

DOING BUSINESS IN BRAZIL

I. Introduction to the Brazilian Legal System.....	4
II. Business Entities.....	6
A. Different Types of Entities.....	6
B. Limited Liability Company (Ltda.).....	7
C. Corporation (S.A.).....	10
D. Branch of a Foreign Company.....	13
III. Foreign Investment and Financing.....	15
A. Basic Characteristics.....	15
B. Capital Registration.....	16
C. Foreign Loans.....	17
D. Remittance of Profits.....	17
E. Reinvestment.....	17
F. Repatriation.....	18
G. Restrictions of Foreign Investment.....	18
H. Restrictions on Transfer.....	20
I. Assignment or Transfer of Investments and Credits Abroad.....	20
IV. The Brazilian Tax System.....	21
A. General Features.....	21
B. Federal Taxes.....	21
C. State Taxes.....	27
D. Municipal Taxes.....	28
E. The Treaty Network.....	28
F. Remittances Abroad.....	30
G. Restrictions on Intercompany Transactions.....	31
V. Labor Law.....	32
A. General Labor and Employment Aspects.....	32

B. The Labor Contract.....	32
C. Basic Rights Guaranteed to Employees.....	34
D. Termination of Employment Contract.....	36
E. Foreign Work in Brazil.....	37
VI. Dispute Resolution.....	39
A. Brazilian Court and Procedural System.....	39
B. Procedural Guarantees.....	50
C. Arbitration.....	52
VII. Intellectual Property.....	53
A. Source of IP Protection.....	53
B. Copyrights and Software.....	53
C. Domain Names.....	54
D. Trade Names.....	55
E. Patents.....	56
F. Utility Models.....	58
G. Designs.....	58
H. Geographical Indications.....	59
I. Trademarks.....	59
J. Technology Transfer.....	60
VIII. Government Contracts.....	62
A. General Principles.....	63
B. Infrastructure and Public Services.....	63
IX. Agency and Distribution.....	66
A. Introduction	66
B. Main Differences between Agency and Distribution.....	66
C. Agency – Main Issues.....	67
D. Distribution – Main Issues.....	71
E. Applicable Special Legislation.....	72
F. Labor Effects related to Agency and Distribution.....	72
X. Competition Law.....	74
A. The Brazilian System of Competition Control.....	74
B. Clearance of Transactions.....	74

C. Repression of Anticompetitive Conduct.....	76
XI. Leasing	79
A. General Features.....	79
B. Leasing Transactions.....	80
XII. The Brazilian Financial System	84
A. The National Monetary Council (CMN).....	84
B. Central Bank of Brazil (BACEN).....	84
C. Securities and Exchange Commission (CVM).....	85
XIII. Real Estate	87
A. Foundations of Real Estate Law.....	87
B. Acquisition of Property.....	88
C. Real Estate Investment Funds.....	89
D. Leases.....	90
XIV. Environmental Legislation	91
A. General Features.....	91
B. Licensing of Effective or Potentially Polluting Activities.....	92
C. Administrative and Criminal Penalties.....	94
D. Civil Liability for Environmental Damages.....	95
E. Brazilian Carbon Market.....	96
XV. International Trade	97
A. Brazil and the WTO – Multilateralism.....	97
B. Regional Trade Agreements.....	98

I. INTRODUCTION TO THE BRAZILIAN LEGAL SYSTEM

The Brazilian Legal System may be characterized as a “Civil Law” system, in the tradition of continental Europe. The main source of law is statute, with precedent playing a subsidiary role.

Brazil is a federation, with the Federal Union, the States and the Municipalities having their own attributions and rights to pass laws, issue and collect their own taxes and enforce those laws.

Most of private law is the exclusive attribution of the Federal Union, such as rules governing business entities, contractual rules, commerce, financing, employment and intellectual property.

At Federal and State levels of government there is an Executive Branch, a Legislative Branch and a Judiciary Branch. Municipalities do not have a Judiciary Branch.

The Brazilian Judiciary Branch is fully independent of the other branches. The Federal Union and the States (including the federal district of Brasília) have their own systems. Within the Federal Judiciary Branch there are specialized divisions, such as the Labor Justice System and the Military Justice. Decisions by the Legislative and the Executive may be challenged in court, as to their compliance with the Constitution and/or the Law.

The Brazilian Federal Constitution (“Brazilian Constitution or the ‘Constitution’”), is at the apex of the legal system, and all other norms must be compatible with constitutional rules.

Rules of business law are scattered throughout many different statutes. However, two of them merit special mention: the Civil Code Introductory Law (Lei de Introdução ao Código Civil – “LICC”) and the Brazilian Civil Code of 2002 (the “Brazilian Civil Code” or the “Civil Code”).

LICC establishes general rules of legal interpretation, intertemporal law and private international law. The Civil Code concentrates most rules on legal capacity, private contracts, business entities, statutes of limitations, torts and family law.

International treaties executed by Brazil and approved by Congress have the status of law in Brazil. Some of those treaties have direct impact on Brazilian business law, such as the MERCOSUR treaty.

II. BUSINESS ENTITIES

A. Different Types of Business Entities

It is important for foreign investors to understand the different types of business entities provided under Brazilian legislation, since a business enterprise is usually created when a direct investment is planned.

The Brazilian Civil Code of 2002 (the “Civil Code”) substituted the concept of civil and commercial entities (*sociedades civis e comerciais*) with non-commercial and commercial enterprises (*sociedades simples* and *sociedades empresariais*). Under the new concept, the former may not engage in commerce, and are generally the type of entity formed by professionals, including lawyers, accountants, consultants, artists and doctors. On the other hand, commercial enterprises are those involved with the production or circulation of goods and services.

Non-commercial enterprises, associations, foundations and co-operatives acquire legal personality when registered with the Civil Registry of Legal Entities (*Registro Civil de Pessoas Jurídicas*, or “RCPJ”), whereas commercial enterprises are normally registered with the Commercial Registry. In both cases, the registration is performed within the state of entities’ domicile.

Except for corporations, which are necessarily commercial enterprises (*sociedade empresarial*), all company types may function as non-commercial entities (*sociedades simples*). Limited liability companies, for example, can either be commercial or non-commercial enterprises, depending on their stated purpose.

There are several different types of enterprises in the Brazilian legal system, as follows:

- (i) Unlimited partnerships (*sociedades em nome coletivo*): the partners have joint and unlimited liability on the company's debt, but they may internally agree upon the liability of each one towards the others.
- (ii) General partnerships (*sociedades em comandita simples*): association of two or more people dividing the equity in quotas. In this type of enterprise, partners' liability is proportionate to the partnership management.
- (iii) Partnerships by shares (*sociedades em comandita por ações*): capital is divided into shares and the Corporation's Law¹ applies.
- (iv) Partnerships with ostensive and silent participation.
- (v) Non-commercial enterprises (*sociedades simples*).
- (vi) Limited liability companies. (*sociedades limitadas - Ltda.*)
- (vii) Corporations. (*sociedades anônimas - S.A.*).
- (viii) Branches of foreign companies (please refer to item 3 below).

Despite the considerable variety of enterprise types, the most common are the limited liability companies and the corporations, because in both cases partners enjoy limited liability.

B. Limited Liability Company (Ltda.)

Limited liability companies are traditionally the best option for investors seeking a simple way to structure their business in Brazil.

¹ Law 6.404/76

The Civil Code brought considerable changes to the rules of limited liability companies. Nowadays, those types of entities are more similar to corporations, which means they have a more detailed and complicated structure than before.

A limited liability company can either be a commercial or non-commercial enterprise, depending on the purposes stated in its articles of association.

The quotaholders' liability is limited to the value of their shares (called *quotas* or *cotas*, differentiated from the shares of corporations, which are called *ações*). This is why a Ltda. is one of the most popular options for the creation of a new company. However, until the company's capital is fully paid up, the quotaholders' liability extends to the entire amount of the company's subscribed capital stock.

The capital stock is always divided into quotas, which represent the amount in money, credits, rights or assets the quotaholders contributed when the Ltda. was created. The Civil Code expressly prohibits paying up capital with services.

As mentioned, the articles of association of a Ltda., when it assumes the form of a commercial company, must be registered with the Commercial Registry of the state where its headquarter is located.

The quotaholders may be individuals or legal entities, Brazilians or foreigners, residents or not in Brazil.

Any quotaholder can manage the company, but the articles of association normally appoint a specific manager. Even a non-quotaholder can be elected to manage the company, but in all cases the manager has to be a Brazilian resident.

The quotaholders can decide the matters regarding the company in “simple” or general meetings. The latter is used when there are more than 10 quotaholders, while the former involve a smaller number of quotaholders. Nevertheless, if the quotaholders decide on a matter unanimously in a written document, which is sometimes more practical, a meeting is not necessary.

A general quotaholders’ meeting must be held at least once a year, within the first four months of the fiscal year (which usually coincides with the calendar year), when the manager’s accounts and financial statements for the past year will be examined and, eventually, approved. In that meeting, officers may also be elected, if necessary.

If all quotaholders are present at the meeting or supply a written declaration that they know all the details (such as time, location and agenda) of the scheduled meeting, the company is not obliged to publish a meeting-call notice.

Some matters to be voted in company meetings have their quorum stipulated in the Civil Code, others can be freely agreed by the quotaholders in the articles of association.

The votes of quotaholders holding the majority of the capital stock are required to approve a resolution to elect or remove managers, to set their compensation and to file for bankruptcy or court reorganization.

The approval of the managers' accounts, on the other hand, requires only the majority of the quotaholders present at the meeting.

If minority quotaholders pose a risk to the company's activities, they may be excluded, as long as this possibility is expressly allowed by the articles of association and quotaholders holding the majority of the capital decide in that sense.

C. Corporation ("S.A.")

Corporations are governed in Brazil by Law 6404/76 ("Corporation's Law"). They are the type of company more appropriate for large investments, and thus are more strictly regulated.

A corporation is, by law, always a commercial enterprise. Its capital stock is composed of shares and the shareholders' liability is limited to the value of the shares they subscribed or acquired.

A corporation's shares may be placed by public or private subscription.

Publicly traded corporations normally offer their shares to the public in the stock market and, because of that, must be registered with the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*, or CVM), so that public authority can establish more strict control and protect the investors. Closely held corporations, however, offer their shares privately.

Creating a corporation is usually more complex and slow than incorporating a Ltda. At least two shareholders must subscribe all the shares of the capital stock stipulated

in the bylaws, a cash down-payment of at least 10% of the issue price of the subscribed shares must be deposited at *Banco do Brasil S.A.* or another CVM authorized bank, and the bylaws and other constitutive documents must be registered with the state Commercial Registry.

Brazilian corporations usually do not have separate articles of incorporation, for public registry, and bylaws, for internal governance. The bylaws (*estatuto social*) usually serve both purposes.

A corporation's capital can be represented by common, preferred or fruition shares, a matter established in the bylaws. The class of a share will depend on its privileges, rights and restrictions.

Common shares entitle the shareholder to essential rights stipulated in law, and each share carries one vote in the company's general meetings.

Preferred shares may have restricted voting rights and advantages such as the right to participate in dividends of at least 25% of the net profits for the fiscal year or the right to receive dividends at least 10% greater than those paid to each common share. Preferred shares cannot exceed half of the remaining shares.

Shareholders do not have to reside in Brazil, but if not they have to appoint an attorney-in-fact that resides in Brazil with the power to acknowledge legal summonses in their name.

The corporation's administration may be structured in different ways, but the two main bodies are the board of directors (*conselho de administração*) and the executive board (*diretoria*).

The board of directors is formed of at least three members, elected by the general meeting, who must always be shareholders. The scope of its activities consists of the company's general financial and administrative orientation. Despite that, the board of directors is usually responsible for the approval of the execution of deeds with a considerable economic impact on the company and also for the election of the executive officers.

The executive board is composed of at least two officers, who must reside in Brazil. They do not have to be shareholders. They are responsible for representing the company against third parties and for the day-to-day control of its activities, executing and developing its business strategies, as well as acting in any other way to contribute to the regular functioning of the company.

There is a third corporate entity, the oversight board (*conselho fiscal*). It acts as an independent body representing the shareholders to oversee the activities of the other corporate bodies, and its existence is not mandatory. In the past it was (and sometimes still is) often called the "audit committee", from the meaning in Portuguese of the word *fiscalizar*, which means to audit, supervise or oversee. However, since the enactment of Sarbanes-Oxley in the United States, which stipulates an audit committee formed of members of the board of directors, this denomination can cause confusion, because the Brazilian entity is independent of the board of directors and is not restricted only to matters related to outside auditing of the books.

General shareholders' meetings are the supreme authority, since they are the origin of all other bodies' authority. The meetings are formed by all shareholders, who can participate even if their voting right was restricted.

General meetings may decide on almost any company matter. The meeting may be ordinary (held annually) or extraordinary (held by special call).

Ordinary annual meetings must be held within four months of the closing of the fiscal year, and is competent to examine and approve matters such as management's accounts and financial statements for the past year, the payment of net profits and dividends, and also the election of directors, officers and members of the oversight board when necessary.

