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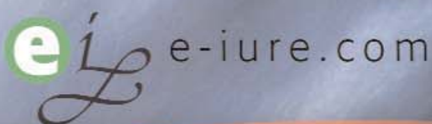

Brazil

THEODORO CARVALHO DE FREITAS ADVOGADOS ASSOCIADOS

L.O. Baptista Advogados

Brazil

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Areas of Practice

Corporate, M&A, Foreign Investment, Litigation, Environment, Tax, International & Local Contracts and Arbitration, Real Estate, Anti Trust, Dumping, Administrative Law, Privatization & Regulatory Agencies, Distribution, Agency & Franchising, Offset & Project Finance Operations, General Practice.

Contact Persons

Theodoro Carvalho de Freitas (Senior Partner and founder)
Sueli de Freitas Veríssimo Vieira (Partner)

General Information

The Law Firm was founded in August, 1975 and consists of 2 partners. The firm is pleased to communicate its association, as of September 4, 2006, with the law firm L.O. Baptista Advogados Associados (www.baptista.com.br), aggregating the tradition, experience and high quality legal services provided by these two firms, since 1975 and 1938, respectively. With this, the law firm will continue to fully serve its clients, always in a personalized manner, in all fields of Law.

Total number of lawyers: 50.

Theodoro Carvalho de Freitas became a member of the law firm L.O. Baptista Advogados Associados in the capacity of counsel and Sueli de Freitas Veríssimo Vieira, as partner.

The firm prides itself in offering a very quick, dedicated and high quality service. The firm is a member of IBA and UIA, . The firm has published many articles and papers and presented at Seminars both in Brazil and abroad.

References

Available upon request.

Brazil

1. Companies

Brazilian law determines the various types of companies. Among the most usual are the corporation ("Sociedade Anônima S/A") and the limited business company (LTDA). Both are subject to registration at the Commercial Board (“Junta Comercial”).

2. Corporations (S/A)

Regulation

Are governed by their corporate by laws and by Law 6404/76.

Types

May be publicly held (quoted companies) or privately held. They are publicly held when the shares they issue are tradable on the stock market. They are subject to the supervision of the Brazilian Securities Commission (CVM), which corresponds to the U.S. Security Exchange Commission (SEC). They are privately held when the respective shares are not tradable on the stock market.

Share Capital

There is no minimum limit. Exceptions: financial institutions and trading companies, for example. Share payment may be made in currency or in assets susceptible to valuation in cash. Time limit for payment: 10% at least at the time of incorporation and the balance in up to 5 years. The capital is divided into registered shares, with or without par value. Types of shares: ordinary, preferred or participating shares. The number of non voting preferred shares may not exceed 50% of the company's total shares. The advantages of the preferred shares of privately held companies are: (i) priority in the distribution of fixed or minimum dividends; (ii) priority in stock redemption, with or without a premium; (iii) accumulation of the advantages of items (i) and (ii). Shareholders: Minimum number: 2. They are entitled to the mandatory dividend. Liability of Shareholders: As a general rule, their liability is limited to the price of subscribed or purchased shares. The corporation has a distinct existence from that of its shareholders. Hence it has capital autonomy in relation to the partners. It is the assets of the corporation that constitute the guarantee of creditors for debts incurred on its behalf. However, this rule is not absolute: for the protection of third parties, Brazilian legislation sets forth some cases wherein the partners are exceptionally accountable for the debts of the corporation. Examples: liability of the controlling shareholder for abuse of power in certain situations, the liability of partners for la-

bor, tax and social security debts, liability for damages caused to consumers, liability for violations of the economic order (Antitrust Law), all arising from the application of the 'piercing the corporate veil' theory. These are exceptions established by law that cannot be quashed by a contractual provision. Transfer and assignment of shares: is free and does not depend on a by law change, operating by a term entered into the "Transfer of Registered Shares" book, dated and signed by the transferor and transferee, or their lawful representatives. However, the corporate by-laws of closely held companies may impose limitations on the transfer of shares, as long as they regulate such limitations in detail and do not impede their trading.

General Shareholders Meeting

Is the supreme body of the company. Convening quorum: in the first call, with the presence of shareholders representing a minimum of 1/4 of the voting share capital; in the second call, it will be called together with any number. Voting quorum: more than half of the votes present, save some exceptions. Types: annual (AGO) and special (AGE). AGO: powers to: (i) receive the administrator accounts and approve the financial statements; (ii) decide on the appropriation of net profits for the year and the distribution of dividends; (iii) elect the administrators and members of the Audit Committee, if applicable. Frequency: annually, in the first 4 months subsequent to the end of the fiscal year. AGE: powers to: (i) reform the corporate by laws; (ii) authorize the issue of debentures; (iii) suspend the exercise of shareholders rights; (iv) approve the valuation of assets contributed by shareholders for the formation of the share capital; (v) authorize the issue of participation certificates; (vi) decide on the transformation, merger and spin off of the company, or its absorption into another; (vii) approve its dissolution and liquidation, elect and depose liquidators and decide on their accounts; (viii) authorize the administrators to declare bankruptcy and request for judicial reorganization. For the voting of the following matters a qualified quorum is necessary (approval of shareholders representing at least half the voting shares, if a larger quorum is not required by the corporate by laws): a) creation of preferred shares or increase of existing classes of preferred shares, without maintaining a proportion with the other classes of preferred shares; b) alteration in the preferences, advantages and conditions of the redemption or amortization of one or more classes of preferred shares, or creation of a more privileged class; c) reduction of the mandatory dividend; d) merger by or of the company; e) participation in groups of companies; f) alteration of the corporate purpose; g) creation of the state of liquidation of the company; h) creation of participation certificates and (i) dissolution of the company. Frequency: whenever necessary. Reform of corporate by laws for: (i) a capital increase: requiring the prior opinion of the Audit Committee, if in operation. Types of increase: a) by capitalization of profits or reserves: implies the alteration of the par value of the shares or distribution to the shareholders of the new shares corresponding to the increase; b) by the public or private issue of shares: a condition for this type of increase is that at least 3/4 of the share capital has been paid up. The share-

holders have the pre emptive right for the subscription of the increase, in proportion to the number of shares held thereby; (ii) capital reduction: requiring the prior opinion of the Audit Committee, if in operation. Situations: a) loss up to the sum of accumulated losses; b) if excessive. Opposition of creditors: the reduction only becomes effective 60 days after the publication of the AGE.

Administration

Is the responsibility of the Board of Directors and Board of Executive Officers, or just of the Board of Executive Officers, as set forth in the corporate by laws. A Board of Directors is obligatory in publicly held and authorized capital corporations. Board of Directors: is responsible for fixing the generation of business and orientation of the company. It is composed of individuals, shareholders, residing in the country or otherwise (non residents shall necessarily have an attorney in fact in Brazil). Minimum number of members: 3. It is elected by the General Shareholders Meeting. Term of appointment: not more than 3 years, re election being permitted. Board of Executive Officers: is the executive body of the company and represents it before third parties. It is composed of individuals, shareholders or otherwise, residing in the country. Members of the Board of Directors, up to a maximum of 1/3, may be elected for executive officer positions. Minimum number of members: 2. They are elected and can be removed at any time by the Board of Directors (when there is one) or by the General Shareholders Meeting (when there is no Board of Directors). Appointment term: not more than 3 years, re election being permitted. The corporate by laws may establish that certain decisions that are the prerogative of the officers shall be taken in Board of Executive Officers meetings. In the event that the by laws are silent and in the absence of a decision of the Board of Directors, the representation and performance of the necessary acts for its regular operation will be the responsibility of any officer. It is lawful for officers to constitute attorneys in fact of the company, with specific powers and a specified duration period of the power of attorney (except the judicial power of attorney for which the duration period may be indeterminate).

Rules Common To Administrators (Directors And Officers). Installment Term

The directors and officers will take up their new posts by signing the installment term in the appropriate books. Remuneration: fixed by the General Shareholders Meeting, including benefits of any nature and representation fees, taking into account their responsibilities, the time devoted to their duties, their professional competence and reputation and the value of their services in the market. There is no minimum or maximum limit. Obligations: the administrator shall employ, in the discharge of his duties, the care and diligence that any active and honest man normally employs in the administration of his own business together with an obligation of loyalty. Acts prohibited to the administrator: (i) perform acts of liberality at the cost of the company; (ii) borrow resources or property of the company, without authorization, or use, to his

own advantage, or to the advantage of a company in which he is a stakeholder, or of third parties, its assets, services or credit; (iii) receive from third parties, without the company's authorization, any kind of direct or indirect personal gain, by reason of the position held in the company. Liability: the administrator is not personally liable for the obligations that he incurs on behalf of the company and by virtue of a regular management act. However, he is civilly liable for the losses he causes, when he acts: I within his duties, with a negligent or fraudulent intent; II in violation of law or of the by laws.

