Brazil

VLMA LAW

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We practice business-oriented law, working promptly and efficiently in developing solutions for our clients. Since the firm was founded in 2011, we have centered our practice on a wide range of corporate transactions, with a focus on mergers and acquisitions, spin-offs and takeovers (M&A). Since then, we have grown both our team and the range of practice areas to cover different areas of business law to serve our clients better, without losing our fundamental qualities.

The close relationship with our clients, the straightforward and agile communication, the identification of relevant business and background elements, and the development of solutions based on a multidisciplinary analysis continue to be the hallmarks of our practice.

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Litigation and Dispute Resolution
Arbitration
Tax
Business Contracts
Labor
Real Estate
Agency & Franchising
Offset & Project Finance Operations
Venture Capital
Privacy and Data Protection
Compliance
Fintechs and Innovation and General Practice

1.1. Companies

Brazilian law provides for different forms of association for the conduct of economic activities geared to the production or circulation of goods and services. Among the most usual are the corporation ("Sociedade Anônima S/A") and the limited business company (LTDA), which are both subject to registration at the Commercial Board ("Junta Comercial").

1.1.1. Corporations (S/A)

1.1.1.1. Regulation

Corporations are governed by their bylaws and by Law 6404/76 and are widely recommended when forming joint ventures in Brazil. The structure of a Corporation allows for the adoption of more robust corporate governance practices. The capital stock of a Corporation can also be controlled or fully owned by foreign legal entities and/or individuals. The registry is fulfilled when registered at the Registro Público de Empresas Mercantis (Junta Comercial).

1.1.1.2. Types

It can be either: (i) privately held (securities not traded in the stock market) or (ii) publicly held (securities are traded in the stock market, subject to Law 6,385/76 and the Normative Rulings issued by the Brazilian Securities Commission (Comissão de Valores Mobiliários - CVM), which corresponds to the U.S. Securities and Exchange Commission (SEC).

1.1.1.3. Share capital

There is no minimum, however some activities require a minimum share capital for authorization to register a corporation, such as financial institutions and trading companies, for example. The capital can be paid in currency or assets. At least 10% (or 50%, in case of financial institutions) of the amount of capital subscribed in currency must be paid upon incorporation; the remaining amount must be paid during such term as set out in the bylaws.

No minimum capital is required except for specific cases (financial institutions, trading companies, etc.). The Capital Structure follows the subsequent pattern: the capital is divided into shares, which can be either common or preferred shares, with or without a par value. Owners of preferred shares can have their voting rights restricted and/ or be assigned additional economic benefits. A disproportional distribution of profits is not allowed by law, however, preferred shares may entitle shareholders to different profit share conditions and dividends. The number of nonvoting 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: Limited to the price of the subscribed or acquired shares. The corporation has a distinct existence from that of its shareholders. Hence it has capital autonomy in relation to the partners. The assets of the corporation 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 labor, 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 bylaw 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.

1.1.1.4. General shareholders meeting

The 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 total votes conferred by the shares with voting rights; in the second call, it will be called with any number of shareholders.

Types: periodical (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 and (iv) approve the updated currency value of the share capital. Frequency: annually, in the first 4 months subsequent to the end of the fiscal year. AGE: powers to: (i) reform the corporate bylaws; (ii) authorize the issuing 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 issuing of participation certificates; (vi) decide on the transformation, merger and spinoff 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 judicial reorganization. For voting of the following matters a qualified quorum is necessary: half of the total votes conferred by shares with voting rights in the case of private corporations if the bylaws do not contain a different provision is needed for matters listed in Article 136 of the Corporations Acts; (ii) Simple majority is necessary for other matters.

The bylaws may require higher quorums for specific matters: a) creation of preferred shares or increase of existing classes of preferred shares, without maintaining the proportion relative to 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) stop the state of liquidation of the company; h) creation of participation certificates and i) spin-off of the company and j)dissolution of the company. Frequency: whenever necessary.

Reform of corporate bylaws 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 shareholders have the preemptive 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.

1.1.1.5. Administration

The management structure is composed by a Board of Officers (at least one and must be a natural person) or a Board of Officers and a Board of Directors, as set forth in the corporate by-laws, furthermore they are responsible for the administration of the Corporation. All publicly held corporations, companies with authorized capital and quasi-public corporations must have a Board of Directors in place.

Board of Directors: is responsible for fixing the generation of business and orientation of the company. It is composed of individuals, residing in the country or otherwise (nonresidents shall necessarily grant power of attorney to a resident of Brazil). Minimum number of members: 3. It is elected by the General Shareholders Meeting. Term of appointment: not more than 3 years, reelection being permitted. Members of the Board of Officers, minimum of 1, may be elected for executive officer positions.

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. Minimum number of members: 1. 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, reelection 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 from the Board of Directors, the representation and performance of the necessary acts for its regular operation will be the responsibility of any officer.

1.1.1.6. Rules common to administrators (directors and officers). Installment term

Administrators (directors and officers) not residing in Brazil are conditioned to the appointment of a representative residing in the country, with powers lasting at 3 years longer than the administrator´s term to be served with lawsuits pursuant to the law of corporations and notices from CVM (Comissão de Valores Mobiliários) in the case of public companies.

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 from 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 (iv) have a position in the advisory body, board of directors or audit committee a competing corporation (v) have a conflicting interest with 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 duty. 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 the law or of the bylaws.

1.1.1.7. 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 bylaw obligations; (ii) to comment 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, merger by incorporation of companies , merger and spinoff; (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.

1.1.1.8. Financial statements

The law requires publication of many different documents (corporate documents, call notices and financial statements).

In general, the publications of a Corporation involve an average annual cost of BRL 45,000.00. 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 local a newspaper of high circulation during at least 5 days before the date scheduled for the AGO. Corporations that have annual turnover up to BR 78 million are permitted publish balance sheets and other corporate acts solely via the internet.

The documents 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 records which approved them.

1.1.1.9. Publicly held companies (quoted companies)

Are subject to specific rules in addition to the general rules applied to the privately 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 control of a publicly held company is subject to CVM approval. Moreover, such companies shall have independent auditors and comply with a series of mandatory 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 was the inclusion of rules that may be classified as concerning 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 required advance notice 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 spinoff among the cases that entail the right of withdrawal, (if the spinoff 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 notify the CVM, the Stock Exchange and organized 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 bylaw obligations, and claimany 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.

Securities can be traded in the stock market if the corporation is publicly held. New rules for publicly held companies were introduced by the recent Law 11638/07, requiring them to draw up consolidated annual financial statements on the basis of international standards (IFRS – International Financial Reporting Standards).

