DOING BUSINESS IN Brazil

L.O. BAPTISTA ADVOGADOS

WWW.BAPTISTA.COM.BR

ADDRESS
Av. Paulista n 1294 - 8 andar
São Paulo 01310-100, Brazil

CONTACT PARTNER
Marta Rodrigues
L.O. BAPTISTA ADVOGADOS
mar@baptista.com.br
Business Structures: What types of business structures are permitted?

There are several types of business structures in Brazil. The most widely used are the limited liability company (sociedade limitada), regulated by Law number 10.406/2002 (“Civil Code”) and the joint-stock corporation (sociedade anônima), regulated by Law number 6.404/1976 (“Corporation Law”).

The incorporation of a sociedade limitada requires at least two shareholders (known as “quotaholders”), who can be resident or not, individuals or corporate entities. The incorporation is made through an articles of association (contrato social), which must be duly registered before the Board of Trade in which the company is headquartered. Its corporate capital is divided into quotas with no minimum or maximum percentage of interest ownership. The effective control is exercised by quotaholders representing at least 75% of the quotas. This type of company is usually incorporated under supplementary application of Corporation Law.

A sociedade anônima is incorporated by private subscription of the company’s capital by at least two individuals or corporate entities, whether or not resident in Brazil. Depending on whether or not its securities (including shares) are traded on the stock exchange or over-the-counter market, this type of company can be a listed corporation (sociedade anônima de capital aberto) or a non-listed corporation (sociedade anônima de capital fechado). The details of a sociedade anônima are described in its By-Laws (estatuto social). The sociedade anônima is divided into shares. Its shares may be classified as common shares or preferred shares, with or without voting rights. In this type of company, the control is ensured by shareholders representing 50% of the voting capital plus one voting share.

Taxation: Briefly explain the country’s tax regime including rates and how rates differ based on business structures.

Taxation in Brazil is divided among the Federal Union, the states and municipalities. Currently, the main taxes are the following:

Federal Taxes: Income Tax (IR): Corporate Income Tax (IRPJ) and Individual Income Tax (IRPF); Social Contribution on Net Profits (CSLL); Excise Tax (IPI); Tax on Financial Transactions (IOF); Social Contributions on Revenues (PIS and COFINS); Contribution upon Economic Activities (CIDE); Import Duty (II); and Export Duty (IE).

State taxes: Value-added Tax (ICMS); Causa Mortis and Donation Tax (ITCMD); Vehicle Ownership Tax (IPVA).

Municipal Taxes: Tax on Services (ISS); Real Estate Ownership Tax (IPTU); Real Estate Transfer Tax (ITBI).

Generally, Brazilian entities which are part of a multinational group may opt for one of the following tax regimes: (i) real profit regime (lucro real); and (ii) deemed profit regime (lucro presumido). The option is valid for the whole tax year (same as the calendar year) and may only be changed for the subsequent taxing period. Under the actual profit regime, IRPJ and CSL are determined based on the profits actually computed by the company, after the adjustments - additions, exclusions and offsetting - provided in the federal tax legislation. Rates applicable over the taxable profits are also 25% and 9%, respectively. Taxes paid or withheld at source and specific incentives may be excluded from IRPJ and CSL tax bases, which would be taxed at the rate of 34% (25% of IRPJ and 9% of CSL).
Under the actual profit regime, PIS and COFINS are generally due pursuant to the noncumulative regime at 1.65% and 7.6%, respectively, being possible the deduction of certain credits. According to the deemed profit regime, the corporate income taxes due by the company (IRPJ and CSL) are not calculated based on the accounting profits computed in its balance sheets. Such taxes are charged over a presumed basis, which results from the application of a predetermined percentage over revenues (i.e., gross income). The percentage applicable on the gross income for sales income is 8% and for services revenues is 32% for both corporate income taxes. IRPJ and CSL are levied at 25% and 9%, respectively, over the mentioned tax basis. In this situation, PIS and COFINS are due under the cumulative regime, what means that revenues are charged by these taxes at 0.65% and 3%, respectively.

One shall thoroughly analyze the type of business structure and margins in order to determine which tax model is best for each situation.