Audit Committee

The corporation has an Audit Committee which may be convened, in case its operation is not permanent, in any general shareholders meeting. Its duties include: (i) to supervise the acts of the administrators and verify the fulfillment of their legal and by law obligations; (ii) to opine on the annual management report; (iii) to comment on the proposals of the administrative bodies to be submitted to the General Shareholders Meeting concerning, among other things, the modification of the share capital, distribution of dividends, transformation, absorption, merger and spin off; (iv) to report to the administrative bodies or the General Shareholders Meeting the errors, frauds or crimes that it discovers and suggest courses of action that are useful to the company; (v) to analyze, al least quarterly, the trial balance and other financial statements drawn up periodically by the company; (vi) to examine and consider the financial statements for the fiscal year. Composition: Minimum of 3 and maximum of 5 members and alternates in an equal number, shareholders or otherwise, elected at the General Shareholders Meeting.

Financial Statements

At the end of the fiscal year, the Board of Executive Officers will have the following financial statements drawn up: I balance sheet; II profit and loss statement; III income statement, and IV the statement of changes in financial position. The financial statements shall be available to the shareholders at least one month prior to the date scheduled for the AGO. They must be published in the Official Gazette and in a newspaper of general circulation during at least 5 days before the date scheduled for the AGO. They shall be the subject of the opinion of the Audit Committee, if in operation. They shall be submitted to the decision of the General Shareholders Meeting and subsequently filed in the Commercial Registry, along with the AGO minutes which approved them.

Publicly Held Companies (Quoted Companies)

Are subject to specific rules in addition to the general rules applied to the private held companies. They are supervised by the Brazilian Securities Commission (CVM). The public distribution of securities cannot occur without prior registration at CVM. The sale of the control of a publicly held company is subject to the approval of CVM. Moreover, such companies shall

have independent auditors and comply with a series of disclosures determined in the rules issued by CVM. Corporate Governance: Law 6404/76, which regulates corporations, was recently amended with the aim of increasing transparency and extending the rights of minority shareholders. Therefore, at least theoretically, there is the inclusion of rules that may be classified as corporate governance, including the following: (i) reduction in the capital of the company of the number of preferred shares without voting rights or subject to restriction in the exercise of such right; (ii) increase of advantages of the preferred shares of publicly held companies (iii) tag along: in the event of the sale of the direct or indirect control of a publicly held company, the acquirer will be obliged to conduct a public offering for the acquisition of the voting shares held by the other shareholders, at the amount equivalent to 80% of that paid per voting share of the control block; (iv) increase in the period of time preceding the publication of the General Shareholders Meeting to 15 days in the 1st call and 8 days in the 2nd call (the time for privately held companies is 8 and 5 days, respectively); (v) right to elect and remove a member and an alternate in the Board of Directors to shareholders with at least 15% of the total voting shares and to holders of preferred shares without the right to vote or with the restriction of the right to vote that represents a minimum of 10% of the share capital; (vi) inclusion of the spin off among the cases that entail the right of withdrawal, (if the spin off implies the reduction of the mandatory dividend, participation in groups of companies or changes in the corporate purpose); (vii) obligation of the controller of a publicly held company, of the shareholders and group of shareholders that elect a member of the Audit Committee to immediately appraise CVM, the Stock Exchange and organized over the counter entities of modifications to their shareholder status in the company; (viii) in the event of the company becoming a private company, the controlling shareholder or the company itself must make a public offering for the acquisition of all the shares at a fair price; (ix) increased independence of the Audit Committee, permitting any member to supervise the acts of the administrators, verify compliance with the legal and by law obligations, and denounce any errors, frauds or crimes, suggesting courses of action that are useful for the company to the administrative bodies, and in case of failure to carry out the necessary measures, by such bodies, to the Shareholders´Meeting,. New rules for publicly held companies were introduced by the recent Law 11,638/07, requiring them to draw up consolidated annual financial statements on the basis of international standards (IFRS – International Financial Reporting Standards).

Shareholders Agreements

Shareholders agreements may deal with such matters as the purchase and sale of shares, the pre emptive rights and exercise of voting rights; whereas it is certain that such agreements will only be observed by the company, when filed in its registered office.

Cost

A S/A involves more formalities than a LTDA. for its organization and operation, notably by virtue of the mandatory publication of certain corporate acts and documents: consequently, its cost is higher than that of a LTDA. As an example of this cost, a S/A will currently spend approximately R$ 21 thousand (US$ 12 thousand) annually, at least, on publications alone.

3. Limited Companies (Ltdas)

Are governed by their articles of association and by Law 10406/02 (Brazilian Civil Code). Articles of Association admit a series of provisions established between the partners and may be very flexible.

PARTNERS: minimum of 2.

Share (Quota) Capital

Constituted in local currency or assets susceptible to valuation. There is no necessity for the initial payment of any minimum amount of the portion of the capital subscribed in cash. The capital is divided into units of interest (shares), distributed as a percentage among the partners and not physically represented by certificates. Capital increase: only permitted after all the shares have been paid up. The pre emptive rights of the partners to participate in the increase must be observed, in proportion to their holdings. Capital reduction: The capital may be reduced by a corresponding change in the articles of association: (i) following payment, if there are irreparable losses; (ii) if excessive in relation to the company purpose. Transfer and assignment of shares: the transfer to third parties of shares or of the pre emptive right to participate in capital increases requires the approval of partners representing at least 1/4 of the share capital (except if the articles of association determine otherwise). There is the need to change the articles of association.

Liability Of The Partners

If the share capital has been totally paid up, there is no personal liability of the partners for the obligations of the company in respect of third parties, except in the case of the violation of law and/or of the articles of association. The same provisions contained in the item "Liability of Shareholders", chapter SHARE CAPITAL in S/As, above, apply to LTDAs, in so far as the liability of partners is concerned. If the capital has not been paid up, each partner will be personally liable and on a several basis for the corporate obligations, but in a manner limited to the total sum missing for the payment of the share capital. Moreover, the partners are jointly and severally liable for debts with the social security authorities, as well as for labor credits, as a result of the application, in these specific cases, of the ‘disregarding the corporate entity’ theory.

Administration

One or more administrators, individuals, Brazilians or otherwise, residing in Brazil, partners or otherwise. It is possible for have a non partner administrator, as long as this is provided for in the articles of association, The designation thereof requires the unanimous approval of the partners (when the capital is not totally paid up) or of partners representing 2/3 of the share capital (when the capital has been paid up). Removal of a partner administrator: requires approval by partners representing at least 2/3 of the share capital. Board of directors and audit committee: may be provided for in the articles of association. Remuneration: there is no minimum amount or maximum limit. Minimum profit: the fixing of dividends or minimum profits to be distributed to the partners is not obligatory. The participation of partners in the company profits, in a different proportion to the partners' interest in the share capital is permitted. However, a rule that excludes a partner from participating in the company profits is not allowed. The responsibility of the administrator of a LTDA before third parties, in principle follows the previously made comments applicable to the administrator of a S/A. However, in practice the administrators of LTDAs are being held to answer in the labor and social security field, jointly with the company, regardless of the cause of the event.

Resolutions

The law provides for minimum quorums for the approval of certain matters, such as: (i) the change of the articles of association, absorption, merger, spin off or dissolution of the company (3/4 of the share capital); (ii) designation of an administrator by a separate instrument to the articles of association, removal of non partner administrators, fixing of the remuneration of administrators and petition for judicial reorganization (more than half the share capital); (iii) other cases set forth by law or in the articles of association, if the latter does not require a larger quorum (majority of the votes present). The decisions of the partners shall be taken in a partners meeting (for LTDAs with up to 10 partners) or in a general partners' meeting (for LTDAs with more than 10 partners). If omitted from the articles of association, the legal rules that discipline the general shareholders meetings of S/As will apply to the meetings. The annual holding of a partners meeting or general partners meeting, in the first 4 months subsequent to the end of the fiscal year for the approval of the administrator accounts and appropriation of the year's profits is obligatory.

Exclusion Of Partners

The law provides for the possibility of the non judicial exclusion of a partner who jeopardizes the continuity of the company, by virtue of acts of undeniable gravity, as resolved by the partners representing more than half of the share capital, as long as the articles of association provide for exclusion for good cause and the legal procedures are observed.

Partners Agreement

This is possible in LTDAs in a similar way to the S/A.

Cost

In accordance with the new Civil Code, the organization and operation of LTDAs are less flexible and more burdensome than before, requiring publications in certain cases. However the cost of LTDAs continues to be lower than that of S/As.

Choice

With the provisions brought by the new Civil Code, many of the advantages that previously existed for LTDAs have disappeared, notably their structuring flexibility. This should lead to greater reflection in regards to the choice of company type: LTDA or S/A. The choice will depend on each specific case, but by and large, one may say that LTDAs work very well for the operation of subsidiaries whose total quota capital is held by foreign companies, whereas possible joint ventures in Brazil should elect for the adoption of a S/A, owing, among other things, to the legal security conferred by the already officially accepted interpretation of the rules that govern this type of company.

4. Branch Offices Of Foreign Companies

A foreign company may directly operate in Brazil through a branch office, i.e, through an extension of the foreign corporate entity itself. However, this procedure presents some disadvantages in comparison to the establishment of a business concern in Brazil through ownership interests, for the following reasons:

- the need of prior authorization, through an act of the Federal Executive Branch;
- prohibition of the remittance of royalties to the head office abroad for the use of tradmarks and exploitation of patents, and
- tax disadvantages.

