

***DOING BUSINESS
IN BRAZIL***

INDEX

FOREWORD.....	3
01. INTRODUCTION: BASIC FACTS AND FIGURES ABOUT BRAZIL	4
I) THE BRAZILIAN ECONOMY	4
II) WELCOMING FOREIGN INVESTMENT	5
III) STRATEGIC INDUSTRIES	6
02. INVESTING IN BRAZIL	12
I) STARTING A BUSINESS	13
II) REGISTRATION	15
III) OTHER WAYS TO ENTER THE BRAZILIAN MARKET.....	15
IV) INCENTIVES AND REGIONAL DEVELOPMENT	16
03. INVESTING IN REAL ESTATE IN BRAZIL	18
I) THE BRAZILIAN LEGAL SYSTEM AND THE PROTECTION OF PRIVATE PROPERTY	18
II) REQUIRED DOCUMENTS.....	19
04. INDIRECT FOREIGN INVESTMENT: THE BRAZILIAN STOCK EXCHANGES	21
I) SECURITIES DEALERS AND BROKERS.....	21
II) MUTUAL FUNDS AND PORTFOLIO ADMINISTRATION	21
05. COMING TO BRAZIL: IMMIGRATION	23
I) TYPES OF VISAS FOR WORK PURPOSES	23
II) ADDITIONAL INFORMATION	24
06. TAXATION IN BRAZIL	25
I) FEDERAL TAXES	25
II) STATE TAXES	26
III) MUNICIPAL TAXES	26
IV) TRANSFER PRICING RULES.....	27
V) TAX TREATIES.....	28
CONCLUSION.....	30

FOREWORD

We at **ALMEIDA ADVOGADOS** understand the difficulties that companies face when looking to develop their overseas businesses, particularly to a market like that of Brazil, and more generally, of Latin America. For this reason, we have prepared this study. For those who are contemplating Latin America for the first time, the information herein will help you form an initial idea about whether Brazil offers the kind of business potential required for your further interest in the market.

After reading the information, please contact us if you need any additional clarification to lead you or your company to a more extensive comprehension about the Brazilian market and its opportunities.

01. INTRODUCTION: BASIC FACTS AND FIGURES ABOUT BRAZIL

In the last ten years, Brazil has become one of the most promising economies, in terms of worldwide business opportunities. Brazil occupies an area of over 8.5 million km² and has a population of 186 million people and an economically active population of 90 million people. In South America, Brazil is strategically located as it shares borders with ten countries: Argentina, Bolivia, Columbia, French Guiana, Guyana, Paraguay, Peru, Suriname, Uruguay, and Venezuela. Brazil is the world's fifth largest country both in terms of population and area, and therefore, holds a dominant position within Latin America. The country is the seventh largest economy in the world and accounts for more than a third of Latin America's land mass, population, and GDP. Politically, the country is a democracy with stable public institutions, such as the Chamber of Deputies, the Federal Senate, and the courts of law. The Brazilian legal system ensures the protection of private property and, presently, the private sector is the country's primary investor.

Although recent surveys prove the impressive growth of foreign investment in Brazil, many still have doubts about the safety of investing in the country. This study aims to provide necessary information for those foreign investors who wish to invest safely in the country. We intend to provide the tools necessary to aid in this process.

I) THE BRAZILIAN ECONOMY

Presently, the Brazilian economy is very strong and is growing. Internal demand is high. The trade balance is in a surplus and has been registering records, one after the other. Since four years ago, the monetary authorities have continued to lower the basic interest rate, improving Brazil's finances and facilitating access to credit lines for an increasing number of people. The risk of internal federal securities debt diminished significantly through the elimination of its net installments indexed to the dollar and with the increase of its prefixed installment. The immediate result for the Federal Government was a 8,1% increase in the GDP in the year of 2010, comparing with the year of 2009. Unemployment rate in 2010 was 6,7% and the worker average income is continually rising.

According to data, recently published by the Brazilian Central Bank, Brazil has just secured a place amongst international creditors. The net foreign debt of the country – which is determined by subtracting Brazilian credits outside the country's commercial bank's assets (international reservations) from the total debt – was approximately USD \$ 1,324¹ billion as of June 2011.

¹http://www.imf.org/external/pubs/ft/weo/2010/02/weodata/weorept.aspx?sy=2008&ey=2015&scsm=1&ssc=1&ssd=1&sort=country&ds=.&br=1&c=223&s=GGXWDN%2CGGXWDN_NGDP%2CGGXWDG%2CGGXWDG_NGDP&grp=0&a=&pr1.x=33&pr1.y=11#download

Sustained by solid democratic institutions and a responsible macroeconomic administration, the political and economic stability of the country are guarantees for foreign investors. These investors benefit from the high return rate, the open economy with low competitive costs and low risks and high incomes provided by the country's present position. These current policies, operated jointly with inflation control, are responsible for the large reduction in poverty and a gradual increase of the middle class.

Inflation indexes have stabilized around 5.91% last year, indicating a safe economic atmosphere for investing and developing projects, without the inflation worries of the past. This is evidenced by international projections of Brazil as it approaches the investment grade granted by international risk agencies to countries that present low credit risks.

According to economic projections, Brazil will occupy a prominent position in the future, becoming one of the world's five largest economies by 2050, similar to countries such as China, India, and Russia.

Nowadays, Brazil is amongst the world's 20 largest exporting economies, which reiterates the progress of the national production sector and the amount of energy directed at the production of exports in 2010 alone, exportations reached a record of USD \$201,916 billion - an increase of USD \$3,917 billion from the previous year. Similarly, importations reached USD \$181,638 billion, resulting in a commercial exchange of USD \$383,554 billion for the year of 2010, a record, with a surplus of USD \$20,278, indicating the significant increase of the economy's strength and its influence in world trade.

Moreover, as a result of population growth over the past decade, Brazil is expected to become one of the main exporting economies in the world within a few years, taking into the consideration the fact that it has the largest and most diversified industrial sector in Latin America and Caribbean. With the price of commodities in limbo following the increase in the demand for petroleum, gas and metals, Brazil continues to become more and more attractive to new investment. The country is one of the largest producers and exporters of rough and processed ore, and is rich in iron ore, bauxite, manganese, tin, and gold. It is also one of the world's top generators of electric energy.

