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Swiss-Brazilian Chamber of Commerce
Schweizerisch-Brasilianische Handelskammer
Chambre de Commerce Suisse-Brésilienne

SWITZERLAND GLOBAL ENTERPRISE
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Brazil
Legal Provisions

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1. Introduction

Brazil is large by almost any standard. It is the fifth largest country in the world, with an area of 8,514,877 sq km, which is equivalent to almost half of the entire South American continent. It borders all South American countries except Chile and Ecuador. Brazil comprises 26 states and the Federal District of Brasília, the capital city.

The population is about 203 million, 57% of them live in the south and south-eastern region, the wealthiest and best-developed area of Brazil, responsible for over 70% of the Brazilian GDP.

Characterized by large and well-developed agricultural, mining, manufacturing and service sectors, Brazil's economy outweighs all other South American countries and is expanding its presence in world markets. Today, Brazil is the 6th largest economy in the world.

Brazil is Switzerland's major trading partner in the region: 40% of Swiss exports to South America go to Brazil.

With the largest economy and population in Latin America, Brazil still presents considerable export opportunities, particularly in areas such as energy generation, construction, infrastructure, safety and security equipment and metalworking machinery.

Despite liberalization, the complexities of the Brazilian business environment still create substantial obstacles for exporters. Doing business in Brazil can be a real challenge and requires intimate knowledge of the local environment. Tariff barriers, also reduced over the last ten years, are still high, and companies face a very difficult customs system, a very high and unpredictable tax burden with a legal system that is overburdened and is often unable to be an effective enforcer of business law.

Nevertheless, most companies find that the opportunities outweigh the risks and the known and hidden costs of doing business here (referred to as the "Brazilian Cost" (*Custo Brasil*).

2. Import / Export

In general, imports to Brazil can only be registered by authorized companies. The permission is granted by SECEX, the Secretary for Foreign Trade. Individuals normally do not get this permission.

For each import, the importer or its representative (customs agent – *despachante*) need to apply for an import license/declaration (*Declaração de Importação* – DI) through the on-line system SISCOMEX, see also 2.1.

Through the SISCOMEX system, an integrated foreign trade system, different government entities (Federal Revenue and Customs Administration, Health and Agricultural Ministry and Central Bank, amongst others) are linked and have the possibility to execute fiscal, administrative and foreign exchange controls.

All information included in the registration, from the cargo input until the customs clearance, are constantly surveyed to avoid price dumping and illegal foreign exchange transfers.

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2.1. Import licenses - automatic and non-automatic procedure

For all imports, an import license is needed. For many products a so called "automatic import license" (*licenciamento automático*) is sufficient. The importer may request it on-line through the computerized trade documentation system SISCOMEX. Automatic licenses are normally issued within five days of application. Goods must be embarked within 180 days of the issuance of the import licenses.

In the other cases, a non-automatic license is necessary. The importer can check the SISCOMEX system about what kind of licenses and from which government agency is required.

In general, non-automatic import license are needed for the following products: living animals, meat, seafood, milk and milk products, eggs and honey, fruits and vegetables and several other animal and vegetable products, mineral water, tobaccos, minerals, chemicals and petrochemicals, rubber, herbicides and pesticides, medical and pharmaceutical products, vitamins, human blood, plastics, furs, wood, textiles, shoes, iron and steel, machines and devices, electro technical goods, automobiles, optical instruments, measuring instruments, weapons and munitions, nuclear material, furniture and toys.

Responsible for the issuing of the import license are, depending on the goods, different government bodies.

As a general rule, all food imports to Brazil are subject to a sanitary control through the Ministry of Agriculture, Livestock, and Supply (MAPA) or through the Brazilian Health Surveillance Agency ANVISA, depending on the nature of the product: Products containing more than 50% ingredients from animal origin (in general) or 30% for diary products must be approved by MAPA, all other products, by ANVISA.

The importation of products from animal origin is conditioned to the prior approval of the exporting establishment in Switzerland by a MAPA inspector according to decree nº 183 of October 9, 1998 (http://www.agricultura.gov.br/animal/importacao/normas). Travelling costs (flight, accommodation and local expenses) must be paid by the Swiss company. The approval has no expiration date and does not have to be renewed in the future. Nevertheless for each export, a sanitary certificate is needed.

It is worthwhile mentioning that most import licenses must be issued before the embarkation.

2.2. Prohibited imports

Prohibited imports include certain narcotics; obscene, immoral and seditious products and some herbicides. The import of used cars is prohibited. Certain quotas apply for the import of new cars and meat.

In general, the importation of used consumer products for commercial proposes is forbidden.

2.3. Import regulation for used machines

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Used machines can only be imported under certain circumstances. They are generally subject to a prior analysis through the Foreign Trade Secretariat (SECEX). SECEX verifies if a similar product is fabricated in Brazil or the machine could be replaced through another comparable product.

Exceptions apply, among others, for temporary imported machines or for machines imported within the scope of an international agreement.

2.4. Import regulation for wood packing material

Brazil signed the International Plant Protection Convention (IPPC) of the Food and Agriculture Organization (FAO). Since the 15th of January 2004 Brazil requires the IPPC standards for wood packing material, Standard No.15 ("Guidelines for Regulating Wood Packaging Material in International Trade").

2.5. Labeling and packing regulations

The Brazilian Customer Protection code states that imported products can be sold in their original packaging providing an additional label is attached to the product giving in Brazilian Portuguese:

- a description of the product;
- the weight according to local standards;
- the composition of the product;
- its validity;
- the country of origin;
- the name and address of the importer;
- any special warning on risks to health or security
- in the case of foodstuff and beverages (excluding alcoholic) also the nutritional value

Usually this label is placed on the product in Brazil by the importer. Special labeling regulations apply to imported pharmaceutical specialties, antiseptics, disinfectants, cosmetics, beauty and hygienic preparations, alcoholic beverages, foodstuff. See also chapter 5.

When an instruction manual accompanies a product, it must also be in Brazilian Portuguese.

2.6. Temporary import

Brazil is signatory of the ATA Carnet Agreement, nevertheless there are still pending procedures for its full implementation. Currently Brazil has two temporary admission regimes (i) without import duties and (ii) with proportional duties.

Temporary imports are limited to 180 days, but can be extended, on the customs authority's (*Receita Federal*) discretion. The application for an extension must be justified to Receita Federal and made prior to this limit period.

2.6.1. Temporary imports without import duties

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Since 2003, temporary import with suspension of import duties is possible in special cases according to the resolution SRF 285/03 (www.receita.fazenda.gov.br/Legislacao/Ins/2003/in2852003.htm) as follows:

- Goods for expositions, fairs and congresses
- Goods for launching tests and other components of aerospace, previously approved by Brazilian Space Agency
- Goods for promotion reasons (also samples without commercial value)
- Goods for scientific research, which were previously approved by the National Council of Science and Technology
- Goods for sports and cultural events or art exhibitions
- Goods for the grant of services under a warranty through technicians from abroad and therefore necessary substitution parts and professional equipment
- Goods for the packaging of export goods
- Goods necessary for the assembling or replacement of machines or devices
- Goods to be repaired

For goods which under the normal import procedure need a non-automatic import license (especially health related products), involved costs can be very high (even though no import taxes are charged). One of the reasons might be the handling costs which can be very expensive and time consuming.

2.6.2. Temporary import with proportionally import duties

In cases of operational leases, rentals, goods imported to render services and for the fabrication of other goods the import tax (II), tax on industrial products (IPI) and ICMS may be paid proportionally to the period of stay of the good in Brazil and the life span of the product.

Example: If import duties (II and IPI and ICMS) on a normal import would be BRL 20,000 and the life span of a machine 5 year, temporary import duty due for a three month stay in Brazil would be BRL 1,000.

V = I / U * P

I …	Import duty normal import	BRL 20,000
U …	Life span machine (in months)[1]	60
P …	number of months the product will remain in Brazil	3
V …	Tax to be paid	BRL 1,000

Further information on temporary imports see Normative Instruction SRF 150/99 (www.receita.fazenda.gov.br/legislacao/ins/ant2001/1999/in15099.htm) from December 21, 1999

2.7. Import of samples and catalogues

Commercial samples without any commercial value (parts or fragments of goods in the necessary quantity, to present nature, type and quantity of them) can be carried to Brazil in the luggage without paying import tax. Some samples may require previous authorization from specific government departments (especially health related products).

[1] according to Normative Instruction SRF 162/98 (www.receita.fazenda.gov.br/legislacao/ins/ant2001/1998/in16298.htm), dated December 31, 1998

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Samples, whether they have any commercial value or not, which are sent to recognized importers need the same documentation as ordinary commercial shipments, including an import license. Documents for samples should be marked "sample, not for sale" (*amostra gratis*). Not more than one sample of each product should be sent.

Catalogues can be sent to Brazil without paying tax if the parcel is declared as "*documentos sem valor comercial*".

2.8. Mail order imports

The weight limit on imports by mail is 30 kg. Mail-order imports of up to US$ 3,000 are subject to a 60% import duty. Exemptions are granted in case of medicine and imports under US$ 50, provided that it is performed between individuals or it is for the individual's use. Also exempt from import taxes are books, journals, and magazines. Alcoholic beverages and smoking products do not benefit from this import regime.

Mail-order imports via courier (express transportation) pay additionally 18% ICMS.

2.9. Import duties

Brazil, Argentina, Paraguay and Uruguay, the Mercosur members, implemented in January 1995 a common nomenclature (NCM) for the custom classification of imported products. The first 6 numbers are equivalent to the Harmonized System (HS) known in Switzerland.

Import taxes are published in the Common External Tariff (TEC), see below.

2.9.1. Customs duties

Import taxes are between 0 and 35%, in average 14%, and levied over the CIF value (FOB price plus insurance and freight). Exact rates can be found under: http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=3361

Exemptions from or reductions on import duties are granted to

- certain capital goods (marked on the previous mentioned list with BK),
- information and telecommunication goods (marked with § or BIT) and
- other goods (marked with # or **) considered of particular importance to the Brazilian economy, if there is no similar local manufactured product.

Duties may also be suspended on goods imported for re-export, for further processing prior to export or for use in preparing other products for export (drawback).

Exemptions or reductions are normally only granted temporarily, but renewals are frequent.

2.9.2. Other taxes and duties

Additionally to the import tax (II), federal value-added excise tax (IPI), contributions (PIS and COFINS), state value-added sales and services tax (ICMS) as well as a seaport tax (AFRMM, 25% on sea freight costs) are levied on imports.

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The Brazilian system is cumulative, that means IPI is calculated on the basis of "custom value + II", ICMS on the bases "custom value + II + IPI" etc. An example of how calculating import costs can be found in chapter 2.12.

Port and dock taxes and charges are high when comparing with international standards.

2.10. Preferable import taxes

Brazil is a member of the Latin American Integration Association (ALADI). ALADI members grant preferential duty treatment to one another. The ALADI community includes Argentina, Bolivia, Brazil, Cuba, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela.

Brazil is also a member of the Southern Common Market (Mercosur - Argentina, Brazil, Paraguay, Uruguay and Venezuela). In theory, Mercosur is functioning as a free trade zone and a customs union, in practice, many special import taxes apply on textiles, computers, automobiles, sugar and capital goods.

A trade agreement has also been signed between Mercosur and the countries Chile and Bolivia where import tax reduction are granted for most goods and a free trade agreement with Mexico covering a limited number of goods.

2.11. Manaus free trade zone

The free trade zone of Manaus is designed to encourage manufacturing for export and local sales in the Amazons area up to 2023. Raw materials, parts and components imported into the Manaus free trade zone enjoy deferment of customs duties and exemption of federal excise tax (IPI). See 10.2.

2.12. Example calculation of import costs

The following spreadsheet should give an overview on import costs in Brazil.

Nº Containers per shipment - DRY 20, 40, HC 40, OT 20, OT 40, flat rack		**1**
Nº B/L's per shipment		**1**
Description	**% Taxes**	**US$**
Exchange rate US$ / BRL reference April 2014	2.24	
FOB Value European Seaport		100,000.00
International Sea Freight - **estimated**		2,000.00
International Insurance Door to Door	0.3% of FOB and Freight	306.00
CIF Value Brazil - basis for the calculation for taxes and charges		**102,306.00**
Federal and State Taxes for import (Generical, it depends on the HS[2])		**US$**
Import Tax - **II -** Federal	14% on CIF	14,322.84
Tax on Industrialized Products - **IPI** - Federal	5% on (CIF+II)	5,831.44

[2] Harmonized Code

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Program for the Social Integration - **PIS** - Federal	1.65% on (CIF+II+IPI) adjusted[3]	2,348.86
Contribution for the Financing of Social Security - **COFINS** - Federal	7.6% on (CIF+II+IPI) adjusted[3]	10,819.01
Tax on the circulation of goods - **ICMS** - State	18% on (CIF+II+IPI+PIS+COFINS)	29,772.03
Total Costs after Tax - this value must be declared on the receipt (*nota fiscal*) and kept for tax reasons		**165,400.19**
Charges at any southern Brazilian Seaport for imports		
Seaport charge - **AFRMM**	25% on freight	500.00
THC - Terminal Handling Carrier - per container		236.61
Seaport Warehouse - 10 days	0.90% on CIF	920.75
Warehouse - optional	0.90% on CIF	920.75
Removal to warehouse - optional		156.25
Handling / load / unload / container		178.57
Customs broker		1,023.06
Syndicate of the customs broker (*despachantes*) - **SDA**		330.26
Bill of Lading clearance		145.00
Exchange Bank Tax		80.00
Registration in **SISCOMEX** system		80.00
Road transport - **hypothetical**		850.00
Total Expenses		**5,421.26**
Total Costs after Taxes and Charges		**170,821.45**
Total Value / FOB		**1,7082**
Source: O.Lisboa Despachos Internacionais		

2.13. Documentation and procedures on imports

Most of import problems in Brazil are due to missing, incomplete or slightly incorrect documentation. The Brazilian customs officers are rigorous: If the dates in the transport and customs documentation do not comply with the sent goods (especially weight and quantity), custom clearance will be delayed or interrupted. Besides delays and fines it is possible to even miss the shipment.

