



**COUNTRY
COMPARATIVE
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The Legal 500 Country Comparative Guides

Brazil

DOING BUSINESS IN

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This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Brazil.

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BRAZIL

DOING BUSINESS IN



1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The Brazilian system of law is fundamentally based on civil law.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

Under Brazilian legislation, we have the following corporate types ("legal forms") for economic business purposes:

1. **"Sociedade em Conta de Participação"** (silent partnership).
2. **"Sociedade Simples"** (partnership).
3. **"Sociedade em Nome Coletivo"** (joint liability company).
4. **"Sociedade em Comandita Simples"** (limited partnership).
5. **"Sociedade Limitada"** (limited liability company).
6. **"Sociedade Anônima"** (corporation).
7. **"Sociedade em Comandita por Ações"** (partnership limited by shares).

3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Except for certain regulated activities, they can carry on business either directly or by means of an affiliate branch in Brazil. These options may imply different tax treatments, as well as specific enrollments with public authorities, such as the Brazilian IRS and the Brazilian Central Bank.

4. Are there any capital requirements to consider when establishing different entity types?

For non-regulated activities, there is no requirement of specific capital amounts or composition. In general, the only requirement is that the corporate capital (or "share capital") be compatible with the operations of the company – especially at the beginning, when the corporate capital is usually a relevant source of funding.

Regarding regulated activities, such as those carried out by banks or financial institutions in general, there may be specific requirements of corporate capital or composition depending on several factors, such as the business, the volume of operations, the regulated market and the regulatory agencies involved.

5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

Depending on the corporate type, Brazilian companies are incorporated by means of (i) signing of their articles of incorporation between the shareholders; or (ii) shareholders' general meeting. Although, they only exist before third parties by means of filing the articles of incorporation or the minutes of the shareholders' general meeting, as the case may be, with the competent Commercial Registry.

In order to carry out their business, they shall be enrolled with other public authorities, such as the Brazilian IRS, the Municipality and/or the State in which the business will be conducted, the Brazilian social security and regulatory agencies (if the activities are regulated under Brazilian legislation).

The most common vehicles used by investors are *Sociedade Limitada* and *Sociedade Anônima*. Nonetheless, *Sociedade em Conta de Participação* has been increasingly adopted for many different joint-

venture projects.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

For the most common used vehicles, the company may be managed by two (2) levels of administration: **(i)** the Board of Directors; and **(ii)** the officers. While the first one is not mandatory (and its composition varies according to the corporate type), the company must necessarily appoint at least one (1) officer.

The Board of Directors are elected by the shareholders' general meeting (or written resolutions, depending on the corporate type) and takes part in strategic decisions, supervises and appoint/remove the officers, convenes shareholders' general meetings, increases the share capital under specific circumstances and takes any other action as provided in the company's corporate documents. Their decisions are formalized by means of minutes of meetings or directors' resolutions, which may need to be filed with the Commercial Registry – according to the corporate type of the company.

The officers are either elected by the Board of Directors or the shareholders (in case there is no Board of Directors). They are responsible for carrying out the operations of the company. According to the rules provided in the corporate documents, they can represent the company either jointly or severally. Unless they hold meetings amongst them (which shall require the signing of minutes of meetings) or need to rely on prior approval from the shareholders or the Board of Directors (as provided in the corporate documents), they are entitled to take any actions on behalf of the company that are under its business purposes.

Sociedades Limitadas and *Sociedades Anônimas* may also have a Fiscal Board, but such body is not mandatory – there is no requirement to appoint members for this body. The companies' corporate documents can provide for several different consulting bodies.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

For the most common used vehicles, and except for certain regulated activities, the company shall appoint at least one (1) officer. If a *Sociedade Anônima* has a Board

of Directors, this body shall be comprised of at least three (3) Directors, and only 1/3 of them can be officers – there is no such requirements for *Sociedades Limitadas*.

The following rules are applicable:

1. Authorized Representatives – Officer/Director

- Natural person (whether Brazilian or not) enrolled with the Brazilian IRS.
- If non-resident in Brazil, the officer/director must appoint a natural person as attorney-in-fact to receive service of process in Brazil – this natural person must be resident in Brazil and enrolled with the Brazilian IRS.
- If non-resident in Brazil, the officer/director shall send over to Brazil the originals of an apostilled version of their passport.
- Declares to be compliant with Article 147 of Law No. 6,404/1976, in such way that the officer/director is not subject to any impediments to hold office.

2. Shareholders

- Natural person or legal entity (whether Brazilian or not) enrolled with the Brazilian IRS.
- If non-resident/incorporated in Brazil, such person or legal entity must appoint a natural person as attorney-in-fact to **(i)** manage their interests and assets in Brazil; **(ii)** represent them before public branches; **(iii)** receive service of process in Brazil; and **(iv)** exercise any acts as shareholder of the Brazilian company.
- If non-resident/incorporated in Brazil, such person or legal entity will be subject to registry with Brazilian Central Bank.
- If non-resident/incorporated in Brazil, such person or legal entity shall send over to Brazil the originals of apostilled versions of their passports and/or corporate documents.
- If the legal entity is a Brazilian company, its business purpose shall encompass the equity participation in other companies.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?