II) WELCOMING FOREIGN INVESTMENT

Only a few economic activities continue to be off limits to foreigners, such as health insurance, as well as other activities related to national security. Foreign investors currently hold a minor presence in media, financial institutions, and insurance companies, but with private authorization from the government or under a reciprocal agreement, they may acquire control of a bank.

Brazil is attracting investors who are inspired by the recent economic indexes and the country's stability, sending more and more resources for projects in the country.

In 2010 alone, foreign investment in Brazil reached USD \$48.462² billion, the biggest amount received since 1947. Despite the economic downturn of the American economy, the global atmosphere continues to favor investments, primarily in emerging economies like Brazil.

These projections are confirmed by the latest data published by the Brazilian Central Bank that indicate the entrance of USD \$6³ billion in direct foreign investment in July of 2011 alone, more than the triple of the value obtained in the same period of 2010 – when the country received USD \$1,287⁴ billion in direct foreign investment.. Aware of the foreign investor's importance to Brazil, the Brazilian government has created legal instruments in the recent years that aim to attract a large volume of resources to the country, creating a safe and comfortable atmosphere for the investments.

As a general rule, direct foreign investment no longer requires prior consultation with the government, unless a governmental incentive is desired. However, it is highly recommended that one seeks legal advice before formalizing any investment plans, so that any preliminary issues may be properly addressed.

III) STRATEGIC INDUSTRIES

Infrastructure, energy, transportation, utilities, and telecommunications are of fundamental importance because of country's size and the increasing demands of industry. Tourism also exercises an important role since it serves as the foundation for the development and expansion of the real estate sector, especially considering the upcoming sports events that will take place in Brazil, FIFA' World Cup in 2014 and the Olympic Games in 2016.

Governmental authorities expect over USD \$ 11 billion to be invested in the World Cup and USD \$16.5 billion in the Olympic Games.

The Inter-American Development Bank (IDB) will grant USD \$ 1.5 billion in loans for investments in the twelve (12) Brazilian cities where games will take place, and a USD \$ 4.5 billion dollars line of credit supported by the Employee Dismissal Fund (FGTS) will be invested in urban mobility projects.

² <http://www.brasil.gov.br/noticias/arquivos/2011/01/25/investimentos-estrangeiros-diretos-atingem-recorde-de-us-48-4-bilhoes-em-2010>

³ <http://www.bcb.gov.br/?ECOIMPEXT>

⁴ <http://oglobo.globo.com/economia/mat/2010/08/23/investimentos-externos-diretos-em-julho-superam-expectativa-do-bc-917454344.asp>

III.1) Infrastructure

In order to improve infrastructure and further the development of industries and services, the government has begun identifying and promoting key areas and sectors, which will lead to business opportunities for private investments. This has been accomplished through major investment projects, in which the government acts in partnership with the private sector, providing guidance and advice to this sector, without interfering in its business strategies and activities.

Many of the investment projects offer excellent opportunities for private companies via privatization, concessions, private public partnership, joint ventures, supplier credit, and project finance. The first major program of this kind was “Brazil in Action” that channeled USD \$30.7 billion from 1997 to 1998 in investments to Brazil – USD \$14.1 billion into basic infrastructure and USD \$ 16.6 billion into social projects.

In line with the expanding of the economy and the strengthening of the macroeconomic conditions for stability and growth, the Brazilian government has carried out important economic reforms in order to improve the infrastructure and increase productivity and competitiveness in services, utilities and the industrial sector.

Currently, the government has been working on more ambitious programs, called the Growth Acceleration Program (“PAC”), which had a first version in January of 2007 after a major study on national development and the integration of regions identified and evaluated hundreds of projects that have the potential to accelerate economic and social development in the coming years. The second version of this program, the PAC II, was initiated this year.

Besides creating incentives for investment, minimizing taxes and production costs, between 2007 and 2010, the PAC provided a total of R\$ 463.9⁵ billion in investment to infrastructure, distributed for social and urban development; logistics and transportation; and energy.

Major investments in the infrastructure are expected in the following sectors: fixed-line telephones; hydropower and thermal power generation; transmission lines; roads and railroads; airports and ports; waterways and water resources in Northeast Brazil; and optical fiber and data communication.

The 2014 FIFA World Cup and the 2016 Olympic Games will probably increase demand in infrastructure projects for the next five (5) years, including ports, airports, roads, railways, stadiums and public transportation, among others.

⁵ <http://blog.planalto.gov.br/pac-executou-707-dos-investimentos-previstos-entre-2007-e-2010/>

III.2) Energy

Brazil is one of the greatest prospects in the world for investors looking to discover natural resources. The Oil Law, passed in 1997, ended Petrobras's monopoly on exploitation, production, refining, and oil transportation. The Oil Law also established the National Agency of Petroleum, which decides on matters that affect new refineries and areas to be exploited by foreign companies.

Although the law is new, the opening of the market has already generated additional wealth for the nation, as "Oil GNP" grew 160% in the year 2000. It is projected to grow even more as only a little more than 10% of the Brazilian basins have been exploited so far.

In 2006, Brazil became self-sufficient in regards to petroleum, producing more than it consumes. South America is now one of the most attractive regions for investment in natural gas exploitation and production, the construction of pipelines, LNG facilities, and gas-fired power generation. The continent boasts abundant and growing natural gas reserves and several cross-border pipelines linking gas-rich countries with large energy-hungry markets in neighboring nations.

However, recently the discussion of issues related to oil and natural gas has been put into a new perspective since the start of activities on the platform of pre-salt which is exclusively located in the Brazilian exclusive economic zone, more precisely in waters bordering the states of São Paulo, Rio de Janeiro and Espírito Santo.

Although it has been possible to observe the existence of a variety of projects of laws concerning this subject, there are basically two noteworthy issues, which toughened a dispute to choose the appropriate rules to petroleum exploitation in Brazil. They are: (i) adoption of a new exploitation model of activity - the model of sharing - and (ii) the payment of royalties to States, Federal District and Municipalities.