Corporate Reorganization Operations And Sale Of Establishments

Corporate reorganization operations involving the transformation, spin-off, merger and absorption of companies may be conducted both by S/As and by LTDAs.

In a transformation, the company is transformed from one type of company to another, without the dissolution or interruption of its activities.

In a spin-off, the company transfers portions of or even its total equity (assets and liabilities)

to one or more companies, with the continuation of the spun-off company, if its equity has been partially transferred, or with its extinction, if all its equity has been transferred. The law stipulates specific succession rules for the spun off or extinguished company.

In a merger, two or more companies are combined to form a new company, which succeeds them to all their original rights and obligations.

In an absorption, one or more companies will be absorbed by another company, which succeeds them to all their rights and obligations.

S/As and LTDAs may further sell their industrial or commercial establishments, in which case the acquirer will succeed to all their respective rights and obligations.

5. Acquisition Of Companies

The total or partial acquisition of a Brazilian company by foreign capital may occur especially through:

- the acquisition of shares or quotas corresponding to the capital;
- the subscription of a capital increase in the company involved;
- the acquisition or subrogation of an establishment;
- other means involving those listed above, but within a tax planning or corporate reorganization.

There is also the leasing of an establishment figure. Though this figure does not constitute the acquisition of an establishment or activity, it presents implications of a legal order, as indicated further on.

An acquisition may be conducted directly by a company domiciled abroad or by its duly established subsidiary in Brazil, in most cases involving the payment of a premium. For the purpose of the tax benefit of the premium paid by the acquirer, which may be amortized and allocated as deductible expense, with due regard to the rules established in the tax legislation, it is as a rule more advantageous than an acquisition made by a Brazilian subsidiary or by a company incorporated by the latter, for the specific purpose of acquisition.

Whatever the acquisition method, special care should be taken by the foreign investor, with respect to the following:

a. choice of a prospective local partner (in the case of a joint venture), based on an in-depth analysis of its financial conditions;

b. analysis of the financial, market and legal status of the company involved;

c. appraisal of the intended transaction, especially in relation to any premium to be paid;

d. analysis of the company's legal and accounting situation, particularly: tax registrations, licenses for opening and operating establishments, environmental licenses, possible special authorizations, depending on the company's area of activity and its corporate, tax, labor and fixed asset status, and its situation in relation to judicial proceedings, contracts, environmental requirements, real estate (owned and leased), trademarks, patents, technology, the consumer protection code and sanitary surveillance legislation;

e. analysis of the transaction's compliance with the Brazilian antitrust legislation.

Among the issues listed above, the prior study of the financial situation of the company and prospective partner, and analysis of the company's position in the market, and appraisal of the transaction are generally carried out by a local bank with experience in this type of transaction. The other conditions are analyzed by lawyers and auditors, through a due diligence to be conduced in their respective sectors of expertise. As regards the environmental area, the work of lawyers can be accompanied by specialized technical consultants who will analyze the industrial practices of the target company, in order to determine the existence of possible environmental liability of the target company. Note that various cases recently verified in Brazil, relating to contamination generated several decades ago and that have only now started to produce direct consequences, indicate the need of a rigorous environmental audit prior to the acquisition. These professionals will issue reports presenting the results of their respective interventions.

With respect to due diligences in the field of competition law, special attention should be given to the study of any administrative proceedings involving the target company that are running before the Brazilian Competition Defense System (Sistema Brasileiro de Defesa da Concorrência – SBDC), as well as the existence of distribution contracts and any contracts or agreements entered into with competitors of the company, and other issues.

Depending on the transaction, letters of intent, acquisition instruments, shareholder or quotaholder agreements and other documents will have to be established between the parties to contract, possibly involving the creation of new companies and/or the transformation of the existing company into a different type of company.

It is customary in such operations to obtain guaranties from the sellers of the company for contingent concealed liabilities and asset inconsistencies, among which the most common are: mortgage, bank, pledge of shares, and personal guaranties and the retention of a portion of the price through an escrow agreement (depósito) with a bank experienced in the matter in question.

All the foregoing precautions are important, especially in tax planning and corporate reorganization operations conducted by company sellers, in view of the tax succession and succession of operations issues, with a view to avoiding the occurrence of capital gain by the sellers. These structures may have a negative impact on the acquirer, especially after the coming into effect of the recent National Tax Code reform, aimed at preventing tax avoidance.

The new Brazilian Civil Code brought various important provisions on the subject of acquisition or subrogation, and on the leasing of establishments, which will have a direct impact on operations between companies, regulating certain commercial aspects that did not previously receive legal treatment or that were the object of free negotiation between the Parties.

Among these, we mention some innovations with respect to the negotiation of a business establishment under the aegis of the said Civil Code: a) the need for the publication of contracts, as well as the registration of their terms alongside the Commercial Registration of the transferor company, in order for them to produce effects against third parties; b) the requirement of the payment of all creditors or the express or tacit consent thereof in case the seller is left with insufficient assets to settle all of its liabilities; c) the liability of the acquirer for the debts prior to the transfer, with the joint and several liability of the transferor for one year, and d) the prohibition of competition on the part of the transferor for the period of five years, unless there is express authorization for such.

On the other hand, certain provisions of the new Bankruptcy and Company Reorganization Law (Law 11,101/05) and Complementary Law 118/05 deserve mention, with respect to the acquisition of branches and production units and the joint or separate acquisition of assets, belonging to companies undergoing judicial reorganization or even the debtor companies.

Indeed, in either of these cases, the subject of the transfer during the course of the judicial proceeding will be free of any encumbrance and there will be no succession of the buyer to the obligations of the debtor, including those of a tax, labor and occupational accident nature.

6. Consortium

Different organizations, S/As or LTDAs, under the same control or otherwise, may set-up a consortium to carry out a specific undertaking.

Through a consortium several companies, by mutually associating, are able to assume certain activities, which could not be carried out individually by each company, due, in most cases, to technical or economic financial conditions.

A consortium is not a corporate entity and its members, in principle, are only bound under the conditions provided for in its incorporation agreement. Each member company is accountable for its own obligations, without the presumption of joint and several liability. However, in the labor, taxation and consumer fields, such joint and several liability may be constituted.

> This type of association is common for participation in public bids and in the sectors responsible for the concession of public and private works and services, and imports and exports.

The consortium incorporation agreement and its amendments shall be filed at the Commercial Board (Junta Comercial) of the place of its headquarters.

Undisclosed Joint Venture Partnership (Scp)

Is a type of partnership that does not appear to third parties, for it merely consists of a private agreement, entered into by two or more participants, with the purpose of permitting the exploitation of a specific business opportunity or activity. The SCP does not have a legal personality distinct from that of its participants. The law distinguishes two types of participants: (i) visible partner: develops the component activities of the company purpose in his individual name and assumes responsibility for the company's obligations in an exclusive manner, and (ii) secret partner: merely represents the investor, not appearing to third parties; assumes responsibility before the visual partner to the limit set forth in the company's formation instrument. The formation of an SCP is not subject to any formality, and may be proved by any evidence permitted by Brazilian law. It is most commonly used in particular operations, such as importation, exportation, participation in transactions, bidding, and others.

1. General Notes

The taxing power is shared by the Federal Union, the States, the Federal District and the Municipalities. To this end, a series of rules were created, which together constitute the Brazilian Tax System, namely: the Federal Constitution, National Tax Code and federal, state and municipal legislation.

2. Significant Developments

The National Tax System has been undergoing improvements in order to cover practically all the activities of corporate entities.

Taxes On Corporate Income

These are federal and can be summarized as follows:

Irpj (Corporate Income Tax)

Assessed on the acquisition of the economic or legal availability of income (the product of capital and labor or the combination of both) and of proceeds of any nature. The basic rate is 15% with a surtax of 10% levied on income in excess of R$ 240 thousand (USD 137 thousand) per year.

Csll (Social Contribution On Net Profits)

Levied at a tax rate of 9% on net profit before the deduction of the contribution itself, with due regard to legal adjustments.

Pis (Contribution To The Social Integration Program)

Assessed on the monthly gross receipts of corporate entities, with some deductions determined by law. It may be computed in a cumulative manner, at the rate of 0.65%, or non cumulative manner, at the rate of 1.65%. In the latter case, the sum collected in certain prior operations is discounted on each successive operation.

Cofins (Contribution For The Funding Of Social Welfare Programs)

This is also levied on monthly gross receipts, with some deductions determined by law and may also be computed in a cumulative manner, at a tax rate of 3% or non cumulative manner, at a tax rate of 7.6%; subject to legal limits and requirements.

3. Corporate Residence

This is determined with regard to the location of the company's assets and where the facts giving rise to the tax obligation occur (company's registered office and/or main place of business).

4. Other Taxes

Federal Taxes

IPI (equivalent to the Excise Tax): Its taxpayers are for example importers and industrial companies. Its tax rate, which is applicable on the amount of each operation, varies in accordance with the product. There are a number of tax benefits to stimulate the industrial sector, as well as the construction sector. The average rate is 14% and it is a non cumulative tax.

