



# Doing business in Brazil

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# Introduction

**The country's abundance of natural resources and strong economic outlook make it especially attractive investors.**

The Brazilian economy is large and diverse. While there still is considerable state and semi-state participation, the country has undergone several privatisation programmes. Indeed, most of the former state companies are now controlled by the private sector.

Natural resources and agriculture were the traditional mainstay of the economy. Nevertheless, since the 1960s, the emphasis has shifted towards industrial development mainly financed by foreign investment.

There is still much to be done to ensure that the economy continues to grow in the years ahead. Brazil is not isolated from the global economy and in recent years turbulent headwinds from the European sovereign debt and banking crisis have caused Brazil's growth to decrease to more moderate rates.

Nevertheless, Brazil remains a compelling opportunity for international investors seeking to create a new business venture or expand their international operations. Being the seventh largest economy in the world, local demand remains robust, unemployment rates remain at historical lows and FDI inflows are at record highs.

At the same time, not all of Brazil's challenges come from abroad. Important reforms are being carried out to address internal

growth constraints. These internal challenges are in themselves a source of opportunity for international investors.

Steady growth and a series of government initiatives have contributed to the expansion of the middle class, which will reach 133 million by 2014 with 85 per cent of the population living in urban areas<sup>1</sup>. Furthermore, Brazil benefits from what it is known as a 'demographic bonus': the percentage of the economically active population will exceed that of dependents in the next 10 years. This phenomenon is thought to be responsible for a third of the growth experienced by Asian economies in the 90's and it is likely to have similar effects in the Latin American giant<sup>2</sup>; a recent study estimates that the country will be the fifth largest consumer market by 2020<sup>3</sup>.

Investment in transportation, power generation, sanitation, housing and logistics are fundamental to ensure Brazil's continued economic development.

Over the past ten years Brazil's domestic market has grown at a phenomenal pace, creating a surge of demand that has heightened pressure on the country's infrastructure networks. Brazil's agriculture is going through a period of extraordinary dynamism, thanks to rising global demand, the vitality of its entrepreneurial-led expansion and technological

advances in production methods. Advanced manufacturing exports have expanded, led by aircraft, automobiles and sophisticated equipment and machinery. The discovery of huge oil fields off the coast of Brazil in the largest oil discovery in the Americas in the past three decades, coupled with Brazil's leadership in non-food based biofuels and emerging shale potential, require development of new supply chains and support infrastructure.

At the same time, however, much is still to be done to address fundamental social infrastructure, such as sewage treatment, water sanitation, housing and electricity transmission. Investment in infrastructure has been small in the past – between 2 per cent and 2.5 per cent of GDP. The challenge currently facing Brazil is therefore one of boosting investment to accelerate upgrades to Brazil's infrastructure.

While this guide makes reference to some of the most common issues investors might face, it must be noted that certain industries are subject to special regulation and therefore companies wishing to invest in the area should seek legal advice.

<sup>1</sup> Mark World Bank

<sup>2</sup> Lester R. Brown, "Outgrowing the Earth" Chapter 2: "Stopping at Seven Billion: The Demographic bonus"

<sup>3</sup> Merger Alliance, Country Report – Brazil

# Legal overview

## Political and legal system

Brazil is a presidential and federal republic; it is formed of 26 states and the Federal District (Brasilia). The states are divided into municipalities (there are 5,581 municipalities) which in turn are divided into districts.

The president of the republic is the chief of state and the head of the federal government. It is elected for a period of four years and can be re-elected for a second term. Brazil was the first country in the world to hold wholly electronic elections.

The Constitution, enacted in 1988, divides the government in three branches: executive, legislative and judiciary.

Legislative power is exercised by the National Congress which consists of a House of Representatives and the Senate. These legislative houses are the main sources of law in Brazil. The legal system is based on the Federal Constitution which is the fundamental law in Brazil.

In Brazil, civil law concepts prevail over common law practice. Although most of Brazilian law is codified, court decisions are often used as interpretative guidelines.

## Data protection

In Brazil, several legislations regulate the collection and use of personal data; the general data protection principles are contained in:

The Brazilian Federal Constitution where the right of privacy and intimacy, as well as the right for secrecy of communications are fundamental rights. Individuals can claim indemnities to compensate the violation of these rights. Additionally, Brazilian citizens have

a special right called 'habeas data' which entitles them to access personal information that is registered on governmental or public databases. The Constitution applies to all individuals – Brazilians and foreigners – and legal entities.

The Brazilian Civil code gives individuals the right to seek injunctions before any competent court to impede or cease any privacy violation. This means that unauthorised use and collection of personal data can result in injunctions and potential liability for damages. The Civil Code applies to private relationships involving any Brazilian individuals and legal entities.

Brazilian Consumer Protection and Defence Code: the code regulates consumer privacy issues; it specifically deals with issues concerning consumer-related databases, data collection and sanctions applicable for the infringement of provisions. The Consumer Code applies to consumer relationships involving any Brazilian individual and legal entities.

The Complementary Law 105/01 deals with the obligations of financial institutions i.e. banks, brokerage houses, credit card companies regarding the secrecy of banking data. It provides for criminal sanctions for violation of banking secrecy which can result in imprisonment for up to four years.

The Brazilian Internet Act deals with issues affecting the collection, maintenance, treatment and use of personal data on the Internet. It entered into force on 23 June 2014. The Act corroborates the general privacy principles provided in the Brazilian Consumer Protection

and Defence Code. Additionally, it determines that the terms and conditions of any Internet application or website regarding the collection, use, storage and treatment of personal data must be highlighted in a manner easily identifiable by the user. The Internet Act applies to internet users, internet connection providers and internet application providers.

Individuals must give their consent before personal data is processed; silence is not considered as implied consent in these cases. Consumers can request the updating and correction of any inaccurate personal information stored in any database, regardless of his previous authorisation for the collection of the relevant data. Any request for correction or update must be addressed within five business days. Similarly, allowing access to personal data stored in consumer databases is mandatory.

Although there are no specific legal provisions relating to the penalties and amount payable for data privacy violations; the Brazilian Internet Act introduced specific penalties on internet connection and application providers for data privacy violation. Any or all of the following penalties can be applied:

- Warning
- Fines of up to 10 per cent of the gross revenues of the economic group in Brazil
- Temporary suspension of activities
- Permanent suspension of activities

## Anti-corruption laws in Brazil

In Brazil, public bribery has been a criminal offence since 1940. However, until 1993, only individuals

could be held liable for corruption. From 1993 the Law 8.666 - that regulates public tenders - provided for penalties to legal entities for certain conducts against the Public Administration.

Brazil recently passed an Anti-Corruption Law (12.846) holding entities liable for corruption. Entities are now legally responsible for damages and losses resulting from corruption regardless of culpability and intent. Anti-Corruption Law 12.846/2014 applies to Brazilian and foreign entities registered to do business in Brazil.

The law prohibits the promise or offer of bribes to Brazilian or foreign officials and includes fraud or interference in public tenders. The law also applies to acts that interfere in the public procurement process.

The company management and third parties acting on behalf of the company may be subject to criminal liability under the Brazilian Criminal Code. However, in this case proof of intent is necessary under the Brazilian Code of Criminal Law.

Referred to by some as the "Clean Companies Act" (CCA), Brazil now holds entities civilly and administratively liable for engaging in corrupt activity.

Administrative proceedings can be initiated by the federal, state or municipal levels of government. Any entity within the Executive, Legislative and Judicial branches of government will have jurisdiction. The Office of the Comptroller General (CGU), the agency of the federal government responsible for assisting the President in matters related to defending public assets and enhancing management

transparency through internal control activities, public audits, corrective and disciplinary measures, corruption prevention and combat, will have concurrent jurisdiction with federal government agencies.

The law lists the following sanctions as penalties for those that fail to comply with the law: forfeiture of property, rights or securities representing the advantage or profit directly or indirectly obtained from the infringement; partial suspension or interdiction of activities; compulsory dissolution of the corporation; ban on receiving government incentives, for a minimum period of one and maximum of five years; publication of the act and penalty in a public registry (CNEP) and financial fines ranging from 1 – 20 per cent of the company's gross revenue.

Compulsory dissolution of the legal entity will be determined if proven that the legal entity was used to facilitate or promote the commission of unlawful acts, or was made to conceal or disguise illicit interests or the identity of the beneficiaries of the acts.

