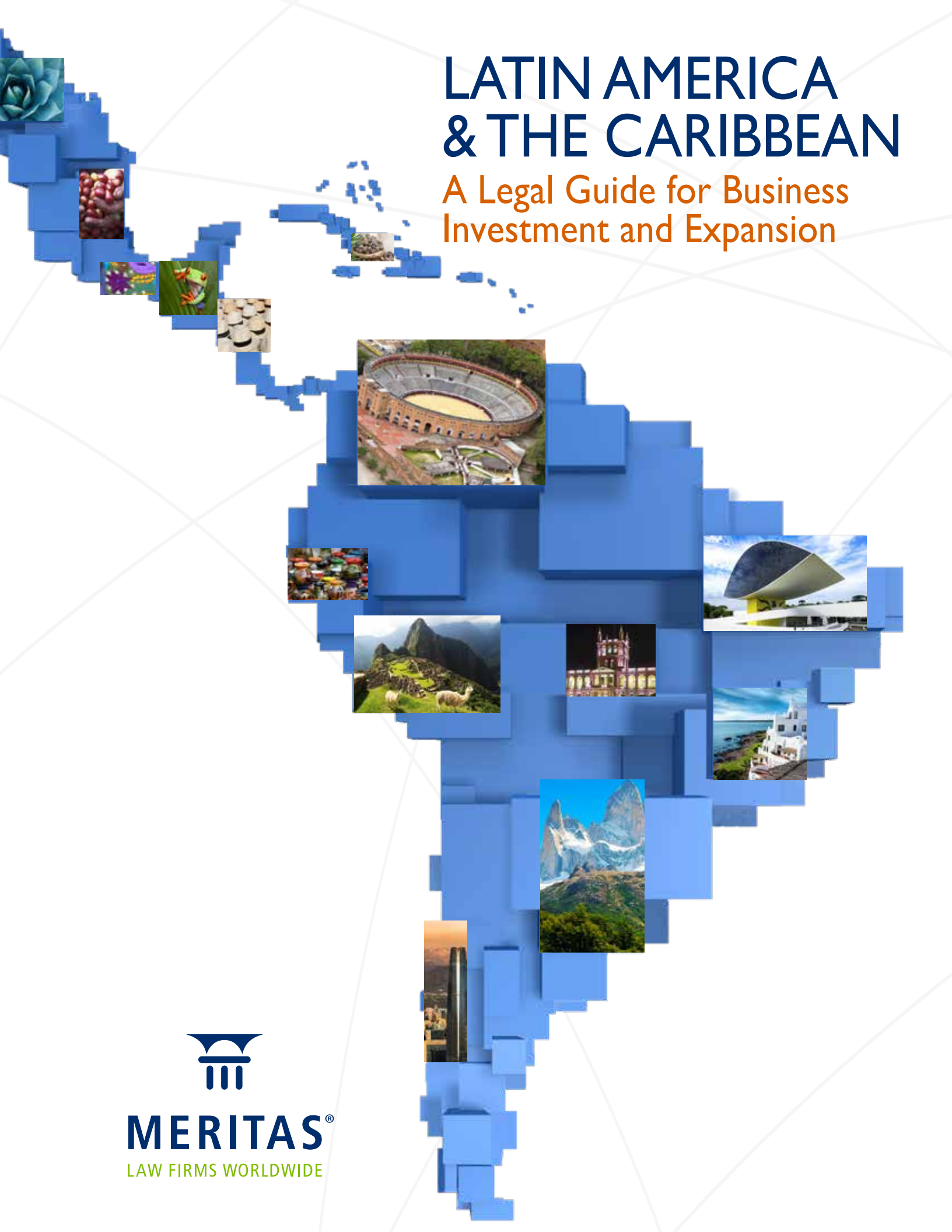


LATIN AMERICA & THE CARIBBEAN

A Legal Guide for Business
Investment and Expansion



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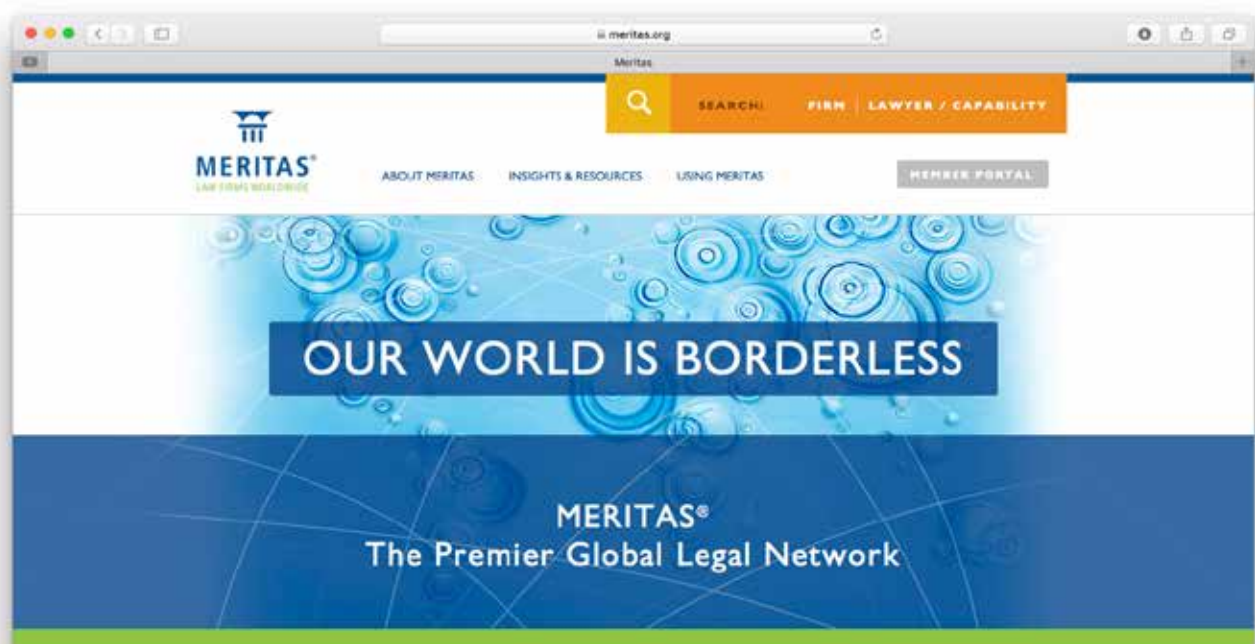
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1. What role does the government of Brazil play in approving and regulating foreign direct investment?

Brazil is a Federation composed by 27 States, 1 Federal District and more than 5,500 Municipalities. Although each public entity is entitled to enact its own legislation, such right is limited by the Brazilian Constitution. Foreign direct investment is exclusively governed by Federal legislation, which must be approved by the Brazilian Congress and ratified by the Brazilian President. Although Brazil is a bureaucratic country, recent measures were taken in order to facilitate and accelerate the inflow of foreign investments into Brazil.

2. Can foreign investors conduct business in Brazil without a local partner? If so, how does Brazil's government regulate commercial joint ventures between foreign investors and local firms?

As a general rule, foreign investors can conduct business without a local partner. In any event, foreign investors can also establish joint ventures with Brazilian partners. The choice of such Brazilian partners is in the absolute discretion of the investor. Such joint ventures do not need to be approved, as a rule, unless in the event of merger control purposes or other regulatory approvals, as far as regulated/restricted sectors are concerned.

A foreign investor may establish itself in Brazil either through a branch or a subsidiary. Branches are subject to prior approval being obtained from the Federal Executive Branch of Brazil and are most commonly used by foreign banks and airline companies. Subsidiaries, which are Brazilian companies established under Brazilian law, represent a more straightforward approach to establishing a presence in Brazil. Although various types of companies exist under Brazilian law, the two most frequently used are the Limited Liability Company (*Limitada*) and the Corporation (*Sociedade por Ações - S.A.*).