More recently, the law was amended to provide that ordinary and preferred shares may belong to one or more classes, and to allow for minority shareholders to have their votes multiplied by the number of seats being elected on governance bodies, with this being a requirement for mergers, incorporation and spin-off of public companies which do not have this provision in their by-laws. Some authority was transferred directly to the General Assembly, such as deciding on the transformation, merger, incorporation, spin-off, liquidation and accounts, authorizing administrators to restructure or file for bankruptcy, and the sale of assets over 50% of the total company assets

1.1.2. Limited companies (LTDAS)

Limited Business Companies are created under articles of association which must provide for, among other things, the company's objectives and capital stock and the ownership interest of each partner. Generally, a Limited Business Company can perfectly operate as a subsidiary whose capital is controlled or fully owned by foreign entities and/or individuals. They are particularly fit for smaller businesses. In forming the business relationship within a Limited Business Company, partners are given more freedom, including with respect to the distribution of profits. Limited Business Companies are governed by their articles of association and by Law 10406/02 (Brazilian Civil Code). The registry is fullfilled when registered at the Registry of Commerce (Junta Comercial).

1.1.2.1. Partners

Minimum of 1 required.

1.1.2.2. Share (quota) capital

The capital can be paid in currency or assets. An initial payment of a minimum amount of capital subscribed in currency is not required. The capital is divided into ideal parts ("quotas") with a par value. The owner of a "quota" cannot be deprived of voting rights.

Capital increase: only permitted after all the shares have been paid up. The preemptive 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 preemptive right to participate in capital increases requires the approval of partners representing at least ¼ of the share capital (except if the articles of association determine otherwise). There is the need to change the articles of association.

1.1.2.3. Liability of the partners

Limited to the amount of the partner's ownership interest; however, all partners are jointly liable for the payment of the capital. 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. Moreover, the partners are jointly and severally liable for debts with the social security authorities, as well as for labor debts, as a result of the application, in these specific cases, of the 'disregarding the corporate entity' theory.

1.1.2.4. Administration

One or more individuals who may be a partner of the company or not, provided that they are resident in Brazil. Appointment can be made either in the Articles of Association or in a separate document. The management structure (the existence of both the Board of Directors and the Board of Officers, or only the Board of Officers) must be defined in the Articles of Association. The designation thereof requires the approval of 2/3 the partners (when the capital is not totally paid up) or of partners representing over half of the share capital (when the capital has been paid up). Removal of a partner administrator who was appointed in the Articles of Association requires approval by partners representing at least half of the share capital.

Remuneration: there is no minimum amount or maximum limit. The participation of partners in the company profits, in a different proportion to the partners' interest in the share capital is an option, provided that the Articles of Association or the partners' agreement so allow. Transformation of the company type, merger, merger by incorporation of companies and spin-off are allowed. Generally, no publication is required. Publication is required in the case of minutes of the meeting of partners approving a capital reduction. 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.

1.1.2.5. Resolutions

The law requires (i) 2/3 of the capital for appointment of an administrator who is not a partner of the company, whenever the capital stock is not fully paid; and over half of the capital :(a) amendment to the articles of association; (b) mergers, mergers by incorporation of companies, dissolutions and end of liquidations; (c) appointment of an administrator who is not a partner of the company, whenever the capital stock is fully paid; and (d) appointment of an administrator (in a separate document), his removal and remuneration, modification of the Articles of Association, incorporation, merger, termination or ceasing of liquidation of the company as well as any request for court-supervised reorganization. The Articles of Association may require higher quorums for specific matters. 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. Securities cannot be traded in the stock market as a means to raise funds. This could only happen if the Company is transformed into a publicly held Corporation.

1.1.2.6. Exclusion of partners

The law provides for the possibility of the nonjudicial 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. For companies with two or more partners, the non-judicial exclusion of a partner can only occur in a meeting specifically called for this purpose, with the partner accused having been made aware of this with enough time to prepare his defense.

1.1.2.7. Financial statement

Generally, no publication of financial statements is required.

1.1.2.8. 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.

1.2. 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 in Brazil through ownership interests, for the following reasons:

- ∴ the need of prior authorization, through an act of the Federal Executive Branch– a slow and highly bureaucratic procedure;
- ∴ prohibition of the remittance of royalties to the head office abroad for the use of trademarks and exploitation of patents, and
- ∴ tax disadvantages

1.3. Corporate reorganization operations and sale of establishments

Corporate reorganization operations may be conducted both by Corporations ("S/As") and by Limited Business Companies ("LTDAs"). These operations include:

I. Transformation: the company is transformed from one type of company to another, without the dissolution or interruption of its activities;

II. Merger: two or more companies are combined to form a new company, which succeeds all their original rights and obligations;

III. 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 obligations of the spun off or extinguished company; and

IV. Merger by incorporation: 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.

1.4. Acquisition of companies

The total or partial acquisition of a Brazilian company by a foreign company may occur through many different types of transactions.

Without harm to other types of transactions that may be recommended in proper tax planning, we highlight, (i) the acquisition of shares or quotas of capital stock of the Brazilian company; (ii) the subscription of new ownership interest as a result of a capital increase by the company involved; and (iii) the acquisition of establishments, assets, and/or goodwill ("fundo de comércio").

In the light of the topic "acquisition of companies", the possibility of setting off the premium paid by the acquirer is of significant importance and must necessarily be analyzed by a skilled professional, particularly when it comes to assessing the tax risks involved.

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

I. a thorough analysis of the financial and legal situation of the prospective local partner (in the case of a joint venture);

II. a detailed analysis of the financial, accounting, and legal situation of the company involved, as well as a detailed analysis of the market in which it is engaged, by professionals specialized in Brazilian law (financial, accounting, and legal audits conducted by investment banks, independent auditors and specialized attorneys);

III. the accurate identification of liabilities and contingencies of the company to be acquired is a crucial step to defining which representations and warranties will be given by sellers with respect to the company, its businesses and assets; definition of the responsibilities for losses regarding events occurring prior to the transaction; setting the price and any application withholdings; defining collateral and/or escrow; among other protective measures to be taken by the investor;

IV. assessment of the best structure, in terms of its tax and corporate aspects, to be used for the intended transaction, especially in relation to any premium to be paid;

V. assessing whether it is necessary to submit the transaction to the Brazilian antitrust authorities or any third parties with whom the company has a contract (change of control clause); and

VI. analysis of issues regarding compliance and anticorruption.

Depending on the transaction, (binding or non-binding) letters of intent, acquisition instruments, shareholder or associate agreements, agreements with officers, guarantee agreements, and other documents will have to be negotiated between the parties.