## Successor liability

The law does provide for successor liability; however, liability is limited to the damage caused up to the value of the assets transferred. Unless intent to defraud is demonstrated and can be linked to the successor, other penalties will not be applicable to the successor.

## Leniency agreements

Leniency agreements are permissible under the law, but do not relieve the entity from liability for the offense. Although fines may be reduced by two thirds, the entity is still liable for repairing the damage caused. In order for a

leniency agreement to be effective, the company must be the first to contact the authorities and fully collaborate with the investigation.

## Mitigating factors

Companies can mitigate penalties by having internal audit and compliance mechanisms in place. Additionally, the law states that the government will take into consideration the seriousness of the offense as well as the ultimate benefit obtained or intended by the offender, including the degree of injury and ultimate effect produced by the offender. Government considerations include: the cooperation of the entity during the investigative process, the economic situation of the offender and the value of the contracts at issue.

## Foreign exchange controls

In Brazil, as a general rule, foreign capital is admitted and treated as local capital. Inbound and outbound transactions are permitted providing:

- They are carried out through financial institutions licensed to operate in the exchange markets
- The transaction is legal
- The transaction has economic substance
- All applicable taxes are paid

While there are some exceptions, the use of foreign-currency bank accounts by local or foreign investors is generally not allowed.

Although no previous approval is necessary, foreign loan transactions must be registered electronically at the Central Bank of Brazil. The parties must assume liability for the legitimacy of the documentation submitted to the financial institution licensed to operate in the exchange market when the transaction is registered.

The National Monetary Council (CMN) issues exchange control policy to regulate transactions. It can impose temporary restrictions on imports and remittances of yields on foreign capital when there are serious inequalities in the balance of payments.

Investors are required to register all inflows of foreign capital into Brazil with the Brazilian Central Bank within 30 days of the funds entering the country. This can only be done online through the Brazilian Central Bank's e-registration tool, RDE-IED (Electronic Declaration Registry), which is part of the Brazilian Central Bank's Information System (SISBACEN). The recipient company of FDI and the foreign investor (through a representative) are responsible for registration.

This requirement is applied for all foreign capital as defined by law as "any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, and are intended for the production of goods and services, as well as any funds brought into the country to be used in economic activities in the country, that belong to individuals or companies resident or headquartered abroad" (Law 4.131).

For investments in securities other requirements are applicable.

An unregistered investment is not eligible for repatriation and dividends or profits generated by it cannot be remitted abroad through the commercial foreign exchange market.

However, it is important to note that nothing prevents the foreign investor from repatriating or remitting dividends or profits abroad through the floating exchange market or transferring local currency abroad to purchase foreign currency outside Brazil.

#### Money laundering regulations

In July 2012, the main Brazilian AML regulation (Federal Law 9.613/98) was amended by Law 12.683/12, enacting the country's Anti-Money Laundering Law. This amendment changed the manner in which the country previously addressed this type of economic and financial crime. It defines money laundering as the concealment of proceeds of any crime or misdemeanor. It also excludes the requirement that actual knowledge of the origin of the illicit funds must exist. Previously, the criminal act of money laundering was only committed if it was linked to the following crimes: illicit trafficking in narcotic substances or similar drugs, terrorism, terrorism financing, smuggling or trafficking of weapons, munitions or materials used for its production or extortion by kidnapping.

The Council of Control of Financial Activities, known as COAF, is the agency entrusted with combating money laundering and terrorist financing in Brazil. It acts as the Financial Intelligence Unit for Brazil. The agency is in

COPYRIGHT	
Copyright (Law 9.610/98) can protect: literary work, dramatic work, musical work, artistic work, layouts and typographical arrangements, recordings and broadcasts.	
<b>Registration</b>	Registration of copyright in Brazil is voluntary but advisable as it can facilitate the proof of ownership.
<b>Enforcement</b>	Copyright can be enforced through judicial action in the Brazilian courts.
<b>Duration</b>	The effective period for copyright protection is 70 years after the author's death for all forms of creative work including music and literature. Exceptionally, software is only protected for 50 years after its creation.

charge of the coordination of cooperation mechanisms and information exchange to deter money laundering. Among those required to report suspicious activities are those who work with sporting events, artistic works, fairs, exhibitions (or similar events), luxury goods and those who sell high-value goods from rural or animal origin. Additionally, those that engage in advisory roles, consulting, bookkeeping or audit are also required to report suspicious activities

The fines for those failing to comply with their reporting responsibilities to the Brazilian authorities increased from BRL200,000 to BRL20 million. Criminal sentences for money laundering activities are between three and 10 years in prison. The sentences can be increased by up to two thirds in case of recurrence; they can be reduced by the same proportion if the person found guilty cooperates with the investigation.

Participation in money laundering activities can result in both administrative sanctions and criminal proceedings. Brazilian authorities can impose several administrative sanctions, including admonitions, fines, disablement, suspension and loss of permission for activity. It must be noted that the administrative and criminal authorities' powers of investigation are limited under the Brazilian Constitution and under other specific legal provisions; these rules protect: bank secrecy laws, communications and privacy. Consequently, a court order is necessary to conduct searches and seizures, to wiretap and to obtain bank or tax information.

TRADE MARKS	
In Brazil, trademarks are regulated under the Industrial Property Law (Law 9.279/96). The system operates in a similar way to Europe, it protects shapes, symbols, colours, names, slogans or other devices used to identify a business' products or services, including trade names.	
In order to avoid 'cybersquatting' (registration in bad faith of well-known domain names to sell them to their original owners), rights owners should register their domain names in Brazil as soon as possible.	
<b>Protection granted</b>	Protection is obtained when the trademark is registered with the INPI. Nevertheless, well-known trademarks are protected even if they are not registered.  When a case registry is made in bad faith, the rightful owner has the right to initiate court action. The rightful owner will have to prove the previous and continuous use of the brand registered in bad faith.
<b>Infringement</b>	When a trade mark is infringed, the individual can take administrative actions before INPI and judicial actions in the Brazilian courts.
<b>Duration</b>	Protection is granted for 10 years and can be renewed indefinitely for further 10 year periods.

#### Intellectual Property Rights

The 'Instituto Nacional de Propriedade Industrial' (INPI), created in 1970 is the main Brazilian body responsible for the protection of Intellectual Property Rights. Its services include the registration of trademarks, industrial designs and geographic indications, as well as granting patents. Even though the process of registering a patent or trademark could take a considerable amount of time, the INPI has increased its resources to accelerate the process. In 2013 it introduced certain changes to facilitate the recognition of famous brands which now benefit from enhanced protection.

Jointly with INPI, the intellectual property in Brazil can also be safeguard by the "Biblioteca Nacional" (National Library), according to Law 9.610/98, where document content, such as texts, trainings, literary work, musical work, etc., can be registered, and the copyright granted to the requestor administered by WIPO.

DESIGNS	
Designs are covered by the same Industrial Property Law (Law 9.279/96) as patents and trademarks. This right protects the shape or other visible attributes of a product. Its application must be novel.	
<b>Protection granted</b>	Protection is obtained through registration of the design with the INPI.
<b>Infringement</b>	When a design is infringed, the individual can take administrative actions before INPI and judicial actions in the Brazilian courts.
<b>Duration</b>	Protection is granted for 10 years and can be renewed for three consecutive periods of five years.

PATENTS	
Patents protect inventions which can be applied in an industrial environment. For a patent to be granted, the invention must be new, have an inventive step which is not obvious to someone with experience in the subject and capable of being used in an industry. Brazilian patent law operates under the 'first to file' principle. If two people apply for a patent on an identical invention, the first one to file the application will be awarded the patent.	
<b>Registration</b>	A patent provides the owner with the exclusive right: <ul style="list-style-type: none"> <li>To make the product</li> <li>To sell the product</li> <li>To use the product</li> <li>To authorise others to do the above acts in whole or in part</li> </ul>
<b>Infringement</b>	When a patent is infringed, the individual can take administrative actions before INPI and judicial actions in the Brazilian courts.
<b>Duration</b>	The registration is valid for 20 years from the filling date (15 years for utility models).

