

# Brazil Legal Provisions

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## 1. Introduction

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

The population is about 203,1 million, according to the most recent census of IBGE (2022). 56% of them live in the south and south-eastern region, the wealthiest and best-developed area of Brazil, responsible for around 70% of the Brazilian GDP.

Characterized by large and well-developed agricultural, mining, manufacturing and service sectors, Brazil's economy outweighs all other South American countries and is expanding its presence in world markets. Today, Brazil is the 11<sup>th</sup> largest economy in the world (by GDP).

Brazil is Switzerland's major trading partner in the region: 54% of Swiss exports to South America go to Brazil (source: [Swiss-Impex](#)).

With the largest economy and population in Latin America, Brazil still presents considerable export opportunities, mainly in areas such as energy, infrastructure and IT. According to a report of the Embassy of Switzerland in Brazil, the industrial sectors that present the greatest opportunities for Swiss companies are infrastructure, cleantech, machinery, healthcare, food and agritech, and fintech.

Despite government efforts to improve business environment and simplify regulations, Brazil still has substantial obstacles for exporters. In the 2023 IMD World Competitiveness Ranking, the country is in the 60th position out of 63 countries, that represents a real challenge and requires deep knowledge of the local environment. Tariff barriers, although reduced over the last years, are still high, and companies face a very difficult customs system, a very high and unpredictable tax burden with a legal system that is overburdened and is often unable to be an effective enforcer of business law.

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

In January 2022 the agreement to avoid [double taxation](#) came into force, an important step towards providing a clear legal and fiscal framework and facilitating investments. As for the free trade agreement between EFTA and Mercosur, there is still a long way to go to get to ratification and implementation, according to the Swiss Ambassador to Brazil, Pietro Lazzeri, which requires efforts at the governmental, legislative and private levels.

## 2. Import / Export

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

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

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

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

Brazil has implemented the WCO (World Customs Organization) Authorized Economic Operator (AEO) Program, according to Normative Instruction [2154/2023](#). More information on the Brazilian federal revenue service agency [website](#).

## **2.1. Import licenses - automatic and non-automatic procedure**

For all imports, an import license is needed. For many products, a so called "automatic import license" (*licenciamento automático*) is sufficient. The importer may request it online through the foreign trade system SISCOMEX. Automatic licenses are normally issued within ten days of application. Goods must be shipped within 180 days from issuance of the import licenses.

In other cases, a non-automatic license is necessary. The importer can check the [SISCOMEX system](#) about the required licenses and the granting government agencies.

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

Different government bodies are responsible for issuing of import licenses, depending on the goods.

As a general rule, all food imports to Brazil are subject to a sanitary control through the Ministry of Agriculture, Livestock, and Supply (MAPA) or through the Brazilian Health Surveillance Agency (ANVISA).

Importation of products from animal origin is conditioned to prior approval of the exporting establishment in Switzerland by a MAPA inspector (<https://www.gov.br/agricultura/pt-br/assuntos/saude-animal-e-vegetal/saude-animal/importacao>). Travelling costs (flight, accommodation and local expenses) must be paid by the Swiss company. The approval has no expiration date and does not have to be renewed in the future. Nevertheless, for each export, a sanitary certificate is needed.

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

## **2.2. Prohibited imports**

Prohibited imports in international shipping include:

- Goods intended for resale or to undergo an industrialization process when imported by an individual, except for imports made by a rural producer, artisan, artist, or similar;
- Counterfeit and/or pirated products;
- Goods offensive to morals, decency, health, or public order;
- Narcotic substances or drugs;
- Currency in cash;
- Products prohibited by administrative control bodies for health, metrology, public safety, environmental protection, sanitary controls, phytosanitary, and zoosanitary controls.

Prohibited imports as baggage include:

- Cigarettes and alcoholic beverages manufactured in Brazil intended exclusively for sale abroad;
- Cigarettes of a brand not commercialized in the country of origin;
- Replicas of firearms;
- Species of wild fauna without a technical opinion and license;
- Aquatic species for ornamental and agricultural purposes without permission from the competent authority;
- Counterfeit and/or pirated products;
- Products containing genetically modified organisms;
- Agrochemicals, their components, and related products;
- Goods offensive to morals, decency, health, or public order;
- and Narcotic substances or drugs.

See the prohibited and restricted products [here](#) and [here](#).

### **2.3. Import regulation for used machines**

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

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

### **2.4. Import regulation for wood packing material**

As a signatory to the International Plant Protection Convention (IPPC) of the Food and Agriculture Organization (FAO), Brazil requires compliance with the IPPC standards for wood packing material, ISPM 15 (International Standard for Phytosanitary Measures). See the guidelines for regulation of wood packaging material in international trade [here](#).

### **2.5. Labelling and packing regulations**

The Brazilian Customer Protection code states that imported products can be sold in their original packaging provided that an additional label is attached to the product with the proper information in Brazilian Portuguese. Usually, this label is placed on the product in Brazil by the importer. Special label regulations apply to imported pharmaceutical specialties, antiseptics, disinfectants, cosmetics, beauty and hygienic preparations, alcoholic beverages, foodstuff. See also chapter 5.

According to the regulation of the National Agency of Sanitary Surveillance (ANVISA), RDC 208/2018, the packaging must contain the following minimum information when entering the national territory, according to the product class to which it belongs:

Food:

- a) Trade name in use abroad;
- b) Manufacturer's name and manufacturing location;
- c) Lot number; and
- d) Expiration date.

Cosmetics / Perfumes / Hygiene Products:

- a) Trade name in use abroad;
- b) Country of manufacture; and
- c) lot number or code.

Sanitizing:

- a) Trade name in use abroad;
- b) Manufacturer's name and manufacturing location;
- c) Lot number; and
- d) Expiration date.

Health Products:

- a) Trade name in use abroad;
- b) Manufacturer's name and manufacturing location;
- c) Lot number or code or part number;
- d) Date of manufacture; and
- e) Expiration date.

Products for in vitro diagnostics:

- a) Trade name in use abroad;
- b) Manufacturer's name and manufacturing location;
- c) Lot number or code or part number;
- d) Date of manufacture; and
- e) Expiration date.

Medicines:

- a) Trade name;
- b) Manufacturer's name and manufacturing location;
- c) Lot or batch number or code;
- d) Date of manufacture; and
- e) Expiration date.

See information on labels and instructions for use of medical devices at chapter VI of RDC/2022: <https://www.in.gov.br/en/web/dou/-/resolucao-rdc-n-751-de-15-de-setembro-de-2022-430797145>

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

## **2.6. Temporary import**

After more than 5 years of use in the Brazilian territory, the ATA Carnet can no longer be used as a customs document able to support temporary admission and export operations of goods in the country due to the lack of expression of interest by any national organization to take place of guaranteeing and issuing association, essential for the continuity of the program. The operations with ATA Carnet in Brazil ended on December 31<sup>st</sup>, 2021. See detailed information [here](#).

Currently Brazil has two temporary admission regimes (i) without import duties and (ii) with proportional duties, according to Normative Instruction [1600/2015](#).

### **2.6.1. Temporary imports without import duties**

The following goods, among others, may be submitted to the temporary admission regime with total suspension of payment of taxes on imports:

- Goods intended for scientific, technical, political, educational, sporting, religious, commercial or industrial events;



- Goods intended for the assembly, maintenance, repair or repair of foreign or nationalized goods, the application of the regime being authorized for parts and pieces exclusively intended for replacement in foreign goods;
- Goods that will be object of homologation, tests, expertise, functioning or resistance tests, or even used in the development of products or prototypes;
- Goods intended for the temporary replacement of imported goods, by virtue of guarantee;
- Goods destined for commercial promotion, including samples without commercial destination and samples of commercial representatives;
- Goods intended for projects or events of a cultural nature;
- Goods intended for international sports competitions and exhibitions;
- Radio, television and press equipment in general;
- Goods intended for clinical and surgical activities provided free of charge in a humanitarian action approved by the health agency of the direct public administration that promotes it;
- Goods intended for launching services for space artifacts, integration and testing of systems, subsystems and space components, previously authorized by the Brazilian space agency (aeb), including machines, equipment, devices, parts, pieces and tools intended to guarantee launch operability.

See the complete list of goods in chapter I, section II of Normative Instruction [1600/2015](#).

The customs clearance for temporary admission with total suspension of payment of taxes may be processed based on an Import Declaration (DI), registered in the Integrated Foreign Trade System (Siscomex), or on a Single Import Declaration (Duimp), registered on the Portal Foreign Trade System (Siscomex Portal). In some cases, the customs clearance can be processed based on the Simplified Import Declaration (DSI), including goods for events.

Within this regime, temporary imports are limited to 1 (one) year, considered the likely period of permanence of the goods in the Country indicated by the beneficiary, but can be extended up to 5 years on the customs authority's discretion. Application for an extension must be justified to the customs authority (Receita Federal) and submitted prior to the limit date.

### **2.6.2. Temporary import with proportionally import duties**

The special customs regime of temporary admission for economic use is what allows the importation of goods intended for the provision of services to third parties or for the production of other goods intended for sale, for a fixed period, with payment of federal taxes levied on importation, in proportion to their length of stay in the customs territory. It also applies to goods intended to serve as an industrial model, in the form of moulds, dies or sheets and to industrial tools.

Proportionality will be obtained by applying the percentage of 1% (one percent) on the amount of taxes originally due, for each month or fraction contained in the period of effectiveness of the regime.

The maximum term of validity of the regime will be 100 (one hundred) months. The provision of a guarantee in an amount equivalent to the amount of suspended taxes will be required. The guarantee will be waived when it comes to imports carried out by a company certified as an Authorized Economic Operator (OEA) or when the amount of taxes with suspended payment is less than R\$ 120,000.00 (one hundred and twenty thousand reais), among other exceptions provided in the Normative Instruction 1600/2015.

The customs clearance of temporary admission for economic use may be processed based on DI or Duimp.

## 2.7. Import of samples and catalogues

According to the Decree no. [6759/2009](#), article 153, the following samples are considered without commercial value:

I - samples represented by quantity, fragments or parts of any merchandise, strictly necessary to make known its nature, species and quality; and

II - goods contained in international postal shipments considered to have no commercial value, which are not intended for profit-making purposes and whose Free On Board - FOB value does not exceed US\$ 10.00 (ten dollars of the United States of America).

They can be carried to Brazil in the luggage or sent by post without payment of import tax (II), tax on industrialized products (IPI), COFINS and PIS/PASEP. Some samples may require previous authorization from specific government departments (especially health-related products).

Samples, whether they have a commercial value or not, which are sent to recognized importers, need the same documentation as ordinary commercial shipments, including an import license. Documents for samples should be marked as "sample, not for sale" (amostra grátis). No more than one sample of each product should be sent. Catalogues can be sent to Brazil without paying tax if the parcel is declared as without commercial value "documentos sem valor comercial".

## 2.8. Mail order imports

The Brazilian Post Office ([Correios](#)) accepts imports of up to US\$ 3,000 which are subject to a 60% import duty and weight limit is **50 kg**. Exemptions are granted in case of medicine and imports under US\$ 50, provided that they are performed between individuals or it is intended for the individual's use. See a complete [list](#) of products that are exempt from import taxes. Prohibitions and restrictions: <https://www.correios.com.br/enviar/proibicoes-e-restricoes/proibicoes-e-restricoes>.

Imports are subject to the Tax on Circulation of Goods and Provision of Services (ICMS), according to the legislation of each State (see chapter 7.9), being charged by the Post Office or courier companies.

In addition to taxes, it is worth noting that Correios and courier companies also charge the recipient other fees, such as customs clearance costs, for example, which have nothing to do with public bodies and are part of the private transaction between the client and service provider.

## 2.9. Import duties

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

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

### Customs duties

Import taxes are set between 0 and 35% and levied over the CIF value (FOB price plus insurance and freight). Exact rates can be found on: <https://portalunico.siscomex.gov.br/classif/#/sumario>

Exemptions or reductions on import duties are granted to:

- certain capital goods (marked on the previous mentioned list with BK),
- information and telecommunication goods (marked with § or BIT)

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

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

### Other taxes and duties

Additionally to the import tax (II), federal value-added excise tax (IPI), contributions (PIS and COFINS), state value-added sales and services tax (ICMS), as well as a seaport tax (AFRMM, 8% on sea freight costs), are levied on imports.

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

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

## **2.10. Preferable import taxes**

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

Brazil is also a member of the Southern Common Market (Mercosur), together with Argentina, Paraguay and Uruguay (Venezuela was suspended since August 2017), as well as with the associated members Bolivia, Chile, Colombia, Ecuador, Guiana, Peru and Suriname, which form a common market of more than 295 million consumers.

In 2019, member countries of Efta (European Free Trade Association) and Mercosur concluded negotiations for a [free trade agreement](#) in Buenos Aires. The agreement still awaits approval of the respective countries parliaments to enter into force.

## **2.11. Manaus free trade zone**

The free trade zone of Manaus is designed to encourage manufacturing for export and local sales in the Amazon area up to 2073. Raw materials, parts and components imported in the Manaus free trade zone enjoy deferment of customs duties and exemption of federal excise tax (IPI). See a brief guide in English (from page 19) [here](#).