**Immigration: Summarize immigration laws, including visas available for foreign employees.**

There are different types of visas for foreigners, their spouses and economically dependent children, the most common of which are:

**Visa for Business Travelers (Visitor Visa):** The visa for business travelers, which can be obtained from any Brazilian Consulate, enables the foreigner to come to Brazil for acts of commerce, the dissemination of products and market research. This modality also permits participation in trade shows, events, meetings, seminars, conferences and similar events, for the short term and with no intent of residence. This new visa category will cover short-term stays in Brazil for business purposes (including maritime business), tourism, transit as well as artist and athletes. The maximum term allowed to stay in Brazil with a visitor visa is 90 days, which can be extended for an additional 90 days and with a maximum of 180 days in any 12-month term).

**Work Visa:** The work visa will be granted to foreigners who come to Brazil to work for a Brazilian company in the capacity of employees, i.e., with an employment relationship and upon remuneration by the Brazilian company, but without representation powers of the company. This visa will be granted for a maximum period of 2 years.

**Technical Work Visa:** The technical work visa will be granted to foreigners that come to Brazil to provide services to Brazilian companies under no employment relationship and that, for that purpose, are paid abroad based on a Technology Transfer Agreement, Technical Assistance Services Agreement or an agreement for technical cooperation signed between a Brazilian company and a foreign company.

**Visa for Administrator of a Legal Entity:** This type of visa will be granted to the employee of a foreign company who is to be transferred to a company of the same Group, based in Brazil, to hold the position of officer, administrator, or member of the Board of Directors of such company, with administration and representation powers, as long as the position is provided for in the company’s bylaws or charter documents.

**Visa for the Foreign Investor – Individual:** This type of visa will be granted to foreign individuals who wish to settle in Brazil by investing their own resources, of foreign origin, in productive activities. In this case, the investor
should work as a partner of the Brazilian company, being also authorized (after obtaining the visa) to occupy the position of administrator of that same company.

**Residency Visa based on the Brazil-Mercosur, Bolivia and Chile agreement:**
The Mercosur, Bolivia and Chile have agreed that the territory of all such countries constitute a Free Residence Area where their citizens will have the right to work. In this case, no requirement other than nationality will be made. This Mercosur Residence agreement is valid for the following countries: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. The agreement determines that the nationals of all such countries can reside in any of the signatory countries, regardless of their migration condition, and they can work in any position and hold management positions in Brazilian companies.

Brazilian law regarding the bureaucratic process to obtain a Brazilian visa changed in 2017, tough not modified substantially the types of visa described above and their main rules.

**Foreign Investment Review and Issues:** Does the government review and approve foreign investments? What factors are considered?

- Brazil does not impose several restrictions concerning foreign investments. Brazilian Central Bank, which controls all the domestic and international transactions, does not have a review and approval system, only a procedural registration through an electronic system to register the foreign transactions.

- Different from other countries, where oil and gas, mining, energy and telecommunications are controlled by the local state, in Brazil there are only few sectors that government imposes some kind of restriction and control.

- Some of these obstacles are based on a limitation for foreign participation, such as the press and broadcasting sector, in which a foreigner can invest up to thirty percent and the airlines sector, in which there is a limit of twenty percent for foreigner investment.

- The restriction based on a review and approval system are for the finance sector, which the President of the Republic and Brazilian Central Bank must approve any foreigner finance institution to operate in Brazil and for a foreigner to purchase a rural land and areas located close to the Brazilian border, which an approval has to be granted by the National Security Board.

- The absolute restriction is related to the nuclear sector, in which the Brazilian government has the state monopoly and no other entity, whether national or foreigner are allowed to enter in this sector.

**Dealing with the Government:** Identify major issues when dealing with local and federal governments.

- Brazil is a federation divided into Federal Government, States and municipalities. Several functions are left under common responsibilities of federal, state and local levels. This fact entails some of the major issues among local and federal governments, including the ones involving social policies.