The limited liability company is the most simple, flexible and inexpensive type of company to operate. A limited liability company requires at least two shareholders, also known as “quotaholders”, whether or not Brazilian resident individuals or corporate entities. The quotaholders may set up a limited liability company by executing a “*Contrato Social*” (Articles of Association) and comply with registration requirements of the local applicable registry in which the registered office of the company is to be located (either the Commercial Registry – or *Junta Comercial* – for business companies, and the Registry for Corporate Entities – *Registro de Pessoas Jurídicas* – for non-business companies). The corporate capital of the limited liability company is divided into quotas, which represent each quotaholder’s interest in the same. The limited liability company must be managed by one or more individuals resident in Brazil (whether

quotaholder(s) or not), appointed by the quotaholders in the Articles of Association or in a separate corporate document. Decision-making in the limited liability company is generally a simple process, particularly where there are only two quotaholders. Each quota usually entitles the holder to one vote at a quotaholders’ meeting. However, quorum for resolutions in the limited liability company is in general higher than a majority vote (i.e., 50% of the voting capital plus one voting quota) and that an equity interest of 75% is really required to ensure control.

Corporations are not as flexible and inexpensive to run as a limited liability company. The corporation is incorporated by private subscription of the company’s capital by at least two individuals or corporate entities or any combination thereof, whether or not resident in Brazil. A corporation may be a listed corporation (*S.A. de capital aberto*) or a non-listed corporation (*S.A. de capital fechado*), depending on whether or not its securities, including shares, are traded on the over-the-counter market or on the stock exchange. The corporation’s corporate purposes must be specifically and fully described in its “*estatuto social*” (By-Laws). Once approved, the By-Laws must be registered and published, prior to the commencement of the company’s activities. Corporate documents of the corporation are also registered with the competent Commercial Registry. The shares of the corporation may be classified as (i) common shares; or (ii) preferred

shares with or without voting rights. The number of nonvoting or restricted voting preferred shares may not exceed 50% of the total number of issued shares. Further, preferred shareholders in a non-listed corporation are entitled to: (i) priority distribution of fixed or minimum dividends, which may be cumulative or not; (ii) priority in the reimbursement of capital upon liquidation of the company, with or without a premium; or (iii) a combination of items (i) and (ii). Corporations are composed of up to four main administrative bodies: (i) the general shareholders' meetings, (ii) the board of directors, (iii) the management board; and (iv) the inspection committee. The board of directors may be composed of shareholders or non-shareholders, while the management board and the inspection committee are composed of two or more Brazilian resident individuals. A board of directors is only mandatory for listed corporations and corporations with authorized capital. Matters submitted for resolution at a duly convened general shareholders' meeting may be approved by shareholders representing 50% of the voting capital plus one voting share. Applicable legislation contemplates a higher quorum for a few specific matters. Further, the bylaws may specify a higher quorum than that established by law.

3. What laws influence the relationship between local agents and distributors and foreign companies?

Agency and distribution relationships are governed by the Brazilian Civil Code (Law No. 10,406/02) and other specific laws, one of them being Law No. 6,729/1979, related to distributions of vehicles and Law No. 4,886/65, as amended by Law No. 8,420/92, related to commercial agents. Such laws are very protective towards agents/distributors.

4. How does the Brazilian government regulate proposed merger and acquisition activities by foreign investors and are there any areas of the economy where they are prohibited (e.g., natural resources, energy or telecommunications)?

