Doing Business in Brazil

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I - FORMS OF ASSOCIATION - INCORPORATION

Notwithstanding the large number of types of companies in the Brazilian legal system, the most used forms of enterprises are Corporations “Sociedades Anônimas” (S/A) - and the Limited Liability Companies “Sociedade por Quotas de Responsabilidade LTDA” (LTDA). This is due to the fact that in both cases all the participants have limited liability. The other company forms are rarely used.

I) SOCIEDADE ANÔNIMA

A Corporation (S/A), governed by Law no. 6.404 of December 15, 1976, is basically a commercial legal entity, with its capital stock represented by shares. It could therefore be defined as a business corporation having as its objective the earning of profits to be distributed to the shareholders.

There are two kinds of Corporations: (a) those capitalized by public offer and subscription, which are denominated “open capital S/A”; subject to Brazilian Securities and Exchange Commission (CVM) regulations and inspection, and (b) those obtaining their resources without any public offer, denominated “closed capital S/A”.

The Corporation may also be an authorised capital S/A, being incorporated with a subscribed capital of less than the authorized share capital established by its By-laws. Despite the founders’ establishing a determined authorized capital level (authorized capital), the company may operate with a capital lower than that authorized, which may then be gradually reached via issue of shares without the need of further approval by a Shareholders General Meeting or a change in the By-laws.

The requirements to establish a Sociedade Anônima are the following:

· subscription by at least 2 (two) persons of the entire allotted share capital;
· payment in cash of at least 10% (ten per cent) of the value of the subscribed capital;
· filing its By-laws with the local Board of Trade.

The capital of a joint stock company is divided into shares representing part or fractions of such capital stock. The shares may be common or preferred shares, depending on the rights they confer to holders thereof.

Common shares entitle the holder to the common or essential shareholders rights, such as voting rights while preferred shares do not, except if established contrarily in the By-laws. Special rights are reserved for holders of some kinds of shares, such as preferred shares (with or without right to vote). These consist of priority for capital return, with premium or without it, or even both the above advantages.

Shares can be either with par value or without par value. Shares with a par value always have a predetermined value expressed in money. In spite of their name, the shares without par value do have a price, their issue price. However, this price does not appear on the certificates. The issue price of the shares without par value is set by the founders, at the time company is formed, by a Shareholders General Meeting or by the Board of Directors at the time of a capital increase.

Each shareholder owns one or more shares in the capital stock. The minimum number of shareholders necessary to incorporate an S/A is two. The shareholders are guaranteed to be entitled to certain essential rights such as, but not limited to:

· profit sharing;
· in the event of liquidation, the right to participate in company business;

· priority in the subscription of shares, warrants convertibles into shares, convertible debentures and subscription warrants;
· withdrawal from the company in cases foreseen in the Law.
An Ordinary General Meeting of Shareholders must be held in the first 4 (four) months after the end of the fiscal year, according to the Law and company's By-laws.
The Corporation may be managed only by the Executive Officers or by the Board of Directors jointly with the Executive Officers, depending on company's By-laws.
The Board of Directors ("Conselho de Administração") is a body for collective decision-making, and is mandatory in public open-capital and authorised capital S/As, and optional in closed S/As. Its members must be shareholders, residing in the country. It must be composed of at least 3 (three) members, who shall be elected and removed by the Ordinary General Meeting of Shareholders.
The Executive Board ("Diretoria") is the executive body of the S/A. It is in charge of representing the company and practising all necessary acts related to its day-by-day operations. The "Diretoria" is composed of, at least, 2 (two) members – Executive Officers ("Diretores"), who may be shareholders or not, and must be individuals residing in the country, being elected and removed, at any time, by the Board of Directors, or, in the absence of such body, by the Ordinary General Meeting of Shareholders. "Diretores" may be elected for a tenure of 3 (three) years at most.
The financial statements of a Corporation show its financial position and changes occurred during the most recent period. In open capital S/As, the financial statements must be audited by independent audit firms or by independent auditors, duly registered with the Brazilian Securities and Exchange Commission. With respect to a closed capital S/A, the audit of its financial statements is optional.
Dissolution of a Corporation may be ordered by Court or occur by administrative decision. Prior to its dissolution, the company's liquidation, which may be amicable or judicial, must take place to appraise its assets, pay its debts and distribute the balance, if any, among the shareholders, according to their respective participation in the capital stock.

