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## **Global Sports Opportunities Conference**

**London, 30-31 January 2013**

# ***Opportunities in Brazil – the 2014 World Cup and the 2016 Olympic Games: Legal Aspects***

***Moderator : Chris Wall, Business Specialist, UKTI***

## **Presentation Topics :**

- 1. Foreign capital treatment in Brazil**
- 2. Sports events and infrastructure projects: concessions and bidding process**
- 3. Available options to structure your business in Brazil**
- 4. The Rio 2016 tendering process**

## **1. Foreign capital treatment in Brazil**

- Brazilian Constitution of 1988 originally prevented foreign capital from being involved in various areas. Today only very few restrictions apply - for example, nuclear energy, health services and postal services.
- Distinction between companies of national and foreign capital ended in 1995. Brazilian company is one that is organised in accordance with Brazilian laws.
- Registration of investment at the Central Bank of Brazil enables remittance of dividends and repatriation. No exchange controls – free flow of currencies.

## **2. Sports events and infrastructure projects: concessions and bidding process**

- World Cup in 2014 and the Olympic Games of 2016 : federal government and host cities focusing especially on urban transport – plus airports, security, etc.
- Most projects will involve the granting of a concession, preceded by a bidding process. Public Bidding law (n.8666/93) and Concessions law ( 8987/95) apply.

### **3. Available options to structure your business in Brazil**

- Setting up a Brazilian company/Joint venture with a Brazilian company : structure using a *Sociedade Anônima* or a *Limitada* – in both cases shareholders have limited liability. Remittance of dividends is zero tax rated in Brazil. Possibility of consortia.
- Purchasing an existing business – should be preceded by a full legal and accounting due diligence.
- Providing services from the UK: 25% withholding tax upon remittance from Brazil.
- Tax incentives : World Cup – Law 12350/2010; Olympic Games – Law 12780/2013.

## 4. The Rio 2016 tendering process

Visit : [www.rio2016.org.br/en](http://www.rio2016.org.br/en) and  
[portaldesuprimentos.rio2016.com](http://portaldesuprimentos.rio2016.com)

- International Invitations to Bid made pursuant to Law 8666/93 (public biddings) and other applicable legislation.
- Possibility of forming a consortium : regulated by the Brazilian Company law (6404/76). Parties in a consortium are **jointly liable** for their obligations towards the public authority (Law 8666/93, art 33 V). Leadership shall always be vested on the Brazilian company.

## **CONDITIONS FOR THE PARTICIPATION IN THE INVITATION TO BID – two phases**

1. Qualifying process – legal, technical, financial and tax and labour qualification requirements must be met (art 27).
2. Commercial Proposal, after phase 1 above.
  - The Company, or companies under a Consortium must, in the same qualifying envelope, independently by each member, present all the documents required to meet the qualification requirements.



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- **QUALIFYING PROCESS**
- **LEGAL QUALIFICATION :**
- Example of documentation required: act of incorporation, by-laws or articles of association in force, duly registered, in the case of a commercial company. In the case of a public company, also the documents electing the company's administrators.

- **TAX AND LABOUR QUALIFICATION**
- Example of documentation required: evidence of holding a valid tax number – CNPJ, issued by the Brazilian Treasury Department; evidence of regularity with the National Social Security Institution (INSS), through the presentation of a certificate attesting to the non existence of debts; evidence of regularity with the Mandatory Fund for Unemployment Benefit (FGTS), through the presentation of a certificate attesting regularity with the institution; evidence of regularity with the Federal Treasury as regards payment of taxes; etc.

- **FINANCIAL QUALIFICATION:**
- Example of documentation required: Balance sheet and accounting statements for the last fiscal year, capable of evidencing the company's good financial standing, the substitution of the said documents by interim balance sheets or temporary balances being expressly forbidden; certificate attesting that the company is not in a bankruptcy or liquidation process, issued in the place where the company has its headquarters, less than 90 (ninety days) before the date when the envelopes will be opened.

- **TECHNICAL QUALIFICATION**
- Example of documentation required: evidence of registration and regularity as to the standing of the company or companies and its/their technical representatives with CREA – Conselho Regional de Engenharia, Arquitetura e Agronomia (self-regulating body of the Engineering, Architecture and Agronomy professions). Evidence of the operational capability of the performing company or companies – with characteristics, quantities and time frames – which are compatible with the object of the Invitation to Bid.

Article 32 of Law 8666/93 : foreign companies shall attend the requirements to the possible extent. All documentation must be legalized at the Brazilian Consulate and sworn translated. Foreign companies must have legal representatives in Brazil with powers to receive service of process.

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- **COMMERCIAL PROPOSAL**

Bidders shall present an envelope containing their **COMMERCIAL PROPOSAL**. They will be disqualified if their commercial proposal fails to present any of the requested data.

The grades to be attributed to each of the **commercial proposals** of companies or consortium formed by companies classified in the previous phase of the present bidding process will be defined in accordance with the criteria defined in the Invitation to Bid.

*Thank you*

*Vera Dantas*

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