Extraordinary general meetings decide on unexpected and momentary matters not included in the scope of the annual general meeting, as well as possible amendments to the bylaws. In this sense, extraordinary general meetings are very important instruments when the shareholders decide to change the orientation of the company in the middle of the fiscal year, as well as when new shareholders, with different perspectives, are admitted to the company.

D. Branch of a Foreign Company

In accordance with Brazilian law, some companies may need authorization to operate in the country, which is an attempt to protect the national market and prevent the economy from the risks of uncontrolled action of foreign companies in Brazil.

In that sense, to set up a branch in Brazil, a foreign company needs federal government authorization. This authorization and consequent approval to operate is obtained by the publication of a presidential decree.

The Brazilian branch must have the same shareholders and same corporate structure as the parent company, which must allocate capital to the branch, unless the parent company is not a commercial company.

A branch is considered an extension of the parent company. Nevertheless, the branch's liability towards third parties extends not only to its own capital, but also to the foreign company's capital in its country of origin, so that the foreign company is answerable in Brazilian courts for its branch's activities in Brazil.

Finally, it is essential to notice that the foreign company must have a permanent representative in Brazil, with powers to deal with all matters.

III. FOREIGN INVESTMENT AND FINANCING

A. Basic Characteristics

The Brazilian legal system does not make any distinction between foreign and national investments². There are no incentives for foreign capital and, in general, there are no restrictions and limitations, with a few exceptions established by the Constitution and infraconstitutional statutes (please refer to item 7 below).

As set forth in Law 4.131/62³ (the “Foreign Capital Law”), “foreign capital is considered to be any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, and are intended for production of goods and services, as well as any funds brought into the country to be used in economic activities, provided they belong to individuals or companies resident or headquartered abroad.”

The inflow of foreign capital in Brazil is made through investments and loans. Both are subject to registration with the Brazilian Central Bank (the “BACEN”).

Foreign investments may be implemented through a variety of forms, including currency investments, investments by conversion of foreign credits, investments by import of goods without cash payment and investments on the capital market.

² Brazilian Constitution, article 172 and Law 4.131/62, article 3.

³ Law 4.131/62, article 1.

B. Capital Registration

Any foreign capital entering Brazil in any form shall be registered with BACEN⁴. Capital flowing into the country as equity shall be interned freely through a currency exchange contract. Capital entering the country as debt shall be interned only after an electronic registration of the loan's details with BACEN.

The recipient of the capital, either as equity or debt, shall request its registration in the name of the foreign investor/creditor within 30 days of the capital's inflow.

The registration procedure will ensure the rights to remit profits, as dividends or interest, repatriation of capital, debt/equity conversions, and reinvestment of profits. Registration will be granted in the currency that actually entered the country.

The above mentioned equity registration procedure refers to investments related to the ownership interest intended to be permanently held by non-resident investors, whether individuals or legal entities, residing, domiciled or headquartered abroad, through the ownership of shares or quotas representing the corporate capital of Brazilian companies, as well as the allocated capital of foreign companies authorized to operate in Brazil. The registration of investments on the capital market is governed by a different set of rules also issued by BACEN⁵ and Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*, or CVM).

⁴ Law 4.131/62 and Circular 2.997/00.

⁵ Central Bank Resolution 2.689/00.

C. Foreign Loans

Foreign capital may also enter the country through loan operations, which are regulated by BACEN. Loan operations performed between foreigners and Brazilians may be carried out involving both parties as either individuals or entities (intercompany or not). The loan operations are subject to previous registration with BACEN.

D. Remittance of Profits

There are currently no restrictions upon distribution and remittance of profits abroad, and, since January 1996, the payment of cash dividends and the distribution of profits to shareholders and quotaholders, as the case may be, are exempted from income tax withholding.

E. Reinvestment

According to the Foreign Capital Law, reinvestments are profits “made by companies established in Brazil and assigned to individuals or companies resident or domiciled abroad, which have been reinvested in the company that produced them or in another sector of the domestic economy⁶”.

Should the foreign investor reinvest profits, such profits are eligible for registration as foreign capital along with the original investment, thereby increasing the basis of calculation for future remittances or reinvestments of profits for tax purposes.

⁶ Law 4.131/62, article 7.

Reinvested earnings are registered in the currency of the country to which such earnings could have been remitted and reinvestments derived from investments made in Brazilian currency will be registered as such⁷.

F. Repatriation

Foreign capital registered with BACEN may be repatriated to its country of origin at any time, without BACEN's prior authorization. Foreign currency amounts registered with BACEN as non-resident investments may be repatriated without income tax assessment⁸. Returns in excess of the registered amount will be considered capital gains for the foreign investor, and, therefore, shall be subject to withholding income tax at a rate of 15%.

In the specific case of repatriation of capital, it should be stressed that the BACEN will usually check the net worth of the company as drawn on its balance sheet. If the net worth is negative, the BACEN may decide that there has been dilution of the investment and the amount of the capital repatriated in proportion to such negative result will be considered return in excess. The amount in excess shall be subject to withholding income tax at a rate of 15%.

G. Restrictions on Foreign Investment

Generally, the Brazilian Constitution does not carry restrictions upon foreign capital. Nevertheless some kinds of investments are still prohibited or limited to foreign investors by the constitution, such as investments in the following areas:

⁷ Circular 2.997/00, article 20.

⁸ Income Tax Regulation/99, article 690, II.

- (i) oil industry⁹;
- (ii) rural properties¹⁰;
- (iii) health care organizations¹¹; and
- (iv) journalistic or media companies, such as television, newspaper and radio¹².

Participation of foreign investors in the financial sector is still limited to the same level existing back in October 1988, and the opening of new agencies of foreign banking institutions is frozen until such participation is regulated by law¹³. However, the Brazilian government may permit the opening of new agencies and increase of participations if such steps should result from international agreements, reciprocity or national interest.

There are other restrictions apart from the above mentioned ones that are imposed upon foreign capital by infra-constitutional legislation, such as participation in companies owning land in frontier areas¹⁴, airline companies with domestic flight concessions¹⁵, internal navigation¹⁶ and shipping of merchandise, fishing industry¹⁷, mining¹⁸, highways¹⁹, among others.

⁹ Brazilian Constitution, article 177.

¹⁰ Brazilian Constitution, article 190.

¹¹ Brazilian Constitution, article 199, §3rd.

¹² Brazilian Constitution, article 222.

¹³ Brazilian Constitution, article 192 and Temporary Provisions Act of the Federal Constitution, article 52.

¹⁴ Law 6.634/79.

¹⁵ Law 7.565/86.

¹⁶ Decree 24.643/34, article 39.

¹⁷ Law-Decree 221/67, articles 18 through 21.

¹⁸ Brazilian Constitution, article 176 and Law-Decree 227/67.

¹⁹ Decree 94.002/87.

H. Restrictions on Transfers

Currently, Brazilian Law does not restrict the transfer of funds abroad, provided that such funds are duly registered with BACEN. Unregistered funds shall be registered prior to the remittance. However, the tax implications of the remittances shall always be duly observed.

Although the Brazilian government never prohibited the remittance of funds, the Foreign Capital Law allows the imposition of restrictions upon remittance whenever a serious derangement occurs in Brazil's balance of payments²⁰.

I. Assignment or Transfer of Investments and Credits Abroad

The equity interest owned in a Brazilian company by a foreign investor may be freely sold, assigned or otherwise transferred abroad. The foreign purchaser will be entitled to register capital with BACEN in the same amount as the registration previously held by the selling investor, irrespective of the price paid.

Furthermore, foreign creditors of loans are also free to assign or transfer their credits to new foreign creditors. The credit assignment must be duly registered with the BACEN.

²⁰ Law 4.131/62, article 28.

IV. THE BRAZILIAN TAX SYSTEM

A. General Features

Brazil is a Federation. Therefore, the tax system encompasses the following tax categories:

- (i) Federal taxes
- (ii) State taxes
- (iii) Municipal taxes

The Brazilian Constitution establishes the tax competence of each federative entity (municipalities, states and the Federal Union). It also establishes tax principles.

Within its competence, each entity may create its own taxes. However, the Constitution imposes that general rules of taxation - including definition of all taxes and relevant taxable events, tax basis and taxpayers - must be established by a federal law.

B. Federal Taxes

1. Corporate Income Tax

Rate: 15%, plus a 10% surtax on annual taxable income exceeding R\$ 240.000,00.

Payment: Monthly on an estimated basis, or quarterly, on an actual basis.

Estimated basis: Levied at a 15% rate, on a percentage of gross revenue ranging from 8% to 32%.

10% surtax is due whenever tax basis exceeds R\$ 20.000,00. Income tax returns are due by March of the following year.

Actual basis: Income tax is paid quarterly at a 15% rate on the actual taxable income (calculated in accordance with the additions and exclusions established by the income tax legislation), plus a 10% surtax, levied on the amount exceeding R\$ 60.000,00.

2. Personal Income Tax

Levied at progressive rates, according to the brackets shown below:

Monthly Income	Applicable Rate	Deduction Allowed
Up to R\$ 1.257,12	exempt	
From R\$ 1.257,12 to 2.512,08	15%	R\$ 188,57 (deductible)
In excess of R\$ 2.512,08	27,5%	R\$ 502,58 (deductible)

For adjustment purposes, tax return is due at the end of the fiscal year.

3. Withholding Tax

Levied on payment, credit or remittance of income, interest or capital gains to a person/legal entity domiciled abroad. The general rate applicable is 15%. This rate is raised to 25% in some operations when the beneficiary company is domiciled in a country which taxes the income at a rate lower than 20%, considered a tax haven.

Royalties and interest are subject to a 15% withholding tax; dividends paid to beneficiaries in Brazil and abroad are exempt.

4. Social Contribution on Profits

Rate: 9% for all legal entities.

Payments: When the income tax is paid monthly on an estimated basis, the social contribution should be calculated at 9% on an estimated tax basis of 32% of the company's gross revenue.

When the income tax is paid quarterly on an actual basis, the social contribution should be calculated at 9% of the actual profits.

5. PIS/COFINS

The Turnover Tax (PIS) is levied: (i) at a 0.65% rate on the company's total monthly invoicing, in case the company is charged based on the cumulative tax regime; and (ii) at a 1.65% rate on company's total monthly invoicing, in case the company is charged based on the non-cumulative tax regime. The Social Security Financing Contribution (COFINS) is levied: (i) at a 3% rate on the company's total monthly invoicing, in case the company is charged based on the cumulative tax regime (this rate is raised to 4% for financial institutions); and (ii) at a 7.6% rate on the company's total monthly invoicing, in case the company is charged based on the non cumulative tax regime. Neither PIS nor COFINS are due on export of goods and services. Nowadays, these taxes are also levied on import of products and services, at the rates of 1.65% and 7.6% for PIS and COFINS, respectively. The

amounts paid upon import in certain cases can be offset against tax due upon subsequent transactions.

6. ITR

Tax on Property of Rural Real Estate (ITR) levied annually at variable rates on the value of the rural real estate. Rates vary according to the degree of utilisation of the land.

7. Compulsory “loan”

The compulsory loan may be levied by the federal government whenever there is a need to cover extraordinary expenses deriving from public calamity, external war or its imminence, or in the case of public investment of urgent nature and of relevant national interest.

8. Payroll Taxes

Payroll taxes are calculated on an employees' monthly salary at varying rates, depending on the company's activity:

Social Security tax:	20%
Other Fees:	2.0% to 6.0%
Insurance against labor accidents:	1.0% to 3.0%
Severance Pay Indemnity Fund (FGTS):	8,5% (deposited monthly to employee's blocked account).

9. IPI (Federal VAT)

The IPI is levied by the federal government on the sale of industrialized products by a domestic manufacturer or on import of such products by an importer, at rates varying according to classification of the product.

Taxpayers are the importer, the manufacturer (or qualified as such by the law), the dealer of products subject to taxation, when purchased by the previous taxpayers, and the buyer at auction of seized or abandoned products. For IPI tax purposes, industrialization (or manufacturing) is the process whereby a product is subject to any procedure that modifies its nature or purpose, or improves it for marketing.

As a VAT, IPI is recoverable to the extent that tax paid upon import or acquisition of products can be offset against tax due upon subsequent transactions.

IPI tax rates vary according to the degree of essentiality of the product. Non-essential/hazardous products (*e.g.* cigarettes) can be taxed at the highest rate.

10. Import duty

The import duty is levied by the federal government, on import of products, at rates varying according to classification of the product in the Mercosur External Tariff Code - TEC, which is based on the Harmonized Tariff System. The tax basis for import duty is the CIF value of the product.

Mercosur External Tariff Code (TEC) is adopted by all Mercosur countries, each of them having a list of exceptions (for each country's local industry protection

purposes, these are items that do not observe the TEC, and accordingly bear higher or lower rates that will gradually conform to the TEC rates).

Because import duty may be a useful governmental tool to balance trade debts, as a rule its rates may be raised at any time through an act of the Executive Branch. Notwithstanding this possibility foreseen in the Brazilian legislation, a rate increase exceeding the TEC rate will only be allowed with the approval of the other Mercosur members.

