is subject to the IOF (*Imposto sobre Operações Financeiras*) at the rate of zero percent for loans with an average repayment term longer than 180 days. However, if the loan has a maturity date or is repaid in a term shorter than 181 days, the IOF will apply at a 6% rate.

3.8. Exchange control in remittance to and from abroad for payment of services

The import of service operations that involve transfer of technology, licensing of intellectual property rights and production of scientific know-how are subject to registration with the National Industrial Property Institute (INPI) and Central Bank (through the ROF registration system), so that it is possible to: (i) remit payments abroad; and (ii) enable the use of the amounts paid as a deductible expense in income tax reports.

All other professional services supplied by foreign companies other than those quoted above are not subject to registration with the INPI and Central Bank.

According to Central Bank's Ruling No. 3,691/2013, the Brazilian exporters may maintain abroad the totality of the revenues related to the payments of their exports.

3.9. Exchange control on imports

All imports in Brazil must be declared in the SISCOMEX system and payment for imports can only be made in foreign currencies. Therefore, an exchange contract with an authorized bank must be done (which is also linked to the SISCOMEX system).

The imports with a payment term of more than three hundred and sixty (360) days are subject to registration with the Central Bank, in the ROF module.

3.10. Declaration of assets maintained outside Brazil

Individuals (Brazilians or expatriates considered as residents for fiscal purposes) and legal entities resident, domiciled or headquartered in Brazil, must submit annually to the Central Bank a list of assets and rights with total value of US\$100,000.00 or higher they hold outside of Brazil.

Furthermore, if the total sum of the above mentioned assets is equal to or higher than US\$100,000,000.00 (one hundred million US Dollars) or its equivalent in other currencies, such individuals and legal entities must also submit the same declaration on a quarterly basis.

The delay or non-compliance with submission of the declaration, as well as provision of incorrect, incomplete or false information, will be subject to penalties to be applied by Central Bank.

3.11. Registry of individuals (CPF) and registry of corporate entities (CNPJ)

Individuals and companies established abroad that own property and hold rights in Brazil that are subject to public registration are required to enrol with the Individual Taxpayers' Registry (CPF) and with the General Taxpayers' Registry (CNPJ), respectively.

3.12. Inclusion of Switzerland in the list of privileged tax regimes

Since 2014, Switzerland is not anymore considered by the Brazilian Federal Revenue Service a "tax haven". After several negotiations and efforts, the Swiss government achieved to reverse the situation and the Brazilian government suspended the "tax haven" status. Now, both countries agreed on following a standard for automatic exchange of information on capital income, called the AIA. This procedure is based on OECD-standard and will take effect in 2019.

Sources Chapter 3:

Brazilian Central Bank <https://www.bcb.gov.br/en/financialstability/fxpolicy>
Doing Business in Brazil Guide of the Swiss-Brazilian Chamber of Commerce
MRE - Ministry of External Relations
Trench Rossi Watanabe – Doing Business in Brazil 2018

4. Registration Procedures for Products

To export food and medical products (drugs, medical supply, diagnostics, equipment and devices, products intended for aesthetic corrections), pharmaceutical raw materials, cosmetics, blood and its derivatives products, sanitizing products and disinfectant, tobacco and pesticides to Brazil, it is mandatory to have prior registration.

All of these products must be approved by the Health Surveillance Agency ANVISA. In addition, products containing ingredients from animal origin (in general) must be approved by the Ministry of Agriculture, Livestock and Food Supply (MAPA). See complete information at www.agricultura.gov.br/assuntos/inspecao/produtos-animais/importacao-de-produtos-de-origem-animais (Portuguese only). Pesticides must be evaluated by three federal government bodies: MAPA, IBAMA (Brazilian Institute for the Environment and Renewable Natural Resources), and ANVISA.

Only local companies may apply for product registration, and the company itself must also be approved by ANVISA. Additionally, the product must already be registered on its country of origin.

Depending on the product, the registration validity varies from one to ten years and may be renewed continuously for the same period. Request for an extension must be performed in the first semester of the last year of validity. For information about sanitary surveillance costs, see 4.2.

Instructions, directions, cautions, labels, brochures, and pertinent information about the products must be translated into Portuguese.

Further information (in English) about procedures, labelling and other requirements can be found on the ANVISA websites: <http://portal.anvisa.gov.br/regulation>

Brazil will become a member of the Pharmaceutical Inspection Co-operation Scheme in 2020, that will allow a mutual acknowledgement between the inspections of ANVISA and SwissMedic. However, an agreement for a pilot project between both agencies already started in October 2019. See more information at http://portal.anvisa.gov.br/updates/-/asset_publisher/1B9EMgTT9yAA/content/switzerland-acknowledges-anvisa-inspection-excellence/33788.

4.1. Time for Registration

In theory, if the required documentation is complete (technical information, product registration certificate from the Swiss Health Ministry or commercialization certificate of the country of origin), registration may take from 60 days to a year, depending on the product. The above deadlines may be extended by up to one third of the original deadline only once. In practice, the product registration process often takes more than one year.

4.2. Registration Fee

A registration fee, called "*Taxa de Fiscalização de Vigilância Sanitária*" (TFVS), is charged by ANVISA upon submission of product registration (see table below). Since May 2010, a Good Manufacturing Practices (GMP) certification is required from manufacturers, which must be renewed every two years. See more information at:

<http://portal.anvisa.gov.br/companies>. Considering the complex legislation and the involved bureaucracy, assuming that your partner does not have a legal department, it is advisable to use the services of a law firm specialized on medical regulation.

The registration fee depends on the product and on the turnover of the Brazilian company which registers the product (and not of its Swiss producer). A complete list with the registration and other possible fees can be found in the table of values (Annex I) of the RDC 198/2017:

http://portal.anvisa.gov.br/documents/10181/3426671/RDC_198_2017_.pdf.

It is also possible to register groups or families of products. Please note that the table below is an overview of the registration fee related to some products. A complete list can be found using the link above.

Product	Company Type					
	Group I (big) Annual turnover over 50 Million	Group II (big) Annual turnover from 20 to 50 Million	Group II (medium) Annual turnover from 6 to 20 Million	Group IV (medium) Annual turnover from 2,133 to 6 Million	Small Annual turnover from 433,755 to 2,133 Million	Micro Enterprises Annual turnover below 433,755
	BRL	BRL	BRL	BRL	BRL	BRL
Food, food additives, beverages, bottled water and recycled packaging	10,637.40	9,041.79	7,446.18	4,254.96	1,063.74	531.87
Cosmetics	4,881.00	4,148.85	3,416.70	1,952.40	488.10	244.05
Medicines						
new products	157,416.00	133,803.60	110,191.20	62,966.40	15,741.60	7,870.80
similar products	41,000.40	34,850.34	28,700.28	16,400.16	4,100.04	2,050.02
generic drug products	11,714.40	9,957.24	8,200.08	4,685.76	1,171.44	585.72
phytotherapeutic and homeopathic drugs	10,637.40	9,041.79	7,446.18	4,254.96	1,063.74	531.87
Sanitizing products	14,057.28	11,948.69	9,840.10	5,622.91	1,405.73	702.86
Diagnostic and therapeutic equipment						
large scale	39,048.00	33,190.80	27,333.60	15,619.20	3,904.80	1,952.40
medium and small scale	15,619.20	13,276.32	10,933.44	6,247.68	1,561.92	780.96
Pesticides	3,172.14	2,696.32	2,220.50	1,268.86	317,21	158,61
Tobacco	196,770.00	167,254.50	137,739.00	78,708.00	19,677.00	9,838.50
Good Manufacturing Practices (GMP) certification (foreign country, except Mercosur)	72,804.90	72,804.90	72,804.90	72,804.90	72,804.90	72,804.90

4.3. Replacement of representatives

The product registration number is attributed to the Brazilian importer/agent, which takes responsibility for any problems occurring through the use of the product, but with no special rights on the product.

The Swiss company can always choose another partner, but the registration process needs to be redone under the name of the new agent.

It is also possible to register the same product in the name of several partners; however, each partner has to perform the whole registration process (and pay the involved fees).

The transfer of a product registration is applied in the following cases:

- Incorporation, merge or split-up
- Sale of assets or a set of assets

Further information about medical product registration can be found in the Doing Business in Brazil guide of the Swiss-Brazilian Chamber of Commerce, chapter 19 (Pharmaceutical regulations).

4.4. Patents, trademarks and copyrights

Federal Law 9,279 of May 14, 1996 regulates rights and obligations regarding industrial property. The protection of industrial property rights is afforded by means of: I. the granting of invention and utility model patents; II. the granting of a registration of an industrial design; III. the granting of a registration of a trademark; IV. the repression of false geographical indication; and V. the repression of unfair competition.

