

GETTING THE
DEAL THROUGH 

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Overview

1 Describe the agriculture and food supply chain in your jurisdiction.

Brazil is one of the largest producers and exporters of agriculture and food products in the world. Its products include soybean, meat, sugar and ethanol, and coffee. In July 2016, according to the Brazilian Ministry of Agriculture (MAPA), the aforementioned products were responsible for 83.8 per cent of gross export income (a drop of 0.2 per cent compared to July 2015). Brazil is in an advantageous position for soft commodities production owing to suitable weather, land availability, advanced technologies in machinery and seed development, as well as high productivity indexes throughout the years. The temperate climate of the southern region means that cultures such as soybean, rice, wheat, corn and tobacco dominate. South-east Brazil is well known for the large-scale production of sugar, cattle (meat), coffee, orange juice and other diversified cultures and the centre-west region is considered the national producer of grains, primarily soybean, corn and wheat as well as cotton, sugar and cattle. The northern and north-eastern regions, despite the restrictions of the Amazon forest and the dry weather that diminishes the availability of productive areas, are responsible for grain production, cattle, cotton and fruits. Thus, the variety in the regions and accommodating climate conditions allow Brazilian producers to diversify the investments in land and crops throughout the year, avoiding significant fluctuations in price.

2 What is the regulatory environment for primary agriculture and primary food processors in your jurisdiction?

Brazilian law is strict with regard to rural producers (primary agriculture), which can be individuals or companies, agro-industries or industries concerning tax, labour, sanitary and environmental issues. Regarding taxes, there is a clear internal incentive for individuals – who are entitled to a lower income tax levy – and for export operations, which are relieved from the main internal taxes on sales (state value-added tax (ICMS), federal value-added tax (IPI) and social contributions (PIS/Pasep, COFINS and INSS)). In general, the Brazilian tax burden is comparatively high compared with other producer countries, so this is an efficient instrument to avoid ‘taxes export’ and to support the products’ international prices competition. Labour rules are currently a very serious issue in Brazil for primary agriculture and primary food processors, mainly with regard to shift restrictions, ergonomics and health risks and hazards related to sun, fuels and chemicals exposure. In addition, Law No. 8,171/1991 provides the Brazilian national agriculture policy, which has very strict sanitary provisions, and is also the agricultural policy implemented by each state’s Secretary of Agriculture Defence, guiding seeds and fertilisers research and production, as well as animal diseases and transit control. Finally, Law No. 12,651/2012 provides the ‘new’ Forestry Code, with several restrictions regarding the use of land in Brazil, such as legal reserve and permanent protection areas including rivers, streams, hillsides and water sources, with distinctions and limits per region and per state.

3 What are the main non-governmental organisations and non-profit organisations in the agribusiness sector in your jurisdiction?

Brazil is internationally known for its avant-garde position when it comes to researching new seeds and plants varieties, as well as for new technologies for machinery, equipment and management techniques for the agribusiness sector, with highlights to the Brazilian Agricultural Research Company (Embrapa), incorporated in 1973 as a part of the MAPA, as well as to the local universities and research centres, such as the University of São Paulo, the most prestigious in Latin America, whose superior school, the Luiz de Queiroz College of Agriculture, stands as a leader in terms of patents, statistics and other applied studies to the agribusiness sector. In addition to that, there are several associations of rural producers and food processors that have relevant representation in politics through the Brazilian Agribusiness Association and National Association of Agricultural Raw Material Distribution, among others.

Land acquisition and use

4 Identify and summarise the legislation addressing agricultural property transactions in your jurisdiction. Outline how farmland is typically held.