The following documents are required:

- Original shipping documents (B/L or AWB), mandatory for all imports;
- Original commercial invoice, in English or Portuguese, in dual version - mandatory for all imports;
- Packing list, thoroughly prepared - mandatory for all imports;
- Import Declaration (DI) for all imports - must be organized by the importer through the SISCOMEX system;
- Phytosanitary Certificate - where applicable or
- Health Certificate - where applicable

Although the importer may clear merchandise through Brazilian customs himself, this job is often delegated to a "*despachante*" or to a freight forwarder.

[3] the calculation basis has change more than 34 times since June 2004; further information can be obtained by SWISSCAM

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Despachantes are organisations that provide a wide range of services to anyone willing to expedite their customs clearance process. The customs clearance fees charged by such an organization are controlled by their union. *Despachantes* are employed not only because they can clear goods through customs faster, but also because they eliminate the need for permanent staff in the importing firm to handle such matters.

2.14. Export regulations

Brazil encourages exports by offering a number of export-linked incentives:

- Import tax exemptions or reductions for imported materials (II) that are incorporated into exported products (Drawback);
- Tax exemption or credit on different local taxes (ICMS, IPI, PIS and COFINS);
- Special (low cost) financing arrangements.

Exporters must be registered with SECEX.

2.14.1. Export taxes (IE)

Export taxes on bovine skin, cigarette paper, tobacco and arms have been abolished over the last years. At the moment there are no export taxes in force.
Further information (only in Portuguese):
www.receita.fazenda.gov.br/Legislacao/LegisAssunto/ComExt.htm

2.15. Methods of quoting and payment

The Brazilian currency Real (plural Reais, symbol R$ or BRL) is not free convertible. Brazilian importers and exporters are not allowed to pay bills or get payment in local currency (BRL). Normally, imports must be paid within 180 days, but can be extended in some special cases up to 1 year. Imports with a payment period over 1 year are considered as a financed transaction and need special registration (ROF). For exporters, receiving payments overseas is forbidden.

Quotations in FOB and CIF (Incoterms 2000) are common, but all other INCOTERMS are also possible. The most used currencies are US$ and € but it is also possible to quote/ invoice in Swiss Francs. Payment terms can be in advance, collection (payment terms are freely negotiable, averaging 360 days), with or without a letter of credit coverage.

Sources Chapter 2:
O.Lisboa – Spreadsheet Import Cost Calculation
Bundesagentur für Aussenwirtschaft bfai: Zoll- und Handelsinformation Brasilien
International Plant Protection Convention (IPPC) - Standard No.15
https://www.ippc.int/index.php?id=13399&tx_publication_pi1[showUid]=124047&frompage=13399&type=publication&subtype=&L=0#item
Market Access Map www.macmap.org
MDIC Ministry for Development, Industry and Foreign Trade www.desenvolvimento.gov.br
Trench, Rossi e Watanabe Adv. Doing Business in Brazil: A Legal Brief

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3. Currency Regulations / Restrictions / Profit Transfer

3.1. The Brazilian currency

The Brazilian monetary unit is the Real (R$ or BRL, plural Reais) which is divided in 100 cents, called centavos. Exchange rates on August 1st 2014: 1 USD = 2.2607 BRL, 1 CHF = 2.4986 BRL. Current exchange rates can be found on www4.bcb.gov.br/pec/taxas/port/ptaxnpesq.asp?id=txcotacao&id=txcotacao

The Brazilian Real is not freely convertible. Purchase and sale of foreign currency in Brazil is subject to tight governmental control. The fine for infringement of exchange control regulations is limited to fifty times the minimal wage (currently at BRL 724.00). The Brazilian Central Bank allows the exchange rate to float freely, but participation is restricted to authorized financial institutions.

Regulations have been simplified in March 2005 by unifying the two before existing exchange markets: the free rate exchange (also called the commercial exchange) and the floating exchange market (also called the tourism exchange) to the so-called New Exchange Market.

There is also an openly used, although illegal, parallel exchange market. Traditionally, this rate has been higher than the commercial rate, in the recent past by about 10%.

3.2. Foreign capital and investment restrictions in Brazil

General policy is to admit foreign capital and treat it in the same way as local capital. However, there are some restrictions on foreign investment in certain sectors (see below).

Foreign investments in Brazil must be registered with the Central Bank to enable foreign remittance or reinvestment of profits and/or interest on equity and repatriation of foreign capital invested in Brazil. The Brazilian government seeks to progressively encourage foreign capital investments in Brazil and is eliminating restrictions.

Except as noted below, 100% foreign ownership of local enterprises and joint ventures is normally permitted.

Sectors that are still subject to certain foreign capital restrictions or government permission:

- Banks and financial institutions;
- Exploitation and use of deposits, mines and other mineral resources and of hydraulic power potentials;
- Companies engaged in the exploitation, research and production of oil and gas;
- Coastal navigation for the transport of products, with some specific exceptions;
- Ownership and administration of journalistic, TV and radio broadcasting companies (limited to 30% of the voting capital. The participation of foreigners in such companies can only be in an indirect way through a company founded under Brazilian law with headquarters in Brazil);
- Investment on cable TV service (limited to 40% of the voting capital);
- Opening of industries of interest to the national security and practice of certain activities at the border areas;
- Purchase of rural real estate by foreigners above certain limits (there are no restrictions on foreign ownership of urban properties);
- Investment in foreign airlines (limited to 1/5 of the voting capital);
- Roadway transportation of cargo (limited to 1/5 of the voting capital);

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- Health plans, except for some specific cases; and
- Companies involved in health products.

3.3. Registration of foreign investment with the Central Bank

Today the registration of foreign investments is done on electronic format. The electronic registration statement, module RDE-IED (Electronic Registration Statement – Direct Foreign Investment) is effectuated through the Central Bank's computerized system, abbreviated "SISBACEN".

The registration of the incoming money must be done within thirty (30) days of the transaction by the representative of the Brazilian company or investor that receives the investment. Non registration may result in fines that may total BRL 125,000.00, per transaction.

3.4. Foreign direct investment

The remittance of funds to Brazil as a capital contribution does not require any more prior authorization of the Brazilian authorities and the resources may be transferred to Brazil whenever the Brazilian company may need them. In order to access the funds, the Brazilian company must convert them into Brazilian currency.

3.5. Reinvestment or remittance of profits and/or interest on equity

The profits and/or interest on equity payable by the investor partner or shareholder established abroad may be reinvested in their Brazilian company or in a third Brazilian company.

The remittance of profits abroad is subject to two prerequisites: (i) the foreign investments must have been duly registered in the SISBACEN system; and (ii) the Brazilian company must yield a profit.

The remittance can only be made to the destiny registered in the module RDE-IED. Profits generated by Brazilian companies before January 01, 1996 are not subject to withholding income tax in the foreign remittance. Distribution from earnings or profits relating to before that date are subject to withholding income tax at the rate of 25% or 15%, depending on the year they relate to.

Payment or credit of interest on equity may be made, provided that the Brazilian company has yielded accrued profits or profits in the current period. The total amount paid or credited cannot exceed 50% of the accrued profits or of the profits in the period yielded by the company.

Interest on equity intends to remunerate the investment on the basis of the equity. Opposite to dividends, payment of interest on equity is a tax-deductible expense. The payment or credit of interest on equity to the partner/shareholder is taxed by the withholding income tax at the rate of 15%. If the beneficiary of this payment is located in a tax haven (see 7.6.), the income tax rate is increased to 25%.

3.6. Capital repatriation

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The capital that may be repatriated is up to the amount of the foreign currency indicated in the registration. The amount that exceeds the registered amount characterizes a capital gain and causes withholding income tax.

3.7. Foreign Currency Loans

Loans contracted in foreign currency extended to Brazilian companies must be electronically registered with the Central Bank in the SISBACEN, ROF module. The payment conditions of the principal and the interest rates cannot be considered excessive according to the Central Bank's policies in force at the time of the loan.

Although the payment of the principal is not subject to taxation, the payment of interest accrued thereto is subject to Withholding Income Tax at the rate of 15% (except Japan: 12.5% and tax haven: 25% - tax haven see also 7.6.).

Foreign currency loans that mature in up to ninety (90) days are subject to the Financial Operations Tax (*Imposto sobre Operações Financeiras - "IOF"*) at the rate of 5,38% over the principal amount. Loans with longer maturity are currently exempt from this tax.

3.8. Exchange control in remittance to and from abroad for the payment of services

The import of service operations that involve the transfer of technology, licensing of intellectual property rights and the production of scientific know-how are subject to registration with the National Industrial Property Institute (INPI) and Central Bank (through the ROF registration system), so that it is possible to: (i) remit payments abroad; and (ii) enable the use of the amounts paid as a deductible expense in income tax reports.

All other professional services supplied by foreign companies other than those quoted above are not subject to registration with the INPI and Central Bank.

By rule, exports of services supplied by Brazilian companies to foreign entities are subject to a foreign currency exchange contract. The exporter is forbidden to receive the payment on an account overseas.

3.9. Exchange control on imports

All imports in Brazil must be declared in the SISCOMEX system and payment for imports can only be made in foreign currencies. Therefore, an exchange contract with an authorized bank must be done (which is also linked to the SISCOMEX system). The importer is not allowed to pay for his imports from an account abroad.

The imports with a payment term of more than three hundred and sixty (360) days are subject to registration with the Central Bank, in the ROF module.

Imports below US$ 3,000 benefit from a simplified system (*Declaração Simplificada de Importação* - DSI).

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3.10. Declaration of assets maintained outside Brazil

Individuals (Brazilians or expatriates considered as residents for fiscal purposes) and legal entities resident, domiciled or headquartered in Brazil must submit annually to the Central Bank a list of assets and rights with total value of US$100,000.00 or higher (this value normally varies each year) they hold outside of Brazil. None or false declarations are subject to fines up to BRL 250,000.00.

3.11. Registry of individuals (CPF) and registry of corporate entities (CNPJ)

Since 2005, individuals and companies established abroad that own property and hold rights in Brazil that are subject to public registration are required to enroll with the Individual Taxpayers' Registry (CPF) and with the General Taxpayers' Registry (CNPJ), respectively.

Note that the new foreign investors in Brazil – whether individuals or companies – that have not yet enrolled with the CPF or CNPJ may be impeded from enrolling with the RDE-IED module of the SISBACEN system and, thus, be prevented from currency exchange operations related to the inflow or outflow of funds from Brazil and to register amendments to its corporate documents in such system.

3.12. Inclusion of Switzerland in the list of privileged tax regimes

On June 20, 2014, the Brazilian Revenue Office issued Normative Ruling 1,474/2014 ("NR 1,474/2014"), amending and revoking certain provisions of Normative Ruling 1,037/2010 ("NR 1,037/2010"). NR 1,037/2010 provides the list of low tax jurisdictions and privileged tax regimes adopted by the Brazilian tax authorities.

The new Normative Ruling included in the list of companies subject to privileged tax regimes legal entities organized in Switzerland in the form of holding company, domiciliary company, auxiliary company, mixed company and administrative company subject to a combined Corporate Income Tax ("CIT") rate lower than 20%. The classification of Swiss entities as privileged tax regimes also encompasses any other corporate legal forms which, by means of rulings issued by the Swiss tax authorities, are subject to a combined CIT rate lower than 20%.

The original wording of NR 1.037/2010 contained a specific provision which included Switzerland in the list of low tax jurisdictions. However, such inclusion had been suspended on June 24, 2010, by means of Declaratory Act No. 11/2010. NR 1,474/2014 expressly revoked these two dispositions.

The effects of NR 1,474/2014 retroacts to January 1st, 2014.

Sources Chapter 3:
Brazilian Central Bank http://www.bcb.gov.br/?EXCHANGENORMS
Doing Business in Brazil Guide of the Swiss-Brazilian Chamber of Commerce
PricewaterhouseCoopers: Doing Business and Investing in Brazil
Trench, Rossi e Watanabe Advogados (chapter 3.12)

4. Registration Procedures for Products

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To export food and medical products (drugs, medical supply, diagnostics, equipment and devices, products intended for aesthetic corrections), pharmaceutical raw materials, cosmetics, blood and blood products, sanitizing products and disinfectant, tobacco and pesticides to Brazil, it is indispensable to have the products registered beforehand.

Products containing more than 50% ingredients from animal origin (in general) or 30% for dairy products must be approved by the Ministry of Agriculture (MAPA). All other products must be approved by the Health Surveillance Agency ANVISA.

Only local companies may apply for product registration and the company itself must be approved by ANVISA. Additionally, the product must already be registered on its country of origin.

Depending on the product, the registration may be valid from one to five years and may be renewed continuously for the same period. The prolongation demand must be made in the first semester of the last year of validity. Sanitary surveillance costs are reduced by 10% at each renewal to a limit of 50%. In the case of pharmaceutical drugs, one must inform the active and inactive ingredients.

Instructions, directions, cautions, labels, brochures, and pertinent information about the products must be translated into Portuguese.

Further information (in English) about procedures, labelling and other requirements can be found on the ANVISA websites: http://portal.anvisa.gov.br/wps/portal/anvisa-ingles

4.1. Time

In theory, if required documentation is complete (technical information, product registration certificate from the Swiss Health Ministry or commercialization certificate of the country of origin), registration may be done in a time period of 90 days. This period may be extended by another 30 days each time the administration asks for additional information. In practice, the product registration process often takes more than one year.