# Conducting business in Brazil

## Business entities

In Brazil, both foreign and local investors wishing to create a business normally establish a Corporation or a Limited Liability Company, commonly known as 'Limitada'. As a general rule, both types of entity can be foreign owned; however, Brazilian law imposes certain restrictions for the following economic sectors: health care assistance, coastal shipping, radio and image broadcasting, cable television, mining, hydraulic energy, highways and airlines.

## Limitadas Formation

Limitadas are the most common type of company incorporated under Brazilian Corporate Law, they are regulated under the New Civil Code. These companies are constituted by signing the articles of association, which should define the relationship between the partners and other basic governing provisions. The articles of association (as well as their amendments) should be filed with the Board of Trade. Limitadas have to comply with fewer formalities than corporations, this is one of the only disclosure requirements these companies have to obey. Limitadas normally take between 40 and 60 days to be incorporated.

Limitadas are formed by a minimum of two or more individuals or companies called quotaholders; these may be Brazilian or foreign. Their liability is limited to their total contribution; nevertheless, all quotaholders are jointly and severally liable of the payment of the total paid up capital. A Limitada can be managed by one or more quotaholders. The management can also be entrusted to non-quotaholders resident in Brazil. It is important for

the Articles of Association to specify their powers.

## Capital requirements

There are no minimum capital requirements. The capital can be divided in quotas of equal or unequal value (this should be determined in the articles of association). Generally, the capital is divided on quotas of equal value. If quotaholders want to decrease or increase capital, the articles of association must be amended. Directors are normally liable for deceit, unlawful acts or when they exceed their powers.

## Audit requirements

After the end of the financial year (January to December), quotaholders have four months to hold a general meeting (when there are more than 10 quotaholders) or pass a written resolution to approve the accounts and financial statements, decide on the allocation of profits and select new management as necessary.

Limitadas are not required to publish basic financial information. Similarly, independent statutory audits are not necessary unless the entity is considered a 'Super Limitada'. The financial statements of the company may be subject to statutory audit if book value of assets is higher than BRL240 million or the gross revenue is higher than BRL300 million a year. These requirements are based on the company's previous year's financial statements and can also be applied to a group of companies under the same controlling parent when their combined revenue reaches the threshold. There are no specific provisions on how to distribute profits; nevertheless, dividends can only be paid out of the profits. Limitadas can be transformed into Corporations.

## Corporations Formation

Corporations are governed by Federal Law 6404/76; if the entity becomes a publicly traded corporation it will also be subject to Law 6385/76, as well as the rules issued by the Brazilian Securities Commission (CVM). This type of company normally suits large businesses that want to obtain funds from the public. Corporations must comply with a series of formalities before incorporation:

- The bylaws must be approved in an initial meeting with the prospective shareholders
- The founders must be at least two entities or two individuals
- Once the bylaws have been approved, the shareholders must select the management body. This body will be legally responsible for the newly created corporation from the initial meeting until the entity is formally incorporated

A corporation does not exist legally until its documents are filled with the Board of Trade and the minutes of its inaugural meeting have been published in the Official Gazette and in a widespread newspaper in the location of its registered office. The whole process requires at least 30 days.

Companies that have been incorporated as private and want to be held publicly must:

- Register the corporation as a publicly held company with the Brazilian Securities Commission
- Register the proposed issuance of shares with CVM
- Obtain the intermediation of a financial institution for the issuance of shares

## Capital requirements

There are no minimum capital requirements except for financial institutions and insurance companies. The capital must be divided into shares all of which need to be subscribed. At least 10 per cent of the issue price of the shares subscribed must be paid in cash to a bank account within five days. This deposit is normally released once the corporation has been registered with the Board of Trade or after six months if there is no registration

## Shareholders

In principle, corporations need a minimum of two shareholders; however, the CMV can require a higher number of shareholder before it awards listed status. Similarly, although shares can be issued with or without par value, the CMV may establish a minimum par value. It must be noted that when shares are issued with par value they must all have the same value. Shares are normally transferrable amongst shareholders; their responsibility is limited to the value of their shares.

## Management

A corporation can be managed by either an executive board and a board of directors or by the executive board only.

The executive board must comprise a minimum of two individuals resident in Brazil on a permanent basis. The members of the executive board do not necessarily

need to be shareholders. Their main duty is to represent the corporation before third parties and public agencies. Up to one third of the members of the executive board can be part of the board of directors.

While executive officers cannot be held liable for the obligations they undertake in name of the corporation in the normal course of business, they are liable for causes and damages caused by their negligent or fraudulent conduct or caused by a breach of the law or the bylaws.

## Branches of foreign companies Formation

The process of establishing a branch of a foreign company in Brazil is particularly burdensome; this form of business is not usually selected unless there are substantial tax advantages in the investor's home country.

Establishing a branch requires special authorisation from the Federal Government. The competence for authorising the setting up of branches is currently held by the Ministry of Development, Industry and Trade. Foreign companies must submit an application alongside documentary evidence of its legal existence, a copy of its articles of incorporation, a list of shareholders and a balance sheet. Additional approval is necessary for any changes in the

branch organisation as a result of a modification of the bylaws. While it is possible to convert branches into Brazilian legal entities, this process is also subject to governmental approval.

Branches are considered an extension for the Brazilian operations of the head office. Consequently, a branch must operate under the same corporate name that the head office uses in the home country, although it is possible to add 'of Brazil' or 'for Brazil'. The head office is liable for the branch's operations. Branches must have a legal representative that lives in Brazil on a permanent basis and has ample powers of representation and administration.

## Capital requirements

While there is not a minimum capital requirement for branches, the capital has to be paid in before the branch is established. The head office is responsible for the branch's debts and claims. Branches are taxed in Brazil at the same rate as a Brazilian company.

## Audit requirements

There are no statutory audit requirements; however, the branch of a foreign company must publish its financial statements if doing so is required the home country. Failure to comply can lead to the operating license being revoked.



# Tax system

The Brazilian Federal Constitution (1988) sets out the principles and guidelines for the tax system and it is also the authority for infra-constitutional legislation (including tax treaties). Taxation is regulated by the National Tax Code (Código Tributário Nacional or CTN); federal, state and municipal tax laws; international tax treaties and government decrees. Administrative and judicial court decisions are generally used as guidelines but they are not binding for third parties. Also, the Income Tax Regulations (Regulamento do Imposto de Renda or RIR) is a compendium of Federal tax legislation. The Ministry of Finance oversees the implementation of tax regulations.

## Corporate taxes in Brazil Federal Taxes

Corporate Income Tax (IRPJ) and Social Contribution Tax (CSLL)

### Scope

Companies incorporated under Brazilian law or managed in Brazil need to pay Corporate Income Tax (IRPJ) on their worldwide income. Similarly, branches, agencies or representative offices of foreign companies, are subject to IRPJ on their income earned worldwide. However, a foreign tax credit is available. There is also foreign tax relief for Brazilian companies for income tax paid overseas.

Taxpayers may choose one of the three taxation methods provided by the tax legislation for purposes of calculating IRPJ and CSLL: Taxable Income (Lucro Real), Estimated Profit (Lucro Presumido) and Arbitrated Profit (Lucro Arbitrado).

### Taxable income

The basic rate for IRPJ is 15 per cent. For those companies with annual profits of more than

BRL240,000, a surtax of 10 per cent is added.

In addition to IRPJ, companies need to pay Social Contribution Tax (CSLL) on their worldwide income. The general rate is nine per cent; nevertheless, insurance companies, financial institutions and capitalisation companies must pay 15 per cent. Although the tax base for CSLL and IPRJ are practically the same, certain adjustments that normally apply for IRPJ are not applicable for CSLL.

A company's taxable income (for both IRPJ and CSLL) is the net book income. Expenses can be deducted if they comply with certain requisites. As a general rule, all ordinary and necessary expenses incurred in the course of business can be deducted; they need to be supported by proper documentation. The following expenses cannot be deducted:

- Donations and other non-compulsory payments;
- Fringe benefits provided to shareholders and officers if the beneficiaries are not identified or individualised;
- Expenses related to fixed assets if the assets are not directly used in the production or commercialisation of products or services;
- Fixed assets used for the production or commercialisation of products can be depreciated using the straight line method at rates provided by the Brazilian authorities (four per cent for real estate, 10 per cent for machinery and equipment, 20 per cent for vehicles and computer hardware and software).