Agricultural property transactions in Brazil are regulated by the Brazilian Civil Code (Law No. 10,406/2002), which requires that each transaction be registered with the Real Estate Registry Office, including mortgages and fiduciary liens restrictions as guarantees to other owners’ obligations and liabilities. Land can be held by individuals and legal entities, either resident or domiciled in Brazil, or foreign, with some restrictions applied to the latter under Law No. 5,709/1971, which provides size and use limits. In 2010 the federal government’s Attorney General of the Union (AGU), based on a new interpretation, extended the application of Law No. 5,709/1971 to Brazilian incorporated legal entities that are controlled by foreign companies or individuals. However, this issue is currently being discussed by the National Congress and no clear definition has been decided on. In addition, it is important to mention that agricultural property in Brazil is subject to an annual federal tax (ITR), which can be at a rate of up to 20 per cent rate according to the land’s size and its actual use for crops, cattle and forestry, as well as a municipal tax at a rate of 2 per cent for each sale and acquisition transaction. For all matters, land must be subjected to a georeferencing process according to its size, which is above 100 hectares in 2016 and will be all sizes from 2023 onwards (Law No. 10,267/2001).

5 Outline any rules related to use of farmland for non-agricultural uses.

In this case, the same provisions regarding agricultural uses are applied, taking into account the general federal, state and municipal environmental rules regarding any kind of construction or land exploration for non-agricultural uses, such as a previous environmental impact assessment project and report to be approved by the governmental authorities.

6 How is lending secured by farmland addressed in your jurisdiction? Do special rules apply for farm lending?

In Brazil, there is a national system designed to provide rural funding through which public and private financial institutions are obligated to distribute credit to the agribusiness by a subsidised fixed rate as a component of the multi-year crop plan carried out by the government through its National Treasury and MAPA. In the 1990s, the form of 'public' funding being used was considered insufficient, so new private securities to finance the agribusiness sector were instituted, such as the Rural Notes (Law No. 8,929/1994) and the Rural Products Certificate, Rural Products Warrant, Rural Credit Rights Certificates, Rural Credit Notes and Rural Receivables Certificates, all designed by the Law No. 11,076/2004 and largely used from 2006 to fund the agribusiness sector and its national supply chain.

7 Are there provisions relating to creditors' rights on default by farmers that apply in your jurisdiction?

The collateral system provided by the Brazilian Civil Code along with sparse legislation and its successful execution before the judicial branch for credit recovery have provided a more favourable scenario for lenders and creditors in Brazil. However, in recent years and mainly after the publication of Law No. 11,101/2005, several rural producers and agro-industrial companies have been rescued by the judicial recovery process (the Chapter Eleven rules), which provides a safe option for debtors and a riskier venture for lenders, who may recover their credits in the longer term with a higher discount, depending on approval of the recovery plan by the general assembly of creditors. Some exceptions are applied, that is, there are some types of credit and guarantees that are not regularly subjected to the debtor's judicial recovery plan.

8 Describe any rules relating to public control of farm property in your jurisdiction. What legislation governs them?

In general terms, Brazilian law (and the Federal Constitution) protects the maintenance of private property by individuals and legal entities; however, said ownership must adhere to the 'social ends', so public interest is accounted for in conjunction with private farm ownership, which may be accomplished through a right of way, if there is the necessity for a public or private road to access other properties; by adhering to environmental rules and restrictions; considering the payment of ITR according to the land's size and use for crops, cattle and forestry; through expropriation, observing the due process of law and the payment of fair (market) values; or even considering mandatory expropriation if slave labour is detected by the administrative authorities or the Public Prosecutor's Office.

9 Are there any restrictions on foreign ownership of farm property in your jurisdiction? What legislation governs them?

As described in question 4, certain restrictions apply to foreign ownership in Brazil, principally through Law No. 5,709/1971, which provides size and use limits. In addition, in 2010 a new interpretation by the AGU extended the application of this Law to Brazilian incorporated legal entities that are controlled by foreign companies or individuals. Since this is not a legal directive and is thus subject to interpretation, the subject is currently being discussed by the National Congress and no clear definition has been reached.

Government programmes

10 Does the government provide agriculture support programmes to producers, processors or agriculture-related businesses and organisations? Outline the programmes and how they are generally accessed.

Yes, by way of the national system designed to provide rural funding through which public and private financial institutions are obligated to distribute credit to the agribusiness by a subsidised fixed rate as a component of the multi-year crop plan conducted by the government through its National Treasury and MAPA. To access such funding programmes, the individual or the company (whether they are the owners or possessors of the property) must be registered with the Brazilian Internal Revenue Service (RFB) and must present to the RFB the title of the property or farmland for which they are seeking funding.