II) LIMITED LIABILITY COMPANY BY QUOTAS (LTDA)
A Limited Liability Company (LTDA) is governed by Decree no. 3.708 of January 10, 1919. LTDA is a middle term between a company composed of individuals and one formed by capital contributions. As it can unite aspects and conditions from both types of companies, it is frequently chosen by those who intend to establish a company.
The LTDA can be organised as a civil or commercial company, depending on the definition of its objectives set forth in the Articles of Incorporation.
A LTDA's capital is divided into quotas. A quota represents the amount in currency, credits, rights or assets with which the quotaholder contributes to incorporation of the company. The quotas are necessarily registered and are not represented by securities or certificates.
Among its characteristics it is relevant mentioning:
1. simplicity of its formation;
2. quotaholders liabilities are limited to the total amount of company capital;
3. it is not subject to the considerable costs publishing balance sheets and other relevant corporate acts incurred by joint stock companies;
The LTDA is incorporated by its Articles of Incorporation and possesses only one class of partners, the limited liability quotaholders, which can be an individual or a legal entity. Each

quotaholder is liable for the total amount of the capital and not only for its quotas, until the capital is fully paid-up. From there on, quotaholders will have no further liability with the company or third parties.
In principle, the managing quotaholder, or the delegate-manager, is not responsible for liabilities contracted in the company's name. Nevertheless, the manager will be held liable with the company and to third parties for acts which exceed the limits established by the Articles of Incorporation and for acts which infringe the Law. Such irregularities can evidently provide grounds for the dismissal of the manager by the majority of quotaholders.
Brazilian Decree no. 3.708 establishes that the quotas of a LTDA are of one form and class. A LTDA may not issue common or preferred shares.

II - BRANCHES
Brazilian law recognises the legal personality of a foreign company, which is permitted to exercise and defend its rights in Brazilian territory. However, to open a branch in Brazil and do business, the enterprise must obtain authorisation from the President of Brazil, through Executive Decree. The proceeding usually takes about three months from request date. Note that branches are not submitted to special exchange regulations.
When authorisation is requested, the foreign investor must deposit an amount of the capital destined for the operations in Brazil and determined by the governmental body, which issues the authorisation.
A branch must adopt the name of the enterprise as a whole, followed by the expression "do Brasil" or "para o Brasil".

III - FOREIGN CAPITAL - DIRECT INVESTMENT
Although there are several company forms in Brazil, only two of them are really worth considering for investment purpose in a Brazilian subsidiary. These are (i) the “LTDA” (or limited liability quota company) - a hybrid between a corporation and a partnership -; and (ii) the “Sociedade Anônima” or “S.A.”, which is the basic corporation form in Brazil.
In relation to the limited liability quota company, a foreign investor could essentially be the sole quotaholder, but at least one additional quotaholder (preferably two, if natural persons) would have to hold a nominal participation in the equity. Each quotaholder is liable for the payment in full of his quota of the capital. As the same time, in the event the company goes bankrupt, each quotaholder is liable, jointly and severally with the others, for payment in full of company’s capital to the extent it may not already have been fully paid up, regardless of whether that particular quotaholder’s own quotas were fully paid or not.
As far as Brazilian law is concerned, there is no requirement that the capital must be paid upon formation of the LTDA. The Articles of Incorporation may provide that the capital be paid in over the time or as requested by management. (However, to obtain a permanent visa for expatriate managers, should such be the case, currently, a minimum amount of capital equivalent to US$ 200,000.00 would have to be paid in at outset.) The quotas of LTDA - referred to as shares of corporation - are of one form and class, although the Articles of Incorporation may attribute a percentage of participation in the profits to a quotaholder, which is not the same as his percentage of the quota-holdings.
Law Nr. 6.404 of December 15, 1976 governs Sociedades Anônimas, which are similar to a corporation. Such law is far more detailed than LTDA’s Decree No. 3.708. As a result, statutory law in practice, determines management structure, operations and corporate acts of a Sociedade

Anônima more frequently than they are in the case of a LTDA. Sociedade Anônima is formed with at least two shareholders by adoption of by-laws, which are filed with the Commercial Registry. Shareholder's liability is limited to payment in full of his own shares. Unlike a LTDA, Sociedade Anônima requires that at least 10% of the amount of the initial subscription to shares be paid in at the company's formation.