11. IOF

IOF (tax on financial transactions) may be levied, as foreseen by the corresponding legislation, on transactions of: (i) credit; (ii) currency exchange; (iii) insurance and (iii) securities trading. As a regulatory tax, IOF rates may be raised and lowered by the Executive Branch at any moment, with immediate enforceability.

12. CPMF

CPMF is denominated a provisional tax, because such tax was to be basically collected on debits to bank accounts only until December 2007. Taxpayers are the holders of bank accounts, and the tax rate is 0,38%. As a rule, the taxpayer is the person/legal entity from whose account the amounts are withdrawn.

13. CIDE

This tax is imposed to Brazilian legal entities that license, purchase or otherwise acquire technological knowledge, at a rate of 10%. The scope of assessment of such

tax has been extended to include payments for technical services, administrative assistance and similar services. CIDE payments on royalties' remittances for payment of trademarks and trade names generate credits to be offset with subsequent CIDE payments. Until December 31, 2008, this credit will correspond to 70% of the amount paid. From January the 1st, 2009 to December 31, 2013, such percentage will be reduced to 30%.

C. State Taxes

1. ICMS (State VAT)

ICMS is levied by the States on circulation of merchandise and on rendition of interstate and inter-municipal transportation and communication services, as well as on import of such goods and services. Rates may vary from 0% to 25%. As a VAT, the ICMS is recoverable to the extent that tax paid upon import or acquisition of products can be offset against tax due upon subsequent transactions.

2. IPVA

The tax on property of automotive vehicles (IPVA) is levied annually on the possession of such vehicles.

3. Tax on transmission of property owing to death or donation

This tax is levied on the transmission of real estate or movable property upon death or through a donation. Rates are progressive and vary from state to state according to the value of the property that is being transmitted, but cannot exceed 4%.

D. Municipal Taxes

1. ITBI

The tax on transmission of property “inter vivos” (ITBI) is levied on the onerous transmission of real estate. Rates are progressive and vary from municipality to municipality according to the value of the real estate that is being transmitted.

2. IPTU

The tax on property of urban real estate (IPTU) is levied on the possession of urban real estate. It is levied annually on the value of the urban real estate. Rates vary from municipality to municipality.

3. ISS

The municipal tax on services (ISS) is levied on the rendition of services, at rates ranging from 2% to 5%, depending on the kind of service, and varying from municipality to municipality.

E. The Treaty Network

Brazil has tax treaties to avoid double taxation (based on the OECD - Organization for Economic Cooperation and Development model) with the following countries:

Argentina	China	France	Japan	Portugal
Austria	Czechoslovakia*	Hungary	South Korea	Philippines
Belgium	Denmark	India	Luxembourg	Spain
Canada	Ecuador	Italy	Netherlands	Sweden
Chile	Finland	Israel	Norway	Ukraine

* The tax treaty with Czechoslovakia is still in force and is presently under negotiation with the Czech Republic and with Slovakia.

* There are Reciprocity Agreements with the US and the UK on individual taxation level.

The above mentioned tax treaties are aimed at avoiding double taxation on the same taxable event both by Brazil and by the other signatory country, as well as are aimed at reducing the internal withholding tax rates levied in each country for income earned by residents of the other country.

Double taxation is avoided by means of offsetting techniques, through which the income tax paid in one country may be used to reduce or eliminate the income tax due in the other, or by taxing the income in only one country.

Tax treaty provisions shall always prevail over internal regulations.

F. Remittances Abroad

The general rate applicable to remittances abroad is 15%²¹. However, remittances to jurisdictions which tax the income at a rate lower than 20%, considered tax havens, as listed below, are subject to withholding income tax at a rate of 25%, except for the following operations:

- (i) dividends (exempt);
- (ii) interest on foreign loans payable over a term greater than 15 years, received by national, private or public companies in countries which have signed tax agreements to avoid double taxation with Brazil. The interest rate to be used is the one in force in the country where the loans were taken (income tax at 15% rate);
- (iii) interest and commissions related to foreign credits and destined to export financing (income tax at 0% rate);
- (iv) lease payments (income tax at 15% rate); and
- (v) interest, commissions, costs and discounts on bonds issued abroad (including commercial paper) as long as the amortization period is at least 96 months (income tax at 15% rate).

Tax havens: US Virgin Islands; Andorra; Anguilla; Antigua; Aruba; Bahamas; Bahrain; Barbados; Barbuda; Belize; Bermuda; British Virgin Islands; Singapore; Cyprus; Costa Rica; Djibouti; Dominica; Dutch Antilles; Gibraltar; Granada; Cayman Islands; Cook Island; Channel Islands (Jersey, Guernsey and Alderney); Lebanon; Macau; Maldives; Malta; Marshall Islands; Mauritius; Nauru; Niue; Turks

²¹ The most important exception to this rule is the one related to services' payment which is subject to a rate of 25%.

and Caicos; Labuan; Liberia; Liechtenstein; Madeira Island; Monaco; Isle of Man; Tonga; Montserrat; Nevis; Oman; Panama; American Samoa; Western Samoa; San Marino; Saint Lucia; Saint Vincent; Seychelles and Vanuatu; United Arab Emirates; Hong Kong; Luxembourg²²; Campione D'Itália.

G. Restrictions on Intercompany Transactions

As of January 1, 1997, cross-border (export, import and loan operations) transactions between related companies are subject to transfer pricing rules. The transfer pricing can be calculated as follows:

Import:

- (i) Compared Independent Price Method;
- (ii) Resale Price Method minus Profit;
- (iii) Production Cost Method plus Profit.

Export:

- (i) Exportation Sale Price Method;
- (ii) Wholesale Price of the Destination Country Method, minus Profit;
- (iii) Retail Trade Price of the Destination Country Method, minus Profit;
- (iv) Acquisition or Production Cost Method plus Tax and Profit.

Intercompany loans not registered with BACEN have their interest deductibility limited to the Libor rate (for 6 month US Dollar deposits) plus an annual pro rata of 3%.

²² Only holding companies according to Luxembourg-Law of July 31, 1929

V. LABOR LAW

A. General Labor and Employment Aspects

The guiding principles of Brazilian labor law are defined in the Brazilian Constitution. The basic rights and duties of employers and employees are regulated by the Consolidation of Labor Laws (CLT), collective labor agreements and collective labor conventions, applicable to a certain category of employees, individual labor agreements, norms issued by Ministry of Labor; some agreements development by the International Employment Organization and other supplementary laws.

Labor union organization is active and rather strong in Brazil and responsible for a series of benefits and rights which are guaranteed by collective bargaining agreements. In Brazil, every employee must pay a compulsory annual contribution to the Labor Union, equivalent to one day of salary, regardless of membership. The payment is withheld by the employer directly from the employees' salary.

One defining feature of Brazilian labor law is the prevalence of fact over agreements. Irrespective of what the written records of an employment relationship may establish, if the actual practice within the employment relationship is different, it will prevail, and the content of written records will be disregarded.

B. The Labor Contract

Employees have a professional card (CTPS) in which the terms of their employment

contract must be entered. Employers must keep files containing information on each employee and submit this information annually to the labor law authorities. Labor contracts are generally recorded in writing for a fixed or undetermined period of time.

Any individual rendering any kind of service is entitled to compensation, which is known as salary, and may be paid monthly, fortnightly, weekly or even per piece or task, depending on the conditions established for the hiring. The wage paid to an employee may never be less than the minimum wage or than the lowest wage level established in the collective bargaining for each professional category.

For all legal effects and purposes, the employee's remuneration includes, besides the base salary, any tips received, plus commissions, percentages or adjusted gratification, bonuses and other values paid regularly.

The benefits and values are considered part of the employee's employment contract for all legal purposes and cannot be abolished or reduced. Any changes in employment contracts that adversely affect the employee, even if with his/her consent, are deemed to be legally null and void.

The salary must be paid at least monthly regardless of the type of work, except for commissions, percentages and/or gratification. Payday must be no later than the fifth business day of the following month.

C. Basic Rights Guaranteed to Employees

Brazilian labor and employment laws are very protective and the employee's main rights are the following:

Wages: The Brazilian Constitution guarantees a minimum monthly wage; however, each professional category may establish a minimum wage level in collective bargaining, which cannot be less than the minimum monthly wage.

13th Salary: The 13th salary corresponds to an additional month's salary paid annually or according to the proportional number of months worked in the year.

Vacation: Employees are entitled to 30 days of vacation after working one year for the same employer if not absent from work for more than five unjustified times during this same period.

Bonus on Vacation: Employees acquired the right to receive a one-third of salary bonus, in addition to the normal wage, in the month prior to taking vacation.

Working Terms and Overtime Pay: Brazilian legislation establishes that the maximum working week is of 44 hours, with one-hour break for meal and rest, distributed over five or six working days. Overtime work shall be compensated with a premium rate of at least 50% over normal working hours.

Some employees are not subject to these rules due to the nature of their

activities, such as outside salesman or employees in management positions.

Night Work: Work between the hours of 10:00 p.m. and 5:00 a.m. is paid at 20% extra, with the added benefit that each nighttime hour is calculated as 52 minutes and 30 seconds.

Work Place: In the event of transferring the location of work provisionally, the employee has the right to receive 25% extra until returning to his normal work place, unless the labor contract has a clause expressly establishing otherwise.

Prior notice in case of dismissal: In case the employer wishes to dismiss an employee, he is obliged to give prior notice of at least 30 days to the employee. Lack of advance notice by the employer entitles the employee to a salary corresponding to the advance notice period.

Incentives: Employers give incentives such as transportation and meal subsidies, with companies receiving tax deductions or other beneficial tax treatment for the resulting expenses. These benefits are not included in the taxable income of employees.

Profit Sharing: The Brazilian Constitution expressly grants employees the right to profit-sharing, which does not integrate the salary, by means of annual negotiation between employers and employees.

FGTS: This severance fund is the equivalent to 8,5% of the employee's salary, deposited every month by the employer in a blocked FGTS bank account in the name of the employee. In case of dismissal without cause the employer has to

pay a 50% (in which 10% is due to the federal government) penalty over the amount deposited in the FGTS bank account, and the employee will have the right to access the money in the FGTS account.

Weekly Remunerated Rest Period (RSR): all employees have a right to one day's remunerated rest period, which should preferably fall on a Sunday. For employees who receive their salary monthly, the payment of the Weekly Remunerated Rest Period (RSR) will already be included in the salary.

Social Security: every employee in Brazil is necessarily covered by a social security insurance which is supported by employers, employees and the Government.

D. Termination of Employment Contract

According to Brazilian labor law the employment contract may be terminated either by the employee or the employer. An employer may terminate the contract of an employee with or without cause.

If the employee is dismissed with cause, he/she will be entitled only to the compensation corresponding to the days already worked during the month, accrued vacation and the additional one-third of salary bonus in respect of the accrued vacation.

If the employer dismisses the employee without cause, the employee will be entitled to the rights listed below:

- (i) outstanding salary for the days worked during the month;
- (ii) 30 days' prior notice;
- (iii) ratable 13th salary (calculated on the salary earned during the last month of employment)
- (iv) vacation and one-third of salary vacation bonus; and
- (v) 40% indemnity over the amount deposited in the FGTS account.

E. Foreign Work in Brazil

1. General Aspects

According to the Labor and employment legislation, 2/3 of the employees in any Brazilian company must be Brazilian citizens, and 2/3 of the total compensation must be received by Brazilians. However, exceptions exist for skilled employees and specialized technicians.

2. Immigration Control and Visas

The following types of visas may be granted to a foreigner seeking entrance into Brazil: transit, tourist, temporary, permanent, – courtesy, –official, diplomatic.

Foreigners coming to Brazil on a work assignment will usually receive a temporary visa, that will be granted in the following cases: on a cultural or studies trip, on business trip, as an artist or sportsman, as a student, as a scientist, teacher, technician, or professional of another category, on a contract regimen or for service to the Brazilian government, as a newspaper, magazine, radio, television or foreign agency correspondent, as a religious Minister, or member of an institute of

consecrated life, or of a congregation or religious order.

Foreigners coming to Brazil to assume executive positions with signing authority must obtain a permanent visa, granted based on investment requirements of the foreign parent company.

in case of disputes involving commercial or civil matters, two sub-branches of the Brazilian judiciary might have (although not overlapping) jurisdiction: federal courts and the courts of the states (Municipalities in Brazil do not have their own judiciary branch). All decisions rendered by these courts are bench interim or final judgments.

The jurisdiction of the federal courts, as opposed to the jurisdiction of the courts organized by each state (also in the case of some Brazilian quasi-states and the Brazilian Federal District Capital – Brasília), will depend on the matter under dispute (“*ratione materiae*”) and the legal nature of each of the parties involved in the litigation (“*ratione personae*”). Thus, most of the litigation involving the federal government, for instance, will be decided by federal courts and most of the litigation among private parties will be ruled by states’ courts.

Federal Low Courts (*Varas Federais*) – These courts are scattered over the capitals and major cities of the country. In general, these courts have jurisdiction to judge most of the disputes in which the federal government, federal bodies and agencies and some federal companies (*Empresas Públicas*) take part as plaintiffs, defendants, or intervening parties. Also, these courts have jurisdiction over disputes involving a foreign government or organism and companies or individuals domiciled in Brazil or disputes involving one of the referred foreign entities and a Brazilian city government.