As stated previously Brazilian Antitrust Law (Law No. 12,529/2011) contemplates the merger control by the Administrative Council for Economic Defense (CADE) – the Brazilian competition adjudicatory agency. The acts and agreements which may limit or restrain free competition, or which may lead to the creation of a monopoly in affected markets of products or services, including mergers, corporate amalgamations, equity and asset acquisitions, associative contracts, consortiums, joint ventures, etc., must be submitted for CADE's approval prior to their implementation, in case they meet one of the following thresholds: (i) at least one of the groups involved in the

transaction has registered, in the last fiscal year, annual gross sales or total turnover in the country equivalent or superior to BRL 750 million; and (ii) at least one other group involved in the transaction has registered, in the last fiscal year, gross annual sales or total turnover in the country equivalent to or greater than BRL 75,000. Failure to notify a mandatorily reportable transaction or the early implementation of a transaction prior to CADE's approval may be penalized by a fine ranging from approximately BRL 60,000 to BRL 60 million. Moreover, it is important to note that the Brazilian Antitrust Law is also applicable to acts performed and agreements entered into outside of Brazil in case their effects may somehow impact the Brazilian market and meet the jurisdictional thresholds.

There are certain areas of the economy that are reserved/partially restricted for Brazilian nationals, such as: (i) Media Companies: 70% of their equity must be held by Brazilians (individuals or companies); (ii) Healthcare activities can only be carried on by Brazilian individuals or companies; (iii) Coastal Shipping: at least 51% of the company's equity must be held by Brazilians; (iv) Domestic Aviation Companies: 80% of the voting capital must be held by Brazilians (there is a discussion in the Congress with the aim of reducing such percentage); (v) Private Surveillance Services: 100% of the corporate capital must be held by Brazilians; and (vi) Acquisition of Rural Lands, which is strictly regulated.

5. How do labor statutes regulate the treatment of local employees and expatriate workers?

All employees are treated the same. Expatriate workers require a work permit to work in Brazil.

In general terms, the Brazilian Consolidated Labor Code (CLT) establishes judicial procedures for labor claims, rules regarding relationships between employees and employers, and regulations for the organization of unions and collective bargaining procedures. Brazilian employee/employer relations are also governed by the federal constitution, employment contracts, labor and social security statutes other than the CLT, collective bargaining agreements and companies' internal rules of conduct (regulamento interno). Collective bargaining agreements are entered into between employees' and employers' unions, or directly with employers (acordos coletivos). These agreements may set forth rights that could ultimately benefit employees more or less than the existing statutory rights.

In addition to what may be established in any written employment agreement, under Brazilian labor law, an employee is entitled to the following enumerated rights (annual mandatory salary increase, annual Christmas bonus, annual 30-day paid vacation, accrued severance fund (FGTS) paid into by

the employer, transportation voucher for the total cost of the employee's transportation, 15 days of sick leave paid for by the employer, etc).

Furthermore, all employees and employers in Brazil are considered to be represented by unions. Any rules agreed to under collective bargaining agreements, including the value of the labor union contribution, will bind all employers and employees, whether such employers and employees are associated with their respective unions or not. Some labor unions are more flexible in negotiations, while other unions are much more rigid. It is important to note that, although some conditions (like work shifts and overtime additional pay) may be negotiated and governed by collective bargaining agreements, the suppression of benefits which are established by law (i.e., Christmas bonus, FGTS or additional pay for unhealthy/hazardous working conditions) shall not be waived, even through collective bargaining agreements, regardless of the employee's seniority. Thus, any private agreement or negotiation in this regard is considered null and void.