## **2.12. Example of calculation of import costs**

The following spreadsheet provides an overview of import costs in Brazil for the following [Mercosul Tariffcode](#) (NCM):

- **18.06** Chocolate e outras preparações alimentícias que contenham cacau (*Chocolate and other food preparations containing cocoa*)
- **1806.20.00** Outras preparações em blocos ou em barras, com peso superior a 2 kg, ou no estado líquido, em pasta, em pó, grânulos ou formas semelhantes, em recipientes ou embalagens imediatas de conteúdo superior a 2 kg (*Other preparations in blocks or bars, weighing more than 2 kg, or in liquid form, paste, powder, granules or the like, in immediate containers or packages of a content exceeding 2 kg*).

Please note that the import tax rate for this product is temporarily and exceptionally reduced, until December 31, 2023, according to article 7 of this resolution: <https://www.gov.br/produtividade-e-comercio-externo/pt-br/assuntos/camex/atas-e->

Number of Containers per shipment - DRY 20, 40, HC 40, OT 20, OT 40, flat rack		<b>1</b>
Number of BLs per shipment		<b>1</b>
<b>Description</b>	<b>% Taxes</b>	<b>US\$</b>
Exchange rate US\$ / BRL reference December 2023	4,95	
FOB Value European Seaport - <b>estimated</b>		100,000.00
International Sea Freight - <b>estimated</b>		2,000.00
International Insurance Door to Door	0.3% of FOB and Freight	306.00
<b>CIF Value Brazil</b> - basis for the calculation for taxes and charges		<b>102,360.00</b>
<b>Federal and State Taxes for import (Generic, depending on the HS - Harmonized Code)</b>		<b>US\$</b>
Import Tax - <b>II</b> - Federal	14.4% on CIF*	14,732.06
Tax on Industrialized Products - <b>IPI</b> – Federal	0% on (CIF+II)*	0,00
Program for the Social Integration - <b>PIS</b> – Federal	2.10% on (CIF+II+IPI) adjusted*	2,148.43
Contribution for the Financing of Social Security - <b>COFINS</b> – Federal	9.65% on (CIF+II+IPI) adjusted*	9,872.53
Tax on the circulation of goods - <b>ICMS</b> – State	18% on (CIF+II+IPI+PIS+COFINS )*	28,330.03
<b>Total Costs after Tax</b> - this value must be declared on the receipt ( <i>nota fiscal</i> ) and kept for tax reasons		<b>157,398.05</b>
<b>Charges at any southern Brazilian Seaport for imports</b>		
Seaport charge - <b>AFRMM</b>	8% on freight	160.00
THC - Terminal Handling Carrier - per container		107.07
Seaport Warehouse - 10 days	0.90% on CIF	920.75
Warehouse – optional	0.90% on CIF	920.75
Removal to warehouse - optional		70.71
Handling / load / unload / container	<i>per container</i>	80.81
Customs broker		1,023.06
Syndicate of the customs broker ( <i>despachantes</i> ) – <b>SDA</b>		320.00
Bill of Lading clearance		145.00
Exchange Bank Tax		80.00
Registration on <b>SISCOMEX</b> system		80.00
Road transport - <b>hypothetical</b>		850.00
<b>Total Expenses</b>		<b>4,758.15</b>
<b>Total Costs after Taxes and Charges</b>		<b>162,147.20</b>

<b>Total Value / FOB</b>	<b>1.6215</b>
*São Paulo	Source: Elotrans

<b>S.D.A</b>	<b>2%</b>	<b>on CIF Value</b>	2,046.12
Min.	170,00	MAX.	320,00

### 2.13. Documentation and procedures on imports

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

The following documents are required, according to article 553 of the [Customs Regulation](#):

- Import Declaration (DI) for all imports - must be organized by the importer through the SISCOMEX system
- Original shipping documents (BL or AWB), mandatory for all imports
- Original commercial invoice, signed by the exporter - mandatory for all imports
- Proof of payment of taxes - mandatory, if required
- Packing list - where applicable
- Certificate of origin - where applicable
- Loading manifesto, to be required exclusively due to international agreements or specific legislation
- Confirmatory documents of the commercial transaction, in the case of an import declaration selected for the gray channel

In order to make commercial processes more efficient and transparent, centralizing the interaction between the government and the private sector, the Single Foreign Trade Portal Program has been gradually implemented by the Brazilian government.

Initiated in 2014, the program is scheduled to be completed by 2026, with recent improvements such as the air Cargo Control and Transit (CCT), a system that controls imports by air completely via digital documents, reducing the time previously spent by up to 80%, and the Flex License, that has simplified the routine and reduced costs for companies that need authorization to trade with other countries.

More information about this program: <https://www.gov.br/siscomex/pt-br/conheca-o-programa/cronograma-de-implementacao>

To find out if the operation will need authorization for the import to be completed, check the [import simulator](#).

Although importers may clear merchandise through Brazilian customs themselves, this is often delegated to a customs agent ("*despachante*") or a freight forwarder.

*Despachantes* are organizations that provide a wide range of services with the purpose of expediting the customs clearance process. The customs clearance fees charged by these organizations are controlled by their union. *Despachantes* are employed not only because they can clear goods through customs faster, but also because they eliminate the need for permanent staff in the importing company to handle such matters.

### 2.14. Export regulations

Brazil encourages exports by offering a number of export-related incentives, such as:

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

More information on Law 8.402/1992: [www.planalto.gov.br/ccivil\\_03/leis/l8402.htm](http://www.planalto.gov.br/ccivil_03/leis/l8402.htm) and guide on how to export: [www.gov.br/siscomex/pt-br/servicos/aprendendo-a-exportar/conhecendo-temas-importantes-1/desoneracao-tributaria-das-exportacoes](http://www.gov.br/siscomex/pt-br/servicos/aprendendo-a-exportar/conhecendo-temas-importantes-1/desoneracao-tributaria-das-exportacoes).

The exporter can also benefit from **Proex**, a program of the Federal Government that assists Brazilian companies in exporting goods and services, providing financing under conditions similar to those in the international market. There are two modalities: Proex Financing, which provides funds directly to the exporter or importer, and Proex Equalization, which facilitates financing by financial institutions in Brazil and abroad.

For more information, please refer to chapter 7: Taxes

### **Export taxes (IE)**

At the moment export taxes on cigarette and arms are in force.

Further information (only in Portuguese): <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/camex/estrategia-comercial/imposto-de-exportacao-pleito>

### **Methods of quoting and payment**

The import payment can be made in any currency, regardless of that registered in the Import Declaration - DI, including when in reais, observing that, in the payment of imports in a foreign currency other than that registered in the DI, the amounts involved must be correlated parity compatible with those practiced by the international market. Normally, imports must be paid within **360 days**, but can be extended in some special cases. Imports with a payment period over 1 year are considered as a financed transaction and need special registration (ROF). Brazilian exporters of goods and services can keep all of the resources received abroad related to their exports.

Import payments can also be made using an international credit card issued in the country or, for operations of up to US\$ 50,000.00 (fifty thousand United States dollars), or its equivalent in other currencies, through an international money order.

Quotations in FOB and CIF (**Incoterms 2020**) are common, but all other INCOTERMS are also possible. The most used currencies are US\$ and € but it is also possible to quote/ invoice in Swiss Francs. Payment terms can be in advance, collection (payment terms are freely negotiable, averaging 360 days), with or without a letter of credit coverage.

### **Sources Chapter 2:**

SISCOMEX import licenses

<https://www.gov.br/siscomex/pt-br/arquivos-e-imagens/2022/01/Minuta-de-Portaria-Licenciamento-Importacoes.pdf>

Elotrans Spreadsheet Import Cost Calculation

Brazilian federal revenue service agency (Receita Federal)

International Plant Protection Convention (IPPC)

[www.ippc.int/en/publications/640/](http://www.ippc.int/en/publications/640/)

Brazilian Mail and Telegraph Company (Correios)

National Agency of Sanitary Surveillance (ANVISA)

Central Bank of Brazil

### **3. Currency Regulations / Restrictions / Profit Transfer**

#### **3.1. The Brazilian currency**

The Brazilian monetary unit is the Real (R\$ or BRL, plural Reais) which is divided in 100 cents, called centavos. Exchange rates on December 2023: 1 USD = 4,9516 BRL, 1 CHF = 5,6642 BRL. Current exchange rates can be found on:

<https://www.bcb.gov.br/conversao>

The Brazilian Real is not freely convertible. Purchase and sale of foreign currency in Brazil, performed through authorized agents, is subject to governmental control. The Brazilian Central Bank allows the exchange rate to float freely, but may intervene occasionally "to ensure smooth functioning of the foreign exchange market" by means of swaps auctions and selling foreign currency in the spot market.

More information about the historical evolution of the Brazilian foreign exchange market and the current foreign exchange system modernization at:

<https://www.bcb.gov.br/en/financialstability/fxpolicy>. There is also an openly used, although illegal, parallel exchange market.

#### **3.2. Foreign capital and investment restrictions in Brazil**

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

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

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

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

- Banks and financial institutions;
- Exploitation and use of deposits, mines and other mineral resources;
- Coastal navigation for transport of products, with some specific exceptions;
- Ownership and administration of journalistic, TV and radio broadcasting companies;
- Purchase of rural real estate or property alongside border areas;
- Health plans, except for some specific cases.

See more details at <https://swisscam.com.br/en/publicacao/doing-business-in-brazil/37-foreign-investment/>

#### **3.3. Registration of foreign investment with the Central Bank**

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



The registration of incoming money must be performed within thirty (30) days from the transaction date by the representative of the Brazilian company or investor that receives the investment. Non registration may result in fines that may total BRL 125,000.00 per transaction, according to Central Bank resolution [131/2021](#).

### **3.4. Foreign direct investment**

Remittance of funds to Brazil as a capital contribution does not require a prior authorization of Brazilian authorities and the resources may be transferred to Brazil whenever the Brazilian company may need them. In order to access the funds, the Brazilian company must convert them into Brazilian currency. The foreign investor must have the taxpayer identification number (CNPJ for companies and CPF for individuals).

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

The dividends and/or interests on equity due to the foreign investor may be (i) remitted to the foreign investor or (ii) reinvested in the same Brazilian company or in another Brazilian company. The reinvestment is registered with RDE-IED in local currency.

The remittance of profits abroad is subject to two prerequisites: (i) the foreign investments must have been duly registered in the SISBACEN system; and (ii) the Brazilian company must yield a profit. The same applies to the payment of interest on equity (*juros sobre capital próprio*).

According to Law [9.249/1995](#), the remittance of dividends is not subject to withholding income tax, even when distributed to non-resident parent companies. On the other hand, the amount paid as profit distribution cannot be deducted as an expense of the Brazilian company for tax purposes.

Interest on equity intends to remunerate the investment on the basis of the equity. Opposite to dividends, payment of interest on equity is a tax-deductible expense. The payment or credit of interest on equity to the partner/shareholder is taxed by the withholding income tax at the rate of 15%. If the beneficiary of this payment is located in a tax haven (see 7.6.), the income tax rate is increased to 25%. The total value of interest on equity payable or credited to the partners shall not exceed 50% of the accrued profits or fiscal year, whatever is greater.

### **3.6. Capital repatriation**

The capital that may be repatriated free of taxes is up to the amount of the foreign currency indicated in the SISBACEN system. The amount that exceeds the registered investment cost characterizes a capital gain and causes withholding income tax at the rate of fifteen percent (15%), or twenty-five percent (25%) in case the beneficiary is located in a low-tax jurisdiction.

### **3.7. Foreign Currency Loans**

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

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

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



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

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

According to Central Bank's Ruling No. [3,691/2013 article 90](#), the Brazilian exporters may maintain abroad the totality of the revenues related to the payments of their exports.

### **3.9. Exchange control on imports**

All imports in Brazil must be declared in the SISCOMEX system. The imports with a payment term of more than three hundred and sixty (360) days are subject to registration with the Central Bank, in the ROF module. More information:

[https://www.bcb.gov.br/content/estabilidade financeira/cambiocapitais/normas\\_cambio/rmcci/RMCCI-1-12.pdf](https://www.bcb.gov.br/content/estabilidade financeira/cambiocapitais/normas_cambio/rmcci/RMCCI-1-12.pdf)

### **3.10. Declaration of assets maintained outside Brazil**

Individuals (Brazilians or expatriates considered as residents for fiscal purposes) and legal entities resident, domiciled or headquartered in Brazil, must submit annually to the Central Bank a list of assets and rights with total value of US\$1,000,000.00 or higher they hold outside of Brazil, according to resolution [4841/2020](#).

Furthermore, if the total sum of the above mentioned assets is equal to or higher than US\$100,000,000.00 (one hundred million US Dollars) or its equivalent in other currencies, such individuals and legal entities must also submit the same declaration on a quarterly basis.

The delay or non-compliance with submission of the declaration, as well as provision of incorrect, incomplete or false information, will be subject to penalties to be applied by Central Bank.