Low Courts of the States (including some Brazilian *quasi*-states and the Brazilian Federal District) (*Varas Cíveis dos Estados*) – Each state is empowered to organize its own Judiciary Branch. These courts are spread almost all over the country, and have jurisdiction to rule most of the disputes between private parties. In addition, these

Low Courts will have jurisdiction over litigation involving some federal corporations (*Sociedades de Economia Mista Federais* – For example: Petrobrás) in case of disputes based on private law or state and municipal environmental laws, disputes involving the government of the respective state, as well as state-owned companies, and cities' governments and city-owned companies. Furthermore, there are low courts specialized in bankruptcy (and even in case a federal body takes part of the bankruptcy/rehabilitation proceedings, for instance, as creditor, this will not result in jurisdiction of the federal courts in detriment of the particular state bankruptcy court), and Intellectual Property disputes (as long as the Brazilian Intellectual Property Agency – INPI – is not a party to the lawsuit). The territorial jurisdiction of each of these state low courts is provided in the Brazilian Constitution and the Constitutions and laws of the respective states.

Federal High Courts (*Tribunais Regionais Federais*) – There are five high courts in the country. Their territorial jurisdiction is divided into five different regions (each covering two or more states). In most cases, these courts rule the appeals filed in the lawsuits started in the federal low courts located in the applicable region.

State High Courts (*Tribunais de Justiça dos Estados*) – Each state has one these courts (some have two, with different degrees of jurisdiction: *Tribunal de Justiça* and *Tribunal de Alçada*). Generally, these high courts rule over the appeals filed in lawsuits started at the low courts of the state where the respective high court is located.

Superior Court of Justice (*Superior Tribunal de Justiça*) – Located in Brasília, the country's capital. One of the main roles of this federal court is to rule over appeals filed against decisions rendered either by a federal or state high court whenever such decisions contravene a treaty, convention or federal law; or upon the analysis of a

given treaty, convention or federal law, such decisions conflict with other court or other courts (state or federal low courts not included, but including the Superior Court of Justice and/or the Supreme Court) precedents on the same matter.

In addition, this court will rule any and all appeals filed against federal low courts' decisions in disputes involving a foreign government or organism and a private party domiciled in Brazil or a Brazilian city government.

In most cases (except, for instance, those referred to in the paragraph immediately above), this court does not review facts or evidence existing in the records of a lawsuit, also imposing a number of requirements to accept an appeal. Thus, for example, one cannot re-open in this court arguments related to the interpretation of a given contract's provisions.

Also extremely relevant is the power of this court (recently transferred from the Brazilian Supreme Court due to an amendment in the Brazilian Constitution) to confirm – and accept as effective and enforceable in Brazil – or not final judgments (either judicial or resulting from arbitration), and to authorize, through “Exequatur” in rogatory letters issued by foreign courts, service of process, depositions or other procedural acts originated in those foreign courts that involve a legal entity or an individual located in Brazil.

Contrary to the Supreme Court, that, as a rule, denied the enforcement of injunctions granted by foreign courts (with the exception of Mercosur effective members, due to Ouro Preto Protocol referring to injunctions and other provisional remedies), the Superior Court of Justice is showing more flexibility in this very sensitive matter, based on the contents of the amendment of the Brazilian

Constitution that endowed to this court the power to authorize the enforcement of foreign decisions in the country.

Notwithstanding, as Brazil still has some material restrictions on the matter (for instance, Brazil upon acceptance of Interamerican Convention on Rogatory Letters, stated that no rogatory letters comprising injunctions will be enforceable in the country – again, with the exception of those originated from Mercosur effective parties), such move from the Superior Court of Justice might lead to future controversies, that shall be settled by the Supreme Court, which, as explained above, is somewhat more conservative than the Superior Court of Justice when it comes to enforcement of foreign judgments.

Regardless of the feasibility yet to be fully tested of the widespread enforcement of injunctions, no foreign decision (final or not) or request will be enforced if contrary to the Brazilian sovereignty, public policy, morals or generally accepted principles.

Supreme Court (*Supremo Tribunal Federal*) – It is the apex of the Brazilian Judiciary Branch and, as the Superior Court of Justice, is located in Brasília. One of the main roles of this federal court is to rule over appeals against decisions rendered by a federal or a state high court or, even, decisions rendered by the Superior Court of Justice, whenever these decisions:

- Directly contravene the Brazilian Constitution;
- Declare a given treaty, convention or federal law as unconstitutional; and
- Deem as valid, in detriment to the Brazilian Constitution, a law issued by one of the Brazilian states or cities.

In addition, the Supreme Court is empowered to settle any conflicts of jurisdiction between itself and the Superior Court of Justice or other Brazilian superior courts (Superior Labor Court and Superior Military Court) and conflicts among these superior courts.

As well as the Superior Court of Justice, the Supreme Court refuses to analyze evidence existing in lawsuits that started either in a federal or a state low court.

In an attempt to reduce the duration of lawsuits in Brazil, the Supreme Court is entitled to issue *Súmulas Vinculantes*; decisions that are binding to any and all Brazilian courts. The only other existing binding decisions issued by the Supreme Court are rendered in two specific types of lawsuits (*Ação Direta de Inconstitucionalidade* and *Ação Declaratória de Constitucionalidade*, which can only be filed by the Brazilian President, or the Brazilian Federal Attorney General, or the governor of a given state, or a political party, among a limited list of entities expressly authorized by the Brazilian Constitution), which basically deal with conflicts between laws or other governmental acts and the Brazilian Constitution.

Small Claims - Along with these courts, the Brazilian Judiciary Branch also comprises small claims courts, which are also empowered to rule on civil and commercial disputes. However, their jurisdiction is limited to disputes under approximately US\$ 5,000.00 (Federal Small Claims Courts) and US\$ 3,000.00 (State Small Claims Courts).

2. International Jurisdiction of the Brazilian Courts

From a civil or commercial perspective, courts in Brazil are empowered with jurisdiction to rule disputes in which the defendant, regardless of nationality, is domiciled in Brazil (the word “domiciled” in this case also comprises companies headquartered abroad but having branches, agencies or subsidiaries in Brazil), and/or Brazil is the place where the obligation undertaken by the foreign entity shall be complied with, and/or the dispute results from an event or act involving such foreign entity that took place in Brazil.

Concurrent Jurisdiction / Privileged Jurisdiction

The above mentioned jurisdiction requirements shall not lead to the assumption that the Brazilian courts would hold the exclusive jurisdiction over a given dispute. Foreign courts might also have jurisdiction over the same controversy. Thus, the parties involved in the dispute might start legal proceedings under the Brazilian courts and under other countries’ courts (parallel litigation), however, unless one of the parties attempts to enforce a foreign judgment in Brazil, such simultaneous foreign lawsuits will have no effect over the lawsuit filed in Brazil and the Brazilian courts will not attempt to interfere in the lawsuits on going under the foreign courts.

Brazilian courts hold privileged (exclusive) jurisdiction over legal proceedings (including disputes) pertaining real estate located in Brazil. In addition, the heirs of assets in Brazil must start legal proceedings (probate) in the Brazilian courts.

3. Examples of Proceedings and Injunctions Available in Brazil

The Brazilian Civil Procedure Code provides for a number of different types of legal proceedings, most of them “tailor made” to specific controversies (land disputes, tax controversies, repossession of assets, etc). However, most of the commercial disputes are carried out in court through two types of lawsuits:

Execução – Which was designed to be a more expedite proceeding, allowing the plaintiff to obtain in the very beginning of the lawsuit (actually, one or two business days after the defendant is served of process) an attachment of assets to secure the satisfaction of a final decision on the merits of the case. The defendant shall offer acceptable and sufficient assets to be attached, otherwise the right to choose the defendant’s assets to be attached will automatically pass to the plaintiff.

To be entitled to file this (theoretically) more expedite lawsuit the obligation that the plaintiff wants to force the defendant to fulfill must be unconditional and clearly described in writing in a document such as a promissory note or a contract or other instrument, signed by the defendant and at least two witnesses (in Brazil, promissory notes, which are way simpler than, for instance, their U.S.A. equivalents, or public deeds do not require signature of witnesses).

Judicial or arbitration courts decisions that are final (“res judicata”) but are pending of compliance by the party who lost the dispute can be enforced by means of this type of lawsuit. The discovery stage in this type of lawsuit is limited, usually not comprising, for example, hearings or depositions.

Rito Ordinário – This is the most commonly used legal vehicle to bring a dispute into the Brazilian (low) courts. Actually, most of the special types of lawsuits borrow at least one of the characteristics of this “common” proceeding. Torts and other

controversies that usually demand a comprehensive discovery stage are brought to court by means of this proceeding.

Injunctions – A number of injunctions is provided by the Brazilian Civil Procedure Code, in order to prevent losses to the party who requests a given relief or to secure the satisfaction of a final judgment. Depending on the quality of the grounds presented by the party and the risks the party is facing at the time the writ requesting an injunction is filed, the judge (either from a low, high, superior or even from the Supreme Court, according to the level where the injunction is requested) is entitled to grant same even without prior communication to the other party, which will be affected by such order (“*inaudita altera parte*”).

Preemptive injunctions can also be requested in Brazil. However, in most cases, up to thirty days after the preemptive injunction is granted and comes into effect, the plaintiff shall file the “main” lawsuit, in which the dispute will be analyzed by the court in a more thorough manner, otherwise the injunction would be revoked (depending on the type of the injunction, it can be requested directly in the initial complaint of the “main” lawsuit. In this case, the “subsidiary” preemptive writ of injunction would not be necessary).

Injunctions in Brazil may comprise: sequestrers, attachments, restraining orders, exhibition of documents, accounting records and other anticipations of evidence production typical of the discovery stage but that had to be immediately secured due to risks of destruction or disappearance. Even though the Brazilian arbitration law enables the parties to request injunctions to the arbitration court, it is common place in Brazil to file a preemptive writ of injunction with a judiciary court prior to the start of the arbitration proceedings (as already mentioned above, depending on the

type of injunction, the plaintiff shall start of the arbitration proceedings in thirty days after the judicial court granted the injunction).

Special requirement for Plaintiffs domiciled outside Brazil. One of the peculiarities of the Brazilian legislation is that the foreign domiciled individual (even a Brazilian national) or foreign headquartered legal entity should be alert prior to initiating judicial proceedings in Brazil to provide the court with collateral (a deposit in escrow, a bond or a comfort letter of a legal entity – a bank, for example – or individual in Brazil) sufficient to secure the satisfaction of the court costs and the defendant’s counsel’s fees in case the outcome of the lawsuit is adverse to the foreign domiciled plaintiff.

Such collateral will not apply when the foreign plaintiff has valuable real estate in Brazil, or the documents that support the claim against the defendant meet the requirements that enable the plaintiff to file an *Execução*.

The collateral can be ordered by the judge regardless of any requests from the defendant, and usually goes from 10% to 20% of the already available economic value of the claim. In case the collateral applies and it not provided, the court will dismiss the case without any exam on the merits.

4. Discovery Stage

According to the Brazilian Legislation, any licit means of evidence and means to produce evidence can be used prior or during a lawsuit. However, unless forced by a court subpoena or similar (which shall be requested and granted by a judge or a

court that considers itself with jurisdiction to rule the controversy), the party asked to surrender some piece of evidence will have the right to refuse.

However, there are cases in which even a court order will not be effective, due to the nature of the information (for example attorney/client privileged information), but these are exceptions to the rule. Thus, a court can order the tax authorities or banks to surrender privileged information regarding defendant's financial activities, or authorize court experts to break file (including electronic) codes and seize the information available. In any of these cases, the party who asked the court for such drastic orders, shall present at least some "initial" evidence to justify such acts, and will be liable for misuse of such evidence (unless the misuse results from the courts or third parties improper access to such finding).

Any lawsuit dealing with privileged information shall be carried out under a veil of secrecy. Therefore, only the parties, the respective authorized counsel and experts, the judges and the court's personnel will be empowered to handle the records of the case. Along with these types of evidence, others exist, such as appraisals, constructions' exams, medical and other scientific exams. These are the most relevant types of evidence to be produced and will have a material influence in the outcome of a lawsuit.

When it comes to civil and commercial disputes, although important, witnesses or parties' depositions (individual or legal representatives in case of legal entities) represent a subsidiary means of evidence. In fact, deposition under oath regarding the merits of the dispute will not apply to the parties, and some witnesses depositions may not be accepted or deemed as potentially biased when it comes to one of the party's family members, close friends, employees or notorious enemies.

Also, if it is found that the alleged witness has some kind of interest in the outcome of the dispute, the testimony might be considered as potentially biased. It is important to highlight that the judge will not be tied to the results of the evidence existing in the lawsuit, and might, regardless any request from one of the parties, order additional evidence or restart the discovery stage all over again.

The discovery stage may also comprise evidence (documents, witnesses etc) located abroad. In this case, the judge will ask the applicable foreign court, through rogatory letters, to produce such evidence.

Finally (although the intention of this report is to not exhaust the matter), as already mentioned above, in case of justified urgency one can file a writ aiming at the immediate production of evidence, to be used later in a lawsuit.