Patents

The life of a patent of an invention lasts 20 years and for an industrial model or design is 15 years from the date of filing the application with the National Institute of Industrial Property (INPI). The title to patents is transferable. An interested party can apply for a compulsory license and-or for forfeiture of the patent when proving that the patent holder has not exercised the patent rights or has suspended exploration after a three-year period following the grant of the patent.

Pharmaceutical patent applications must have the authorization of the National Agency of Sanitary Surveillance (ANVISA) before submission to the Brazilian Patent & Trademark Office (INPI).

In 2019, Brazil signed the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Trademarks in Brazil are now recognized in 120 countries, including Switzerland.

Trademarks and trade names

Trademarks in Brazil may be registered in the following forms: (i) nominative (only words); (ii) word and design (styled drawing, word or letters); (iii) figurative (only drawing); and (iv) three-dimensional (drawing in three dimensions – example: product or packaging format).

In the event of a trademark application to be filed in Brazil which has already been requested in a country that has an agreement with Brazil or with an international organization, the right to priority can be granted, provided the time periods set in the agreement are fulfilled.

As provided in article 4 of the Convention of the Union of Paris (CUP), which Brazil is also a signatory party, the period to request priority is of six months for trademarks. Therefore, the trademark holder is entitled to the filing date in the country of origin, and

any fact which occurs within this period (between the original filing and the filing in the country where the priority is requested) shall not prevent its registration in Brazil.

Registration is valid for ten years and may be renewed for similar periods indefinitely.

Industrial Designs

The registrations of industrial designs are issued without an examination on the merits, in a few months (in average 6 to 12 months) as of the filing of the application and are valid for 25 years, at maximum.

Copyrights

Law no. 9610 of February 19, 1998 governs copyright, the term encompassing the rights of authors and neighboring rights. Foreigners resident outside the country shall enjoy the protection provided for in the agreements, conventions and treaties in force in Brazil.

The provisions of this law shall be applicable to the nationals of and persons resident in countries that assure Brazilians or persons resident in Brazil of reciprocity in the protection of copyright or equivalent rights.

Brazil is a signatory of the Berne Convention for the protection of artistic and literary works, the Paris Convention for the protection of industrial property, the Washington Patent Cooperation Treaty, and is a member of the World Organization of Intellectual Property.

Sources Chapter 4 and further information:

ANVISA www.anvisa.gov.br

SWISSCAM Guide "Doing Business in Brazil", chapter 4 and 19

Mission Economique de Rio de Janeiro "L'enregistrement de produits médicaux au Brésil"

5. Standards, Technical Provisions – Labelling Regulations

5.1. Entities involved in the definition of standards in Brazil

In 1973, Brazilian Federal law established SINMETRO (a National System of Metrology, Standardization and Industrial Quality), which is comprised of CONMETRO (the legislative arm formed by 9 ministries), INMETRO (the National Institute of Metrology, Standardization and Industrial Quality), ABNT (Brazilian Association of Technical Norms), IPEM (Institute of Weights and Measures) and accredited labs. INMETRO serves as the executive chair of SINMETRO.

Sinmetro is a Brazilian system consisting of public and private entities that perform activities related to metrology, standardization, industrial quality and certification of compliance.

Sinmetro has an infrastructure of technological services enabled to assess and certify quality of products, processes and services through certification bodies, a network of essay and calibration laboratories, training bodies, proficiency essay bodies and inspection bodies, all accredited by Inmetro.

This system supports standardization agencies, scientific and industrial metrology laboratories and legal metrology laboratories of the states. This structure is formed to meet the needs of industry, commerce, government and consumers.

5.2. Standards and Technical Regulations

Conmetro is the regulatory authority of Sinmetro and is chaired by the Minister of Development, Industry and Foreign Trade. Conmetro operates through its technical advisory committees, which are open to society through participation of entities representing the academic, industry, commerce areas and other activities with interest in metrology, standardization and quality in Brazil.

Inmetro is the National Institute of Metrology, Quality and Technology, a federal agency under the Ministry of Economy. As part of its broad institutional mission, Inmetro aims to strengthen national companies, increasing their productivity through the adoption of mechanisms aimed at improving the quality of products and services.

Its mission is to provide Brazilian society with confidence in measurements and products through metrology and conformity assessment, promoting the harmonization of consumer relations, innovation and the country's competitiveness. Among Inmetro's competences and attributions are:

- implement national metrology and quality policies;
- verify and supervise compliance with technical and legal standards with respect to units of measurement, measurement methods, materialized measurements, measuring instruments and premeasured products;
- maintain the standards of measurement units, as well as implement and maintain the traceability chain of measurement unit standards in the country, in order to make them harmonized internally and internationally compatible, aiming at their universal acceptance and use for quality of goods and services;
- strengthen the country's participation in international activities related to Metrology and Conformity Assessment, promoting exchanges with foreign and international entities and bodies;
- stimulate the use of quality management techniques in Brazilian companies;
- plan and execute Accreditation activities of Calibration and Testing Laboratories, proficiency testing providers, Conformity Assessment Bodies and others necessary for the development of technological services infrastructure in the Country;
- coordinate, within the scope of Sinmetro, the activity of Conformity Assessment, voluntary and compulsory of products, services, processes and people;
- plan and execute research, teaching, technological development in Metrology and Conformity Assessment activities; and
- develop activities related to service provision, technology transfer and technical cooperation, when focused on innovation, scientific and technological research in Metrology and Conformity Assessment.

When the need for normalization of a particular issue arises, ABNT (Brazilian association of technical standards) forwards the subject to the responsible Technical Committee, where it will be exposed to the various involved sectors. Once the Draft Standard is prepared with the requested subject, it is submitted to National Consultation. In this process, the Draft Standard, prepared by a Study Committee representative of stakeholders and sectors involved with the subject, is submitted to the society for consideration. During this period, any interested party may speak without charge to recommend to the authoring Study Committee the approval of the text as presented; approval of text with suggestions; or its non-approval, and, for such, it must present the technical objections that justify its manifestation.

Proposed voluntary standards that are open for public consultation can be accessed through: www.abntonline.com.br/consultanacional.

Voluntary standards can be adopted as mandatory technical regulations by any of the 9 ministries. Alternatively, these ministries may develop their own technical regulations. Brazil's technical regulations are available through INMETRO's website. This website provides access to both proposed and final technical regulations:
www.inmetro.gov.br/rtac

5.3. Product Certification

How can I know if my product can/should be certified?

There are two types of certification within the Brazilian Conformity Assessment System: Voluntary or Compulsory Certifications.

Compulsory certifications are those in which a regulation states that a company can only produce/market a product after its certification.

In this case, an Inmetro ordinance defines the mandatory requirements to be followed by all companies that produce a certain product, as well as the deadlines that the company will have to comply with the regulation.

The first step is to find out if there is a certification applicable to your product, and whether this certification is compulsory or voluntary. The list of products covered by Inmetro's Compliance Assessment Program can be found on the Inmetro website at the following links:

Products under Voluntary Certification:

<http://www.inmetro.gov.br/quality/rtepac/voluntarios.asp>

Products under Compulsory Certification:

<http://www.inmetro.gov.br/quality/rtepac/compulsorios.asp>

Where do I start the process for certifying my product?

Once you have confirmed that there is a certification program for your product, and find out if it is compulsory or voluntary, the next step is to assess whether your company meets the requirements to apply for certification by reading the corresponding standard or regulation. After this assessment, the company should look for an Inmetro accredited Product Certification Body (OCP) to perform the certification process for its product. To find out which OCPs are accredited to conduct certification of a particular product, the company should consult the Inmetro website, at:

<http://www.inmetro.gov.br/organismos/consulta.asp>

Which OCP should I choose? What is the best OCP for me?

There is no definition of "the best OCP" to perform a certification process. Having the list of accredited OCPs to perform the process of a particular product, the company should consult one or more of these, and choose the one that best meets their needs. Inmetro does not engage in these procedures. The institute's function is to accredit the Bodies, according to the rules defined by Cgcre (General Coordination of Accreditation). Upon accreditation, any OCP is recognized by Inmetro as competent to conduct the certification process for that specific product. Negotiation of certification deadlines and budget between OCP and companies that produce this product is free.

How much does a certification process cost? How long does it take to certify my product?

It is not possible to determine exactly the cost of a certification and the time to complete this process in a generic way as it varies from product to product according to the level of complexity of the tests required by a standard or regulation. Also, it is not possible to determine the certification price of a specific product, as there is no table setting the prices charged by OCP. In this way, each body is free to set its market prices. Therefore, companies should consult this value directly with accredited OCP.

