

# **NORONHA ADVOGADOS**

## **BRAZIL'S GLOBAL LAWYERS**

Sao Paulo | Rio de Janeiro | Brasília | Curitiba | Porto Alegre | Recife | Belo Horizonte



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## **THE BRAZILIAN LEGAL SYSTEM: AN OVERVIEW**

Presentation made for the UK multi – sector Trade Mission  
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# THE BRAZILIAN LEGAL SYSTEM: AN OVERVIEW

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# ORIGIN OF THE BRAZILIAN LEGAL SYSTEM

<u>LAW FIELDS</u>	<u>ORIGIN</u>
Constitution	Portugal – Italy
Commercial + Civil + Corporate	France
Civil Procedure + Criminal Procedure	Germany
Labour + Criminal	Italy
Competition Law + Insurance+ Bankruptcy	United States of America
Consumer Law	EU



# UPDATE OF THE LEGAL FRAMEWORK IN BRAZIL - I

<u>LAW</u>	<u>ADMISSION EFFECT</u>
Constitution	1988
Code of Consumer's Defence	1990
Franchising	1994
Trade Remedies` law	1994
Intellectual Property	1996
Arbitration	1996
Public Bids + Contracts	1998
Sports Law	1998

# UPDATE OF THE LEGAL FRAMEWORK IN BRAZIL - II

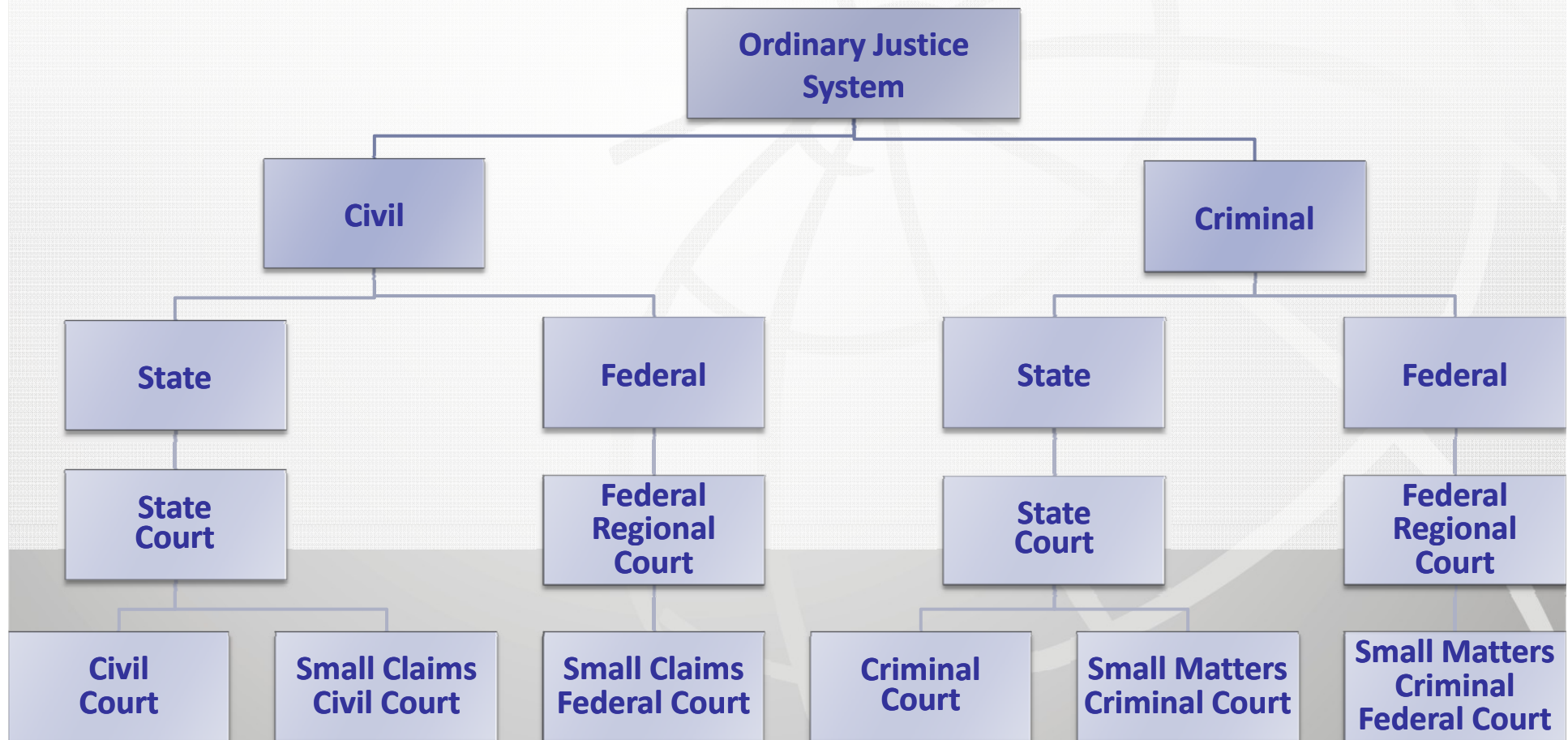
<u>LAW</u>	<u>ADMISSION EFFECT</u>
Anti-trust + Competition Law	2000
Corporate Law	2001
Civil Code	2003
Reform of the Judiciary – “Brazilian National Council of Justice”	2004
Bankruptcy Law	2005
Reform of the Penal Code	2005
Reform of the Code of Civil Procedure	2006
Reform of the Code of Criminal Procedure	2008