In this respect, Brazil has been carrying out substantial reforms of its gas sector. Steps toward regional cooperation and integration have not only facilitated cross-border energy trade, but have fostered stability and growth throughout the region.

III.3) Telecommunications

The telephone network, initially controlled by state-owned companies, was significantly developed throughout the 1960's and 1970's. With the privatization program of the 1990's, the state-owned telephone system was split into various companies that were later sold to international investors, such as Telecom Italia Mobile, BT, MCI, Sprint, and Portugal Telecom. Currently, all major telecommunications companies have subsidiaries in Brazil, such as Ericsson, Siemens, and to Nokia, to name but a few.

Nokia has concentrated a great deal of its Americas production in Brazil and was responsible for the implementation of GSM networks, along with Ericsson, the largest company in the network implementation business. It is important to mention that connections have continually improved in recent years with satellite link-ups worldwide, and there is still a large section of the market left to be taken advantage of, especially considering the ever-growing third generation of wireless communications.

Telecommunication businesses are now putting their efforts into network optimization which provides opportunities for experienced, market-weary foreign suppliers of equipment and services in this sector.

III.4) Transportation

The deficient transportation system in Brazil is a prominent target for investment. Railroad facilities are underdeveloped; the main lines are in the states of São Paulo and Rio de Janeiro. The privatization of railroads and ports is also underway and is deemed to be the solution for developing these areas.

We foresee development of ports and railroads as a great business for profitable investment as the federal government has already allocated resources and policies to prioritize the sectors. Due to the deficiencies in rail and sea transport, a considerable amount of freight is transported by highway throughout the country. Although the major highways run near the coast, road construction in the interior of the country is expanding and exit routes are being improved. Consequently, the privatization of highways has been a success in Brazil.

Privatization of transportation, initiated in 1991, has been one of the most extensive programs of its kind in either the developed and the developing world. At the federal and state levels, the government has invested almost USD \$100 in it. The National Bank for Economic and Social Development (BNDES) is responsible for implementing and monitoring the program.

Foreign investment constitutes a third of total investment in privatization in Brazil. The telecommunications and electric energy sector, the cutting edge of the privatization program, has been the recipient of half of the total foreign investment, followed by the steel mining, power, and petrochemical sectors.

Many efforts were spent in the creation of a partnership culture between public agencies and the private sector of Brazil, a system already present in several other countries. The Public-Private Partnerships ("PPP") guarantees legal benefits and tax exemptions to all companies interested in investing in certain sectors and areas within Brazil. Such sectors, like infrastructure, energy, and public services, are highly known by foreign companies with great expertise in the field.

III.5) Tourism

Due to the natural beauty and pleasant climate year-round, Brazil is a favorite destination for many foreigners who stimulate the tourism industry and attract resources and investment to the real estate sector.

In 2010, about 7.9⁶ million passengers arrived in the country from international flights. Data published by the Brazilian Central Bank revealed that the expenses of foreign tourists visiting Brazil from January to December 2010 reached USD \$5.91⁷ billion. In comparison, the same period in 2006 generated only USD \$5.30 billion. Moreover, statistics gathered by the Brazilian Institute of Tourism (Embratur) confirm the same favorable closing of 2011 in comparison with 2010. Specifically, the Northeastern region of Brazil stands out as one of the best destinations for the development of tourism and real estate enterprises in the world. The Northeast region, (nine states in total) has 3,300 km of coastline with beautiful beaches. The total area is approximately 1,558.196 km² and the population is more than 51 million.

Northeastern Brazil is strategically located closer to Europe and the USA, only a little more than a 5-hour flight from a number of airports, which guarantees the increasing demand in the tourist/real estate businesses.

III.6) Real Estate

As opposed to many other countries with saturated, stagnate real estate markets, Brazil is in a prime position with excellent growth perspectives in the upcoming years.

This is evidenced by, and goes hand in hand with, positive performance of the tourism sector, which has presented superior results in comparison with other, more traditional, sectors. The growth of the tourism is greater than the average of the national economy as a whole.

The entrance of direct foreign investment in the civil construction sector exploded at the beginning of 2007, reaching in 2010 USD \$33,65 billion⁸, much of which was concentrated in real estate companies. This followed the increase in the “second residence” real estate tourism market. This success is due to the guarantees provided by the Brazilian legal system for the protection of private property and the effective guarantee of the commercial relationships in the country. In Brazil, except in specific cases of national security, foreigners can have full ownership of the land, with the same rights as Brazilian citizens.

⁶http://www.dadosefatos.turismo.gov.br/dadosefatos/estatisticas_indicadores/desembarques_internacionais/

⁷ http://www.dadosefatos.turismo.gov.br/dadosefatos/estatisticas_indicadores/receita_cambial/

⁸<http://www.ibplan.com.br/Balanco%20da%20Habitacao%20e%20Construcao%20Civil%201%20Semestre%202010.pdf>

Moreover, as opposed to many other countries, there are no legal restrictions on the amount of properties a foreigner can acquire in Brazil, nor are there restrictions on foreigner participation in companies in the tourist real estate sector.

The state grants autonomy to individuals for the development of ventures and town planning projects in areas near the coast, giving owners the use of the property and the freedom to transfer it to any interested party.

In the following sections, you will find ample information that will allow you to participate in the most promising investment of the Americas: Brazil.