What happens after I choose the OCP? How does this certification process work?

The OCP you choose will always be ready to answer your questions. Each regulation (or standard) establishes the procedures for product certification. Generally, certification processes consist of document review and product testing. Upon completion of these steps and possible corrective actions that may be required, the OCP issues a certificate for the product, declaring its compliance with the regulation or standard, and records this certificate with Inmetro.

5.4. Mercosur standards

Brazil is a member of the Mercosur trading union, which has its own regional standards organization that issues and harmonizes standards. Technical committees write and recommend standards in selected areas. Each country must ratify the standard before they are adopted in that country. A number of standards have already been adopted as Mercosur standards. Adopted and proposed Mercosur standards are listed on Mercosur's website: www.amn.org.br. The Executive Secretariat of the Mercosur Standards Organization is located in São Paulo, Brazil.

5.5. Labelling

The Brazilian Customer Protection Code requires that product labelling provides consumers with correct, clear, precise, and easily readable information about the product's quality, quantity, composition, price, guarantee, shelf life, origin, and risks to the consumer's health and safety. Imported products should bear a Portuguese translation of this information. Since metric units are the official measuring system, products should be labelled in metric units or show a metric equivalent.

However, the information that should appear on the packaging depends on the type of product.

For example, food products must contain, in addition to the information mentioned above, additions to the nutritional value.

Thus, the company should seek specific information about each product.

Information resources on labelling:

ANVISA	National Health Surveillance Agency	www.anvisa.gov.br
CVS	Center for Sanitation Vigilance:	www.cvs.saude.sp.gov.br
IPEM	Institute for Weights and Measures:	www.ipem.sp.gov.br

Sources chapter 5:

ABNT	Associação Brasileira de Normas Técnicas	www.abnt.org.br
AMN	Asociación Mercosur de Normalización	www.amn.org.br
INMETRO	Instituto Nacional de Metrologia, Normalização e Qualidade Industrial	www.inmetro.gov.br

6. Environmental Legislation

Since the 80s, Brazilian environmental legislation became more severe. Federal and state governments have developed programs and controls to prevent environmental impacts or reduce pollution in already existing activities.

The group of governmental bodies and entities, at federal, state and municipal level, responsible for the protection and improvement of the environment comprises the Brazilian Environmental System – SISNAMA. Within this group, the most important entities are:

- **CONAMA** (Brazilian Environmental Council), the normative, consultative and decision-making agency;
- **Ministry of the Environment**, the agency charged with coordination, supervision and control of the Brazilian Environmental Policy;
- **IBAMA** (Brazilian Environmental and Renewable Natural Resources Institute), the executive agency.
- Other agencies of all levels of the federation, such as CETESB, in the state of São Paulo, and FEEMA, in the state of Rio de Janeiro.

6.1. Environmental Liability

The liability for environmental offences may be at the civil, administrative and criminal levels.

The Environmental Crimes Act makes Brazil one of the few countries worldwide which gives environmental damages criminal character, and both, individuals or companies are subject to criminal liability.

The sanctions specifically applicable to legal entities are, among others:

- warnings
- fines (single or daily fines ranging between BRL 50.00 and BRL 50 million)
- partial or total suspension of activities
- suspension of product manufacturing
- penalties restricting rights: suspension or cancellation of registration, licensing, permit or other authorizations granted to the corporate offender; loss of tax benefits and incentives or credit facilities from official institutions; and prohibition against signing any agreement with the government authorities

6.2. Environmental Licensing

In order to start your business properly, it is critical to check if your business requires an environmental licensing.

The environmental licensing is the procedure in which the government, represented by environmental agencies, authorizes and monitors the implementation and operation of activities that use natural resources or that are considered effective or potentially polluting. It is the obligation of the company, as provided by law, to seek environmental licensing from the competent agency, from the initial stages of its planning and installation until its effective operation.

Every business sector listed in CONAMA's Resolution 237 of 1997 is required to have an environmental license. Therefore, it is necessary to check if your company's activity is listed there and, in this case, follow the legal procedures for environmental licensing.

Since 1981, according to Federal Law 6.938/81, the Environmental Licensing has become mandatory in all national territory and actual or potentially polluting activities cannot function without proper licensing. Since then, companies operating without the Environmental License have been subject to the sanctions provided by law, including the punishments listed in the Environmental Crimes Act.

State environmental protection agencies and Ibama are responsible for the licensing.

To start the process of application for a license, the company must first identify the type of license to be requested at the environmental agency (municipal, state or federal) and make sure which environmental agency to apply for.

The environmental licensing process consists of three types of licenses:

- Prior License (LP) - The licensing body assesses the location and design of the company, attesting to its environmental viability and establishing the basic requirements for the next phases.
- Installation License (LI) - authorizes the start of building of the premises and installation of equipment.
- Operation License (LO) - authorizes the operation of the company

Environmental licensing provides companies with a protection in the legislation for their activities and expansion of their visibility in the market.

Waste Transport Control for the State of São Paulo

According to Decree n. 58.701/2019 and Resolution 137/AMLURB/2019, all companies based in São Paulo must register with the Waste Transport Control (Controle de Transporte de Resíduos – CTR-E).

CTR-E is a monitoring system which allows all commercial establishments to register and declare if they are or not a large generator of waste.

Main laws and sources chapter 6:

CONAMA <http://www2.mma.gov.br/port/conama/>

Law No. 6938 of August 31, 1981 (Brazilian Environmental Policy) -

http://www.planalto.gov.br/ccivil_03/leis/l6938.htm

Law No. 9605 of February 12, 1998 (Criminal Sanctions) -

<http://presrepublica.jusbrasil.com.br/legislacao/104091/lei-de-crimes-ambientais-lei-9605-98>

SEBRAE - Brazilian Micro and Small Business Support Service

www.sebrae.com.br

Prefeitura de São Paulo: www.prefeitura.sp.gov.br

7. Taxes

Brazilian tax legislation is rather complex, consisting of several different taxes (*impostos*), charges (*taxas*), social and other contributions (*contribuições*). Historically, Brazilian tax legislation is complex. Despite of the government's efforts to reduce and simplify the Brazilian tax system there still exists a large number of taxes and pulverized rules currently in force. This chapter briefly addresses the main taxes that are levied in the businesses conducted with Brazil, as well as the most important aspects related to the

taxation of the individual's income in Brazil, which also affects non-residents and, more particularly, the expatriates.

Federal Taxes

- Import Tax (II)
- Export Tax (IE)
- Income Tax (IRPJ and IRPF)
- Tax on industrialized products (IPI)
- Tax on financial operations (IOF)
- Tax on rural land property (ITR)

State Taxes

- Tax on circulation of goods and transportation and communication services (ICMS)
- Tax on motor vehicles (IPVA)
- Tax on inheritance and gifts (ITCD)

Municipal Taxes

- Tax on urban land and property (IPTU)
- Tax on real estate conveyance (ITBI)
- Tax on services (ISS)

Charges and contributions are also levied on all three levels. The most important are

- Social Contribution on net profit (CSLL)
- Social Contribution on revenues (PIS and COFINS)
- Withheld income tax (IRRF) in foreign payments
- Contribution for intervention in economic domination (CIDE)

7.1. Import tax (II)

The import tax is due upon clearance by customs of imported products, according to an ad valorem tax rate. The tax rate varies according to the tariff classification of the imported product. Imports of products are also subject to IPI (Tax on industrialized products), ICMS (Sales Tax) and PIS/COFINS-Import. These taxes, jointly with the import tax, are calculated as follows: the import tax is applied over the CIF price of the imported product; the IPI tax applies over the CIF price plus import tax; the ICMS tax applies over the CIF price, plus import tax, IPI tax, the PIS/COFINS-Import and the ICMS tax and the PIS/COFINS-Import applies over the CIF price.

7.2. Export tax (IE)

The export tax is due upon export transactions. The IE ad valorem tax rate is applied according to a limited product list and varies according to the type of product that is being exported.

7.3. Income tax (IRPJ and IRPF)

Individual Income Tax ("IRPF")

Brazilian residents are subject to the payment of income tax on their global income with progressive tax rates, which vary according to the specific class in which the taxpayer is classified, based on the overall taxable net profit earned. The current tax rates are as follows: (i) 0% for monthly income whose value does not exceed R\$ 1,903.98; (ii) 7,5% for monthly income from R\$ 1,903.99 to R\$ 2.826,65 (iii) 15% for monthly income from

R\$ 2,826.66 to R\$ 3,751.05; (iv) 22,5% for monthly income from R\$ 3,751.06 to R\$ 4,664.68 and; (v) 27.5% for monthly earnings over the figure of R\$ 4,664.68.