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

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

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

Since 2014, Switzerland is not anymore considered by the Brazilian Federal Revenue Service a "tax haven". After several negotiations and efforts, the Swiss government achieved to reverse the situation and the Brazilian government suspended the "tax haven" status. Now, both countries agreed on following a standard for automatic exchange of information on capital income, called the AIA. This procedure is based on OECD-standard and will take effect in 2019.

In 2018, an important agreement was signed between Brazil and Switzerland, the "Convention to Eliminate Double Taxation in Relation to Income Taxes and Prevent Tax Evasion and Avoidance". The Swiss Ambassador to Brazil, Pietro Lazzeri, emphasized it is an important step towards providing a clear legal and fiscal framework and facilitating investments. The agreement was approved by the Swiss parliament in 2019. In Brazil, it was ratified in 2021 and came into force in January 2022. More information: [https://www.sge.com/sites/default/files/article/downloads/swiss\\_hub\\_-\\_dtt\\_brazil\\_and\\_switzerland\\_-\\_2022.10.17.pdf](https://www.sge.com/sites/default/files/article/downloads/swiss_hub_-_dtt_brazil_and_switzerland_-_2022.10.17.pdf).

### **Sources Chapter 3 and further information:**

Brazilian Central Bank  
SWISSCAM Doing Business in Brazil Guide  
MRE - Ministry of External Relations  
FCR Law

## **4. Registration Procedures for Products**

To export food and medical products (drugs, medical supply, diagnostics, equipment and devices, products intended for aesthetic corrections), pharmaceutical raw materials, cosmetics, blood and its derivatives products, sanitizing products and disinfectant, tobacco and pesticides to Brazil, it is mandatory to have prior registration.

All of these products must be approved by the Health Surveillance Agency, ANVISA. In addition, products containing ingredients from animal origin (in general) must be approved by the Ministry of Agriculture, Livestock and Food Supply (MAPA). See complete information at [www.gov.br/agricultura/pt-br/internacional/english/importing/animal/importing-animal-products](http://www.gov.br/agricultura/pt-br/internacional/english/importing/animal/importing-animal-products). Pesticides must be evaluated by three federal government bodies: MAPA, IBAMA (Brazilian Institute for the Environment and Renewable Natural Resources), and ANVISA.

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

Depending on the product, the registration validity varies from one to ten years and may be renewed continuously for the same period. Request for an extension must be performed in the first semester of the last year of validity. For information about sanitary surveillance costs, see 4.2.

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

Further information (in English) about procedures, labelling and other requirements can be found on the ANVISA websites: <https://www.gov.br/anvisa/pt-br/english>

Brazil has become the 54th Participating Authority of the [Pharmaceutical Inspection Co-operation Scheme](#) as from January 2021, that allows a mutual acknowledgement between the inspections of ANVISA and SwissMedic.

### **4.1. Time for Registration**

In theory, if the required documentation is complete (technical information, product registration certificate from the Swiss Health Ministry or commercialization certificate of the country of origin), registration may take from 60 days to a year, depending on the product. The above deadlines may be extended by up to one third of the original deadline only once. In practice, the product registration process often takes more than one year. See a detailed list with deadlines [here](#).

### **4.2. Registration Fee**

A registration fee, called "Taxa de Fiscalização de Vigilância Sanitária" (TFVS), is charged by ANVISA upon submission of product registration (see table below). A Good Manufacturing Practices (GMP) certification is required from manufacturers, which must be renewed every two years. See more information at: <https://www.gov.br/anvisa/pt-br/english/regulation-of-companies>. Considering the complex legislation and the involved bureaucracy, assuming that your

partner does not have a legal department, it is advisable to use the services of a law firm specialized on medical regulation.

The registration fee depends on the product and on the turnover of the Brazilian company which registers the product (and not of its Swiss producer). A complete list with the registration and other possible fees can be found in the table of values (Annex I) of the RDC 198/2017: [https://www.in.gov.br/materia/-/asset\\_publisher/Kujrw0TZC2Mb/content/id/1432285/do1-2017-12-28-resolucao-rdc-n-198-de-26-de-dezembro-de-2017-1432281](https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/1432285/do1-2017-12-28-resolucao-rdc-n-198-de-26-de-dezembro-de-2017-1432281).

It is also possible to register groups or families of products. Please note that the table below is an overview of the registration fee related to some products. A complete list can be found using the link above.

Product	Company Type					
	Group I (big) Annual turnover over 50 Million	Group II (big) Annual turnover from 20 to 50 Million	Group II (medium) Annual turnover from 6 to 20 Million	Group IV (medium) Annual turnover from 3.6 Million to 6 Million	Small Annual turnover from 360,000 to 3.6 Million	Micro Enterprises Annual turnover below 360,000
	BRL	BRL	BRL	BRL	BRL	BRL
Food, food additives, beverages, bottled water and recycled packaging	10,637.40	9,041.79	7,446.18	4,254.96	1,063.74	531.87
Cosmetics	4,881.00	4,148.85	3,416.70	1,952.40	488.10	244.05
Medicines						
new products	157,416.00	133,803.60	110,191.20	62,966.40	15,741.60	7,870.80
similar products	41,000.40	34,850.34	28,700.28	16,400.16	4,100.04	2,050.02
generic drug products	11,714.40	9,957.24	8,200.08	4,685.76	1,171.44	585.72
phytotherapeutic and homeopathic drugs	10,637.40	9,041.79	7,446.18	4,254.96	1,063.74	531.87
Sanitizing products	15,619.20	13,276.32	10,933.44	6,247.68	1,561.92	780.96
Diagnostic and therapeutic equipment						
large scale	39,048.00	33,190.80	27,333.60	15,619.20	3,904.80	1,952.40
medium and small scale	15,619.20	13,276.32	10,933.44	6,247.68	1,561.92	780.96
Pesticides	3,172.14	2,696.32	2,220.50	1,268.86	317,21	158,61
Tobacco	196,770.00	167,254.50	137,739.00	78,708.00	19,677.00	9,838.50
Good Manufacturing Practices (GMP) certification (foreign country, except Mercosur)	72,804.90	72,804.90	72,804.90	72,804.90	72,804.90	72,804.90

#### 4.3. Replacement of representatives

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

The Swiss company can always choose another partner, but the registration process needs to be redone under the name of the new agent.

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

The transfer of a product registration is applied in the following cases, according to RDC [102/2016](#), and updated by RDC [233/2018](#):

- Incorporation, merge or split-up
- Transfer of assets or a set of assets

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

#### **4.4. Patents, trademarks and copyrights**

Federal Law [9,279](#) of May 14, 1996 regulates rights and obligations regarding industrial property. The protection of industrial property rights is afforded by means of: I. the granting of invention and utility model patents; II. the granting of a registration of an industrial design; III. the granting of a registration of a trademark; IV. the repression of false geographical indication; and V. the repression of unfair competition.

##### Patents

The life of a patent of an invention lasts 20 years and for an utility model is 15 years from the date of filing the application with the National Institute of Industrial Property (INPI). The title to patents is transferable. An interested party can apply for a compulsory license and-or for forfeiture of the patent when proving that the patent holder has not exercised the patent rights or has suspended exploration after a three-year period following the grant of the patent.

Pharmaceutical patent applications must have the authorization of the National Agency of Sanitary Surveillance (ANVISA) before submission to the Brazilian Patent & Trademark Office (INPI).

In 2019, Brazil signed the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Trademarks in Brazil are now recognized in 115 countries, including Switzerland.

##### Trademarks and trade names

Trademarks in Brazil may be registered in the following forms: (i) nominative (only words); (ii) word and design (styled drawing, word or letters); (iii) figurative (only drawing); (iv) three-dimensional (drawing in three dimensions – example: product or packaging format); and (v) position mark.

In the event of a trademark application to be filed in Brazil which has already been requested in a country that has an agreement with Brazil or with an international organization, the right to priority can be granted, provided the time periods set in the agreement are fulfilled.

As provided in article 4 of the Convention of the Union of Paris (CUP), which Brazil is also a signatory party, the period to request priority is of six months for trademarks. Therefore, the trademark holder is entitled to the filing date in the country of origin, and any fact which occurs within this period (between the original filing and the filing in the country where the priority is requested) shall not prevent its registration in Brazil.

Registration is valid for ten years and may be renewed for similar periods indefinitely.

## Industrial Designs

The registrations of industrial designs are issued without an examination on the merits, in a few months (in average 6 to 12 months) as of the filing of the application and are valid for 25 years, at maximum.

The Hague Agreement allows for the international protection of industrial designs and since August 2023, Brazil has also joined the agreement, so that Brazilian products can now be marketed in Switzerland and in more than 90 countries with this protection.

## Copyrights

Law no. 9609 of February 19, 1998 governs copyright, the term encompassing the rights of authors and neighboring rights. Foreigners resident outside the country shall enjoy the protection provided for in the agreements, conventions and treaties in force in Brazil.

The provisions of this law shall be applicable to the nationals of and persons resident in countries that assure Brazilians or persons resident in Brazil of reciprocity in the protection of copyright or equivalent rights.

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

### **Sources Chapter 4 and further information:**

ANVISA [www.anvisa.gov.br](http://www.anvisa.gov.br)

SWISSCAM Guide "Doing Business in Brazil", chapter 4 and 19

Pharmaceutical Inspection Co-operation Scheme

## **5. Standards, Technical Provisions – Labelling Regulations**

### **5.1. Entities involved in the definition of standards in Brazil**

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

Sinmetro is a Brazilian system consisting of public and private entities that perform activities related to metrology, standardization, industrial quality and certification of compliance.

Sinmetro has an infrastructure of technological services enabled to assess and certify quality of products, processes and services through certification bodies, a network of essay and calibration laboratories, training bodies, proficiency essay bodies and inspection bodies, all accredited by Inmetro.

This system supports standardization agencies, scientific and industrial metrology laboratories and legal metrology laboratories of the states. This structure is formed to meet the needs of industry, commerce, government and consumers.

## 5.2. Standards and Technical Regulations

[Conmetro](#) is the regulatory authority of Sinmetro and is chaired by the Minister of Economy. Conmetro operates through its technical advisory committees, which are open to society through participation of entities representing the academic, industry, commerce areas and other activities with interest in metrology, standardization and quality in Brazil.

Inmetro is the National Institute of Metrology, Quality and Technology, a federal agency under the Ministry of Economy. As part of its broad institutional mission, Inmetro aims to strengthen national companies, increasing their productivity through the adoption of mechanisms aimed at improving the quality of products and services.

Its mission is to provide Brazilian society with confidence in measurements and products through metrology and conformity assessment, promoting the harmonization of consumer relations, innovation and the country's competitiveness. Among Inmetro's competences and attributions are:

- implement national metrology and quality policies;
- verify and supervise compliance with technical and legal standards with respect to units of measurement, measurement methods, materialized measurements, measuring instruments and premeasured products;
- maintain the standards of measurement units, as well as implement and maintain the traceability chain of measurement unit standards in the country, in order to make them harmonized internally and internationally compatible, aiming at their universal acceptance and use for quality of goods and services;
- strengthen the country's participation in international activities related to Metrology and Conformity Assessment, promoting exchanges with foreign and international entities and bodies;
- stimulate the use of quality management techniques in Brazilian companies;
- plan and execute Accreditation activities of Calibration and Testing Laboratories, proficiency testing providers, Conformity Assessment Bodies and others necessary for the development of technological services infrastructure in the Country;
- coordinate, within the scope of Sinmetro, the activity of Conformity Assessment, voluntary and compulsory of products, services, processes and people;
- plan and execute research, teaching, technological development in Metrology and Conformity Assessment activities; and
- develop activities related to service provision, technology transfer and technical cooperation, when focused on innovation, scientific and technological research in Metrology and Conformity Assessment.

When the need for normalization of a particular issue arises, ABNT (Brazilian association of technical standards) forwards the subject to the responsible Technical Committee, where it will be exposed to the various involved sectors. Once the Draft Standard is prepared with the requested subject, it is submitted to National Consultation. In this process, the Draft Standard, prepared by a Study Committee representative of stakeholders and sectors involved with the subject, is submitted to the society for consideration. During this period, any interested party may speak without charge to recommend to the authoring Study Committee the approval of the text as presented; approval of text with suggestions; or its non-approval, and, for such, it must present the technical objections that justify its manifestation.

Proposed voluntary standards that are open for public consultation can be accessed through: [www.abntonline.com.br/consultanacional](http://www.abntonline.com.br/consultanacional).

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

### **5.3. Product Certification**

#### How can I know if my product can/should be certified?

There are two types of certifications within the Brazilian Conformity Assessment System: Voluntary or Compulsory Certifications.

Compulsory certifications are those in which a regulation states that a company can only produce/market a product after its certification.

In this case, an Inmetro ordinance defines the mandatory requirements to be followed by all companies that produce a certain product, as well as the deadlines that the company will have to comply with the regulation.