1.5. 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 (Corporations or Limited Business Companies, whether or not under common control) associate with each other to carry out a specific undertaking, being able to carry out certain activities, which could not be carried out individually by each company, especially due to technical or economic financial conditions. This type of association is frequently used in public bids and for the concession of construction works and private and public services, import and export.

A consortium is not a corporate entity and, as a general rule, its members are only bound by the conditions provided for in its incorporation agreement, without the presumption of joint or separate liability.

This rule does not apply to the obligations pertaining to federal taxes; in this case, the member companies will be jointly responsible for these obligations. Depending on each case, member companies may also incur joint and separate liability with respect to labor, tax (other than federal taxes) and consumerrelated obligations.

The consortium incorporation agreement and its amendments must be filed at the Registry of Commerce (Junta Comercial) of the venue of its headquarters.

1.6. Undisclosed joint venture partnership (scp)

It consists merely of a private agreement, entered into by two or more participants, with the purpose of permitting the exploitation of a specific business opportunity or specific business activity. It is commonly used in specific transactions such as import, export, participation in specific businesses, public bids, among others.

The law differentiates two types of participants: (i) the visible partner: carries out the activities of the company purposes in his individual name and assumes sole responsibility for the company obligations, and (ii) the secret partner: appears merely as an investor, not known to third parties; is liable to the visible partner within the limit provided in the company's formation instrument.

An SCP is not a separate legal identity different from that of their participants and its formation is not subject to any formality. Proof of existence of an SCP can be made by any means of evidence permitted under Brazilian law.

2.1. General notes

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

Such an allocation of taxing powers and the interplay of the rules within the Brazilian Tax System, not to mention the case law, make Brazil one of the countries with the highest compliance costs related to fiscal obbligations.

2.2. Significant developments

The National Tax System has been constantly modified and updated. The most recent and relevant changes were the following:

∴ A executive order established new legislation on transfer pricing rules (Medida Provisória 1152/2022), aligning them with OECD standards. The executive order has to be turned into Law by the Brazilian Congress to become permanent.

∴ As part of the relief program directed to businesses affected by the COVID-19, the federal government exempted from most federal taxes companies in the events sector. Definition of which business activities are part of the events sector has been changing through recent legislation.

∴ There has been speculation on the taxation of didivends as both presidential campaigns mentioned such taxation as part of a tax reform. Specifics on how this taxation will occur and how it will reflect on corporate taxation remain unclear and should take effect in 2024.

2.3. Taxes on corporate income

Legal entities in Brazil are taxed on their worldwide income. These taxes are imposed on a federal level and can be summarized as follows:

2.3.1. 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 rate is 15% with a surtax of 10% levied on income in excess of R$ 240 thousand (approximately US$ 46 thousand in December 2022) per year.

2.3.2. CSLL (Social contribution on net profits)

Levied at a tax rate of 9% on taxable profits. The contribution rate corresponds to 20% in the case of legal entities considered financial, private insurance and capitalization institutions.

2.3.3.PIS (Contribution to the social integration program)

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

2.3.4. COFINS (Contribution for the funding of social welfare programs)

This is also levied on monthly gross receipts and may also be computed in a cumulative regime, at a tax rate of 3% or non cumulative regime, at a tax rate of 7.6%; subject to legal limits and requirements. PIS and COFINS are determined and collected on the same tax basis.

2.4. Corporate residence

A legal person is deemed to be a resident when its has been incoportared in Brazil and its head office is located within the Brazilian territory. 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).

2.5. Other main taxes

2.5.1. Federal taxes

IPI (equivalent to the Excise Tax): its taxpayers are, for example, importers and industrial companies. Its tax rate, which is applicable to 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.

II (Import Duty): is levied on import operations. This tax has variable rates according to the product being imported.

IOF (Tax on Credit, Insurance and Foreign Exchange Operations, or on Operations relating to Negotiable Instruments and Securities): in foreign exchange operations, the tax basis for the calculation of IOF is the sum in local currency received, delivered or made available. The maximum rate is 25%, currently reduced to thirty-eight hundredths of a percent (0.38%) to most transactions.

CIDE-Royalties (CONTRIBUTION TO THE INTERVENTION ON THE ECONOMIC DOMAIN-Royalties): in remittances of payments overseas related to technical services, technical assistance, royalties, technology transfer and intellectual property licensing.This tax is levied at a 10% rate on the amount remitted abroad.

2.5.2. 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 (Inheritance and Gift Tax) is assessed on the transfer of any property by will, inheritance or gift made between individuals or corporate entities. The tax base is the market value of the property donated or received as an inheritance. The rate is determined by each State up to the maximum of 8%. In the States of São Paulo and Paraná the rate is fixed at 4%. Some other States established progressive tax rates that go from 0% up to 8% (Rio Grande do Sul and Santa Catarina).

2.5.3. Municipal taxes

ITBI (Inter-living Property Tax): is levied on the 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, the rate is 3%.

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 1% to 1,5%).

ISS (Service Tax): is levied on the provision of the services contained in the list attached to Complementary Law 116/03, regardless of whether the services constitute the core activity of the provider. The rate varies between 2% and 5% and is defined by the Municipality within this range. The Municpality entitled to this tax is the one where the establishment is located or where the service is carried out, according to each individual case.

2.5.4. Capital tax and stamp duty

These are not provided for in the legislation.

2.6. 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.

2.7. Income determination

There are currently three main regimes in force regarding the determination of income:

I. In the “Actual income regime”, which is the standard regime, income is determined according to the annual balance sheet at December 31 or in quarterly trial balances (income determined as such must comply with the IFRS). Once the “book income” has been determined, tax legislation provides for some adjustments (exclusions and deductions from the “book income”) in order to ascertain the tax base, which is then called “Actual Income”.

II. In the “Presumed income regime”, which is optional, the taxable income is determined by the application of fixed percentages over the quarterly gross revenues of the corporate entity, without any deduction, for the purposes of the calculation of IRPJ and CSLL (corporations eligible to this regime are those whose total gross receipts in the preceding calendar year were not higher than R$ 78 million, equivalent to approximately US$ 15 million in December 2022).

III. In the “National Simplified regime”, which is also optional, the taxable base is determined by the application of fixed percentages over the monthly gross revenues of the corporate entity, without any deduction. This regime comprises the assessment and collection of the following taxes: IRPJ, CSLL, PIS, COFINS, IPI, ICMS, ISS and payroll contributions. All these taxes, depending on the business activity of the taxpayer, are asssed and collected in a single tax return/tax bill (corporations eligible to this regime are those whose total gross receipts in the preceding calendar year were not higher than R$ 4.8 million, equivalent to approximately US$ 934 thousand in December 2022).