### Other methods

Most companies which realise gross revenues of up to BRL78 million in the prior taxable year can elect, on an annual basis, to pay IRPJ and CSLL under the Estimated Profit (Lucro Presumido). Under this method, taxable income is determined by applying a statutorily determined "presumed" profit margin which ranges from eight per cent to 32 per cent depending on the taxpayer's activities. The presumed profit percentage is applied to gross revenues. Non-operating revenues such as financial revenues and sales of fixed assets are 100 per cent taxed.

### Capital gains

Capital gains are treated as non-operating income subject to IRPJ and CSLL at the same rates as operating taxable income. Non-residents are subject to a capital gains tax at a rate of 15 per cent or 25 per cent if located in a low tax jurisdiction.

### Losses

Tax losses may be carried forward indefinitely but no carry back or inflation is permitted. However, they can only offset a maximum of 30 per cent of the company's taxable income in a tax period. In a merger, the merged entity loses all accumulated non-operating losses (NOLs) while the surviving entity retains all of its NOLs. In the case of a spin-off/split-up, the amount of NOLs retained is determined in proportion to the amount of net worth distributed or retained.

Losses generated outside Brazil through branches or subsidiaries may not be used to offset taxable income of the parent company in Brazil. In any event, such losses may be carried forward indefinitely and they may be used to offset future income from the

same foreign branch or subsidiary without limitations.

In addition, a legal entity will lose its NOLs if:

- It suffers a change of control
- It changes its business activity

Carry-forward non-operating losses may only be used to offset non-operating income, up to the limit of 30 per cent of annual profits.

Losses for CSLL purposes are subject to the same tax rules applicable to losses for IRPJ purposes.

### Administration

The Federal tax system is administrated by the Federal Tax Revenue (Receita Federal do Brasil or RFB), which is part of the Ministry of Economy. States and municipalities maintain similar administrative departments.

The tax year is the calendar year (January 1 to December 31). As a general rule, companies need to file an electronic tax return by the last working day of June of the following year; no extensions are available. From 2015 onwards, the income tax return (ECF) must be filed by the last working day of July following the end of the tax year.

Companies that choose the Taxable Income method are eligible to calculate IRPJ and CSLL on an annual (Lucro Real Anual) or quarterly basis (Lucro Real Trimestral). Generally, the selected payment method cannot be changed through the calendar year. If a company chooses to adopt the annual calculation period, tax pre-payments must be calculated and collected (if applicable) on a monthly basis. The

tax pre-payments must be based on monthly revenues or year-to-date accounted for net income.

For monthly payments of IRPJ calculated with the estimated method, the tax base is eight per cent of the entity's gross revenue. This percentage similar to the Estimated Profit (Lucro Presumido), varies depending on the industry (16 per cent for financial institutions and transportation services; 32 per cent for services in general and 1.6 per cent for gas distribution).

The difference between the amount shown in the annual tax return and the advanced payments made monthly must be paid the last working day of March the following year. Conversely, if the amounts paid in advance exceed the amounts shown in the tax return, they can be used to offset the tax due in a month following the fiscal year end. This refund can be claimed from the tax authorities within five years of the tax payment.

Income tax paid after the due date may be subject to the following interest and penalties:

- Official interest (SELIC) charged at a monthly rate published by the government;
- A daily fine of 0.33 per cent on the tax due (up to a maximum penalty of 20 per cent of the tax due, excluding interest)

Similarly, lack of payment found in a tax audit is subject to a fine of 75 per cent on the amount due while the penalty for fraud can go up to 150 per cent. Nevertheless, these penalties might be reduced by 50 per cent when a payment is made before the last day of the appeal period.

As a general rule, the statute of limitations in Brazil for most taxes and social contributions is five years.

### Contribution for the Social Integration Programme (PIS) and Contribution for Social Security Financing (COFINS)

PIS and COFINS are social contributions charged on the monthly gross revenues of Brazilian companies calculated through a 'cumulative regime' and a 'non-cumulative regime':

- Non-cumulative regime: COFINS is charged at 7.6 per cent and PIS is charged at 1.65 per cent. Companies are granted a tax credit calculated on the acquisition of inputs and on certain expenses such as raw materials of goods and services. This system ensures that the tax is applied only once on the final value of each transaction. There are also different rates for specific activities determined by law;
- Cumulative regime: COFINS is charged at three per cent and PIS is charged at 0.65 per cent. Credits are not permitted which makes the taxes cumulative throughout the supply chain (financial entities are subject to a different cumulative system). Companies who elect the Estimated Profit Method are subject to the cumulative regime

PIS and COFINS are also due upon the payment, credit, delivery or remittance of the amounts related to the importation of raw materials, goods and services. In general, PIS and COFINS are not levied on export transactions.

### Import Duty (II)

The Import Duty applies to the CIF value of imported products at variable rates. Since it is a final

tax, there is no tax credit granted. Therefore, it is generally a cost for the importer.

#### **Federal Tax on Industrialized Goods (IPI)**

The IPI is a federal tax on transactions involving manufactured goods. It must be paid either when manufactured products leave the industrial establishment or when manufactured products are imported. Export revenues are exempt from IPI.

When manufactured products are sold between producers, IPI is imposed. Nevertheless, the subsequent manufacturer is entitled to book a tax credit for the tax levied on the previous operation. The credit is normally indicated in the invoice of the goods acquired.

The tax rates vary depending on the type of product manufactured or imported. Certain exemptions exist for goods considered to be a basic necessity for the country's economy. For example, the IPI rate levied on cigarettes is 300 per cent, while the rate levied on soap is zero. It must be noted that rates can be modified at any time by an Act of the Chief of the Brazilian Executive Government. The act is effective from the moment of its publication.

#### **Social Security Taxes**

The Social Security Taxes include the Social Security Contribution (INSS) and the Severance Indemnity Fund (FGTS), both calculated based on the total gross compensation amounts paid to employees.

The INSS rate is based on:

- The Social Security contribution itself (20 per cent)
- The RAT contribution (work accident risk between 0.5 per cent and 0.6 per cent). This contribution is determined considering the risk-level associated with the activities developed by the company

- The payment of additional Social Security charges (usually 5.8 per cent) that must be made to the Federal Government, who will transfer the funds to third parties (Senai, Sesc, Sebrae, among others).

Regarding the Severance Indemnity Fund (FGTS), the applicable rate is eight per cent.

#### **Financial Transaction Tax (IOF)**

The IOF is imposed by the Federal government at rates varying from 0 per cent to 25 per cent on loan transactions, investments in fixed income funds, transfers of amount from foreign to local financial institutions and investments by non-residents in short-term funds. The tax basis is the amount, in local currency, received, delivered or made available. The IOF taxpayer is the lender, the purchaser and the insurer. Nevertheless, the law determines that, when applicable, financial institutions are jointly responsible for the amount due. As with the IPI, the IOF can be modified at any time by an Act of the Brazilian Executive Government.

#### **State Taxes**

##### **Value-Added Tax (ICMS)**

The State Value-Added Tax (ICMS) is a type of value-added state tax generally levied on imports (customs clearance), sales, transfers and other transactions involving goods, inter-municipal and interstate transportation services and communication services (including electricity).

For imports of goods and transactions within the same State, the regular ICMS rates are from 19 per cent to 17 per cent. However, for some specific goods, the applicable rate on import operations and sales within the State may be different from the regular ones. When transactions involve two different States, the rates are seven per cent or 12 per cent depending on the States involved. The applicable

rate is four per cent on interstate transactions with imported goods, irrespective of the States involved, with some minor exceptions.

The ICMS tax is also due either when a product is resold in the domestic market or when it is physically moved from a manufacturing facility.

ICMS taxpayers are entitled to a tax credit at the amount of the tax paid in the previous transaction with the same goods (inputs), provided the purchaser is an ICMS taxpayer with respect to that product. The tax credit may be offset against future ICMS payables.

#### **Municipal Taxes Services Tax (ISS)**

The Services Tax (ISS) is a municipal tax on certain services listed by the federal government as per Complementary Law 116/2003. The taxable basis of ISS is the price or value of the service rendered. The rates vary from two per cent to five per cent, generally depending on the municipality where the service provider or imported is located, where the service is provided and the type of service.

Imported services are also subject to ISS taxation regardless of whether the service is performed abroad. Exported services are tax exempt, provided certain conditions are met.