**Dispute Resolution and Court Systems:** Summarize the court system, including the use of juries and arbitration.

- In Brazil, the most common method to resolve commercial, civil and criminal disputes is litigation in the federal and state courts. At federal level, any appeal shall be directed to the relevant federal court of appeal, whereas at the state level to the relevant state court of appeal. In addition, subject to some requirements, it is possible to challenge the appeal court decision to the Supreme Federal Tribunal (Supremo Tribunal de Justiça) and the Superior Tribunal of Justice Court (Superior Tribunal de Justiça). Only crimes against
Since 1990, Brazil has been strengthening its anticorruption legislation. One of the most recent law is the Clean Company Act of 2013, regulated by the Decree n. 8.420 of 2014, which stipulates strict corporate liability at the administrative level for corruption practices. The Clean Company act was inspired in the FCPA, The British Anti Bribery Act and the OECD Recommendations. In general, the Act prohibits companies (directly through its directors, officers, employees or indirectly through partners, distributors, representatives, agents etc.) from offering or giving an unjust advantage to a domestic or foreign public official or to a related third party, or from financing or subsidizing such conduct. It also prohibits practices that affect competition on public bids or on public contracts. The Act applies to companies with activities in Brazil, including those operating through a local subsidiary. As provided in the FCPA, the definition of a government official is broadly opened. Furthermore, it prohibits the bribery of foreign government officials, and activities like bid rigging, financing or influencing others to engage in illegal acts in foreign countries by Brazilian companies.

Any act taken “in the interest of benefit” of the company subjects the company to a fine of up to 20 percent of a company’s gross revenue. The law also set forth for an array of other sanctions, including suspension of activities and prohibition to contract with public authorities and companies and to receive subsidies. Brazilian Criminal Code also defines the most relevant anti-corruption offenses for criminal purposes. Those offenses are related to improper influence, active and passive corruption and bribery and corruption involving foreign public administrations.

Under the Criminal Code individuals – public officials and civil servants, as well, as the from the private parties – are subject to penalty of imprisonment, from two to twelve years, in addition to the payment of a fine, to be determined by a court. For the crime of undue influence, the Criminal Code provides for the sentence of imprisonment, ranging from two to five years, plus a fine. Federal Law n. 8429 of July 2, 1992, sets forth definition and penalties for administrative improbity, of civil nature. The administrative improbity law provides penalties related to the illicit enrichment of public officials and to damages. It applies to those who induce or contribute for the act of improbity, or who directly or indirectly benefit from such act. For acts of Improbity civil servants are subject to penalties: (i) loss of assets; (ii) loss of public function; (iii) temporary suspension of political rights; (iv) payment of civil forfeit; (v) compensation damages; (vi) a prohibition contracting with Public Authorities or receiving benefits or tax incentives or credit, plus damages to be discretionarily imposed by the judiciary.

Business may be combined as follows:
**Merger:** two or more companies are combined to form a new company, which succeeds them to all their original rights;

**Spin-off:** the company transfers portions of or even its total equity (assets and liabilities) to one or more companies, with the continuation of the spun-off company, if its equity has been partially transferred, or with its extinction, if all its equity has been transferred. The law stipulates specific succession rules for the obligations of the spun off or extinguished company;
| **Merger by incorporation:** | one or more companies are absorbed by another company, which succeeds them to all their rights and obligations; |
| **Equity Purchase and Sale:** | the equity of a target company is sold to another shareholder or third party; |
| **Joint Venture:** | two or more legal entities combine efforts to explore business opportunities. |

### Competition Law: How do laws impact competition?

In Brazil, the Brazilian Competition Authority (CADE) is the exclusive responsible for competition matters. CADE is responsible for the mergers and acquisitions review and clearance, as well as for the investigation and prosecution of companies and individuals engaged in anticompetitive practices.

Brazilian Antitrust Law, Federal Law n. 12.529 of November, 2011, establishes that consolidations, acquisitions, mergers, association agreements, consortia and joint ventures are subject to CADE’s review prior to their closing when (i) one of the economic groups involved in the transaction had gross revenues or a total business volume in Brazil of at least BRL 750 million in the last fiscal year preceding the transaction; and (ii) the other economic group involved in the transaction had gross revenues or a total business volume in Brazil of at least BRL 75 million in the last fiscal year preceding the transaction.

If the parties close the transaction before CADE’s approval or fail to notify the transaction, parties involved in the transaction are jointly subject to a penalty of nullity of the agreement, as well as a fine ranging from sixty thousand reais (R$ 60,000.00) to sixty million Reais (R$ 60,000,000.00).

Regarding anticompetitive infractions, Law 12.529/2011 establishes that practices aiming at causing the following effects shall be considered unlawful: (i) limiting, restraining or injuring free competition or free initiative; (ii) controlling the relevant market of goods or services; or (iii) exercising a dominant position abusively.

Some examples of these practices are cartel, influence of uniform commercial behavior, discriminatory and/or exclusionary practices, predatory price, sham litigation, abuse of dominant position, etc.