4.2. Registration Fee

A registration fee, called "*Taxa de Vigilância Sanitária*", is charged by ANVISA at the time of the registration of the product (see table below). Since May 2010, a Good Manufacturing Practices (GMP) certification is required from manufacturers. Considering the complex legislation and the bureaucracy involved, assuming that your partner does not have a legal department, it is advisable to use the services of a law firm specialized on medical regulation.

The registration fee depends on the product and on the turnover of the Brazilian company which registers the product (and not of its Swiss producer). A complete list with the registration and other possible fees can be found in Resolution RDC nº 23, of February 6th 2003.

It is also possible to register groups or families of products.

Product	Company Type

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	Group I (big) Annual turnover over 50 Million	**Group II (big)** Annual turnover from 20 to 50 Million	**Group II (medium)** Annual turnover from 6 to 20 Million	**Group IV (medium)** Annual turnover from 2,133 to 6 Million	**Small** Annual turnover from 433,755 to 2,133 Million	**Micro Enterprises** Annual turnover below 433,755
	BRL	**BRL**	**BRL**	**BRL**	**BRL**	**BRL**
Food, food additives, beverages, bottled water and recycled packaging	6,000	5,100	4,200	2,400	600	exempt
Cosmetics	2,500	2,125	1,750	1,000	250	exempt
Medicines						
new products	80,000	68,000	56,000	32,000	8,000	exempt
similar products	21,000	17,850	14,700	8,400	2,100	Exempt
generics, phytotherapeutic and homeopathic drug products	6,000	5,100	4,200	2,400	600	Exempt
Sanitizing products	8,000	6,800	5,600	3,200	800	Exempt
Diagnostic and therapeutic equipments						
large scale	20,000	17,000	14,000	8,000	2,000	Exempt
medium and small scale	8,000	6,800	5,600	3,200	800	Exempt
Pesticides	100,000	85,000	70,000	40,000	10,000	Exempt
Good Manufacturing Practices (GMP) certification	37,000	37,000	37,000	37,000	37,000	37,000

4.3. Replacement of representatives

The product registration number is attributed to the Brazilian importer/agent, which takes responsibility for any problems occurring through the use of the product, but he has no special right on the product.

The Swiss company can always choose another partner, but the registration process needs to be redone in the name of the new agent. The time period foreseen in the legislation is again 90 days, but in practice it may last over 5 months.

It is also possible to register the same product in the name of several partners, however each partner has to do the whole registration process (and pay the involved fees).

The transfer of a register is mandatory in the following three cases:

- Denunciation of the contract
- Merger of companies
- Incorporation of companies

Further information about medical product registration can be found in the guide Doing Business in Brazil of the Swiss-Brazilian Chamber of Commerce, chapter 19 (Pharmaceutical regulations).

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4.4. Patents, trademarks and copyrights

Law 9279/96 provides special protection for intangible industrial property, which includes patents, trademarks and industrial drawings. There is also legal protection against video and audio piracy.

Penalties for patent and trademark infringement include confiscation of goods, imprisonment and fees as well as the payment of losses and damages.

4.4.1. Patents

The life of a patent of an invention lasts 20 years and for an industrial model or design is 15 years from the date of filing the application with the National Institute of Industrial Property (INPI). The title to patents is transferable. Restrictive measures may not be taken against a patent during the first three years of its existence. An interested party can, however, apply for a compulsory license and-or for forfeiture of the patent when proving that the patent holder has not exercised the patent rights or has suspended exploration. Non-payment of fees for the maintenance of patents will result in their cancellation. Patent holders in other countries with which Brazil has treaties or conventions covering such matters have priority rights for filing patent applications within the periods specified.

4.4.2. Trademarks and trade names

Names, words, descriptions, emblems, designs and numerals used to identify products may be registered. Trademarks are registered with INPI and trade names with the local Commercial Register (*Junta Comercial*). There are a number of restrictions which are referred to in the Industrial Property Code (*Código de Propriedade Industrial*) regarding trademarks. Registration is valid for ten years and may be renewed for similar periods indefinitely. Renewal applications must be filed during the last year.

4.4.3. Industrial Drawings

The term of the register is ten years and may be renewed three times, by five years each time. Registers holder is subject to retribution every five years for the maintenance of the register. The register is also transferable.

4.4.4. Copyrights

As regards to copyrights, Brazil is a signatory of the Berne Convention for the protection of artistic and literary works, the Paris Convention for the protection of industrial property, the Washington Patent Cooperation Treaty, and is a member of the World Organization of Intellectual Property.

Sources Chapter 4 and further information:

ANVISA www.anvisa.gov.br
SWISSCAM Guide "Doing Business in Brazil", chapter 4 and 19
Mission Economique de Rio de Janeiro "L'enregistrement de produits médicaux au Brésil"
PricewaterhouseCoopers "Doing Business in Brazil"

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5. Standards, Technical Provisions – Labelling Regulations

5.1. Entities involved in the organization of Standards in Brazil

In 1973, Brazilian Federal law established SINMETRO (a National System of Metrology, Standardization and Industrial Quality), which is comprised of CONMETRO (the legislative arm formed by 9 ministries), INMETRO (the National Institute of Metrology, Standardization and Industrial Quality), ABNT (Brazilian Association of Technical Norms), IPEM (Institute of Weights and Measures) and accredited labs. INMETRO serves as the executive chair of SINMETRO.

5.2. Standards and Technical Regulations

Under SINMETRO, the development of voluntary standards is the responsibility of the Brazilian Association of Technical Standards (ABNT). ABNT is a private, non-governmental, non-profit organization that develops standards across all industries. ABNT represents the country in relevant international and regional forums and acts as a certification body. Brazilian standards are developed either through ABNT's own technical committees or through Sectoral Standardization Bodies (ONS), which it accredits. ABNT annually publishes a National Standardization Plan, containing all of the titles it plans to develop throughout the year. It can only be accessed by a member of ABNT or by contacting the corresponding Brazilian Committee (ABNT/CB): http://abnt.iso.org/livelink/livelink/fetch/2000/2827/Comit%C3%AAs_T%C3%A9cnicos_-_%C3%82mbito_de_atua%C3%A7%C3%A3o.html?nodeid=6873132&vernum=0. Proposed voluntary standards that are open for public comments can be accessed through: www.abntonline.com.br/consultanacional.

Voluntary standards can be adopted as mandatory technical regulations by any of the 9 ministries. Alternatively, these ministries may develop their own technical regulations. Brazil's technical regulations are available through INMETRO's website. This website provides access to both proposed and final technical regulations: www.inmetro.gov.br/rtac

Brazil is a signatory of the Agreement on Technical Barriers to Trade (TBT) of the World Trade Organization (WTO), affirming its obligations relative to standards, technical regulations and conformity assessment procedures. Under the agreement, INMETRO was established as the national inquiry point for information on standards-related issues. Additional information about technical barriers to trade and a formal system for inquiries is available through INMETRO at www.inmetro.gov.br/barreirastecnicas/index.asp

5.3. Product Certification

5.3.1. Mandatory Testing and Mandatory Product Certification

For regulated products, the relevant government agency generally requires that entities engaged in product testing and mandatory certification be accredited by INMETRO. Generally, testing must be performed in-country, unless the necessary capability does not exist in Brazil.

INMETRO is a signatory to the mutual recognition arrangement (MRA) of the International Laboratory Accreditation Cooperation (ILAC), which can facilitate acceptance of test results from Swiss laboratories. For a complete list of MRAs to which INMETRO belongs, visit the following website: www.inmetro.gov.br/english/international/mutual.asp

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A complete list of products subject to mandatory certification:
www.inmetro.gov.br/qualidade/prodCompulsorios.asp

5.3.2. Non-Mandatory Testing and Product Certification

If a product has been certified in Europe or the US, it probably will not need to be re-certified (see MRA above). If a product is not certified, please refer to the mandatory product certification link above. A list of certified products (both mandatory and voluntary) in Brazil is available at the following website:
www.inmetro.gov.br/prodcert/Produtos/busca.asp

5.4. Mercosur standards

Brazil is a member of the Mercosur trading union, which has its own regional standards organization that issues and harmonizes standards. Technical committees write and recommend standards in selected areas. Each country must ratify the standard before they are adopted in that country. A number of standards have already been adopted as Mercosur standards. Adopted and proposed Mercosur standards are listed on Mercosur's website: www.amn.org.br. The Executive Secretariat of the Mercosur Standards Organization is located in São Paulo, Brazil.

5.5. Labelling

The Brazilian Customer Protection Code, in effect since September 12, 1990, requires that product labelling provide the consumer with correct, clear, precise, and easily readable information about the product's quality, quantity, composition, price, guarantee, shelf life, origin, and risks to the consumer's health and safety. Imported products should bear a Portuguese translation of this information. Since metric units are the official measuring system, products should be labeled in metric units or show a metric equivalent.

Information resources on labeling:

ANVISA	National Health Surveillance Agency	www.anvisa.gov.br
CVS	Center for Sanitation Vigilance:	www.cvs.saude.sp.gov.br
IPEM	Institute for Weights and Measures:	www.ipem.sp.gov.br

See also chapter 2.5., 4. and **Erro! Fonte de referência não encontrada.**.

Sources chapter 5:

ABNT	Associação Brasileira de Normas Técnicas	www.abnt.org.br
AMN	Asociación Mercosur de Normalización	www.amn.org.br
INMETRO	Instituto Nacional de Metrologia, Normalização e Qualidade Industrial www.inmetro.gov.br	

US Commercial Service Doing Business in Brazil: 2009

6. Environmental Legislation

Since the 80s, Brazilian environmental legislation became more severe. Federal and state governments have developed programs and controls to prevent environmental impacts or reduce pollution in already existing activities.

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The group of governmental bodies and entities, on federal, state and municipal level, responsible for the protection and improvement of the environment comprises the Brazilian Environmental System – SISNAMA. Within this group, the most important entities are:

- **CONAMA** (Brazilian Environmental Council), the normative, consultative and decision-making agency;
- **Ministry of the Environment**, the agency charged with coordination, supervision and control of the Brazilian Environmental Policy;
- **IBAMA** (Brazilian Environmental and Renewable Natural Resources Institute), the executive agency.
- Other agencies of all levels of the federation, such as CETESB, in the state of São Paulo, and FEEMA, in the state of Rio de Janeiro.

6.1. Environmental Liability

The liability for environmental offences may be at the civil, administrative and criminal levels.

The Environmental Crimes Act makes Brazil one of the few countries worldwide which gives environmental damages criminal character, and both individuals or companies are subject to criminal liability.

The sanctions specifically applicable to legal entities are

- warnings
- fines (one-time or daily fine ranging between BRL 50.00 and BRL 50 million)
- partial or total suspension of activities
- product destruction or demolition of irregular works or activities
- reparation of damages
- penalties restricting rights: suspension or cancellation of registration, licensing, permit or other authorizations granted to the corporate offender; loss of tax benefits and incentives or credit facilities from official institutions; and prohibition against signing any agreement with the government authorities for a period up to three years)
- imposition of service rendering to the community

6.2. Environmental Licensing

When establishing or expanding an industrial installation, that are deemed to be pollutant or potentially pollutant or that require the use of natural resources, an environmental licensing is required.

State environmental protection agencies and Ibama are responsible for the licensing. Ibama is principally acting in the licensing of big infrastructure projects, which involve impacts in more than one state and in the oil and gas sector on continental platforms.

The licensing process is divided in three stages. First, the environmental feasibility of the company is evaluated. Second, the installation must be approved, according to the specifications set out in the approved plans, programs and projects, including the environmental control measures and other conditions. If the project is classified as potential pollutant, two additional reports are necessary: An Environmental Impact Study (*EIA - Estudo de Impacto Ambiental*) and an Environmental Impact Report (*RIMA - Relatório de Impacto Ambiental*). Third, a control visit is made at the installation to verify if the construction is consistent with the project approved and licensed. If everything is correct, the company finally receives the operating license.

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In the case of activities which cause significant environmental impacts, an additional mandatory compensation must be paid, meaning that the implantation and maintenance of conservation areas of the National system of conservation units (SNUC) must be financially supported.

The company that acquires a business has successor liability in connection with environmental matters. The buyer may escape liability if he can prove that the alleged breaches of the environmental regulations occurred before the purchase and that it subsequently cured the failures of its predecessor. In other cases, he is responsible for the liability in regard to the government and the third parties that were harmed. Therefore environmental audits are becoming standard practice for many businesses and properties.

Main laws and sources chapter 6:

CESA Legal Guide for the Foreign Investor in Brazil
SWISSCAM Guide "Doing Business in Brazil"
CEBDS (Brazilian Council for Sustainable Development): www.cebds.org.br
CONAMA www.mma.gov.br/port/conama/estr.cfm
Federal Constitution, October 1988, Chapter VI – The Environment; Title VIII – The Social Order (37 articles to environmental law and five concerning urban law)
Law No. 6938 of August 31, 1981 (Brazilian Environmental Policy) - http://www.planalto.gov.br/ccivil_03/leis/l6938.htm
Law No. 9605 of February 12, 1998 (Criminal Sanctions) - http://presrepublica.jusbrasil.com.br/legislacao/104091/lei-de-crimes-ambientais-lei-9605-98
Law No. 9985 of July 18, 2000 (Sistema Nacional de Unidades de Conservação) - www.planalto.gov.br/ccivil_03/LEIS/L9985.htm

7. Taxes

Brazilian tax legislation is rather complex as it consists of about 74 different taxes (*impostos*), charges (*taxas*), social and other contributions (*contribuições*). We will concentrate on the most taxes relevant in business. Tributes are levied on federal, state and municipal level:

Federal Taxes
- Import Tax (II)
- Export Tax (IE)
- Income Tax (IRPJ and IRPF)
- Tax on industrialized products (IPI)
- Tax on financial operations (IOF)
- Tax on rural land property (ITR)

State Taxes
- Tax on circulation of goods and transportation and communication services (ICMS)
- Tax on motor vehicles (IPVA)
- Tax on inheritance and gifts (ITCD)

Municipal Taxes
- Tax on urban land and property (IPTU)
- Tax on real estate conveyance (ITBI)
- Tax on services (ISS), except those subject to ICMS

Charges and contributions are also levied on all three levels. The most important are
- Social Contribution on net profit (CSLL)

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- Social Contribution on revenues (PIS and COFINS)
- Withheld income tax (IRRF) in foreign payments
- Contribution for intervention in economic domination (CIDE)

7.1. Import tax (II)

Import taxes are between 0 and 35% over the CIF value (FOB price plus insurance and freight). Exact rates can be found under the so called Common External Tariff table (TEC): www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=1848

Some capital goods (marked on the previous mentioned list with BK), information and telecommunication goods (marked with § or BIT) and other goods (marked with # or **) may profit, in special cases, from reduced import tax.