From the corporate perspective, and except for certain regulated activities, there are not any restrictions for doing business in Brazil. Any entity is entitled to work with trade/commercial agents and resellers.

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

Except for certain regulated activities, privately owned companies are generally governed by Laws No. 10,406/2002 (the "Brazilian Civil Code") and No. 6,404/1976 (the "Brazilian Corporations Act"). This second one governs *Sociedades Anônimas* and *Sociedades em Comandita por Ações* (as indicated in item 5 above). All the other corporate types are governed by the Brazilian Civil Code.

Regarding specifically *Sociedades Limitadas*, they can be governed by the Brazilian Civil Code and subsidiarily by the Brazilian Corporations Act (to the extent compatible), provided this is expressly laid out in the company's articles of association.

The corporate statutes are vast. Below are the main aspects of Brazilian companies:

1. "Sociedade em Conta de Participação" (silent partnership)

- The company is not an existent legal entity before third parties.
- The company may be governed by corporate documents similar to articles of association and/or operating agreement.
- The operations of the company are carried out by one or more of the partners ("*Sócios Ostensivos*"), under their own name and personal liability – the other partners take part essentially in investments and net results.
- The contributions of the partners compose "segregated assets", to be controlled and accounted for by *Sócios Ostensivos* on their own.
- The net profits can be distributed to the partners regardless of their pro-rata equity in the "segregated assets", provided that this kind of distribution is provided in the corporate documents.
- The company is ultimately managed by *Sócios Ostensivos* (in case they are natural persons) or the officers and/or directors of *Sócios Ostensivos* (in case they are legal entities).

- This corporate type is usually adopted for joint-venture projects.

2. "Sociedade Simples" (partnership)

- The share capital is comprised of "quotas" (similar to "shares").
- The company is governed by its articles of association, which is not required to be filed with public branches – this is a requirement only for purposes of obtaining Tax ID and existing before third parties.
- The shareholders can enter into shareholders' agreements.
- There is no limitation to the liability of shareholders – they are personally responsible for any liabilities not covered by the company's net equity.
- The company is managed by the shareholders and/or officers (natural persons) – these last ones if provided the company's articles of association.
- The net profits can be distributed to the shareholders regardless of their pro-rata equity in the share capital, provided that this kind of distribution is provided in the articles of association.

3. "Sociedade em Nome Coletivo" (joint liability company)

- The share capital is comprised of "quotas" (similar to "shares").
- The company is governed by its articles of association (filed with the Commercial Registry) and shareholders' agreements (if existent).
- Only natural persons can be shareholders and they are all jointly and unrestrainedly responsible for any liabilities of the company.
- The company is managed by the shareholders.
- The net profits can be distributed to the shareholders regardless of their pro-rata equity in the share capital, provided that this kind of distribution is provided in the articles of association.

4. "Sociedade em Comandita Simples" (limited partnership)

- The share capital is comprised of "quotas" (similar to "shares").
- The company is governed by its articles of association (filed with the Commercial Registry) and shareholders' agreements (if existent).

- Some of the shareholders (natural persons) are jointly and unrestrainedly liable for any liabilities of the company, while others are not.
- These last shareholders cannot be directors/officers of the company.
- The net profits can be distributed to the shareholders regardless of their pro-rata equity in the share capital, provided that this kind of distribution is provided in the articles of association.

5. "**Sociedade Limitada**" (limited liability company)

- The share capital is comprised of "quotas" (similar to "shares").
- The company is governed by its articles of association (filed with the Commercial Registry) and shareholders' agreements (if existent).
- The liability of the shareholders is restricted to the share capital – i.e., they shall not be held liable for the operations of the company, unless in case of fraud, abuse of power, deviation from the business purposes, or confusion of business or assets. Under this case, the company may have its corporate veil pierced by means of court order.
- The company is mandatorily managed by at least one (1) officer, however the articles of association can also provide for directors.
- The net profits can be distributed to the shareholders regardless of their pro-rata equity in the share capital, provided that this kind of distribution is provided in the articles of association.
- Unlike all the other companies herein, *Sociedade Limitada* can be comprised of a sole shareholder.

6. "**Sociedade Anônima**" (corporation)

- The share capital is comprised of "shares" or "stocks" (if the company is publicly traded) that can be divided into "ordinary" and "preference", as well as into several different classes.
- The company is governed by its Bylaws filed with the Commercial Registry and other public branches, such as the Brazilian Securities Commission – if the company is publicly traded.
- The shareholders enter into shareholders agreements, which rules shall also govern the activities of the company – mostly the relationship between the shareholders and

the management of the company.