02. INVESTING IN BRAZIL

Due to Brazilian legislation, foreign investment is awarded special treatment, leading to an attractive atmosphere for investors who can enjoy several legal guarantees aimed at motivating the entrance of foreign resources. All foreign investments must be registered in the Central Bank of Brazil. The registration is essential for offshore remittances, capital repatriation and profit reinvestment. It is important to mention that, although foreign investment must be registered, there are no restrictions on the distribution and remittance of profits abroad. Profits, as those from January 1996, are absolutely exempt from income tax withholding. Therefore, while remitting profits abroad, the subsidiary, although they must inform the Central Bank of Brazil, has no income tax liability of any kind. The same regime is adopted for the reinvestment of profits as well as the repatriation of the capital invested. Earnings obtained by a foreign investor and further reinvested in Brazilian businesses for the purpose of reimbursing or purchasing shares and/or quotas should also be registered at the Central Bank. These earnings that are to be reinvested are registered as foreign capital, in the same manner as the original investment, and thus may be repatriated to its country of origin at any time, without prior authorization. The amount of the original investments (plus any reinvestment of profits, if that is the case) may be repatriated without income tax assessment. Finally, the ownership interest in a Brazilian company by a foreign investor may be sold, assigned, or otherwise transferred abroad, with no tax implications in Brazil, irrespective of the price paid.

For registration purposes, foreign direct investment is defined as the permanent ownership interest held in the Brazilian investment, or, according to the common market practices, the ownership interest intended to be permanently held by nonresident investors, whether individuals or legal entities, residing, domiciled, or headquartered abroad, through the ownership of shares or quotas representing the corporate capital of Brazilian companies, as well as the allocated capital of foreign companies authorized by Brazil.

The registration of foreign direct investments is made through an electronic statement, which means that the Brazilian investment and/or the representative of the foreign investor are responsible for registration of those investments, which shall not be subject to preliminary review and verification by the Central bank. The aforementioned registration shall also be made in Brazilian currency.

Another benefit we should emphasize is the requirements for the permanent visa for foreign investors in Brazil. The Normative Resolution n.84, published by the Ministry of Labor, authorizes the concession of permanency to foreigners who invest the amount in foreign currency equivalent to at least R\$ 150,000 of their own resources in productive activities in Brazil. This investment can be for new companies, that should be constituted and registered before the Brazilian authorities, or in any other existent Brazilian company.⁹

⁹ http://www.migalhas.com.br/mostra_noticia_articuladas.aspx?cod=101830

Investment of foreign capital is prohibited, or in some cases restricted, in the following activities:

- Activities involving the development of nuclear energy;
- The ownership and management of newspapers, magazines, and other publications, and of television and radio networks;
- Health services;
- Ownership of rural area and businesses in border areas;
- Post office and telegraph services;
- Airlines with domestic flight concessions; and
- Aerospace industry.

I) STARTING A BUSINESS

When it comes to starting a business, Brazil offers different paths to entrepreneurs. The two most-used legal categories of a Brazilian company are the (I) private limited liability company (Ltda) and (II) Corporation (S/A), due to the fact that, for both, the participants have limited liability. The other forms are rarely used but can sometimes fulfill specific purposes.

Although some multinational corporations originally, in the 1950's and 1960's, set up their Brazilian operations through a branch, the trend in recent years has been the conversion of branches into Brazilian business entities. At the present time, only a few companies operate through branches.

This formation requires prior approval from the federal government by presidential decree, which is a lengthy process. There is no difference, from a tax perspective, between the branch of a nonresident company and other corporate structures such as the LTDA or the S/A, explained below.

It should be emphasized that non-resident individuals or legal entities may adopt any type of business organization recognized by Brazilian legislation or may operate without establishing a permanent place of business through resident agents or representatives/distributors. All business entities are organized under federal law. Should you wish, ALMEIDA ADVOGADOS is at your disposal to advise you on the most appropriate business organization for your company within Brazil.

I.1) Private Limited Liability Company (Ltda – Limitada)

This form of organizational structure requires the formation of a company by at least two partners. It is organized in the form of a Business Partnership and may engage in commercial, industrial, and service activities and its bylaws are registered at the Board of Trade (Commercial Registry). Shares represent the participation of each partner in the company's capital, with each partner's liability limited to the value of his/her shares or quotas, once the capital is full paid.

This category of company, the Limitada, is a very useful kind of subsidiary of foreign corporations. Although its bylaws take the form of a partnership contract, it is considered an entity that is separated from its shareholders. Minimum capital requirements are not imposed but minimums may be required for specific purposes, such as obtaining a permanent visa for a nonresident moving to Brazil to manage the company (presently R\$ 150,000). Capital must be, dominantly, in Brazilian currency.

Finally, companies as well as individuals may be members of a Limitada. Non-resident members must grant a power of attorney to representatives in Brazil to receive service of notice, act on their behalf at meetings, and to modify bylaws/agreement.

I.2) Corporations (S/A)

Although the Limitada has proven more effective for the creation of a foreign corporate subsidiary, if some degree of public ownership desired, it may be necessary to adopt a Sociedade Anonima (S/A) type structure, equivalent to a Corporation in the United States. There are other cases for which the adoption of a corporate organization is not mandatory, but is still recommended. In order to establish a firm of this kind, at least two stockholders – the partners – are needed, whose responsibility is limited to the issued cost of subscribed or acquired capital. The capital stock of the company is divided in shares, and the firm must aim for profits. It is regarded as a trading company, no matter what its objectives are. Capital may consist of cash or assets. This form of business organization could, therefore, be defined as a business corporation, its object being the earning of profits to be distributed to the shareholders.

The company may be considered “public” or “private,” depending on whether or not the securities are traded in the Stock Exchange or in the over-the-counter market. Public (open capital) corporations trade their stock on the Stock Exchange and the private ones (closed capital) do it through financial institutions. The open capital company obtains funds through the public offers, and subscriptions must be registered with the Securities Commission, the federal agency in charge of regulating and auditing such firms. The closed company obtains capital from its own shareholders or subscribers, and it has a simple accounting and administration system. Both types require registration at the Board of Trade. We emphasize that both forms, S/A and LTDA, are allowed, by law, to transform, merge, consolidate, or split.

The transformation of a LTDA into a corporation or vice versa is quite simple and inexpensive. The law states that all shareholders or members must agree with the transformation, unless the corporate bylaws or articles of association provide otherwise.

II) REGISTRATION

Registration of a business, regardless of the type of company adopted, is a multistep process that begins at the Board of Trade, and makes its way through the Federal Revenue Service, Treasury Office, and City Administration. Our firm is fully equipped to take the necessary measures in order to help you safely and efficiently register your business in Brazil.