On imports, there are levied several other taxes. See also chapter 2.9.

Import tax is a cost to the company (not recoverable). ICMS and IPI paid on imports are creditable (to be compensated with ICMS and IPI due at the time of sale or movement).

7.2. Export tax (IE)

Export taxes on bovine skin, cigarette paper, tobacco and arms have been abolished over the last years. At the moment there are no export taxes in force.

Additionally exporters are exempt from ICMS, IPI, PIS and COFINS.

Further information (only Portuguese):
www.receita.fazenda.gov.br/Legislacao/LegisAssunto/ComExt.htm

7.3. Income tax (IRPJ and IRPF)

Corporate income tax (IRPJ) is currently 15% charged over net profits or presumed profits (see also 7.5) with a surcharge of 10% on taxable income that exceeds annually BRL 240,000.00. Income tax must be paid quarterly or monthly.

For individual taxpayers, the progressive rates of income tax (IRPF) are 0% (up to a monthly income of BRL 1,499.15), 7.5% (over this value to BRL 2,246.75), 15% (from BRL 2,246.76 to BRL 2,995.70), 22.5% (from BRL 2,995.71 to BRL 3,743.19) and 27.5% (over BRL 3,743.19). Tax is withheld at the source and once a year, a tax declaration has to be made.

7.4. Social contribution on net profit (CSLL)

In addition to Corporate Income Tax (IRPJ) the Brazilian companies are subject to the payment of the social contribution on the net profit (CSLL). The current tax rate is 9%.

However, there exists a 1% reduction for companies which **did not** delay CSLL or any other tax or charge or loan payment in the last five years.

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7.5. Example calculation income tax (IRPJ) and social contribution (CSLL)

Year ending December 31, 2012

	BRL
Net income before income tax (IRPJ), before social contribution (CSLL)	15,200,000.00
Less: Dividends received[4]	1,000,000.00
Net taxable income	14,200,000.00
Taxes thereon:	
Basic income tax at 15%	2,280,000.00
Surcharge: 10% from 240,000.00 to 14,200,000.00	1,496,000.00
Total federal income tax	**3,776,000.00**

The social contribution calculation is as follows:	BRL
Net taxable income	14,200,000.00
Social contribution (CSLL) at 9%	**1,278,000.00**

The income tax / social contribution basis may be computed in three different ways:

a. On a "presumed taxable income" (*lucro presumido*) basis:

The tax rate of 25% (15% basic and 10% surcharge) is imposed on a percentage of monthly gross revenues (from the sale of goods / products / services) plus capital gains and money-market income, less some minor adjustments such as unconditional discounts and cancelled sales. The taxable basis for other diversified activities is determined according to the proportionate amount of gross revenue.

Taxable basis for Income Tax as a percentage of monthly gross revenue:

Type of activity	%
Business Mediation	32.0
Hospital Services	8.0
In general	8.0
Management or rental of assets	32.0
Oil, gas, lubricants etc. (retail)	1.6
Services in general	32.0
Transportation (except cargo)	16.0

The social contribution liability, at the rate of 9%, presumes a taxable basis equal to 12% of the sum of gross monthly revenues, capital gains and money market income and equal to 32% of services rendered.

b. On an "arbitrary" (*lucro arbitrado*) basis:

Established solely at the discretion of the tax authorities, should the taxpayer fail to comply with the regulations for keeping records and/or computing taxable income.

c. On an "actual taxable income" (*lucro real*) basis:

[4] Dividends received from other Brazilian companies, incl. affiliated companies, are not subject to withholding tax and excluded from tax calculation

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This basis is computed in accordance with the corporate records and adjusted for tax purposes in line with the applicable regulations. Legal entities with the following characteristics/activities must utilize this method:

(i) Annual gross revenues in the preceding calendar year of more than BRL 48 million;
(ii) Financial institutions in general, leasing companies, insurance companies;
(iii) Legal entities that have profits, income or capital gains from abroad;
(iv) Legal entities benefiting from income tax incentives (reduction or exemption);
(v) Legal entities that have made the monthly payments on an estimated basis during the tax year;
(vi) Legal entities that render services related to credit and market assistance, credit management, risks and selection, management of receivables and payables assistance or factoring.

Further information in Portuguese:
www.receita.fazenda.gov.br/PessoaJuridica/DIPJ/2005/PergResp2005/pr517a555.htm or Doing Business and Investing in Brazil, PricewaterhouseCoopers.

7.6. Withheld income tax (IRRF) on foreign payments

In Brazil payments made to non-residents are usually subject to withheld income tax. As of January 1, 1999 payments made to non-residents for services declared as remuneration are subject to the regular levy at the rate of 25%. Some types of payments, not classified as services pay reduced rates (see table below).

Additionally, since January 1, 2002, payments remitted abroad for technical services, administrative assistance and other similar payments that do not involve technology transfer are taxed on a reduced rate of 15%, but pay additionally the CIDE contribution (see 7.17).

Payments made to so called "tax havens" are subject to 25% withholding income tax on all income payments. Such countries include American Samoa, Andorra, Anguilla, Antigua and Barbuda, Aruba, Ascension Island, Bahamas, Bahrain, Barbados, Belize, Bermuda, British Virgin Islands, Brunei, Campione d'Italia, Cayman Islands, Channel Islands, Cook Islands, Costa Rica, Cyprus, Djibouti, Dominica, French Polynesia, Gibraltar, Grenada, Hong Kong, Isle of Man, Kiribati, Labuan, Lebanon, Liberia, Liechtenstein, Macau, Madeira Island, Maldives, Marshall Islands, Mauritius, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Norfolk Island, Oman, Panama, Pitcairn Islands, Qeshm, Saint Helena, Saint Kitts and Nevis, Saint Lucia, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Samoa, San Marino, Seychelles, Singapore, Solomon Islands, Swaziland, Tonga, Tristan da Cunha, Turks and Caicos Islands, United Arab Emirates, United States Virgin Islands and Vanuatu. (see chapter 3.12. Inclusion of Switzerland in the list of privileged tax regimes)

Withholding income tax on transfers abroad		
Dividends	0%	whether paid out to individuals or corporations domiciled in Brazil or abroad
Interest	15% (*) (**)	
Royalties	15% (*) (**)	The royalty contract has to be approved by the National Institute of Industrial Property (INPI) and filed with the Brazilian Central Bank. Deductions for royalties are generally limited up to 5%

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		of net sales of the relevant products or services; the percentage depends on the type of product or activity. Royalties for the use of trade marks and trade names, for whatever type of production or activity, when the use of the mark or name does not result from the utilization of a production patent, process or formula, are limited to 1% of net sales
Technical and adm. services	15% (*)	(***)
Other services	25% (*)	
Repatriation	15%	Repatriation of capital in excess of the cost of the non-residents investment in Brazil are subject to capital gains tax at 15%
Loans	15%	A 15% IRRF rate applies over the interest paid, asserted by the partners or capitalized

(*) These rates are effective unless otherwise specified by tax treaty.
(**) Payments of any type made to tax havens, defined as jurisdictions that do not tax income or tax income at a rate lower than 20%, will be subject to with-holding at a rate of 25%.
(***) The income tax rate that applies to technical, administrative assistance services and other similar payments that do not involve transfer of technology was reduced to 15%, but the payments remitted abroad related to these services are subject to CIDE at the rate of 10%.

Example remittance abroad:

As base for every tax is different, nominal and effective rate can be different

	Amount	Rate nominal	Rate effective
Remittance (net)	1,000.00		
IRRF (gross up)	176.47	(*) 15.00%	17.65%
ISS (gross up)	52.63	(**) (***) 5.00%	5.26%
CIDE	100.00	(**) 10.00%	10.00%
PIS	21.82	(**) 1.65%	2.18%
Cofins	100.50	(**) 7.60%	10.05%
Total	**1,419.19**	**39.25%**	**45.14%**

(*) 0% on dividends, see also table above
(**) 0% on dividends, interest, repatriation and loans
(***) 2% on use of licenses, 5% for maintenance, administrative and technical support and technical transfer

7.7. Tax on industrialized products (IPI)

This is a value added tax levied on **manufactured goods** which ranges, depending on the product, from 0% to 60% (can reach 330% for cigarettes). Charged rates can be found on www.receita.fazenda.gov.br/Aliquotas/DownloadArqTIPI.htm

7.8. Tax on financial operations (IOF)

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There is a tax on credit operations (0.0041% per day), exchange transactions (mostly 0%; only for foreign loans shorter than 90 days 5.38%), credit card expenses abroad (6.38%), insurance policies (0.38% – 7.38%) and operations related to stock exchange transactions (0 – 10%).

Futher information www.receita.fazenda.gov.br/Aliquotas/ImpCreSegCamb.htm

7.9. Tax on rural land property (ITR)

Depending on the size and utilization grade, the tax is between 0.03% and 20% over the value of rural land which is not under environmental protection.

Further information on ITR in Portuguese: www.planalto.gov.br/ccivil_03/Leis/L9393.htm

7.10. Tax on circulation of goods, transportation and communication services (ICMS)

In summary, ICMS is a state value added tax (comparable with the Swiss "Mehrwertsteuer") levied on goods in general and some services. The usual rate is 17%, except for the states of São Paulo, Rio de Janeiro and Minas Gerais, whose tax rate is 18%.

Some products exceptionally trigger a higher rate (usually 25% as communication services) or a lower rate (car industry, transportation services and other special industries are below 17% or 18%). Parts and pieces of vehicles are usually taxed at the normal rates (17% and 18%).

In operations between states, rates may be lower:

From	To	ICMS Tax rate
Southern and southeastern states	Southern and southeastern states	12%
Northern, Northeastern and Center eastern states	Northern, Northeastern and Center eastern states	12%
Southern and southeastern states, Espírito Santo included	Northern, Northeastern and Center eastern states, Espírito Santo included	7%
Any state	Non-taxpayer	Internal rate from the state of the sender

Micro and small companies (annual turnover up to BRL 2,4 Mio.) may pay ICMS in a simplified way. Further information (in Portuguese): http://leigeral.sebraesp.com.br/

7.11. Tax on motor vehicles (IPVA)

IPVA is calculated over the current sales price of the car and amounts 4% in São Paulo. In other states, the rate is between 1 and 3%.

Further information in Portuguese on IPVA: www.ipva.com.br

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7.12. Tax on inheritance and gifts (ITCD)

The ITCD is a state tax levied on the transmission of movable goods or real estate property by way of donation or death (inheritance). Currently, in the state of São Paulo, the ITCD tax rate is 4% of the appraised value of the goods or real estate or the transmission of rights.

7.13. Tax on urban land and property (IPTU)

IPTU is levied on an annual basis and has progressive tax rates based on the use and appraised value of the real estate property.

Further information for São Paulo:
www.prefeitura.sp.gov.br/cidade/secretarias/financas/servicos/iptu/

7.14. Tax on real estate conveyance (ITBI)

ITBI, also known as SISA, is levied over the transfer of real estate property and amounts 2% in the municipality of São Paulo. The tax rates may vary according to the real value of the operation or the appraised value of the real estate, whichever is higher. The ITBI/SISA tax is not due in the transfer of real estate property in the events of merger of companies or contributions for paying in corporate capital.

7.15. Tax on services (ISS), except those subject to ICMS

ISS is a municipal tax and due generally to the jurisdiction of the supplier's facility. The following exceptions are determined in LC 116/03 (for reference http://www.planalto.gov.br/ccivil_03/Leis/LCP/Lcp116.htm): civil construction, services acquired abroad, sweeping and collection of garbage services, treatment of effluents, environmental sewage, forestation, parking security, storage and amusement services.

As of January 2004 the ISS tax is due over the purchase of foreign services, the Brazilian beneficiary thereof being liable for the payment of the tax, in addition to its levy over exports of services when the results occur in Brazil (despite that the payment is made by a foreign resident).

ISS is between 2 and 5%, depending on the municipality.

7.16. Social contribution on revenues (PIS and COFINS)

The legislation foresees two calculation systems for PIS and COFINS: the non-cumulative and cumulative (*incidência não-cumulativa | cumulativa*).

Under the **non-cumulative system**, contribution paid on the purchasing of the raw material, transport and storage costs can be offset against the contribution due on gross revenue (that means it works as a VAT). In this case, the applied rates are 1.65% (PIS) and 7.6% (COFINS). These rates and system also apply for imports.

Under the **cumulative system**, rates are 0.65% (PIS) and 3% (COFINS), but contribution can not be offset against earlier payments. Companies working under the

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presumed profit regime (*lucro presumido* – see also 7.5) must choose the cumulative system.

Special rates apply for financial institutions health plan operators, private pension entities and insurance company, among others. Additionally different tax rates apply for certain products which levy occurs only once in the supply chain (among others: fuels, medicines, perfumery vehicles and machinery, parts of vehicles and tires).