- The company can issue preference "shares" or "stocks" with no voting rights up to 50% of company's issued shares.
- The liability of the shareholders is restricted to the share capital – i.e., they shall not be held liable for the operations of the company, unless in case of fraud, abuse of power, deviation from the business purposes, or confusion of business or assets. Under this case, the company may have its corporate veil pierced by means of court order.
- The company can issue "shares" or "stocks" without any par value.
- The company is mandatorily managed by at least one (1) officer, however the Bylaws can also provide for at least three (3) directors.
- There are protective rules against abuse of power by the controlling shareholders and conflict of interests.
- There are protective rules for the minority shareholders, especially regarding preferences, voting and dividends rights.
- The results (including net profits) cannot be distributed to the shareholders regardless of their pro-rata equity in the share capital.
- The company shall keep updated mandatory corporate books provided in the Brazilian Corporations Act.
- The company shall publish its corporate documents (such as minutes of shareholders' meetings) on local newspapers and/or public electronic systems.
- Alongside *Sociedade em Comandita por Ações* (below), this is the only corporate type which can be publicly traded, as well as issue specific securities – including debentures, beneficiary shares, subscription warrants and promissory notes.

7. "**Sociedade em Comandita por Ações**"

(partnership limited by shares). The rules of *Sociedade Anônima* are all applicable to this corporate type, except mainly for the following:

- The officers/directors (necessarily shareholders) are jointly and unrestrainedly liable for any liabilities of the company, and they can only be removed from office by means of resolutions passed by at least 2/3 of the voting share capital.
- The shareholders do not have the right to change the company's business purpose, term of business, change the share capital and issue debentures and beneficiary shares without the approval of the directors and/or

officers.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The options are essentially capital injection or loans – either intercompany or not.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.

The proceeds may be returned essentially under the form of **(i)** distribution of profits/dividends; **(ii)** redemption of shares; **(iii)** repurchase of shares in *Sociedades Anônimas* – due to disagreement between the shareholders in core resolutions provided by Brazilian Corporations Act; **(iv)** interests on the shareholders' equity; **(v)** liquidation or winding-up of the company; and **(vi)** loans.

There are ongoing propositions in the Brazilian Congress to revoke the form **"(iv)"**.

12. Are specific voting requirements / percentages required for specific decisions?

It depends on the corporate type of the company. Regarding *Sociedades em Conta de Participação*, *Sociedades Simples*, *Sociedades em Nome Coletivo* and *Sociedade em Comandita Simples*, unless provided otherwise in the corporate documents, the resolutions are passed by the majority of the shareholders, except for amendment to essential rules of the articles of association – as provided in the Brazilian Civil Code. This amendment requires the consent of all the shareholders.

As per the other corporate types, the rules described below are applicable. All the resolutions of the shareholders shall be filed with the Commercial Registry, regardless of whether they are passed by means of shareholders' general meetings or written resolutions.

1. "Sociedade Limitada" (limited liability company). Unless provided otherwise in the corporate documents, the resolutions are passed by the majority of the shareholders attending the shareholders' meeting, except for following resolutions, which require the approval of more than 50% of the share capital:

- Appointment of officers/directors – when they are not nominated in the articles of

association.

- Removal of officers/directors.
- The compensation of officers/directors, as long as it is not provided in the articles of association.
- Amendment to the articles of association.
- Combination, merger and/or dissolution of the company, or termination of the liquidation condition of the company.
- Filing of bankruptcy claims and/or procedures.

Should all the shareholders agree on the resolutions, the shareholders' meeting is not mandatory. In this case, the shareholders can formalize their decisions by means of executing written resolutions.

2. "Sociedade Anônima" (corporation). Unless provided otherwise in the corporate documents, the resolutions are passed by the majority of the owners of voting shares attending the shareholders' meeting, except for following resolutions, which require the approval of more than 50% of the voting shares:

- Creation of preference shares or increase in the class of existing preference shares, without maintaining proportionality with the other classes of preference shares, except if already provided for or authorized by the Bylaws.
- Change in the preferences, advantages, and redemption or amortization conditions of one or more classes of preference shares, or creation of a new, more favorable class.
- Reduction of the minimum dividends.
- Merger or combination of the company.
- Equity participation in group of companies.
- Change to the company's business purposes.
- Termination of the liquidation condition of the company.
- Creation of beneficiary shares.
- Winding-up of the company.
- Dissolution of the company.

3. "Sociedade em Comandita por Ações" (partnership limited by shares). The same rules of *Sociedades Anônimas* are applicable, except for the following:

- The directors and/or officers can only be removed from office by means of resolutions passed by at least 2/3 of the voting share capital.
- The shareholders cannot change the company's business purpose, term of business, change the share capital and issue debentures and beneficiary shares without the approval of the directors and/or officers.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

According to rules above, all the resolutions regularly passed by the shareholders – by means of either shareholders’ general meeting or written resolutions – are binding to the management. The officers/directors can only refrain from abiding by these decisions as long as they deem, according to the best judgment expected from their position, that the resolutions are not in accordance with the law and/or the corporate documents.