The first step is to find out if there is a certification applicable to your product, and whether this certification is compulsory or voluntary. The list of products covered by Inmetro's Compliance Assessment Program can be found on the Inmetro website at the following link:

Products under Compulsory Certification:

<http://www.inmetro.gov.br/qualidade/rtepac/compulsorios.asp>

#### Where do I start the process for certifying my product?

Once you have confirmed that there is a certification program for your product, and find out if it is compulsory or voluntary, the next step is to assess whether your company meets the requirements to apply for certification by reading the corresponding standard or regulation. After this assessment, the company should look for an Inmetro accredited Product Certification Body (OCP) to perform the certification process for its product. To find out which OCPs are accredited to conduct certification of a particular product, the company should consult the Inmetro website, at:

<http://www.inmetro.gov.br/organismos/consulta.asp>

#### Which OCP should I choose? What is the best OCP for me?

There is no definition of "the best OCP" to perform a certification process. Having the list of accredited OCPs to perform the process of a particular product, the company should consult one or more of these, and choose the one that best meets their needs. Inmetro does not engage in these procedures. The institute's function is to accredit the Bodies, according to the rules defined by Cgcre (General Coordination of Accreditation). Upon accreditation, any OCP is recognized by Inmetro as competent to conduct the certification process for that specific product. Negotiation of certification deadlines and budget between OCP and companies that produce this product is free.

#### How much does a certification process cost? How long does it take to certify my product?

It is not possible to determine exactly the cost of a certification and the time to complete this process in a generic way as it varies from product to product according to the level of complexity of the tests required by a standard or regulation. Also, it is not possible to determine the certification price of a specific product, as there is no table setting the prices charged by OCP. In this way, each body is free to set its market prices. Therefore, companies should consult this value directly with accredited OCP.

#### What happens after I choose the OCP? How does this certification process work?

The OCP you choose will always be ready to answer your questions. Each regulation (or standard) establishes the procedures for product certification. Generally, certification processes consist of



document review and product testing. Upon completion of these steps and possible corrective actions that may be required, the OCP issues a certificate for the product, declaring its compliance with the regulation or standard, and records this certificate with Inmetro.

#### **5.4. Mercosur standards**

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

#### **5.5. Labelling**

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

However, the information that should appear on the packaging depends on the type of product.

For example, food products must contain, in addition to the information mentioned above, additions to the nutritional value.

Thus, the company should seek specific information about each product.

Information resources on labelling:

Normative Instruction nº 75: <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-in-n-75-de-8-de-outubro-de-2020-282071143>

Labels and Packaging Plant-based Products and Wines/Beverages (Official Standards): <https://www.gov.br/agricultura/pt-br/assuntos/inspecao/produtos-vegetal/rotulos-e-embalagens>

Product Registration: <https://www.gov.br/agricultura/pt-br/assuntos/inspecao/produtos-animado/empresario/registro-de-produtos-rotulagem>

Labeling of products regulated by Anvisa (Brazilian Health Regulatory Agency): <https://cvs.saude.sp.gov.br/legis.asp?p=rotulagem>

Technical regulation on how to indicate the net weight or dimensions of any product: <http://www.inmetro.gov.br/legislacao/rtac/pdf/RTAC002775.pdf>

#### **Sources chapter 5:**

ABNT	Associação Brasileira de Normas Técnicas	<a href="http://www.abnt.org.br">www.abnt.org.br</a>
AMN	Asociación Mercosur de Normalización	<a href="http://www.amn.org.br">www.amn.org.br</a>
INMETRO	Instituto Nacional de Metrologia, Normalização e Qualidade Industrial	<a href="http://www.inmetro.gov.br">www.inmetro.gov.br</a>

## **6. Environmental Legislation**



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

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

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

### 6.1. Environmental Liability

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

Although Brazilian environmental legislation is one of the most up-to-date frameworks in the world, deforestation continues to expand at high annual rates, according to a [report](#) of the Brazilian National Justice Council (CNJ) and the European Union.

According to Law [9.605/98](#), the sanctions specifically applicable to legal entities are, among others:

- warnings
- fines (single or daily fines ranging between BRL 50.00 and BRL 50 million – see also Normative Instruction [19/2023](#))
- partial or total suspension of activities
- suspension of product manufacturing
- penalties restricting rights: suspension or cancellation of registration, licensing, permit or other authorizations granted to the corporate offender; loss of tax benefits and incentives or credit facilities from official institutions; and prohibition against signing any agreement with the government authorities
- provision of services to the community: funding of environmental programs and projects; carrying out work to recover degraded areas; maintenance of public spaces; contributions to public environmental or cultural entities

Brazil ratified in 2021 the Convention on Biological Diversity ([Nagoya Protocol](#)) then undertaking the obligation to establish internal rules regarding the access to the genetic resources under its jurisdiction and to protect the traditional knowledge of local communities and indigenous population, valuable to the conservation and sustainable use of the biodiversity.

The enforcement of the [Biodiversity Law](#) is performed by IBAMA, which is entitled to:

- Impose fines ranging from BRL 1,000 to BRL 100,000 when the violation is committed by individuals; and from BRL 10,000 to BRL 10,000,000 when the violation is committed by a legal entity.
- Seize samples containing the component from the Brazilian biodiversity that was subject to the access; instruments employed to acquire or process the component from the Brazilian biodiversity or of the associated traditional knowledge that was subject to access; products deriving from the access to the genetic resource or to associated traditional knowledge; or products obtained from information arising out of associated traditional knowledge.
- Suspend temporarily the manufacturing and sale of the finished product or reproductive material deriving from access to the genetic resource or to associated traditional knowledge up to its regularization.

- Suspend (fully or partially) the specific activity related to the infraction.
- Suspend or cancel a certificate or authorization granted.
- In addition to the administrative sanctions above, companies that violate the law may have their names associated with biopiracy, then offering a serious risk of damage to their brands and image.

## 6.2. Environmental Licensing

In order to start your business properly, it is critical to check if your business requires an environmental licensing.

The environmental licensing is the procedure in which the government, represented by environmental agencies, authorizes and monitors the implementation and operation of activities that use natural resources or that are considered effective or potentially polluting. It is the obligation of the company, as provided by law, to seek environmental licensing from the competent agency, from the initial stages of its planning and installation until its effective operation.

Every business sector listed in CONAMA's Resolution [237](#) of 1997 is required to have an environmental license. Therefore, it is necessary to check if your company's activity is listed there and, in this case, follow the legal procedures for environmental licensing. In general terms, the following activities or undertakings are subject to environmental licensing:

- Mineral extraction and treatment
- Non-metallic mineral products industry
- Metallurgical industry
- Mechanical industry
- Electrical, electronic and communications material industry
- Transport material industry
- Wood industry
- Pulp and paper industry
- Rubber industry
- Leather and fur industry
- Chemical industry
- Plastic products industry
- Textile, clothing, footwear and fabric artifacts industry
- Food and beverage industry
- Tobacco industry
- Civil works
- Transport, terminals and warehouses
- Tourism
- Agricultural activities
- Use of natural resources

Since 1981, according to Federal Law [6.938/81](#), the Environmental Licensing has become mandatory in all national territory and actual or potentially polluting activities cannot function without proper licensing. Since then, companies operating without the Environmental License have been subject to the sanctions provided by law, including the punishments listed in the Environmental Crimes Act ([Law 9.605/98](#)).

State environmental protection agencies and Ibama are responsible for the licensing.

To start the process of application for a license, the company must first identify the type of license to be requested at the environmental agency (municipal, state or federal) and make sure which environmental agency to apply for.

The environmental licensing process consists of three types of licenses:

- Prior License (LP) - The licensing body assesses the location and design of the company, attesting to its environmental viability and establishing the basic requirements for the next phases.
- Installation License (LI) - authorizes the start of building of the premises and installation of equipment.
- Operation License (LO) - authorizes the operation of the company.

Environmental licensing provides companies with a protection in the legislation for their activities and expansion of their visibility in the market.

Following the National Solid Waste Policy, the Ministry of the Environment created the Waste Transport Manifest – MTR, an online tool capable of tracking the mass of waste, controlling the generation, temporary storage, transport and disposal of solid waste in Brazil. The use of the MTR is mandatory throughout the national territory, for all waste generators. More information: [www.sinir.gov.br](http://www.sinir.gov.br)

There are current discussions on regulatory developments in Brazil regarding carbon emissions and their impact on businesses. During COP 28, Brazil issued resolutions, including the Climate Plan, outlining national strategies and sector-specific carbon mitigation plans. The country updated its greenhouse gas emission reduction targets, aiming for a 48% reduction by 2025 and 53% by 2030, compared to the 2005 levels.

A bill, awaiting approval in the House of Deputies, that aims to regulate the new carbon market will establish the Brazilian Emissions Trading System (SBCE). The bill defines carbon credits as securities, impacting regulatory costs for project developers. There are concerns about fiscal implications and the need for incentives to drive the carbon market effectively.

#### **Main laws and sources chapter 6:**

CONAMA <http://conama.mma.gov.br/>

Law No. 6938 of August 31, 1981 (Brazilian Environmental Policy) - [http://www.planalto.gov.br/ccivil\\_03/leis/l6938.htm](http://www.planalto.gov.br/ccivil_03/leis/l6938.htm)

Law No. 9605 of February 12, 1998 (Environmental Crimes Act) - [http://www.planalto.gov.br/ccivil\\_03/leis/l9605.htm](http://www.planalto.gov.br/ccivil_03/leis/l9605.htm)

SWISSCAM Doing Business in Brazil guide (chapter 15 - Environmental)

Waste Transport Manifest – MTR <https://www.in.gov.br/en/web/dou/-/portaria-n-280-de-29-de-junho-de-2020-264244199>

National Solid Waste Policy [https://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2010/lei/l12305.htm](https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/l12305.htm)

## **7. Taxes**

Brazilian tax legislation is rather complex, consisting of several different taxes (*impostos*), charges (*taxas*), social and other contributions (*contribuições*). Despite of the government's efforts to reduce and simplify the Brazilian tax system there still exists a large number of taxes and pulverized rules currently in force. We will concentrate on the most taxes relevant in business.

#### **Federal Taxes**

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

#### State Taxes

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

#### Municipal Taxes

- Tax on urban land and property (IPTU)
- Tax on real estate conveyance (ITBI)
- Tax on services (ISS)

Charges and contributions are also levied on all three levels. The most important are

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

On December 20, 2023, the Brazilian National Congress enacted Constitutional Amendment [132](#) on tax reform. It is the first wide-ranging reform of the national tax system carried out under the 1988 Federal Constitution. Its main effect is the unification of five taxes - ICMS, ISS, IPI, PIS and Cofins - into a single levy, which will be divided between the federal (CBS: Contribution on Goods and Services) and state (IBS: Tax on Goods and Services) levels.

The changes will take place gradually. The new taxation of goods and services will come into force in 2026 and will not end until 2033. The transition to charging tax at destination (place of consumption) will begin in 2029, take 50 years and will not be completed until 2078.

See more information here: [www.gov.br/economia/pt-br/aceso-a-informacao/acoes-e-programas/reforma-tributaria](http://www.gov.br/economia/pt-br/aceso-a-informacao/acoes-e-programas/reforma-tributaria)

In 2024, parliamentarians will work on the complementary bills that will regulate various points of the constitutional amendment and begin the second stage of the reform, which will change the collection and payment of income tax.

### **7.1. Import tax (II)**

The import tax is due upon clearance by customs of imported products, according to an ad valorem tax rate. The tax rate varies according to the tariff classification of the imported product (see chapter 2.9). Imports of products are also subject to IPI (Tax on industrialized products), ICMS (Sales Tax) and PIS/COFINS-Import. These taxes, jointly with the import tax, are calculated as follows: the import tax is applied over the CIF price of the imported product; the IPI tax applies over the CIF price plus import tax; the ICMS tax applies over the CIF price, plus import tax, IPI tax, the PIS/COFINS-Import and the ICMS tax and the PIS/COFINS-Import applies over the CIF price.

### **7.2. Export tax (IE)**

The export tax is due upon export transactions. The IE ad valorem tax rate is applied according to a limited product list and varies according to the type of product that is being exported (see chapter 2.14).

### **7.3. Income tax (IRPJ and IRPF)**

#### Individual Income Tax ("IRPF")

Individual taxpayers residents in Brazil are subject to the payment of income tax on their global income with progressive tax rates as follows: (i) 0% for monthly income whose value does not

exceed R\$ 2,112.00; (ii) 7.5% for monthly income from R\$ 2,112.01 to R\$ 2,826.65 (iii) 15% for monthly income from R\$ 2,826.66 to R\$ 3,751.05; (iv) 22.5% for monthly income from R\$ 3,751.06 to R\$ 4,664.68 and; (v) 27.5% for monthly earnings over the figure of R\$ 4,664.68. Tax is withheld at the source and once a year, a tax declaration has to be made.

Individuals that hold temporary visas are considered residents for tax purposes upon their entry in Brazil to work pursuant to a labor agreement. Further, individuals that hold temporary visas who enter Brazil for any other reason are considered residents for tax purposes after a permanence of 183 days in a 12-month period as of the date of entry. Expatriates treated as non-residents are subject to Brazilian income tax only in regard to the income earned from Brazilian sources, whether individuals or companies.