These practices are subject to fines: (i) for the companies involved, which vary from 0.1% to 20% of the gross sales of the company, group or conglomerate; (ii) for officers, a fine ranging from 1 to 20% of the fine applicable to the company; and (iii) for non-officers or employees or related individuals and any other public or private legal entity, the fine may range from fifty thousand reais (R$ 50,000.00) to two billion reais (R$ 2,000,000,000.00).

### Employment Relations: Briefly summarize major laws impacting employment and employee relations.

The most important Brazilian Employment law is the Consolidation of Labor Laws, known as “CLT”, recently amended by the Law No. 13,467, dated as of November 11, 2017, popular named as “Labor Reforms”. The “Labor Reforms”, contemplates a higher degree of flexibility to negotiate labor and employment conditions by the parties (employees and employers) and, in certain cases, without third parties assistance such as employees unions (which usually offers resistance and represents difficulties to implement changes in the labor and employment conditions). The Labor Reforms limits the influence and interference of the Brazilian judicial system in certain employment negotiations and authorizes the adoption of arbitration for those considered highly paid employees (who currently receive a monthly base salary higher than R$11,062.62). Certain minimum labor and employment rights are also regulated and guaranteed by the Brazilian
Federal Constitution and cannot be supplied or excluded by an agreement to be executed between the parties, such as vacation period, Christmas Bonus, maternity leave, FGTS deposits, prior notice period, among others, although with the Labor Reforms, a collective bargaining agreement can prevail even over certain laws.

| Statutes and regulations: What are the main laws and regulations governing business combinations? | Brazil does not have specific law governing business combinations. The main laws governing herein business combinations are: the Federal Constitution, the Brazilian Civil Law, the Antitrust Law, the Anticorruption Law, the Capital Markets Law, regulations issued by the CVM (Brazilian Securities and Exchange Commission), the Employment Law, Bankruptcy and Judicial Recovery Law. |
| Governing Law: What law typically governs the transaction agreements? | Brazilian law typically governs the transaction agreements. In case arbitration is chosen as the method of the dispute resolution (in opposition to court law), the foreign law may govern such transaction, although certain formalities established by the Brazilian law would still need to be observed, such as the ones regarding equity transfer. |
| Filings & Fees: Which government or stock exchange filings are necessary in connection with a business combination? Are there stamp taxes or other government fees payable in connection with a business combination? | Brazilian corporate acts need to be registered before the Registry of Commerce (Junta Comercial) of the venue of its headquarters. If the transfer of equity involves a joint-stock corporation, such transfer shall be also registered in the company’s corporate books of transfer of shares and registration of shares. Such books are not subject to public records. Should the transaction involve a public offering of a company listed with the stock exchange, the offering must be registered with the Brazilian Securities Commission (Comissão de Valores Mobiliários – CVM). Depending on certain requirements and situations, the prior approval of the Brazilian antitrust authority (Administrative Council for Economic Defense – CADE) is required. The registration before Junta Comercial, CVM and CADE are subject to certain fees. |
| Information to be Disclosed: What information must be made public in a business combination? Does this depend on the structure used? | In general, a business combination does not require public disclosure: the company’s corporate document just need to approve the business combination providing its general terms and conditions. Such corporate document is made public when registered with the competent Registry of Commerce (Junta Comercial). However, in Brazil there are special disclosure requirements. For instance: - Publicly held corporations are subject to the rules established by the Brazilian Securities Commission (Comissão de Valores Mobiliários – CVM) and the disclosure requirements vary according to the type of the acquisition; - When Brazilian antitrust authority (Administrative Council for Economic Defense – CADE) is required, other disclosure requirements are needed, despite the fact that the information submitted to CADE is normally treated as confidential. |
| Disclosure of substantial shareholdings: What are the disclosure requirements for owners of large shareholdings in a company? Are the requirements affected if the company is a party to a business combination? | With regard to shareholders: - In a limited liability company, its corporate document needs to inform the shareholders’ data, the company’s capital stock and the number of equity (quotas) each shareholder owns. Such corporate document is made public when registered with the competent Registry of Commerce (Junta Comercial); - In a closely held corporation, no shareholding disclosure is required. The transfer of the shareholder’s share is registered in the company’s corporate books of transfer of shares and registration of shares. Such books are not subject to public records; |
In Brazil, the purchaser in a takeover bid needs to make a public offer to the remaining voting shareholders for a purchase price of at least 80% of the amount paid for the controlling shareholders. As per CVM regulations, bidders must not reveal any information related to the takeover bid until it is finally disclosed to the market. The bid must take place in a stock exchange or in another authorized organized market.

