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ADVOGADOS

**Doing Business in Brazil**  
**2010**



# Doing Business in Brazil 2009

With main offices in São Paulo, nationwide presence in Brazil and several legal cooperation agreements with law firms overseas, our office provides legal services to corporate clients in several fields, creating personalized solutions focused on each client's corporate culture.

This booklet is a brief overview regarding the main aspects related to foreign investments in Brazil. We hope this can give you a glimpse of the opportunities and challenges of starting a business in our country.

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**Forms of Association** The companies in Brazil are organized by written agreement and regularly incorporated with the register of its By-laws before the respective Civil Registry of Legal Entities or the local Commercial Board, depending on the company's type. The Law gives corporate status to the companies after the By-laws' registration.

The Brazilian legislation provides for the incorporated entities the following types: *sociedade simples*, *sociedade em nome coletivo*, *sociedade em comandita simples*, *sociedade limitada* (Limited Liability Company), *sociedade anônima* (Joint-stock Company). The most common types are the Limited Liability Company and the Joint Stock Company, which are explained below.

**Joint-stock Company** The main purpose of the Joint-stock Company is to earn profits and distribute them among its shareholders. There are two kinds of Joint-Stock Companies: (i) a publicly held company which obtains its funds through public offers and respective subscriptions and is supervised by the Brazilian Securities and Exchange Commission (CVM), and (ii) a closed company which obtains its funds from its own shareholders and has a less bureaucratic administration system.

- a. **Corporate Name:** The chosen name must be succeeded by the term "Sociedade Anônima", extended or abridged ("S/A"), or preceded by the word "Companhia", extended or abridged ("Cia."). The corporate name may describe the company's main activity, but the description is not mandatory. Proper nouns and the name of the company's founder can be used.
- b. **Capital:** Represented by securities called shares, which may be common, preferred or fruition shares, depending on the rights and advantages it confers to the respective

shareholders: (i) *Common shares*: besides the essential rights (participation on the company's profits), entitles its holder to the right of vote; (ii) *Preferred shares*: may grant special rights to its holder regarding the profits distribution, but may also restrict or suppress the right of vote; and (iii) *Fruition shares*: fully amortized shares may be substituted by fruition shares (or prepaid shares), subject to restrictions established in by-laws or by a general shareholders' meeting approving the amortization, taking part in the incomes from the paying off of common or preferred shares, without reduction in the capital stock.

- c. **Partners:** A Joint-stock Company must have at least two partners, individual or legal entities, Brazilian or foreigner.
  
- d. **Management:** Usually composed by a Management Board and a Board of Directors. The Management Board is a collegiate decision-making body which is mandatory in public-held companies and optional in closely-held corporations. It must be comprised of at least three members, which must be shareholders, individuals, residing or not in Brazil. The Board of Directors is the executive body of the Joint-stock Company, responsible for its legal representation and the practice of all necessary acts for its regular operation. Only individuals that are resident in Brazil can be part of the Board of Directors.

**Incorporation:** The Joint-Stock Company is governed by its By-laws which has the main information about the company, such as, but not limited to its name, head office, branches, term, activities, capital stock, administrative bodies, financial year, and profits' destination. The registration of its By-laws shall be provided before the local Commercial Board and it follows the same process of the Limited Liability Company type, as explained below.



Foreign Partners: The same rules are applied to foreign partners in a Joint-Stock Company and in a Limited Liability Company. Further details are explained below.

***Organization of a  
Brazilian Limited  
Liability Company***

The Brazilian Limited Liability Company (hereinafter “Limitada”) is the most common type of commercial company in Brazil followed by the Joint-stock Company (“Sociedade Anônima”). The choice between them will vary according to the commercial strategy of the company.

Advantages: The common usage of the Limited Liability Company can be explained by some of its advantages as follows:

- i. partners liability is restricted to the amount of the quotas held in the Limited Liability Company;
- ii. legal structure simpler and more flexible;
- iii. free allocation of the obtained incomes (inexistence of legal reserves);
- iv. lower costs, both in organization and administration;

Incorporation: A Limited Liability Company is established by the partner, its representative or its attorney in fact’s signatures in the respective Articles of Organization (“Contrato Social”). The main aspects of the referred document are:

- i. **Corporate Name:** The Limited Liability Company must include in its name the expression “limitada” or “Ltda.” Also, the name must include a word or expression evidencing the main activity that the company will perform in Brazil.
- ii. **Capital:** The corporate capital shall be divided into quotas and can be paid in cash, assets or rights.
- iii. **Partners:** A Limited Liability Company must have at least two partners, individual or legal entities, Brazilian or foreigner.
- iv. **Management:** One or more individuals, Brazilian residents, partners or not, appointed in the Articles of Organization or in a separate document shall be entitled to administrate and

manage the Limited Liability Company.