In general terms, a LTDA is a more flexible company form than a Sociedade Anônima. Therefore, if there is no minority shareholder or joint venture partner involved (who could have conflicting interests), there will be no compelling reason to form a Sociedade Anônima. By using the LTDA form, the investor could avoid (to the extent it desires) the management structure of a corporation, the formalities associated with the operation of a Sociedade Anônima (calling shareholders' meetings, maintaining minute books) and the disclosure rules applicable to same (publication of financial statements and minutes of shareholders' meetings). Under these circumstances, we usually recommend that the more appropriate company form for the Brazilian Subsidiary would be a LTDA. (Please note that it would always be possible to change the form at any time.)

Contribution to the capital of the Brazilian Subsidiary should be in foreign hard currency, through official exchange market, or in Brazilian currency, through certain legitimate funding mechanisms. However, only capital contributions in foreign hard currency are eligible for registration with Central Bank of Brazil. Such foreign capital registration would allow the Brazilian Subsidiary to remit dividends to foreign company and repatriate the registered capital base, at least up to the then current net worth of the Brazilian Subsidiary, through the official exchange market. At any given time, a foreign investor's registered capital base is the amount of capital it has paid in together with the amount of any increases in capital resulting from capitalised retained earnings.

Foreign Capital

Foreign capital in Brazil is governed by Laws nr. 4.131 (the "Foreign Capital Law") and 4.390, dated September 3, 1962 and August 29, 1965, respectively. Both laws are regulated by Decree nr. 55.762, of February 17, 1965, and have been amended.

As set forth in Law nr. 4.131/62, "foreign capital is considered to be any goods, machinery and equipment that enter into Brazil with no initial disbursement of foreign exchange, and are intended for production of goods and services, as well as any funds brought into the country to be used in economic activities, provided they belong to individuals or companies resident or headquartered abroad".

Foreign capital shall be registered with Central Bank of Brazil (Central Bank), which will issue a Certificate of Registration reflecting the amount invested in foreign currency and corresponding amount in Brazilian currency. Such certificate allows remittance of profits abroad, repatriation of capital and registration of reinvested profits.

Investor who does not request the register of invested capital within legal term is subject to the penalties imposed by Central Bank, which, at present, represents a fine equal to US$ 50,000.00.

No preliminary official authorisation is required for investment in currency. The investment to subscribe capital or acquire equity stock in a Brazilian company may be remitted to this country through any banking establishment authorised to deal with foreign exchange.

There is usually no restriction on distribution and remittance of profits abroad. Since January 1st, 1996, profits are exempt from income tax withholding.

Should a foreign investor decide to reinvest profits in the company that produced them or in another sector of domestic economy, same are eligible for registration as foreign capital along with the original investment thereby increasing the basis of calculation for future remittances.
Foreign capital registered with Central Bank may be repatriated to its country of origin, at any time, without authorisation. Only returns in excess of the registered amount will be considered capital gains, being subject to 15% withholding income tax.
Central Bank will examine the net worth of the company involved, as shown in its balance sheet. In case net worth is negative, Central Bank may conclude dilution of investment existed, and may thus deny authorisation for repatriation of part of the investment in proportion to such negative result.
Remittance of funds, not corresponding to registered investment, is forbidden.
The equity stock owned in a Brazilian company by a foreign investor may be sold, assigned or otherwise transferred abroad, with no tax implications in Brazil, regardless of price paid. Foreign purchaser will be entitled to register capital in the same amount as the registration previously held by seller, once again regardless of the price paid for the investment abroad. Application must be presented to Central Bank for issuance of new Certificate of Registration reflecting the change in foreign investor's identity, which is essential to allow the new investor to remit/reinvest profits and to repatriate capital.
Certificate of Registration will allow remittance of the principal, interest and any other expenses and/or burdens related to the external indebtedness. Any alteration to terms of the agreement shall be recognised by Central Bank of Brazil and reflected in respective Certificate of Registration. Whilst transfer of amount related to the principal are income tax free, remittance of interests or any other kind of income is submitted to such tax assessment, at the rate of 15%.
Remittances of currency as royalties and/or expenses for technical/scientific assistance are only authorised after the register of corresponding agreements with Central Bank of Brazil. Such remittances are also submitted to a withholding income tax at a rate of 15%.