B. Procedural Guarantees

The Procedural Guarantees are foreseen on the Article 5 of the Brazilian Constitution, and guide the Brazilian procedural system, that, as a matter of fact, establishes a “due process of law”, meaning that the violation of such guarantees would affect the validity or even the efficacy of the procedural act.

Access to Court – Everyone has the right of access to the court in order to have disputes solved under the law, which means that every dispute – excluded those in which the parties have sought an alternative way of dispute resolution – might be decided by a court.

Natural Judge – Judging is reserved to Judges who were instituted by the Constitution, and with the jurisdictional power to rule the dispute. Brazilian procedures grant the Judge power to control the proceedings and to obtain and analyze the evidence. Every dispute must be decided by an independent and impartial court, previously established by law, avoiding the institution of specific courts to specific lawsuits.

Equality of Parties – According to this guarantee all the parties, in any lawsuit, must be treated equally by the court. Thus, the court shall grant to all the parties in a procedure the same opportunities to speak and to prove all the alleged facts.

Full Defense – Every party in a judicial lawsuit shall be allowed to make his full defense by counsel learned in law and registered before the local bar, using all legal means and resources in the defense of the party's rights.

Adversary System – In every procedure the parties shall have an opportunity to confront the other party's arguments, meaning that every party has the right to present its version of the facts.

Publicity of the Procedural Acts – The parties and their counsel are to be informed about all the acts related to the lawsuit in which they litigate. This guarantee is a reflex of the right of information applicable to the procedural system.

Double Degree of Jurisdiction – Since the Brazilian Judiciary Branch is structured with 2 ordinary degrees of Jurisdiction (Low and High Courts), the Federal Constitution foresees the right of filing an appeal before the Higher Court against a decision granted by the Lower Court.

Motivation of the Judicial Decision – As a corollary of the principles of “publicity of the procedural acts”, “full defense” and “double degree of Jurisdiction”, all judicial decisions must expressly state their foundations of fact and law.

Due Process of Law – It is a guarantee that the whole of the other procedural guarantees shall be granted together.

C. Arbitration

The Brazilian Arbitration Law (Law 9.307/96) was enacted in 1996, and since then arbitrations is increasingly being adopted in Brazilian business practices.

The recent development of arbitration in Brazil as an efficient instrument for dispute resolution is due to, on one hand, the declaration of constitutionality of the Brazilian Arbitration Law by the Supreme Court in a decision granted in 2001²³ and, on the other hand, to the ratification – in 2002²⁴ – of the New York Convention of 1958.

The increase of utilization of arbitration in Brazil can be easily realized through the growth of both domestic and international arbitration procedures involving Brazilian parties, as well as by the number of companies which are constantly inserting arbitration clauses in commercial agreements somehow related to Brazil.

²³ “*Agravo Regimental na Sentença Estrangeira nº 5.206-7 – Reino da Espanha*”

²⁴ *Decreto* nº 4.311 of July 23, 2002 published on the official gazette on July 23, 2002

VII. INTELLECTUAL PROPERTY

A. Source of IP Protection

Intellectual Property encompasses protection of copyrights, software, domain names, trade names and industrial property (patents, utility models, designs, indications of origin and trademarks). Legal provisions aiming at the protection of intellectual property rights are included among the fundamental rights and guarantees of the Brazilian Constitution (Article 5, XXVII and XXIX), as well as in specific statutes (Copyright Law, Software Law, Industrial Property Law, Brazilian Civil Code). Most of these statutes are in compliance with the main international treaties on IP (Berne Convention, Paris Union Convention and TRIPS).

It is also important to mention contracts, such as technology transfer and franchising agreements, which although regulated by Civil Code rules, involve IP aspects.

B. Copyrights and Software

Protection of copyrights in Brazil covers not only literary, scientific and artistic works, but also neighboring rights, sketches and plastic works related to geography, engineering, topography, architecture, scenography and science. Software is protected by Law 9610/98 (the “Copyright Law”), and more specifically by Law 9609/98 (the “Software Law”), both enacted in 1998, in compliance with the Berne Convention (effective in Brazil as of 1975 by Decree 75,999).

Business methods, ideas, games and mathematic concepts per se, as well as legal texts, blank forms and common information are not covered by copyright.

The local copyright system is grounded on the author's right doctrine, according to which the moral rights of a work are linked to the author's own personality and cannot be waived or assigned to third parties. Only a few of these moral rights can be claimed by the author's heirs, e.g., the maintenance of the work's integrity.

Financial compensation for copyright use is due until seventy years from the January 1st after the author's death. The software protection term is of fifty years from the January 1st after its creation or publication.

Although registration is possible with specific government offices, copyright and software protection are immediately enforceable and do not require registration. There are severe civil and criminal remedies for copyright and software violation, including punitive damages and jail (according to the Penal Code).

C. Domain Names

Registration of a .br domain name is essential for ensuring the exclusive use of a Brazilian URL address. Furthermore, it is always good to remember that non-registered domain names cannot be found on the Internet.

The local authority for domain names was created in 1995 by a joint regulation of the Ministry of Culture and the Ministry of Science and Technology, named the Committee for Brazilian Internet Management (CGI - *Comitê Gestor Internet do Brasil*). The CGI delegated the registration of domain names and allocation of Internet

Protocol Addresses to the Center for Information and Coordination of .br (NIC.br - *Núcleo de Informação e Coordenação do .br*; URL: www.nic.br). Registration of domain names and searches for previously registered names can be done online at <http://registro.br>.

The current domain name rules are in the CGI's Regulation nr. 2 enacted in 2005, according to which a foreign entity must observe 2 requirements in order to register a domain name: 1) to designate a local attorney-in-fact, and 2) state that the entity will be duly established in Brazil within twelve months. Otherwise registration will be temporary.

Further, Regulation nr. 2 sets forth that a valid domain name must be distinct from other ones previously filed; that it must not mislead Internet users (typo squatting); and that it must not constitute a violation to the rights of third parties, such as trademarks, trade names and copyrights.

Prosecution of any violation of domain names is available under unfair competition provisions in the Industrial Property Law.

D. Trade Names

A trade name is the designation for which a company is known and is bound to its obligations *vis-à-vis* third parties. It differs from a trademark, which is used to designate a product or service, and from a title of establishment, which identifies the location where a company operates.

Unlike other IP rights, which are nationally enforceable, trade names are only protected at the state level. The reason is that trade names are registered with each state's Commercial Registry, and there is currently no possibility of extending the scope of protection to all states. Trade names are registered at the same time as their owners file their articles of organization or bylaws.

The most important legislation on trade names is the Brazilian Civil Code, which mainly provides that: 1) trade names must reflect their entity's type (especially regarding the owners' personal liability); 2) a trade name must be original and different from others previously registered; and 3) a trade name cannot be assigned to third parties.

Although trade name rules are out of the scope of Law 9279/96 (the "Industrial Property Law"), violations thereto are included among the unfair competition provisions in that statute. Offenders are subject to both civil and criminal liability.

E. Patents

Patents are registrable if they comply with the 3 requirements established in the Industrial Property Law: novelty, inventive step and industrial application. Registration is mandatory for enforcement and must be applied for from the Brazilian Patent and Trademark Office (*INPI - Instituto Nacional de Propriedade Industrial*).

Business methods *per se*, artistic works, computer software, biological materials and methods used in producing medicines, even if isolated from their natural environments, are out of the scope of patent protection.

After the filing of a patent application, it is not disclosed for eighteen months. After that the application is published and analyzed by an examiner of the INPI. Due to a huge backlog, it may take up to seven years until a patent is granted.

Pipeline patents are allowed by the local statute, assuring the date of the first filing of a patent in other countries, as long as its subject matter has not yet been used and its owner has protection assured by a treaty or convention effective in Brazil. As soon as the patent is granted in the country where the first patent application was filed, its grant is mandatory in Brazil.

Compulsory licensing of patents occurs upon request of an interested third party, should the owner of a patent may be abusing (i) its patent rights; or (ii) its economic power by using its patent's exclusive rights.

The term of protection of a patent is twenty years from the filing date and renewal is not allowed.

The available civil remedies against patent infringement are preliminary "ex parte" injunctions determining the immediate interruption of the manufacture, marketing and distribution of falsified products; search and seizure of falsified goods; and the awarding of indemnification covering loss of profits and actual damages. Punitive damages are not provided in the Industrial Property Law. Criminal remedies are also available in that statute.

F. Utility Models

Utility model patents are very similar to patents of invention, since the Industrial Property Law requires in both cases novelty and industrial applicability. However, instead of inventive step, which is exclusive for patents of invention, utility models require an inventive action that results in a functional improvement of a patented product, such as a new shape of an electronic appliance.

Registration is mandatory for enforcement and must be applied for with the INPI. Official proceedings for obtaining registration of utility models are the same as for patents.

The term of protection of a utility model is fifteen years from the filing date and renewal is not allowed.

G. Designs

According to the Industrial Property Law, designs are registrable if they have novelty, industrial applicability and originality. A necessary or technical shape of a product cannot be protected as a design.

Registration is mandatory for enforcement and again must be applied for with the INPI.

Unlike patents and utility models, design applications are not subject to examination by the INPI. However, the owner of a design may request at any time its evaluation, which is useful should a court action be filed.

The term of protection for designs is ten years from the filing date and renewal is possible for three successive periods of five years.

H. Geographical Indications

The Brazilian Industrial Property Law also protects geographical indications, consisting of indication of origin or appellation of origin. The registrability requirements were set forth by the INPI in 2000, by means of its Regulation nr. 075. Registration is valid as long as the indication maintains its own local factors, such as climate and soil.

I. Trademarks

Trademarks are visually distinctive signs used to identify a product or service. According to the Industrial Property Law, a trademark is protected within the scope of a class, namely a specific business field, and must not cause confusion with other ones previously filed. They are protected nationwide upon registration with the INPI.

Slogans, prior trade names, words of common use, technical terms, flags and government signs are not allowed for registration as trademarks.

Well-known marks in their specific business fields are an exception to this scope, since according to the Paris Convention, they do not require registration in Brazil to be entitled to protection. Marks considered to be of high renown (*alto renome*), though, are afforded special protection in all classes.

The term of protection of a trademark registration is of ten years after grant, and can be renewed as many times as its owners want, but if an owner stops using a mark for five consecutive years, the mark will be subject to an administrative action for forfeiture.

Civil and criminal remedies against trademark and patent infringement are the same.

J. Technology Transfer

According to the Industrial Property Law, technology transfer agreements must be registered with the INPI in order to be effective against third parties and to provide the contracting parties with tax incentives, such as a credit on withholding income tax due on royalty payments (as per Law 11.196/05 – please note limitations to these incentives in the 3rd and 5th paragraphs of Article 17).

The INPI regulations consider the following as technology transfer agreements: licensing of patents; licensing of trademarks; provision of technology (aiming to obtain industrial related expertise not protected by IP rights); technical and scientific assistance services (aiming at developing research, planning methods and specialized projects) and franchising (aiming at the temporary concession of trademarks, provision of services and technical assistance).

Contracts that do not involve technology transfer, such as distribution agreements, consulting services, marketing services, software licensing and distribution are outside the scope of registration with the INPI or any other government agency.

VIII. GOVERNMENT CONTRACTS

A. General Principles

In Brazil, any purchase of goods and/or services by the Federal Union, the States, the Municipalities and the bodies and entities pertaining to the public administration, state companies, quasi-public companies and other entities directly or indirectly controlled by the Federal Union, the States, the Federal District and the Municipalities is subject to the provisions of Law 8666/93 (the “Procurement Law”).

The Procurement Law contains rules regarding public biddings and government contracts relating to construction, services, purchases, sales and leases involving the entities mentioned above.

In this sense, government contracts and public bidding are subject to detailed regulation by statute, and are subject to tight formalities. With regard to the bidding procedures, all relevant documents must be published in the Official Gazette and another newspaper. The terms and conditions of the contract are provided for by the contracting party in the bidding documents and may not be negotiated or altered by the bidder, who may only accept them or refrain from bidding. It is clear that government contracts, in Brazil, are “vertical” agreements, agreements among parties who are inherently unequal.

Furthermore, government contracts have a maximum term of five years and all payments due under the contract must fit in the annual budget of the public administration body in charge of it.

Government contracts contain some specificities that must be highlighted. The main point is that they are governed under the principle of supremacy of public interest, which means that all acts and facts related to them must aim at fulfilling collective interests. In this sense, the public administration is entitled to modify contracts, unilaterally, for their better adjustment to the public interest and to terminate contracts unilaterally as well.

The flip side of these extraordinary rights benefiting the government is the guarantee, in government contracts, of the initial economic equation of the deal against facts which may make it more onerous, which are not attributable to the private party.

B. Infrastructure and Public Services

The number of infrastructure and public services projects being carried out by the private sector is increasing by the day in Brazil. The public administration is hiring private parties to execute projects that would normally be implemented by the government directly, in sectors such as highways, railroads, port facilities, water and sanitation, electricity, waste treatment.

Such public services and projects may be performed by the private sector under two types of concessions, regulated by Law 8987/95 (the “Public Concessions Law”) or by Law 11079/04 (the “Private-Public Partnership Law”).