Termination of the employment relationship without just cause should be preceded by written notice of at least 30 days (the employee is entitled to 3 additional days per worked year, with a maximum of 60 days, with a total of 90 days). Failure by the employer to give such notice obligates the employer to pay the employee the

amount of remuneration that the employee normally receives in such period. The main severance payments due in case an employer terminates the employment relationship without just cause are: (i) balance of salary; (ii) vacation accrued, paid pro rata based on the employee's right to one month of paid vacation for each year of employment; (iii) vacation bonus accrued, paid pro rata based on the employee's right to one-third of one month's compensation once every year; (iv) Christmas bonus accrued paid pro rata based on the employee's right to an additional 1/12 of monthly compensation for every month of employment (or a corresponding fraction thereof, for periods less than a month, but at least 15 days). This compensation shall be calculated from the previous 1 January to the day of termination; (v) indemnification for 50% of the amount in the employee's FGTS bank account on the day of termination (40% is due to the employee and the remaining 10% is due to federal government). Other payments may be due, if particular situations occur or if certain provisions are included in the employment agreements. Regardless of the form of dismissal, the employee is entitled to receive his/her severance payments by the 10th day following the dismissal (in the event of dismissals with an indemnified 30-day prior notice) or by the first working day after the prior dismissal notice.

6. How do local banks and government regulators deal with the treatment and conversion of local currency, repatriation of funds overseas, letters of credit, and other basic financial transactions?

The unit of currency is the Brazilian real (R\$). The Brazilian Central Bank (BACEN) is charged with registering, following up, and monitoring foreign investments. BACEN has a modern system of registration of foreign investments, the Declaratory Electronic Registration of Direct Investments, which provides that direct foreign investment shall be registered electronically on the online information system of BACEN (SISBACEN). Also, foreign loan transactions and some specific transactions, such as the issuance of securities abroad and loans relating to export transactions, can generally be registered through the Electronic Declaration Register of Financial Operations Registration Module – RDE-ROF, also with no need of prior authorization from BACEN. Foreign investors have the same rights as national investors. Capital investment, repatriation and profit remittance related to foreign investments duly registered with BACEN may be effected without prior authorization of BACEN.

7. What types of taxes, duties, and levies should a foreign investor in Brazil expect to encounter?

The Brazilian tax system is quite complex. There are federal, state and municipal taxes, whose nature and burden may vary throughout the Brazilian territory. In turn, the Brazilian tax system has certain unique features that can very appealing to foreign investors, such as the fact that there is no double level of taxation in Brazil. Because of that, dividends paid out by Brazilian companies to their shareholders (Brazilian residents or not) are tax-free. On top of that, Brazil has entered into 32 tax treaties for the avoidance of double taxation on income, in addition to tax treaties of other natures (e.g., social security, airline business, etc.)

Although Brazil has more than 50 different taxes, please find below a summary of the most representative ones.

FEDERAL INDIVIDUAL INCOME TAX (IRPF)

Individuals resident in Brazil are subject to IRPF on their worldwide income at a maximum rate of 27.5%. Other rates might apply for the income deriving from financial investments and on capital gains. Any income tax paid abroad may be offset as a foreign tax credit against the IRPF that is due on a monthly or annual basis, limited to the amount of IRPF

due in Brazil over the same income or earnings obtained abroad. No carry-forward to subsequent years is permitted for such foreign tax credit.

An expatriate working in Brazil is considered a local resident:

- On the date of arrival in Brazil, if the expatriate holds a permanent visa;
- On the date of arrival in Brazil, if the expatriate holds a temporary visa and has entered into a labor agreement with a Brazilian company;
- After 183 days of presence in Brazil within a period of 12 months.

CORPORATE INCOME TAX (IRPJ) AND SOCIAL CONTRIBUTION ON NET PROFITS (CSLL)

IRPJ is a federal tax charged at the rate of 25% over taxable income. CSLL is also a federal tax levied at the rate of 9% on taxable income.

Companies may elect to calculate their taxable income under either the actual profit method (known as ‘lucro real’) or the presumed profit method (known as ‘lucro presumido’) every fiscal year. Under the actual profits method, companies determine taxable income by effectively subtracting all permitted deductions from gross income. Under the presumed profits method, companies calculate taxable income by applying a percentage set forth by law on operational income and adding its product to nonoperational income. The law establishes such percentage, which varies depending on the activity conducted by the company.