If any instructions have not been turned into the resolutions above, they are not binding to the management.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

In Brazil, various statutes and regulations oversee employment law, safeguarding workers’ rights. Here are some central employment law protections in Brazil:

1. **Discrimination Laws.** Brazilian law restrains workplace discrimination based on race, color, gender, age, disability, religion, sexual orientation, political affiliation, or marital status. Employers must ensure equal opportunities and treatment for all employees.
2. **Minimum Wage.** Brazil’s government periodically adjusts a national minimum wage. All employers must adhere to these regulations, guaranteeing employees receive at least the minimum wage.
3. **Working Hours and Overtime.** The typical workweek in Brazil is 44 hours, often spread over five or six days. Any work exceeding this requires overtime payment, usually at least 50% more than the regular hourly wage.
4. **Vacation and Leave.** Brazilian law requires paid vacation for employees, 30 days each year. Also, under specific circumstances, employees receive paid sick leave, maternity leave, and paternity leave.
5. **Dismissal and Severance Pay.** Brazilian labor laws protect employees from unfair dismissal. When terminating employees,

employers must show the cause or follow certain procedures, such as providing notice and severance payment. The calculation for severance payment usually depends on the length of service.

6. **Health and Safety Regulations.** Employers must ensure a safe and healthy work environment, which includes measures to prevent accidents and occupational hazards, training on health and safety procedures, and compliance with relevant regulations.
7. **Social Security Contributions.** Both employers and employees must contribute to Brazil’s social security system, which offers benefits like retirement pensions, and disability benefits.
8. **Collective Bargaining and Union Rights.** Brazilian law acknowledges workers’ rights to form and join trade unions, participate in collective bargaining, and strike. Collective agreements between employers and unions might determine additional rights and benefits for workers.

These are just some of the key employment law protections in Brazil. However, the legal framework can be intricate and subject to change. Therefore, it’s crucial for employers and employees to stay updated on their rights and obligations under Brazilian labor laws.

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

As per Brazilian labor law, an employer can terminate an employee’s contract without giving a reason at any time, as long as the employee is given a 30-day notice and paid the severance due. Severance payments may differ depending on the termination specifics (with or without cause). However, if employees are let go without cause, they’re entitled to:

- Outstanding salary for the worked period.
- Funds deposited in the FGTS account during their employment.
- A fine of 40% of the total amount deposited in the FGTS account.
- A minimum of 30 days’ notice plus three days’ salary for every full year worked, up to a maximum of 90 days.
- Accrued vacation pay, based on one month’s salary for each year of employment. If termination happens before a full year is

completed, vacation time is calculated pro-rata.

- Vacation bonus, equal to one-third of the accrued or regular vacation amount.
- Christmas bonus, equivalent to 1/12 of the monthly salary for each month (or fraction of at least 15 days) worked from January 1st to the termination date.

Collective dismissals require additional steps, like consulting with unions. Also, the scale of collective dismissals can affect severance negotiations and related costs.

In short, the reasons for dismissal, the process, and the costs involved may vary between individual and collective dismissals in Brazil.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Brazil has a robust system for employee representation and involvement, primarily through unions and collective bargaining. Here are some key points:

- Unions play a crucial role in Brazil, advocating for worker rights. They negotiate collective bargaining agreements with employers on behalf of employees, addressing wages, working conditions, and other employment-related issues.
- Unions are organized based on territory, industry, or profession, and they have legal recognition and the right to represent workers in discussions with employers.

In Brazil, every economic activity must be represented by a union, with no exceptions. Contrary to other countries, Brazilian unions represent all workers within their territorial jurisdiction, not just those who are members.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

There are several and relevant provisions in Brazilian legal system relating to bribery and corruption.

The Brazilian Criminal Code provides for penalties for crimes committed by individuals against the Brazilian or foreign public administration, which includes the crimes of passive and active corruption.

Law No. 12,846/2013, known as the Anti-Corruption Law, provides for the administrative and civil liability of legal entities for carrying out acts against the Brazilian or foreign public administration, and the Improbability Law (Law No. 8,429/1992), on the other hand, regulates improbity acts performed by public agents against the administration.

At the international level, Brazil is part of OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction the Organization for Economic Cooperation and Development (OECD), and the Decree 5,687/2006 has published the United Nations Convention against Corruption, adopted by the United Nations General Assembly on October 31, 2003, and signed by Brazil on December 09, 2003.

The Brazilian system does not have extraterritoriality, however cross-border initiatives, joint investigations and international cooperation may be applied.