#### Corporate Income Tax ("IRPJ")

Corporate income tax (IRPJ) is currently 15% charged over net profits or presumed profits with a surcharge of 10% on taxable income that exceeds quarterly R\$ 60'000,00. Income tax must be paid quarterly or monthly.

See chapter 11 of SWISSCAM Doing Business in Brazil guide for detailed information on the methods the taxpayer may adopt for the calculation and payment.

#### **7.4. Social contribution on net profit (CSLL)**

In addition to Corporate Income Tax (IRPJ) the Brazilian companies are subject to the payment of the social contribution on the net profit ("CSLL"). The current tax rate is 9%, with the exception of financial institutions that are subject to a CSLL rate of 20% (banks) or 15% (other financial institutions) – see Law [7,689/1998](#)

There is a 1% reduction for companies which did not delay CSLL or any other tax or charge or loan payment in the last five years, according to article 38 of Law [10,637/2002](#).

#### **7.5. Withhold Income Tax ("IRRF") in foreign payments – (services, royalties, interests)**

In Brazil payments made to non-residents are usually subject to withheld income tax. As a general rule, remuneration paid by a Brazilian source for services supplied by non-resident individuals are subject to withholding income tax with rates between 15% and 25%. See table below for some types of payments, according to the Withholding Income Tax [Handbook](#) of the Federal Revenue Authority.

<b>Income from residents abroad</b>	<b>Rate</b>
Royalties, Technical Services and Payment for Technical Assistance	15%
Interest and Fees in General	15% or 25% if arising from the rendering of services
Interest on Equity	15%
Rent and Lease	15% 2023: 0% for aircrafts 2024: 1% for aircrafts
Investments in Funds / Investments in Securities / Investments in Fixed or Variable Income	0% investments in government bonds and investment fund shares, emerging companies and private equity 10% stock investment funds, swaps and other futures transactions off the stock exchange 15% fixed income investments and other cases
Income and Earnings of Any Nature	25% income from work and from retirement, civil or military pension 25% income from the rendering of services 15% other income In the case of a capital gain: a) 15% earnings that does not exceed BRL 5,000,000.00; b) 17.5% earnings that exceeds BRL 5,000,000.00 and does not exceed BRL 10,000,000.00; c) 20% earnings that exceeds BRL 10,000,000.00 and does not exceed BRL 30,000,000.00; or d) 22.5% earnings that exceeds BRL 30,000,000.00.
International Freight	15%
Withdrawal of supplementary pension savings	25%
Payment of Copyright Fees	15%
Audiovisual, Cinematographic and Videophone works	15%

It shall be noted that the services taxed by CIDE [Contribution for Intervening on Economic Domain], whose applicable rate is of 10%, are entitled to a reduction of the IRRF to 15%, unless the beneficiary of the remittances is located in a low-tax jurisdiction (so called "tax havens"). In this case, IRRF will be levied at a 25% rate plus the CIDE at a 10% rate.

Law 14,537/2023 reduced the rate of withholding tax levied on amounts paid, credited, delivered, used or remitted to individuals or legal entities resident or domiciled abroad, intended to cover personal expenses, abroad, of individuals residing in the Country, on tourism, business, service or training trips or on official missions, up to the limit of BRL 20,000.00 per month, to:

- 6% (six percent), from January 1, 2023 to December 31, 2024;
- 7% (seven percent), from January 1st to December 31st, 2025;
- 8% (eight percent), from January 1st to December 31st, 2026; and
- 9% (nine percent), from January 1st to December 31st, 2027.

In the case of countries with which Brazil has signed a double taxation agreement (including Switzerland), the withhold income tax can be reduced. See full text of the agreement and rates [here](#).

## **7.6. Tax on industrialized products (IPI)**

This is a value added tax levied on manufactured goods which ranges, depending on the product, from 0% to 30% (can reach 300% for cigarettes). Charged rates can be found on <https://www.gov.br/receitafederal/pt-br/aceso-a-informacao/legislacao/documentos-e-arquivos/tipi.pdf>. The IPI tax is also due over the import of manufactured products in the case of import of a product used as an input and its subsequent sale by the importer. The IPI tax rates vary according to the product's essentiality.

## **7.7. Tax on financial operations (IOF)**

Contributors to the IOF are individuals and legal entities that carry out credit, foreign exchange and insurance operations or related to securities. The tax is collected by the legal entity that grants the credit; institutions authorized to operate in foreign exchange; the insurers or financial institutions to which they charge the insurance premium; institutions authorized to operate in the purchase and sale of securities.

Concerning the credit transactions with term and values determined, the IOF applies over the main loan at a tax of 0.0041% per day, in case of legal entity borrower, or of 0.0082% in case of an individual borrower (article 7 of Decree [6,306/2007](#)), followed by a supplement of 0.38% (see § 15 of the same article).

As part of Brazil's accession process to the Capital Liberalization Code of the Organization for Economic Cooperation and Development (OECD), Brazilian government is reducing IOF rate for exchange operations.

In the settlement of foreign exchange operations for the inflow of funds into the country, including through simultaneous operations, referring to a foreign loan, subject to registration with the Central Bank of Brazil, contracted directly or through the issuance of securities in the international market with a minimum average term up to one hundred and eighty days, IOF tax rate is 0% (Decree [6,306/2007](#), article 15-C, section I).

Acquisition of goods and services from abroad, withdrawals abroad, acquisition of foreign currency in traveler's checks and for international credit cards, intended to meet personal expenses on international trips, have a gradual IOF rate reduction from the current 6.38% to 5.38% in 2023, 4.38% in 2024, 3.38% in 2025, 2.38% in 2026, 1.38% in 2027 and 0% from 2028. The current tax rate for the acquisition of foreign currency, in cash (1.10%), will fall to 0% in 2028. The remaining exchange operations will reach 0% as of 2029.

For income arising from export IOF rate is 0%. In addition, a 0% rate applies to the inflow of funds to be invested in the Brazilian financial and capital market by non-residents.

In addition to the levy of IOF over credit and exchange transactions, this tax also is due over financial transactions related to insurances (mostly the tax is levied at a 7.38% rate. See complete list in article 22 of Decree [6.306/2007](#)), title deeds and real estate (with taxes that in the majority of transactions oscillate between 0% and 1.5% - see article 29 of the same decree) and upon transactions with gold, financial assets, or exchange instrument, under the rate of 1% (article 39).

## **7.8. Tax on rural land property (ITR)**



It focuses on properties located outside the urban areas of the municipalities. The rate is higher for larger area properties and low utilization, so as to discourage large unproductive estates. Depending on the size and utilization grade, the tax is between 0.03% and 20% over the value of rural land which is not under environmental protection, according to Law [9,393/1996](#).

### **7.9. Tax on circulation of goods, transportation and communication services (ICMS)**

In summary, ICMS is a state value added tax (comparable with the Swiss "Mehrwertsteuer") levied on goods in general and some services.

The ICMS tax rates and tax benefits vary from State to State and depend on the type of transaction (e.g., intrastate or interstate sale of goods, communication or transportation services, etc.). In the State of [São Paulo](#) the most common tax rates currently are (i) 12% over transportation services; (ii) 18% over importation and circulation, within the State, of goods; and (iii) 25% over communication services.

The ICMS is due over imports by companies and individuals, even when not considered taxpayers for the purposes of ICMS payment, at a tax rate of 18%. The other tax rates may be applied depending on the product/service. The tax rates may also vary in interstate transactions (usually 7% or 12% depending on the state of destination of products and services, or 4% in case of imported goods or goods with imported content higher than 40%).

The ICMS system allows the taxpayer to offset the ICMS paid upon the purchase of products and services with the tax amount due in subsequent taxable transactions (e.g., sale of goods and services subject to ICMS tax). See more information in chapter [11.14](#) of the SWISSCAM Doing Business Brazil guide.

### **7.10. Tax on motor vehicles (IPVA)**

The Motor Vehicle Property Tax (IPVA) is an annual tax paid by vehicle owners. The value of IPVA is calculated based on the value of the vehicle and its payment is a requirement for licensing the vehicle. The rate in [São Paulo](#) is [4%](#). In other states, the rate is between 1 and 4%.

### **7.11. Tax on inheritance and gifts (ITCMD)**

The ITCMD is a state tax levied on the transmission of chattels or real estate property by way of donation or death (inheritance). Currently, in the State of [São Paulo](#), the ITCMD tax rate is [4%](#) of the appraised value of the chattels or real estate or the transmission of rights.

### **7.12. Tax on urban land and property (IPTU)**

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

Further information for the city of [São Paulo](#):

<https://www.prefeitura.sp.gov.br/cidade/secretarias/fazenda/servicos/iptu/index.php?p=2456>

### **7.13. Tax on real estate conveyance (ITBI)**

ITBI is a Municipal tax levied over the transfer of real estate property. The tax rates may vary according to the real value of the transaction or the appraised value of the real estate, whichever is higher. Note that, in the Municipality of [São Paulo](#), the tax authorities are allowed to update the appraised value of the real estate through market researches. In addition, in the Municipality of [São Paulo](#), ITBI has a fixed tax rate of [3%](#). The ITBI tax is not due in the transfer of real estate



property in the events of merger of companies or contributions for the paying up of the capital stock in cases where the taxpayer's corporate objective is not related to the real state activity.

#### **7.14. Tax on services (ISS), except those subject to ICMS**

ISS is a municipal tax levied on the supply of any type of services, as defined in federal Supplementary Law [116/03](#). The rate of ISS varies between 2% and 5%.

ISS is due generally for the Municipality where the supplier's facility is located. The exceptions are: civil construction, services acquired abroad, sweeping and collection of garbage services, treatment of effluents, environmental sewage, forestation, parking security, storage and amusement services. In these cases, ISS is due where the service was rendered or where the client is established.

The tax is not levied on exports of services abroad. Services developed in Brazil, in which the result is verified here, do not fall under this condition, even if the payment is made by a resident abroad.

#### **7.15. Social contribution on revenues (PIS and COFINS)**

The Contribution for the Financing of Social Security (COFINS) and the Social Integration Program (PIS) shall be levied over the revenues received by the Brazilian legal entities, with a few exceptions.

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

Under the non-cumulative system, the applied rates are 1.65% (PIS) and 7.6% (COFINS). Organizations included in this regime are those that calculate income tax based on Real Profit (lucro real) - with some exceptions.

Contribution paid on the following transactions can be offset against the contribution due on gross revenue (that means it works as a VAT):

1. goods acquired for purposes of resale, excepting for those goods expressly referred to;
2. goods and services used as input for the rendering of services and for the production or manufacturing of goods or products addressed to sale, including fuels and lubricants;
3. electrical and heat powers, including steam Power, consumed in the legal entity's establishments;
4. payment of leases of buildings, machines and equipment to companies for the use thereof in the company's transactions;
5. amount of the considerations of commercial lease transactions of legal entity;
6. machines, equipment and other goods incorporated to the fixed assets acquired or manufactured to be leased to third parties or used in the manufacturing of goods intended for sale or in the rendering of services;
7. buildings and betterments in own real property or real property pertaining to third parties used in the corporate activities;
8. goods received in return;
9. storage of good and freight in the sale transaction, for cases (i) and (ii), when the burden is supported by the seller;
10. meal coupons, transportation and uniforms provided to employees by a company which explores activities of cleaning, conservation and maintenance services; and
11. goods incorporated to the intangible assets, acquired for the utilization in the production of goods destined to sale or in the rendering of services.

Under the cumulative system, rates are 0.65% (PIS) and 3% (COFINS), but contribution can not be offset against earlier payments. Companies working under the presumed profit regime (lucro presumido) must choose the cumulative system.

The general tax rates of the PIS and COFINS for imports of goods are 11.75% (2.1% PIS and 9.65% COFINS) and the tax basis shall be the customs value of the imported goods. In the import of services, the applicable tax rate is 9.25% (1.65% PIS and 7.6% COFINS) and the tax basis is the value paid, credited, delivered, employed or remitted abroad, before the deduction of the withholding income tax, plus the Municipal Services Tax (ISS) and the PIS and COFINS contributions. See detailed information on imports at <https://www.gov.br/receitafederal/pt-br/assuntos/orientacao-tributaria/declaracoes-e-demonstrativos/ecf/perguntas-e-respostas-pessoa-juridica-2021-arquivos/capitulo-xxiii-contribuicao-para-o-pis-pasep-importacao-e-a-cofins-importacao-2021.pdf>

Legislation (in Portuguese): <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-n-1.911-de-11-de-outubro-de-2019-221810934>  
[http://www.planalto.gov.br/ccivil\\_03/\\_ato2004-2006/2004/lei/l10.865compilado.htm](http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/lei/l10.865compilado.htm)

### **7.16. Contribution for intervention in economic domination (CIDE)**

The Brazilian companies that hold licenses to exploit rights, purchasers of know how or parties to contracts that imply in the transfer of technology executed with non-residents and domiciled abroad are subject to CIDE taxation.