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Duties of directors/officers:

**Corporation:** duty of care, loyalty and to avoid conflict of interest. In listed corporation, there is also the duty of disclosure, as well as to comply with the information policies set out by the CVM regulations.

**Limited liability company:** The Civil Code does not contain any specific provision relating to managers’ duties and responsibilities. However, the general duties indicated above are applicable to the managers of this type of company.

**Duties of controlling shareholder:** The Corporation Law provides that the controlling shareholder must exercise its power in order to guide the corporation towards the achievement of its purpose. It has duties and responsibilities towards minority shareholders, workers and the community. The controlling shareholder is liable for abuse in the exercise of control, such as, among others: to direct the company to purposes other than the corporate purpose or those that are harmful to the national interest, or that benefit another company, to the detriment of the minority shareholders; to liquidate a solvent company, or merge it in order to achieve unfair advantage for him, her, itself or a third-person; to promote amendment of the by-laws, issuance of securities or adoptions of policies or decisions contrary to the interest of the company and harmful to minority shareholders, workers and investors; and to induce a manager or overseer to perform illegal acts or to promote, contrary to the interest of the company, their approval by the general meeting.

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Approval rights: Both in a corporation and in a limited liability company, business combination needs to be approved by its shareholder or quotaholder. In a corporation, unless other quorum is provided for in the By-Laws, the majority of the corporate capital may approve the transaction. In a limited liability company, the minimum of three-quarters of the corporate capital is required.

**Appraisal rights:** Both in a corporation and in a limited liability company, the shareholders/quotaholders, who voted against the business combination, are entitled to withdraw from the company and be reimbursed for the value of their interest. The company’s by-laws or articles of association may establish specific provisions related to the equity reimbursement. In a listed corporation, the business combination must be made in the interest of all shareholders, including the minority and those with no voting rights.

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Hostile transactions: What are the special considerations for unsolicited transactions?

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### Break-up fees – frustration of additional bidders:

Which types of break-up and reverse break-up fees are allowed? What are the limitations on a company’s ability to protect deals from third-party bidders?

Break-up fees and reverse break-up fees are not expressly established in Brazilian law.

### Government influence:

Other than through relevant competition regulations, or in specific industries in which business combinations are regulated, may government agencies influence or restrict the completion of business combinations, including for reasons of national security?

Some business combinations are subject to governmental regulations, which may influence or restrict the completion of the transactions, such as the ones involving health care and life sciences, telecommunications, oil and gas, aviation, electricity, and other public services, which are regulate by government agencies. There are also restrictions in statutory law with respect to the acquisition of real property located in national security and rural areas, by foreign individuals or corporate entities, or by Brazilian corporate entities controlled by foreigners residing or based abroad.

### Conditional offers:

What conditions to a tender offer, exchange offer or other form of business combination are allowed? In a cash acquisition, may the financing be conditional?

In private law, everything which is not forbidden by public law is allowed. In other words, in business combination among private parties, the parties are free to establish the conditions and terms of the pursue transaction. In public law, the parties must obey the law and the Notice of Public Offer (“Edital”) or equivalent document.

### Financing:

If a buyer needs to obtain financing for a transaction, how is this dealt with in the transaction documents? What are the typical obligations of the seller to assist in the buyer’s financing?

The transaction document may impose to buyer the financing obtainment in the form of a precedent condition for the closing of the transaction. As per Brazilian law, seller has no obligation to assist buyer in the financing obtainment.

### Minority squeeze-out:

May minority stockholders be squeezed out? If so, what steps must be taken and what is the time frame for the process?