II (Import Duty): is levied on import operations. This tax has variable rates according to the product being imported (i.e., between 0% and 35%, with an average rate of 14%).

State Taxes

ICMS (equivalent to VAT): is levied mainly on the circulation of goods, including those imported from abroad; interstate and inter municipal transport services and communication services. Its rates vary from 4% to 25% of the operation amount, in accordance with the type of goods sold or the service rendered and according to the internal legislation of the State where the company taxpayer is located. In most cases, the rate is 18%. It is non cumulative.

ITCMD (Transfer Tax) is assessed on the transfer of any property by will, inheritance or gift made between individuals or corporate entities. The rate on the market value of the property donated or received as an inheritance varies according to the State. In the State of São Paulo the rate is 4% and in some other States, 6%.

Municipal Taxes

ITBI (Inter-Vivos Property Tax): Levied on the inter vivos transfer, for any reason, by an onerous act, of real property, by physical nature or accession and in relation to security interests on real property. Its rate, which is applicable to the market value of the property, varies in accordance with the Municipality. In the municipality of São Paulo, it is 4%.

IPTU (Urban Property Tax): the taxable event is the dominium utile or the possession of real estate located in the city zone of the Municipality (In São Paulo, the rates vary in accordance with the market value and use of the property, from 0.8% to 1.8%).

ISS (Service Tax): levied on the provision of the services contained in the list attached to Complementary Law 116/03, notwithstanding that such services do not constitute the core activity of the provider. The rate varies from 2% and 5% and is defined by the Municipality where the establishment is located or where the service is carried out, according to each individual case. Nowadays, the ISS has been levied over determined services importation.

Capital Tax And Stamp Duty

These are not provided for in the legislation.

5. Branch Income

Subject to the same rules set forth above. Branches in Brazil are not allowed to take deductions related to expenses paid or credited to the headquarters, as royalties, technical, administrative or similar support.

6. Income Determination

Actual income determined in the annual balance sheet at December 31 or in quarterly trial balances. Presumed income percentage of the quarterly gross receipts of the corporate entity, without any deduction, for the purposes of the calculation of IRPJ and CSLL (corporate entities whose total gross receipts in the preceding calendar year were under or corresponding to R$ 48 million, equivalent to USD 27.4 million, may elect for this regime).

- Inventory valuation: The goods and raw materials are valued by acquisition cost, i.e. the transport and insurance costs of the company, the taxes due on the purchase or importation and expenses with customs clearance.
- Capital gains: In general taxed by IRPJ. However, capital gains resulting from financial investments by a corporate entity based in Brazil or by a person residing or domiciled abroad, will be subject to the levy of Withholding Tax (IRRF), according to specific rates and legal requirements, and may be deducted, if applicable, from the aforesaid tax (IRPJ).
- Intercompany domestic dividends: There is no taxation.
- Foreign income: If a branch, subsidiary or affiliate of a corporate entity (with its registered office in Brazil) receives interest abroad, the taxation will occur as profits and not as income earned abroad. Agreements to avoid double taxation should be analyzed to verify the taxation of each earning.
- Stock dividends: There is no legal provision for taxation.

7. Deductions

From the income tax determined for the month, the tax paid or withheld at source on income included in the tax basis, and the deduction incentives related to the Workers' Food Program, Children and Adolescent Funds and Cultural, Artistic and Audiovisual Activities may be deducted. Additionally, there are some costs and expenses that are deductible for the determination of actual profit:

- Depreciation, amortization and depletion: The amounts related to the decline in the value of asset items resulting from wear and tear, as a result of nature and normal obsolescence (depreciation), recovery of the capital invested, or of the resources invested in the formation expenses of the result for more than one taxable period (amortization) and decline in the value of mineral and forestry resources, resulting from their exploitation (depletion), may be computed as a cost or charge in each taxable period.
- Net operating expense: The expenses that are not computed in costs, necessary for the company's business activity, paid on the transactions undertaken are operating expenses and deductible.
- Payments to foreign affiliates (transfer pricing): The respective costs, expenses and charges relating to goods, services and rights are deductible for the determination of actual profit up to the price determined by one of the methods provided in law.
- Taxes: Deductible from actual profit according to the accrual basis of accounting.
- Other significant items: The provisions and allowances provided in law (technical, vacation pay, thirteenth salary and provision for income tax) are deductible.

8. Group Taxation

There is no legal provision for group taxation; each company is taxed in separate.

Tax Incentives (including special tax regimes)

Industrial Technological and Agricultural Development Programs (PDTI and PDTA), to foster the technological qualification of industries and agriculture. There are tax regimes linked to the importation and exportation of goods and tax benefits for industrialization and commercialization in certain Brazilian regions.

9. Withholding taxes (IRRF)

Below is a table with some of the percentages:

Remittance Abroad Cases	Current Rate	Current Rate For Tax Havens
Profits And Dividends (As Of 1.1.96)	0	0
Interest (As At 1/1/00)	15%	25%
Royalties, Or Remuneration For Technical Or Similar Services Or Of Payment For Contracts With Or Without Technology Transfer, Except If There Is An Agreement To Avoid Double Taxation. *(B)	15% + 10% Of Cide *(A)	25% + 10% Of Cide

***(a):** CIDE is the Economic Domain Intervention Contribution. It is levied on the payment, crediting, delivery or remittance abroad for the use or acquisition of technological knowledge and contracts with or without technology transfer.

***(b):** For the purposes of the application of the Brazilian tax legislation, tax havens are construed as countries or dependencies with the taxation of income at a rate of less than 20%:

Andorra, Anguilla, Antigua and Barbuda, Netherlands Antilles, Aruba, Commonwealth of the Bahamas; Bahrein, Barbados, Belize, Bermudas Islands, Campione D'Italia; Channel Islands (Alderney, Guernsey, Jersey and Sark), Cayman Islands, Cyprus, Singapore, Cook Islands, Republic of Costa Rica, Djibouti, Dominica, United Arab Emirates, Gibraltar, Granada, Hong Kong, Labuan, Lebanon, Liberia, Liechtenstein, Luxembourg (as regards the holding companies regulated, in the legislation of Luxembourg, by the Law of July 31, 1929), Macau, Madeira Islands, Maldives, Malta, Isle of Man, Marshall Islands, Mauritius Island, Monaco, Montserrat Islands, Nauru, Niue Island, Sultanate of Oman, Panama, Federation of St. Kitts and Nevis, American Samoa, Independent State of Samoa, San Marino, St. Vincent and the Grenadines, St. Lucia, Seychelles, Tonga, Turk and Caicos Islands, Vanuatu, Virgin Islands of the United States, British Virgin Islands.

10. Tax Administration

Is carried out by the Brazilian IRS and by the State and Municipal Treasuries, according to the respective taxing power.

- Returns: Annual by the month of March of the year subsequent to that declared, demonstrating the results for the previous calendar year.
- Payment of tax: IRPJ and CSSL Quarterly or annual, with the adjustments provided in law; IPI/ICMS/ISS/PIS/COFINS monthly; and II at the time of customs clearance.

11. Individual Taxes

General Notes

Individuals residing in Brazil, holders of the economic or legal availability of income or proceeds of any nature, including capital earnings and gains, are payers of income tax.

Territoriality and Residence

The tax domicile of an individual is construed as his or her habitual residence, providing that there is the requisite intention to maintain such a residence.

Gross Income

Product of capital, labor or the combination of both, alimonies and personal allowances in cash, proceeds of any nature, (increases in patrimony that do not correspond to the declared income, are also included).

Employee Gross Income

Taxed in the month that the resources are received by the paying source, even by means of a deposit in a financial institution in favor of the beneficiary. This is calculated with the use of the following progressive monthly table:

Tax Basis In Us$	Current Rate	Portion To Be Deducted From The Tax In Us$
Up To 784.46	0	0
From 784.76 To 1,567.57	15%	117.66
Over 1,567.57	27.5%	313,61

* US$ 1.00 = R$ 1,75

Capital Gains And Investment Income

Income tax in the definitive form is due on the capital gains on the sale of property or rights, determined by the positive difference between the sales value and the acquisition cost, at the rate of 15%.

Capital Losses

There is no provision for the taxation or deduction in Brazilian legislation.

Monthly Deductions

Social security contributions, expenses in the cash book, US$ 94.20 per dependent and US$ 941.00 of allowances and pensions of persons over the age 65.

Deductions In Returns

Incentives for cultural and artistic activities (gifts and sponsorships), gifts and funds controlled by the Councils of Rights of Children and Adolescents, medical and education expenses, contributions to Pension Plans.

Simplified Discount

The taxpayer may elect for the simplified discount, which consists of the deduction of 20% of income, limited to US$ 5,317.71, in the Annual Adjustment Statement, with the proof of the expense and indication of its type being dispensed with.

Personal Allowances

These may be deducted if necessary in order to comply with a judicial decision or judicially ratified agreement, including the payment of provisional alimony.

Tax Credits

There is no provision in Brazilian legislation.