The financial institutions entitled to provide this sort of public funding will demand sufficient collateral to mitigate the credit risk in order to compensate the lower rate.

11 Are there any programmes addressing assistance or government incentives for investment by foreign ownership in agribusiness?

In general, all government assistance and incentives applicable to Brazilian individuals and domiciled companies regarding ownership are also applicable to foreign individuals or companies in the agro-industrial sector. The main exception relates to the financial and capital markets foreign investments carried out by non-tax havens or tax privileged regimen that, by means of the National Monetary Council's Resolution No. 4,373/14, are entitled to some tax exemptions or lower rates on withholding taxes; for instance, a zero per cent income tax rate is applied when a foreign individual or company invests in a share negotiated in the Brazilian Stock Exchange, BM&F Bovespa.

Food safety, certification programmes, animal safety and disease

12 Outline the applicable legislation for primary processors of live animals. Is any distinction made between meat for domestic consumption and meat for export?

There are several relevant rules regarding food and animal safety and diseases, mainly Decree No. 24,548/1934, which provides the animal sanitary defence ruling; Decree No. 30,691/1952, which provides the Industrial and Sanitary Inspection on Animal Origin Products; and Law No. 8,171/1991, which provides the Agriculture Policy - ruled by Decree No. 5,741/2006 that established the Unified System for Farming and Cattle Health.

Legally, MAPA is the competent organism to implement the agricultural defence plan by means of several normative rulings, with references to No. 27/2008, which approves the operational proceedings for registering the animal origin products' manufacturing establishments that aim to sell their products internationally, with stricter audit and supervising procedures in order to comply with the recipient countries or groups.

13 Describe the food safety regime in your jurisdiction, including applicable legislation and regulations.

Law No. 11,346/2006 provides the National Council for Food and Nutrition Security, which aims to ensure the human right to adequate nutrition and other related measures. The National Health Surveillance Agency (Anvisa) and the state and municipal organisms supervise and apply penalties concerning food safety and related issues.

14 What enforcement can take place in relation to food supply chain safety? What penalties may apply?

The federal, state and municipal authorities responsible for food supply chain safety are entitled, depending on the case, to seize goods, temporarily suspend the register or terminate the establishment's register, including the application of several fines and indemnification procedures for recovering damages, in addition to the criminal sanctions provided by Law No. 9,605/1998, such as imprisonment.

15 Describe any certification programmes and rules for genetically modified foods, organic foods or other differentiated products.

There are several certification programmes provided by MAPA, with support from the Brazilian National Institute of Metrology, Standardisation and Industrial Quality. Specifically regarding organic foods, Law No. 10,831/2003 provides the organic agriculture ruling and other related measures, foreseeing the necessity of certification for production and commercialisation purposes. There is also the certification for products that are free from genetically modified organisms (GMO), but there is currently no legal restriction for commercialising them in Brazil, provided said product is registered with MAPA and has undergone analysis by the Biosafety National Technical Commission.

Update and trends

The paths for the sustainable growth of Brazilian agribusiness are in place under a straightforward legal system and production mechanisms that will be able to support the increase of agricultural, food and energy production in Brazil for at least the next few decades. Some new techniques, trends and patterns specially developed for Brazilian agricultural products should increase and positively influence this growth.

The regulation of 'agribusiness bonds' in relation to their issuance in foreign currency at face value should play an important role in the near future.

Regulations concerning the acquisition of land by foreigners or non-residents is now under discussion at the National Congress and should also represent an important and relevant change to facilitate foreign investments related to the production itself.

Clean development mechanisms also play an important role for the future since low-carbon agriculture projects have been largely utilised during the past three years, allowing producers to consider a new agricultural product (commodity) to be sold as sub-product: the carbon credit certificates, which should be offered by the agricultural

producers through the capital market to the 'polluter countries' (more developed countries and emergent countries such as Brazil, Russia, India, China and South Africa) in order to compensate and aggregate much more value to the financial and capital market, which represents an important part of said countries' GDP, changing their position for international negotiations.