Brazilian law establishes certain protections to avoid the squeeze out of minority stockholders, such as anti-dilution clause; preemptive rights; and prohibition of unjustified dilution. In listed corporations, a public offering shall be made assuring the remaining shareholders a purchase price of a least 80% of the amount paid for the controlling shareholders.
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<th><strong>Cross-border transactions:</strong> How are cross-border transactions structured? Do specific laws and regulations apply to cross-border transactions?</th>
<th>Brazil has no specific law and regulation applicable to cross-border transactions. Foreigner shareholders/quota holders must comply with certain requirements established herein, such as the ones issued by the Brazilian Central Bank with regard to the registration of foreigners’ investment. In addition, nonresident shareholder/quota holder must be represented by an individual resident in Brazil, who must have powers to receive summons and notices. Foreigners must obtain their enrollment under Brazilian Federal Tax Authorities. As for the law governing the cross-border transaction, it depends on the parties’ decision. Usually the Brazilian law is chosen as the governing law along with an arbitration panel in Brazil as dispute resolution.</th>
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<td><strong>Waiting or notification periods:</strong> Other than as set forth in the competition laws, what are the relevant waiting or notification periods for completing business combinations?</td>
<td>As for waiting and notification periods in business combinations, Brazilian law requires companies to prepare a special balance sheet for the transaction. Such balance sheet must be dated no later than thirty (30) days prior to the business combination event – in case of a limited liability company and sixty (60) days – in case of a corporation. The event must also be published in a newspaper of wide circulation and in the Official Gazette.</td>
</tr>
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<td><strong>Sector-specific rules:</strong> Are companies in specific industries subject to additional regulations and statutes?</td>
<td>Some business sectors are subject to specific regulations, such as health care and life sciences, telecommunications, oil and gas, aviation and electricity, which are under the surveillance of autarchies known as regulatory agencies (“agências reguladoras”). These agencies do not share a common format and are essentially part of public administration, but contain enough autonomy to create and enforce their own regulations, including technical and financial standards.</td>
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<tr>
<td><strong>Tax issues:</strong> What basic tax issues are involved in business combinations?</td>
<td>Business combinations generally involve either the acquisition of assets or the acquisition of the legal entity. The best model depends on the envisaged structure and risks involved. The main tax issues to consider in business combinations are tax responsibility and succession, treatment of revenues and expenses arising from the reorganization, possibility of amortizing goodwill, among others.</td>
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| **Labor and employee benefits:** What is the basic regulatory framework governing labour and employee benefits in a business combination? | In accordance with Brazilian employment law, employees are entitled to certain rights, such as:  
- Annual mandatory salary increase – as a percentage determined in either the collective bargaining agreement executed by and between the respective employer and employee unions - whether or not they are affiliated to such unions (“Convenção Coletiva de Trabalho”); or a collective labor claim filed by the employee union against the employer union (“Dissídio Coletivo De Trabalho”), or the collective bargaining agreement executed by and between the employee unions and the company (“Acordo Coletivo de Trabalho”);  
- Annual Christmas bonus (commonly referred to as a 13th salary) – an additional annual payment equal to an employee’s monthly compensation;  
- Vacation - an annual 30-day vacation, coupled with a bonus equal to 1/3 of the employee’s monthly compensation. The total vacation pay equals 133.33% of the employees monthly salary, coupled with the average (1/12) of all salary variable amounts paid (e.g. overtime); |