#### **Tax incentives**

Over the last years, the Brazilian government has increased foreign investment and export incentives. State and municipal government also continue to provide tax and other incentives for investments in their regions. Many local governments, especially those in the North and Northeast of Brazil, offer significant incentives to attract businesses to their regions. Incentives include deferment or reduction of the state based value-added tax (ICMS), free land or

free building leases, and exemption from Services Tax (ISS) some of the most relevant schemes include:

- Plano Brasil Maior: import, export and sales tax benefits
- REPETRO: tax incentives for the oil and gas sector
- Special Tax Regime for Technology Information Services Export (REPES) and Special Regime for the Acquisition of Capital Goods by Export Companies (RECAP) - Law 11,196/2005: tax benefits for investments in infrastructure, research and development
- REPORTO: a special Tax Regime for investments in the modernization and enlargement of port facilities
- Some temporary reductions of employer social security contributions in industries such as hospitality, information technology and air and sea

Also, the Manaus Free Trade Zone (MFTZ) is a free trade area offering special tax incentives to attract businesses to the underdeveloped Amazon region. Foreign goods used in the area for consumption, manufacture or assembly and goods imported for storage or re-export, are exempt from import duties, PIS and Cofins and IPI. The local government of the state of Amazonas may also grant and exemption and/or reduction on the state ICMS.

#### **Transfer pricing**

Brazilian transfer pricing rules apply to the import and export of products, services and rights charged between related parties and inter-company financing transactions not registered at the Brazilian Central Bank. These rules also apply to transactions between Brazilian companies and residents in a low tax jurisdiction or a jurisdiction with a privileged tax regime, even when the parties are not related.

Brazil does not follow strictly the OECD (The Organization for Economic Cooperation and Development) guidelines on transfer pricing. Intercompany transactions need to be documented on a strict transactional basis; fixed statutory profit margins apply. Brazilian companies need to substantiate their inter-company import and export prices on an annual basis by comparing the current transfer price to the country's equivalent of the OECDs comparable uncontrolled price method, resale price method or cost plus method. Despite the rigidity of the system, taxpayers are allowed to change the method on a yearly basis; no justification or economic reasons are needed.

Although there are no specific penalties for not preparing or submitting transfer pricing information, general tax penalties are applicable: a daily fine of 0.33 per cent of the tax due (up to a maximum penalty of 20 per cent of the tax due excluding interest).

#### **Thin capitalisation**

Brazilian thin capitalisation rules stipulate that interest expense arising from a financial arrangement with a related party can only be deducted if the related Brazilian borrower does not exceed a debt-to-net equity ratio of 2:1.

Interest expenses arising from financing arrangements executed with a party established in a low tax jurisdiction, or in a privilege tax regime, can only be deducted if the Brazilian borrower does not have a debt-to-net equity ratio greater than 0.3:1.

These rules also apply when the related party act as a guarantor, surety, representative or intervening party.

#### **Low tax jurisdiction or privileged tax regime**

Under Brazilian law, a tax haven is defined as a jurisdiction that

grants tax benefits to non-residents investors that do not perform business activities in that particular country or a jurisdiction that does not provide access to information related to the ownership of shares, goods, local entities or economic transactions.

Regimes with the following characteristics are considered as 'privileged tax regimes':

- No income tax or income tax lower than 20 per cent
- Tax benefits for non-resident shareholders regardless of whether they carry out economic activities in the country
- Worldwide income either exempt or taxed at a maximum rate lower than 20 per cent
- No information on economic transaction or identity of asset's owners.

The Brazilian low-tax jurisdiction list was recently amended to allow listed entities to challenge the listing. Their request must be substantiated with relevant local tax legislation.

Transactions between Brazilian residents with counterparts in tax havens or with privileged tax regime entities can have different consequences; amongst others:

- Transfer pricing rules apply even when the transaction does not take place between related parties
- There is an increased withholding tax rate on payments (25 per cent instead of 15 per cent)
- Stricter thin capitalisation rules apply
- Expenses are non-deductible unless the beneficiary is duly identified and proves to have economic capacity to bear the operation
- The 'more favourable tax treatment' benefit is not applicable to financial and capital market investments

## Personal Income Tax (IRPF)

### Tax residency

In Brazil, the source of income is determined by the place where the tax payer is located, irrespective of where the work is performed. Brazilian residents are taxed on their worldwide income on a monthly basis. Non-residents are taxed exclusively on their Brazilian-source income.

The following are considered tax-resident in Brazil:

- Naturalised foreigners
- Foreigners holders of permanent visa as from the date of arrival to Brazil
- Foreigners holders of a temporary visa with a local employment contract since the date of arrival
- Foreigners holders of temporary visa without a local employment contract; they become residents as from their 184th day of presence in Brazil within any given 12 month period

The following are considered as non-resident tax-payers:

### Foreigners

Holders of a temporary visa without a local employment contract before completing 183 days stay in Brazil (within any 12 month period)

### Scope

For residents of Brazil, the income tax is due on the individual's worldwide income, on a cash basis ('pay as you earn' system).

The local tax regulations consider income as: proceeds of any nature including but not limited to product of capital, employment or combination of both, wealthy increase not compatible with the income received, pensions, rental income, earnings of any nature available from employment, including fringe benefits, capital, pensions and rentals are considered taxable income.

The Brazilian tax year runs from January to December and the applicable income tax table for the year of 2014 is showed above and right:

Annual Income	Rate ( per cent)	Deduction (R\$)
Up to 21,453.24	0	0
From 21,453.25 to 32,151.48	7.5	1,608.99
From 32,151.49 to 42,869.16	15	4,020.35
From 42,869.17 to 53,565.72	22.5	7,235.54
Over 53,565.72	27.5	9,913.83

Residents of Brazil subject income tax in Brazil can use two tax payment methods:

- Income tax withholding: income tax is withheld at source
- Monthly Income Tax Return – “*Camê-leão*”: the payments are made by the individual itself

In both cases the same progressive tax table applies. The income related tax paid during a calendar year will be subject to Annual Income Tax Return (DIRPF), to adjust the final income tax calculation due.

Nonresidents will also be subject to income tax only on Brazilian sourced income. The withholding tax rate will be a flat rate of 15 per cent or 25 per cent depending on the type of income and whether deductions are allowed or not. For instance, income from work is withheld at 25 per cent, while rental income, for example, is tax withheld at 15 per cent.

### Investment income, rental income and capital gains

As a general rule, interest income is withheld at source. It must be noted that interest derived from Brazilian bank accounts is not taxed. Similarly, taxes are not due on dividends distributed by Brazilian companies.

Investment income from foreign sources is subject to ordinary rates. The tax must be paid by the last day of the month following the date when the income is received.

Capital gains from stocks sold in Brazil are exempt from any tax as long as the proceeds of the sale do not exceed BRL20,000 (this limitation is applicable only for stocks of “*Mercado a vista*”). Any gains above that limit are taxed at a flat 15 per cent rate, except for day-trade operations which are taxed at a flat 20 per cent rate. Capital losses from the sale of Brazilian stock can be used to offset capital gains on a monthly basis. ‘Unused losses’ can be carried forward.

Capital gains from stocks sold outside Brazil are taxed at a 15 per cent rate when the gains exceed BRL35,000. However, capital losses from these sales cannot be used to offset the gains.

As for other taxes not withheld at source, the due amount must be paid by the last day of the month following the month of sale. Non-residents must pay the tax on the day of the sale.

Real estate capital gains are also taxed at a 15 per cent rate; however, Brazilian tax residents can have that amount reduced by five per cent for every year they held the property before 1989. Additionally, an individual selling his personal residence for less than BRL440,000 is exempt from tax on the gain provided he does not own other real estate, and as long as he was not involved in a similar transaction in the previous five years.

There are other income tax exemptions for individuals selling their residential real estate. To be eligible for the exemption, individuals must invest the amount received in the transaction in the acquisition of further residential real estate. The new property must be acquired in the six months following the sale of the first property. This benefit is only available once in a five-year period.