IV - TAX LAW

I. GENERAL FEATURES:

Brazilian tax system encompasses the following tax categories:
1) Federal taxes
2) State taxes
3) Municipal taxes
Brazilian Federal Constitution establishes tax competence of each federative entity (municipalities, states and federation). It also establishes tax principles.
Within its competence, each entity may create its own taxes. However, the Constitution imposes that general rules of taxation - including definition of all taxes and relevant taxable events, tax basis and taxpayers - must be established by a federal law.

FEDERAL TAXES

1. CORPORATE INCOME TAX

Rate: 15%, plus a 10% surtax on annual taxable income exceeding R$ 240,000.00 (approximately US$ 123,077.00 at US$1/R$1,95 exchange rate).
Payment: Monthly on an estimated basis, or quarterly, on an actual basis.
Estimated basis: Levied at a 15% rate, on a percentage of gross revenue ranging from 8% to 32%.

10% surtax is due whenever tax basis exceeds R$ 20.000,00 (approx. US$ 10,256.00 at US$1/R$1,95 exchange rate). Income tax returns are due by March of the following year.
Actual basis: Income tax is paid quarterly at a 15% rate on the actual taxable income (calculated in accordance with the additions and exclusions established by the income tax legislation), plus a 10% surtax, levied on the amount exceeding R$ 60.000,00 (approx. US$ 30,769.00 at US$1/R$1,95 exchange rate).
2. PERSONAL INCOME TAX -Levied at progressive rates, according to the brackets shown below:
Monthly Income Applicable Rate Deduction Allowed
Up to R$ 900.00 exempt
From R$ 900.00 to 1,800.00 15% R$ 135.00 (deductible)
In excess R$ 1,800.00 25% R$ 315.00 (deductible)
For adjustment purposes, tax return is due at the end of the fiscal year.
3. WITHHOLDING TAX - Levied on payment, credit or remittance of interest or capital gains, to a person/legal entity domiciled abroad. The general rate applicable is 15%.
Royalties: 15%
Interest: 15%
Dividends: 0%
4. SOCIAL CONTRIBUTION
Rate: 12%for all legal entities.
Payments: When the income tax is paid monthly on an estimated basis, the social contribution should be calculated at 12% on an estimated tax basis of 12% of company's gross revenue. When the income tax is paid quarterly on a actual basis, the social contribution should be calculated at 12% of the actual profits.
5. PIS/COFINS - The Turnover Tax (PIS) is levied at a 0.65% rate on company's total monthly invoicing. The Social Security Financing Contribution (COFINS) is levied at a 3% rate on company's total monthly invoicing. Neither PIS nor COFINS are due on export of goods and services.
6. ITR - Tax on Property of Rural Real Estate (ITR) levied annually at variable rates on the value of the rural real estate. Rates vary according to the degree of utilisation of the land.
7. COMPULSORY "LOAN" - The compulsory loan may be levied by the federal government whenever there is a need to cover extraordinary expenses deriving from public calamity, external war or its imminence, or in the case of public investment of urgent nature and of relevant national interest.
8. PAYROLL TAXES - Payroll taxes are calculated on employees' monthly salary at varying rates, depending on the company's activity:
Social Security tax: 20%
Other Fees: 2.0% to 6.0%
Insurance against labor accidents: 1.0% to 3.0%
Severance Pay Indemnity Fund (FGTS): 8% (deposited monthly to employee's blocked account).
9. IPI (FEDERAL VAT) - The IPI is levied by the federal government on the sale of industrialised products by a domestic manufacturer or on import of such products by an importer, at rates varying according to classification of the product.
Taxpayers are the importer, the manufacturer (or qualified as such by the law), the dealer of products subject to taxation, when purchased by the previous taxpayers, and the buyer at auction of seized or abandoned products. For IPI tax purposes, industrialisation (or manufacturing) is the