III) OTHER WAYS TO ENTER THE BRAZILIAN MARKET

III.1) Distribution Contracts

If starting a new business organization in Brazil is not presently an option, a foreign company can still bring its products and services to Brazil through distribution agreements and/or sales representation.

Presenting your product at one of the many sector-specific trade fairs in Brazil is an excellent way of gaining exposure in the Brazilian market and the wider Mercosul markets of Argentina, Paraguay, Uruguay, and Venezuela. For details on trade fairs occurring in Brazil, you should consult the Brazilian Association of Trade Fair Organizers' website at <http://www.ubrafe.org.br>.

Participating in a trade mission is an excellent introduction to the Brazilian market. An additional benefit is that you can travel with a group of similar-sized businesses, some of who will be returning so that you can hear and learn from their experiences. Brazilian fairs are widely respected and they have become a reference for doing business with all countries in Latin America.

III.2) Consortium

Investing through a consortium is another possibility. A consortium is an association of companies that is without a joint corporate identity but aims at the development of a specific project. It is formed by an agreement between two or more companies, but its formation does not bring a new legal entity into existence. Therefore, the parties preserve their corporate identity, pooling their efforts together to achieve certain purposes. Consequently, they only bind themselves under the terms of the consortium agreement made and each party must comply with the terms of the consortium contract, without the assumption of joint liability

before third parties, except if otherwise agreed upon. A contract between the consortium member companies must be filed at the Commercial Registry.

In addition, it is an interesting time for joint ventures in Brazil as there is a solid market for mergers and acquisitions, and there is also a well-structured legal system and a growing customer market. Joint ventures and merging/acquisitions are alternatives to investing in a wholly owned Brazilian subsidiary and, therefore, should be considered. The decision to engage in a joint venture with or in the acquisition of an existing Brazilian company should be carefully considered and only made after an investigation performed with due diligence. In addition, there should be an assessment of the legal risks associated with the activities developed by the Brazilian company, especially corporate, tax, environmental, and labor burdens. ALMEIDA ADVOGADOS specializes in this field and is fully staffed with highly qualified attorneys to assist your company.

III.3) Investment in New Technologies

The Brazilian National Bank for Development (BNDES) is the largest venture capital agent in Brazil and is currently focused on furthering investment in the technological field. Brazil is well known for its creativity. Many fairs are held during the year, in which inventors and other tech professionals show their projects to venture capital investors willing to sponsor a project that promises great profits. Therefore, venture capital is most welcome according to the Brazilian legal system and is primarily subject to regulation by the Central Bank as is the case with any other foreign investment. Many efforts have been made in order to create a culture of partnership between the private and the public sectors in Brazil, similar to that which already exists in Scandinavian countries. Recently, a Public-Private Partnership Act was approved by Parliament, which aims at granting legal and tax advantages to all companies interested in investing in target areas in Brazil. Comparatively, Scandinavian countries already specialize in these areas such as in infrastructure, energy, and other essential services.

IV) INCENTIVES AND REGIONAL DEVELOPMENT

A wide range of governmental incentives is available for start-up projects in Brazil. Generally, the international investor has the same access as local investors to these incentives. Usually, incentives take the form of subsidized-rate loan financing and of tax exemptions or reductions, rather than cash grants.

Various concessions are offered to encourage economic development in Brazil, on both a regional and an industry basis, by offering taxpayers the opportunity to invest part of their tax liability and/or other incentives, such as the exemption on imported equipment used in new industries established in the specific geographical area, to mention but a few. It is important that, for those investments, the tax-exempted portion of the income generated is not

remittable abroad. This policy targets the development of select regions, such as North and Northeast Brazil. It was created in Manaus, a city in the heart of the Brazilian rainforest. The “Zona Franca” or Free Trade Zone of Manaus is a duty free zone. Over 600 industries are present in the zone, and they are eligible for tax incentives on income tax and import duties, excise taxes, and partly on sales taxes.

03. INVESTING IN REAL ESTATE IN BRAZIL

In the last 10 years, Brazil has become one of the most promising economies in terms of business opportunities at the international level. Its geographical beauty and unexplored potential have motivated the development of the tourism industry. Moreover, the recent economic stability of the country attracted investment for the real estate section, especially in the Northeastern region, a popular refuge for tourists from the Northern Hemisphere, and an attractive and lucrative destination for the development of real estate enterprises for the international market.

The guarantee of the rights and contracts of foreign companies, the economic conjuncture, and the countless opportunities, make the atmosphere attractive to external investment. With the assistance of ALMEIDA ADVOGADOS, it is possible for the interested foreign investor to take advantage of this exciting moment in the Brazilian economy and in all the Brazilian Northeast has to offer. By launching into the market, one could benefit from the business opportunities, maximized profits and the legal prerogatives and commercial advantages in order to succeed in his or her operations and personal projects in the country.

I) THE BRAZILIAN LEGAL SYSTEM AND THE PROTECTION OF PRIVATE PROPERTY

Brazil is a fantastic country that offers some outstanding life-style opportunities. Unfortunately, there is not much information available for people looking into something more than a brief tourist adventure. The purchase of property requires detailed understanding of the legal requirements and the dynamics of the searching, negotiating, and purchasing processes.

The Brazilian legal system supplies the necessary tools for the protection of private property and the effective guarantee of the commercial relationships within the country. There is extensive legislation that serves to regulate the real estate industry and provide safety to contracts.

In practical terms, real estate is protected in Brazil by laws and judicial norms that regulate all its relationships thereby instituting basic and reliable instruments for the protection of property and real estate transactions. This guarantees several ways to enter into the real estate market, from full property ownership to the usage rights for the private incentive.

First, regulations governing the acquisition of property provide that foreign nationals are not permitted to own property within a short distance of international borders. In addition, foreign nationals are subject to restrictions on the ownership of rural land, and may need to seek the approval of the government rural property agency (INCRA); otherwise, acquisitions of real property are regulated purely by each individual purchase contract.