In this sense, Brazilian agribusiness should, in future, represent a win-win business environment to all players in the agribusiness chain, from production to financial institutions responsible for funding and investing in food and renewable energy supplies that have the technology and local regulations on their side because of the proven relevance of the agribusiness chain to the Brazilian economy.

Therefore, those situations mentioned above should also create a better environment for transnational business, avoiding blocking coalitions in international negotiations and giving rise to a new scenario for the exchange of positive externalities between companies, businesses and countries, through the potential changes in legislation that will soon be implemented.

16 What are the food labelling requirements, including the applicable legislation, enforcement and penalties?

There are several requirements provided by Law with regards to food labelling, mainly through Anvisa's ordinances and resolutions, including information regarding nutrition facts, GMO-free products, organic products, natural mineral water and meat, among others. Penalties for non-compliance are essentially the same as those detailed in question 14: seizure of goods, temporary suspension or termination of the register, including the application of fines, indemnification and criminal sanctions.

17 Outline any applicable legislation regarding health of food animals, including transportation and disease outbreak and management.

The legislation applicable to health of food animals is Law No. 8,171/1991, Decree No. 5,741/2006, Law No. 569/1948, Decree No. 27,932/1950 and Decree No. 24,548/1934, which are enforced by MAPA's Secretary of Agricultural Defence, including the control and extermination of diseases such as foot-and-mouth disease (FMD), brucellosis and animal tuberculosis, herbivores rabies disease, brain diseases and encephalopathies, as well as national programmes for poultry, goat and sheep, swine and equine health.

18 What are the restrictions on the movement of animals within your country?

Law No. 8,171/1991 established the Animal Transit Guide (GTA) to be used in the Brazilian territory for any livestock, fertile eggs and other animal multiplication material transit, to be supervised by MAPA, as well as by the state Secretariats for Agriculture Defence.

19 Describe any restrictions on import of food animals.

Decree No. 5,741/2006 provides several restrictions on the import of food animals, in addition to several MAPA normative rulings regarding each specific animal and outlining the requirement to have an obligatory inspection by the Animal Sanitary Defence Services in Customs, as well as previous certifications to analyse health and diseases tests.

20 What are the regulations related to livestock slaughtering?

The regulations related to livestock slaughtering are implemented through several of MAPA's normative rulings, which create specific programmes for controlling and exterminating diseases such as FMD, and provide the quarantine, certification and authorisation rules for slaughtering.

21 Outline the regulatory regime relating to pest control and pesticides, and other management regimes in relation to disease and pests in plants and animals.

The Brazilian Pesticide Law of 1989 (Law No. 7,802), ruled by Decree No. 4,074/2002, provides the research, testing, production, packing, labelling, transport, warehousing, commercialisation, advertising, import, export, final destination for residues and register and classification of

pesticides. The three main authorities that deal with such matters are MAPA, Anvisa and the Ministry of the Environment, which are entitled to supervise, audit and apply penalties and other sanctions.

Business organisation

22 How are agricultural operations typically organised in your jurisdiction?

In general, agricultural operations are conducted by individuals, independently of the crop's size or production volume, because of the tax benefits (the income tax is lower compared with companies). However, when a more organised structure is required by creditors or even when the rural production is mostly directed to export operations, a legal entity is constituted by two or more individuals or companies.

Brazilian laws provide two main types of company, limited liability companies (Ltda) and joint-stock companies (SA).

Both an Ltda and an SA are legal entities separated from their quota holders or shareholders, both limit the liability of the quota holders or shareholders to their respective capital payment and both are taxed as separate entities to their members.

The structure and activities of an SA are specifically governed by Law No. 6,404/1976, which requires the company to establish and maintain corporate books, including the register share book and share transfer book, as well as management bodies such as a board of directors and board of officers.