process whereby a product is subject to any procedure that modifies its nature or purpose, or improves it for marketing.
As a VAT, IPI is recoverable to the extent that tax paid upon import or acquisition of products can be offset against tax due upon subsequent transactions.
IPI tax rates vary according to the degree of essentiality of the product, from 0% to 30%. Non-essential/hazardous products (e.g. cigarettes) can be taxed at the highest rate.
10. Import duty - The import duty is levied by the federal government, on import of products, at rates varying according to classification of the product in the Mercosul External Tariff Code - TEC, which is based on the Harmonized Tariff System. The tax basis for import duty is the CIF value of the equipment.
Mercosul External Tariff Code (TEC) is adopted by all Mercosul countries, each of them having a list of exceptions (for each country's local industry protection purposes, these are items that do not observe the TEC, and accordingly bear higher or lower rates that will gradually conform to the TEC rates until year 2006).
Because import duty may be a useful Governmental tool to balance trade debts, as a rule its rates may be raised at any time through an act of the Executive Power. Notwithstanding this possibility foreseen in the Brazilian legislation, a rate increase exceeding the TEC rate will only be allowed with the approval of the other Mercosul members.
11. IOF - IOF (tax on financial transactions) may be levied, as foreseen by the corresponding legislation, on transactions of: (i) credit, (ii) currency exchange, (iii) insurance and (iii) securities negotiation. As a regulatory tax, IOF rates may be raised and lowered by the Executive Power at any moment, with immediate enforceability.
12. CPMF - CPMF is denominated a provisional tax, because such tax is to be basically collected on debits to bank accounts only until June 17, 1999. Taxpayers are the holders of bank accounts, and the tax rate is 0,38%, on the 12 (twelve) first months, and 0,30% on the following 24 (twenty-four) months. As a rule, the taxpayer is the person/legal entity from whose account the amounts are withdrawn.
STATE TAXES
1. ICMS (STATE VAT) - ICMS is levied by the States on circulation of merchandise and on rendition of interstate and inter-municipal transportation and communication services, as well as on import of such goods and services. Rates may vary from 7% to 25%. As a VAT, the ICMS is recoverable to the extent that tax paid upon import or acquisition of products can be offset against tax due upon subsequent transactions.
2. IPVA- The tax on property of automotive vehicles (IPVA) is levied annually on the possession of such vehicles.
3. TAX ON TRANSMISSION OF PROPERTY OWING TO DEATH OR DONATION - This tax is levied on the transmission of real estate or movable property upon death or through a donation. Rates are progressive and vary from state to state according to the value of the property that is being transmitted, but can not exceed 8%.
MUNICIPAL TAXES
1. ITBI - The tax on transmission of property inter vivos (ITBI) is levied on the onerous transmission of real estate. Rates are progressive and vary from municipality to municipality according to the value of the real estate that is being transmitted.
2. IPTU - The tax on property of urban real estate (IPTU) is levied on the possession of urban real estate. It is levied annually on the value of the urban real estate. Rates vary from municipality to municipality.

3. ISS - The municipal tax on services (ISS) is levied on the rendition of services, at rates ranging from 0,5% to 10%, depending on the kind of service, and varying from municipality to municipality.

V - REPRESENTATIVES (AGENTS AND DISTRIBUTORS)

1. Commercial Representation - Agency

Commercial Representation in Brazil is governed by Law nr. 4.886, of December 9, 1965, amended by Law nr. 8.420, of May 8, 1992. According to these laws, Commercial Representation is defined as the intermediation activity performed on a permanent basis by any person or company committed to achieve the market of products or services on behalf of a company or of several companies.

In this sense, the commercial representatives perform their duties by gathering sales proposals from potential customers and sending them for approval of the represented company.

In case of acceptance, the commercial representative will be entitled to claim for a previous and contractually agreed percentage of the transaction proceeds("commission"), conditioned to effective payment performed by the customer, unless the agreement sets out the rights of commission regardless of buyer's payment.