Corporate Income Tax ("IRPJ")

Brazilian companies are subject to Corporate Income Tax ("IRPJ") which is levied over the adjusted net profit at the rate of 15%, and in the event the net profit exceeds R\$ 240,000.00 per annum it shall be subject to an additional 10%. The calculation basis for IRPJ may be subject to calculation upon definition of the taxable income, the "actual profit method", to the "presumed profit method" (upon application of the percentage that varies pursuant to the activity performed, being percentage applicable on the gross revenue obtained by the legal person), or the "arbitrated profit method", as per the criteria defined by the taxpayer.

According to Law 9,430 of December 30, 1996 the taxpayer may elect to calculate the IRPJ on the taxable income from an annual or quarterly basis. If the IRPJ is calculated quarterly, it may also be paid on a quarterly basis. Over the profit ascertained in the quarter applies a 15% tax rate, plus an additional rate of 10% over the net profit that exceeds R\$ 60,000.00 per quarter. If the IRPJ is calculated on an annual basis, the taxpayer advances the monthly payments of the IRPJ, calculated based on a presumed profit (or by means of the profit obtained by the analysis of monthly balance sheets). To a large number of companies, the monthly presumed profit corresponds to 8% of the total monthly gross revenues plus capital gains and other income and positive results obtained by the company, whose percentage may vary between 8% and 32% according to the field of business in which the taxpayer is engaged. A tax rate of 15% applies over this tax basis, plus an additional 10% over the presumed profit that exceeds R\$ 20,000.00 per month.

In the case of electing the actual profit method and making advance monthly payments, at the end of the period the company must pay the amount due or apply for the return of the difference between the entire of the amount paid monthly and the amount calculated based on the annual taxable income.

For taxpayers that have adopted the actual profit method, the tax loss created in a given period may be cleared through the taxable income related to the subsequent period, provided that such loss is restricted to 30% of the taxable income (e.g. for each R\$ 1.00 of profit, R\$ 0.70 are susceptible to taxation, irrespectively of the figure representing the existing tax loss). The tax loss may be maintained during an indefinite period of time, i.e., without legal restriction. It shall be noticed that non-operating accrued tax loss may only be cleared through non-operating profits.

Another method that is adopted to calculate income tax consists in the method of the presumed profit, in which the income tax is calculated quarterly and, for most of the business, the calculation basis is 8% of the gross revenues, (however, the quoted percentage for calculation of the presumed profit varies between 8% and 32% depending on the activities carried out by the company). The following tax rates of income tax apply over the presumed profit: 15% income tax plus an additional 10% over the amount that exceeds R\$ 60,000.00 per quarter. If the method of presumed profit is adopted to calculate the income tax the taxpayer is not subject to adjustment of the annual income tax that is asserted.

However, the possibility of adopting the presumed profit method is subject to the fulfilment of certain conditions, such as:

- incomes asserted in the preceding year cannot exceed R\$ 78,000,000.00;
- the profit, capital gains or other gains cannot have a foreign origin;

- financial institutions or similar organizations, as determined in Brazilian law, cannot adopt the presumed profit method for income tax purposes;
- companies cannot be beneficiaries of tax incentives granted under Brazilian law (e.g. tax exemption or reduction of income tax);
- companies cannot have paid income tax calculated based on a monthly estimate;
- factoring companies cannot adopt the presumed profit method; and
- companies created as specific purpose companies ("SPE"), etc.

7.4. Social contribution on net profit (CSLL)

In addition to Corporate Income Tax (IRPJ) the Brazilian companies are subject to the payment of the social contribution on the net profit ("CSLL"). The current tax rate is 9%, with the exception of financial institutions that, due to Law No. 13,169/2015, in force as of September 1st, 2015, are subject to a CSLL rate of 20%.

CSLL is levied separately from the IRPJ given that the CSLL is paid to the Social Security and not to the Brazilian Federal Revenue, which collects the IRPJ.

The tax basis of the CSLL is the net profit specifically calculated for the CSLL payment purposes. The calculation basis for CSLL is subject to calculation upon the definition of the taxable income or presumed profit (upon application of the percentage that varies pursuant to the activity performed, being such percentage applicable on the gross revenue obtained by the legal entity), as per the criteria defined by the taxpayer.

Similar to IRPJ, the taxpayers that have adopted the taxable income may calculate the CSLL on an annual or a quarterly basis. In the event the calculation of the CSLL is performed on an annual basis, the payments must be made based on an estimate. The same rules applicable to IRPJ applies in this case. In other words, in case the CSLL is due on an annual basis, the monthly payments and the accrual upon the ending of the calendar-year are mandatory, in such a way that it is possible to offset an eventual negative balance with other federal taxes or even to request a tax refund before the Federal tax authorities.

The legislation establishes that the CSLL can no longer be deducted from the net profit for the purposes of calculating IRPJ.

The negative tax basis of the CSLL (tax loss for CSLL purposes) may be used to offset the taxable profit in the subsequent periods, limited to 30% of the taxable profit in each calculation period. Similar to what occurs in regard to the tax loss for IRPJ purposes, the negative tax basis of the CSLL may be used by taxpayers that have adopted the taxable income to offset a future taxable income, without a transient limit for the expiration for usage of these amounts.

For the taxpayers that have adopted the presumed profit, the calculation of CSLL shall be performed on a quarterly basis, constituting the calculation basis of 12% over the gross income (however, such percentage for calculation of the presumed profit varies between 12% and 32%, depending on the specific activities carried out by the company). The rate of 9% is applicable to the presumed profit.

7.5. Withhold Income Tax ("IRRF") in foreign payments – (services, royalties, interests)

The incomes, gains derived from capital and other revenues paid, credited, delivered, applied or sent, through resource placed in the Brazil, to the individual or to the legal entity domiciled abroad are subject to levy at withholding income tax ("IRRF").

The quoted tax levies on the rates of:

(i) 15% on transactions not taxed according to the specific manner provided for in Law as well as on (a) the gains derived from capital concerning investments performed via foreign currency; (b) alimony and reserve funds; and (c) the awards obtained through competitive examination or competitions.

(ii) 25%: (a) on the revenues proceeding from any transaction under which the beneficiary is resident or domiciled in country where the taxation system is subsidized and; (b) on the labour revenues, with or without employment relationship, or on the revenues regarding rendering of services.

It shall be noted that the services taxed by CIDE [Contribution for Intervening on Economic Domain], whose applicable rate is of 10%, are entitled to a reduction of the IRRF to 15%, unless the beneficiary of the remittances is located in a low-tax jurisdiction. In this case, IRRF will be levied at a 25% rate plus the CIDE at a 10% rate.

Payments made to so called "tax havens" are subject to 25% withholding income tax on all income payments. Such countries include: Andorra, Anguilla, Antigua and Barbuda, Aruba, Ascension Island, Bahamas, Bahrain, Barbados, Belize, Bermuda, Brunei, Campione d'Italia, Cayman Islands, Channel Islands, Cook Islands, Curaçao, Cyprus, Djibouti, Dominica, French Polynesia, Gibraltar, Grenada, Hong Kong, Isle of Man, the Republic of Ireland, Kiribati, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Niue, Norfolk Island, Oman, Panama, Pitcairn Islands, Qeshm, Saint Helena, Saint Lucia, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Samoa, Seychelles, Sint Maarten, Solomon Islands, Swaziland, Tonga, Tristan da Cunha, Turks and Caicos Islands, United Arab Emirates, United States Virgin Islands and Vanuatu.

7.6. Tax on industrialized products (IPI)

The IPI is a federal tax that is due over manufactured products upon the outflow from the establishment where they were manufactured. The IPI tax is also due over the import of manufactured products in the case of import of a product used as an input and its subsequent sale by the importer. The IPI tax rates vary according to the product's essentiality.

The IPI is due in each stage of the manufacturing process of the industrialized products, and also in the import thereof. This tax is paid upon the purchase or import of raw materials and products, parts, intermediary components and packaging materials and may be offset in subsequent transactions.

7.7. Tax on financial operations (IOF)

Contributors to the IOF are individuals and legal entities that carry out credit, foreign exchange and insurance operations or related to securities. The tax is collected by the taxpayer: the legal entity that grants the credit; institutions authorized to operate in foreign exchange; the insurers or financial institutions to which they charge the insurance premium; institutions authorized to operate in the purchase and sale of securities.

For payments with undetermined terms, it also applies the tax rate of, respectively, 0.0041% and 0.0082% per day, for the legal entity borrower and individual borrower, followed by a supplement of 0.38 %, but there is a specific methodology of calculation to benefit the amount of the due tax.