Legislation:
www.receita.fazenda.gov.br/Legislacao/LegisAssunto/PisPasCofFin/PisPasCofFin.htm

7.17. Contribution for intervention in economic domination (CIDE)

The CIDE contribution is due over the amounts paid, credited, delivered, used or remitted, to non-resident beneficiaries, such as royalties (any type) and remuneration in the following types of contracts: (i) technology and know-how supply, (ii) technical support (technical assistance and specialized technical services), (iii) assignment and licensing of trademarks, (iv) assignment and licensing of patents, and (v) contracts for the supply of technical services, administrative assistance and other similar services that do not involve transfer of technology.

The tax rate of this contribution is 10%.

7.18. International tax treaties

Brazil holds double taxation conventions with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Holland, Hungary, India, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Norway, Philippines, Portugal, Slovakia, South Africa, Spain, Sweden and Ukraine.

A Treaty with Paraguay has already been signed, pending only on presidential ratification. The Treaties signed with Mexico, Israel, South Africa and Ukraine are still pending approval of the National Congress.

In July of 1995 Brazil and Switzerland signed a statement whereby both undertake to resume negotiations for a bilateral agreement to prevent dual taxation, however, up to this date, this has not materialized. The same applies to Romania, Trinidad & Tobago, United Kingdom and the United States. Further information:

www.receita.fazenda.gov.br/principal/Ingles/Acordo/DuplaTributDefault.htm

7.19. Overview corporate taxes

Tax	Activity	Tax rate	Calculation base	Remarks
Corporate Income Tax (IRPJ)	Commerce, industry, Services	15%	Net profit or estimated profit	See chapter 7.3 and 7.5
Additional IRPJ	Commerce, industry, Services	10%	Net profit or estimated profit	Net profit that exceeds BRL 240,000.00 per annum (or 60,000.00 quarterly or 20,000.00 monthly) is subject to an additional 10% Income Tax
Social	Commerce,	9%	Net profit or	

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Contribution on the Net Profit (CSLL)	industry, Services		estimated profit	
Tax losses generated in a certain period may be offset with taxable income of the following period, provided that limited to 30% of the taxable income (e.g. for each BRL 1.00 of profit, BRL 0.70 are subject to taxation, irrespective of the existent tax loss). The tax loss may be maintained indefinitely, without legal limitation.				
Contribution on the Social Integration Program and Civil Servants Investment Program (PIS)	Commerce, industry, Services	0.65% or 1.65%	Sales / revenues	The calculation of the PIS vary depending on the regime the company chooses: the first rate is paid in the case of the non-cumulative system, the second on the cumulative (*)
Contribution for the Financing of Social Security (COFINS)	Commerce, industry, Services	3.00% or 7.60%	Sales / revenues	3% in the case of the non-cumulative, 7.6% under the cumulative regime (*)
Tax on industrialized products (IPI)	Industry	0 - 45%, normally 10%	Sales / revenues	Works more or less like the TVA, but taxes on the purchase of goods which do not enter directly in the composition of the product or the manufacturing process are not recoverable
Service tax (ISS)	Services	2-5%	Sales / revenues	Depending of the municipality, the tax varies between 2 and 5%
Tax on circulation of goods and transportation and communication services (ICMS)	Industry and Commerce	7-18%	Sales / revenues	See chapter 7.10.
II – Import Tax	Import		Import value (CIF)	See chapter 2.9.
(*) cumulative / non cumulative (*incidência cumulativa* / *não-cumulativa*): The company can choose between the two regime: if it works under the cumulative regimes, the tax paid over the sales can be compensated with the tax paid over the purchase (working as a VAT), if it works under the non-cumulative regime, the reduced tax rate applies but no compensation is possible (see also 7.16.)				

Micro and small companies with an annual turnover up to BRL 2,4 million have the possibility to choose a simplified system to pay federal and state taxes (*Simples Federal* and *Simples Estadual*).

Sources Chapter 7
Links mentioned under the sub-chapters
PricewaterhouseCoopers "Doing Business in Brazil"
Federal Revenue Authority www.receita.fazenda.gov.br
SWISSCAM Guide "Doing Business in Brazil", chapter 11

8. Commercial Law / Sales Representation / Criminal Law

Brazil has a functional commercial code that governs most aspects of commercial association, except for corporations formed for the provision of professional services, which are governed by the civil code.

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An overburdened court system can take years to enforce property rights. Judicial reform measures enacted in December 2004 streamlined administrative procedures and introduced binding precedent, which should eventually make judicial decisions more predictable.

8.1. Sales representation and distribution agreement

In January 2003, Brazil implemented a new Brazilian Civil Code, which introduced more specific provisions and also certain novelties regarding the sales representation and distribution agreements (articles 710 to 721).

The Brazilian law distinguishes between two representation contracts: (i) **the sales representation** (*agência*), also called **commercial representation** (*representação comercial)* and (ii) the **distribution agreement**.

(i) is the contract whereby a company or individual acts as an intermediary between a buyer and a producer, with exclusivity in a certain territory, on a non-sporadic basis and without an employment relationship, gaining for this an intermediary fee, normally a percentage of the sales price; (ii) is the contract whereby the distributor purchases the product first to resell them thereafter in a certain territory. The distributor may contract sub-distributors, however such arrangement must follow the rules determined by the manufacturer.

The Civil Code foresees that for both types of contracts, even if not specifically mentioned in the contract, dual exclusivity shall be presumed. This means the manufacturer cannot designate, simultaneously, more than one representative or distributor, in the same territory and with the same duty, nor may the latter undertake business of the same type on behalf of other proposing parties.

Generally, contracts may be terminated for different reasons and in principle, the initiative of terminating the contract is not required to be supported by any reason. In certain cases the party that terminated it without cause is subject to indemnifying the other party for losses and damages:

This is valid in regard to the sales representation agreements, where the Brazilian legislation establishes an indemnity to the representative equal to 1/12 of the entire compensation that the representative earned in the period in which it was engaged as a sales representative.

It further established the compulsory 90-day prior notice of termination without cause or the payment of an indemnity equal to 1/3 of the commissions that the sales representative earned in the three months that precede the termination.

In regards to the distribution agreement, Brazilian legislation is not clear and there have always been doubts as to the obligation of indemnities, as well as the determination of the amount thereof. The new Civil Code apparently clearly provides that from now on it is required to indemnify in the case of unilateral termination, without cause and that is harmful to the distributor.

Without prejudice to the cases, the new Civil Code also establishes in regard to the distribution agreement that, if the contract has an indefinite term of duration, any party thereto may terminate it upon a 90-day prior notice, provided that a period proportional to the nature and the magnitude of the investment required has elapsed.

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In such event, having elapsed the prior notice period proportional to the business and not existing any disagreements between the parties, it would appear that there is no reason for the distributor to claim any indemnity.

8.2. Possible sources of legal assistance

Some links with further information about the commercial law (Portuguese):

Commercial Code (Código Comercial): http://www.planalto.gov.br/ccivil_03/Leis/L0556-1850.htm
New Brazilian Civil Code (Código Civil):
http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10406.htm
Consumer Defense Code (Código de Defesa do Consumidor):
http://www.planalto.gov.br/ccivil_03/LEIS/L8078.htm

8.3. Criminal Law

Some useful links on criminal law:

Criminal Code (Código Penal):
http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del2848.htm
Criminal Litigation Code (Código de Processo Penal):
http://www.planalto.gov.br/ccivil_03/Decreto-Lei/Del3689.htm
Penal Law (Lei de Execução Penal):
http://www.planalto.gov.br/ccivil_03/Leis/L7210.htm
Military Penal Code (Código Penal Militar):
http://www.planalto.gov.br/ccivil_03/decreto-lei/del1001.htm
Military Criminal Litigation Code (Código de Processo Penal Militar):
http://www.planalto.gov.br/ccivil_03/decreto-lei/del1002.htm
Environmental Crimes (Crimes Contra o Meio Ambiente):
http://www.dji.com.br/leis_ordinarias/1998-009605-ma/ma001a005.htm
Law N° 9.613 Of 3 March 1998 Pertaining to Money Laundering And Financial Activities Control Council (COAF) (English):
http://www.planalto.gov.br/ccivil_03/Leis/L9613.htm
Law N°. 9.034 of 3 May 1995 on Prevention and Suppression of the activities of Criminal Organizations (English): http://www.planalto.gov.br/ccivil_03/leis/l9034.htm
Crimes against Fiscal Authorities and Free Competition (crimes contra a ordem tributária e econômica e contra as relações de consumo):
http://www.cade.gov.br/Default.aspx?84b746d32de239fa0f3c0c58e9

Sources Chapter 8 and further information
SWISSCAM Guide "Doing Business in Brazil"
Links mentioned above

9. Setting up a Company

In Brazil, corporate entities may adopt three different forms: foundation, association or company. The foundations and associations are for non-profit purposes, while companies are for profit purposes.

The Brazilian legislation provides for the following types of companies:

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- Sociedade simples (Non-profit company)
- Sociedade em nome coletivo (General partnership)
- Sociedade em comandita simples (Limited partnership)
- Sociedade em comandita por ações (Limited partnership by shares)
- Sociedade em conta de participação (Overt/covert partners partnership)
- Sociedade limitada – Ltda. (Limited liability company)
- Sociedade anônima – S.A. (Corporation)

The labor and capital partnership (*sociedade de capital e indústria*) type has been extinguished.

Formerly regulated by the Brazilian Commercial Code (Law 556/50) companies are now regulated by the in 2003 enacted new Civil Code (Law 10.406/2002), which revoked the provisions of Law 556/50 and consolidated in a single piece of legislation civil law and commercial law.

Due to the unlimited liability vested to the first five forms, these company types are not commonly used by foreign investors. Further description of these types can be found in the SWISSCAM Guide "Doing Business in Brazil".

The cost of forming a company is variable, based on the complexity of the statutes and capital structure and normally is between US$ 3,000 and US$ 10,000.

9.1. Limited liability company (Ltda.)

The Limited Liability company is the type that is most widely adopted in Brazil. It is used for businesses of all sizes, from small local stores to large multinational companies. This preference has always been based on the following aspects:

(i) Limited liability of the partners;
(ii) Simplified and flexible structure of this type of company;
(iii) No minimum capital requirement with only few exceptions;
(iv) Non-existence of obligation to constitute a capital reserve provision and the results obtained may be freely distributed;
(v) Non-existence of obligation to publish annual financial statements;
(vi) Reduced costs;
(vii) Greater confidentiality in comparison to the Corporation;
(viii) Can still be converted to a Corporation.

A Ltda. needs at least two partners, who, with a few exceptions established in the law depending on the company's purposes, are not required to be Brazilians, individuals or companies, residing or not in Brazil.

The company must be managed by an individual residing in Brazil (may also be a foreigner with valuable work permit), who may be a partner or not.

At least once a year a partners meeting or assembly must be held, for approval of the accounting records (financial statements) and appointment of managers, if necessary.

The company name must end with "Limitada" ou "Ltda." and achieves its own legal identity after having filed its articles of association (*contrato social*) with the registry of legal entities of the relevant Chamber of Commerce (*Junta Comercial*), when the company consists in a commercial company, or with the Civil Registry of Legal Entities when it consists in a non-profit company organized under the form of a limited liability company.

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9.2. Corporation (S.A.)

The Corporations (*Sociedades Anônimas*) are regulated in Brazil by Law 6.404 of Dec. 15, 1976 (the "Brazilian Corporations' Law") which has been amended several times since it was enacted, its most recent amendment by Law 10.303 of Oct. 31, 2001 being the most important.

Corporations are characterized by the following features:

- Shareholders' liability is limited to the total amount of the stock capital
- Detailed regulatory framework exists for corporate activities, management and shareholder relations
- Greater financing flexibility and enhanced transparency
- Higher costs involved (publishing financial statements and other relevant corporate acts etc.)
- Results must be published in the newspaper
- Reserve of 10% of total capital must be kept on a bank account

The name of the corporation must be followed by the words "Sociedade Anônima" or "S.A." or placing before its proper name the word "Companhia" or its abbreviation "Cia".

The corporations may be open or closed: the open corporations have its stock negotiated at a stock exchange and it must be registered with the Brazilian Stock Exchange Commission (*Comissão de Valores Mobiliários – CVM*).

The closed capital corporations are companies that do not negotiate its stock on a stock exchange, not being subject to CVM surveillance and, consequently, it may adopt a form of operation and management that is simpler than those of the open capital corporation.

As a general rule, the corporation needs at least two (2) shareholders and at least 10% of the shares must be paid in, in cash.

The corporation's articles must be filed with the registry of legal entities of the relevant Chamber of Commerce *(Junta Comercial)*. With a few exceptions, there is neither a minimum capital required for a corporation nor a deadline for it to be paid up.

The corporation's bodies that are responsible for the company's decisions and surveillance are:

(i) Shareholders Meetings - at least once a year
(ii) Board of Officers - at least three members who must be, necessarily, shareholders, individuals, residing or not in Brazil
(iii) Board of Directors – at least two, who must necessarily reside in Brazil, and shall have a term of office of, at maximum, three years, re-appointment being allowed
(iv) Audit Committee – its operation may be on a permanent or occasional basis and must consist of at least three and at maximum five members

More detailed information and information about listed companies can be found in the Guide "Doing Business in Brazil" of the Swiss-Brazilian Chamber of Commerce.

9.3. Foreign company in Brazil

A foreign company may only regularly operate in Brazil, whatever its purposes may be, even if through subordinated entities (subsidiaries, branches) after obtaining authorization from the Brazilian Government. The authorization application must be

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addressed to the Ministry of Development, Industry and Foreign Trade (MDIC), and it is processed and analyzed by the National Department of Registry of Trade Activities – DNRC.

All required documents (documents that attest, in general terms, the foreign company's incorporation in conformity with the laws of the home country) must be notarized by the relevant authorities and legalized by the Brazilian Embassy or Consulate in Switzerland, translated in Brazil by a sworn translator and recorded with the Public Registry of Deeds and Documents (*Cartório de Registro de Títulos e Documentos*).