Since title to large areas of Brazilian land has been in dispute since the first colonial land grants were made, it is very important to ascertain whether the seller has good title. This verification can be made at the real estate registry. If the seller has been in possession for many years, and in the absence of ongoing lawsuits, the purchase of the land should be safe. In all cases, buyers should seek legal advice.

Upon the purchase of freehold property, buyers should take steps to register the change of title at the Real Estate Registry. It is also recommended that long and short leaseholds be registered at the real estate registry in order to minimize potential disputes with the landlord.

It is very important to emphasize that, even after the purchase, the transfer of property will only be effective after the registration of contract/agreement before the Real Estate Registry.

It is much easier and less expensive to take some evasive and precautionary actions by obtaining legal assistance. ALMEIDA ADVOGADOS is equipped with legal professionals in the real estate field, all of which are experienced and qualified, and can help keep your purchase out of harm's way. Our professionals are able to act directly in the mediation process to the conclusion of negotiations through powers-of-attorney, especially granted for such. As stated above, foreigners are permitted to buy, own, and rent real estate property. By law, Brazilians and foreigners are almost on equal footing when it comes to property ownership and tenant rights. Non-Brazilians are subject to certain limitations dictated by national and security interests. Foreign governments cannot own real estate property, except properties used as consulate or embassy sites.

II) REQUIRED DOCUMENTS

Should you wish to buy real estate in Brazil, you will need a passport and a Brazilian social security number (CPF), which, for this purpose, is easily obtainable by foreigners. CRECI is the professional organization that regulates career Property Managers and Real Estate Brokers. While CRECI membership is not a guarantee against dishonest actions by certain individuals or companies, it provides additional leverage and is an official complaint organ. Having a local lawyer to conduct real estate transactions in Brazil is not mandatory, but is highly recommended. In order to claim possession of real estate, you must register the transfer transaction of property ownership at the Real Estate Registry. It usually takes place inside the same jurisdiction that the property is located in, but can also be conducted at any location by an authorized official. This means that anyone can have access to property ownership information without reason and authorization.

The registration number (Matrícula) is the passport of the real estate property; the legal relationship between the property and its Matrícula is that they are treated as one in the same. Besides uniquely identifying a property, the registration number also contains a detailed description and historical records of all legal, judicial, and financial transactions pertaining to the property and all information, such as description of property, its precise address and location, past and present owner information, mortgages, etc. There are some

documents that should be requested from the potential seller before considering buying a property and some additional documents that may be helpful, in any case. ALMEIDA ADVOGADOS can provide you with the list of necessary documents and procedures to be followed should you wish to purchase real estate in Brazil. Finally, one should always verify that the property is debt free and lien free. In order to verify city taxes payment compliance, the City Council should be consulted. Any debts on the property can and should be taken into consideration during the negotiations.

04. INDIRECT FOREIGN INVESTMENT: THE BRAZILIAN STOCK EXCHANGES

The principal Brazilian stock exchanges, regulated by the Securities Commission (CVM) are located in São Paulo and Rio de Janeiro. Active financial futures are options on commodities such as metals, grains, meat, and currencies that are also traded on these exchanges.

A checkered history involving periodic speculative booms has caused the general public to be somewhat wary of investing in the stock market. After a weak performance in 1995, the yield from investment in stocks surpassed the return of the investment in the money market and the volume of investments increased significantly with the help of foreign participation in 1996 and 1997. Since 2003, Brazilians and foreign investors alike have regained confidence in the Brazilian stock market. Records since have been frequently broken, following the impressive pace of economic growth and the stabilization of the Brazilian currency.

Future markets in Brazil include futures, spot and future options, forward contracts, spot contracts, and currency swap.

I) SECURITIES DEALERS AND BROKERS

“Corretoras de Títulos e Valores Mobiliários” and “Distribuidoras de Títulos e Valores Mobiliários” undertake virtually the same activities, namely, securities brokerage. These two entities differ in that “corretoras” have a seat on the stock exchange, and “distribuidoras” do not. These firms are authorized to trade for their own account as well as for clients and may manage mutual funds and investment clubs.

II) MUTUAL FUNDS AND PORTFOLIO ADMINISTRATION

Brazil's high interest rates have turned mutual funds into a popular alternative, particularly for individuals. Mutual funds are generally open-ended funds with or without a grace period, a minimum deposit, or withdrawal amounts, in order to restrict processing costs. Their investments are focused on certain types of assets, depending on the tax and regulatory regime they adopt. The Brazilian Securities Commission (CVM) also regulates stock market funds. The manager or sponsor of a mutual fund must be a financial institution. The main types of funds include: stock market funds; money market funds; and foreign capital investment funds. Securities brokers and dealers, in addition to banks and finance companies, can manage funds. Banks have an advantage over the retail and money markets in that customers can conveniently use the branch network to transfer between funds and to demand deposits.

II.1) Stock Market Funds

These funds are regulated by the CVM because they invest most of their cash in publicly traded shares, government bonds, and term deposit certificates. They can operate in futures and options markets.

II.2) Money Market Funds

At a basic level, these funds, which are regulated by the Central Bank, invest their cash in interest earning securities of the public and private sectors. There are the Fundos de Curto Prazo, very short-term investments, which substitute the interesting-bearing bank accounts since demand depositions cannot pay of the interest. The Securities Law governs the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários – CVM) and regulates the overall operation of the capital markets, the public distribution of securities, the listing of securities on exchanges, disclosure requirements, the activities of brokers and intermediaries, types of securities negotiated and the types of companies which can be traded on the capital markets.

The Securities Law grants regulatory and police powers to CVM.

05. COMING TO BRAZIL: IMMIGRATION

Foreigners who decide to reside in Brazil for work purposes need authorization that must be granted by the Ministry of Labor and is required by Brazilian consular authorities in accordance with the legislation in force. Before elaborating on the types of visas available, it should be emphasized the ALMEIDA ADVOGADOS has the required expertise to initiate the process towards the attainment of any kind of visa.

I) TYPES OF VISAS FOR WORK PURPOSES

I.1) Visa for Short-Term Business Travel

A visitor to Brazil with a visa for short-term travel may not, under any circumstances, be paid any types of remuneration from a Brazilian source. A visa must be obtained at the Brazilian Consulate in the jurisdiction where the applicant resides.