The concession of services under the Public Concessions Law involves transfer of the rendering of a certain service from the public administration to the private sector for a determined period of time.

Under this modality, the private party is remunerated for the services solely through fees paid by the users of such service.

Private Public Partnership Law establishes the general rules for Public-Private Partnerships and is supplementary to Procurement Law and Public Concessions Law.

A Public-Private Partnership is defined as a concession agreement and is essentially a build-operate-transfer concession designed for projects that require additional government support to take off. There are two kinds of concessions contemplated by the Public-Private Partnership Law.

One kind is referred to as a “sponsored concession”, the objective of which is to provide public services directly to users. In this kind of concession, the private investor, in addition to rates paid by the users of the public services, is remunerated by government funds.

The other kind of concession is referred to as “administrative concession”, the objective of which is to render services directly to the public administration, not to the end users.

As previously mentioned, the Brazilian public-private partnership necessarily includes compensation by the government to the private partner. In this respect, it is different from the regular concession contemplated in the Public Concessions Law, since the public-private partnership concession involves disbursement of treasury funds. As a result, it enables the government to transfer to the private sector projects that would not be economically feasible simply through fees paid by their users.

In addition, the Public-Private Partnership Law establishes the possibility of remunerating the private investor for its performance according to goals and objectives established for the project. This makes it viable for the public administration to provide essential services and achieve high standards of quality in this respect.

As previously mentioned, the purpose of the Public-Private Partnership is the concession of public services. Therefore, the object of such agreements may not be simply the supply of manpower, the supply and installation of equipment or the execution of public works, which are all regulated by the Brazilian Procurement Law.

In general terms, PPP agreements shall have a minimum value of R\$ 20.000.000,00. The agreement shall be effective for the minimum period of five years and a maximum period of thirty five years, extensions being allowed.

Both Public Concessions and Public-Private Partnerships may be contracted by the Federal Union, the States and the Municipalities, according to their respective attributions in terms of building infrastructure and providing public services.

IX. AGENCY AND DISTRIBUTION

A. Introduction

The evolution of business intermediation in Brazil has led to some specific types of intermediation agreements, which are currently regulated by Brazilian laws such as commercial representation, governed by Law 4886/65, as amended by Law 8420/92; and agency and distribution agreements, which are now regulated by the Brazilian Civil Code of 2002.

B. Main Differences Between Agency and Distribution

According to Article 710 of the Civil Code, an agency agreement exists when a legal or natural person assumes, on a non-occasional basis and without dependence or subordination, the obligation to arrange certain and specific transactions on behalf of a party (a company or an individual) in a determined area, upon compensation for these services.

In this sense, the agent's duties, in general terms, will be finished before the closing of the specific transaction intended by the principal, which was arranged by the agent and will be executed directly by the principal.

The definition of an agency agreement is very close to a distribution agreement, which is also set forth in Article 710 of the Civil Code. The difference between them is basically that in a distribution agreement the product to be negotiated is at the distributor's entire disposal, while in an agency agreement the principal keeps

the product under its control. Also, a distributor acts in its own name and according to its own account and risk in the sale of the product, while an agent acts on behalf of the principal, only intervening in the transaction, even if authorized to close the deal. Concerning the other aspects related to such agreements, the Civil Code basically unifies the rights and duties of agents and distributors.

Commercial representation agreements are governed by Law 4886/65, as amended by Law 8420/92, and in general terms are defined similarly to what is established in the Civil Code for agency agreements. In this sense, until the new Civil Code (2002), agency and commercial representation agreements were considered by precedent and jurisprudence as the same type of agreement.

Although this question is not settled yet, we believe that Law 4886/65, as amended by Law 8420/92, is applicable only when the intervening party is hired to promote activities that have a commercial nature, making the intervening party an agent and also a commercial representative. In this sense, if the activities intermediated do not have a commercial nature, such as agency activities related to professional athletes, writers, actors, artists, etc., the agreement for intermediation will only be directly subject to the rules of the Civil Code, and the intervening party will be deemed an agent.

C. Agency - Main issues

In general terms, the elements of agency agreements are the following: (i) the agent must assume the obligation to intermediate the activity of the principal (with or without powers to close the transaction on behalf of the principal); (ii) the activities performed by the agent must be on a permanent or recurring basis (as opposed to

occasional); (iii) the geographic area and whether or not the services will be performed exclusively must be determined; (iv) the agent's services must be remunerated; (v) the agent must be independent of the parties (no employment relationship, hierarchical subordination or economic dependence).

Under the Civil Code, both parties of an agency agreement can be companies or individuals and there is no limitation regarding the nature of the transactions to be intermediated.

In this sense, as already mentioned, when the activities of the principal have a commercial nature, the agent will also be a commercial representative, subject to the rules of Law 4886/65, as amended by Law 8420/92. If it is not the case, the agency relationship will be subject to the applicable Articles of the Civil Code.

Furthermore, if these intermediation agreements stipulate that the commercial representative or agent, depending on the nature of the activities, is authorized to close transactions on behalf of the principal, the rules to attorneys-in-fact under the Civil Code will also apply to the agents and the rules contained in Law 4886/65 regarding this matter will apply to commercial representatives.

According to Law 4886/65, commercial representation agreements must be executed in writing, and state the representatives' obligation of register with the Federal Commercial Representation Board (*Conselho Nacional de Representantes Comerciais*), which also inspects and regulates the activities of commercial representatives, in the state where the representation activities take place.

In contrast, agency agreements, regulated by the Civil Code, do not have to be established in writing and agents do not have to be registered with any authority.

Commercial representation agreements according to law must regulate the following matters, among others, which usually are also regulated in agency agreements:

- (i) general conditions of the representation;
- (ii) features and specifications of the products;
- (iii) determined or undetermined duration of the agreement;
- (iv) indication of geographic area;
- (v) granting (or not) of exclusivity in the indicated geographic area;
- (vi) commission rate or amount, stipulation whether or not payment will depend on effective collection of the customer's payment;
- (vii) exclusivity (or not) on behalf of the represented company's products; and
- (viii) indemnification to be paid to the commercial representative in case of unjustified termination of the contract.

Furthermore, the law applicable to commercial representation regulates the events that may lead to termination for cause by both parties, which also may be applied to agency agreements, stating the economic compensation rules applicable in those cases as well.

Termination without cause of commercial representation agreements with determined durations gives to the representative the right to receive indemnification equivalent to the monthly average of the remuneration until the date of termination, multiplied by half the remaining term of the agreement.

In the case of agreements of undetermined duration (and for successive agreements executed during a period of 6 months after the termination of the first agreement, or renewed agreements, even if with determined term), the indemnification may not be less than 1/12 of the total remuneration paid to the agent during the agreement. Again, this also applies to agency agreements. Such termination can be invoked by both parties upon 30-day written notice to the other party or payment of 1/3 of the remuneration related to the last three months of the agreement.

The rules related to the indemnification of agents in the event of termination without cause by the principal are basically the same as for commercial representatives, but the regulation related to the advance notice of termination of agreements with determined term is quite different, since this must be done at least ninety days beforehand. Furthermore, payment of the respective indemnification (which is not determined by the Civil Code) will be applicable if the effective duration of the agreement is not compatible with the nature and amount of the investments demanded from the agent. In other words, if the agent has made significant investments based on a good faith promise by the principal, and the principal then terminates the agreement without cause, the agent can sue for indemnification.

The compensation of commercial representatives and agents is basically contracted on a commission basis. If not otherwise agreed, the commercial representative or agent that works on an exclusive basis will be entitled to receive the agreed compensation if any transaction is closed in its area, even if the deal was not closed as a result of its efforts or was directly negotiated by the principal.

Furthermore, if the principal decides to withdraw from the transaction without good cause, the commercial representative or agent will be entitled to receive the remuneration related to the transaction, since the arrangement of the transaction creates an expectation of compensation.

D. Distribution – Main issues

The rules above relating to agency agreements, including the application or not of Law 4886/65, are in general terms also applicable to distribution agreements. However, it is essential for investors to understand the actual meaning of the expression “product under distributor’s control.”

The Civil Code is the first statute that expressly defines the activity of distribution, and brought an innovation in relation to the former definition, only developed in jurisprudence, since it broadened its meaning by mentioning sale of products without owning them.

In this sense, distribution is no longer restricted to agreements for resale of products, instead also including cases where the distributor does not purchase the product. Therefore, distribution activity is configured even if the distributor only has powers to dispose of the product in order to conclude the transaction in its name and by its account and risk, assuming the liabilities and duties arising from the sale *vis-à-vis* the customer, as if it the transaction was a direct resale of the product.

Considering this distinction, some distributors earn commission when they are not owners of the products, as occurs with agents and commercial representatives, and

others receive payment based upon the net profit obtained on the resale of the product.

E. Applicable Special Legislation

Besides the application of Law 4886/65 to agency and distribution agreements, Law 6729/79, as amended by Law 8132/90, is specifically applicable to vehicle distribution agreements (automobile dealerships).

Furthermore, the Brazilian Consumer Code (*Código de Proteção e Defesa do Consumidor*) is also applicable to agreements if a consumer feels injured, since in general terms the law considers as supplier any person or company, even ones that are not established in Brazil or that are established in Brazil but are not registered with the competent public bodies. Such broad interpretation of the concept of supplier is a consequence of the desire to protect consumers, considered in most cases as the weaker party of the relationship.

F. Labor Effects Related to Agency and Distribution

In practice, any individual can bring a labor suit demanding that his or her activity be recognized by the labor courts as an individual labor contract (formal employment relationship). In this case, the court's decision will be oriented by the real conditions under which the services were provided rather than the formal conditions under which they were contracted. For this reason, a labor contract is a contract based on the de facto situation (employment relationship, hierarchical subordination, economic dependence) rather than formalistic considerations. Therefore, as Brazilian law is very strict in this respect, it is advisable that agency,

commercial representation and distribution agreements be executed with companies and the orders issued only be related to instructions and guidelines for performance of the obligations, without dependence or subordination.

X. COMPETITION LAW

A. The Brazilian System of Competition Control (*Sistema Brasileiro de Defesa da Concorrência* – “SBDC”)

The Brazilian competition system is comprised of three different agencies: the Administrative Council for Economic Defense (CADE), the Economic Law Office (SDE) and the Secretariat for Economic Accompaniment (SEAE).

SEAE is responsible for the analysis of the economic aspects of transactions or conduct, while SDE is responsible for the analysis of their legal aspects. Both agencies will issue recommendations addressed to CADE, which CADE may follow or not. CADE is the decision making body within the SBDC.

The SBDC controls anti-competitive behavior from the standpoint of the public interest. CADE may order some actions to be undone, totally or partially, impose measures to be taken by the infringing party (ies) and/or impose administrative sanctions, including monetary penalties. Compensation for damages sustained from anti-competitive behavior has to be sought in court.

B. Clearance of Transactions

Pursuant to Law 8884/94 (the “Competition Law”), Brazilian competition rules are applicable to acts practiced in or that might have effects in Brazil and also to companies that operate, have a subsidiary, a branch, an office, an establishment, an agent or a representative in Brazil.

Therefore, even if the transaction is not entered into in Brazil, but it has the power to generate effects in Brazil, it shall be subject to Competition Law.

According to Competition Law, any act that might involve damage or limitation to free competition and (i) that might result in participation equal or superior to 20% in a relevant market; or (ii) in which any of the parties involved has annual turnover, in the last year, equal or superior to R\$ 400.000.000,00, must be presented to CADE for clearance.

With respect to the turnover criteria, the Brazilian competition authorities take into consideration not only the turnover of the parties involved, but also of the economic groups to which they belong. Under the terms of *Súmula* nr 1, CADE understands that the above mentioned R\$ 400.000.000,00 threshold should refer to annual turnover regarding sales, or export revenues, obtained in the Brazilian market.

Regarding the term for the filing, the Competition Law establishes that the notification to the competition authorities must be presented before the transaction or within fifteen business days of its conclusion.

However, CADE considers, through its Resolution 15, Article 2nd, and through its established precedent, that the accomplishment of the transaction shall be deemed to have occurred in the earlier of (i) the execution, by the parties, of a binding agreement, or (ii) the actual occurrence of anti-competitive effects. Transactions may be completed before clearance is received, provided, however, that it may have to partially or totally undone in the event that clearance is not granted.

The fines to be applied in case of presentation of the notification after the legal term or in case of non-presentation of the transaction at all, vary from approximately R\$ 60.000,00 reais to R\$ 6.000.000,00, depending on several aspects such as, for instance, the good faith of the parties involved, their economic situation, the damages to the market and the number of days of the delay, if there was a delay.

In its decision CADE will assess the existence of potential anti-competitive effects arising out of the transaction and can either approve the transaction in full, approve it with the imposition of conditions (divestments, guarantees of employment, licensing of patents or trademarks, e.g.), or reject the transaction in full, ordering its undoing.

According to the law, SEAE and SDE have, each one, thirty days to issue a report on the case, and after both reports are issued, CADE will have sixty days to issue the final and binding decision, totaling one hundred and twenty days. Less complex transactions, deemed to have no competition effects, may be processed through an expedited procedure.