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

Law No. 9,613/1998, as amended, known as the Anti-Money Laundering Act, provides for crimes related to money laundering or the concealment of assets, rights, and valuables, and the prevention of the use of the financial system for the illicit activities provided for in such law.

Additionally, Laws No. 13,260/2016 and No. 13,810/2019 forbid terrorism and its financing and enforce the immediate freezing of terrorist assets, in compliance of United Nations Security Council's sanctions related to terrorist offenses.

All financial institutions under the Central Bank of Brazil's regulation must report to it any suspicious operation or situation, implement internal procedures to detect suspicious operations, among other measures. Additionally, entities subject to CVM regulation are obliged to prepare a compliance report for the calendar year immediately preceding the current year and forward it to the Council for Financial Activities Control (COAF).

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Money laundering and terrorist financing is supervised and centered at the Council for Financial Activities Control (COAF)—the Brazilian financial intelligence unit. The Coaf is vested with technical and operational autonomy and is administratively linked to the Central Bank of Brazil.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

The Brazilian Federal Constitution prohibits slavery and the slave trade in all its forms, and the Article 149 of the Brazilian Criminal Code provides for the elements that characterize the reduction of a human being to a condition similar to that of a slave, as well as provides for the penalties applicable to such crime.

At the international level, Brazil has ratified several treaties on this matter, such as the Universal Declaration of Human Rights, the American Convention on Human Rights (Pact of Saint Joseph of Costa Rica), the Conventions No. 29 and 105 of the International Labor Organization, among others.

Regarding child labor, the Brazilian legislation establishes that up to the age of thirteen (13) years old, any form of work is illegal; from 14 to 15 years, work is only allowed as apprenticeship and at 16 and 17 years, there are restrictions regarding night shifts, and unhealthy and dangerous conditions.

In respect of environmental practices, Law No. 9,605/1998 provides for criminal and administrative sanctions arising from conduct and activities harmful to the environment, which may be applied to legal entities and their directors, officers, members of technical council or body, auditors, agents or representatives, who, knowing of the criminal conduct of others, failed to prevent its practice, when they could act to avoid it.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Except for *Sociedades Anônimas*, *Sociedades em Comandita por Ações* and any other corporate type (or group of companies) with either annual assets or gross

revenue greater than, respectively, BRL 240,000,000.00 and BRL 300,000,000.00, the rules pertaining to annual accounts/financial statements are all provided in the Brazilian Civil Code. On annual basis, the officers/directors are essentially required to prepare and present to the shareholders an annual balance sheet and earnings statement.

As per the companies excepted above, and notwithstanding special regulations on certain activities, such rules are generally provided in the Brazilian Corporations Acts. On annual basis, the officers/directors are essentially required to prepare and present to the shareholders annual:

- Balance sheet.
- Earnings statement.
- Demonstration of cash flows.
- Report of the officers/directors on the conduction of business during the fiscal year – only for *Sociedades Anônimas* and *Sociedades em Comandita*.
- Report of the Fiscal Board – if this body has functioned during the fiscal year, and only for *Sociedades Anônimas* and *Sociedades em Comandita*.
- If the company is publicly traded (either *Sociedade Anônima* or *Sociedade em Comandita por Ações*), the basis of the valuation aggregated to the company and reports presented by independent auditors.

All the specific accounting statutes and guidelines are applicable to any corporate type, including the Brazilian GAAP.

22. Please detail any corporate / company secretarial annual compliance requirements?

Aside from the provisions of Item 21 above, and notwithstanding special regulations on certain activities, there are no additional secretarial compliance requirements.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

Except for *Sociedades Limitadas*, *Sociedades Anônimas* and *Sociedades em Comandita por Ações*, the officers

have a general obligation to annually provide the shareholders with **(i)** justified accounts of their administration; **(ii)** the inventory; and **(iii)** balance sheet and earnings statement.

As per the companies excepted above, and notwithstanding special regulations on certain activities, the shareholders shall take following resolutions, within four months counted from the end of each fiscal year:

1. “Sociedade Limitada” (limited liability company)

- Assessing the officers/directors’ accounts and decide on the financial statements.
- Appointing officers/directors (if applicable).
- Deciding on any other matters provided in the agenda.

Should all the shareholders agree on the resolutions, the shareholders’ meeting is not mandatory. In this case, the shareholders can formalize their decisions by mean of executing written resolutions.

2. “Sociedade Anônima” (corporation) and **“Sociedade em Comandita por Ações”** (partnership limited by shares)

- Assessing the officers/directors’ accounts and decide on the financial statements.
- Deciding on the allocation of the net profit and the distribution of dividends.
- Appointing officers/directors and members of the fiscal board (if applicable).
- Deciding on the correction of the monetary expression of the share capital (if applicable).

The resolutions shall be passed by means of shareholders’ general meetings.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

Any legal entity enrolled with Brazilian IRS (whether incorporated in Brazil or not) must file with such branch, within 30 days counted from its enrollment, a statement demonstrating either **(i)** that there are no UBOs; or **(ii)** the identity of the UBOs (if existent).