2.7.1. Deductions

From the income tax determined for the month under the actual income, 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 expenses necessary to 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 by law (technical, vacation pay, thirteenth salary and provision for income tax) are deductible.

2.8. Group taxation

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

2.9. Tax incentives (including special tax regimes)

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

2.10. Withholding taxes (IRRF)

Remittante Abroad Cases	Current Rate	Current rate for Tax Havens
Profits and dividends	0	0
Interest	15%	25%
Royalties, or remineration for technical or similar services or of payment for contracts with or without technology transfer, except ir there ir an agreement to avoid double taxation *(a)	15%	25%

Below is a table with some of the main percentages:

**(a): 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, Aruba, Ascension Islands, Commonwealth of the Bahamas; Bahrein, Barbados, Belize, Bermudas Islands, Brunei, Campione D'Italia; Channel Islands (Alderney, Guernsey, Jersey and Sark), Cayman Islands, Curacao, Cyprus, Cook Islands, Djibouti, Dominica, Erin, United Arab Emirates, Gibraltar, Granada, Hong Kong, Republic of Ireland, Kiribati, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Maldives, Isle of Man, Marshall Islands, Mauritius Island, Monaco, Montserrat Islands, Nauru, Niue Island, Norfolk Island, Panama, Pitcairn Island, French Polynesia, Queshm Island, American Samoa, Independent State of Samoa, Saint Martin, Islands of St Helena, St. Lucia, Saint Pierre and Miquelon Island, St. Vincent and the Grenadines, Seychelles, Solomon Island, Swaziland, Sultanate of Oman, Tonga, Tristan of Cunha, Turk and Caicos Islands, Vanuatu, Virgin Islands of the United States, British Virgin Islands.

2.11. Tax administration

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

∴ Returns: Obligation depends on each tax and State/Municipality involved.

∴ Payment of tax: IRPJ and CSLL Quarterly or annual, with the adjustments provided in law; IPI/ICMS/ISS/PIS/COFINS monthly; and II at the time of customs clearance.

2.12. Individual taxes

2.12.1. General notes

Individuals residing in Brazil are subject to tax on the worldwide income.

2.12.2. Territoriality and residence

The tax domicile of an individual is generally construed as his or her habitual residence, provided that there is the requisite intention to maintain such a residence. There are specific criteria and conditions though.

2.12.3. Gross income

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

2.12.4. Employee gross income

Taxed in the month that the resources are received by the paying source, 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 370.58	0	0
From 370.59 to 550.17	7.5%	27.79
From 550.18 to 730.10	15%	69.05
From 730.11 to 907.93	22.5%	123.81
Over 907.93	27.5%	169.21

** US$ on December 2022.*

*** This deduction is not a "deductible expense" or some sort of exemption/reduction. Actually, it is just a way to facilitate the progressivity calculation.*

2.12.5. Capital gains and investment income

Income tax 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 a progressive rate corresponding to 15% to 22,5%.

2.12.6. Capital losses

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

2.12.7. Monthly deductions

Social security contributions, business expenses made by autonomous professionals, US$ 35.65 per dependent and US$ 358.04 for allowances and pensions of persons over the age 65, per month.

2.12.8. 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, and contributions to Private Pension Plans.

2.12.9. Simplified discount

The taxpayer may elect for the simplified discount, which consists of the deduction of 20% of income, limited to US$ 3,150.67, in the Annual Adjustment Statement, without need for proof of the expense and indication of its type.

2.12.10. 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.

2.12.11. Tax credits

Credits for foreign taxes paid are allowed, limited to the amount of tax due in Brazil.

2.12.12. Other taxes

2.12.12.1. Social security (INSS)

The employees' contribution, discounted from their salary, is calculated by the application of the corresponding rate (could be up to 14.00% of the amount paid by the company, limited to USD 155.78), on their monthly contribution salary. For other taxpayers affiliated to the General Social Security Regime, the contribution is 20% of the contribution salary in the company level, subject to the deductions set forth by law.

2.12.12.2. Wealth taxes

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

3.1. Labor law and social security

The Consolidation of Labor Laws (Consolidação das Leis de Trabalho - CLT) is the main set of rules that regulates labor relations in Brazil. It contains a number of definitions, principles and rules designed to protect the interests of employees and workers in general

3.1.1. Employee

Employee is defined as the natural person who personally provides services to another person, on a habitual basis and under subordination, in exchange for remuneration.remun
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.

3.1.2. Employer

Employer is defined as the for-profit or nonprofit entity, with or without a legal personality, that has at least one employee.

The employer, in the majority of cases, is a company, but liberal professionals, associations, etc. may also be employers.

3.1.3. Individual employment contract

Individual Employment Contract is defined as the tacit or express agreement, corresponding to the employment relationship.

The adoption of a written contract is advisable.

Contracts may be for an undefined or defined period, though contracts for undefined periods are more common, since defined period contracts are only allowed to be signed in specific situations set forth in law.

3.1.4.Work and social securoty booklet (CTPS)

The work and social security booklet is obligatory and proves the existence of a written or verbal employment contract.

3.2. Rights of the employee

Some of the main basic rights of employees are:

3.2.1.Working hours of the employee

Ordinary working hours are 8 hours a day and 44 hours a week. The law provides for shorter working hours in certain situations (e.g. minors) and for certain professions (e.g.: railroad workers, physicians, telephone operators, journalists, bank workers, etc).

The working day will be diurnal, when it is between 5:00 a.m. and 10:00 p.m., in urban centers, with other criteria for rural areas. Nocturnal work in urban centers, occurs when the work is performed between 10:00 p.m. of one day and 5:00 a.m. of the following day.

Overtime refers to the hours worked beyond the normal limits fixed by law, collective bargaining agreements, normative sentence or individual employment contracts. Usually, it is forbidden to exceed 2 extra hours per day.

3.2.2. Remunerated weekly rest period

Remunerated weekly rest period is defined as the remunerated weekly rest period of 24 consecutive hours, preferably taken on Sundays (at least once a month) and within the limits of the technical requirements of companies, or 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.

3.2.3. Meal and rest break

Employees who work eight (8) hours daily are ensured a break for a meal and rest of at least one hour. By negotiation with the unions, this time can be reduced to 30 minutes a day.