Following the approval of the application and the issuance of the presidential decree, the company must publish the documents in the official press and then obtain the registration of the subsidiary with the Chamber of Commerce (*Junta Comercial*).

Resources must be remitted from abroad to pay-up the subsidiary's capital. It is important to note that Brazilian law considers the Brazilian subsidiary to be an extension of the parent company and, therefore, its liability in regard to third parties may affect not only its own capital in Brazil but also the capital of the parent company located abroad.

The branch (not subsidiary) must operate under the name of its head office in Switzerland and may add the words of Brazil ("do Brasil") or for Brazil ("para o Brasil").

Further, it is required to have at all times a legal representative residing in Brazil, empowered to settle any issued that involve the subsidiary.

Also, the Brazilian government must always approve any amendments to the foreign company's articles or by-laws and must publish, in Brazil, the financial statements and/or acts of its administration bodies that are published in its home country pursuant to the legal requirements effective in the home country, under penalty of cancellation of its authorization to operate. Moreover, it must also publish the subsidiary's financial statements.

Subsequent nationalization of branches, i.e., conversion into a Brazilian legal entity, is provided for in the law, subject to the Executive Power's authorization.

9.4. Consortium

Under the current legislation, the consortium is intended to facilitate the operation of joint enterprises without need of incorporating another company. It may be comprised of corporations (S*ociedades Anônimas*) and/or other types of companies. Since it does not consist in a new company, the consortium does not have its own legal identity, sufficing to draft a contract establishing the clauses for the businesses that will be carried out and to implement the enterprise.

The consortium company does not have joint liability and each member is accountable for the obligations that it undertook, unless expressly established otherwise in the consortium agreement. It also does not have a corporate capital, however the members may constitute a fund to implement the enterprise or for the payment of routine expenses. The consortium usually designates a leader that is engaged in the guidance, representation and management of the consortium.

If it desires, the consortium may adopt a name and the contract must describe the subject enterprise of the consortium, its term of existence, address and venue. The contract should also establish the conditions to receive income and the apportioning of the results.

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The consortium agreement must be registered with the registry of legal entities of the Chamber of Commerce (*Junta Comercial*) so to protect the members against any risks that may pursue from the qualifying of the enterprise. Following such filing, it must publish the filing certificate in the official press and in a major newspaper.

9.5. Joint ventures / licensing

Establishment of joint ventures is a common practice in Brazil. A major motivation for joint ventures is to pair specific know how and technical cooperation between domestic and/or foreign firms to compete in segments of the government procurement market or in other markets subject to government regulation, such as telecommunications and energy.

Usually, the foreign company partners supply technology and financial support to the Brazilian companies that lead in the local market.

Though the joint ventures usually vest the form of a company comprised of capital, there are no rules that instruct as to its incorporation and it may be in the form of a corporation (S*ociedade Anônima*) or a limited liability company (*Limitada*), instrumentalized by a formal agreement (contract).

The joint venture agreement is intended to establish a close relation between the participants to attain common business goals, implying or not in the contribution of capital or the organization of a new company. There are no rules in regard to the participation of each company (50%/50%, 30%/70%), which may be differentiated according to the interest of maintaining stock control.

Licensing agreements are common forms of accessing the Brazilian market. Use of a competent local attorney in structuring such an arrangement is advised. All licensing and technical assistance agreements, including trademark licenses, must be registered with the Brazilian Industrial Property Institute (INPI, www.inpi.gov.br).

Source and further information chapter 9:
SWISSCAM Guide "Doing Business in Brazil"
PricewaterhouseCoopers "Doing Business and Investing in Brazil"

10. Investment Incentives / Promoting Investment

Brazil offers for local and foreign investors, without distinction, investment incentives particularly if it brings new technology, creates new jobs, develops agriculture, industry and increases exports or decreases imports.

There is a wide variety of federal programs designed to encourage the economic development of Brazil and also to promote regional development. They tend to favor new operations in the poorer Northeast (ADENE) and Amazon (ADA) regions.

State and local governments also encourage investment and they generally offer incentives to attract local and foreign investors.

10.1. Regional incentives

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The following two regional superintendencies are responsible for the progress of the less-developed states:

SUDENE – Superintendência do Desenvolvimento do Nordeste aims to promote the Northeast region development, which includes the following states: Alagoas, Bahia, Ceará, Espírito Santo, Maranhão (part), Minas Gerais (part), Paraíba, Pernambuco, Piauí, Rio Grande do Norte and Sergipe (www.sudene.gov.br).

SUDAM – Superintendência do Desenvolvimento da Amazônia (successor of ADA) is responsible for the Amazon region: Acre, Amapá (part), Amazonas, Maranhão (part), Mato Grosso, Pará, Rondônia, Roraima, Tocantins (www.sudam.gov.br).

The investment incentive plans administered by SUDENE and SUDAM offer certain fiscal and financial benefits currently available (until 31/12/2018) to **industrial** or **agricultural** companies operating in approved projects in both regions.

10.2. Manaus free-trade zone

The Manaus free-trade zone (Zona Franca de Manaus, Amazônia Ocidental and Área de livre Comércio de Macapá/Santana) was created in 1967 to attract industries and commerce to the Amazon region. All imported foreign goods are tax free, provided they are consumed within the zone or are exported abroad. Sales or transfers of these goods to other parts of Brazil result in payment of the previously exempt taxes unless they are incorporated into manufactured products within the free-trade zone. Foreign-controlled subsidiaries may establish assembly operations and enjoy the same benefits as local companies. Sales from other parts of Brazil to the Manaus free-trade zone are also entitled to some tax benefits. These fiscal benefits are also applicable to certain specific areas of the Western Amazon region, which covers the states of Acre, Amazonas, Amapá, Rondônia and Roraima. Incentives granted:

- **Import Tax (II):** Exemption if goods are for internal (free-trade zone) consumption and reduction of 88% of the import tax over raw material, intermediate and secondary coming from abroad used in the manufacture of products in the Free Zone, when sent to any of the Brazilian states, as long as the producers have their project approved by the Administration Council of Suframa and correspond to the basic production process-PPB (a number of steps to distinguish industrialization).
- **Tax Over Industrialized Goods (IPI):** Exemption
- **Municipal Government Incentives:** Exemption for 10 years of IPTU Tax, public cleaning and conservation tax and business running tax

These benefits apply only to merchandise entering the free trade zone by Manaus Airport or Manaus Harbor. They do not apply to the importation of weapons and munitions, perfumes and beauty products, tobacco products, alcoholic beverages or automotive vehicles.

10.3. State incentives (ICMS)

At the moment, there is a dispute between the states in order to attract investment with fiscal incentives which vary from tax exemption, reduction of the calculation base, deferment, presumed credit and suspension of the ICMS tax (see 7.10).

More information can be obtained by the each State Tax Office. Their addresses can be found on http://www1.fazenda.gov.br/confaz/

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The free trade zone of Manaus has special ICMS reduction programs. See http://www.sefaz.am.gov.br/Areas/OpcaoSistemas/SILT/Normas/Legislação Estadual/Lei Estadual/Ano 2003/Arquivo/LE_2826_03.htm

10.4. Municipal incentives

The principal municipal incentives are (i) the reduction, postponement or exemption of IPTU (see7.13.) and ISS (see 7.15.) for a determined time and (ii) the availability of land for industrial development at reduced prices, provided the undertaking is made to maintain agreed levels of employment within the municipality that made the grant.

10.5. Industry incentives

As to stimulate the broadening, modernization and restructure of the Brazilian industrial park, the National Bank for Social & Economic Development (BNDES) offers low-cost financing, including capital goods acquisition (see http://www.bndes.gov.br/SiteBNDES/bndes/bndes_pt/Institucional/Apoio_Financeiro/). Moreover, the importation of capital goods, which are not available in the Brazilian market, might have a reduction of the Import Duty (see chapter 2.9.).

10.6. Investment promotion: Public-Private Partnerships (PPPs)

Brazil approved the Public-Private Partnerships (PPPs) Law on December 30, 2004 (Law 11.079 www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/Lei/L11079.htm) which intends to attract private investments for infrastructure and public service sector projects.

Brazil's economic growth depends on the improvement of its current infrastructure. Exports can only be sustained at their current level if significant investments are made in highways, railways and ports (the initial PPP portfolio). PPPs are expected to increase public investment.

Under the Brazilian law, a PPP is any arrangement between the public administration and private entities by which the private partners assume the financing and execution of a venture, which may include the rendering of public services, the performance of certain activities that would otherwise be of state competence and the execution of works for sale or lease to the public sector.

One of the main characteristics of the Brazilian PPPs is that the contract value must be above BRL 20,000,000.00 (roughly CHF 12,44 million) with a minimum term of five years and a maximum length of 35 years.

More information about PPPs on the site of the Ministry of Planning, Budget and Administration: www.planejamento.gov.br/ppp/index.htm

10.7. EXIM Brasil

EXIM Brasil (Agência Crédito à Exportação do Brasil S.A) is BNDES' (Brazilian Development Bank) subsidiary which centralizes and increases the government efforts in supporting the exporters. EXIM Brasil operations are supported by BNDES Foreign Trade Guarantor Fund (FGCE - Fundo Garantidor de Comércio Exterior).

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EXIM Brasil is an institution exclusively dedicated to supporting the export sector, with the purpose to strengthen Brazilian foreign sales, increasing opportunities to access the international market for high added-value products and services, which are manufactured locally.

10.8. Other incentives

There are several tax reductions or exemptions for exported goods. See 2.14.

There are no tax havens or offshore financial facilities and no specific incentives for establishing holding companies and regional administrative offices. Besides that, special-use company incentives do not exist in Brazil.

Sources chapter 10 and further information:
PricewaterhouseCoopers "Doing Business and Investing in Brazil"
SUFRAMA www.suframa.gov.br
Integration Ministry (Ministério da Integração) www.integracao.gov.br
MDIC Guide "Instrumentos de Apoio ao Setor Produtivo"
Article in the magazine Serviço Público (RSP), vol. 56, nº1 - Jan/Mar 2005: "Parceria público-privada: compreendendo o modelo brasileiro"
Barbara Moreira Barbosa de Brito and Antonio Henrique Pinheiro Silveira: Public-private partnership: understanding the Brazilian framework
Information about PPPs on the site of BrasilGlobalNet www.brasilglobalnet.gov.br

11. Entry Conditions / Work Permits and Residence Permits

11.1. Entry conditions

Swiss and Liechtenstein passport holders, tourists and businessmen (for business discussions only or participation at fairs and congresses) do not require a visa to enter Brazil for a stay of up to 90 days. However, passports must be valid for at least six months and a return ticket may be requested on arrival.

Whoever needs to stay longer can apply, before the 90 days period is over, for a prolongation at the Federal Police (*Polícia Federal*) main office in each city, bringing along the immigration form received at the entrance and the passport.

Some other nationals need a short-term business visitor's visa (*Vitem II*) which can be applied through the Brazilian Consulate in Zurich. It is valid for 90 days and is extendable, at the discretion of the Federal Police (*Polícia Federal*), for a further 90 days in any 12-month period. Further information about which citizens, requirements and procedures can be found on the website: http://zurique.itamaraty.gov.br/de/

An immigration form has to be filled in on arrival (normally distributed on the flight). Half of the form must be retained and shown at the departure.

To work or render a service in Brazil, a visa is needed.

11.2. Work permits and residence permits

The Brazilian law establishes 7 categories of visas:

(1) Transit

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(2) Tourist
(3) Temporary
(4) Permanent
(5) Courtesy
(6) Official and
(7) Diplomatic

The most commonly used categories of visas for business are the (3) temporary and (4) permanent visas.

Work permits (temporary and permanent) must be applied **in advance** by the Brazilian company/sponsor at the General Coordination of Immigration of the Ministry of Labor (*Coordenação Geral de Imigração do Ministério do Trabalho*). An exception is the Vitem II (see below) which can be applied, if needed, at the Brazilian Consulate in Zurich.

It is important to mention that retroactive regularization is very difficult and sometimes impossible.

11.3. Work permits and residence permits

There are seven types of temporary visas, namely:

Vitem I	**Cultural Visa** (for lecturers, researchers, teachers and participants in cultural/ scientific missions, trainees, exchange students and to athletes under 21)
Vitem II	**Business Trip Visa** (for business travelers, also including media coverage or filming and for flight/ship crew members not holding an international crew card)
Vitem III	**Artists or Athletes Visa**
Vitem IV	**Student Visa**
Vitem V	**Temporary Work Visa** (for professionals (i) with employment contract with a Brazilian entity or (ii) Technicians without employment contract; also for scientists, remunerated social workers, professors, etc.)
Vitem VI	**Journalist Visa** (Media correspondents, journalists working for journals, magazines, radio stations, television or foreign news agencies)
Vitem VII	**Religious Missionaries Visa** (for religious missionaries, members of the clergy and of monastic orders, temporarily transferred to Brazil)

Among these types, we will concentrate on Vitem II and V.

Vitem II: Business trip visa

This visa enables foreigners, who are exclusively working for non-Brazilian companies, to offer their products in Brazil, become familiar with the Brazilian market, conduct market surveys, participate in meetings, conferences, exhibitions and seminars, visit potential clients and close contracts.

To render remunerated work, i.e. the technical assistance for the installation of a machine, whether paid locally or not, is forbidden under this visa and subjects the company to a fine and to the compulsory departure of the foreigner from Brazilian territory.

The business visa allow a stay in Brazil of up to 90 days and may be extended only once for the same period, within Brazil. Thus, this type of visa enables a stay in Brazil of up to 180 days in a 365-day period.

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Business visa requirements have been waived for Swiss and Liechtenstein passport holders due to reciprocal treatment.

In the case a foreigner needs to stay longer than 180 days, or render a remunerated work, a Temporary Work Visa (Vitem V) has to be applied.