For these purposes, natural persons who hold “significant influence” over these legal entities are considered UBOs, which can result from either voting power or relevant equity participation – natural persons holding (whether directly or indirectly) more than 25% of

the share capital are presumed to be UBOs. This statement shall be updated in case there is any change to this status.

There are exemptions provided in Brazilian legislation. The most relevant ones are publicly traded companies, which are not obliged to file the aforementioned statement with the Brazilian IRS. This applies to publicly traded companies abroad as well, as long as the corresponding regulatory agency is acknowledged by the Brazilian Securities Commission.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

1. Corporate Income Taxes (IRPJ and CSLL)

Companies domiciled in Brazil are subject to two Federal Corporate Income Taxes, the “*Imposto de Renda de Pessoa Jurídica*” (“IRPJ”) and the “*Contribuição Social sobre o Lucro Líquido*” (“CSLL”). All companies have the right to calculate both taxes on their taxable income. The taxable income is the net income of the company pursuant to the Generally Accepted (in Brazil) Accounting Principles (the Brazilian GAAP), with some adjustments (additions and reductions) provided for by the law. This is the so-called “real profit regime”.

Tax losses incurred by companies (in the “real profit regime”) may be carryforward. However, tax losses carryforward can only be used to offset taxable incomes of subsequent fiscal year up to a maximum of 30% of each year’s taxable income.

There is no state or local Income Tax in Brazil. However, companies’ gross revenues are subject to another federal tax (PIS/Cofins) e municipal tax (ISS), as described below.

The IRPJ is calculated at a tax rate that ranges between 15% and 25% according to the amount of taxable income produced by the company in the respective fiscal year.

The CSLL is calculated at a flat rate of 9%.

Alternatively, both taxes may be calculated with basis on a “presumed income”, which is the product of the multiplication of the company’s revenues by certain presumed profit margins set forth in the Tax Law (different activities have different presumed profit margins). Such regime is called the “presumed profit regime” and is only applicable to companies that have expressly chosen to submit themselves to such special

regime. Once a company has chosen to pay its Corporate Income Taxes under the “presumed profit regime” it cannot go back to the “real profit regime” before the end of the respective fiscal year.

2. The Social Integration Program (PIS) and the Social Security Tax on Revenues (COFINS)

The “*Programa de Integração Social*” (“PIS”) and the “*Contribuição para o Financiamento da Seguridade Social*” (“COFINS”) are both federal taxes created to fund the Brazilian social security.

They are both calculated on the companies’ gross revenues on a monthly basis.

There are two basic regimes for the calculation of such taxes: the value-added regime and the “old” regime.

The value-added regime was created in 2002 and is today the standard regime, i.e., is the regime that applies to all companies, except for those that have been kept in the old regime by the law.

The value-added regime allows companies to deduct from their revenues the cost of certain acquired goods and hired services, provided that such goods and services are acquired from/provided by a Brazilian company and are used by the acquiring/hiring company to produce goods or the provision of services.

In the value-added regime, the PIS and COFINS rates are respectively 1.65% and 7.6%. In the old regime, which is much simpler, companies calculate the PIS and the COFINS on the amount of their revenues at tax rates of 0.65% and 3% respectively.

3. Federal Excise Tax (IPI)

IPI stands as a federal excise tax imposed on the manufacturing and importation of goods in Brazil. Exports are exempt from IPI. The rates for IPI depend on the specific product, typically averaging around 20%. Filing and payment responsibilities are carried out on a monthly basis.

4. State Tax on Goods (ICMS)

ICMS represents a state-level Value Added Tax applied to the circulation and import of goods, as well as the provision of interstate and intermunicipal transportation and communication services.

The rates for ICMS vary from 4% to 25%. Accurate ICMS calculations must be maintained in the appropriate fiscal records. Filing and payment obligations occur on a monthly basis.

5. Municipal Tax on Services (ISS)

Most services are subjected to the “*Imposto Sobre Serviços*” (“ISS”), a Municipal Tax that is calculated on the revenues of services companies.

Since the ISS is a Municipal tax its rates may vary from city to city, but its minimum and maximum rates are 2% and 5% respectively.

The ISS is owed to the Municipality in which the provider has the infra-structure necessary to provide the services.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

1. Taxation on Inflow/Return of Capital and Dividends

Remittances made by foreign investor to a capital inflow of Brazilian direct investment are not subject to taxation in Brazil, not even financial tax (IOF).

The book net profit determined by Brazilian invested company (after paying all taxes and other costs and expenses) may be remitted abroad as dividend, without tax, except with the IOF-Câmbio, whose current rate is 0.38%.

2. Incentives

R&D projects and information technology initiatives are eligible for various forms of direct assistance and tax relief. A significant benefit is the exclusion from the corporate income tax base, ranging from 60% to 100% of R&D project expenses. Additionally, when acquiring assets, a reduced IPI is applied, and accelerated depreciation is permitted for R&D assets.