Workdays of up to 4 (four) hours do not require breaks, and 15 (fifteen) minutes should be granted for up to 6 (six) working hours.

Also, there must be 11 (eleven) hours of rest between the end of a working day and the beginning of another.

3.2.4. Vacation

All employees will have the right to vacation, after each 12month 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).

During vacation, employees receive the same amount of salary as if they were working, plus a 1/3 bonus. In addition, employees may trade 1/3 of their vacation period in exchange for remuneration.

3.2.5. Wages

The Government establishes the minimum wage amount annually. On 1 January 2023, it will be R$ 1302.00 or around USD$250, but States and Unions can provide for higher values. Severance pay, profit sharing, pension plan benefits and their supplements, and intellectual rights are not regarded as wages.

Payment in fringe benefits or in kind is the payment method whereby the employee receives such economic goods as food, housing, the use of an automobile, credit card, payment of household bills, etc, as payment of part of his or her wage, though it should be pointed out that, according to court decisions and the law, employers are not allowed to pay the entire wage in fringe benefits.

The wage amount may be freely stipulated, provided that such stipulation is not conflicting with the labor protection provisions, collective bargaining agreements and judicial rulings. The following constitute special types of wage:

I. Advances: advance in money or wage advance established as a result of temporary needs;
II. Additional overtime pay: is at least 50% and is incorporated into the base compensation;
III. Additional night pay: is 20% of the contractual wage due, as a rule, for services rendered after 10:00 p.m. (urban centers);
IV. Health hazard allowance: is due to employees that render service in an environment that is considered unhealthy – it is 10%, 20% or 40% of the minimum wage, according to the degree of health hazard;
V. Hazard pay: is due to employees that render services under highly risky safety conditions – it is 30% of the contractual wage;
VI. Additional transfer pay: is due to any employee that is temporarily transferred by the employer to another locality and its amount is 25% of the contractual wage;
VII. Others: commissions, bonuses, gratuities and premium bonuses;
VIII. Thirteenth wage: a mandatory bonus that corresponds to one wage of the employee and must be paid in two installments, the first of which between February and November 30, and the second on or before December 20 of each year. For employees that worked less than 1 year, the 13th wage 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.

3.2.6. Unemployment compensation fund (fgts)

The FGTS is an account in a public bank that the worker can use on the occasions provided by law, which is formed by monthly deposits made by the employer.

Every month, the company has to deposit, with its own resources, in a specific account held by each employee, the equivalent of 8% of the employees" compensation. For employment contracts with minors qualified as apprentices, the rate is 2%.

The sums deposited will be the property of the employee and withdrawals shall be made in the situations set forth in law, such as in the case of unfair dismissal.

In the latter case, the company is also obligated to pay the employee an indemnity of 40% of the FGTS account balance and pay the sum of 10% of the same balance, as social contribution.

3.2.7. Tenure

Tenure is defined as 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 that gives rise to the employee's discharge, except when there is prove that just cause exists.

It is the law that sets forth the cases of job tenure, e.g. the tenure of union leaders and representatives, victims of accidents, committee representatives, expectant mothers and employees' representatives in the CIPA (Internal Commission for the Prevention of Accidents).

3.2.8. Collective bargaining agreements

In addition to the previously described benefits, companies must observe the rules established in the collective bargaining agreements entered into between the unions that represent the professional category.

3.3. Termination of employees' contracts

An employee may be dismissed for cause or without cause. The grounds for dismissal for cause are set out in the law.

Dismissal for cause allows the employer to terminate the employment contract without extra cost (the employer only pays the balance of salary and overdue vacation).

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.

In case of dismissal without cause, the employee will have the right to, among other things, receive ordinary amounts, including: notice period (30 days or more, depending on the duration of the contract), proportional 13th wage, holidays due, proportional holidays plus the additional 1/3 set forth in the Constitution, 40% of the FGTS deposits and any other amounts as set out in the collective agreement.

3.4. Labor union / trade association law

The core business activity of the company and the geographical area are what will determine the trade association to which a given company will belong.

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 particular unions.

As a rule, negotiations are held annually between the trade association of the company and the labor union of the employees of the same category. The collective labor agreements resulting from these negotiations are filed with the Ministry of Labor and Employment and have force of law.

3.5. Social security

There is more than one social security regime in Brazil:

∴ The General Social Security Regime: concerning the INSS (Brazilian Social Security Institute);

∴ Specific Social Security Regime: concerning the social security regime that regulates public Federal, State and City government officials and those hired by government agencies and foundations;

∴ Private Social Security Regime: the purpose of this regime is to supplement the pensions from the official social security regime.

In general, the contribution to social security for the company is 20% of the total compensation paid, due or credited, for any reason, during the course of the month, to insured employees and free-lancers.

Employees also contribute with a percentage of their remuneration, progressive according to salary.

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

I. Contribution to 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% (low risk) to 3% (high risk).

II. 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%;

III. 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%.

IV. 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 entitled entities.

3.5.1. Occupational safety and hygiene

As a rule, companies that have more than 20 employees must have an Internal Commission for the Prevention of Accidents (CIPA).

A medical exam is obligatory, both at the time of hiring and upon termination, which shall be at the expense of the employer. In addition, depending on the type of work performed, some employees may be subject to regular and special medical exams from time to time.

Unhealthy activities or operations are those activities that, due to their nature, condition or methods of work, expose workers to elements that are harmful to health, beyond the tolerance limits fixed in the law.

Hazardous activities or dangerous operations are those that, due to their nature or method of work, imply the worker's permanent contact with inflammable products or explosives, under highly risky conditions.

All companies are required to maintain their occupational medicine and safety programs renewed, annually, especially those determined by the Ministry of Labor and Employment (MTE), namely:

I. Environmental Risk Prevention Program (Programa de Prevenção de Riscos Ambientais –PPRA);

II. Occupational Health Medical Control Program (Programa de Controle Médico de Saúde Ocupacional – PCMSO);

III. Technical Report on the Environmental Conditions in the Workplace (Laudo Técnico de Condições Ambientais no Trabalho – LTCAT);

IV. An occupational health and safety risk assessment (Perfil Profissiográfico Previdenciário – PPP).

3.6. Outsourcing

Outsourcing is defined as the act of transferring the responsibility for the service from one company to another.

Usually, outsourcing is applied to cleaning activities and security services, but companies can still be secondarily liable for the labor and social security obligations of the employees of the company that render the respective service.