7.8. Tax on rural land property (ITR)

It focuses on properties located outside the urban areas of the municipalities. The aliquot is higher for larger area properties and low utilization, so as to discourage large unproductive estates.

Depending on the size and utilization grade, the tax is between 0.03% and 20% over the value of rural land which is not under environmental protection.

Further information on ITR, in Portuguese: <http://www.cadastrorural.gov.br/cartilha-de-orientacoes/perguntas-e-respostas-it-2019>

7.9. Tax on circulation of goods, transportation and communication services (ICMS)

The ICMS tax is a State tax that is due over the importation and circulation of goods and, also, the supply of interstate and intermunicipal transport and communication services.

The ICMS tax rates and tax benefits vary from State to State and depend on the type of transaction (e.g., intrastate or interstate sale of goods, communication or transportation services, etc.). In the State of São Paulo the most common tax rates currently are (i) 12% over transportation services; (ii) 18% over importation and circulation, within the State, of goods; and (iii) 25% over communication services.

The ICMS is due over imports by companies and individuals, even when not considered taxpayers for the purposes of ICMS payment, at a tax rate of 18%. The other tax rates may be applied depending on the product/service. The tax rates may also vary in interstate transactions (usually 7% or 12% depending on the state of destination of products and services, or 4% in case of imported goods or goods with imported content higher than 40%).

The ICMS system allows the taxpayer to offset the ICMS paid upon the purchase of products and services with the tax amount due in subsequent taxable transactions (e.g., sale of goods and services subject to ICMS tax). The difference amount such amounts shall consist of the amount due to the State.

As of 1 November 1996, importers/purchasers may be credited by the ICMS paid over imports and local purchases of fixed assets (which was prohibited up to 1 November 1996). Nevertheless, Supplementary Law No. 102/00 introduced a new system for the use of ICMS credits upon the purchase of fixed assets, according to which the taxpayer may record the aforesaid credits at a 1/48 monthly rate.

In regard to taxpayers that have excess of ICMS tax credit, some state laws establish alternatives that allow the taxpayer to transfer its credits. In the State of São Paulo, for example, the state law offers three options for the taxpayer that has an excess of ICMS tax credit to use the tax already paid (instead of offsetting same with ICMS debt), namely: (i) transfer of ICMS credits to any of its affiliates or offices established in the state of São Paulo, (ii) transfer the credits to an inter-dependent company, as defined by

the law, or (iii) use the credits to pay suppliers of raw materials and/or certain fixed assets. Other state laws may establish other options for the use of ICMS credits.

7.10. Tax on motor vehicles (IPVA)

The Motor Vehicle Property Tax (IPVA) is an annual tax paid by vehicle owners. The value of IPVA is calculated based on the value of the vehicle and its payment is a requirement for licensing the vehicle.

7.11. Tax on inheritance and gifts (ITCMD)

The ITCMD is a state tax levied on the transmission of chattels or real estate property by way of donation or death (inheritance). Currently, in the State of São Paulo, the ITCMD tax rate is 4% of the appraised value of the chattels or real estate or the transmission of rights.

7.12. Tax on urban land and property (IPTU)

IPTU is levied on an annual basis and has progressive tax rates based on the use and appraised value of the real estate property.

Further information for São Paulo:

www.prefeitura.sp.gov.br/cidade/secretarias/financas/servicos/iptu/

7.13. Tax on real estate conveyance (ITBI)

ITBI is a Municipal tax levied over the transfer of real estate property. The tax rates may vary according to the real value of the transaction or the appraised value of the real estate, whichever is higher. Note that, in the Municipality of São Paulo, the tax authorities are allowed to update the appraised value of the real estate through market researches. In addition, in the Municipality of São Paulo, ITBI has a fixed tax rate of 3%. The ITBI tax is not due in the transfer of real estate property in the events of merger of companies or contributions for the paying up of the capital stock in cases where the taxpayer's corporate objective is not related to the real state activity.

7.14. Tax on services (ISS), except those subject to ICMS

ISS is a municipal tax levied on the supply of any type of services, as defined in federal Supplementary Law (LC). This tax is currently governed by Supplementary Law (LC) No. 116/03. The rate of ISS varies between 2% and 5%.

ISS is due generally for the Municipality where the establishment rendering services is located. The following exceptions are determined in LC No. 116/03: civil construction, services acquired abroad, sweeping and collection of garbage services, treatment of effluents, environmental sewage, forestation, parking security, storage and amusement services.

As of January 2004 the ISS tax is due over the purchase of foreign services, the Brazilian beneficiary thereof being liable for the payment of the tax, in addition to its levy over

exports of services when the results occur in Brazil (despite that the payment is made by a foreign resident).

7.15. Social contribution on revenues (PIS and COFINS)

The Contribution for the Financing of Social Security ("COFINS") and the Social Integration Program ("PIS") shall be levied over the revenues received by the Brazilian legal entities, with a few exceptions.

Laws 10,637/02 and 10,833/03 introduced the system for verification of PIS/COFINS [Social Integration Program/Contribution for Social Security], which applies to the major of the companies. The intent of the new legislation is to prevent the accumulation of this contribution by way of grant of tax credits. Nowadays, with few exceptions, PIS/COFINS levy on a combined rate of 9.25% (COFINS – 7.6% and PIS – 1.65%).

Under the non-cumulative system of calculation of PIS and COFINS, the taxpayer is entitled to the record the tax credit related to the contribution pursuing from the transactions of:

1. goods acquired for purposes of resale, excepting for those goods expressly referred to;
2. goods and services used as input for the rendering of services and for the production or manufacturing of goods or products addressed to sale, including fuels and lubricants;
3. electrical and heat powers, including steam Power, consumed in the legal entity's establishments;
4. payment of leases of buildings, machines and equipment to companies for the use thereof in the company's transactions;
5. amount of the considerations of commercial lease transactions of legal entity;
6. machines, equipment and other goods incorporated to the fixed assets acquired or manufactured to be leased to third parties or used in the manufacturing of goods intended for sale or in the rendering of services;
7. buildings and betterments in own real property or real property pertaining to third parties used in the corporate activities;
8. goods received in return;
9. storage of good and freight in the sale transaction, for cases (i) and (ii), when the burden is supported by the seller;
10. meal coupons, transportation and uniforms provided to employees by a company which explores activities of cleaning, conservation and maintenance services; and
11. goods incorporated to the intangible assets, acquired for the utilization in the production of goods destined to sale or in the rendering of services.

The credits may be used to reduce the PIS/COFINS that levy on the revenues of the company. This form does not apply to the cooperative organizations, immune or exempt companies, companies taxed by income tax based on the assumed or arbitrated profit, legal entities that have adopted the SIMPLES [Unified Tax Collection System], to the revenues arising out of rendering of telecommunication services, arising out of services of call center, telemarketing, phone collecting and phone services companies in general, to revenues arising out of software related services, among others.

The financial revenues, which were subject to a zero rate of PIS/COFINS as long as the taxpayer was under the non-cumulative system, begin to be subject to the 4.65% combined rate as from July 1st, 2015, as per Decree No. 8,426/15.

PIS/COFINS-Import

Law No. 10,865/04 introduced the taxation of PIS and COFINS on imported products and services. This law determines that PIS and COFINS are due in the entry of foreign goods

in Brazil and in the payment, crediting, delivery, the use or remittance of amounts to foreign residents or domiciled abroad as payment for the services supplied.

The taxpayers thereof are all the importers and companies or individuals that contract the services of individuals or companies domiciled abroad. The general tax rates of the PIS and COFINS – Import contributions for imports of goods is 11.75% and the tax basis shall be the customs value of the imported goods. In the import of services, the applicable tax rate is 9.25% and the tax basis is the value paid, credited, delivered, employed or remitted abroad, before the deduction of the withholding income tax, plus the Municipal Services Tax (ISS) and the PIS and COFINS contributions.

Legislation (in Portuguese): <http://idg.receita.fazenda.gov.br/aceso-rapido/tributos/pis-pasep-cofins>

7.16. Contribution for intervention in economic domination (CIDE)

The Brazilian companies that hold licenses to exploit rights, purchasers of know how or parties to contracts that imply in the transfer of technology executed with non-residents and domiciled abroad are subject to CIDE taxation.

As of January 1, 2002, the CIDE contribution is also paid by companies that supply technical services, administrative assistance and other similar services, as well as by the legal entities that pay, credit, deliver, use or remit royalties, of any type, to beneficiaries resident or domiciled abroad.

The CIDE contribution is due over the amounts paid, credited, delivered, used or remitted, on a monthly basis, to non-resident beneficiaries, such as remuneration of the transactions above mentioned.