Other Taxes

12. Social Security (Inss)

The employees' contribution, discounted from their salary, is calculated by the application of the corresponding rate, in a non cumulative manner, on their monthly contribution salary. For the individual and opting taxpayers affiliated to the General Social Security Regime, the contribution is 20% of the contribution salary, subject to the deductions set forth in law.

Local Taxes On Income

ISS of between 2% and 5% on the services provided by self employed professionals.

Wealth Taxes

Though provided for in the Constitution, this tax has not been introduced yet.

1. Direct Investment

The assets, machinery and equipment imported into Brazil, (without an initial outlay of foreign currency), for the production of goods and services, and the financial or monetary resources brought into the country for investment in business activities, (provided that IT belongs to individuals or corporate entities residing, domiciled or based abroad), are considered foreign capital, and as such, shall be registered electronically in Central Bank of Brazil (BACEN).

This registration is a condition for the remittance of profits and dividends obtained through investments made in Brazil, and to repatriate the invested resources.

The investment may also be made through the contribution of used goods (machinery and equipment). In this case, to obtain the aforesaid registration, it must be demonstrated that the goods are not manufactured in Brazil, that similar products are not available in the Country and, also, that they have a remaining useful life of more than 5 years.

Intangible property, including trademarks, patents, know how and technology may also be the subject of investment as foreign capital, providing they are that approved by the agency responsible for the registration and control of industrial property rights in Brazil, the Brazilian Trademark and Patent Office (INPI).

The foreign investor is also allowed to make investments through the capitalization of foreign loans that are liable to generate transfers abroad, such as previously registered foreign loan principal and interest, profits, dividends and other amounts remittable abroad.

Profits distributed by companies established in Brazil and appropriated to persons residing and domiciled abroad, (but which are reinvested in the same companies from which they originated or in another sector of the Brazilian economy) are also subject to registration at BACEN.

Consolidated Statement of Direct Foreign Investment in Brazil: this document is generated on the basis of the declarations and data entered electronically by the company or its representative in the Central Bank Electronic System (SISBACEN), and is evidence of the investment made by the foreign investor before third parties.

Registration procedure: shall be formalized within 30 days of its receipt into Brazil, except for the cases of foreign investment in tangible goods. In these cases registration shall be made in up to 90 days from the customs clearance date failing which, the recipient company of the investment to the application will be liable to pay a fine of up to R$ 125 thousand (equivalent

to approximately US$ 71,4 thousand). The registration will be made in the foreign currency actually brought into Brazil or in the amount declared in the import document of the goods.

Transfer of interests to third parties: the foreign investor that holds ownership interests in a Brazilian company may transfer its interests to third parties abroad. The foreign acquirer, notwithstanding the price paid for this acquisition, shall alter the Consolidated Statement of Direct Foreign Investment in Brazil, obtaining a new registration number that will identify its investment in substitution of the assigning investor, in order to allow for future remittances, profit remittance registrations and any repatriation of the investment.

Enrollment in the Federal Register of Individual Taxpayers (CPF) and Federal Register of Corporate Taxpayers (CNPJ): this enrollment is obligatory for individuals and corporate entities domiciled or based abroad that own assets in Brazil, including ownership interests.

2. Indirect Investments: Foreign Loans

Foreign Loans Via The Free Exchange Rate Market

The foreign loan contracting process takes place through the electronic declaratory registration, called the SISBACEN Financial Operation Registration Module (ROF). This prior registration may be denied by the system, if the costs of the operation are inconsistent with the conditions and practices normally employed in the international market and if the structure of the proposed operation is not compatible with the configurations of the system. The fixing of a spread is permitted. There are no minimum or maximum time limits for the amortization of the debt, repayment of the capital and payment of interest.

Once the funds have been received in Brazil, the payment scheme shall be registered, in order to permit the remittance of the principal and interest abroad.

As a general rule, the interest will be taxed by withholding income tax, at the rate of 15%. The Tax on Financial Operations (IOF) for loans contracted for terms of over 90 days is zero. However, for loan operations contracted for shorter terms (less than 90 days) the IOF rate is 5.38%.

Conversion of loans into direct investments: Loans (principal and interest) may, as a general rule, be converted into direct foreign investment, after their registration in the ROF, through simultaneous foreign currency purchase and sale transactions.

As a general rule, the accelerated payment of loans is not permitted by BACEN. However, the extension and alteration of the loan conditions prior to its maturity are permitted, with due regard to the BACEN procedures and legal provisions.

Foreign Loan Through The Issue Of Securities

Consists of foreign loan operations obtained by means of the placement of convertible securities (issued by an institution based in Brazil and placed abroad, representing rights over shares issued by the company itself) and of securities exchangeable into shares (issued by an institution based in Brazil and placed abroad, representing rights over shares issued by another institution based in Brazil) or warrants (call option for shares, placed abroad by institutions based in Brazil).

Foreign Exchange Market

In 2005, BACEN published new rules with a view to simplifying foreign exchange operations in Brazil, indicating the probability of a future complete foreign exchange opening, which, to this date, has not yet occurred. Additionally, the measures in question are designed to combat illegal transfers linked to drug traffic, armaments and terrorism. The main rules currently in force are:

- unification of the free and floating rate markets;
- individuals and corporate entities may purchase and sell foreign currency or make transfers of any nature, without a limitation of value; however, transfers in the name of third parties are prohibited;
- Brazilian investment abroad, regardless of BACEN authorization, and is not subject to any limitation of value;
- nonresident individuals or corporate entities in Brazil may maintain accounts in the Country called "nonresident accounts", with financial institutions authorized by BACEN to operate in Brazil; however, the use of such accounts to make transfers in the name of third parties is forbidden.

3. Remittance of Profits and Dividends to Investors Domiciled Abroad

Once the foreign capital has been registered at BACEN, profits may be freely remitted to the foreign investor, in proportion to its holdings in the paid up capital of the Brazilian company. Remittance operations shall also be registered before BACEN and will be exempt from any taxation.

4. Repatriation of Investment

The capital and reinvestments registered at BACEN may be repatriated to the investor's country without incurring income tax, up to the total foreign currency amount stipulated in the Consolidated Investment Statement available on the BACEN RDE IED System.

With due observance of the foreign investor's ownership interest in the capital of the company, the distribution of resources determined in the transfer of interest, capital reduction for refunding to a partner or liquidation of the company shall be registered with BACEN.

The differences in the excess of the amounts registered as brought into Brazil, as in the case of a premium verified on the sale of shares, will be considered “capital gain” and be subject to the levy of income tax at the rate of 15%.

5. Foreign Personnel

There are different types of visas in Brazil for foreigners, their spouses and children under the age of 21 or those who are economically dependent. The most common visas are:

Business Visa

Can be obtained from any Brazilian Consulate, is valid for up to 5 years and authorizes its bearer multiple entries. This visa permits a stay of up to 90 days, extendible for an equal period. The foreigner's total stay may not exceed 180 days per year from the date of first entry into Brazil. Remuneration of the visitor is forbidden. Brazil maintains reciprocity agreements with certain countries (such as those of the European Union and Mercosur) dispensing with this type of visa. In the case of exemption, the foreigner may enter Brazil by presenting his or her passport and informing the purpose of the business on the immigration form distributed during international flights to Brazil.

Temporary Work Visa

Will be granted to foreigners who come to Brazil to work for a Brazilian company as employees, without representation powers. This visa will be granted for the maximum period of 2 years, extendible for an equal period. After 4 years, the temporary visa may be transformed into a permanent visa. In order to apply for this visa, the foreigner must prove that his or her professional qualification and experience are compatible with the position to be held, by submitting diplomas, certificates or declarations from the entities where he or she discharged activities, demonstrating satisfaction of one of the following requirements: a) 1 year' experience in the practice of a high level profession; b) 2 years' experience in a mid level profession, with minimum schooling of 9 years; or c) conclusion of a master´s or high degree course that is compatible with the activity that he or she will be performing.

The Brazilian company shall justify the use of foreign labor and observe the rule that determines that Brazilian employees shall account for 2/3 of the total staff and corresponding payroll.

The temporary visa will also be granted to foreigners who come to Brazil to provide services to a Brazilian company, without an employment relationship, by means of a service agree-

ment or technical cooperation agreement between companies of the same group, provided that such agreements have been previously registered with INPI. The validity term of the visa is one year, which may be extended for an equal period, provided that the need is evidenced. This sort of visa cannot be transformed into a permanent visa.

Permanent Work Visa

Will be granted to employees of foreign companies who are to be transferred to a company of the same group, located in Brazil, to occupy the position of officer or director of the company, with management and representation powers, provided that the position is provided for in the company's corporate by laws or charter documents.

A Brazilian company wishing to appoint a foreigner to assume the duties of administrator shall submit to the Labor Ministry: (a) proof of direct foreign investment (in currency, technology transfer or the transfer of other capital assets) in the minimum amount of US$ 50 thousand, for each foreign administrator, through a copy of the Consolidated Statement of Direct Foreign Investment, obtained directly from SISBACEN. This can be obtained following registration of the investment, or the foreign exchange agreement or the contractual or by law amendment at the competent body, in addition, evidence shall be provided of the generation of, at least, 10 new jobs, during the 2 years subsequent to the establishment of the company or admission by the administrator that 2/3 of his employees are Brazilian as set forth in the labor legislation; or (b) investment corresponding to or in excess of US$ 200 thousand, or the equivalent in another currency, for each administrator. In exceptional cases of investment of national interest, the competent authorities may study the dispensation of the initial investment in the aforesaid amounts. In addition the current salary of the foreigner appointed to occupy the position of administrator of the Brazilian company will also be notified (in addition to the salary that he or she will receive after taking office). Information as to whether the foreigner will continue to receive his or her salary from abroad, in addition to receiving the salary as administrator from the Brazilian company should also be provided.