4.1. Direct investment

Assets, machinery and equipment brought into the Country without an initial outlay of foreign currency, to be employed in the production of goods or services, and financial or monetary resources admitted into the Country for investment in business activities, are considered foreign capital, provided that in both cases they belong to individuals or corporate entities residing, domiciled or based abroad, and must be registered electronically with Central Bank of Brazil (BACEN), through an investor-recipient related code called RDE-IED, which was initially instituted through the repealed BACEN Circular 2,997 of 11 August 2000, and is currently ruled by Resolução 3.844, of March 24, 2010 ("Resolução 3.844") and Circular 3.689, of 16 December 2013 ("Circular 3.689"), both issued by the BACEN. Circular 3,689 was recently amended by Circular 3,814 of 7 December 2016 ("Circular 3,814") with respect to the procedures required for registering foreign investment capital with BACEN.

This registration is made in the IED module of the RDE in the Electronic Central Bank System - SISBACEN, on the BACEN website. As mentioned above, an investor-recipient code RDE-IED is assigned to each pair of foreign investor and related Brazilian company, and the following information must be provided: initial investment, changes to the net shareholders' equity, changes to the recipient's paid capital and the percentage of paid capital held by each foreign investor and any subsequent change, as well as economic and financial statements.

Registration at BACEN is a condition for the remittance abroad of profits and dividends, and interest on owners' equity, obtained by means of investments made in the Country guarantees the investor the possibility of repatriating the resources invested.

The investor can also invest in Brazilian companies through the conveyance of tangible goods (machinery and equipment), provided that such goods are imported, without the obligation of a payment to a nonresident. In this case, the registration must be made, firstly, in the ROF - Registro de Operação Financeira (Financial Operation Registration) module of the RDE, and, subsequently, in the IED module of the RDE as foreign direct investment. This Registration in the RDE-ROF module must be linked to the cleared Import Declaration (Declaração de Importação - DI).

In addition to investments in corporeal property to be employed in the production of goods and services, BACEN also accepts such intangible goods as trademarks, patents and know-how, as the subject of investment as foreign capital. The registration of intangible goods in BACEN should also be done through the RDE-ROF module, linked to an invoice or equivalent document that characterizes the importation of the intangible goods, provided that it has been approved by the agency responsible for the registration and control of industrial property rights in the Country, namely the INPI (Brazilian Patent and Trademark Office). Finally, the registration is conducted in the RDE-IED module.

According to the Circular 3.689 rules, the technology transfer subject to INPI registration does not characterize an intangible good for the purposes of the financial operation registration designed for the payment of the capital of Brazilian companies.

The foreign investor may also make investments through the conversion of credits that are capable of generating transfers abroad, such as foreign loan principal and interest duly registered in the RDE-ROF Module, profits or dividends, interest on owners' equity and other amounts remittable abroad.

On the basis of the declarations and data informed electronically to the Electronic Central Bank System - SISBACEN, by companies or their representatives, a Consolidated Foreign Direct Investment Registration Statement will be generated. This statement is the appropriate document to evidence the investment made by the foreign investor before third parties.

The investment registration procedure shall be formalized within 30 days from the investment's entry into Brazil. In relation to foreign investments through tangible goods, the registration period is 30 days from the customs clearance date of the goods, at the risk of subjecting the recipient company of the investment to a fine of up to R$ 250 thousand, in accordance with the provisions of the Resolução 4.104, of June 28, 2012, issued by BACEN.

The aforesaid registration will be made in the foreign currency actually brought into the Country or in the amount declared in the import document of the goods.

Circular 3,814 also determines that the investments arising from the events below are registered through a statement entered in the IED module of the SISBACEN RDE – not automatically: (i) remittance of tangible and intangible assets from abroad for the purpose of capitalization by the recipient; (ii) corporate reorganizations – i.e., merger, merger by incorporation of companies or spin-off – occurring in Brazil and involving at least one company with foreign capital registered with BACEN; (iii) exchange of shares in Brazil, which means any exchange of ownership interests in Brazilian companies, one of which must be a recipient of direct foreign investment registered with BACEN, whenever such exchange is made between a domestic investor and a non-resident investor or between non-resident investors; (iv) transfer of shares in Brazil, which means the transfer of fully paid shares of a Brazilian company held by a non-resident investor for the payment of the shares subscribed by such non-resident in another Brazilian company; (v) reinvestment, which means the capitalization of profit, dividend, interest on shareholders' equity and profit reserve in the recipient company that generated them; (vi) distribution of profit/dividend, payment of interest on shareholders' equity, sale of ownership interests, return of capital and net assets as a result of liquidation, whenever they are used as reapplication in another Brazilian company; (vii) distribution of profit/dividend, payment of interest on shareholders' equity, sale of ownership interests, return of capital and net assets as a result of liquidation, whenever they are used in payments in Brazil or direct payments abroad.

Foreign investors with ownership interests in Brazilian companies may transfer these interests to third parties abroad. The foreign purchaser, notwithstanding the price paid for the acquisition, must alter the Consolidated Foreign Direct Investment in Brazil Registration Statement, obtaining a new RDE-IED registration number, which will identify its investment in substitution of the assigning investor, in order to permit future remittances, profit reinvestment registrations and any repatriation of the investment.

Lastly, it is important to mention that individuals or companies domiciled or based abroad, that have ownership interests and other assets in Brazil are obliged to register in the CPF (Federal Register of Individual Taxpayers) and CNPJ (Federal Register of Corporate Taxpayers), respectively.

4.1.1. Economic and financial information

Circular 3,814, as amended by Circular 3,822 of 20 January 2017, sets a requirement for the submission of accounting information, as follows:

A. Recipients of foreign capital, except those described in letter "b" below, will have until 31 March of each year to update in the BACEN system their information on the net shareholders' equity and the sum of capital stock paid by each investor based on the balance sheet of December 31 of the preceding year.

B. Recipients of foreign capital with assets or net shareholders' equity of BRL 250,000,000.00 (two hundred and fifty million Reais) or around USD$ 48 million or greater must update their economic and financial information registered with the BACEN system quarterly, according to the schedule below:

Information disclosure base date	Information disclosure deadline
31 March	30 June
30 June	30 September
30 September	31 December
31 December	31 Mach

The economic and financial information to be submitted must include: (i) amount of paid capital; (ii) net shareholders' equity; (iii) assets; (iv) liabilities; (v) Net profit (+)/losses(-) for the base period; (vi) profit distributed during the based period; (vii) estimated company value; (viii) valuation method; (ix) investor's registration number with Brazilian Ministry of Finance (CPF/CNPJ); (x) information on the investor such as voting power, country of origin, and country of destination.