The Ltda, on the other hand, is ruled by the Brazilian Civil Code (Law No. 10,406/2002) and differs from the SA in that its articles of association do not have to be published, but must be filed before the Boards of Trade. Therefore, the individual or legal entity wishing to set up a company (either as an Ltda or SA) shall take into account the desired ownership structure, legal flexibility, costs and confidentiality considerations, among other factors, as specific circumstances that may have an influence.

It is also very common to make use of third-party land in Brazil by means of a 'rural partnership', ruled by Law No. 4,504/1964. This is an agreement through which the landowner assigns the use and possession of their property to another individual or legal entity, with terms and conditions in place, without transferring the ownership of the land - this type of contract is beneficial under tax law in Brazil, which is a reason why it is largely used by companies, including those that are multinational.

23 Outline any restrictions on foreign ownership of agricultural operations or businesses other than farming operations.

If the quota holder or the shareholder of a Brazilian company (either Ltda or SA) is a foreign company or individual, it is necessary to grant power of attorney to an individual resident in Brazil in order to represent and act on behalf of such foreigner in accordance with the applicable Brazilian law. In addition, the Brazilian company controlled by the foreign individual or entity must declare that they are still under foreign ownership on a quarterly basis to the Brazilian Central Bank, but other than that there is no restriction for a local company, even if

it is controlled by a foreign individual or company, to act in Brazil and conduct its business. However, if the foreigner is an individual, immigration and visa rules shall apply and the income and capital gains must be taxed locally through the withholding method.

Agricultural workers, immigration, and health and safety

24 Describe any specific rules or laws governing the rights of workers or employees for agricultural operations.

Decree-Law No. 5,452/1943 is the primary legislation regarding labour rights and relations in Brazil. It is a very complex ruling that is clearly intended to protect the employee, assuring some constitutional rights such as an unemployment insurance and guarantee fund; nationally unified minimum wage; irreducibility of wage except for collective agreement or convention; 13th wage; night shift remuneration superior in comparison with day shift; maternity and paternity leave; workday limited to eight daily hours and 44 hours per week; overtime payment that is at least 50 per cent more than the normal shift pay; and annual paid leave of 30 days plus one-third bonus and prior notice payment. Law No. 5,889/1973 provides some additional rights to rural workers, such as a 25 per cent premium on night hours.

25 How is farmworker immigration regulated in your jurisdiction?

General immigration ruling is provided in Brazil by Law No. 6,815/1980 and the Ministry of Justice is entitled to monitor and enforce the policies for foreign workers in Brazil. As general rule, Brazilian law provides for two types of residency: temporary or permanent. Temporary residency has a maximum term of two years, extendible depending on each case, for individuals to develop work, religion, research or study activities. Permanent residency depends on subjective bonds such as marriage, a stable relationship or a familial relationship with any Brazilian citizen or immigrant resident in Brazil, as well as bilateral agreements such as Brazil-Argentina and Mercosul. It is also possible to convert the temporary residency to permanent for workers who have been employed for more than two years.

26 Outline the health and safety regulations relating to farmworkers in your jurisdiction.

The Ministry of Labour and Employment (MTE) is entitled to publicise several regulatory rules (NR) with technical conditions for health and safety protection to the employee, such as NR 7 - promotion and preservation of the company's workers, NR 9 - environmental risks prevention programme by means of anticipation, evaluation and control of environmental risks, and NR 31 - health and safety for agricultural workers, including first aid and access to a hospital, individual protection equipment, pesticides packing, washing, warehousing and discarding, as well as basic sanitary conditions and food supply in crop handling. In this sense, both the MTE and the Public Prosecutor's Office are entitled to monitor and audit the companies, and apply fines and penalties in case of non-compliance or violations.

International trade

27 How are the export and import of agricultural products (animal and non-animal) regulated in your jurisdiction?

In a regular import operation with manufactured goods, for example, several local taxes shall be imposed, such as import duty, ICMS, IPI, contribution to PIS/Pasep and COFINS (see question 2), in order to promote the equalisation of the tax burden. On the export side, incentives for local producers include being exempted from taxes (ICMS, IPI, Contribution to PIS/Pasep, COFINS and contribution to INSS) on export operations. Both export and import operations are subject to customs clearance carried out by the RFB as well as to the Brazilian Central Bank ruling regarding inflow and outflow of resources by means of exchange agreements.