Any change of employer is contingent on prior authorization from the Ministry of Justice. In order for foreigner directors, bearers of permanent visas, to discharge the duties of administrator, concurrently in two or more companies belonging to the same business group or conglomerate, a simple communication to the Labor Ministry will be sufficient, within the period of 15 days from the occurrence of the fact.

1. Brazilian Labor Legislation

Relations between employers and employees are subject to complex and costly legislation. This legislation, which is known as the CLT (Consolidation of labor Laws), is unreservedly protective of employees.

Employee

Is a natural person who personally renders to another person, non casual, subordinate and salaried services.

The following criteria must be observed for the hiring of employees in Brazil:

- minimum age of 16;
- from 14 to 16 only as an apprentice and provided that the employee is studying in the natural sciences area that he or she intends to work;
- over the age of 18 for night, unhealthy and hazardous work.

Employer

Is an entity, with or without a legal personality, for the purpose of generating profit or otherwise, and which has employees. There is the employer in general, the company, and employer by correlation, the liberal professions, associations, etc. The company is the main type of employer.

Individual Employment Contract

Is a tacit or written agreement relating to a job. They may be established for an indeterminate period (most cases) or for a determinate period, in exceptional cases. There is also the probation Contract, which is designed to permit the employer, during a certain length of time, to verify the aptitudes of the employee, with a view to his or her being hired for an indeterminate period.

Work and Social Security Booklet (CTPS)

An obligatory document, in which all the tacit or written hirings are recorded. It constitutes proof of the employment contract.

Registration

The employee's registration in cards, books or electronic systems is obligatory.

Rights of the Employee

2. Working Hours Of The Employee

Normal working hours are 8 hours a day and 44 hours a week. The law provides for shorter working hours, depending on the special condition of the worker (e.g. minors and women) or of the profession (e.g.: railroad workers, doctors, telephone operators, typists, journalists, bank workers, etc). In relation to the time of the day in which the service is rendered, the working day in urban centers will be daily, between 5:00 a.m. and 10:00 p.m., with other criteria for rural areas. Nocturnal will mean between 10:00 p.m. of one day and 5:00 a.m. of the following day or their extensions. Overtime refers to the hours beyond the normal limits fixed by law, collective bargaining agreements, custom, or the individual employment contracts. Overtime is classified into 5 types: (i) overtime resulting from an extension agreement (the law permits the extension of hours, which shall not exceed 2; (ii) compensation of hours, system; (iii) for the purpose of the conclusion of non postponable services or the execution of which may cause losses to the employer; (iv) rendered to recover work stoppage hours; (v) time worked in case of force majeure.

3. Remunerated Weekly Rest Period

Is based on the Federal Constitution and Law 605/1949. It consists of a remunerated weekly rest of 24 consecutive hours, preferably on Sundays and, within the limits of the technical requirements of companies, on public and religious holidays in accordance with local tradition. The employee's full attendance at work during the week is a condition for the maintenance of the remunerated weekly rest period. The law does not permit the employee to go without his or her weekly rest, even if receiving substitutive payment for the lack of rest.

Rest Break

Employees who work eight (8) hours daily are ensured a break for a meal and rest of at least one hour.

Vacation

All employees will have the right to vacation, after each 12 month period of a valid employment contract, without prejudice to their compensation. Its duration depends on the diligence of the employee, which is liable to reduction in lieu of the employee's unjustified absences (maximum of 30 and minimum of 12 days' vacation).

It is forbidden to discount the employee's absences at work from the vacation period.

Concessive period: the employer shall grant vacation during the 12 months subsequent to the acquisition period. If it fails to do so within this period, it is liable to pay the employee double.

Compensation: the employee's compensation will be the same during the vacation period, as though he or she were at work, plus 1/3.

Vacation in money: the law only permits the conversion of 1/3 of the vacation period into payment in cash.

Wages

As opposed to the laws of other countries, Brazilian law does not define wages. It merely indicates its components and fixes rules for its payment and protection.

Severance pay, profit sharing, pension plan benefits and their supplements, and intellectual rights are not regarded as wages.

Method of payment: wages may be paid in cash, check or via bank deposit and in fringe benefits.

The law requires that payment of wages must be made in the local currency of Brazil.

Payment in fringe benefits: is the method of payment whereby the employee receives economic assets. The law permits the payment in fringe benefits (food, habitation, automobile, credit card, payment of household bills, etc), but not totally. At least 30% of the total amount shall be paid in money.

Whether such fringe benefits are incorporated into the wage or not is debatable. The understanding that has prevailed so far is as follows: the fringe benefits that are provided to the employee to carry out his duties (transport voucher, meal voucher, free transport to work, etc.) do not characterize a wage. As for any other non habitual benefits, the law is uncertain.

General wage protection rules:

(i) the wage shall be paid in maximum intervals of 1 month, except for commissions, percentages and bonuses; (ii) the law fixes as the payment day, the 5th working day of the following month. If the wage is paid on a fortnightly or weekly basis, the payment will be made on the 5th day of the following month; (iii) the employer may not make alterations in the payment method without the employee's consent. Even with the worker's consent, such alterations will be considered null and void, if prejudicial; (iv) the wage cannot be reduced. Only the reductions resulting from collective bargaining agreements are permitted, and those resulting from the reduction of work through negotiations with the union; (v) it is prohibited for the employer to make discounts in the wages, except in the cases expressly provided in law (for example, dental, health, insurance and private pension plans, and cultural, recreational and other entities), save for that authorized by the employee; (vi) salaries are non attachable, except for the payment of alimony.

Wage amount: The wage can be freely stipulated, provided that such stipulation is not conflicting with the labor protection provisions, collective bargaining agreements and judicial rulings.

Minimum wage: was fixed in March 1, 2008 at R$ 415 (equivalent to US$ 237), valid until March 31, 2009.

Special types of wage: (i) advances: advance in money, a wage advance established as a result of transitory needs; (ii) additional overtime pay: is at least 50% of the hour/wage and is incorporated into the base compensation for the calculations that are made, imposed on the wage; (iii) additional night pay: is 20% of the contractual wage, due for services rendered after

10:00 p.m., in urban centers; it is incorporated into the base compensation for the calculation of the 13th wage, vacation, etc; (iv) additional pay for unhealthy or in sanitary work: is due to employees who render services in an environment that is considered unhealthy and is 10%, 20% or 40%, according to its degree   minimum, average and maximum; it is incorporated into the employee's base compensation for all purposes; (v) additional pay for hazardous work: is due to employees who render services in permanent contact with explosives or inflammable products under highly risky conditions. It is 30% of the contractual wage and is incorporated into the employee's compensation; (vi) additional transfer pay: is due to an employee who is transferred by the employer to another locality and amounts to 25% of the contractual wage. It is not due in the definitive transfer; (vii) others: commissions, bonuses, gratuities and premium bonuses.

Thirteenth wage: is a mandatory bonus in compliance with law, is of a wage nature and is also known as the Christmas bonus. It was created as a payment to be made in the month of December and amounts to one monthly wage. For employees that do not work the whole year, its amount is proportional to the months of service, in the order of 1/12 per month, considering a fraction of 15 days or over as a full month and disregarding smaller fractions.

4. Unemployment Compensation Fund (FGTS)

Is a bank account that the worker may use on the occasions provided by law, which is formed by the deposits made by the employer. Every month, the company has to deposit, with its own resources, in a specific account on behalf of each employee, the equivalent of 8% of the employees' compensation. For employment contracts for a fixed term the rate is 2%. The sums deposited will be the property of the employee. Withdrawals shall be made in the situations set forth in law, as in the case of unfair dismissal. In the latter case, the company is also obliged to pay the employee an indemnity of 40% of the FGTS balance and the sum of 10% of the same balance, as social contribution.

The FGTS contribution may be extended to non employee directors, at the discretion of companies that are submitted to the labor regime.

Tenure

Is the right of an employee to remain in the job, even against the employer's wish, while there is no relevant cause expressed in law which permits the employee's dismissal. It refers to the right not to be dismissed. The law provides some cases of job tenure such as, the tenure of union leaders and representatives, victims of accidents, committee representatives, expectant mothers, employees' representatives in the CIPA (Internal Commission for the Prevention of Accidents).

Termination of Employees' Contracts

Termination occurs (i) as decided by the employer (discharge of the employee); (ii) as decid-

ed by the employee (resignation, separation and retirement); (iii) by the initiative of both (agreement); (iv) by the disappearance of persons (death of the employee, death of the employer where he is a natural person and extinguishment of the company; (v) extinguishment of a fixed term contract due to the lapse of the term fixed or the employee's discharge during the course of the legal bond.