4.1.2. Foreign investment in local currency

In 2007, BACEN published new foreign exchange rules permitting the registration in local currency of ownership interests held by a foreign partner, which, up to that time, could not be made at BACEN, due to there being no evidence of the regular entry of the resources into the Country (via the contracting of foreign exchange, as determined in the prevailing foreign exchange regulations). This situation was known as "tainted capital" (capital contaminado). The consequence of this situation, among others, was that of not permitting the remittance of profits and dividends abroad on the unregistered portion of the capital/investment.

In accordance with the new rules, foreign capital should only be registered with BACEN, in local currency, if the respective amount is stated in the accounting records of the Brazilian recipient company of the foreign capital, and if there is documentary evidence with respect to the ownership of the foreign capital.

Once the registrations are regularized with BACEN, the foreign investor is authorized to remit abroad the total computed profits and dividends, among others, up to the limit of the holdings held in the company.

Lastly, the capitalization of profits and dividends, interest on owners"equity and profit reserves, originating from the portion of the capital registered in local currency, are subject to the same registration modality.

4.2. Indirect investments: foreign loans

4.2.1. Foreign loans via the free exchange rate market

The foreign loan contracting process is conducted through the electronic declaratory registration, by means of the Financial Operation Registration Module (ROF) of SISBACEN, which dispenses with the presentation of documents to BACEN, prior to the receipt of the loan resources. The electronic registration is thus prepared through the declarations and data informed electronically in SISBACEN, in two phases: (i) prior registration, relating to the general conditions of the operation, to allow for the entry of resources into the Country and (ii) registration of the payment scheme, done after the closing of the foreign exchange and entry of the resources into the country, enabling remittances to be made abroad as payment, both of the principal and interest.

It is important to mention that the aforementioned prior registration may be denied by the system, if the costs of the operation are not compatible with normal market conditions and practices or if the proposed structure of the operation is not compatible with the standards of the system.

BACEN does not currently call for any minimum or maximum average term for the debt amortization and repayment of the loan principal, or for the renewal and extension of loans. However, such terms may be fixed by BACEN in accordance with the Country's current foreign exchange and monetary policy. The interest varies in accordance with the term contracted, and may be fixed or variable, or even non-applicable, provided that, as previously mentioned, they are within the parameters prevailing in the international market. Spreads are also permitted.

Still in relation to the interest, the term for its calculation will begin to run on the date that the funds enter the Country, namely, the settlement date of the foreign exchange contract. However, when the disbursement of the funds abroad occurs up to five (5) consecutive days before their entry into the Country, the disbursement date may be used as the initial date for the reckoning of the term.

After the entry of the funds into the Country, the payment scheme must be registered, in order to permit remittances of the payments of the interest and principal abroad.

As a general rule, the interest will be taxed by withholding income tax, at the rate of 15%. This rule, however, is subject to many exceptions depending on some factors such as the type of loan and the jurisdiction of the creditor (tax haven or non-tax haven jurisdiction) and also depending on the existence of a double taxation agreement applicable to the case.

The Tax on Financial Operations – Currency Exchange (IOF – currency exchange) is currently zero upon entry of the principal for all foreign loans. No Tax on Financial Operations - Exchange (IOF - exchange) is levied on the repayment of the principal or payment of interest. Because the rules applicable to this tax are constantly changing, it is important to check which rules are in force before concluding the operation.

If it does, there is no TFO on the principal amount. When the principal amount and interests are paid, there is no TFO, regardless of the term of the loan. We emphasize that such parameters are often subject of amendments, which can be in effect from their publication by decree.

Loans (principal and interest) may, as a general rule, be converted into foreign direct investment, after their registration in the ROF, by means of the performance of simultaneous foreign currency purchase and sale operations. However, it is important to take into account the consequences of such conversion in terms of income tax and the Tax on Financial Operations - Exchange (IOF - exchange).

The accelerated payment of the loan principal (either total or partial) is permitted, it being sufficient to include, in theROF, the payment date of the principal and interest, and the sum of the interest due up to the payment date.

4.2.2. Foreign loan through the issue of securities

Resolução 3.844 and Circular 3.689 regulate the electronic declaratory registration, by means of the Financial Operation Registration Module (ROF), of foreign loan operations obtained by means of the placement of convertible securities (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas of its own issuance) and securities exchangeable into shares or quotas (issued by an institution based in the Country and placed abroad, which represent rights over shares or quotas issued by another institution based in the Country) or also warrants (purchase options of shares or quotas, placed abroad by institutions based in the Country).

Moreover, BACEN legislation also establishes that, prior to the date of the conversion, exchange or exercise of the purchase option by the holders of warrants, the distribution of dividends and exercise of subscription will constitute rights of the issuer institution of the securities abroad.

Promissory notes issued for placement in the international market, whether under the private placement regime or otherwise, are known as Floating Rate Notes or Fixed Rate Notes, depending on whether their remuneration is stipulated in variable or fixed interest.

The entity issuing the notes does not require a specific legal form or special registration for their issuance, and BACEN is directly and exclusively responsible for their control, in the same format as loan registrations. However, the difference lies in the existence of an issuing agent figure of the notes, which shall necessarily be an authorized financial institution, responsible for issuing and obtaining funds from entities abroad.

4.2.3. Foreign exchange market

In 2005, BACEN published new rules with a view to simplify 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, arms 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, arenot 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.

4.2.4. Local currency loans

In 2007, BACEN published new foreign exchange rules permitting the registration in local currency of foreign loans, which, until that time, could not be registered at BACEN, due to the non-existence of evidence of the regular entry of the resources into the Country (via the contracting of foreign exchange, as determined in the prevailing foreign exchange regulations). The direct consequence of this situation was that the borrower of the resources in Brazil was precluded from remitting to the foreign creditor the interest due on the loan or the principal itself.

Nevertheless, in accordance with the new rules, as long as documentary evidence exists with respect to the ownership of the foreign capital (i.e., in the name of the foreign creditor) and the indication of the number of the operation conducted via International Transfer in Reais (“TIR”) through which the resources were remitted to the country, the same may be registered with BACEN, in the local currency loan registration modality, according to the terms and criteria established by BACEN. Thus, once the registrations are regularized, the borrower of the resources may remit abroad the respective interest due or the principal itself.

4.3. Remittance of profits and dividends to investors domiciled abroad

Once the foreign capital has been registered with Central Bank of Brazil (BACEN), profits may be freely remitted to the foreign investor abroad, in proportion to its holdings in the paid-up capital of the Brazilian company and always limited to the stake registered with SISBACEN, RDE-IED Module. Remittances must also have their movement registered with BACEN and will be exempt from any taxation.