The CIDE contribution is also paid by companies that supply technical services, administrative assistance and other similar services, as well as by the legal entities that pay, credit, deliver, use or remit royalties, of any type, to beneficiaries resident or domiciled abroad.

The payments for use license and rights for commercialization of software, in cases which do not involve technology transfer are not subject to CIDE.

The CIDE tax rate is of 10% and the taxpayer is the Brazilian legal entity.

### **7.17. International tax treaties**

Brazil holds double taxation agreements with the following countries: Argentina, Austria, Belgium, Canada, Chile, China, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Hungary, India, Israel, Italy, Japan, Luxembourg, Mexico, Netherlands, Norway, Philippines, Peru, Portugal, Russia, Singapore, Slovakia, South Africa, South Korea, Spain, Sweden, Switzerland, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, Uruguay and Venezuela.

Further information (in Portuguese): <https://www.gov.br/receitafederal/pt-br/acao-a-informacao/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao>

The [agreement](#) between Brazil and Switzerland ("Convention to Eliminate Double Taxation in Relation to Income Taxes and Prevent Tax Evasion and Avoidance") was approved by the Swiss parliament in 2019. In Brazil, it was ratified in 2021 and entered into force in January 2022.

### **Sources Chapter 7**

Federal Revenue Authority [www.gov.br/receitafederal/pt-br](http://www.gov.br/receitafederal/pt-br)

SWISSCAM Guide "Doing Business in Brazil", chapter 11

São Paulo State Treasury Office <https://portal.fazenda.sp.gov.br/>

City Hall of São Paulo: [www.prefeitura.sp.gov.br](http://www.prefeitura.sp.gov.br)

## **8. Commercial Law / Sales Representation**

The legal basis for the commercial law in Brazil is the [Civil Code](#), except for the Maritime Commercial Law that is the only part of the old [Commercial Code](#) still in force.

An overburdened court system can take years to enforce property rights. The new [Brazilian Code of Civil Procedure](#) that entered into force in 2016 improved the procedures also for the companies in order to have more efficiency and transparency.

### **8.1. Sales representation and distribution agreement**

The Brazilian law distinguishes between two representation contracts: **commercial representation** (agency), and **distribution**.

#### **Sales Representation**

An agency or commercial representation is an agreement whereby a legal entity or individual person acts as an intermediary in certain business transactions on behalf of a principal, with exclusivity within a defined area, on a regular and independent (non-employment) basis, receiving offers or orders for transmission as agent to the principal.

A perusal of this concept reveals the principal legal characteristics of the agency relationship, namely: a) business activity; b) regularity of services; c) acting as intermediary on conclusion of certain business; d) independent activity of the agent.

The agent's remuneration normally consists of commission on the sales in which it acted as intermediary. Note that, if the agent has the exclusive right to act in a given territory, it may be entitled to commission on business concluded within that territory even though he did not effectively participate in the sale. The manufacturer should therefore be careful to bear this point in mind.

#### **Distribution agreement**

Distribution is a contract whereby a person assumes the obligation to resell, with exclusivity (unless agreed otherwise), for its own account, against payment, goods of a given manufacturer, in a defined area.

This type of contract may be regarded as a kind of commercial concession. The main difference is that distribution, due to its general nature, allows for sub-distribution; accordingly, the distributor, duly authorized by the distribution agreement, may use a network of sub-distributors in order to arrange for the placing of the product on the consumer market, although such sub-distribution must be subject to the rules dictated by the manufacturer.

The distributor, as already explained, negotiates for its own account. It purchases the merchandise in order to resell it with exclusivity in a certain area, the manufacturer in turn agreeing not to sell it to another dealer in the same area. If it does so, it will be obliged to remunerate the distributor.

As regards the method of remunerating the distributor, this is based on the margin that the distributor manages to obtain between the purchase price of the goods from the manufacturer and the resale price to its own customers. It should be emphasized that the distributor must be free to set the resale prices. It is normally prohibited for such prices to be stipulated by the manufacturer, although there is no prohibition on prices suggested by the manufacturer.

## Termination of a contractual relationship

Generally speaking, it is well known that contracts may be terminated in five ways: a) because of some prior defect, which causes it to be null or voidable; b) by performance, with compliance with all the contractual obligations; c) by negligent non-performance, when there occurs unilateral or bilateral rescission; d) by voluntary willful non-performance, in the event of unilateral or bilateral termination; e) by involuntary non-willful non-performance, in the event of termination, for example, in cases of force majeure.

More information on the subject may be found on the Doing Business in Brazil Guide, Chapter 3: <https://swisscam.com.br/en/publicacao/doing-business-in-brazil/3-agencia-distribuicao-e-compra-e-venda/>

### **Sources: Chapter 8**

Guia Doing Business in Brazil Chapter 3 - Stüssi – Neves Advogados  
Brazilian Federal Government

## **9. Setting up a Company**

The Brazilian law provides support for various types of enterprises. The most frequent are Corporations (S.A.) and Limited Liability Companies (Ltda.) in the establishment of subsidiaries and joint ventures. This is due to the fact that, in both cases, participants have limited responsibilities. The law provides legal status to these companies as entities that are separated from its participants.

### **9.1. Limited Liability Company**

One of the most popular types of business entity in Brazil, currently representing 29.65% of the companies registered before the country's commercial registries, the limited-liability companies (sociedade limitada, in Portuguese), regulated by article 1.052 et seq. of the Brazilian Civil Code, are largely consolidated by their use by Brazilian and international entrepreneurs. This type has several attractive advantages, to wit, limited liability of the partners, reduced setup and maintenance costs, no obligation of publication of organizational documents; and a possibility to use specific Joint-Stock Company rules, which may permit a more sophisticated management structure if partners or investors so desire.

Its capital is divided into quotas, between at least 2 members – although organization by a sole shareholder is already possible, as explained below – and its operating rules are established in articles of organization (contrato social in Portuguese), a document that will identify who are the partners, the amount of capital, the address of the main place of business and branches, who are the directors and what are the management rules of the company, among other information. The articles of organization are freely amended upon consent of the members, with new amendments superseding prior decisions, and taking effect as soon as they are registered before the commercial register (Junta Comercial in Portuguese) of the State of the Federation where the company is established. There is a minimum obligatory annual resolution in limited-liability companies dealing with the annual approval of accounts and appointment of directors where applicable. Such approval of accounts is mandatory and must take place, pursuant to article 1.078 of the Civil Code, within four months counted from the end of the fiscal year, the numbers of which are the object of the resolution.

The management of the limited-liability company is carried out by at least one Brazilian individual or a foreign citizen resident in Brazil with a permanent visa. The appointment is made directly in the articles of organization or in a separate document. The directors may or may not be partners of the company. In the latter case, they may be removed from office at any time, in the event of

an indefinite term tenure. Directors who are partners may only be removed by the majority of the capital, unless otherwise provided in the articles of organization.

With the primary objective to simplify the procedure for initiating businesses in Brazil, the One-Person Limited Company ("Sociedade Limitada Unipessoal") company was created and converted into the [Law 13.874/2019](#). This legal structure is a variant of the Limited Liability Company, allowing for sole ownership without the necessity of having partners. The entrepreneur's personal assets are distinct from those of the company, and there is no obligatory minimum amount for the Share Capital.

## **9.2. Joint-Stock Companies (or Corporations)**

There are two subtypes of corporations (S.A. - sociedade anônima, in Portuguese), also called joint-stock companies (sociedade por ações, in Portuguese): publicly-held corporations, companies whose securities are publicly traded on securities markets, or closely-held corporations, whose papers are not publicly traded, thereby operating similarly as limited-liability companies. A corporation's capital is divided into shares, not quotas. It is governed by articles of incorporation (estatuto social in Portuguese), which may be freely amended by the controlling shareholders as often as necessary to accommodate the growth of the company.

Joint-stock companies also confer liability limited to the contributions of partners, as do limited-liability company. However, corporations are less used than limited-liability companies as they tend to present higher management costs, chiefly due to the obligation to publish certain organizational documents. According to article 294 of Law [6,404/1976](#), closely-held companies with annual gross revenues of up to BRL 78,000,000.00 (seventy-eight million reais) may provide the publications required by law electronically, as well as replace the reports referred to in article 100 of this Law by mechanized or electronic records.

Despite its rarified use, a Corporation is a business entity type more suited to the development of businesses requiring a larger sum of capital, given its wide list of mechanisms for the raising of funds, and in addition, the possibility of using various types and classes of shares, which will be extremely useful when converting investments into equity, a typical situation when converting different rounds of funding in a startup, for instance. The corporation is a preferred mean for fundraising by investment funds, which have in their regulations the obligation to invest only in corporations, in light of their more sophisticated governance system.

## **9.2. Other Types of Companies**

Apart from the Sociedade Limitada and the Sociedade por Ações, single-shareholder partnerships are extremely popular in Brazil. Be it an Individual Micro Entrepreneur (MEI – Microempresário Individual, Law No. 123/2006, articles, 18-A et seq.) or a One-Member Limited-Liability Company (Sociedade Limitada Unipessoal, in Portuguese) (Art. 1.052, §1º), single-partner types are practical and easy to organize.

Unincorporated Joint Venture (SCP – sociedade em conta de participação, in Portuguese), a type provided for in articles 991 et seq. of the Brazilian Civil Code, is a widely used depersonalized type, being effective only among the partners, the registration of its documents before any registry does not confer legal personality, pursuant to article 993 of the Civil Code. It is a de facto corporation, spearheaded by a general partner (sócio ostensivo), who deals with and is fully obligated before third parties, and where the limited partners (sócio oculto) participate by investing and receiving the profits. However, such protection may be jeopardized in the event the silent partner engages in management practices (art. 993, sole paragraph).

Less widely used is the General Partnership (sociedade em comum, in Portuguese), or de facto corporation (sociedade de fato, in Portuguese), which is a depersonalized type, where the liability of the members is joint and several (article 990 of the Civil Code), and the company is evidenced

by any means by third parties, but exclusively in writing by the members (art. 987). It is quite true that there is a great risk of the members' personal property being involved in the event of company debts, which makes the type rarely used; on the other hand, it is a good temporary solution to start carrying out activities, since it does not engender organization and maintenance costs with bookkeeping or bureaucracy. The taxation of the partners will be pass-through.

In addition to the above, there are also minor corporate types such as limited partnership (comandita simples, in Portuguese) and limited partnership per shares (comandita por ações, in Portuguese), which are currently in disuse, ordinary partnership (sociedade em nome coletivo, in Portuguese), which resembles a de facto corporation, and the cooperative corporation (cooperativa, in Portuguese), which is always a partnership with specific form, of a civil nature, not subject to bankruptcy, and which are not intended for profit.

### **9.3. Foreign company in Brazil**

A foreign company may only regularly operate in Brazil, whatever its purposes may be, even if through subordinated entities (subsidiaries, branches) after obtaining authorization from the Brazilian Government. The authorization application must be addressed through the Federal Government [website](#), and it is processed and analyzed by the National Department of Business Registration and Integration (DREI).

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

More information: <https://www.gov.br/mdic/pt-br/assuntos/drei/empresas-estrangeiras/ManualdeEmpresaEstrangeira27out20.pdf> and chapter 37 - Foreign Investment of the SWISSCAM Doing Business in Brazil guide: <https://swisscam.com.br/en/publicacao/doing-business-in-brazil/37-foreign-investment/>

#### **Source and further information chapter 9:**

Brazilian Federal Government

Departamento Nacional de Registro Empresarial e Integração (DREI) [www.gov.br/mdic/pt-br/assuntos/drei](http://www.gov.br/mdic/pt-br/assuntos/drei)

Doing Business in Brazil Guide – SWISSCAM – [Chapter 8](#)

Gaia Silva Gaede & Associados <https://gsga.com.br/alteracoes-na-publicacao-de-atos-das-sociedades-anonimas/>

## **10. Investment Incentives / Promoting Investment**

Brazil has a wide array of opportunities across many sectors and offers investment incentives for local and foreign investors, particularly when it provides new technology, creates new jobs, develops agriculture, industry and increases exports or decreases imports.

The federal programs are designed to encourage the economic development of Brazil and also to promote regional development. State and local governments also encourage investment and they generally offer incentives to attract local and foreign investors, such as:

- Financing: Through the National Economic and Social Development Bank ([BNDES](#)), the Brazilian government's main institution for long-term financing in all areas of the Brazilian Economy, but also through other institutions such as Banco do Nordeste do Brasil ([BNB](#)). For this purpose, it supports all types of entrepreneurs, including individuals, in carrying out their



modernization, expansion and new business plans, always aiming at the potential for job creation, income and social inclusion for Brazil.

- Tax incentives: There are several tax incentives granted by federal, state or municipal governments for several purposes and through different programs, such as the "ex-tarifário", which allows for temporary reduction of import taxes, sometimes by 0%, on capital goods, IT and telecommunications; the "Reintegra Program", which institutes the return of a 0.1% to 3% percentage of the product price to the exporter to compensate for tax residues; and the Simples Nacional regime, which offers a simplified tax regime for micro and small companies, among others.