The payments for use license and rights for commercialization of software, in cases which do not involve technology transfer are not subject to CIDE.

The CIDE tax rate is of 10% and the taxpayer is the Brazilian legal entity. CIDE shall be collected on the last business day of the fortnight subsequent to the month in which the taxable event takes place.

7.17. International tax treaties

Brazil holds double taxation agreements with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Netherlands, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Norway, Philippines, Peru, Portugal, Russia, Slovakia, South Africa, South Korea, Spain, Sweden, Trinidad and Tobago, Turkey, Ukraine and Venezuela.

Further information (in Portuguese): <http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao>

The Legislative Decree Project (PDL) number 650/19 approved the "Convention to Eliminate Double Taxation on Income Taxes and Prevent Tax Evasion and Avoidance between the Federative Republic of Brazil and the Swiss Confederation".

According to the Ministry of Economy, the convention introduces limits to the tax competencies of both countries, eliminating or minimizing the possibilities of double taxation of income and provides greater security to businesses in general.

The proposal is currently at the Lower House, and will be reviewed by the Finance and Taxation, Constitution and Justice and Citizenship Committees before moving to the Plenary.

Sources Chapter 7

Federal Revenue Authority www.receita.fazenda.gov.br

Brazilian Chamber of Deputies: <https://www.camara.leg.br>

SWISSCAM Guide "Doing Business in Brazil", chapter 11

8. Commercial Law / Sales Representation

Brazil has a functional commercial code that governs most aspects of commercial association, except for corporations formed for the provision of professional services, which are governed by the civil code.

An overburdened court system can take years to enforce property rights. Judicial reform measures enacted in December 2004 streamlined administrative procedures and introduced binding precedent, which should eventually make judicial decisions more predictable.

8.1. Sales representation and distribution agreement

The Brazilian law distinguishes between two representation contracts: **commercial representation** (agency), and **distribution**.

Sales Representation

An agency or commercial representation is an agreement whereby a legal entity or individual person acts as an intermediary in certain business transactions on behalf of a principal, with exclusivity within a defined area, on a regular and independent (non-employment) basis, receiving offers or orders for transmission as agent to the principal.

A perusal of this concept reveals the principal legal characteristics of the agency relationship, namely: a) business activity; b) regularity of services; c) acting as intermediary on conclusion of certain business; d) independent activity of the agent.

The agent's remuneration normally consists of commission on the sales in which it acted as intermediary. Note that, if the agent has the exclusive right to act in a given territory, it may be entitled to commission on business concluded within that territory even though it did not effectively participate in the sale. The manufacturer should therefore be careful to bear this point in mind.

Distribution agreement

Distribution is a contract whereby a person assumes the obligation to resell, with exclusivity (unless agreed otherwise), for its own account, against payment, goods of a given manufacturer, in a defined area.

This type of contract may be regarded as a kind of commercial concession. The main difference is that distribution, due to its general nature, allows for sub-distribution; accordingly, the distributor, duly authorized by the distribution agreement, may use a network of sub-distributors in order to arrange for the placing of the product on the

consumer market, although such sub-distribution must be subject to the rules dictated by the manufacturer.

The distributor, as already explained, negotiates for its own account. It purchases the merchandise in order to resell it with exclusivity in a certain area, the manufacturer in turn agreeing not to sell it to another dealer in the same area. If it does so, it will be obliged to remunerate the distributor.

As regards the method of remunerating the distributor, this is based on the margin that the distributor manages to obtain between the purchase price of the goods from the manufacturer and the resale price to its own customers. It should be emphasized that the distributor must be free to set the resale prices. It is normally prohibited for such prices to be stipulated by the manufacturer, although there is no prohibition on prices suggested by the manufacturer.

Termination of a contractual relationship

Generally speaking, it is well known that contracts may be terminated in five ways: a) because of some prior defect, which causes it to be null or voidable; b) by performance, with compliance with all the contractual obligations; c) by negligent non-performance, when there occurs unilateral or bilateral rescission; d) by voluntary willful non-performance, in the event of unilateral or bilateral termination; e) by involuntary non-willful non-performance, in the event of termination, for example, in cases of force majeure.

More information on the subject may be found on the Doing Business in Brazil Guide, Chapter 3: <https://swisscam.com.br/en/publicacao/doing-business-in-brazil/3-agencia-distribuicao-e-compra-e-venda/>

Sources: Chapter 8

Guia Doing Business in Brazil Chapter 3 - Stüssi – Neves Advogados

9. Setting up a Company

The Brazilian law provides support for various types of enterprises. The most frequent are Corporations (S.A.) and Limited Liability Companies (LLC.) in the establishment of subsidiaries and joint ventures. This is due to the fact that, in both cases, participants have limited responsibilities. The law provides legal status to these companies as entities that are separated from its participants. Brazilian law also provides for other forms of corporations, such as consortia or special types of partnership that do not have legal status. In this case, the parties have individual rights and obligations for the common benefit of the group. These contractual structures are usually adopted to meet specific purposes or for non-corporate businesses.

Another type of company included in the Brazilian law comprises General Partnerships (partnerships), which imply unlimited liability of the partners. These companies are uncommon nowadays, since certain tax benefits from which they historically benefited from have been extended to other types of companies.

Step-by-Step

Abide by the regulations for the register of foreign companies, in the terms of Instruction DREI no. 7/2013, available in Portuguese in the following link:

http://www.mdic.gov.br/images/REPOSITORIO/SEMPE/DREI/INs_EM_VIGOR/IN-DREI-07-2013-alterada-pela-IN-25-2014.pdf

1) Choose the type of company for the business. For that, it is important to consider the types of businesses in Brazil.

2) Hire a local accountant to take all documents to the Board of Trade of the Brazilian state where you intend to open the company. This professional should assist throughout the process, prepare and register the following documents:

- Articles of incorporation/bylaws. One must choose the revenue method for calculating taxes when filing these – either the "National Simple" (Simples Nacional) for small businesses, Taxable Income or Estimated Profit - and make a number of other decisions, such as the company's name, the legal representatives in charge of the company's administration, etc. Legal assistance is also recommended in order to prepare the articles of incorporation/bylaws;
- Power of attorney given to the Brazilian Representative;
- Copies of the personal documents of the representatives, including the visa; and the address voucher for where the company will be established;
- Corporate taxpayer ID number (CNPJ);
- State and Municipal Taxpayer Registries;
- Municipal License / Operation Permit (Alvará ou Licença de Funcionamento); and
- National Institute of Social Security (Previdência Social) and Special Fund for Unemployment - FGTS Registrations.

Note that all foreign documents must be translated to Portuguese by a sworn translator (whose contacts available at the local Board of Trade) and notarized in the Bureau of Registry of Deeds and Documents (Cartório). The paperwork must be also notarized by a Brazilian consulate located in the associate's country of origin.

Opening a Bank Account

A final important point related to this topic is opening a bank account in Brazil. The Brazilian banking sector is considered as one of the most modern in the world. State-owned banks, private banks, investment banks and other financial institutions, both domestic and international, compete in the retail banking industry in Brazil.

To open a business account, companies must fill out certain forms and provide legal documents, such as:

- Identification, proof of registration and registration status with the National Registry of Legal Entities of the Ministry of Finance/Internal Revenue Service issued no more than 30 days earlier;
- Identification of Legal Partners and Managers - Submit documents and information form for the registration of individuals who are shareholders or officers of the company/organization (ID, CPF, proof of residence);
- Chattel property, real estate and livestock (e.g. proof of property ownership, proof of payment of property tax or ITR for the last year, Certificate of Ownership, Registration and Licensing of Vehicles)
- Authorization for waiver of registration information – SCR (Credit information system)
- Authorization for waiver of registration information – REFIS (Taxpayers Program)

Main Types of Business Organizations in Brazil*

	Limited Liability Company (LLC)	Joint-Stock Company (Business Corporation)	Eireli (Individual Company of Limited Liability)
Classification	- Business company formed by individuals or capital.	- Business corporation formed by either public or private capital	- Individual company - For profit