Vitem V: Temporary work visa

(1) **With employment contract.** Brazilian companies may hire foreigners that have a special professional expertise on a temporary basis. The company must basically fulfill two conditions: for each foreigner that is hired there must exist at least two registered Brazilian employees and the total salary sum paid to foreigners may not exceed the payment made to Brazilians.

The foreigner is required to have completed at least nine years of school education and own professional experience related to the duties he will have in Brazil of at least (a) one year after completion of the college course or (b) two years without college. Professionals without experience may only apply for a Vitem I Visa (Trainee). Foreigners holding a master's degree or doctorate related to their future activities will not need any professional experience.

Furthermore, the gross monthly salary may not be reduced in comparison to the value of the salary that the foreigner received abroad.

Vitem V is valid for up to 2 years, with the possibility of extending it for another 2 years and its conversion to a permanent visa.

Foreigners with this type of visa cannot have managerial responsibilities, since such duties are allowed only to those that obtain a permanent visa (see below). Furthermore, the holder is only entitled to change the employer upon the prior and express authorization of the Ministry of Justice.

(2) **Technicians without local employment contract (paid by a foreign company**) This visa is intended for technicians who will not have an employment relation with the Brazilian company that retains such services. It is based on the contractual relation between two companies, one being Brazilian (which applies for the visa) and a foreign company, concluded through a contract (transfer of technology, technical support for the installation of a bought equipment, technical cooperation between companies of the same corporate group or other agreements or conventions).

This visa may be valid for up to one year. The validity period may be extended provided that the contract that supports is still fully effective and the requirements set forth by the Brazilian government are met.

Emergency cases Exceptionally, in cases of real emergency, where unforeseen circumstances intervene (situation that puts at risk life, the environment, the patrimony or that causes interruption in the production or supply of services), the Brazilian Consulate in Zurich might grant, at their discretion, an "Emergency Vitem V", without the Ministry of Labor and Employment's agreement, valid for 30 days only and not renewable for a period of three months.

In the emergency cases other than the foregoing situations, or in which more than 30 days are needed, it is possible to apply to the Ministry of Labor and Employment, through a simplified process, for authorization to issue a non-extendable work visa valid for 90 days.

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11.4. Permanent visa (Visto permanente – VIPER)

The Permanent visa may be issued, basically, under 5 circumstances: (a) family relation to a Brazilian national (marriage, children); (2) retirement; (3) appointment to the representation and managing position of a Brazilian company; (4) new entrepreneurs; or (5) bank representative. In other circumstances it is difficult to obtain one.

(1) **Family reunion**. In case the candidate is married to a Brazilian citizen or has a child born in Brazil, he/she shall be eligible for applying for a permanent visa at the Brazilian Consulate abroad, before coming into the country, or at the Federal Police if the candidate is already in the country. In this case, the candidate shall be allowed to work in Brazil.

(2) **Retirement**. A retired person, fifty (50) years of age or older, accompanied by up to two dependents, and able to transfer monthly a sum equal or higher than US$ 2,000.00, may apply for a permanent visa directly before the Brazilian consulate abroad. In the case of more than two dependents, the applicant must transfer the amount equivalent to US$ 1,000.00 for each additional dependent.

(3) **Legal representatives.** Intended for foreigners that come to Brazil to have managerial powers and to act as legal representatives of a Brazilian company.

The main requirement for the grant is the investment of, at least, US$ 200,000.00 for each foreign executive, duly registered as foreign investment before the Central Bank of Brazil. Alternatively, it is possible to prove the existence of an investment amounting US$ 50,000.00 and a plan to hire at least 10 new employees over the next two years.

It is indispensable that a Brazilian company/institution has been established, which will apply for the work visa. The appointment of the foreign officer in a corporate document (ato societário), with its filing with the Commercial Register (*Junta Comercial*), is also required.

The foreigner's compensation will be analyzed by the Ministry of Labor and Employment according to strict criteria.

For up to 5 years, the foreigner will be legally bound to the Brazilian company that applied for the foreigner's visa. If the foreigner is appointed to more than one leading position of the same economic group or conglomerate or changes the statutory position, he/she must be previously authorized by the Brazilian immigration authorities.

(4) **Entrepreneurs.** Over the last years, Brazil increased its efforts to attract foreign entrepreneurs and consequently creating new jobs. Required documents for this type of application have been simplified.

A Brazilian company must be founded, in which the foreign entrepreneur will be a partner and administrator (this last condition may only be met after the permanent visa has been obtained, and this must be expressly stated in the company's by-laws). Furthermore, an investment of at least R$ 150,000.00 is required, duly recorded in the Central Bank of Brazil's electronic registration system, along with a brief description of the activities that will be performed.
The amount of the investment can be reduced by verifying the following social criteria: Number of jobs generated in Brazil; Geographic region where the investment will be made; Economic sector where the amount of money will be invested; Contribution to productivity increase and assimilation of technology.

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In addition to the investment mentioned above primarily the social interest, characterized by the generation of employment and income in Brazil, the increase in productivity, the transfer of technology and the reception of resources for specific sectors will be examined.

Although the visa and work permit is called "permanent", it must be renewed after two years. At this moment, the foreigner's identification card (RNE) must also be exchanged by the Immigration Police. For this purpose, it is required to prove that the applicant continues to be an investor in Brazil and that the business in which the applicant is engaged is a productive activity, through the submission of the company's by-laws, its income tax statement and also the RAIS tax report related to the last two years.

(5) **Bank representatives.** According to the Central Bank of Brazil regulations, foreign financial institutions or the like may open agencies in Brazil for commercial contacts and to provide information of interest to the parent company or other affiliates abroad. Such representation may be carried out by a Brazilian company, a Brazilian or a foreign individual.

In the case of a foreign individual, a permanent visa may be granted with the Ministry of Labor and Employment's authorization, for a period of five years. For this purpose it is an essential requirement to have obtained Registration with the Central Bank.

In addition, persons who have been employed in Brazil in a temporary capacity (regardless of whether the company is Brazilian or foreign owned) for a period of four years, may apply to convert their status to permanent. Application must first be made to the Ministry of Justice at least 30 (thirty) days prior to the completion of the four-year term.

11.5. Travel in advance of permanent or temporary employment

Individuals needing to conduct business in Brazil prior to obtaining employment authorization and the appropriate visa may do so by obtaining a short-term business visa Vitem II (for Swiss and Liechtenstein passport holders not necessary). However, they shall not work in Brazil or receive any remuneration locally until the employment authorization and visa are issued. Furthermore, individuals must obtain permanent or temporary visas outside of Brazil at the Brazilian Consulate with jurisdiction over the individual's residence.

11.6. Residence visa for spouses (family reunion)

Accompanying spouses and children are allowed to remain in the country as a dependent of the visa holder for as long as his/her visa is valid. However, spouses and children are not permitted to engage in employment or any work activity while residing temporarily in Brazil, but they shall be authorized for employment if converted to permanent resident status.

It is advisable to apply well in advance for any type of visa.

Further information can be received by the Brazilian Consulate in Zurich http://zurique.itamaraty.gov.br/de/ or at the Swiss-Brazilian Chamber of Commerce in Sao Paulo www.swisscam.com.br (in English, German and Portuguese).

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Sources Chapter 11:
Brazilian Consulate in Zurich - http://zurique.itamaraty.gov.br/de/
List of countries and which visa is needed
http://www.portalconsular.mre.gov.br/estrangeiros/quadro-geral-de-regime-de-vistos
Permanent Visa – Ministry of Justice http://portal.mj.gov.br/main.asp?ViewID=%7BA1BC41DE-C501-4FD4-8651-4891730652C3%7D&params=itemID=%7B39752F10-D92C-4F00-A51B-653236FEEDC1%7D;&UIPartUID=%7B2868BA3C-1C72-4347-BE11-A26F70F4CB26%7D
Law 6.815 of August 19, 1980, which is regulated by Decree 86.715 of December 10, 1981
Regulations at a lower hierarchy level issued by the *Conselho Nacional de Imigração – CNIg* (National Immigration Council), authority responsible for establishing the national immigration policies
Ministry of Labor and Employment http://portal.mte.gov.br/trab_estrang/trabalho-estrangeiro.htm
SWISSCAM Guide "Doing Business in Brazil"
PricewaterhouseCoopers "Doing Business and Investing in Brazil"

12. Labor Law

The 1988 Brazilian Federal Constitution, the Consolidation of Labor Laws (CLT) and other supplementary laws regulate questions involving Labor and Employment under the Brazilian System.

Brazilian legal system clearly favors employees and in case of a legal dispute, justice often decides in favor of the employee. That's why it is important to follow strictly the Labor Laws or regulate even minor discrepancies (compensation of overtime instead of payment etc.) via written collective or individual agreement.

This chapter should only give a rough overview about the extensive labor regulations and social security laws.

(1) **Wages and salary**: all work of equal value must be remunerated at the same rate, irrespective of the nationality, age, sex, or marital status of the employee (except when employee benefits from a career planning or development scheme), but services rendered for more than two consecutive years may be taken into account.

Payment must be made in local currency within five working days of each month-end. Gaps exceeding one month between successive payment dates are not permissible. The remuneration of foreign technicians contracted from abroad on a temporary basis to render specialized services may be stipulated in foreign currency, but payment must be made in local currency.

A minimum wage is established by law and is currently set at BRL 724.00 per month[5]. It should be noted that the minimum wage serves mainly as a base index for adjusting wages and certain prices. In practice, it is paid only to some rural, unskilled and migrant workers.

The salary may also be paid in utilities, though not entirely; at least 30% of the salary must be paid to the employee in cash.

For accounting reasons, commissions, percentages, gratifications, travel expenses, overtime, night shift bonus, dangerous and unhealthy environment bonuses are also considered as salaries.

(2) **Additional pay for overtime:** Additional work hours by at maximum two hours per day are allowed, subject to a written agreement between the employee and

[5] Since January 1st, 2014

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employer or a collective labor agreement. The pay for overtime work must be at least 50% higher than the regular wage rate. Overtime that is repeatedly labored integrate the employee's compensation for the effects of calculation vacation, 13th salary, FGTS, among others.

Overtime hours may also be offset with work hours (without any additional payment). If overtime is incurred as an emergency measure, payment may not be less than the regular wage, provided such emergency constituted a contingency beyond the employer's control. Managers and some outdoor activities employees (i.e. security guards) are not entitled to overtime pay.

(3) **Salaries not decreased:** Salaries may not be decreased, apart from very exceptional situations and only for a short time. A collective bargaining agreement must be assigned.

(4) **13th salary:** Employers must pay an annual bonus, known as the 13th salary and equivalent to the normal remuneration of December, in two parts: the first when the employee takes a vacation or before November 30 and the second until December 20. Employers' contributions to the Employees Severance Indemnity Fund (FGTS) and to social security funds are also payable on this bonus.

(5) **Profit sharing:** Law 10.101/00 obliges companies to distribute part of their annual net income to employees. Participations must be negotiated company by company and disputes settled by arbitration. Amounts distributed are deductible for corporate income tax purposes and not subject to labor and social security contributions, but they are taxable to beneficiaries.

(6) **44-hour weekly working hours:** generally, a five-day workweek is the norm. Legally, the working week may not exceed 8 hours daily or 44 hours weekly. In the case of employers with continuous working shifts, the workday may not exceed 6 hours. In both cases, this requirement can be resolved by means of a collective bargaining agreement. Many companies already work a five-day, 8-hours-per-day week.

Work periods that exceed 6 hours must be interrupted by a lunch period of at least one hour, but where an enterprise provides adequate canteen facilities this period may be reduced to less than one hour. If the work period is six hours or less, a break of 15 minutes must be given after the first four hours. Office employees on continuous work, such as data processing, must be permitted 10 minutes of rest after every 90 minutes of work. Other rest periods must be allowed for special kinds of work. Breaks are not remunerated, but if not provided, it must be paid in overtime.

The above provisions do not apply to managers and other employees in positions of trust and responsibility.

Between one daily work period and the next the employee is entitled to a rest period of at least eleven hours, which cannot coincide with the weekly one-day rest period. In other words, such period starts when the employee effectively ceases work activities, whether overtime or regular hours.

(7) **Unemployment insurance/benefits**: the unemployment benefit of up to a maximum of BRL 1'163.76 per month is payable by the government after certain conditions have been met and for a period of from three to five months. [6]

[6] All benefits are adjusted annually. The employment benefits are strictly connected to the minimum wage variation. Therefore any changes in its values will reflect on the benefit value.

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Agricultural and domestic workers are not generally eligible, nor are those employed by nonprofit organizations or members of an employer's family who work for him. Also, unemployment pay is not granted to those dismissed from work for misconduct, those who stopped working without reason or those unable or unwilling to work.

(8) **Annual vacations**: upon completion of every 12 months of service, employees are entitled to a paid vacation of 30 consecutive days to be taken during the next 12-month period. This annual vacation must be paid with an increase of one-third of the related pay. If a vacation is not granted within this period, the employee must be compensated at double the remuneration. Up to one-third of a vacation period may instead be paid in cash, at the employee's option. In addition, employees are entitled to receive 50% of their 13th month salary at the beginning of their vacation.

Official holidays are paid.

(9) **Maternity leave**: the pregnant employee has job stability as of the confirmation of her pregnancy up to five months following birth and is entitled to a maternity leave of 120 day of full pay.

(10) **Paternity leave**: husbands are allowed paternity leave of five days with full pay.

(11) **Other leaves**: the employee may have two days off if a relative deceases, up to three days for marriage and one day for blood donation.

(12) **Prior notice**: normally, both employer and employee are obliged to give 30 days' notice of intention to terminate employment, but in practice employees leave immediately. If the service is terminated by the employer without such notice, compensation corresponding to the period of notice must be paid. For all employees with more than one year of service, settlement of an employee's termination rights (*rescisão e homologação*) under the labor laws must be signed by the employee in the presence of a representative of the labor authorities or union. After notice has been given by the employer, the employee must be granted two hours' absence daily for the purpose of finding other employment.