International firms looking to invest in Brazil are favored with numerous tax incentives provided by the Brazilian government at the municipal, state, and federal levels. Typically, these incentives are awarded upon the presentation of a project outlining the minimum investment amount, along with details on job creation and other pertinent aspects. Some areas selected for the incentives are:

- RECAP - Special Regime for the Acquisition of Capital Goods for Exporting Companies
- REPES - Special Taxation Regime for the Export Platform of Information Technology (IT) Services
- REPORTO - Tax Regime for the Incentive of Modernization and Expansion of Port Infrastructure

See more information [here](#).

- Regional incentives promoted by specific agencies such as SUDENE, which promotes the Northeast region development, SUDAM, promoting the Amazon region, and SUDECO, for promotion of the Midwest states. The reduction of the income tax by 75% is worth a note, including an additional for implementation, expansion or diversification projects of enterprises in those regions (SUDENE and SUDAM), approved until the year 2028 (Provisional Measure no. 2,199/2021), for the period of 10 years, as well as special conditions to perform the accelerated depreciation of assets. There is also the right to reinvest 30% of the income tax due in modernization projects or complementation of equipment until the year 2028.

- The [Manaus free-trade zone](#), created to attract industries and commerce to the Amazon region. Some fiscal incentives granted:

Import Tax (II) - Reduction of 88% on inputs destined for industrialization or proportional to the national added value in the case of computer goods;

Tax on Industrialized Products (IPI) - Exempt;

Social Integration Program (PIS) and Social Security Financing (COFINS) - Zero rate on entries and internal sales between industries and 3.65% on sales of finished products to the rest of the country.

Income Tax (IR) - Reduction of 75% of Income Tax and Non-Refundable Additional, exclusively for reinvestments. Common throughout the Legal Amazon.

- State incentives: At the moment, there is a dispute between the states in order to attract investment with fiscal incentives which vary from tax exemption, reduction of the calculation base, deferment, presumed credit and suspension of the ICMS tax. More information can be obtained by each State Tax Office. Their addresses can be found [here](#).

- Industry-related incentives, including special tax regimens for infrastructure development, IT services export, ports infrastructure modernization, oil and gas, aeronautics industry, among others. See some incentives by sector [here](#).

- The Public-Private Partnerships (PPPs) Law, which intends to attract private investments for infrastructure and public service sector projects, according to Law 11,079/2004. More information: <https://ppp.worldbank.org/public-private-partnership/country-profile-brazil>.

- Tax incentives for R&D were instituted by Law 11,196 of 2005, also known as "Lei do Bem". We highlight:

- deduction, in calculating the due Income Tax, of expenditures with R&D, including those with research institutions, universities or independent inventors;
  - exclusion, in determining the taxable income for calculating the IRPJ and the CSLL calculation base, of the amount corresponding to up to 60% of the sum of expenditures made with R&D. This percentage may reach 70% due to the increase of up to 5% in the number of employees hired exclusively for R&D activities; and 80%, in case this increase is greater than 5%. In addition, there may also be an exclusion of 20% of the total expenditures made on R&D subject to a granted patent or registered cultivar;
  - IPI reduction of 50% on the purchase of equipment (domestic or imported) intended for R&D;
  - immediate depreciation of equipment purchased for R&D;
  - accelerated amortization of expenditures for the acquisition of intangible assets for R&D;
  - reduction to zero of the withholding tax rate on remittances abroad for the registration and maintenance of trademarks, patents and cultivars;
- Others: Innosuisse, the Swiss Innovation Agency, and EMBRAPII, the Brazilian Innovation Agency has a [partnership](#) to provide financial support for R&D projects of Swiss and Brazilian companies.

#### **Sources and further information - Chapter 10:**

Manaus Free Trade Zone: [www.suframa.gov.br](http://www.suframa.gov.br)

Brazilian Trade and Investment Promotion Agency: <https://portal.apexbrasil.com.br>

Federal Government

Innosuisse

Doing Business in Brazil guide – [chapter 26](#)

Reintegra: [www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2015/Decreto/D8415.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2015/Decreto/D8415.htm)

Lei do Bem: [www.gov.br/mcti/pt-br/acompanhe-o-mcti/lei-do-bem](http://www.gov.br/mcti/pt-br/acompanhe-o-mcti/lei-do-bem)

## **11. Entry Conditions / Visas and Residence Permit**

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

Swiss citizens are exempted from visa requirements to entry in Brazil for Tourism or Business. The total stay in Brazil, including outings and multiple entries, is limited to 90 days every 180 days, and cannot be extended. However, passports must be valid for at least six months and a return ticket may be requested on arrival.

See a complete [list](#) with the entry visas to Brazil for all nationalities.

The Federal Police of Brazil requires an immigration form (entry/exit card) that has to be filled in on arrival (normally distributed on the flight or [online](#) version available for print). Half of the form must be retained and shown at the departure.

### **11.1. Main types of visas for foreigners travelling to Brazil**

- **Visit visa:** for foreigners travelling to Brazil for a stay of up to 90 days, without immigration or paid activity purposes.

I - tourism and transit;

II - business;

III - non-corporate events (conferences, seminars, events etc.);

IV - artistic and sports activities

V - other hypotheses defined in regulation.



See complete list here [https://www.gov.br/mre/pt-br/consulado-genebra/servicos-consulares/copy\\_of\\_visto-visa/vistos/tipos-de-vistos/copy\\_of\\_visto-de-visita-vivis](https://www.gov.br/mre/pt-br/consulado-genebra/servicos-consulares/copy_of_visto-visa/vistos/tipos-de-vistos/copy_of_visto-de-visita-vivis)

- **Diplomatic visa:** for foreign authorities and foreign employees traveling to Brazil with a diplomatic status and in an official mission
- **Official visa:** for foreign administrative staff travelling to Brazil on an official mission
- **Courtesy visa:** granted to personalities and foreign authorities in an unofficial trip to Brazil (e.g. spouse or partner, regardless of their gender, dependents and other family members who do not benefit from Diplomatic or Official Visa)
- **Temporary visas:** granted to foreigners in the following situations:
  - (1) VITEM I – research, teaching or academic purposes;
  - (2) VITEM II – health care visa;
  - (3) VITEM III – humanitarian visa;
  - (4) VITEM IV – student visa;
  - (5) VITEM V – paid work visa;
  - (6) VITEM VI – working-holiday visa for persons traveling primarily for purposes of tourism, with the possibility of undertaking paid employment (this visa is granted on the basis of bi-lateral agreements, currently only with New Zealand, Australia, Germany and France);
  - (7) VITEM VII – ministers of a religious organization or members of an institute of consecrated life and of a congregation or religious order;
  - (8) VITEM VIII – voluntary work visa;
  - (9) VITEM IX – investor visa;
  - (10) VITEM X – visa for activities of economic, scientific, technological or cultural relevance;
  - (11) VITEM XI – family reunification visa;
  - (12) VITEM XII – artistic or sports activities visa;
  - (13) VITEM XIII – temporary visas due to international agreements;
  - (14) VITEM XIV – temporary visas due to Brazilian immigration policy; and
  - (15) VICAM – Temporary Visa for foreign doctors (medical training).

## 11.2. Residence permit

With the new immigration law ([13,445/2017](#)), the temporary visa extension and the permanent visa was eliminated. Currently, a residence permit must be required. Some specific cases:

### 11.2.1. Work

According to Normative Resolution [02/2017](#), that regulates the granting of residence permits for purposes of work with an employment relationship in Brazil, the proof of qualification and professional experience must be provided by the applicant employer, through diplomas, certificates or statements from the entities in which the immigrant has performed activities, demonstrating compliance with one of the following requirements:

- Proof of master or doctorate degree, with no need for proving professional experience.
- Proof of graduate course completion, with a minimum of 360 hours + 1 year of professional experience.
- Proof of higher education + 2 years of professional experience.
- Proof of specific training in technical level occupation + 3 years of professional experience.
- Proof of 12 years of schooling + 4 years of professional experience.
- Proof of minimum experience of 3 years in a profession whose artistic or cultural activity does not depend on educational training.

### 11.2.2. Technical Assistance / Technology Transfer

According to Normative Resolution [03/2017](#), that regulates the granting of a residence permit for the purpose of work without an employment relationship in Brazil, to provide **technical assistance services**, the following documents must be provided:

- I - in the case of purchase and sale of equipment with technical assistance, copy of the document issued and signed by the Federal Revenue Service of Brazil; or

- II - in the case of technical assistance in equipment resulting from a contract, cooperation agreement or agreement, a copy of the signed document that demonstrates the situation; or
- III - in the case of technical cooperation between companies of the same group, a statement from the interested company with the identification of the parties and information on the existing associative bond.

As for **technology transfer** (Normative Resolution [04/2017](#)), prior residence permits for the purpose of granting a temporary visa will be analyzed by the Ministry of Labor, upon presentation of the following documents:

- I - copy of the contract, cooperation agreement or agreement that demonstrates the situation;
- II - in the case of technical cooperation between companies of the same group, a statement from the interested company with the identification of the parties and information on the existing associative bond;
- III - simplified training plan, in accordance with the provisions of the contract, agreement or convention, specifying the professional qualifications of the immigrant, the scope of training, its form of execution with the number of Brazilians to be trained, the place where it will be performed, the recipient company(s), duration and expected results; and
- IV - other documents provided for in Normative Resolution No. 01/2017 of the National Immigration Council.

### **11.2.3. Trainee (professional training)**

According to Normative Resolution [19/2017](#), that regulates the granting of a residence permit for the purpose of working without employment in Brazil, in order to receive professional training at a subsidiary, branch or head office in Brazil, the following documents must be provided:

- I – proof of the link between the Brazilian subsidiary, branch or head office and the foreign company of the same economic group;
- II – proof of the relationship between the immigrant and the foreign company belonging to the economic group;
- III - simplified training plan, with the justification of the need for training of the immigrant in Brazil, specifying the scope, its form of execution, the place where it will be performed, the granting company(ies), the time of duration and expected results;
- IV – statement by the company that the immigrant's remuneration will come from a source abroad; and
- V – other documents provided for in Normative Resolution No. 01/2017 of the National Immigration Council.

The term of residence will be up to 02 (two) years, non-renewable.

### **11.2.4. Investment**

According to Normative Resolution [13/2017](#), the Ministry of Labor may grant a residence permit to an individual immigrant who intends, with their own resources from abroad, to invest in a legal entity in Brazil, in a project with the potential to generate employment or income in the country.

The granting of a prior residence permit to an immigrant will be subject to proof of investment, in foreign currency, in an amount equal to or greater than BRL 500,000.00, upon presentation of an investment or business plan.

The Ministry of Labor may also authorize prior residence, for the purpose of granting the temporary visa, when the investment value is below BRL 500,000.00, and provided that it is not less than BRL 150,000.00, for the entrepreneur who intends to settle in Brazil with the purpose of investing in innovation activity, in basic or applied research, of a scientific or technological nature.

### 11.2.5. Family reunion

The [visa or residence permit](#) for family reunion purposes will be granted to the immigrant:

- I – spouse or partner, without any discrimination, under the terms of Brazilian legal system;
- II – child of a Brazilian or of a migrant beneficiary of a residence permit;
- III – who has a Brazilian child;
- IV – who has an immigrant child benefiting from a residence permit;
- V – ascendant up to the second degree of a Brazilian or of an immigrant benefiting from a residence permit;
- VI – descendant up to the second degree of a Brazilian or of an immigrant benefiting from a residence permit;
- VII – sibling of a Brazilian or of an immigrant benefiting from a residence permit; or
- VIII – who has a Brazilian under their guardianship, curatorship, or custody.

More detailed information about migratory processes and work permits can be found on SWISSCAM's Doing Business in Brazil Guide, chapter 10:

<https://swisscam.com.br/en/publicacao/doing-business-in-brazil/10-trabalho-de-estrangeiros-no-brasil/>

#### Sources Chapter 11:

Brazilian Consulate in Zurich: <https://www.gov.br/mre/pt-br/consulado-zurique/deutsch/visa-english>

Ministry of Foreign Affairs: [www.gov.br/mre/pt-br/assuntos/portal-consular/vistos/informacoes-sobre-vistos-para-estrangeiros-viajarem-ao-brasil](http://www.gov.br/mre/pt-br/assuntos/portal-consular/vistos/informacoes-sobre-vistos-para-estrangeiros-viajarem-ao-brasil)

## 12. Labour Law

The Labor Reform (Laws [13,467/2017](#) and [13,429/2017](#)) heavily amended the Consolidated Labor Laws (CLT), in an attempt to modernize the complex and frequently unintelligible legislative, administrative and judicial structure, reduce intervention of the State in labor relations and give more autonomy to the trade unions and to certain categories of employees.

The pandemic and post-pandemic period were also very productive in terms of legislation and caselaw, imposing on companies the need to adapt, often immediately, to the obligations set forth in legal texts and court decisions.

Six years later, the principles inherent in Brazilian Labour Law, which aim to protect the employee against the employer's disciplinary and economic power, have, however, remained unchanged, or have been attenuated to a minimum degree, and many issues remain open or are still without final definition as to their constitutionality by the Brazilian Judiciary.