# THE BRAZILIAN CONSTITUTIONAL FRAMEWORK

## BRAZILIAN JUDICIARY

### HIGHER COURTS



# STF FEDERAL SUPREME COURT





# STJ SUPERIOR COURT OF JUSTICE



# TST

## SUPERIOR LABOUR COURT





# TRT

## 2<sup>ND</sup> INSTANCE - SÃO PAULO



# **GENERAL OVERVIEW:**

## **LABOUR RIGHTS IN THE BRAZILIAN FEDERAL CONSTITUTION**

The Brazilian Federal Constitution guarantees to all workers:

- ☑ protection against arbitrary dismissal;
- ☑ national uniform minimum wage;
- ☑ unemployment benefit;
- ☑ maternity and paternity leaves; and
- ☑ occupational accident insurance.



# LABOUR LAW

## 1. CONSTITUTION OF 1988

- Minimum Wage (today – R\$ 465,00)
- Maximum duration of the day's work  
8 hours per day  
44 hours per week
- Overtime Pay: + 50%
- Annual Vacation: + 1/3
- Mandatory Fund for Unemployment Benefit (FGTS): 8,5%



## 2. LABOUR CODE

- National Institute of Social Security (INSS) : 8% - 11%

# TYPES OF COMPANIES - I

## 1. S.A.

- share capital
- public
- closed
- always nominatives shares
- ordinary or preferred

### 1.1. Shareholders Agreement

- specifics performance

### 1.2. Meetings

- Ordinary or Extraordinary

### 1.3. Managements

- Board of Administrators (public and authorized capital)
- Board of Directors

### 1.4. The S.A. favoured for joint - ventures.





# TYPES OF COMPANIES - II

## 2. LTD.

2.1. Social Contract

2.2. Quotaholders

2.3. Responsibility

2.4. Administrations by partners or non-partners

## 3. Consortia.

3.1. Contractual nature.





# FOREIGN CAPITAL

1. There are no exchange controls in Brazil.
2. The Central Bank of Brazil.
3. Restrictions to foreign capital.
  - 3.1. Restrictions to official credit.
  3. 2. Restrictions to real state in the frontiers.
  - 3.3. Restrictions to communications companies.



# LITIGATION

## NATURE OF THE CASES



Administrative and Public Law	29%
Civil	16%
Labour Matters	16%
Tax Matters	14%
Criminal Law	13%
Consumer Law	4%
Others	8%

Source: STF

\* estimated: 1990 - 2009



# BRAZIL:

## NEW JUDICIAL CASES PER YEAR

State Circuit

17 million

Labour Circuit

3 million

Federal Circuit

1 million

TOTAL

21 million



# BRAZIL:

## NUMBER OF JUDGES

State Circuit

11.118

Labour Circuit

3.085

Federal Circuit

1.447

TOTAL

15.650





# BRAZIL:

## NEW JUDICIAL CASES PER JUDGE PER YEAR

Federal Circuit

14 thousand

State Circuit

8 thousand

Labour Circuit

8 thousand



Source: Brazilian National Council of Justice (CNJ )

# MINISTRY OF JUSTICE - I

## ROLES:

- to defend the legal system, political rights and constitutional guarantees;
- National Security: Federal Police;
- to defend the National Economy: financial crimes and consumer rights;
- administration of the national prison system;
- dealing with nationality and immigration issues;
- etc.





# MINISTRY OF JUSTICE - II

## ORGANIZATION FRAMEWORK

- **Minister**: Mr. Tarso Genro
- **Direct Assistance Agencies** (Headquarter office, Amnesty Committee, Legal Assistance and Executive Secretary);
- **Singular Agencies** (Public Legal Aid, Federal Police Department, Federal Highway Police, National Penitentiary Department, Legal Matters Secretary, Economic Law Secretary, Judiciary Reform Secretary, National Justice Secretary and National Public Security Secretary);
- **Collegiate Agencies** (Federal Managing of Natural Rights Defense Council– “CFDD”; National Piracy And Intellectual Property Control Council– “CNCP”; National Criminal and Penitentiary Policies Council– “CNCP”; and National Public Security Council – “Conasp”); and
- **Related Entities** (Autarchy: Administrative Concil of Economic Defense – “CADE” and Indigenous National Foundation – “FUNAI”).

# AGU

## ADVOCACY OF THE FEDERAL UNION

### ROLES:

- Advising the President, as well as the members of the Executive branch, the federal agencies and public foundations;
- Mediate conflicts involving federal public entities;
- Defend all Federal entities in litigation in which the Federal Union is a part.





# ATTORNEY GENERAL

## ROLES:

- to defend social and individual rights, for example, the right to life, liberty and health;
- ensure the compliance with Brazilian law as well as international treaties signed by Brazil;
- etc.



# BRAZILIAN BAR ASSOCIATION - OAB

## ROLES:

- Defend the Constitution; the democratic state of justice; human rights; social justice; the prevalence of law; the efficient working of the Courts.
- Promoting law practice, selection and regulation of lawyers.
- Brazil has today approximately 600,000 lawyers.





# SOME RELEVANT BI-LATERAL BETWEEN BRAZIL AND UNITED KINGDOM

1988	Drugs
1995	Extradition
1997	Technological and Scientific Co-operation
1997	Customs Co-Operation
2000	Defence Co-operation
2005	Double Taxation on Maritime and Air Transport
2006	Education

# NORONHA ADVOGADOS





**THANK YOU !**



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