Subsidized financing options are accessible for the acquisition of capital goods, investment in infrastructure projects, and ship construction.

Export-oriented sectors enjoy duty drawback benefits on imports and have access to specialized financing through an export promotion program.

Manufactured goods exporters are entitled to a tax refund, calculated as a percentage of their export revenue, contingent on the type of goods exported.

Furthermore, regional incentives for federal and state taxes are provided by the Brazilian government.

3. Manaus Free Trade Zone (“ZFM”)

The ZFM was created by the Federal Government as a tool for building an industrial area in the Amazon, as well as for attracting investments to poorer regions of the country.

ZFM area includes four states located in the Northern region: Amazônia, Acre, Rondônia e Roraima and is administered by “SUFRAMA” (“Manaus Free Trade Zone Administrative Body”).

SUFRAMA introduced some tax benefits, such as the exemption/reduction of the Import Tax (“I.I.”) and of the Industrialized Products Excise Tax (“IPI”), applicable to industries operating in this area.

4. Brazilian Tax Reform (PEC 45/2023)

On July 2023, the House of Representatives gave its approval to Constitutional Amendment (PEC) No. 45, marking a potential paradigm shift in consumption taxes within Brazil. However, the full implementation of these changes remains contingent upon approval from the Senate.

Simultaneously, the Ministry of Treasury is actively considering alterations to corporate income tax structures, with a focus on potentially introducing dividend taxation. The evolving landscape of Brazilian tax reforms underscores the ongoing efforts to address and reshape the country’s fiscal policies. Further developments await Senate deliberations and potential outcomes in the broader context of economic governance.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

1. Transfer Pricing Regulations

Cross-border transactions involving the import or export of goods, services, intangible properties and loans between a Brazilian company and a related party abroad, or a party residing in a low-tax jurisdiction (LTJ), must adhere to transfer pricing regulations based on the arm’s length standard, which entails determining prices equivalent to those in the open market. Brazil’s transfer pricing rules are distinctive, typically operating under a formulary apportionment and fixed profit margins.

Brazil is currently in the process of transitioning from its previous transfer pricing legislation to align with the

internationally recognized OECD Transfer Pricing Guidelines. The new rules are set to become mandatory from 2024, but taxpayers have the option to adopt them in 2023.

The new transfer pricing model aims to integrate Brazil into global value chains and address issues related to both double taxation and double non-taxation. Structured under the Arm’s Length Principle (ALP), it replaces Brazil’s previous fixed-margins system. This updated framework incorporates comparability analysis, specific methodologies, and documentation requirements, aligning closely with the OECD standard adopted by the majority of countries.

2. Interest Deduction Limitations

Under thin capitalization rules, interest paid to related parties outside tax haven jurisdictions without preferential tax regimes may be deducted for corporate income tax purposes, provided the expenses meet general deductibility requirements and specific thresholds related to debt-to-equity ratios are met. However, interest paid to entities in tax havens or benefiting from preferential tax regimes is subject to stricter criteria, and excess interest is treated as a nondeductible expense for IRPJ and CSLL purposes.

3. Controlled Foreign Companies (CFCS)

Profits from CFCs of Brazilian entities are considered in calculating IRPJ and CSLL liabilities. Under specific conditions, profits from foreign affiliates may be taxed only upon distribution. Brazilian taxpayers can opt for an irrevocable election each calendar year to consolidate CFC profits and losses until 2022. Depending on the business sector, a Brazilian controlling company may be eligible for a 9% deemed credit through 2022 on foreign profits from its CFCs, offsetting income tax related to included CFC profits.

4. Economic Substance Requirements

Brazil’s tax authorities have clarified the criteria for “substantial economic activities” in the context of evaluating whether specific Danish and Dutch regimes qualify as privileged tax structures, warranting inclusion on Brazil’s “grey list.” A foreign holding company based in Denmark or the Netherlands will be considered as engaging in substantial economic activities if it possesses the requisite operational capabilities to fulfill its corporate objectives. This includes maintaining an adequate number of qualified employees and suitable physical premises to efficiently oversee its operations.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

1. Transfer Tax (ITBI)

ITBI is a municipal tax applicable upon the transfer of title to real property, encompassing both land and buildings. The tax rate is progressive, ranging from 2% to 6%, calculated broadly on the sales price. The buyer assumes responsibility for tax payment.

2. Stamp Duty

No stamp duty is applicable.

3. Real Property Tax (IPTU)

IPTU is an annual tax collected by the municipality where the property is situated. It is based on the deemed "sales price" of the property, with rates varying by municipality, typically falling within the range of 0.3% to 1.5%. Additionally, the rural property tax (ITR) is a federal tax assessed annually on rural property ownership, with rates spanning from 0.03% to 20%, contingent on the region and property utilization.