The visa may be valid for a period of up to 90 days from the date of first arrival in Brazil and may be used for multiple entries into the country during this period. An extension for an additional 90 days may be obtained from the Federal Police if requested before the expiration date.

I.2) Temporary Work Visas

There are various types of visas for individuals coming to Brazil for work purposes, and the individual must obtain a Work Permit from the Brazilian authorities, specifically the Ministry of Labor. Following the approval of the request, the authorization will be published in the Federal Official Gazette and the respective consulate will be notified. At this point, the foreign candidate may apply for his or her visa through the same process described above.

I.3) Temporary Visas for Professionals

This type of visa is offered to individuals who come to Brazil for a period of up to two years and may be extended for an additional two years. This visa is available to foreigners who will be temporarily employed by a Brazilian company that requires know-how not readily available in Brazil.

I.4) Permanent Working Visa

Those who wish to relocate, permanently, to Brazil in order to work for a branch or a subsidiary of a foreign company as a director or manager may request a permanent working visa. In this case, the company must have registered a foreign investment in Brazil in the amount equivalent to at least, R\$ 150,000 (with the Brazilian Central Bank. However, if a person has been working in Brazil for a period of four years or more on a temporary basis, regardless of whether the company is Brazilian or foreign or whether it has invested up to R\$ 150,000, he or she may apply for a change in his or her status to permanency. The company must make this request to the Ministry of Justice. In order to obtain a permanent working visa for someone who is not already working in Brazil on a temporary basis, the application to the Ministry of Labor must be filed first.

II) ADDITIONAL INFORMATION

Foreigners living in Brazil, immigrants, and temporary residents who come for work purposes, except for short-term business trips, must register with and present their passports to the Federal Police within 30 days of the of their arrival in Brazil. Those who travel to Brazil on business before obtaining a work permit and the appropriate visa may request a short-term business visa. However, they may not be paid a salary in Brazil until after the authorization and the visa are obtained.

06. TAXATION IN BRAZIL

The Brazilian Federal Constitution establishes the taxing ability of each federal entity (municipalities, states, and the federal government), and it also establishes tax principles. Within its ability, each entity may create its own taxes. However, the Constitution imposes general rules of taxation (including the defining of all taxes and relevant taxable events, the tax base, and the taxpayers) must be established by federal law.

For comprehension purposes, we could divide Brazilian taxes into three categories: 1) taxes on income and revenue; 2) taxes on the production and circulation of goods, on services and cross-border trade; and 3) taxes on financial operations. The first and third categories can be only be levied by the federal government while the second may be levied by the three entities, concurrently, each one with its specific powers.

I) FEDERAL TAXES

The following taxes can only be levied by the federal government: import duties; export duties; income and capital gains; tax on industrialized goods; tax on credit and exchange transactions; tax on insurance and securities; and tax on rural land.

- a) **Corporate Income Tax and Person Income Tax**: Income Tax is assessed on income and capital gains earned by resident individuals from domestic or foreign sources at the rates of 15% and 27.5% (depending on the level of income); corporate income tax is assessed on profits and capital gains generated by operations carried out within Brazil and abroad.
- b) **Withholding Tax**: Levied on payment, credit, or remittance of interest or capital gains, to a person/legal entity domiciled abroad. Dividends based on profits ascertained as of January 1, 1996, paid out or credited by corporations, are no longer subject to it.
- c) **ITR**: Tax on Property or Rural Real Estate.
- d) **IPI (Federal VAT)**: The IPI is levied by the federal government on the output of industrialized products by a domestic manufacturer or on import of such products by an importer, at rates varying according to the classification of the product. It is not levied on exports. As a VAT, IPI is recoverable to the extent that taxes paid upon import or acquisition of products can be offset against taxes due on subsequent transactions.
- e) **Import Duty**: The import duty is levied by the federal government on the importation of products, at rates varying according to classification of the product in

the Mercosul External Tariff Code (TEC), adopted by all Mercosul countries. Each country has a list of exceptions (for each country's local industry protection purposes, these are items that do not observe the TEC, and accordingly, bear higher or lower rates that will gradually conform to the TEC rates until the year 2011¹⁰).

f) IOF: IOF (tax on financial transactions) may be levied, as foreseen by the corresponding legislation, on transactions of: (i) credit, (ii) currency exchange, (iii) insurance, and (iv) securities negotiation.

g) Social Contribution: Usually levied on the company's gross income, the government may levy social contributions to fund social programs at low rates.

h) Simple Tax: Brazil has developed a simplified system of taxation and payment of taxes for micro and small businesses, whose gross income for the calendar year or equal to or less than R\$1,200,000 (approximately USD \$400,000). The "Simples" Tax is a Federal Tax. Several states have developed a similar system to replace the ICMS (State VAT) for their micro and small businesses.

II) STATE TAXES

The following taxes can only be levied by state governments: ICMS; IPVA; and tax on transmission of property owing to death or donation.

a) ICMS (State VAT): ICMS is levied by the States on the circulation of merchandise, on rendition of interstate and inter-municipal transportation and communication services, as well as on the importation of goods and services. Rates may vary from 7% to 25%. As a VAT, ICMS is recoverable to the extent that a tax paid upon importation or acquisition of products can be offset against a tax due upon subsequent transactions.

b) IPVA: The tax on ownership of automobiles (IPVA) is levied annually, varying from 2% to 4%, depending on the state and the characteristics of the vehicle.

c) Tax on transmission of property owing to death or donation: This tax is levied on the transfer of real estate or moveable property upon death or through a donation. Rates are progressive and vary from state to state according to the value of the property that is being transferred, but may not exceed 8%.

III) MUNICIPAL TAXES

¹⁰ <http://www.desenvolvimento.gov.br/sitio/interna/interna.php?area=5&menu=1848>

The following taxes can only be levied by municipal governments: ITBI; IPTU; and ISS.