However, such terms can be suspended whenever a request for further information or for explanation is requested.

C. Repression of Anticompetitive Conduct

The SBDC is also responsible for the repression of anti-competitive practices and for applying corrective and punitive measures. In the past years the

authorities have strengthened their emphasis on fighting cartels and other sorts of competition law infringements.

Under the Competition Law and Law 8137/90, the following acts, among others, are considered practices that limit or impair free competition: controlling any relevant market of goods or services, increasing profits in an arbitrary manner, exercising economic power in an abusive manner, entering into price fixing and market sharing agreements, creating obstacles for new competitors to enter the market, dumping, etc.

The assessment and punishment of such practices are carried out through an administrative proceeding which may be initiated by the SDE on its own initiative or through accusations sent by any third party to the SDE.

SDE is authorized to request the presentation of documents, reports, receipts, electronic files and any other form of information that may be useful for the investigation of anticompetitive acts. The SDE also has the power to hear witnesses and carry out raids for such purpose.

The SDE's Secretary or the CADE councilman in charge of an administrative proceeding are allowed to issue a preventive measure if there are signs that the accused party may cause irreparable damage or cause any damage that is hard to remedy or, further, practice any act that may jeopardize the final result of the administrative proceeding. The preventive measure shall order the accused party to immediately cease the practice and, whenever possible, revert to the status quo ante.

The investigated party will be notified to present its defense and will be able to allege any and all matters of fact and law and present any lawful evidence.

The final decision on the administrative proceeding will be handed down by CADE in a public session. From that decision there is appeal, but to CADE itself. In essence, it is just a plea to CADE to reconsider. However, the Brazilian Constitution establishes that all administrative acts may be reviewed by the Judiciary as regards legal requirements. In this sense, any form of illegitimate act or procedure carried out during the administrative proceeding may be challenged in court by the damaged party.

If the final decision concludes that the acts were in fact illegal CADE may apply monetary fines and/or prohibit the party to practice certain acts. In relation to the fines, they are based on the nature of the violation, the number of times it occurred and the economic status of the party and will range from 1% to 30% of the party's revenues. As regards prohibitions, CADE may prohibit the party to carry out its business, enter into contracts, among other measures.

XI. LEASING

A. General Features

In the past, leasing transactions in Brazil were understood – and are still considered by less specialized scholars and judges – as similar to a rental agreement combined with a purchase option. However, at least from a legal standpoint, the resemblance is at best slight.

Lease agreements (which can be divided into two major groups: financial leasing and operating lease agreements), are clearly financial transactions under the Brazilian legal system. In Brazil, only leasing companies (ultimately similar to financial institutions and subject to the majority of laws and rules applicable to Banks) and some expressly authorized financial institutions are allowed to execute lease agreements as lessors. On the other hand, rental agreements can be executed by non-financial companies or even individuals, such agreements being regulated by Articles 565 to 578 of the Brazilian Civil Code and general rules applicable to non-financial agreements.

Such general rules also apply to agreements that combine a rental transaction and a purchase option, which should always be understood as two different agreements coexisting in the same transaction (the purchase taking place only at the end of the rental term). There is no law in Brazil specifically mentioning rental agreements with purchase options.

On the other hand, in the case of lease agreements, there is not only a law (Nr. 6099/74), but a number of resolutions from the National Monetary Board - CMN (such as Resolution nr. 2309/96) and directives from BACEN, ruling in a very detailed manner on such agreements' characteristics.

B. Leasing Transactions

Both financial and operating lease transactions consist of two phases, which we will call "Phase A" and "Phase B". Phase A consists of the financing phase of a lease agreement, where the funds employed by the leasing company to purchase the asset chosen by the lessee are recovered, in full or in part, along with operational costs and lessor's remuneration (basically, the interest rate embedded in the spread), by means of installments to be paid by the lessee (in financial leasing, Phase A may involve up to 100% of the asset's purchase price; in operating leasing, this is limited to 90%).

Following Phase A, the lessee is entitled to purchase the asset, return same or renew the lease (in case of financial leases, the renewal term should be, at least, twenty-four months; the minimum term applicable for the renewal of operating leases is ninety days), in case the lessee decides to purchase the asset, it must pay the amount stipulated as a purchase option. Such amount, in operating leases, is the market value of the asset at the time Phase B occurs (the fair market value should be established by the market itself. In the absence of such benchmark same may be provided by the manufacturer).

In financial leases, the purchase price can be freely stipulated by the parties (even a symbolic price is allowed). Also, exclusively in financial leases, parties may stipulate

a guaranteed residual value (*valor residual garantido – VRG*), which, according to CMN’s Resolution Nr. 2309/96 can be paid by the lessee at any time of the agreement, such payment, if in advance, not being taken as an anticipation of lessee’s choice in Phase B.

The VRG acts as a guarantee to the lessor that it will recover the full amount invested in purchase of the leased asset, regardless of lessee’s choice in Phase B. Thus, for instance, in case the lessee decides to purchase the asset, the lessee will pay the VRG. In case the lessee decides to return the asset, the lessor can sell it (or execute a new lease) and if the proceeds from the sale (or the present value of the new lease executed by lessor with a third party based on the asset returned by the former lessee) are not sufficient to cover the amount stipulated (as the VRG), the lessee must pay the difference. Otherwise, if such proceeds exceed the VRG, the lessor will credit the difference to lessee’s benefit.

Rental agreements do not involve financing; the lessee pays rent to the owner for possession of the asset. This rent can be compared to the interest that a borrower owes to a lender in a loan agreement.

Hence, from a legal standpoint, the nature of the payments in lease agreements and rental agreements is clearly different. Same is applicable to the purchase option (VRG included) typical in lease agreements and the purchase option that may be granted at the end of the rental transaction’s term. The latter has no connection to financing of any kind (again from a legal standpoint) and the price may be stipulated in accordance with both parties’ decision.

In addition, according to Brazilian law, in lease agreements (except for the sublessor situation in sublease operations), title of the asset remains with the lessor until Phase B (and will continue to be held by the lessor in case the lessee decides to return the asset or renew the lease). In rental agreements, on the other hand, the rental company does not need to be the owner of the asset.

Lease agreements are essentially non-cancelable (such characteristic may be weakened in case a court accepts the applicability of the Brazilian Consumer Code provisions). When it comes to rental agreements, however, due to the Brazilian Civil Code provisions, set forth in Article 571, the rental company's client may cancel a rental transaction by returning the asset and paying the applicable penalty stipulated in the agreement (which may be combined with the liability to pay rental Company's eventual losses and damages resulting from such early termination). Such penalty, however, may be reduced in court by the rental company's client, in case the latter decides to challenge such early termination penalty and same is considered excessive by the Judge. Both types of agreements can be terminated in case of default by one of the parties.

Leasing companies may charge lessees differences in exchange rates between, for instance, US Dollars and Brazilian currency in case the funds to purchase the leased asset were obtained from foreign investors. Comprehensive and strict evidence of such origin must be provided by the leasing company for such purpose, due to a number of court decisions stating that evidence of the connection between the funding (origin) and respective lease transaction is required.

On the other hand, rental agreements in Brazil cannot be Dollar-indexed, for example, except when one of the parties is domiciled abroad and the agreement is duly registered with the BACEN.

Leasing companies are authorized to assign their lease receivables to other leasing companies in Brazil, or other financial institutions and/or special purpose companies expressly authorized by the CMN, or to foreign entities of any kind (subject to BACEN approval). Rental companies may also assign their credits in rental agreements, but such assignments are not subject to any specific restrictions, except for those general restrictions set forth in Articles 286 to 298 of the Civil Code.

XII. THE BRAZILIAN FINANCIAL SYSTEM

A. The National Monetary Council (CMN)

The functions of the National Monetary Council are: to establish the general guidelines of the monetary, exchange and credit policies, to rule the financial institutions, their conditions of organization, operation and supervision. The National Monetary Council is presided over by the Minister of Finance.

CMN has the following powers with respect to the securities market: (i) to define the general policy relating to the organization and operation of the capital markets, (ii) to issue regulations on the extension of credit in the market, and (iii) to determine general rules to be followed by Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*) for the performance of its functions; and (iv) to define the activities which CVM must perform in cooperation with the BACEN.

B. Central Bank of Brazil (BACEN)

The Central Bank of Brazil (BACEN) is also linked to the Ministry of Finance and its main functions are: (i) fulfill the rules issued by the National Monetary Council, (ii) be a depository of official gold reserves and foreign currency reserves, (iii) control credit of all forms, (iv) control foreign capital, (v) control payments and investments, (vi) represent the Brazilian Government with international financial institutions, (vii) carry out the inspection of and grant authorizations to financial institutions, (viii) put into effect buying and selling operations of federal debt securities as an instrument of monetary policy, among others.

The BACEN is managed by a board of nine members, being one of them named as president, all appointed by the President for an indefinite term. This appointment is subject to ratification by the Senate.

C. Securities and Exchange Commission (CVM)

Law 6385/76 (the “Securities Law”) created the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários – CVM*) and regulates the overall operation of the capital markets, the public distribution of securities, the listing of securities on exchanges, disclosure requirements, activities of brokers and intermediaries, types of securities negotiated and the types of companies which can be traded on the capital markets. The Securities Law grants regulatory and oversight powers to CVM.

CVM is the governmental agency responsible for regulating and supervising compliance with the Securities Law and all other aspects of the local capital markets. It is managed by a president and four board members appointed by the President of Brazil for a term of five years, as ratified by the Senate, each of whom must have acknowledged expertise in the securities market.

CVM also has oversight powers over all participants in the Brazilian securities markets. It includes brokers, dealers, financial institutions, stock exchanges, Organized OTC, publicly-held companies, investment funds and companies, portfolios and custodians, independent auditors, consultants and market analysts.

CVM may take actions and impose administrative sanctions on any persons and entities which fail to comply with the Securities Law, the Corporations Law and with other regulations which CVM is responsible for enforcing. The primary sanctions that CVM may impose include: (i) issuance of warnings; (ii) pecuniary penalties; (iii) suspension or revoking of the registration of authorization to participate in the securities market; (iv) temporary prohibition, for up to twenty years, to participate in certain activities related to the securities market; and (v) suspension and removal of directors or officers.

XIII. REAL ESTATE

A. Foundations of Real Estate Law

Ownership of real property in Brazil, is determined by proper registration with the Real Estate Registries (*Cartórios de Registro de Imóveis*), which exist all over the country and are in charge of a given territorial jurisdiction. The legal owner of a property is the one registered with the Real Estate Registry.

Other rights over real property exist, such as possession (*posse*), when someone occupies the property with the intent of keeping it.

All forms of acquisition of property shall result in the registration with the Real Estate Registry, if full ownership is to be recognized.

The right to own real estate is constitutionally guaranteed, although property rights are not absolute. The property right is subject to restrictions on land use (urbanistic and environmental) and to the principle of “social function of property”, which means that property not used in accordance with what its social purpose should be is subject to expropriation by the authorities, always with compensation.

Furthermore, the subsoil is not deemed to be part of the property, and anything that is found underneath a property (such as oil, gas, precious metals, etc) does not belong to the property owner, but to the Federal Union, which may grant concessions for its exploitation.

There are significant differences between the legal regime of urban property and rural property, in what regards taxation, the meaning of “social purpose”, land use restrictions, among others.

The main sources of law relevant to real estate can be found in the Brazilian Constitution, the Brazilian Civil Code, and specific statutes, such as Law 10.257/2001 (General Rules of Urban Land Use) and Law 5.709/71 (Restrictions on Acquisition of Rural Property by Foreigners).

B. Acquisition of Property

Property may be acquired through the following manners: (i) a transaction between capable parties; (ii) *usucapio*, which is a form of property acquisition through the effective possession, unchallenged, of the property for a given number of years; (iii) inheritance and (iv) accession, dislocation of land through natural forces.

A transaction involving transfer of real rights, such as outright purchase and sale, usufruct or mortgages must be recorded in writing before a notary, through a public deed. It is common that the parties to the transaction execute a private contract (*Compromisso de Compra e Venda*) among themselves, with the basic terms of the transaction and agreeing to go to the notary when some precedent conditions are met (such as presentation of certain documents by the seller insuring full right to transfer the property). The transfer of the property occurs when the public deed is brought into the Real Estate Registry and registration is made.

Any restrictions or rights over the property that must be opposed against third parties, such as mortgages, options to purchase or sell, rights of first refusal, etc, must be registered with the Real Estate Registry.

Foreigners have no restrictions for the acquisition of urban property. However, there are some restrictions for the acquisition of rural land, established by Law 5.709/71. Some of these restrictions, however, do not apply to Brazilian companies controlled by foreign persons or legal entities. Therefore, foreigners may acquire, directly or indirectly, most types of property in Brazil.

C. Real Estate Investment Funds

An alternative for investment in Brazilian real estate without the hassle involved in direct acquisition of property is the investment in real estate funds. Such funds usually acquire several properties, which generate revenues from leases or sales, and are then distributed among the fund investors.