Accrued vacation pay is also payable upon termination of employment, even if the employee has not completed 12 months services.

(13) **Old-age pension**: old-age pensions are available from the age of 65 (60 for women) if at last 180 monthly contributions have been made. The company may, at its own will, retire an employee older than 70 years.

(14) **Retirement pension**: Retirement pensions are ordinarily available if an employee has worked 35 years (30 for women). For certain types of work, e.g., dangerous, unhealthy or fatiguing labor, the qualifying period of service is reduced, provided at least fifteen years' contributions have been paid. An employee who is entitled to receive the retirement pension may continue to work for the same employer, or for another.

The monthly pension varies according to contributions made. The maximum amount is BRL 4,159.00. [7]

[7] All benefits are adjusted annually. The employment benefits are strictly connected to the minimum wage variation. Therefore any changes in its values will reflect on the benefit value.

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(15) **Sickness benefit and social accident insurance benefit:** the sickness benefit is payable if the insured is unable to work for a period of more than 15 days and continues for the duration of the infirmity.

When incapacitated by an accident, an employee will receive full pay for the first 15 days' absence and then a certain amount monthly. If it is determined that the accident victim is permanently incapable of working, the accident insurance payments are replaced by the invalid pension

The maximum amounts payable for each of these benefits is also BRL 3,912.20 per month.

(16) **Invalid pension**: The invalid pension replaces the sickness benefit and accident insurance benefit, subject to formal approval of the government social security fund.

(17) **Other benefits**: other social security benefits include dependents' pensions in respect of deceased beneficiaries, assistance to dependents of insured prisoners, and family allowance for each child under the age of 14.

(18) **Employment-related accident insurance**: various regulations relate to health and safety factors in dangerous and unhealthy activities. Many companies have a system of training and education designed to reduce the number of health and safety hazards in the work place. See also (27) and (28).

(19) **Workers' Severance Indemnity Fund (FGTS):** All employers must contribute to the FGTS an amount of 8% of the gross monthly remuneration of each employee. An additional 0.5% must be paid for the Social Security Institute.

Contributions are credited to bank accounts in the name of each employee and accrue interest according to the Reference Rate (*Taxa Referencial* – TR), plus 3%, per year. These contributions are deductible expenses for corporate income tax purposes. The balances in these bank accounts may be withdrawn by employees upon termination of employment under following circumstances:

- Dismissal without just cause or where the employer and employee are considered to be mutually at fault. In the first case, the employer is obliged to pay to the employee an additional penalty equivalent to 40% (and if not a small or micro enterprise an additional 10% to the FGTS) of the accumulated balance in the employee's FGTS bank account, in the second case, the additional amount payable is 20%.
- Retirement in accordance with the social security regulations.
- An employer may insist on retirement when an employee reaches 70 (women 65)
- Death of the employee, in which event the balance in the FGTS account is included in the estate of the deceased.

An employee is allowed to use the FGTS balance at any time to purchase a personal residence under a government approved housing financing scheme.

When an employee voluntarily resigns or is dismissed with fair cause and is then employed elsewhere, the balance in his account is transferred to the new employment.

(20) **Right to strike**: labor unions are active. They are more militant in the metallurgical, automobile, banking and transport sectors.

The right to strike is recognized and regulated in law. Provision is made in the labor laws for the formation of labor unions on the basis of a similarity of business interests or occupations. They may be organized on a citywide or merely on a

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district basis. They may also be combined so as to form statewide federations or nationwide confederations. As a rule, their membership must represent at least one-third of all persons engaged in the activity or occupation concerned. Membership in a trade union is not obligatory.

(21) **Approval of collective norms**: Employer's union, workers' unions and companies, even without any employees active in a union, when requested, can not refuse negotiations on collective labor agreements. Maximum validity of collective labor agreements is 2 years.

(22) **Commission**: Commissions consist in compensation on a percentage basis of results obtained by the employee or by the company. They are usually paid to employees engaged in trade and sales. Commissions may constitute the exclusive form of compensation, except that the employee is warranted a minimum salary or wage determined by the workers class in which the worker is classified.

(23) **Family allowance (*salário-família*):** The National Institute of Social Security (INSS) pays a small supplementary monthly allowance (at the moment between BRL 22.00 and BRL 31.22, depending on the salary) for each of a worker's child under 14 years of age.

(24) **Transport pass**: Employers must supply transport vouchers to employees, which entitle them to free transportation to and from work. Employees contribute to the cost at up to 6%, the employer pays the rest.

(25) **Food pass**: some companies also provide meal vouchers which employees may use in certain restaurants and other eating establishments.

(26) **Other fringe benefits**: voluntary fringe benefits normally constitute a significant additional cost of employment. Depending on the enterprise and the category of the employee, a wide range of benefits are offered, like medical care and meals. Income tax incentives exist for meals provided under approved schemes.

Many companies have private pension schemes for which there is special legislation. Group life insurance schemes may also be available.

All employers are obliged to make reasonable provision for the comfort and convenience of their employees. The authorities may require that other special facilities be made available where unusual conditions exist. No industrial enterprise may commence operations until working conditions have been inspected and approved by the authorities.

(27) **Children's aid (*auxílio-creche*):** Companies with more than 30 female workers above 16 years must provide day nursery.

(28) **Unhealthy work premium**: Unhealthy work is defined as the activities that, due to their nature, condition or method of work expose the worker to elements that are hazardous to health (noise, warmth, coldness, vibrations, ionized and non-ionized radiation, aerosols, gases and vapors, chemical and biological agents, etc.) above the established tolerance limits due to the nature and levels of the agent and period of exposure to the effects thereof.

The unhealthy work entitles the employee to a salary accretion, according to the level of unhealthiness, which is determined by the Ministry of Labor, ranging from 10, 20 or 40% of the minimum monthly salary, currently corresponding to BRL 724.00, in addition to being entitled to a special retirement.

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(29) **Risk premium**: Work activities or operations that, due to their nature or work methods imply in permanent contact with inflammables or explosives under extreme risk conditions are considered dangerous (hazardous).

The hazardous activity entitles the employee to a salary accretion for hazardous work conditions, in an amount equal to 30% of the employee's base salary.

These salary accretions are not cumulative, that is, the employee that receives a salary accretion for unhealthy work conditions is not entitled to the accretion for hazardous work conditions.

(30) **Night premium**: for work between 22:00h and 05:00h, remuneration must be at a rate at least 20% higher than equivalent day work. Each hour of night work is deemed to have 52.5 minutes.

(31) **Transference premium**: employees may not normally be transferred from one place of work to another if this involves a change of residence, unless the employee holds a position of trust and responsibility or the transfer results from the closing down of an establishment.

Notwithstanding the above, an employee who is not in a position of trust and responsibility may be transferred if this is justified by the requirements of the employer. A 25% remuneration increase must be granted upon transfer and all expenses incidental to the transfer must be paid by the employer.

(32) **Military service**: an employee who leaves to fulfill a military or civic obligation must be permitted to return to the former position with the benefits corresponding to the position that would otherwise have been attained. The employee's intent to return must be communicated to the employer with 30 days following the termination of the outside activity.

(33) **Sickness**: an employee whose term of service is interrupted by illness is entitled to receive an allowance from the Social Security authorities and upon recovery may reassume the former position together with all accrued benefits.

(34) **Minors**: special regulations exist for the protection of minors aged 14 to 18. Apprentices must be between 14 and 18 years of age and must be undergoing occupational training. All minors must be given adequate time to attend educational classes.

All companies, irrespective of their line of business, are required to employ apprentices and enrol them in National Apprentice Services. Their number may not be less than 5%, neither more than 15% of the total skilled workers. Relatives of employees must be given preference.

(35) **Trainees**: trainees are not regular employees. They must be enrolled at an university and a contract between the employer and the university must be signed.

(36) **Weekly paid rest**: every employee is entitled to a paid weekly rest period of twenty-four consecutive hours, which usually falls on a Sunday.

(37) **Signed social card (CTPS)**: all registered employees, including foreigners, are required to hold a work card in which the terms of employment must be recorded for retirement calculation. Employers must keep official registers or cards containing detailed information about each employee, and each year they must file with the local office of the Ministry of Labor returns listing all employees, reporting also the number of foreigners and minors.

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(38) **Calculation example of employment contributions and deductions on the employers payroll**

(a) Employers payroll in Brazil:

(a) Remuneration	
Salaries paid in the year (11 months x BRL 2,500.00)	27,500.00

(b) Supplementary Remuneration	
Vacation pay (30 days per year)	2,500.00
Vacation Bonus (compulsory, 1/3 of the monthly salary)	833.33
Thirteenth month salary	2,500.00
Overtime (not applicable in this case)	0,00
Night shift premium (not applicable in this case)	0.00
Family Salary (not applicable in this case)	0.00
Sub Total (i) Basis for social contributions	**33,333.33**

Profit sharing (one salary, as example)	2,500.00
Sub Total (ii) Total Supplementary Remuneration	**8,333.33**

(c) Social Contributions (*)	
Social security (INSS) (20%)	6,666.67
Employee Indemnity Guarantee Fund (FGTS) (8,5%)	2,833.33
Education fund (2,5%)	833.33
Work accident insurance (depending on the degree of risk in the workplace 1 - 3%)	1,000.00
SESI/SESC Social programs (1,5%)	500.00
SENAI/SENAC Training programs (for industrial and commercial companies only - 1%) (**)	333.33
SEBRAE Program for small companies (0,6%)	200.00
INCRA Supplementary rural pension (0,2%)	66.67
Sub total Social Contributions (iii)	**12,433.33**

Total Social Contributions and Labor benefits (Sub total ii and iii)	**20,766.67**
as percentage of base salary	**75.52%**

(*) calculated on subtotal (i)
(**) Companies that can prove they provide satisfactory in-house training schemes are liable to only 1/5 of the above mentioned rate

All contributions are deductible for corporate income tax purposes.

(b) Deducted from the employees gross salary:

Deduction for Transport and Meals (depending on the company	Variable
Social contribution (INSS) (*)	8.00 – 11.00%
Income tax withhold at the source (IRPF) (**)	0 – 27.50%
Total Deduction Income Employee	**37.50%**

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(*) Monthly salary base for monthly social contribution (INSS):		
From BRL	**To BRL**	**%**
0.00	1,174.86	8.00%
1,174.87	1,958.10	9.00%
1,958.11	3,916.20	11.00%
Over 3,916.20		BRL 430.78

(**) Monthly salary base for monthly Income Tax deductions (IRPF)		
From BRL	**To BRL**	**%**
0.00	1,566.61	0.00%
1,566.62	2,347.85	7.50%
2,347.86	3,130.51	15.00%
3,130.52	3,911.63	22.50%
Over 3,911.63		27.50%

Contributions are deducted from employees' monthly remuneration. Contributions are deductible for individual income tax purposes. The salary base for contributions is adjusted annually according to minimum wage restatements.

Social security benefits are the same for all employees, regardless of their nationality. Contributions to the social security fund (INSS) are not refunded if an employee leaves the country.

As a consequence of the high social and other contributions, the number of companies adopting outsourcing as well as collective bargaining agreements to get more flexible labor rights grew substantially.

Sources Chapter 12:
Ministry of Labor and Employment
http://www.mtb.gov.br
SWISSCAM Guide "Doing Business in Brazil"
PricewaterhouseCoopers "Doing Business and Investing in Brazil"

13. Avoiding payment problems / Procedures for collecting payments / reminders

Many payment problems may be prevented if, before closing a business, the Swiss exporter seeks some information about financial background, solvency and payment behavior of the Brazilian counterparty.

The Brazilian financial information system Serasa (www.serasa.com.br) possesses an ample data base with economic and financial information about all Brazilian companies. A Serasa report comprehends contact information, business behavior, analysis of the accounting statements (indebtedness, repayment capacity, open bills) and, for your reference please check products list at
http://www.serasaexperian.com.br/compreonline/produtos.html

Reports about the main Brazilian companies are also available from Dun & Bradstreet (www.dnb.com.br).

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Furthermore, the bigger Swiss banks offer diverse services which facilitate and secure transactions with Brazil, such as documentary credits, collections, guarantees or letters of credit.

Additionally, or if the above instruments are not feasible, a very common procedure in Brazil is to ask a new client for a reference of three other suppliers.

Should the importer not pay, despite all these measures of precaution have been taken, the following steps are recommended:

1. Send a letter to the customer informing about the open account.
2. Call the client to ask reason for delay and try to negotiate a new deadline for payment. The new agreement must be formalized by fax or e-mail. Continue with follow-ups or contract a collecting agent.
3. Make known the insolvency to institutions like Serasa (Once a company is on the "black list", it is difficult for it to do new business in Brazil).
4. Ask your lawyer to get in contact with your customer, threatening with a legal action or a protest at the registry office (*cartório*).
5. Register the debt at the registry office and communicate this step to the debtor. This step is only possible if the importer can provide a promissory note, a contract, a bill of exchange or another securitized instrument. A commercial invoice is not sufficient. Further information about accepted documents, access www.protesto.com.br (Portuguese only).
6. Cash guaranties or pledge, if available.
7. Apply an action against the client. The attempt of a new agreement, however, is always worthwhile, as the legal system is extremely slow and expensive in Brazil. Lawsuits can take years.
8. An alternative to the legal way, faster and more efficient, are the arbitration and intermediation services offered by Arbitration Chambers, although involved costs can also be high: Registration costs are normally between BRL 500.00 and BRL 3,000.00, administrative tax equals 2% of the involved amount or up to BRL 50,000.00, remuneration of the arbitrator and other expenses (travel, material, extra hours, etc). Among others, the Eurochamber in Brazil offer this service: www.euroarbitragem.com.br.

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