### Deductions from income tax

Brazilian tax-residents are entitled to the following deductions from income tax:

- Dependents can be claimed as a deductions (even when the dependents do not live in Brazil)
- Education expenses for the tax payer of his dependents up to a limit of BRL3,375.83 per student
- Pension income received from the Brazilian government is not taxable up to a limit of BRL1,787.77 per month
- Employee contributions to the social security system (withheld from the salary on a monthly basis by the employer) can be deducted
- Amounts paid to Brazilian domiciled private pension plans (limited to 12 per cent of the tax-payer total income)
- Unreimbursed medical expenses incurred by the tax payer

### Foreign tax relief

Brazil has a foreign tax credit mechanism. Tax payers can receive

credit against Brazilian income tax for taxes paid on non-Brazilian sourced income. Foreign tax credits are available when Brazil has an income tax treaty with the foreign country where income tax was paid. The treaty must grant reciprocal treatment to Brazilian-sourced income and taxes to reduce or eliminate double taxation. Brazil currently has tax treaties with 29 countries.

### Brazilian Annual Income Tax Return - DIRPF

Individuals who are fiscal residents in Brazil shall submit the Annual Income Tax Return – DIRPF, in the months of March and April, related to the previous calendar year according to the rules established by the Brazilian Internal Revenue Service.

The first Income Tax of the expatriate that becomes a fiscal resident in Brazil must be submitted from March to April of the year following the acquisition of such status.

Income Tax submitted after the deadline is subject to penalties.

### Declaration of capital located abroad

All individuals and legal entities residents domiciled or established in the country that hold a total amount equal or higher than USD100,000 in another country are required to submit the Annual Declaration of Capital Located Abroad, to the Brazilian Central Bank on a quarterly basis. The period for filling such declaration is from 15 February to 5 April.

This declaration is not for tax purposes and therefore will not incur in any tax liability. However, the omission of information, the provision of false or incomplete information, submitting the declaration after the deadline or not submitting the declaration may result in fines up to BRL250,000.

### Departure from Brazil - termination of residency

The resident taxpayer leaving the country permanently shall cease the residence in Brazil by submitting the following:

- Submit the Communication of Definitive Departure – “CDD”
- Submit the Definitive Departure Tax Return – “DDTR”
- Issuance of Tax Clearance Certificate

The CDD can be submitted from the departure date until the last day of February following the year of definitive departure. The purpose of the CDD is to communicate to the Brazilian Revenue Service the date of definitive departure followed by the individual's personal information and attorney's basic information (name, address, taxpayer ID).

During the months of March and April, it shall be submitted the DSD, in order to adjust the tax due for the period the professional remained as resident in the calendar year of departure.

Note that, taxpayers leaving Brazil permanently must name an attorney to bridge eventual communications between the Internal Revenue Services and the individual and enable the solution of possible pending tax issues. It is important to mention that the IRS has five years, from the year of filling, to require proof of information reported on the tax returns.

# Labour

For all employment relationships taking place in Brazil, Brazilian statutes apply regardless of any choice of law to govern the employment contract or the nationality of the employee. Employment relationships are normally regulated by: the Federal Constitution, The Consolidation of Labour Laws (CLT) and Collective Bargaining Agreements (CBAs).

All employees must hold an employment registration book containing the terms of employment. Each year, employers must provide to the local office of the Ministry of Labour a list of all their employees specifying the number of foreign nationals and minors they employ.

## Employment protection legislation

Generally, the terms of employment cannot be altered unless there is mutual consent.

The Federal Constitution prohibits any sort of discrimination based on race, religion, gender or sexual orientation. Additionally, Law N. 9799/99 provides guidelines on how to avoid discriminating against female employees in the work environment. There is no qualifying period of continuous employment in order to bring a claim for discrimination.

All industrial enterprises must employ apprentices and register them in the National Apprentices Service. Apprentices must be between the ages 14 and 24 and undergo occupational training. Special regulations exist for the protection of minors. All minors must be given enough time off to attend educational classes.

Special regulations cover health and safety issues. Any activities considered as unhealthy or dangerous for employees involve special provisions in terms of salary, breaks and time off. No industrial company can start operating until working conditions are inspected and approved by the competent authorities.

## Working time and leave

According to the Federal Constitution, working hours are limited to 44 hours a week, eight hours per day. This rule does not apply to those that hold a position of trust such as managers and directors. Certain sectors have their own rules; for instance, employees of retail banks can only work 30 hours a week, six hours per day.

Overtime must be paid more than 50 per cent of the regular wage rate and night work performed between 10pm and 5am must be paid at least 20 per cent more than the normal hourly rate. The normal duration of work may be increased by supplementary hours, not exceeding two (these limits do not apply to managers).

Employees are entitled to 30 calendar days of paid holiday after each 12 months of work, from the hiring date. In addition, there are eight national holidays each year (see country profile for national holidays in 2015).

In case of illness or injury, employees are entitled to time off if they obtain a doctor's certificate. They are entitled to sick pay at the usual salary rate while they are ill or injured. The employer must pay the first 15 days and the rest is paid by the National Social Security Institute (INSS). Upon recovery, employees can return to their previous position.



All employers are obliged to contribute to the employee Severance Indemnity Fund (FGTS) an amount equivalent to eight per cent of the gross monthly remuneration

Women are entitled to 120 days of paid maternity leave paid by the employer. However, employers can offset this allowance from other social security contributions. For example, the employer can grant an additional 60 days of paid maternity leave and recover tax benefits granted by the federal government or offset the extra salary amounts with other amounts due to the federal government such as company's income tax. Fathers can take paid parental leave for up to five days.

Although there are no specific leave rules for family emergencies, most CBAs grant some days depending on the industry (or role level).

## Termination of employment

All employers are obliged to contribute to the employee Severance Indemnity Fund (FGTS) an amount equivalent to eight per cent of the gross monthly remuneration of each employee. These contributions are credited into bank accounts under the employee name and accrue interest at the reference rate.

The employer is not required to formally justify any dismissal. Employees can be dismissed at any time subject to notice periods and severance pay. When the employment contract is terminated

without cause, the employee is entitled to:

- 30 days' notice plus three days for every year worked or payment in lieu of notice
- The balance of their wages
- All unused vacation pay plus one third
- Proportional 13th month salary
- 40 per cent of the balance existing in the Severance Indemnity Fund
- One month salary if the employee is entitled to a mandatory salary increase under the applicable CBA in the 30 days following the dismissal
- Any other payments provided in the applicable CBA

The severance pay is the same for constructive dismissal. When there is a reasonable cause for the dismissal, the employee is only entitled to receive the balance of their wages and accrued unused vacation pay and the proportional 13th month salary.

The employee can resign at any time for any reason providing he gives 30 days' notice.

The employment can also terminate under the following circumstances:

- Liquidation of the enterprise or termination of the operations

- Retirement in accordance with the social security regulations
- Death of the employee, in which case the balance of the Severance Indemnity Fund becomes part of the employee estate

## Benefits

In Brazil all employers must make reasonable provisions for the comfort and convenience of their employees such as canteen facilities where there are more than 300 employees in the same premises. They must also supply transport vouchers to employees (employees contribute with six per cent of their monthly salary).

Even though they are not mandatory it is market practice to provide medical and dental care, meal vouchers, and to a lesser extent, private pension schemes and life insurance these can be provided at the discretion of the employer or within the CBAs. When these benefits are not granted in accordance with legal requirements, they are considered as fringe benefits and therefore comprise part of the employee's compensation package which is subject to taxes and other contributions.

## Social security

The Social Security system is regulated by law. The system provides a number of benefits

# Audit

including pensions, sickness and maternity assistance and accident insurance. There is also an official unemployment insurance programme. All persons employed and their dependants are covered by the social security system, provided contributions have been paid.

For the year 2014, employees must pay contributions to social security at the following monthly rates:

- Eight per cent of salary up to BRL1,317.07
- Nine per cent of salary from BRL1,317.08 to BRL2,195.12
- 11 per cent of salary from BRL2,195.13 to BRL4,390.24

These contributions are withheld by the employer. There is a cap of BRL482.93 which is reviewed annually.

Employers must contribute 20 per cent of the gross payroll. The contribution of financial institutions and insurance companies is 2.5 per cent higher. Additionally, employers are required to make contributions to other funds which can amount to as much as 11.8 per cent of gross payroll. Both employees and employers' contributions are deductible for Income Tax purposes.

## Minimum wage

The national minimum wage applies to all employees independently of their age, employment sector and experience. In 2014 the Federal Government established the minimum wage at BRL724.