Real Estate funds are regulated by the Brazilian Securities and Exchange Commission, the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*, or CVM), and their administration must follow rules established by law and CVM regulations. Participation on these funds is free to foreigners, who must register this investment with the Brazilian Central Bank.

High end commercial real estate in Brazil, such as office buildings and shopping centers, is increasingly being developed through Real Estate Investment Funds. Quotas of such funds are tradable securities, which increases the liquidity of the investment and makes divestment much easier.

D. Leases

Leases have different legal regimes according to whether they are urban or rural, residential or commercial.

Leases may be freely negotiated, within certain parameters. Law 8.245/91 regulates urban leases. Lease Agreements may be for a determinate or indeterminate term. In the first case, the landlord is obliged to respect the lease term, but the tenant is not, being able to terminate the lease at will, with the payment of a penalty, established by law. In the second case, any of the parties may terminate the lease with thirty days advance notice.

In commercial leases, the law established some situations in which the tenant may be entitled to renew the lease, even if the landlord does not wish to do so.

In any case, tenants have a right of first refusal to acquire the property in case the landlord wishes to sell it. This right automatically applies against the landlord, but must be registered with the Real Estate Registry to be opposed against third parties.

VII - ENVIRONMENTAL LEGISLATION

A. General Features

Brazil has a well-developed system of environmental law. Although enforcement is still unreliable, the laws are in many ways stricter than in most countries. It is important to emphasize some of the particularities of the Brazilian system, especially concerning environmental licensing proceedings and environmental liability in criminal, administrative and civil fields.

Environmental protection, in Brazil, is foreseen by the Constitution in Article 225, which states that “everyone has the right to an ecologically balanced environmental which as a communal asset is a precondition for a healthy quality of life, and the duty to defend and preserve the environment for present and future generations is of the State as well as of society”.

The Constitution establishes in its Article 24 that the competence to legislate is concurrent between Federal Union and the States. Article 30 states that Municipalities have supplementary competence to legislate upon matters of local interest.

In this sense, the Federal government is competent to legislate in determined areas, such as energy and mining, and to establish general rules that can be complemented by state legislation. The states may also issue standards of equal or more stringent requirements than the federal ones.

Concerning administrative jurisdiction, the Constitution, in Article 23, Clauses VI and VII, provides that Federal Union, States and Municipalities have common jurisdiction to protect the environment and control pollution.

Law 6.938/81, which created the National Environmental Policy (*Política Nacional do Meio Ambiente – PNMA*), establishes the principles, mechanisms and instruments of Brazilian environmental policy, and structures the National System of Environment (“*Sistema Nacional de Meio Ambiente – SISNAM*”) that comprises, among others, the National Council of Environment (“*Conselho Nacional de Meio Ambiente – CONAMA*”) the normative and consultative body; the Ministry of the Environment (“*Ministério do Meio Ambiente*”), charged with the coordination, supervision and control of the Brazilian Environmental Policy; and of the Brazilian Institute of Environment (“*Instituto Brasileiro de Meio Ambiente, Recursos Naturais Renováveis e Amazônia Legal – IBAMA*”), which is the executive agency.

B. Licensing of Effective or Potentially Polluting Activities

The Brazilian environmental licensing system is regulated by Law 6938/81, Decree 99.274/90, and CONAMA Resolutions 01/86 and 237/97. The licensing process is mandatory to construction, installation, expansion and functioning of any establishment that uses environmental resources, or is considered to be effectively or potentially polluting.

The development of the Study of Environmental Impact (EIA) with its respective report (RIMA) is required for projects or activities considered to be potentially or effectively polluting. This study is part of the licensing process, and the concession of the referred license depends on its approval. The CONAMA Resolution 001/86

defines the basic content of the EIA, and establishes the public participation requirements. CONAMA Resolution 09/87 regulates the public hearing process associated with the EIA process. In these cases, a Public Hearing may be required during the licensing process, according to CONAMA Resolution 09/87.

In order to install and develop such projects the following licenses are required:

- Previous License - LP, granted during the project's planning phase, approving its location and conception, attesting to its environmental feasibility and establishing basic guidelines to be accomplished in the subsequent stages of licensing;
- Installation License - LI, authorizes the implementation of the project in accordance with the plans and specifications, including environmental control measures; and
- Operational License - LO, authorizes, after due inspections, the beginning of activities and its pollution control equipment, according to Previous and Installation licenses.

According to CONAMA Resolution 237/97, the States are responsible for the environmental licensing procedures of projects within the territory under their jurisdiction, except for those which have a regional or national influence in what it concerns environmental issues. In that case, the federal environmental agency (IBAMA) will take over the licensing responsibility for the project. Although the matter is still controversial, CONAMA Resolution 237/97 also establishes that municipalities may be responsible for environmental licenses of projects with local impact.

It is also important to stress that CONAMA Resolution 02/96 obliges projects that cause damage to the environment to create a conservation unit of public domain to compensate for the environmental disturbance generated by their activities. The total amount of resources to be used for these compensations cannot be less than 0.5% of the total implementation cost of the project.

C. Administrative and Criminal Penalties

Law 9.605/98 (*Lei de Crimes Ambientais*), a modern environmental criminal law in force in Brazil since 1998, established a series of criminal and administrative offences against the environment as well as its corresponding penalties, and introduced other means to guarantee environmental protection, such as the possibility to impose criminal sanctions on legal entities, without excluding the possibility of penalizing individuals who may be responsible for such damages or that, even aware of the risk of the criminal conduct, do not impede its practice.

The sanctions that are specifically applicable to legal entities are fines, the restriction of rights, and the imposition of service rendering to the community.

Criminal liability results from the practice of a fact foreseen as crime, imposing fines, imprisonment or confinement, and restriction of rights to the offender. Imprisonment can be replaced by the restriction of rights, when the penalty provided for by the law is less than four years of imprisonment, if the crime was committed without malice, and when the personal condition of the agent indicates that the replacement of the imprisonment by the restriction of rights will be sufficient to discourage and prevent future crimes.

According to Law 9.605/98 and Federal Decree 3.179/99, administrative liability arises from the infringement of legal or administrative rules. The offender can be subjected to administrative penalties such as warning, fines, destruction of the offending product, restriction of rights, suspension of activities, and demolition of irregular works, among others. Fines range from R\$ 50,00 to R\$ 50.000.000,00.

D. Civil Liability for Environmental Damages

Brazil adopts, for environmental damages, the strict liability system and the principle of joint liability, which means that the polluter pays, regardless of fault, negligence, or knowledge of the harm. It is enough to prove a causal relation between the activity and the damage caused, and that each party responsible for the whole damage, will be required to pay the total amount if the other parties cannot afford to contribute their share.

Otherwise, the liability for dangerous activities without causal relation was already accepted by Brazilian courts, when the simple execution of an activity, potentially polluting, can be sufficient to hold the agent liable.

Environmental liability in Brazil is “proptem rem”, which means that the owner of the property is liable for any pre existent damage whether the owner has contributed or not for its consummation. The lawsuit for this indemnity is a class action foreseen by Law 7.347/85, called Public Civil Action. There is no limitation period for civil actions involving environmental matters.

Disregard of legal entity is possible when it represents an obstacle to remedy the damages caused to the environment.

E. Brazilian Carbon Market

Brazil plays a prominent role in the discussions on climate change. As established in the Kyoto Protocol, as a non-Annex 1 party (developing country), and according to the principle of common but differentiated responsibilities, Brazil is not required to take specific action to meet the targets established, and has a special affinity to host projects involving Clean Development Mechanism (CDM).

XV - INTERNATIONAL TRADE

A. Brazil and the WTO - Multilateralism

Brazil has been a World Trade Organization (“WTO”) member since January 1st, 1995 and has increasingly played an important role, either by participating actively in all negotiations in course, or being one of the most frequent users of the dispute settlement system.

1. Brazil in the WTO negotiations

This intense diplomatic activity of Brazil in the WTO is linked to the belief of the Brazilian government that the WTO is the most important path to defend the interests of the country in the foreign trade scenario. This is because although Brazil has important interests in the agricultural sectors, Brazil has also products and services for export in the most diversified fields: from basic products (*e.g.* soybeans) to manufactured products (*e.g.* airplanes). Notwithstanding, the importers of such products are spread all over the world. This context makes the multilateral system more appropriate to address Brazil’s concerns. Thus, the multilateral negotiations have always received significant attention on the part of the Brazilian foreign policy.

2. Brazil in the Dispute Settlement System

Brazil has always been a believer in the WTO Dispute Settlement Body. Since 1991, Brazil has been a complainant in twenty disputes, a respondent in nine disputes,

including consultations that have not lead to the establishment of panels. Among the most important disputes in which Brazil has been a complainant, we point out:

European Communities - Export Subsidies on Sugar (DS 266)

United States - Subsidies on Upland Cotton (DS 267)

United States - Equalizing excise tax imposed by Florida on processed orange and grapefruit Products (DS 250)

United States - Definitive safeguard measures on imports of certain steel products (DS 259)

Canada - Export Credits and Loan Guarantees for Regional Aircraft (DS 222)

Brazil - Export Financing Program for Aircraft (DS46), as respondent.

Besides having participated as a complainant and respondent, Brazil has also participated of several disputes as a third party.

Brazil is one of the most active users of the WTO dispute settlement system. Although most of the results have been in favor of Brazil, not always the results achieved in the panels have been implemented by the respondent parties. The absence of effective means of enforcing the decisions of the Dispute Settlement Body (“DSB”) is a severe limitation on its usefulness, and the Brazilian diplomacy is acutely aware of this fact.

B. Regional Trade Agreements

The General Agreement on Tariffs and Trade allows the formation of regional trade areas, so that the regional and the multilateral trade agreements may exist simultaneously.

As regionalism appears to offer a quicker way to achieve results, most of the WTO members are currently part of at least one regional trade agreement. Approximately 300 regional trade agreements have been notified to the WTO and it is estimated that 150 of them are currently in force.

1. Brazil in the Regional Trade Agreements

In order to increase trade opportunities, Brazil is also part of some regional agreements and negotiations. Not only do such agreements open markets, but they also aim to bring stability in the rules and policies of the relevant trade area.

Mercosur

The Southern Cone Common Market (Mercosul in Portuguese, Mercosur in Spanish and as it commonly appears in English) was constituted in March 1991 by the Treaty of Asuncion, which aimed to set up a common market²⁵ among Argentina, Brazil, Paraguay and Uruguay.

Mercosur was designed to attain the level of a truly common market, in the following steps: (i) a *free trade zone* (already reached by Mercosur); (ii) a *customs union* (current stage, in progress), in which a common external tariff (TEC) is applied to the products from other countries and trade blocks; and finally (iii) a *common market*, involving the unfettered circulation of products, people, capital and services.

²⁵ The common market seeks the free circulation of goods, services and production factors; the elimination of restrictions on reciprocal trade; the establishment of a common external tariff; the adoption of common trade policies; and the coordination of macroeconomic and sectorial policies.

Today, Mercosur cannot be said to have achieved the second stage of a customs union, since the number of exceptions to the common external tariff and the variation of these exceptions are so large that the system in practice does not work properly.

To date, Mercosur has completed the free trade stage, which is the initial stage of the regional integration process, by which the member countries sought to reduce duties and other trade barriers within the block.

Currently, the products sold within Mercosur are, in general, free of duties and other trade barriers.

While problems still exist, Mercosur is trying to put the Common External Tariff (TEC) system into place to consolidate the customs union among the member countries. In Brazil, the TEC was implemented with the passing of Decree 1343 on December 23, 1994. Since then it has been amended several times, mainly to adapt it to the new version of the Common Mercosur Nomenclature (NCM).

Coordination of macroeconomic and sectorial policies among the member countries is still not considered a priority. Their economies are different, and their economic policies in many respects reflect this situation.

Still, MERCOSUR is Brazil's most important trade agreement to date. Some advances have been made, such as the execution of the Olivos Protocol, dealing with dispute settlement within MERCOSUR.

MERCOSUR is expanding its reach, to include Bolivia, Chile (as an associated

member) and Venezuela, with several trade agreements with third parties as well.

ALADI (Latin American Integration Association)

The ALADI is the largest Latin-American group of integration. ALADI comprises 12 countries: Bolivia, Ecuador, Paraguay, Chile, Colombia, Peru, Uruguay, Venezuela, Cuba, Argentina, Brazil and Mexico.

The 1980 Montevideo Treaty is the global legal framework that constitutes and rules the ALADI and was signed on August 12, 1980. It establishes the following general principles: pluralism, convergence, flexibility, differential treatment and multiplicity.

ALADI aims at the gradual and progressive implementation, of a common Latin-American market, through the adoption of tariff preferences and elimination of non-tariff barriers, through three mechanisms:

- Regional tariff preference granted to products originating in the member countries, based on the tariffs in force for third countries;
- Regional scope agreement, among member countries; and
- Partial scope agreements, between two or more countries of the area.

Other Significant Agreements

- Brazil/Argentina (2002) – deal with specific trade rules in the automotive sector.
- Brazil/Uruguay (1983) – deals with specific trade rules in the automotive sector.

- Brazil/Cuba (1999) - grants fixed preferences to certain products.
- Brazil/Mexico (2002) - grants fixed preferences to certain products.

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