	- For profit	(either publicly- or closely-held companies). - For profit	
Legal Name	- Corporate Name: name of one or more of company's partners + "Limitada" or "Ltda."; or - Denomination: corporate object + "Limitada" or "Ltda."	- Denomination: fictitious business name or shareholders' civil name + company's core business + "Sociedade Anônima" or "Companhia" or "S.A." or "Cia." (the latter cannot be placed at the end of corporate denomination).	- Corporate Name: holder's name + "Eireli"; or - Denomination: corporate object + "Eireli"
Partners composition	- Two or more partners. - Individuals or legal entities (of Brazilian or foreign origin ¹).	- At least two shareholders for closely-held companies and three for publicly-held ones. - Individuals or legal entities (of Brazilian or foreign origin).	- Only one holder – a one-man undertaking*. - Individual ² (of Brazilian or foreign origin). *Once the individual opts for an Eireli, he/she can run only one company under that modality.
Corporate Capital	- Divided in quotas. - No minimum corporate capital is legally required. - An increase of the corporate capital is admitted as soon as all the subscribed quotas are paid. Preferential rights are granted to keep the original share of the existing partners in the corporate capital. - The corporate capital may be subject to reduction in the following cases: (i) occurrence of losses; or (ii) corporate capital is excessive pursuant to the company's corporate object.	- Divided into shares. - No minimum capital is required, but shareholders must integrate at least 10% of the issuance price of the shares subscribed in cash. - The bylaws will establish: the number of shares; and - whether the shares will have nominal value or not. - The corporate capital may be increased in the following cases: - issuance of shares provisioned in the bylaws; - conversion of debentures and - deliberation of the Annual General Meeting regarding capitalization new shares. - The corporate capital may be reduced in the case of loss or excessive capital pursuant to the company's corporate object.	- Given that the company relies on a sole holder, it is not required that the corporate capital is divided into quotas. - The minimum corporate capital may not be less than one hundred times the sum of the highest minimum salary applied in Brazil on the date - Once it is immediately paid in, the corporate capital may be increased at any time. - The corporate capital may suffer a reduction, respected the minimum value required by law.

¹Foreign shareholding in business activities in Brazil is limited to the constitutional restrictions and constraints that discipline foreign shareholding in Brazilian companies.

²As understood by the National Trade Registry Department (DNRC)

*The full chart can be found at:

<http://arq.apexbrasil.com.br/portal/MainTypesofBusinessOrganizationsinBrazil.pdf>

Source and further information chapter 9:

APEX Brasil:

<http://www.apexbrasil.com.br/en/how-to-set-up-a-company-in-brazil>

MDIC: <http://www.mdic.gov.br>

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10. Investment Incentives / Promoting Investment

Brazil has a wide array of opportunities across many sectors and offers investment incentives for local and foreign investors, particularly when it provides new technology, creates new jobs, develops agriculture, industry and increases exports or decreases imports.

There is an ample variety of federal programs designed to encourage the economic development of Brazil and also to promote regional development. With a diversified economy, there are several areas with potential for investment, such as agribusiness, automotive sector, aerospace, renewable energy, environmental solutions, solar energy, oil & gas, infrastructure, health and life sciences, private equity and venture capital, R&D, innovation, among others.

State and local governments also encourage investment and they generally offer incentives to attract local and foreign investors, such as:

- Financing: Through the National Economic and Social Development Bank (BNDES), the Brazilian government's main institution for long-term financing in all areas of the Brazilian Economy. For this purpose, it supports all types of entrepreneurs, including individuals, in carrying out their modernization, expansion and new business plans, always aiming at the potential for job creation, income and social inclusion for Brazil. More information can be found on the BNDES website.
- Tax incentives: There are several tax incentives granted by federal, state or municipal governments for several purposes and through different programs, such as the "ex-tarifário", which allows for temporary reduction of import taxes, sometimes by 0%, on capital goods, IT and telecommunications; the "Reintegra Program", which institutes the return of a 0.1% to 3% percentage of the product price to the exporter to compensate for tax residues and the Simples Nacional regime, which offers a simplified tax regime for micro and small companies, among others.
- Regional incentives promoted by specific agencies such as SUDENE, which promotes the Northeast region development, SUDAM, promoting the Amazon region, and SUDECO, for promotion of the Midwest states
- The Manaus free-trade zone, created attract industries and commerce to the Amazon region.
- State incentives: The ICMS tax is a state tax that is due over the importation and circulation of goods and, also, the supply of interstate and intermunicipal transport and communication services. The ICMS tax rates and benefits vary from state to state and depend on the type of transaction (e.g., intrastate or interstate sale of goods, communication or transportation services, etc.).
- Industry-related incentives, including special tax regimens for infrastructure development, IT services export, ports infrastructure modernization, oil and gas, aeronautics industry, among others
- The Public-Private Partnerships (PPPs) Law, which intends to attract private investments for infrastructure and public service sector projects.
- BNDES-EXIM - a funding line intended for the production of goods and services for export.

Sources and further information:

<http://www.investexportbrasil.gov.br>

Public-Private Partnerships: <http://www.planejamento.gov.br/assuntos/desenvolvimento/parcerias-publico-privadas>

Manaus Free Trade Zone: www.suframa.gov.br

Brazilian Trade and Investment Promotion Agency: <https://portal.apexbrasil.com.br>

SUDAM: www.sudam.gov.br

SUDENE: www.sudene.gov.br

SUDECO: www.sudeco.gov.br

Investment Portal of the São Paulo state: www.en.investe.sp.gov.br

BNDES-EXIM: <https://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/BNDES-Exim>

11. Brazilian Visas

Itamaraty (Ministry of Foreign Affairs) is the body responsible for granting visas, which occurs through Embassies, General Consulates, Consulates and Vice consulates of Brazil abroad.

The main types of visas are as follows:

- Visit visa: for foreigners travelling to Brazil for a stay of up to 90 days, without immigration or paid activity purposes.
- Diplomatic visa: for foreign authorities and foreign employees traveling to Brazil with a diplomatic status and in an official mission
- Official visa: for foreign administrative staff travelling to Brazil on an official mission
- Courtesy Visa: granted to personalities and foreign authorities in an unofficial trip to Brazil
- Temporary visas granted to foreigners for the purposes of research, health treatment, students, paid activity, voluntary services, investors, sport activities, among others.

Swiss citizens are exempted from visa requirements to entry in Brazil for Tourism or Business. The total stay in Brazil, including outings and multiple entries, is limited to 90 days every 180 days, and cannot be extended, however, passports must be valid for at least six months and a return ticket may be requested on arrival.

Non-Brazilians who invest BRL 500,000.00 in the country and have plans to create jobs may receive a permanent visa. For those who intend to invest in technology and R&D activities, the starting value is BRL 150,000.00.

More detailed information about migratory processes and work permits can be found on SWISSCAM's Doing Business in Brazil Guide, chapter 10:

<https://swisscam.com.br/en/publicacao/doing-business-in-brazil/10-trabalho-de-estrangeiros-no-brasil/> - EMDOC Serviços Especializados

Sources Chapter 11:

Brazilian Consulate in Zurich: [http://zurique.itamaraty.gov.br/de/visa_\(english\).xml](http://zurique.itamaraty.gov.br/de/visa_(english).xml)

Ministry of Foreign Affairs: <http://www.portalconsular.itamaraty.gov.br/vistos-para-viajar-ao-brasil>

12. Labour Law

The Consolidation of Labour Laws (CLT), promulgated in 1943, aimed to balance labour relations among Brazilian professionals. This regulation guaranteed the first rights and benefits for workers. However, we are currently experiencing new work models in the country in a totally transformed labour market, creating the need to amend many points of the labour laws in order to adapt to this new scenario.

With the new labour law reform approved in 2017, Brazil has defined new rules related to issues such as outsourcing, home office, working hours, compensation, among others. However, the principles inherent to Brazilian Labour Law, which seek to protect the employee against the disciplinary and economic power of the employer, remain unchanged, or have been attenuated to a minimum degree.

This chapter should only give a rough overview about the extensive labour regulations and social security laws.

Wages and Salary:

- Remuneration is the total of sums of money and benefits paid to employees in consideration for services provided for the benefit of the employer. Salaries cannot be reduced, except by collective negotiation, cannot be altered unilaterally by the employer to the employee's detriment, cannot be levied upon and are intangible.
- Salaries are subject to obligatory readjustment at least once a year, in accordance with the annual pay-rise date applicable to the category of worker.
- Salaries may not be decreased, apart from very exceptional situations and only for a short time. A collective bargaining agreement must be assigned.
- Salaries must be paid in national currency. Payment in foreign currency is prohibited.
- The salary for work done in a given month must be paid not later than the 5th working day of the following month, and this period cannot be exceeded.
- Foreigners who come to Brazil to work, with a visa granted by the Brazilian government, and who continue to receive remuneration abroad, must declare their situation to the authorities and pay, depending on the type of visa and/or the length of time they remain in national territory, income tax on the money received outside Brazil.

Additional pay for overtime: Additional work hours by at maximum two hours per day are allowed, subject to a written agreement between the employee and employer or a collective labour agreement. The pay for overtime work must be at least 50% higher than the regular wage rate.