Collective Bargaining Agreements can establish higher minimum wages for certain professional categories.

Work of equal value must be remunerated at the same rate, regardless of nationality, age, sex and marital status. Some discrepancies are allowed for employees working in the same position for at least two years more than their colleagues. Salaries must be paid until the fifth day of the month following the month worked.

In Brazil, employers are obliged to provide a bonus known as the 13th month salary. It usually amounts to one month salary.

## Personnel limitations

Foreign workers require a working visa to work in Brazil. The application is normally undertaken by the prospective employers. The visas most commonly used are temporary visas and permanent visas.

## Temporary visa

This visa is available to foreign nationals that have an employment contract with a Brazilian company. It is available for two years and it can be renewed for the same period once it expires providing the employment contract is still valid. Companies wanting to employ technicians or other professionals to render a service in Brazil can apply for a temporary visa to provide specialised services (they are normally valid for 30 days, 60 days or a year).

## Permanent visa

These visas are often granted to senior executives, they are normally granted for the duration of their appointment, but can be extended easily. To obtain the permanent visa, the Brazilian company must receive either BRL600,000, or BRL150,000 if the company commits to creating a minimum of 10 new jobs for Brazilians within two years from the arrival of the foreign national as a permanent visa holder

Other types of visas that can be obtained include: 'permanent visas for foreign nationals that go to Brazil as investors' or 'temporary visas for trainees to provide services for Brazilian companies'.

Generally, two thirds of the employees of a company must be Brazilian citizens, although there are some exceptions for skilled workers and technicians. Brazilians carrying the same duties as foreign workers must be given preference in case of redundancy.

## Trade unions

Trade unions have a crucial role in labour relations in Brazil, especially in the metallurgy, automobile, banking and transport sectors. The right to strike is recognised and regulated by law. Their membership must represent at least one third of all persons engaged in the activity or occupation concerned. Unions frequently cooperate with the government when research involving the workers they represent must be carried out.

## Accounting standards

All accountants in Brazil must be registered with the CRC, which has primary responsibility for regulating and overseeing the accounting profession in Brazil. The CFC is also responsible for issuing statements on professional ethics, bylaws and auditing standards.

Companies and individuals engaged in commercial activities must comply with legal requirements governing the maintenance of accounting records, prepared by a registered accountant.

Official records must be written in Portuguese and amounts must be specified in Brazilian currency. They are to be signed by the accountant and the Legal Acting Director of a legal entity at the end of the Fiscal year. As soon as a company is granted a Federal Tax ID number (CNPJ) this requirement starts, even if the legal entity is dormant or has not started operations in Brazil.

Independent auditors need to examine financial statements in accordance with Brazilian auditing standards which fully converge with international auditing standards (ISAs) issued by the International Federation of Accountants (IFAC).

In order to facilitate updates and reviews, Brazil follows the original numbering issued by the International Auditing and Assurance Standards Board (IAASB). Nevertheless, small

accountancy firms carrying audits in non-regulated entities do not need to follow these standards. This also applies to small and medium-sized enterprises that do not have debt or equity instruments traded on a public market.

The Accounting Practices adopted in Brazil (BR GAAP) were modified by Law 11,637 enacted in 2007. These modifications were necessary to move towards making BR GAAP equivalent to International Financial Reporting Standards (IFRS). Full convergence with IFRS was achieved at the end of 2010 for consolidated financial statements, and also for individual financial reporting, except when the evaluation of investments in controlled entities is executed by the Equity Method.

Before the publication of Law 11,637, the CVM and other regulators, including the Brazilian Federal Council of Accountants, used to publish accounting guidance. However, Accounting Pronouncements Committee (APC), established in 2007, has assumed that responsibility; it issues accounting standards that must then be endorsed by the applicable regulators.

Prior to 2010, stand-alone financial statements could be prepared in accordance with BR GAAP. However, the CVM, the Brazilian Central Bank and the Insurance Regulator (SUSEP) have partially adopted IFRS rules.

## Audit requirements

The following entities must have their financial statements audited by independent auditors registered with the Brazilian Securities Commission (CVM), the Brazilian Central Bank or other governmental agencies:

- Listed companies
- Large companies (that is, companies with total asset over BRL240 million or an annual revenue over BRL300 million)
- Financial institutions and other entities under the jurisdiction of the Central Bank
- Investment funds
- Insurance companies
- Private pension funds

It must be noted that the definition of a 'large company' not only applies to individual legal entities, but also to a group of entities under the same control, even if they are controlled abroad. Nevertheless, the analysis only makes reference to operations in Brazil.

Even if it is not required by legislation or bylaws, banks often require audited financial statements from their borrowers.

Only a CVM registered Auditor may execute and sign an Audit.

# Trade

## Foreign Direct Investment

Except for certain exceptions listed below, total foreign ownership of local companies is normally permitted. Restrictions of foreign investment apply in the following areas:

- Aerospace industry
- Activities involving nuclear energy
- Health services
- Rural and border real estate properties
- Newspapers, magazines, radio and television
- Security
- Airlines
- Financial institutions

The exploration and extraction of mineral resources, as well as the generation of electricity can only be carried out by Brazilian nationals or business entities incorporated in the country. Aside from entities operating in border zones, these companies can be controlled by foreign investors.

There are further restrictions in the total rural area owned (directly or indirectly) by foreign investors, especially in foreign areas. Conversely, there are no restrictions on foreign ownership of urban property.

## Imports and exports

Businesses established in Brazil need to obtain an import/export permit before they carry out any international trade transactions. The permit is granted by the Federal Revenue Services and it is essential to access the international trade electronic system (SISCOMEX), which is used to register import declarations and export registrations. It is important to note that some categories of products

require special import licences. For these products, the license should be obtained before the execution of any trade transaction.

Goods imported into Brazil are subject to several taxes that must be paid by the importer on registration of the import declaration:

Import Duty ( II): this is levied on the customs value of the imported goods at different rates depending on the good's classification in the Mercosur Common Nomenclature (NCM)

Federal Tax on Industrialized Goods (IPI): this is levied on the customs value of the imported goods plus the II. The IPI rate also varies in accordance with the good's classification in the NCM;

Value-Added Tax (ICMS): this is levied on the customs value of the imported goods plus the II, the IPI and the social contributions PIS/COFINS on internal revenues;

PIS-COFINS: this is levied on the customs value of the imported good plus the ICMS, normally at a combined rate of 9.25 per cent, although some goods are subject to different rates;

Freight Surcharge for Renovation of Merchant Marine (AFRMM): this is calculated at a 25 per cent rate on the cost of international ocean freight

Generally, the customs value of imported goods is determined in accordance with the Customs Valuation Agreement of the World Trade Organisation, which states that the customs value is the transaction value. If the transaction value cannot be applied, alternative methods provided by the Customs

Valuation Agreement can be used. Under Brazilian law, international insurance and international freight costs are included in the customs value of imported goods.

Exports are generally free of taxes. However, the exportation of certain products such as cigarettes and weapons is subject to export tax which is calculated on the export price of the goods. The tax rate varies from 30 per cent to 150 per cent.

## Competition

Competition is generally encouraged in Brazil; however, certain exceptions exist for industries that enforce restrictions on foreign investment. The main competition authority is CADE (Conselho Administrativo de Defesa Econômica); the agency is responsible for preventing the abuse of economic power. To determine whether a company's conduct is able to produce anti-competitive effects in the market, CADE can:

- Examine the market power effectively enjoyed by the economic agent within the relevant market
- Examine the effects produced, or which are likely to be produced, in the market
- Evaluate possible efficiencies generated by the conduct

CADE normally balances these factors to determine whether any efficiencies could offset the competitive effects produced.

In June 2012, the new Brazilian Competition Law (12,529/11) entered into force. Transactions that must be submitted to the Brazilian competition authority must wait for CADE's approval before they can be closed. The new law establishes the following penalties:

- Corporate administrative fines: these can be fixed between 0.1 per cent to 20 per cent of the revenue in the business activity segment involved
- Personal administrative fines for managers: these can be fixed between one per cent to 20 per cent of the fine applied to the company
- Personal criminal penalties: criminal penalties now range from

two to six years of imprisonment, plus a fine. The amendment of the law, according to the Brazilian criminal system, excludes the possibility of alternative penalties to fines, therefore entailing the necessary application of reclusion penalties

As far as mergers and acquisitions are concerned, agreements which are able to limit or hinder free competition in the Brazilian market,

or result in the dominance of the relevant market, may be subject to the scrutiny of CADE. Indeed, Brazilian competition law requires prior approval from CADE before the closing of the agreement when the transaction meets the thresholds and criteria established in the law.