An employee may be dismissed for reasons that are fair or unfair.

Fair Dismissal

Is based on reasons pertaining to the worker's performance, almost always in an action or inaction relating to breach of discipline. It permits the employer to dismiss without cost (payment of severance pay, or the percentage on FGTS deposits, 13th wage and vacation, the latter two proportional). The law enumerates the circumstances of fair dismissal. The following are inter alia, considered fair reasons for dismissal: improbity, unreasonable conduct, misbehavior, criminal conviction, drunkenness, violation of confidentiality, lack of discipline, insubordination, abandonment of the job, acts that are harmful to honor and reputation, physical offense, constant practice of games of chance.

Unfair Dismissal

The rule is that of the free dismissal of employees by the employer, in the manner set forth in law, whereby the latter only bears the financial cost, with the exception of the cases of tenure. If dismissed for unfair reasons, the employee will have the right, among other things, to the following amounts: notice (30 days), proportional 13th wage, vacations due, proportional vacations, 40% of the FGTS deposits and withdrawal of the FGTS.

Homologation

The termination of employment contracts with a duration period of more than one year shall be homologated by the Labor Ministry or the employees' Union of the category to which he or she belongs.

5. Labor Union / Trade Association Law

The core business activity of the company and the number of existing trade associations in its geographical area are what will determine the trade association to which a given company will belong. Once the core business activity of the company has been established, the respective employees' labor union will represent all the employees of the company, with the exception of those belonging to officially recognized professional categories, such as secretaries, drivers, economists and journalists, who will be represented by their own unions,

The company shall pay its employees all the labor sums and benefits that have been previously negotiated with the respective union.

Union Contribution

Both the employees and the companies shall pay the union contributions: (i) for companies, an annual contribution to the Union of the category. It is based on the number of employees and the registered capital amount; (ii) for each employee, an annual contribution to the union, equal to one day's wage, withheld at source by the employer and paid to the employees' union.

Collective Bargaining

Negotiations are held annually between the trade association of the company and labor union of the employees of the same category. These negotiations may occur more than once during the year.

Each labor union / trade association conducts its own annual negotiation, which is considered the base date of the respective category.

The collective bargaining agreements resulting from these negotiations are filed at the Labor Court and have the force of law, which means that all employers should respect and enforce all the terms and conditions thereof.

6. Social Security

The Brazilian Constitution of 1988 created an extensive and ambitious system called social security, comprising an integrated series of actions of the initiative of the Public Powers and society, designed to guarantee rights pertaining to health, social security and social welfare.

There is more than one social security regime in Brazil: a) the general one of the INSS (Brazilian Social Security Institute) for the private sector; b) the public sector regime instituted by the Federal Government, the States and Municipalities; c) the supplementary regime, both in the public and private sectors, with the purpose of supplementing the pensions from the official social security regime.

The contribution to social security for which the company is responsible, is (i) 20% on the total compensations paid, due or credited, for any reason, during the course of the month, for insured employees and freelancers; (ii) 20% of the total compensations or compensations paid or credited during the course of the month for the insured individual contributor; (iii) 15% of the gross amount of the tax invoice or service bill, with respect to the services rendered thereto by cooperative members through workers' cooperatives; (iv) 2.5% of the total gross revenue derived from the sale of rural production, in substitution for the contribution set forth in item (i), when involving a corporate entity that has only the rural production activity as its corporate purpose.

There are also other contributions that must be paid on the total remunerations paid or credited to employees, namely:

- Contribution for the financing of occupational accidents: consists of the degree that the company provides for the event of incapacity for work resulting from the environmental risks of the work. The percentage of this contribution varies from 1% to 3%.
- Third party contribution: are obligatory contributions imposed on the payroll that are earmarked for private social service and professional training entities linked to the union system, whose rates vary from 0.2% to 5.8%;
- Education salary contribution: consists of a contribution to the Federal Government (União Federal) for the financing of elementary and middle school (ensino básico). The education salary rate is 2.5%.

The total charges for the Company correspond, on average, to 35.8% (the index for industry). These contributions are paid directly to the INSS, which transfers the contributions that do not pertain thereto to the other entities.

There are also other contributions that must be paid on the total remunerations paid or credited to employees, namely:

a. Contribution for the financing of occupational accidents: consists of the degree that the company provides for the event of incapacity for work resulting from the environmental risks of the work. The percentage of this contribution varies from 1% to 3%.

b. Third party contribution: are obligatory contributions imposed on the payroll that are earmarked for private social service and professional training entities linked to the union system, whose rates vary from 0.2% to 5.8%;

c. Education salary contribution: consists of a contribution to the Federal Government (União Federal) for the financing of elementary and middle school (ensino básico). The education salary rate is 2.5%.

The total charges for the Company correspond, on average, to 35.8% (the index for industry). These contributions are paid directly to the INSS, which transfers the contributions that do not pertain thereto to the other entities.

7. Occupational Safety and Hygiene

Is the application of systems and principles established by medicine to protect the worker, actively foreseeing the hazards that, for physical and psychic health, originate from work. The elimination of harmful agents in relation to the worker constitutes the prime purpose of occupational hygiene.

The basic occupational safety and hygiene rules refer to organizations that are responsible for looking out for occupational safety and medicine, prior inspection, embargo or interdiction

of an establishment, the safety and medicine bodies of a company, individual protection equipment, preventive occupational medicine measures, building, illumination, thermal comfort, electrical installations, conveyance, storage and handling of materials, machinery and equipment, boilers, furnaces and containers under pressure, unhealthy and hazardous activities, prevention of fatigue, the criteria for supplementary regulations to be enacted by the Ministry of Labor and Employment and the penalties applicable to the employer for non compliance with any determination.

Internal Commission for the Prevention of Accidents (CIPA): is obligatory for companies with more than 20 employees. The CIPA is formed by employee representatives, elected by secret vote, and by representatives indicated by the employer. The term of office of the members is 1 year, re election being permitted, and during the exercise thereof, the employee representatives are afforded job tenure.

Obligatory Medical Exam

The medical exam is obligatory, both at the time of admission and termination, at the expense of the employer.

Insalubrity

Insalubrious activities or operations are construed as those activities that, due to their nature, condition or methods of work, expose employees to agents that are harmful to health, beyond the tolerance limits fixed in accordance with the nature and intensity of the agent and the time the employee is exposed to such agents.

Hazard

Hazardous activities are construed as those activities that, due to their nature or method of work, imply permanent contact with inflammable products or explosives, under highly risky conditions.

Environmental Protection

Law 7347/85 stipulates the public civil action for the ascertainment of the liability for damages caused to the environment, the consumer, assets and rights of an artistic, esthetic, historic and tourist value. The Public Prosecution Service ("Ministério Público") has been promoting the protection of the environment and work environment, in cases where there has been a violation of the law.

Outsourcing

Is the act of transferring the responsibility for certain services from a company to third parties. Notwithstanding the absence of specific legislation on the matter, the practice of outsourcing in Brazil is increasing steadily. Its great attraction is that it transfers to third parties the activities that do not conform to the corporate purposes of companies, enabling them to concen-

trate on their core businesses. Companies are adopting outsourcing as a means of cutting costs and enhancing performance in the short and medium term. Moreover, outsourcing eliminates direct labor, social security and tax liability, although these liabilities are indirectly passed on to the company by the service provider. Nevertheless, the understanding of late has been that the company becomes jointly liable for the aforesaid obligations, if they are not fulfilled by the outsourced party. In addition, companies that outsource their atividades meio (activities that are not related to its corporate purpose), are secondarily liable for the labor and social security obligations of the employees of the company that renders the respective service.

1. Ownership

Regulatory laws: The real right in Brazil, which includes ownership, is regulated by the Civil Code (Law 10.406/2002).

Real Rights: Besides ownership, real rights include: the surface area, servitudes, usufruct, the use, habitation, the right of the promising buyer of the property, the pledge, real mortgage and antichresis.

Establishment and transfer of real rights: As a general rule, the acquisition of real rights over property, established or transferred by acts between living persons, is only legally carried into effect with the registration of the acts at the Real Estate Registry Office.

Concept of ownership: The right to use, enjoy and dispose of a thing, and the right to repossess it from whoever unjustly possesses or holds it. Ownership is presumed full and exclusive, until proved otherwise.

Exercise of the right of ownership: Shall be consistent with its economic and social purposes, so that the flora, fauna, natural beauties, ecological balance and historic and artistic patrimony are preserved and the pollution of air and waters are avoided, in conformity with that established in special law.

Deprivation of the right of ownership: The owner may be deprived of the property, in the cases of expropriation, public need or interest, or social interest, as well as in the case of imminent public danger which is always subject to just indemnification.

Ownership of the soil: Includes the ownership of the corresponding air space and subsoil, at a height and depth that are useful for its exercise. The owner cannot oppose the activities that are performed by third parties at such a height or depth where he does not have a legitimate interest to impede. It does not cover mineral deposits, mines and other mineral resources, potential hydraulic energy, archeological monuments and other property referred to by special laws.