Commercial representation agreements, as well known as Agency Agreements, shall be in duly executed as written documents. As per article 27 of Law nr. 8.420/92, besides the specific provisions agreed by the parties, same shall regulate the following subjects: (i) general conditions of the representations; (ii) indications and features of the products; (iii) duration of the commercial representation relationship; (iv) indication of representation area, along with permission (or not) for the representation company to perform direct sales of its own in the indicated areas; (v) granting (or not) of exclusivity in indicated area; (vi) commission's value and stipulation if its payment will be conditioned (or not) to the effective collection of buyers' payment; (vii) exclusivity (or not) on behalf of the represented company's products; and (viii) indemnity to be paid to commercial representative, in case of non justified termination of the contract, which shall not be less than 1/12 of the total remuneration paid to the agent during the agreement.

Law nr. 4.886/65, as altered by Law nr. 8.420/92, establishes expressly the events, which may lead to termination for cause by the represented company and also by the commercial representative.

2. Distribution

Distribution Agreement can be defined as an agreement, in which a person undertakes the obligation to purchase the merchandise of a certain manufacturer to resell, with or without exclusivity, and for his own account, in a certain territory, and in which the manufacturer undertakes the obligation to sell its products on a continuous basis, to a distributor for resale in the territory. Such agreements are not subject to specific legislation in Brazil, although many authors consider distribution agreements to be commercial concession agreements latu sensu.

It is recommended that all distribution agreements should be in writing and must specify the following conditions:

(a) Parties shall keep a continuous buyer/seller relationship during the term of the agreement;
(b) Supplier shall always provide special advantages to distributor;
(c) Product to be traded shall necessarily be resold by distributor;
(d) Territory or territories where distribution shall be exercised must be expressly indicated;
(e) Contract must determine whether there is exclusivity in distributorship within the territory;

(f) There is to be no other relationship between the parties other than the one settled in the contract (there is no labor relation between them).
Supplier is entitled to comply with the following obligations:
(a) Any orders received by supplier from customers in the territory shall be passed on to distributor for fulfillment.
(b) Supplier shall promote publicity towards the products and services related to these rendered by distributor.
Obligations of distributor are as follows:
(a) To maintain a suitable number of complete sets of samples of products for marketing purposes;
(b) to promote the supplier's products.
Distribution agreement shall remain in force for a definite or indefinite period, as provided therein.
3. Labor Effects
Neither commercial representatives nor distributors acquire rights as an employee. Notwithstanding, as Brazilian Labor law is very strict, it is recommendable, to avoid labor claims and heavier economic burdens, that represented company makes the following restrictions for its commercial representation contracts in Brazil: (i) commercial representative should be established as a company; (ii) represented company must restrict the orders granted to representative company to the performance of representative's obligations.
4. Regulatory Bodies
Every commercial representative must be registered before "Conselho de Representantes Comerciais" (Commercial Representative Council) of the state where the respective activities take place. Such Councils have regulation power regarding the exercise of the profession. There is no regulatory body for distributors.
5. Commission Rates
Commission rates shall be set forth in agency agreements. The commercial representative is entitled to receive the commission only after the order is paid and until the 15th day of the subsequent month of payment. Distributors do not receive commissions since they buy to resell and the remuneration is by means of a margin resulting from the resale price.
6. Anti-trust Regulation
Both commercial representation and distribution agreements are submitted to Anti-Trust Law (Law nr. 8.884/94) provisions. Accordingly, such agreements must not produce any of the following effects, or, otherwise, it may be considered infringement of economic order: (i) limitation, fake or in any other manner damage of free competition or free initiative; (ii) domination of relevant market of goods or services; (iii) unjustifiable rise of profits; and, (iv) unfair exercise of dominant position (Anti-trust Law, art. 20).
7. Termination Rights
In regards to Commercial Representation, in case of non-justified termination of the agreement by the represented company, executed for an undetermined term, which remained in force for more than six (6) months, shall be subject to previous notice of thirty 30 days, or an indemnification equivalent to the average remuneration of the last three months is applicable in case of non concession of the prior notice.
Despite the prior notice, the termination without cause of the agreement for an undetermined period of time also gives raise to the obligation for the represented company to pay an

indemnification, which shall be, at least equal to 1/12 of the total amount paid as commissions during the contractual term.
With relation to agreements with determined term, such indemnity shall correspond to monthly average of the income paid to representative until contractual rescission, multiplied by the number of month left for contractual term end.
Unlike commercial representation agreements, there is no specific provisions that regulate indemnification upon termination of distribution agreements in Brazil. However, Brazilian Courts in case of abrupt and abusive termination have already condemned manufacturers to pay an indemnification to distributors other than the one established in the agreement. In the absence of specific statutes, principles of contract, civil and commercial law and analogy to other typical contracts are also applicable.

