



EVERYTHING MATTERS

# *Investing in Brazil:*

A Non-Brazilian Perspective on Inward Investment Issues

Stuart Berkson  
DLA Piper  
São Paulo  
December 3, 2009

- These all were major investor issues but are no longer generally significant problem areas:
  - Exchange controls and remittance limitations
  - Telecommunications—no more *bolsa* for phone lines; not quite at US or European levels, but getting there
  - Import limitations and substitution—importation may be expensive but virtually almost anything from anywhere can be purchased in Brazil
  - Absence of arbitration with no alternative to local (potentially bias) courts
  - Absence of environmental regulations which created tough issues for multinational investors
  - Hyperinflation and cash management over long term investment

*But Brazil is not yet Switzerland, and  
may never be...*



- Numerous major problems remain unchanged for international investors
- These all combine to make investment difficult and potentially dangerous, depending on the circumstances
- The biggest issues my clients tend to raise as concerns are:
  - Labor Law
  - Tax
  - Corruption and Bureaucracy

- Presence of unions in every industry covering virtually every worker in Brazil, in many cases involving 2 layers of union negotiations
- The concept of acquired rights resulting in an inability to ever reduce wages, benefits or make other adjustments in compensation which are normal in North America (this may not be as problematic for European investors)
- The requirement of paying benefits across the board in a manner that is often ridiculous and irritating to international investors—e.g., senior managers getting restaurant tickets
- The difficulty in utilizing non-competition agreements and the ability to enforce via injunction vs. simply paying damages

- The fact that almost all terminations result in some form of law suit so that target entities regularly have hundreds of claims outstanding at any one time
- The ability of employees to actually be the driving force behind certain employment schemes, such as independent contractor arrangements, and then the same employee can challenge the arrangement before the labor authorities and prevail

- The number of taxes and bodies that impose taxes makes compliance impossible and often can result in taxation in excess of income, depending on interpretation and application
- The manner in which the government often promulgates tax legislation, and the necessity for tax litigation on a much more frequent basis than in the US and Europe
- The level of tax fraud in acquisition target companies, particularly those which are privately held, that can gut the value of the enterprise to a multinational which will start paying taxes once it becomes the parent
- The lack of application of precedents in many situations

- Notwithstanding the advances which have been made in this area, the pervasive presence of corruption in every aspect of business life, whether for permits, approvals, licenses, etc.
- The quandary that this places international companies, and in particular US companies with obligations under the FCPA, when competing against foreign companies from countries with less regulation and against Brazilian companies that flout local regulations

- The ever present bureaucracy involved in getting routine things done, such as organizing an entity, securing a position as a creditor, or other normal business activities
- When organizing an entity in Brazil, the contradictory requirement to establish a local administrator and address before one has an entity in place that can actually hire a local administrator or rent a location for an address

- The fact that in spite of the negatives above, those who invest in and come to know Brazil fall in love with it and never can get it out of their system. That is, notwithstanding some of the major issues above, and the hundreds of others you encounter over time, investors routinely find Brazil to be a place:
  - With amazing economic opportunities now and for the future; a place that is finally realizing its potential
  - That has made incredible progress over the past 10 years in moving from what was always just a potentially great economic power to a place that *is* an economic superpower
  - Is serious about business, with serious business people who are professional and as capable in all ways as their international counterparts

## *But in the end Brazil remains....intoxicating and attractive*



- With people who are as warm and welcoming to foreigners as any in the world, and maybe more so
- A place that is second to none in natural beauty, which compensates for the ugliness of some of its cities, Sao Paulo included
- An investment destination that is exciting, on the move, and makes you feel like you are living at a historic juncture when Brazil is moving into its rightful place internationally