Brazil is also a signatory of 31 bilateral tax treaties (for preventing double taxation) and applies the transfer price criteria for assessing maximum deductible costs on import operations, as well as minimum taxable income on export operations with related parties or companies and individuals in tax havens and privileged tax regimen jurisdictions.

28 May tariffs, quotas or similar measures be put in place?

Yes, since Brazil is currently a member of the International Trade Organization and is a signatory of the General Agreement on Tariffs and Trade (GATT) and several bilateral and multilateral agreements such as Mercosul, which provide anti-dumping rules and internal tariffs for imported goods. There is also a general preferences system to support the local industry and to impose higher taxes on imported goods from a similar local industry.

29 What treaties apply to the import and export of agricultural products in your jurisdiction?

The GATT and several bilateral and multilateral agreements, such as Mercosul, as well as 31 bilateral tax treaties (for preventing double taxation).

Intellectual property

30 How are plant breeders' property rights protected in your jurisdiction?

Brazil is a member of Stockholm Convention of 14 July 1967 and subscribes to both the Paris Convention and the Berne Convention. Therefore, the international framework on regulation of intellectual property rights applies in Brazil, as in many other jurisdictions.

Intellectual property and other associated rights are provided by Law No. 9,610/1998, which incorporates elements of Law No. 12,853/2013, recently ruled by Decree No. 8,469/2015. In addition, a new Industrial Property Code was enacted in 1997 (Law No. 9,729/1996) covering utility models, patents and other property rights. As a result of this, Brazilian regulations may be considered to be the same as in most Organisation for Economic Co-operation and Development (OECD) countries with respect to this subject.



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31 How is farmers' access to crop varieties and plant technologies addressed in your jurisdiction?

The production, sale, export and import operations of seeds and seedlings are ruled in Brazil by Law No. 10,711/2003, which has created the National System for Seeds and Seedlings with regulations established by Decree No. 5,153/2004. In this sense, to produce, export and import seeds or seedlings in Brazil, the company or individual must be registered before the National Registry for Seeds and Seedlings, as well as the National Registry of Cultivars. To produce seeds of protected cultivars registered with the National Service for Protection of Cultivars, it is necessary to obtain previous authorisation from the copyright owner.

32 What other intellectual property considerations apply to agribusiness in your jurisdiction?

The specific provisions relating to export and import operations are provided by MAPA by means of Normative Ruling No. 50/2006, which stipulates, along with other relevant provisions, the obligation to obtain authorisation from MAPA prior to import or to export seeds or seedlings in Brazil.

Environmental issues**33 Describe the regulatory agencies that have a role in managing the environmental impact of agricultural production in your jurisdiction.**

Since environmental protection in Brazil derives from the Law No. 6,938/1981 and from the Federal Constitution, there are 'agencies' related to the matter in the three levels of government: federal, state and municipal. The agencies involved in environmental regulations in regard to agricultural products in Brazil are: MAPA; Anvisa and the state and municipal sanitary surveillance centres; the civil and federal police and the army; environmental state agencies (such as Cetesb for São Paulo state); the federal Institute of the Environment; and the National Environment Council. Therefore, there is a high number of bodies in charge of the assessment and regulation of this subject in Brazil.

34 Describe how water and air pollution is regulated in relation to primary agriculture in your jurisdiction.

Water and air pollution is subject to the control of the agencies listed in question 33 and may be considered an environmental crime based on Law No. 6,938/1981. Sanctions vary from a criminal conviction to an administrative punishment, which includes termination of the illegal activities and other penalties such as a fine.

35 Describe how liquid and other waste is regulated in relation to primary agriculture in your jurisdiction.

See question 34. There are specific provisions under the law and governmental bodies in the three levels of the federation in order to enforce compliance with regulations and directives on liquid and waste disposal derived from agriculture and other sectors of activity.

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