VI - LABOR LAW IN BRAZIL AND FOREIGN WORK

Labor Law in Brazil was influenced by transformations in Europe, the various countries' concern in creating law to protect workers, and particularly the commitment made by the country with the International Work Organization, which combined with important domestic factors - such as the government labor policy and the industrial upsurge - triggered the creation of a series of laws.

Only in 1943, the Consolidation of the Brazilian Labor Laws (CLT) was created to group the few laws existing at that time in addition to the institutes developed by legal scholars.

The Consolidation of the Brazilian Labor Laws (CLT), the primary legal system that rules labor relationships, accounts for more than 900 articles.

Among the chapters forming this system there are important norms relating to:

Labor Safety General Norms,
Working Hours Duration, Minimal Salary and Vacations Norms,
Medicine and Occupational Safety Norms,
Special Work Tutorship Norms,
Work Nationalization Norms,
Woman Work Protection Norms,
Underage Work Protection Norms,
Individual Employment Contract Norms,
Workers' Union and Trade Association Norms and Classification,
Workers' Union and Trade Association Contribution Norms.

Besides, the CLT has the whole legal system concerning Labor Court, such as applications and related agencies, also stating the norms that rule labor proceedings in Brazil.

Although the CLT was enacted in 1943, with the passing of time the Brazilian legal system was modernized with the creation of a number of laws ruling certain issues such as the Law

concerning Strikes, or the laws that brought new wording to CLT's articles.

With the enactment of the Federal Constitution in 1988, in addition to the labor norms duly consolidated, new labor rights were created or improved in the body of the final version.

The labor rights provided for by labor laws stemming from either the CLT, specific laws or from the Federal Constitution are the following:

(a) minimal salary;
(b) 44-hour weekly working hours;
(c) salaries not decreased;
(d) unemployment insurance;
(e) 13th salary;
(f) profit sharing;
(g) additional pay for overtime;
(h) annual vacations;
(i) maternity leave;
(j) paternity leave;
(l) prior notice;
(m) retirement;
(n) approval of collective norms;
(o) employment-related accident insurance;
(p) Workers' Compensation Fund;
(q) right to strike;
(r) provisional tenure for members of Internal Commission for Accident Prevention, employees victims of employment-related accident and the pregnant employee.

Finally, it is important to emphasize other sources of law existing and which are respected by the Brazilian legal system:

(a) Collective Bargaining and Collective Labor Agreements;
(b) Superior Labor Court Jurisprudence Statements;
(c) Norms issued by the Ministry of Labor; and
(d) some Agreements developed by the International Employment Organization.

As a consequence of the high cost borne by companies related to the so-called labor charges, the number of companies adopting outsourcing and the flexibilization of labor rights resulting Collective Bargaining/Agreement grew substantially.

There is a clear tendency in recent decisions rendered by the Superior Labor Court towards accepting flexibility as an important fact in the current phase of development of employment relationships.

In fact, Brazil has been undergoing an important historic moment where large changes are expected to occur.

FOREIGN WORK IN BRAZIL

The Ministry of Labor, through the Immigration General Coordination (CGIg), has the specific competence of being responsible for the work authorization for foreign nationals, to issue a concession of visas, according to the Law NR. 6.815 of 19 August of 1980.

There are different sorts of work visas defined by the Brazilian Laws, but there are no restrictions about the nationality of the applicant and spouse or children under 21 years old.