Fruits: The fruits and other products of the thing belong, (even when separate), to their owner, except if, by special legal maxim, they belong to another person.

Purchase of Real Property

The most common method of the purchase of real property between living persons is the registration of the title deed at the Real Estate Registry Office.

Another method of acquiring real property is usucaption (prescription): those who, for 15 years, without interruption, or opposition, possess a property as their own acquire its ownership, regardless of title and good faith; and may seek a declaration from the court in this respect which will serve as the title for registration at the Real Estate Registry Office. This period may be reduced in certain cases. It may be reduced to 10 years, for example, if the possessor has established his habitual residence on the property, or carried out works or services of a productive nature thereon. There are other cases of usucaption (prescription) provided in law.

Mortgage

Real property may be charged by way of mortgage as security for the debts or obligations of its owner or of third parties. The mortgaged property is subject, by a real relationship, to the performance of the obligation.

The deed granting a mortgage must be registered with the Real Estate Registry Office.

Right to Construct

The owner may erect constructions on his land as he wishes providing he respects the rights of his neighbors and the administrative regulations. The administrative regulations (building rules and zoning restrictions) are mainly set forth in municipal laws. Special attention should be paid to the location and authorization for the establishment of manufacturing plants which are subject to the regulations imposed by the zoning and pollution control agencies.

Usufruct

Included in the definition of ownership is the usufruct, which may be on one or more movable or immovable assets on an entire estate or a part thereof, including the fruits and conveniences, in whole or in part.

Assignment of usufruct: the owner may assign the usufruct to another person, continuing with the tenancy.

Establishment of usufruct: the usufruct of real property, when not resulting from usucaption (prescription), will be achieved by registration in the Real Estate Registry Office. Unless otherwise provided, the usufruct is extended to the fixtures of the thing and its extensions. The usufructuary has the right to the possession, use, administration and receipt of the fruits.

Methods of exercising usufruct: the usufructuary may usufruct in person, or by means of leasing the building, but cannot change its economic use, without the express authorization of the owner. The usufructuary is not obliged to pay for dillapidations resulting from the regular exercise of the usufruct.

Extinguishment of the usufruct: the usufruct is extinguished, and the registration at the Real Estate Registry Office cancelled, upon inter alia the occurrence of the following events: the waiver or death of the usufructuary; termination of its duration period, extinguishment of the corporate entity in favor of whoever the usufruct was established, destruction of the thing.

City Leasing

Regulatory laws: the leasing of city real estate, which includes both residential property, and non residential or commercial property, is, as a general rule, regulated by Law 8245/91. There are exceptions, regulated by the Civil Code and special laws.

Term: the lease contract may be adjusted for any length of time. During the stipulated term the landlord may not repossess the leased property. However, the tenant may do so, provided he pays the fine stipulated in the contract, or if there is none, the judicially stipulated fine. However, the tenant will be exempt from a fine, if the return of the property results from the transfer by its private or public employer to render services in different localities to the one at the start of the contract.

Sale of leased property: if the property is sold during the lease, the purchaser may cancel the contract giving the tenant ninety days to vacate the premises, save if the lease is for a specified term and the contract contains a continuity clause in the case of a sale and is registered in the Real Estate Registry Office. Termination of lease: the lease may also be annulled by mutual agreement.

Assignment of lease: the assignment of a lease, sublease and loan of the premises, either totally or partially, depends on the prior written consent of the landlord.

Rent: the parties are free to adjust the rent, though its stipulation in foreign currency and its tying to a foreign currency or the minimum wage are prohibited. Preemption rights: in the case of a sale, the promise of sale, assignment or promise of assignment of the rights or datio en solutum, the tenant has preference to purchase the leased property, on equal conditions to that of third parties. The landlord shall notify the tenant of the transaction by means of judicial or extrajudicial notification or other equivalent means.

Repossession in residential leases: Besides the general cases of the termination of the lease contract mentioned above, the law provides two types of repossession exclusively for residential leases. These depend on the initial term of the lease: a) in leases recorded in writing, for a term corresponding to or in excess of 30 months, the termination of the contract will occur at the end of the stipulated term, regardless of notification or notice. If the tenant continues in possession of the leased premises for more than 30 days without objection from the landlord, the lease will be presumed to be extended for an indeterminate period of time and the terms of the lease will continue. If the extension occurs, the landlord may cancel the contract at any time, specifying a period of 30 days to vacate the property (eviction or landlord's repossession of the premises without stating the reasons); b) in leases agreed verbally or in writing with a term of less than 30 months, at the end of the established term, the lease is automatically renewed for an indeterminate period of time, and the premises may only be repossessed in cases explicitly stated in law. (with cause).

Right to renewal in the leasing of premises for commerce: in order to protect "goodwill", the law grants the tenant the right to the renewal of the contract, for an equal period, regardless of the landlord's consent, provided that the following requirements are cumulatively met: (i) the contract to be renewed has been executed in writing and for a specific term; (ii) the minimum term of the contract to be renewed or the sum of the uninterrupted terms of written contracts is 5 years; (iii) the tenant is exploiting its commerce, in the same field, for the minimum and uninterrupted period of 3 years.

Commodatum

A property may also be granted under a commodatum, which is the gratuitous loan of fungible things. If the commodatum does not have a conventional term, the necessary time for its permissive use will be presumed. The lessor of a commodatum, save an unforeseen and urgent need, acknowledged by a judge, may not suspend the use and enjoyment of the property loaned, prior to the end of the stipulated term, or the term determined by the use granted.

The lessee is obliged to maintain the property loaned as if it were his own, and may not use it other than in accordance with the agreement or the nature thereof, save that he is liable for loss and damage. The lessee, besides being accountable for the loaned property, must also pay the rent of the property, until its return.

The lessee is not entitled to recover any expenses incurred in connection with the use or enjoyment of the thing loaned from the lessor.

Purchase of Property by Foreigners

The purchase of city properties can be freely made: (i) by foreign individuals and corporate entities residing or domiciled abroad, where the investment made in the purchase of the property is not subject to registration with (BACEN); (ii) by a corporate entity based in Brazil, but controlled by foreign capital, where the investment made in the purchase of the property is subject to registration at BACEN, as foreign capital invested in a Brazilian company.

With respect to the acquisition of real properties located in national security and rural areas, the statutory laws contain restrictions on their purchase by foreign individuals or corporate entities, or by Brazilian corporate entities controlled by foreigners residing or based abroad.

Rural real property is subject to the following basic rules: a) the sum of the rural property owned by foreigners cannot exceed 1/4 of the surface area of the Municipalities and persons of the same nationality may not own more than 40% of this limit; b) the surface areas are divided into modules, whose areas, in accordance with the locality, range from 5 ha. (Greater São Paulo region) to 100 ha. (according to the region of the country); c) foreign individuals residing in Brazil may freely purchase areas of up to 3 module units for undefined exploita-

tion, provided that the aforesaid surface area restrictions are observed and it is the foreign individual's first purchase (in practice, it is recommended that INCRA (National Land Development Agency), associated to the Ministry of Land Development, be consulted beforehand to check that the acquisition is within the surface area limit). For areas in excess of 3 and up to 50 module units, and for the second purchase operation, authorization from INCRA must be obtained, whereas for areas of between 20 and 50 module units, a land use proposal will also have to be submitted. For areas of 50 to 100 module units, approval will be necessary from the President of the Republic, together with evidence to the effect that the project is of national interest and approved by the National Defense Council. For the purchase of areas in excess of 100 module units, authorization from Congress will have to be obtained; d) foreign corporate entities authorized to operate in Brazil, or corporate entities based in Brazil controlled by individuals or corporate entities residing or based abroad, shall obtain authorization from the Ministry of Land Development, through the competent agency, in this case, INCRA; (e) foreign individuals that have Brazilian children or are married, under the partial or community property system, to a Brazilian, are free to purchase rural property.

Although the restrictions on the purchase of rural property listed in item "d" above are in theory, in force, a new understanding established by the Ministry of Land Development, with the Attorney General's Office of INCRA in Brasília, has now eased the purchase and leasing of rural properties by companies domiciled in Brazil and controlled by foreign capital.

Nevertheless, special restrictions are made for rural properties located in frontier strips, construed as the area indispensable to national security. This area is defined as the 150 kilometer (equivalent to 93 miles) wide internal strip, running parallel to the borderline of the Brazilian territory.

The purchase of rural real property within the frontier strip by a foreign individual or corporate entity, or by a company with any foreign ownership interest (whether majority or minority, as a stockholder or member of the Administration), will depend on the prior approval of the National Defense Council.

Prior approval from the National Defense Council is also required for the establishment or operation, in the frontier strip, of industries that are of interest to national security, as listed in the decree of the Public Power, and the establishment, in this same strip of companies that engage in the following activities: (i) prospecting, extraction, exploration and utilization of mineral resources, except for those of immediate application in civil construction, classified as such in the Mining Code; (ii) land settlement and rural developments. These companies shall necessarily satisfy the following conditions: a) at least 51% of the capital shall belong to Brazilians; b) at least 2/3 of the employees shall be Brazilian; c) the majority of the administrators and managers shall be Brazilians, who shall have the predominant powers.

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