- a) **ITBI**: The tax on transfer of property 'inter vivos' (ITBI) is levied on the onerous transfer of real estate. Rates are progressive and vary from municipality to municipality according to the value of the real estate transferred.
- b) **IPTU**: The tax on urban real estate (IPTU) is levied on the possession of urban real estate, and is levied annually on the value of the property. Rates also vary from municipality to municipality.
- c) **ISS**: The municipal tax on services (ISS) is levied on the rendition of services, depending on the kind of service, and also varies from municipality to municipality.

IV) TRANSFER PRICING RULES

Cross-border transactions (import and export of goods, services, and intangibles) entered into between a Brazilian company and a related party abroad, or a party residing in a tax haven-type jurisdiction, shall comply with transfer pricing regulation (arm's length standard). A company domiciled in Brazil is considered related to:

- a) Its parent company domiciled abroad;
- b) Its branch or subsidiary domiciled abroad;
- c) An individual or legal entity, residing or domiciled abroad, when it holds at least 10% of the share capital or control of the Brazilian company;
- d) A legal entity domiciled abroad in which the Brazilian company holds at least a 10% participation or has voting control;
- e) A legal entity domiciled abroad, which is under common corporate or administrative control with a Brazilian entity or when at least 10% of the share capital of each belongs to a common shareholder;
- f) A legal entity or individual, residing or domiciled abroad, that, jointly with the entity domiciled in Brazil, owns a controlling stake in a third legal entity;
- g) An individual or legal entity resident abroad with which the Brazilian entity is associated by a consortium or co-ownership in any enterprise;
- h) An individual resident abroad who is a family member, or is related up to the third degree of kinship to, or is a spouse or companion of one who is the director or associate with the Brazilian entity; and

- i) The exclusive agent, distributor or concessionaire for the purchase and sale of goods, services, or intangible properties of a resident or person domiciled abroad or in relation to whom the legal entity in Brazil acts as such.

Any jurisdiction that does not impose income tax or where such income tax is imposed at a maximum rate of 20% is deemed to be a tax haven.

V) TAX TREATIES

Brazil has signed treaties with various countries in order to avoid double taxation. The main method of tax relief under the treaties is the reduction or elimination of withheld taxes, rates on dividends, royalties, and loan interest payments remitted abroad. Of the tax rate stipulated in the treaty and the domestic tax rate, the lower rate will apply. Besides, Brazil affords its residents or citizens a credit against Brazilian income tax equivalent to the income tax paid in a foreign country, adopting the same regime for foreigners who paid their income taxes abroad. This is subjected to the limitations of Brazilian law and is strictly in accordance with the provisions of the relevant tax treaty.

For example, Brazil has signed and ratified treaties with Spain and Portugal in order to avoid double taxation.

V.1) The Mercosul

Brazil is also committed to a common market. Members of this Mercosul market include: Argentina, Paraguay, Uruguay, and Venezuela, plus the associates, Chile and Bolivia. Mercosul has a timetable for a gradual and general elimination of trade barriers that presents an opportunity for commercial integration and exports. Mercosul is a market with a population of more than 250 million. Investing in Brazil is also a valuable tool for penetrating the Argentine market, a smaller market but one that has a lot of potential and has undergone major recovery in the past year. Brazil is also engaged in preferential trade agreements with other countries, such as Portugal and South Africa, among others. It is especially relevant to mention that an extensive agreement between Mercosul and the European Union was settled in 2004, dealing with a wide range of subjects, such as investments, agriculture, and trade facilitation, which has particularly benefited European investors.

V.2) The United Nations Conference on Trade and the GSP (General System of Preferences)

Since GSP was created in 1970, Brazil has been one of its beneficiaries. Under GSP schemes of preference-giving countries, selected products originating in developing

countries are granted reduced or zero rates over the MFN rates. The least developed countries (LDCs) receive special and preferential treatment for a wider coverage of products and deeper tariff cuts. There are currently 16 national GSP schemes identified to the UNCTAD secretariat. The following countries grant GSP schemes: Australia, Belarus, Bulgaria, Canada, the Czech Republic, the European Union, Hungary, Japan, New Zealand, Norway, Poland, the Russian Federation, the Slovak Republic, Switzerland, Turkey, and the United States of America. Brazil is one of the countries that were granted special treatment by the European Union. The giving countries grant reduction on agricultural goods or industrial goods, listed positively or not mentioned in a negative list. It is important to highlight that if some products were made in Brazil, even if made by foreign companies, they may receive a better tax treatment in their home countries than if they were made in Brazil. This means that there are times when starting a business in Brazil, not only targeted at the Brazilian market but also at the foreign market, is a great deal. It also works well if the company aims at exporting worldwide, as countries such as Japan, Australia, the Russian Federation, the USA, and others, grant the GSP benefit to Brazil for specific goods.

V.3) Bilateral Investment Treaties and the World Trade Organization

As a general rule, all investments are subjected that which is outlined in the World Trade Organization Agreement on Investments (known as "TRIMS" - Trade Related Investment Measures). The TRIMS Agreement, one of the Multilateral Agreements on Trade in Goods, prohibits trade-related investment measures, such as local content requirements that are inconsistent with the basic provisions of GATT 1994. The General Agreement on Trade in Services names foreign investment as one of four modes of supply of services.

CONCLUSION

This study sought to address the key issues affecting the business community in Brazil, from the arrival of foreign investments aimed at the opening of businesses in the country, passing through the most prominent economic sectors and the most effective non-judicial forms of conflict resolution, to the legal labor, contractual and tax developments generated by the various branches of activity.

Born of a union of skilled professionals committed to legal practice, whose activities are focused on providing legal services for Brazilian and foreign companies in the areas of corporate legal counsel, risk management, consulting and litigation in general, **ALMEIDA ADVOGADOS** is a law office focused on the corporate business environment, and has as its major premise the full comprehension of each of its customers market area, the nuances of each industry, corporate culture and goals of each company. This approach allows us to provide to our customers safe and reliable legal services, in a very economical way.

ALMEIDA ADVOGADOS is placed at your disposal to provide any further clarifications related to the matters addressed in this study.

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