4. Net Wealth/Worth Tax

No net wealth/worth tax is levied.

5. Inheritance/Estate Tax (ITCMD)

For individuals, states are authorized to impose inheritance taxes at rates of up to 8%.

6. Financial Transactions Tax (IOF)

- Foreign Exchange: General rate of 0.38% for most transactions.
- Cross-Border Loans (Short Term): 6% rate on the principal amount for loans of less than six months.
- Domestic Loans: Maximum rate of 1.88% (calculated using specific methods and conditions) on the principal amount for loans where the lender is a legal entity.
- Security Transactions: Rates vary based on the transaction type, ranging from 0% to a maximum daily rate of 1.5%.

29. Are there any public takeover rules?

There are rules pertaining to public takeover offers in Brazil. Some of the main applicable legislation are the following:

- Law No. 6,404/1976 (the "Brazilian Corporations Act").
- Law No. 6,385/1976, which regulates the securities market and creates the Securities and Exchange Commission (CVM) as the corresponding regulatory body.
- CVM Resolution 85, which encompasses public takeover offers of shares of publicly traded companies.

Certain companies may be subject to specific regulations, especially when operating in regulated sectors.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

There is a mandatory merger control regime in Brazil. Law No. 12,529/2011 provides that mergers must be submitted to the Administrative Council for Economic Defense (CADE) when the parties involved reach certain revenue thresholds, as defined in the Interministerial Ordinance of the Ministers of Finance and Justice.

The most recent provision, set forth by Interministerial Ordinance No. 994/2012, provides that transactions must be analyzed by CADE if **(i)** one of the involved groups of companies has annual gross revenue of at least R\$ 750,000,000.00; and **(ii)** at least one of the other groups of companies has annual gross revenue of R\$ 75,000,000.00 – according to their latest balance sheets.

Before the closing of any of these transactions, they must undergo CADE's analysis, which will issue a decision considering whether the merger will imply **(i)** the elimination of competition in a substantial part of a relevant market; **(ii)** the strengthening or creation of a dominant market position; or **(iii)** the domination of a relevant market for goods or services.

These effects may be excepted when the transaction leads to increased productivity or competitiveness, improvement in the quality of goods or services, promotion of efficiency and technological or economic development, or results in significant benefits passed on to consumers.

31. Is there an obligation to negotiate in good faith?

According to Article 422 of the Brazilian Civil Code, the parties are obliged to observe the principles of probity and good faith in the execution and performance of contracts. Although the article does not expressly

address the pre-contractual phase, its interpretation is usually extensive, covering, in addition to the execution and performance of the contract, the pre- and post-contractual phases.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives' information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

From a Brazilian Labor Law perspective, employees do not have any protections from when their employer is being acquired.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and / or approvals required for corporate acquisitions.

All foreign direct investments are supervised by Brazilian Central Bank, and the investor shall be enrolled with such branch and the Brazilian IRS. Any currency exchange operations of foreign direct investments receive a code from Brazilian Central Bank – therefore, they are automatically registered with this branch. In addition, the Brazilian recipient company shall be enrolled with “SCE-IED”. This is an electronic system of Brazilian Central Bank for keeping track of foreign direct investments in Brazil.

Any foreign investment in amount of at least USD 100,000.00 shall be specifically registered by the Brazilian recipient company with “SCE-IED”. If there is any movement of direct investments involving that amount (such as transfer of shares, combination, donation etc.), the Brazilian recipient company shall

update the “SCE-IED” accordingly.

34. Does your jurisdiction have any exchange control requirements?

Besides specific regulations on financial institutions and/or currency exchange agencies, the control is carried out by means of the system described in item 33.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

Although there may be other circumstances, Brazilian companies usually undergo this process as a result of **(i)** resolutions passed by the shareholders; or **(ii)** bankruptcy.

Under the first scenario, the process depends on the net equity state of the company. In general, if the company has positive net equity and assets comprised exclusively of cash, the dissolution/liquidation can be formalized by a single shareholders' meeting or written resolutions, by which they approve the dissolution of the company and the allocation of the net equity amongst the shareholders.

Although, if the net equity is not comprised exclusively of cash, the dissolution will be divided into three (3) different phases: **(i)** a shareholders' meeting or written resolutions approving the dissolution and the appointment of a liquidator; **(ii)** the liquidation phase, when the assets and liabilities will be liquidated under the responsibility of the liquidator; and **(iii)** a shareholders' meeting or written resolutions approving the end of the liquidation (and the accounts and exoneration of the liquidator) and the allocation of the net equity (if there is any) amongst the shareholders.

Under the second scenario of a bankruptcy, the company undergo liquidation by means of court order. In general, Brazilian courts and the creditors supervise all the procedures and follow a liquidation plan proposed by the liquidator (or equivalent) and approved by general meeting of the company's creditors.

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