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- Accrued severance fund ("FGTS") - an amount to be funded by the employer corresponding to 8% of the employee's monthly compensation, deposited into a special bank account maintained in the name of the employee at a branch of the Federal Savings Bank (Caixa Econômica Federal);
- Transportation voucher - the employer shall be liable for the total cost of transportation vouchers exceeding 6% of the employees' monthly compensation;
- 15-day paid sick leave - the employer shall be liable for the payment of a 15-day sick leave, thereafter the leave shall be extended for a term to be determined by the Social Security Institute (INSS), which shall be responsible for the payment of the employee's salaries. Please note that the sickness leave is mandatory and unwaivable by the parties;
- Minimum of 120-day maternity leave - female employees are entitled to at least 120-day maternity leave period (the collective bargaining agreement may grant more than 120-days for the pregnant human), to be paid by the employer and male employees are entitled to a 5-day paternity leave period, also to be paid by the employer;
- Hazardous working premium: 30% premium on employee's wage or salary for dangerous working conditions;
- Unhealthy working premium: a 10%, 20% or 40% increase of the minimum wage for unhealthy working conditions;
- Temporary transfer allowance: a 25% increase in pay for a temporary transfer of the workplace, which results in the need for a change in the employee's domicile;
- Dismissal indemnification (FGTS indemnity): an accrued severance fund indemnification - in the event of dismissal without cause, the employee is entitled to receive a payment corresponding to 40% over the balance of deposits made during the employment relationship and if there is an agreement between the parties to terminate an employment relationship, the employee will be entitled to receive only 20% over the balance of deposits made during the employment relationship;
- Overtime: overtime with a minimum additional payment of 50% over the normal hourly rate;
- Night shift hour reduction: every 52 minutes 30 seconds of work done after 22:00 and before 05:00 is considered to correspond to a full 60 minutes of work;
- Night shift premium: 20% additional pay for night shift workers;
- Weekly paid rest: at least one rest day for every week, preferably on Sundays;
- Prior notice: a 30-day of prior notice is required where the termination is without cause or the employee resigns. The employer is authorized by law to make a payment in lieu of providing notice to the employee. In this regard, please note that the law affords employees an additional 3 days per year of service, limited to a total of 90 days, for termination payment purposes, for notice to be given by the employer in situations of termination without cause (the employer being entitled to request the employee to work for up to 30 days of prior notice). Failure to provide such notice results in the employer's obligation to pay in lieu of such notice. Should the employee fail to provide the maximum 30 days' prior notice in case of resignation, the employer may deduct a full month's salary from the severance due to the employee;
- Moreover, certain benefits neither provided by law nor stipulated in a collective bargaining agreement that are extended by the employer on a discretionary basis (i.e. discretionary bonus monthly paid, sometimes car or housing allowance, etc.), can become a vested right to the employee when paid repeatedly and cannot be reduced or suppressed unless if this is done through a collective bargaining agreement.
The Brazilian Bankruptcy and Judicial Recovery Law aims to avoid bankruptcy. As such, prior to entering into a judicial recovery, the law allows the companies in difficulty to amicable negotiate its debts out of court with its creditors, procedure named as “Recuperação Extrajudicial” (Extrajudicial Recovery). In case, this negotiation does not succeed, the company may seek court intervention to avoid its bankruptcy, through the procedure called “Recuperação Judicial” (Judicial Recovery). For that matter, the company shall present a recovery plan, which may be adjusted upon the creditors’ suggestion, rejection or acceptance. Failure to have the recovery plan duly approved may lead the company to bankrupt.

Based on the above scenario, the company under recovery is allowed to sell certain assets, units and/or undergo business combinations, such as mergers, acquisitions and absorptions, provided they are specified in the company’s recovery plan.

Further, in accordance with Brazilian Federal Constitution, employees have: (i) 5 years during the life of the employment relationship to file a labor claim seeking any unpaid employment right during such period; or (ii) 2 years as from the termination of their alleged or formally recognized employment relationship (having regard the projected prior notice period) to file a labor claim seeking unpaid labor rights in respect of a period of up to 5 years prior to the filing of a labor claim. It is important to highlight that we only mentioned basic benefits that a fully-fledged employee is entitled to receive. We have specific laws contemplating benefits and different conditions for hiring outsourced and temporary workers, domestic workers, sales representation/agency relationships and many other categories of workers.

Restructuring, bankruptcy or receivership: What are the special considerations for business combinations involving a target company that is in bankruptcy or receivership or engaged in a similar restructuring?

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Based on the above scenario, the company under recovery is allowed to sell certain assets, units and/or undergo business combinations, such as mergers, acquisitions and absorptions, provided they are specified in the company’s recovery plan.

Anti-corruption and sanctions: What are the anti-corruption, anti-bribery and economic sanctions considerations in connection with business combinations?

Under current Brazilian legal framework, those involved in acts of corruption may face criminal, civil and administrative sanctions. With regard to criminal prosecution, individuals who practice active (give or offer) and passive (receive or suggest to receive) corruption in Brazil are subject to imprisonment, from two to twelve years, in addition to the payment of a fine, to be determined by a court. For the crime of undue influence, the Criminal Code provides for the sentence of imprisonment, ranging from two to five years, plus a fine. Legal entities are also subject to severe administrative and civil liabilities. Federal Law n. 12.846, from August 2013 establishes civil and administrative liability for legal entities that promise, offer or give, directly or indirectly, any undue advantage to a public official or third person related to him. The applicable penalties for violating the Act are severe, including the returning of any profit arising from the bribery, suspension of the company’s activities and, in some cases, the dissolution of the company. Additional administrative penalties may include fines of up to 20 percent of a company’s gross revenue.