### 12.1. Employment Relationship

In order to constitute an employment relationship in Brazil, four simultaneous requirements need to be fulfilled: personal service, regularity, economic dependency and subordination.

The employment relationship is expensive, since it attracts direct costs for the company. These may be summarized as follows:

- i) **Welfare contribution** of 20% of the remuneration paid to the employee, to which is added labor accident insurance (from 1% to 3%, which percentage is subject to alteration depending on the aggressive nature of the working environment), and contribution to third parties (agencies representing the economic sector to which the employee belongs) – [Sistema S](#) – (average rate of 5.8%);

ii) **FGTS (Workers' Severance Indemnity Fund)** – paid on the basis of 8% of the salary, it is deposited monthly by the employer in a specific account for each employee, who can only withdraw the funds in the events expressly stipulated by law, such as dismissal without cause, termination of a contract for a definite term, retirement, purchase of home, death and serious illness, among others;

iii) 30 days' **vacation**, divided into not more than 3 periods, if the employee agrees, one of which not less than 14 days and the others of 5 days, after each period of 12 months' work, plus a 1/3 bonus. The employee may convert 1/3 of the vacation period to which he is entitled into a pecuniary payment, amounting to the remuneration due for those days. The grant of vacation after the 12-month period following acquisition of this right by the employee subjects the employer to payment of double the sum due, pursuant to article 137 of the CLT;

iv) **13<sup>th</sup> salary**, based on the employee's full remuneration.

## 12.2. Alternative Forms of Contracting

The Labor Reform created two new forms of employment. One is **intermittent employment**, where the worker is paid for the work actually done on an hourly basis, since under this system work periods and periods of inactivity are alternated.

The second consists of **telework**, defined by article 75 of the CLT as "... the provision of services preponderantly outside the employer's premises, with the use of information and communication technology that, by its nature, does not constitute external work".

## 12.3. Working hours

Generally, a five-day workweek is the norm. Legally, the working week may not exceed 8 hours daily or 44 hours weekly. With the Labor Reform, there are now 2 options for part-time contracts. In the first, the contract will be for up to 30 hours a week, with no provision for overtime. In the second case, the contract will be for up to 26 hours per week, up to 6 hours' overtime being permitted.

The employee may work overtime, subject to a maximum of 2 hours. As an exception to the limit of 2 hours' overtime per day, the new CLT permits, by means of an individual or collective agreement or convention, a working day of 12 hours followed by 36 hours' rest, with the intervals for refreshment and rest being observed or remunerated. It is also permitted to establish a working day of 12 hours, subject to the limit of 220 hours per month.

The remuneration due for overtime is at least 50% more than for a normal hour. Some collective labor agreements stipulate percentages higher than the rate provided for by law, principally for the purpose of discouraging employers from allowing overtime.

Habitual overtime forms part of the employee's remuneration, for the calculation of vacation pay, 13th salary, prior notice, FGTS etc.

Overtime worked may be remunerated by the employer otherwise than by the payment of cash. In Brazil this is called the Hour Bank (compensatory or comp time) system, a procedure whereby the excess time worked one day is compensated by partial or total rest on another. The Labor Reform introduced an important modification, permitting an Hour Bank agreement to be made directly between the employee and employer, provided that compensation for the overtime is made within a period of 6 months.

In any continuous work that lasts for more than 6 hours, an interval of at least one hour for refreshment and rest is obligatory. For a shorter period not exceeding 6 hours, an interval of 15

minutes is obligatory. An employer who fails to grant the interval for refreshment and rest must indemnify the employee in the exact proportion of the right not enjoyed, and no longer the entire period as was decided before the Reform, with an addition of 50%. Such payment will be of an indemnity nature.

#### **12.4. Remuneration and Salary**

Remuneration is the total of sums of money and benefits paid to employees in consideration for services provided for the benefit of the employer.

Salaries – the fixed amount guaranteed to the employee on being hired – cannot be reduced – except by collective negotiation, cannot be altered unilaterally by the employer to the employee's detriment, cannot be levied upon, and are intangible (cannot normally suffer deductions).

Salaries are subject to obligatory readjustment at least once a year. The great majority of trade unions determine payment of the salary readjustment to all the employees, regardless of their qualifications, position in the corporate hierarchy or salary, but there are Collective Agreements/Conventions that draw a distinction between employees based on the criteria referred to above.

The salary must be paid in national currency. Payment in foreign currency is prohibited.

The salary for work done in a given month must be paid not later than the 5th working day of the following month. Commission and gratuities may be paid over longer periods, depending on what is stipulated in the contract.

Foreigners who come to Brazil to work, with a visa granted by the Brazilian government, and who continue to receive remuneration abroad, must declare their situation to the authorities and pay, depending on the type of visa and/or the length of time they remain in national territory, income tax on the money received outside Brazil. The Brazilian company that applied for the visa must take into consideration the amounts paid abroad, invariably by a company forming part of its economic group, as a basis for calculating FGTS and the welfare contribution.

#### **12.5. Trade Unions**

The new CLT establishes that the collective agreement and / or collective bargaining agreement will prevail over the law in 15 different points, such as participation in profits and results, remuneration for productivity, working hours, hour bank, minimum interval for meal and rest of half an hour, holiday exchange, telecommuting, notice and intermittent work, plan of positions and salaries and adhesion to unemployment insurance. The degree of unhealthiness and the extension of working hours in unhealthy environments may also be negotiated, without prior permission from the Ministry of Labor.

It is important to state that the CLT prevents the negotiation of 30 items of the employment relationship, prohibiting, for example, negotiation for the reduction or elimination of rights such as FGTS, 13th salary, minimum salary, remuneration for night work higher than for work during the day, weekly paid leave, maternity and paternity leave, prior notice, retirement, accident insurance, right to strike and take action, among others.

#### **12.6. General Data Protection Law (LGPD)**

In the scope of employment relationships, the LGPD (Law no. 13.709/2018) is unquestionably present in its three phases, the pre-contractual, contractual and post-contractual, although it has not been subject to specific regulation. In addition, the LGPD is also present in relationships with employees of outsourced companies.

Article 41 of the LGPD obliges all companies to appoint a personal data controller, also known as Data Protection Officer (DPO) under European law. Micro-enterprises, small businesses, startups and non-profit legal entities, natural persons and unincorporated entities have the option to provide a communication channel.

### **12.7. Parenting Law**

Law no. 14457/2022 instituted the Employ + Women (Emprega + Mulheres) Program. This program aims to insert and maintain women in the labour market, through the implementation of various measures, including support for parenthood in early childhood, with the payment of daycare reimbursement and maintenance or subsidy of institutions for early childhood education by the independent social services (SESI, SESC and SEST).

Establishments where 30 or more women over the age of 16 work must have an appropriate place to keep their children under surveillance and assistance during the lactation period, unless they adopt the day-care reimbursement benefit.

### **12.8. Termination of Work Contract**

A work contract can be terminated either by the employer or the employee, and also by decision of both parties.

The employment relationship will be terminated by the employer with dismissal of the employee, with or without just cause. In the latter case the employee forfeits the right to labour indemnities (for having committed a serious fault), which are fully assured in the first case.

The employment relationship will be terminated by an employee by handing in a notice or resignation, or by indirect termination of the work contract. In the first case, the employee is not paid labour indemnities; in the second case the employee is entitled to such indemnities.

Prior notice is the manifestation of will of the party who intends to terminate the contract. It usually corresponds to one month of work. An employer who does not want the employee to remain on its premises during the notice period may indemnify him/her in respect of such period.

In contracts with expatriates, it is common to have longer notice periods. According to Brazilian law, if the employer decides to waive the employee's compliance with the notice period, it must pay for the whole contractual period. The employee, when handing the notice, is not obliged to work for the full period.

The new CLT also abolished the compulsory assistance of the trade union on termination of the labor contract and its ratification. According to the text, the act of rescission by the employer, with annotation in the workbook, will be sufficient for release of the forms necessary for the employee to receive unemployment insurance and withdraw his FGTS. Unemployment insurance is the benefit paid, for a limited time, to a worker dismissed without just cause, equivalent to 3 or 5 installments calculated on the average of the last salaries received, variable according to the length of time worked, and paid by Social Security.

### **12.9. Social Security**

The Pension Reform (constitutional amendment [No. 103](#), November 2019) brought a series of changes to the Brazilian social security pension system.

Summary of the main changes:

#### **Minimum age and contribution time**

For **urban workers in the private sector**, the general retirement rule now requires women to be at least 62 years old and have 15 years of contribution. In the case of men, 65 years of age and 20 years of contribution.

As for **federal civil servants**, the new general rule will require 62 years of age for women and 65 for men, with at least 25 years of contribution, 10 years of public service and 5 years in the post in which retirement will take place.

For **teachers**, it means 25 years of contribution and a minimum age of 57 for women and 60 for men. **Police officers**, both men and women, may retire at 55 years of age, provided they have 30 years of contribution and 25 years of effective exercise of their function.

For the retirement of **rural workers**, the contribution time of 15 years and the minimum retirement age of 55 for women and 60 for men are maintained.

### Benefit calculation

Upon reaching the minimum age and contribution period, urban workers may retire with 60% of the average of all social security contributions made since July 1994 (or since January 2004 for federal civil servants). For each additional year of contribution, in addition to the minimum required, it will be added two percentage points to the 60%. Thus, to be entitled to a pension equal to 100% of the average contribution, women must contribute for 35 years and men, for 40 years.

The amount of pensions will not be less than a minimum wage nor may it exceed the ceiling (currently BRL 7,087.22 per month).

### Contribution rates

The social contribution (INSS) is deducted from employees' monthly remuneration and has progressive rates according to the salary ranges below (2023).

Monthly salary base	Rate
Up to BRL 1,320.00	7.5%
From BRL 1,320.01 to BRL 2,571.29	9%
From BRL 2,571.30 to BRL 3,856.94	12%
From BRL 3,856.95 to BRL 7,507.49	14%

More information on [chapter 13](#) – Social Security Law of SWISSCAM Doing Business in Brazil guide.

### International Agreements

Foreigners who work in Brazil have their social security rights guaranteed by international [agreements](#) that the Brazilian Social Security maintains with several countries. This type of agreement allows the contribution time of a person working in Brazil to be computed in another country. Likewise, a foreigner may have his or her contribution time abroad counted for the benefit provided by the Brazilian Pension Plan.



The Bilateral International Social Security Agreement between Brazil and Switzerland entered into force in October 4th, 2019, which extends coverage to workers linked to the social security systems of both countries and avoids double taxation in cases of temporary displacement. Applicants who have met the requirements may apply for death pension, age retirement and disability retirement benefits. Information in [German](#) or in [French](#).

### **Sources Chapter 12:**

SWISSCAM Guide "Doing Business in Brazil" - Chapter 12:

<https://swisscam.com.br/en/publicacao/doing-business-in-brazil/12-labor-law-in-brazil-brief-overview/>

Brazilian Ministry of Labor and Welfare

National Institute of Social Security (INSS): <https://www.gov.br/inss/pt-br/assuntos/noticias/confira-as-principais-mudancas-da-nova-previdencia>

Trench Rossi Watanabe article: <https://www.trenchrossi.com/en/legal-alerts/brazils-senate-approves-social-security-pension-reform-pec-6-2019/>

## **13. Avoiding payment problems / Procedures for collecting payments**

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

The Brazilian financial information system Serasa possesses a wide database with economic and financial information about all Brazilian companies. A Serasa report comprehends contact information, business behavior, analysis of the accounting statements (indebtedness, repayment capacity, open bills). For your reference, please check available services at [www.serasaexperian.com.br](http://www.serasaexperian.com.br) (only in Portuguese, with link to partners in other countries).

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

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

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

1. Send a letter to the customer informing about the open account.
2. Call the client to ask the reason for the delay and try to negotiate a new deadline for payment. The new agreement must be formalized by e-mail. Continue with follow-ups or contract a collecting agent.
3. Make known the insolvency to institutions like Serasa (Once a company is on the "black list", it is difficult for it to do new business in Brazil).
4. Ask your lawyer to get in contact with your customer, threatening with a legal action or a protest at the registry office (cartório).
5. Register the debt at the registry office and communicate this step to the debtor. This step is only possible if the importer can provide a promissory note, a contract, a bill of exchange or another securitized instrument. A commercial invoice is not sufficient. Further information about accepted documents, access <https://protestosp.com.br/Info/Glossario> (in Portuguese only).
6. Cash guaranties or pledge, if available.
7. Apply an action against the client. The attempt of a new agreement, however, is always worthwhile, as the legal system is extremely slow and expensive in Brazil. Lawsuits can take years.

An alternative to the legal way, faster and more efficient, is the arbitration and intermediation services offered by Arbitration Chambers, although involved costs can also be high. Among others, the Canadian Chamber (<https://ccbc.org.br/cam-ccbc-centro-arbitragem-mediacao/en/>) and the Eurochamber in Brazil (<https://www.caeurocamaras.com.br/cae/pt/index.php>) offer this service.

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