# Finance

## Capital markets

CVM – Comissão de Valores Mobiliários is an independent federal agency connected to the Ministry of Treasury and created by Law no. 6,385/86. It was created to regulate, control, develop and supervise the securities markets in Brazil. With the changes introduced by Law no. 10,303/01, CVM's jurisdiction also includes the commodities and futures markets, the organised over-the-counter market and securities transactions clearing and settlement entities. CVM has independent administrative authority, with its own financial resources and budgetary powers.

In order to have securities traded on the stock exchange or on the over-the counter market, publicly held companies must be registered with CVM and meet the registration requirements imposed by the stock exchange or over-the-counter (OTC) institutions.

Additionally, financial assets, securities and other modalities of financial operations, according to their type must:

- Be registered, under custody or kept in a deposit account in an institution or entity authorised by the Central Bank or by CVM
- Be registered in a register, settlement or custody system certified by the Central Bank or authorised by CVM

Operations in derivatives markets or other futures markets can only be performed or registered in stock exchanges, OTC markets organised by entities authorised by CVM, or registered in register, settlement or custody systems certified by the Central Bank or authorised by CVM.

It is important to note that non-resident investors shall be registered with a local brokerage house in order to be able to trade. As local brokerage house customers, non-resident investors must fill in an enrolment form with these institutions, which will then become responsible for keeping it updated. That enrolment must contain at least the information required by the norms and rules covering the fight against money laundering crimes. It shall, in

addition, contain the names of the persons authorised to issue orders, as well as the legal representative or entity responsible for the custody of bonds and securities.

Furthermore, the National Monetary Council and the Brazilian Central Bank have regulatory authority over brokerage firms and foreign investment and foreign exchange transactions.

In Brazil there are two main settlement systems duly accredited with the Central Bank and CVM:

- CETIP SA , center for the custody and financial settlement of private issuances
- BM&F BOVESPA SA Bolsa de Valores, *Mercadorias e Futuros*

CETIP is the country's largest custodian of fixed income assets and OTC derivatives.

## Banking system

The Brazilian Central Bank is the entity responsible for controlling and monitoring lending and capital limits,

compulsory deposit levels, interest rates, accounting procedures, foreign investment and the foreign exchange market

Brazilian private banks are sophisticated and competitive offering a broad range of financial services. Due to their high capitalisation and corporate governance structure, Brazilian private banks were lightly touched by the economic crisis of 2008. Several global foreign banks have offices in Brazil.

#### Insurance industry

According to the Brazilian insurance regulator, the SUSEP (*Superintendencia de Seguros Privados*), insurance premiums grew 14.58 per cent in 2013, the industry is currently worth USD33billion<sup>4</sup>.

Until 2007, the Brazilian reinsurance market was a monopoly exclusively owned by IRB-Brasil Resseguros, a firm co-owned by the government. The reinsurance market is now open for foreign insurers, but only companies authorised by the SUSEP can operate in the country; registered foreign investors can own local companies.

The SUSEP is implementing new measures to improve market solvency and align local practices to international standards. The SUSEP has decided not to implement Solvency II as a framework; however, it will implement the rules to manage each risk category, further capital requirement rules are expected.

#### Investment management industry

The Brazilian investment management industry has grown significantly over the past 20 years; indeed, the number of funds has increased from 632 in 1993 to 14,097 in 2013 which is a 2,131 per cent increase. Nevertheless, there are still many challenges that the industry needs to address in the near future such as the lack of equality between taxes levied on different investments, investors education, the internationalisation of the industry and using funds as a channel for family saving.

It is important to mention that on December 17, 2014, CVM issued 2 new Instructions:

- CVM Instruction 554/14: among various changes, it brings a new concept of qualified investors and creates the new category of professional investors, reflecting them in other CVM instructions that mention categories of investors for specific products. It also states the cases of mandatory verification of clients' suitability and the exceptions
- CVM Instruction 555/14: after 10 years of effectiveness of CVM Instruction 409/04, CVM understands it is time to update the rules applicable to investment funds. In this sense, big part of the new Instruction refers to electronic communication and review of the amount, content and form of the publicity of information. Among various changes, it also brings flexibility

of the investment limits in certain assets, especially offshore assets; improvement of the rules applicable to performance fee; transparency related to the distribution policy; clarification on the duties and responsibilities of the administrator and the investment manager.

Both Instructions shall be effective as of July 1st, 2015, and will demand adjustments in the operational systems and legal documents of the investment funds.

The main laws and regulations applicable to investment funds are:

- Federal Law No. 6,385/76 which regulates Brazilian capital markets
- CVM Instruction 409/04 which consolidates the guidelines and rules on forming, operating and winding up retail investment funds. Such Instruction to be replaced by CVM Instruction 555/14, as previously mentioned
- Monetary Council (Conselho Monetário Nacional) (CMN) Resolution No. 3,334/05 which sets out the rules applicable to financial institutions acting as fund managers and portfolio managers
- CVM Instruction 438/06 which consolidates the accounting rules for retail investment funds
- CMN Resolution No. 3,568/08 which addresses the foreign exchange controls applicable to investment funds investing abroad

<sup>4</sup> Source: SUSEP

# Infrastructure

Roads remain the principal means of transport in Brazil. The country possesses one of the largest highways network in the world. Although there has been significant investment in the development and modernisation of the network, Brazilian roads are well known for being inadequate for the ever-increasing needs of cars. Some major roads received substantial investment for the 2014 World Cup, this trend will continue for the 2016 Olympic Games. Nevertheless, these events are not the only motivation behind the improvements; the government intends to link the industrial sector with less developed parts of the country such as the

North and Central West regions. Urban transport is one of the major problems in big urban areas. Currently the sub-developed subway services are unable to solve the problem. Therefore, it is common for big companies to provide special bus services for their employees. Despite certain improvements in the rail network, road transport still dominates both intra-city and long distance.

Brazil's air transport infrastructure is well developed. There are around 300 airports in the country, around 50 of which are major commercial ports. The government recently privatised major airports in Sao Paulo, Rio de Janeiro and Brasilia

and further investment is expected before the Olympic Games 2016.

There are approximately 50,000 kilometres of navigable waterways in Brazil, in addition to 15 seaports and harbours along the coast; however, the full potential of Brazil's waterways and coastal transport has not been fully exploited.

The country's telecommunication system is controlled by private companies; it is generally well developed and efficient. More than 45 per cent of the population has access to internet. The telecommunications infrastructures are fairly modern, particularly in Central and South Brazil.

## Country profile

<b>Capital City</b>	Brasilia
<b>Area</b>	8,515,767 sq. km
<b>Population</b>	200,361,925
<b>Language</b>	Portuguese
<b>Currency</b>	Real
<b>International dialling code</b>	+ 55
<b>National Holidays 2015</b>	1 January – New Year’s Day 14 February – Carnival 3 April – Good Friday 21 April – ‘Tiradentes’ Day 1 May – Labour day 4 June – Corpus Christi 7 September – Independence Day 12 October – Brazil’s Patron Saint Day (N.S.Aparecida) 2 November – All Souls’ Day 15 November – Proclamation Republic 25 December – Christmas Day
<b>Business and Banking hours</b>	09:00 am to 17:00 pm (Banks 10:00 to 16:00)
<b>Stock exchanges</b>	BM&FBovespa. Leading share indexes: IBOVESPA & IBrX
<b>Political structure</b>	Federal Republic
<b>Doing Business rank 2014</b>	120

## Ease of Doing Business

Topics	2015 rank	2014 rank	Change in rank
Starting a business	167	160	-7
Licenses and Permits	174	171	-3
Getting Electricity	19	19	No change
Registering property	138	137	-1
Financing	89	86	-3
Protecting Investors	35	35	No change
Paying Taxes	177	175	-2
Trading Across Borders	123	126	3
Enforcing Contracts	118	118	No change
Resolving Insolvency	55	60	5

Source: World Bank Group (Doing Business)