Certain companies are not permitted to adopt the presumed profit method, such as companies with gross income exceeding BRL78 million, that have foreign subsidiaries, banks, etc. In the actual profit method, tax losses locally incurred may be indefinitely carried forward, but they are only able to offset taxable income up to 30% in a given fiscal year.

Dividends paid out or credited by companies are no longer subject to income tax, whether paid out to individuals or to companies resident in Brazil or abroad.

International transactions between related companies (including companies located in tax havens) are subject to transfer pricing rules in Brazil, for both imports and exports. Finally, thin-capitalization rules establish two different limits, based on the debt-to-equity ratio, for the deduction of interest paid to related parties or to residents in tax havens or in regions with privileged tax regime.

TAXES ON GROSS INCOME - PIS AND COFINS

PIS and COFINS are federal social contributions levied on a company's gross income. Some revenues, such as dividends, are not currently subject to PIS and COFINS. Such taxes are imposed under two systems: cumulative (cumulativo) and noncumulative (não-cumulativo). The law lists which companies are subject to each regime. In general, companies that determine their taxable income under the actual

profit method are subject to the noncumulative PIS and COFINS while those that elect the presumed profit method are under the cumulative system.

Under the cumulative system, PIS and COFINS are levied at the rates of 0.65% and 3% respectively. In turn, under the noncumulative system, the PIS and COFINS burden corresponds to the product of 9.25% and its gross income, less the PIS and COFINS credits granted to it. In order to calculate the PIS and COFINS credits, the 9.25% should be applied over certain costs and expenses that companies have with local corporate entities.

PIS and COFINS are also levied on imports of goods and services at a general rate of 9.25%. Different rates are applied on the importation of specific goods set forth by the Law.

WITHHOLDING TAX (WHT)

Withholding taxes are imposed on payments made from residents in Brazil to other residents and from residents to nonresidents. Payment of certain service fees from a resident in Brazil to another resident triggers certain withholding taxes at the combined rate of 6.15%. Payments made from Brazil to no residents may also be subject to WTH, whose rate usually varies from 15% to 25% depending on the nature of the transaction and on the residency of the beneficiary of such amounts.

SPECIAL CONTRIBUTION ON ROYALTIES AND ON TECHNICAL SERVICES FEES (CIDE/ROYALTIES)

CIDE is a local contribution on royalties and on technical service fees remitted to nonresidents. It is levied at the rate of 10%. It is due by Brazilian companies that pay royalties and technical service fees to nonresidents. It is important to point out that CIDE is a deductible expense in the calculation of IRPJ and CSLL for those companies adopting the actual profit method. Royalties paid in consideration for the licensing of software are exempted from CIDE.

FEDERAL EXCISE TAX ON MANUFACTURED PRODUCTS (IPI)

IPI is a value-added tax imposed on each phase of the manufacturing process. Its rates vary depending on the importance of the manufactured good. The fiscal classification of a good allows one to identify the applicable IPI rate. The IPI basis is the price of the manufactured good.

IPI is also imposed on imports of goods. The rate varies according to the product's fiscal classification.

TAX ON FINANCIAL TRANSACTIONS (IOF)

IOF is levied on foreign currency exchange, financing agreements, insurance and on transactions involving securities at different rates. The rates may vary from zero to 25%, depending on the nature of the transaction.

SOCIAL SECURITY CONTRIBUTION (INSS)

The social security contributions are levied on payroll and on salaries, to be paid, respectively, by companies and beneficiaries. There are also social contributions due to other agencies (SESC, SENAE, etc.).

For beneficiaries, the calculation basis is the gross salary and the applicable rate varies from 8% to 11%, depending on the amount received. For companies, the social contribution is imposed on total payroll, and the rate may reach approximately 28%, depending on the company's activities.

STATE VAT (ICMS)

ICMS is the main state tax and is imposed on transactions that imply legal transfer of goods, and on interstate and inter-municipal transport services as well as on communications services. ICMS is also levied on imports.