13th salary: Employers must pay an annual bonus, known as the 13th salary and equivalent to the normal remuneration of December, in two parts: the first when the employee takes a vacation or before November 30 and the second until December 20.

Profit sharing: Companies may distribute part of their annual net income to employees. Participations must be negotiated in a collective bargaining agreement.

Working hours: The normal duration of work is 8 hours per day and 44 hours per week. Other limits, whether lower or higher, are permitted, as provided in special legislation relating to a given category of worker or collective labour agreements.

The new Labour Law allows for greater workload flexibility, which means that the law allows situations that can be adjusted between the company and the employee.

Unemployment insurance:

Unemployment insurance is the benefit paid, for a limited time, to a worker dismissed without just cause, equivalent to 3 or 5 instalments calculated on the average of the last salaries received, variable according to the length of time worked and when meeting the conditions set by the specific regulations.

Annual vacations:

Every employee has a right to a yearly vacation, without prejudice to salary and counting of period of employment for retirement purposes, and it is usually thirty calendar days. The employee has the option to convert 1/3 (one third) of the vacation period to which he/she is entitled into a cash payment, which amount shall correspond to the number of days that are being converted into cash, in the amount of the remuneration that would be due to him/her by the corresponding days.

Maternity leave:

The pregnant employee has job stability as of the confirmation of her pregnancy up to five months following birth and is entitled to a maternity leave of 120 days of full pay. Employers have the option to offer an additional period of two months and deduct the amount paid during this period from its corporate income tax.

Paternity leave:

Fathers are allowed paternity leave of five days with full pay, which can be extended to an additional 15 days if the company participates in the federal government program "Programa Empresa Cidadã".

Prior notice:

A work contract can be terminated either by the employer or the employee, and also by decision of both parties.

The employment relationship will be terminated by the employer with dismissal of the employee, with or without just cause. In the latter case the employee forfeits the right to labour indemnities (for having committed a serious fault), which are fully assured in the first case.

The employment relationship will be terminated by an employee by handing in a notice or resignation, or by indirect termination of the work contract. In the first case, the employee is not paid labour indemnities; in the second case the employee is entitled to such indemnities. Prior notice is the manifestation of will of the party who intends to terminate the contract. It usually corresponds to one month of work. An employer who does not want the employee to remain on its premises during the notice period may indemnify him/her in respect of such period.

In contracts with expatriates, it is common to have longer notice periods. According to Brazilian law, if the employer decides to waive the employee's compliance with the notice period, it must pay for the whole contractual period. The employee, when handing the notice, is not obliged to work for the full period.

Pension: There were two pension models in Brazil: by age, in which 60 years (women) and 65 years (men) were required, and at least 15 years of contribution, or by contribution time, which required 30 years (women) and 35 years (men), without setting a minimum age. However, the new pension reform approved on October/2019 states that pensions are available from the age of 65 (62 for women) if at least 20 years of contributions for men and 15 years for women. Farm hands (men) retire at the age of 60 and women at the age of 55, with at least 15 years of contribution.

The Brazil-Switzerland Social Security Agreement, signed in 2014, was in the parliaments of Switzerland and Brazil and entered into force on 1 October 2019. It allows, among others, to receive pensions in both countries.

Sickness benefit and social accident insurance benefit: The sickness benefit is payable if the insured is unable to work for a period of more than 15 days and continues for the duration of the infirmity.

When incapacitated by an accident, an employee will receive full pay for the first 15 days' absence and then a certain amount monthly. If it is determined that the accident victim is permanently incapable of working, the accident insurance payments are replaced by the invalidity pension.

Invalidity pension: The invalidity pension replaces the sickness benefit and accident insurance benefit, subject to formal approval of the government social security fund.

Other benefits: Other social security benefits include dependents' pensions in respect of deceased beneficiaries, assistance to dependents of insured prisoners, and family allowance for each child under the age of 14.

Employment-related accident insurance: Various regulations relate to health and safety factors in dangerous and unhealthy activities. Many companies have a system of training and education designed to reduce the number of health and safety hazards in the work place.

Workers' Severance Indemnity Fund (FGTS): All employers must contribute to the FGTS an amount of 8% of the gross monthly remuneration of each employee.

Contributions are credited to bank accounts in the name of each employee and accrue interest according to the Reference Rate (*Taxa Referencial* – TR), plus 3%, per year. The balances in these bank accounts may be withdrawn by employees upon termination of employment under specific circumstances, some of them are listed below:

- Dismissal without just cause by the employer
- Termination of contract for a specified period
- Termination by bankruptcy, death of individual employer, domestic employer or invalidity of contract
- Termination of contract due to reciprocal fault or force majeure
- Retirement

Right to strike:

The right to strike is constitutionally guaranteed to workers subject to the rules of the Consolidation of Labor Laws (CLT), as well as to civil servants, except the military.

Approval of collective agreements:

It is the agreement that stipulates applicable working conditions within the company or companies in agreement to their working relationships. The celebration of collective bargaining agreements is allowed to unions representing the professional categories, according the CLT.

Allowance for unhealthy work conditions:

It is a worker right that guarantees employees who perform activities in which exposure to harmful agents to health is demonstrated beyond the limits set by law, the right to receive compensation.

Extra night work rate: Night pay guarantees different working and salary conditions for professionals who need to perform their duties at night. This benefit is provided to all professionals working between 10 pm and 5 pm the next day.

Signed social card (CTPS): All registered employees, including foreigners, are required to hold a work card in which the terms of employment must be recorded for retirement calculation.

Foreigners who work in Brazil have their social security rights guaranteed by international agreements that the Brazilian Social Security maintains with several countries. This type of agreement allows the contribution time of a person working in Brazil to be computed in another country. Likewise, a foreigner may have his or her contribution time abroad counted for the benefit provided by the Brazilian Pension Plan.

The Bilateral International Social Security Agreement between Brazil and Switzerland entered into force in October 4th, 2019, which extends coverage to workers linked to the social security systems of both countries and avoids double taxation in cases of temporary displacement. Applicants who have met the requirements may apply for death pension, age retirement and disability retirement benefits.

As a consequence of the high social and other contributions, the number of companies adopting outsourcing as well as collective bargaining agreements to get more flexible labour rights grew substantially.

Sources Chapter 12:

SWISSCAM Guide "Doing Business in Brazil" - Chapter 12:

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Ministry of Labour and Employment

<http://www.mtb.gov.br>

13. Avoiding payment problems / Procedures for collecting payments / reminders

Many payment problems may be prevented if, before closing a business, the Swiss exporter seeks information about financial background, solvency and payment behaviour of the Brazilian counterparty.

The Brazilian financial information system Serasa possesses a wide database with economic and financial information about all Brazilian companies. A Serasa report comprehends contact information, business behaviour, analysis of the accounting statements (indebtedness, repayment capacity, open bills) and, for your reference please check available services at <https://www.serasaexperian.com.br> (only in Portuguese, with link to partners in other countries).

Furthermore, the largest Swiss banks offer diverse services to streamline and secure transactions with Brazil, such as documentary credits, collections, guarantees or letters of credit.

Additionally, if the above instruments are not feasible, a very common procedure in Brazil is to ask a new client for a reference of three other suppliers.

Should the importer not pay, despite all these measures of precaution have been taken, the following steps are recommended:

1. Send a letter to the customer informing about the open account.
2. Call the client to ask reason for delay and try to negotiate a new deadline for payment. The new agreement must be formalized by fax or e-mail. Continue with follow-ups or contract a collecting agent.
3. Make known the insolvency to institutions like Serasa (Once a company is on the "black list", it is difficult for it to do new business in Brazil).
4. Ask your lawyer to get in contact with your customer, threatening with a legal action or a protest at the registry office (*cartório*).
5. Register the debt at the registry office and communicate this step to the debtor. This step is only possible if the importer can provide a promissory note, a contract, a bill of exchange or another securitized instrument. A commercial invoice is not sufficient. Further information about accepted documents, access www.protesto.com.br (in Portuguese only).
6. Cash guaranties or pledge, if available.
7. Apply an action against the client. The attempt of a new agreement, however, is always worthwhile, as the legal system is extremely slow and expensive in Brazil. Lawsuits can take years.

An alternative to the legal way, faster and more efficient, is the arbitration and intermediation services offered by Arbitration Chambers, although involved costs can also be high: Registration costs are normally between BRL 800.00 and BRL 3,400.00, administrative tax equals 5% if the amount is below BRL 250,000.00 or 3% (until the limit of BRL 100,000.00) if the amount is above BRL 250,001.00, remuneration of the arbitrator and other expenses (travel, material, extra hours, etc). Among others, the Eurochamber in Brazil offer this service: www.euroarbitragem.com.br

Date: November 2019
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