The law establish 7 (seven) categories of visas

- Transit
- Tourist
- Temporary
- Permanent
- Courtesy
- Official and
- Diplomat

11.1 Visas for Short-Term Business Visitors and Tourists

Persons from some countries will require a visa to travel to Brazil on short-term business or for tourism. Business visitors traveling on this type of visa must not receive remuneration for services from Brazil. The visa may be obtained at the Brazilian Consulate having jurisdiction over the place of residence of the applicant, and the application consists of the following:

- The purpose of the trip
- Names, addresses and telephone numbers of business contacts in Brazil
- Date of arrival and anticipated departure
- Guarantee of financial and moral responsibility for the applicant for the duration of the visit

In the case of tourists, a round-trip airline ticket.

If a visa is required for the country to which the applicant is going after Brazil, that visa must already be included in the passport, prior to requesting the Brazilian visa.

The visa is generally issued within 24 hours. This type of visa may be valid for a period up to 90 (ninety) days from the date of first arrival in Brazil. It may be utilized for multiple entries during that period. An extension for a further period up to three months, may be obtained from the Immigration Authorities in Brazil, prior to expiration of the visa.

11.2 Temporary Employment Visas

For persons coming to Brazil on a temporary basis for employment purposes, there are other four categories:

(1) Temporary for Professionals. This visa is available to individuals coming to Brazil to work for a temporary period not more than 2 years initially, and may be renewed for an additional 2 year period. This type of visa is available to foreign nationals who will be temporarily employed at a Brazilian company in a position requiring special knowledge. The candidate shall receive his salary in Brazil.

(2) Artist and Sportspersons. The request for this visa must be submitted to the Brazilian labor ministry by the Brazilian organization which is sponsoring the event for which the individual's services will be required.

(3) Foreign Journalist. This visa is available for foreign journalist working on a temporary basis in Brazil. The candidate must not receive his salary in Brazil.

(4) Religious Mission. This visa may be granted to religious persons for specific mission in Brazil for up to one year.

The applicant for any of these types of visa may obtain an Employment Authorization from the Brazilian authorities. It is an administrative act, which comes under the competence of the Ministry of Labor, as an exigency of the Brazilian Consular Authorities, according to the national legislation, to obtain a concession of permanent and/or temporary visas, for foreign nationals wishing to work in Brazil. Upon approval, the employment authorization will be published on the Federal Official Gazette, and the designated Consulate will be notified, so that the foreign national may apply for the visa issuance.

11.3 Other Temporary Visas

(1) Mission of Studies: Extended business visa. The candidate must not receive any compensation in Brazil.

(2) Student. This visa is obtained by students at the Brazilian Consulate having jurisdiction over the place of residence of the applicant. The student must not work in Brazil.

11.4 Permanent Employment Visa

The permanent visa is issued in the case of a foreign company that has a branch or subsidiary in Brazil, and wishes to transfer a statutory director or manager to the Brazilian company.

Individuals who will be permanently transferred to Brazil to work for a subsidiary or branch of a foreign-owned company in the capacity of director or manager, may apply for a permanent employment visa. 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. To apply for a permanent visa for its

director or manager, the company must have, at least, US$ 200,000 invested in Brazil and registered within Central Bank of Brazil.

To obtain permanent employment authorization for an individual not presently working in Brazil on a temporary basis, application must first be made to the Ministry of Labor. However, to obtain a conversion from temporary to permanent status, application must be made by the company to the Ministry of Justice, by presenting the same documents as presented for the Permanent visa.

11.5 Registration upon Entry into Brazil

All foreign who enter in Brazil holding a Temporary or Permanent visa must register with the Ministry of Justice within 30 days of arriving in Brazil. This applies to alien residents of Brazil, immigrants, and temporary residents coming for employment (except for those admitted as artists, sportspersons or short-term businesspersons). The individual must present his/her passport.

11.6 Travel in Advance of Permanent or Temporary Employment

Persons 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. However, they may not be paid locally until the employment authorization and visa are issued. Furthermore, the individual must obtain the permanent or temporary visa outside of Brazil.

11.7 Employment of Spouses/Children

Accompanying spouses and children are not permitted to engage in employment while residing temporarily in Brazil, but will be authorized for employment if converted to permanent resident status.

These are the most common work visas defined in the Brazilian laws, but we also have the situation where the candidate is married to a Brazilian or has a Brazilian child. These situations allow the candidate to apply for a permanent visa at the Brazilian Consulate, before coming into the country, or at the Ministry of Justice if the candidate is already in the country.

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