ICMS is a value-added tax which allows the taxpayer to book tax credits from the ICMS paid on the purchase of raw materials, intermediate products, packaging materials, and goods to be resold.

ICMS rates vary depending on the state, and the nature of the goods or services. In general, in the state of São Paulo, the rate is 18%. Interstate transactions are subject to reduced ICMS rates (4%, 7% or 12%, depending on the origin and the state of destiny).

SERVICES TAX (ISS)

ISS is levied on the rendering of certain services listed in a national law. The taxable event of ISS is the performance of a listed service by an individual or a company. ISS basis is the price of the service.

In accordance with national legislation, the minimum ISS tax rate is 2% and the maximum is 5%, which varies depending on the municipality and on the service rendered. The most common rate in the largest Brazilian cities is 5%.

8. How comprehensive are the intellectual property laws of Brazil, and do the local courts and tribunals enforce these laws regardless of the nationality of the parties?

Brazil is a signatory of the main international intellectual property treaties (such as the Paris, Berne and Rome Conventions, and TRIPS). Intellectual property rights are regulated by federal laws in Brazil (the Industrial Property Law n° 9.279, enacted in 1996, which also regulates unfair competition; Federal Law n° 9.610, enacted in 1998 – Copyright Law; and Federal Law n° 9.609, enacted in 1998 – Software Law). Intellectual Property comprises copyrights (related to literary, scientific and artistic works), software protection and also industrial property, which contains trademarks, patents, designs,

trade secrets and other intangible assets. The Brazilian Patent and Trademark Office (Instituto Nacional da Propriedade Industrial - INPI) is the governmental agency in charge of protecting industrial property rights, as well as registering licensing and technology transfer agreements. Local courts and tribunals enforce such laws regardless of the nationality of the parties.

9. If a commercial dispute arises, will local courts or will international arbitration offer a more beneficial forum for dispute resolution to foreign investors?

Both forums are available to a foreign investor. There is no universal answer to this question. The nature of the matter under dispute will help to determine which forum is best for a particular foreign investor. In any event, please note that Brazil has an Arbitration Act (Law No. 9.307/1996) establishing a modern legal framework based on the arbitration laws of developed countries as well as on the UNCITRAL Model Law on International Commercial Arbitration. This Act grants foreign investors additional security when entering into contracts with Brazilian domiciled parties containing clauses that submit any arising conflicts to arbitration. Brazil has also ratified the 1958 New York Convention on the recognition

and enforcement of foreign arbitration awards. With the ratification of this convention, Brazil clearly joins the group of countries that have included arbitration in their legal systems, and have acknowledged arbitration as an effective means of dispute resolution. All legal instruments for the development and application of arbitration have been enacted in Brazil. The agreements to arbitrate contained in domestic and international instruments are recognized under Brazilian law and the awards rendered by arbitration tribunals may be enforced in Brazil, provided that they were adjudicated in Brazil or were submitted for ratification to the Brazilian Superior Court of Justice for awards rendered abroad.

10. What advice can you provide for how best to negotiate or conduct business in Brazil?

Brazil is not only one of the biggest economies in the world, but also it is one the largest countries (territorially speaking). Such characteristics are clearly reflected in the Brazilian legal system, which derives from a civil law tradition.

Although the Brazilian corporate and commercial legislation were heavily influenced by the international practice, the Brazilian tax and labor systems have unique features which should be considered by foreign

investors willing to carry on business in Brazil. Brazil is a very employee-friendly country, are labor courts tend to be extremely protective. The tax system is quite complex, and having a comprehensive tax planning is usually mandatory for having a successful business in Brazil.

Another important item to be considered when deciding to invest in Brazil is the location of such investment. While the South and Southeast regions are quite developed and economically self-sustainable, other regions are less well developed. Because of that, transport and logistic costs should always be taken into account when deciding where to invest.

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