4.4. Repatriation of Investment

Amounts stipulated in the Consolidated Investment Statement are available on the BACEN RDE-IED System. However, depending on the specifics of the case at hand, Brazilian tax authorities may give a different interpretation: it may consider capital gain as the positive difference, in Brazilian currency (Real), between the sale price and the purchase cost.

Therefore, with due observance of the ownership interest of the foreign investor in the capital stock of the Brazilian company, the allocation of resources determined in the sale of ownership interests, reduction of capital for the reinstatement of shareholders or liquidation of companies, shall be registered with BACEN.

The differences in excess of amounts registered as brought into the Country or the amount as otherwise proven to be the cost of purchase of the Brazilian asset - such as the case of a premium verified on the sale of shares - will be considered “capital gain” and, as a rule, be subject to the levy of income tax at progressive rates from 15% up to 22,5%. This rule, however, is subject to many exceptions depending on some factors such as the type of asset that is being sold and the jurisdiction of the seller. This is why a thorough analysis of each individual case is essential.

BACEN may, if it deems necessary, ask for the presentation of an appraisal report, as well as other elements it considers relevant for the perfect characterization of the operation and verification of the reasonability of the amounts involved.

4.5. Foreing Personnel

Brazil adopts a policy of reciprocity regarding visas, meaning that nationals of countries that require visas for Brazilian citizens will need a visa to travel to Brazil. According to Brazilian law, Brazil must agree, on a reciprocal basis, to offer visa waiver to nationals of another country, except for the hypotheses established in the Decree 9.731 / 2019. Brazil has signed visa exemption agreements with about 90 countries.

Law 13,445/2017 defines the rights and duties of migrants and visitors, regulates their entry and stay in Brazil and establishes principles and guidelines for public policies for emigrants.

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

In need to extend the stay in Brazil or obtain a residence permit, the foreigner must refer to the Ministry of Justice/Federal Police or the Ministry of Labour, if the authorization is for work or research purposes.

There are different types of visas for foreigners, their spouses and economically dependent children, the most common of which are:

4.5.1. Visit VISA

The visit visa will be issued to foreigners traveling to Brazil and staying up to 90 days without purposes of immigration or the exercise of paid work. Visit visas can be granted for those traveling for tourism, business, transit, artistic or sports activities, study, volunteer work, or to attend to conferences, seminars or meetings, among other purposes.

4.5.2. Diplomatic VISA

The diplomatic visa is granted to foreign authorities and employees who have diplomatic status and travel to Brazil on an official mission, either on a temporary or permanent basis, representing foreign Governments or International Organizations recognized by Brazil.

4.5.3. Official VISA

The official visa is granted to foreign administrative staff traveling to Brazil on an official mission, either on temporary or permanent basis, representing foreign Governments or International Organizations recognized by the Brazilian government; or to any foreigners traveling to Brazil under official seal of their States.

4.5.4. Courtesy VISA

The courtesy visa is granted to personalities and foreign authorities in an unofficial trip to Brazil; their spouse or partner, regardless of their gender, dependents and other family members who do not benefit from Diplomatic or Official Visa for family reunification; domestic workers of foreign Mission based in Brazil or of the Ministry of Foreign Affairs; foreign artists and sportsmen traveling to Brazil for free and eminently cultural events.

4.5.5. Temporary Visa

It is granted to foreigners in the following situations:

∴ Temporary Visa I
research, teaching or academic extension;

∴ Temporary Visa II
health care visa;

∴ Temporary Visa III
humanitarian visa;

∴ Temporary Visa IV
as a student;

∴ Temporary Visa V
paid work visa;

∴ Temporary Visa VI: Working-Holiday Visa
for those who travel primarily for purposes of tourism, with the possibility of undertaking paid employment. Visa granted on the basis of bilateral agreements. There are currently agreements with New Zealand, France and Germany;

∴ Temporary Visa VII
as a minister of a religious confession or as a member of an institute of consecrated life and of a congregation or religious order;

∴ Temporary Visa VIII
voluntary work visa;

∴ Temporary Visa IX
investor visa;

∴ Temporary Visa X
visa for activities of economic, scientific, technological or cultural relevance;

∴ Temporary Visa XI
family reunification visa;

∴ Temporary Visa XII
artistic or sports activities visa;

∴ Temporary Visa XIII
temporary visa due to international agreements;

∴ Temporary Visa XIV
temporary visa due to the Brazilian immigration policy;

∴ VICAM
Temporary Visa for foreign doctors (medical training).

4.5.6. Mercosur citizens

Nationals of countries which joined the Agreement on Residence for Nationals of Mercosur, (Argentina, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador and Peru) may apply, at a Consular Office, for a temporary residence visa. Those who already live in Brazil can go directly to the Ministry of Justice. After two years in Brazil, holders of a temporary residence visa can request residence for an indefinite period to the Federal Police.

5.1. Ownership

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

Real Property Rights: Besides ownership, real property rights includes but are not limited to: the surface area, right-of-way, usufruct, the use, habitation, the pledge, mortgage and antichresis.

Establishment and transfer of real property rights: As a general rule, the acquisition of real property rights over property, established or transferred by acts between individuals and/or legal entities, 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 specific laws.

5.2. Purchase of real property

The most common method of purchase of real property between individuals and/or legal entities is the registration of the title deed at the Real Estate Registry Office.

5.3. Mortage

Real property may be charged by way of mortgage as collateral for the debts or obligations of its owner or of third parties. The mortgaged property is subject to foreclosure proceedings should the debtor fail to performance it’s obligation.

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

5.4. Right to construct

The owner may build 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 and/or power plants which are subject to the regulations imposed by the zoning and pollution control agencies.

5.5. Usufruct

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

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

Establishment of usufruct: the usufruct of real property 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.

5.6. City leasing

Regulatory laws: the leasing of city real estate, which includes both residential property, and nonresidential 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 return the property, 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.

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, unless 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 terminated 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/charge: the parties are free to adjust the rent, though its stipulation in foreign currency or related to 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 payment in kind, 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 for two types of repossession exclusively for residential leases. These depend on the initial term of the lease:

A. in leases agreed in writing, for a term corresponding to 30 months or more, 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 terminate the contract at any time, giving the tenant 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 commercial activities: 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

5.7. 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, in which case 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, in which case 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 foreigneing individuals or corporations 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 each Municipality and persons of the same nationality may not own more than 40% of this limit; b) the surface areas are divided into modules ranging from 5 ha. 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 exploitation, 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.