Registration: The partners must file the Articles of Organization before the Commercial Board of the State where the Limited Liability Company's head office is located. Only after the registration before the Commercial Board the Articles of Organization is enforceable against third parties.

After registration of the Articles of Organization, the company must also be enrolled with the General Taxpayers' Registry (*CNPJ*).

And to become fully operational, companies involved in commercial activities must also register with State and Municipal Taxpayer's Registry. Companies that only render services do not need to be registered with the State taxpayer's registry.

It usually takes one week to have a Limited Liability Company duly organized and registered before the Commercial Board. The enrollment with the Individual Taxpayers' Registry usually takes three weeks.

Foreign partners: Each foreign partner ("Grantor") must grant powers of attorney to an individual resident in Brazil ("Grantee") who will execute the Articles of Organization on its behalf. Grantee will also represent Grantor as a partner of the Limited Liability Company and shall receive service of process on corporate matters on Grantor's behalf.

Also, Brazilian legislation states that any foreign company or individual holding equity interest (among other assets) in a Brazilian company must be enrolled with the Taxpayers' Registration ("CNPJ" registration for legal entities and "CPF" registration for individuals) and also must be registered with the Central Bank of Brazil.



***Central Bank of Brazil*** According to Law nr. 4.595/64, the Central Bank is responsible for the implementation of the monetary policy, exchange controls, regulations of financial institutions (including brokers and dealers), control of foreign investment (including investments in the securities markets) and other matters regarding the securities markets which the National Monetary Council (“CMN”) determines that fall under the regulatory powers of the Brazilian Central Bank.

All the companies that have foreign partners, which may be either individuals or legal entities, must be registered before the Central Bank which is permanently informed about investments that enter or leave the country through such company. The foreign investors are also registered before the Central Bank and receive an identification number called “CADEMP”.



**Foreign Professional** In case of a professional that comes to Brazil to assume the position of administrator, manager or director of a limited liability company, he/she must obtain a permanent visa. In this case, it will be necessary to have an amendment to the Articles of Organization so that the professional may be included in the position which he/she was appointed for. The professional shall receive “*pró-labore*” (compensation) and, if applicable, distribution of dividends.

In case the professional comes to Brazil as an employee of the company, the same must acquire a temporary work visa, type V (with an employment agreement).

Also, the company must enter into an employment agreement which provides the following rights:

- Monthly salary;
- Christmas Bonus;
- Vacation + 1/3;
- FGTS (Unemployment Guarantee Fund);
- PLR (profit sharing);
- Enrollment with the PIS (similar to VAT tax);
- Collecting the social security;

The company may pay part of the salary in a foreign country, in case it prefers to. However, it is important to mention that it is mandatory to pay at least one part in Brazil.

**Acquisition of real estate in Brazil**

Foreign individuals or foreign-owned companies have the right to acquire real estate property in Brazil under the same conditions applied to national individuals or entities. However, prior to the acquisition of a real estate located in the Brazilian territory, the foreign purchaser must provide its enrollment with the General Taxpayers’ Registry. Furthermore, special conditions and limitations shall be applied to a non-resident individual or company regarding



the acquisition of property located near the coast, frontiers and other specific areas considered by the Brazilian government as being of national security.

The ownership of a real estate property is acquired through the registration of the public or private instrument (deeds) in which the purchase was accomplished at the competent Real Estate Registry of the region where the property is situated.

**Rural Property:** only foreign individuals with permanent residence in Brazil can purchase rural properties located in the national territory. Those who do not have the permanent residence can only acquire a rural property in Brazil due to inheritance rights. According to Law nr. 5.709/71, foreign companies can only purchase rural properties in Brazil for the purpose of implementation of agricultural, cattle-raising, industrialization or colonization

projects, which shall be indicated in the company's by-laws and approved by either the Brazilian Agriculture Ministry or the Department of trade and Industry, as the case may be.

**Taxation:** *Inter-Vivos* Transfer Tax ("ITBI") is collected by the municipalities and due when the real estate property or rights to any real estate property, and also when assignment of rights for the acquisition of property is transferred on a remunerated basis. ITBI's rate is generally indicated in the respective Municipal Law and the amount to be paid is proportional to the property's value.

## **Tax System**

### **General Features**

The tax system in Brazil is complex, highly regulated, with numerous taxes and exemptions. Taxation in Brazil is divided into taxes, fees, betterment fees, social contributions, other contributions and compulsory loans. The Brazilian Constitution determines which of these taxes can be levied by each of the three different levels of government: Federal Government, the Brazilian States and the Municipalities.

In addition to the duty of paying taxes, there are several tax ancillary obligations, keeping records and filling out forms, for example, that must be accomplished by companies under penalty of tax notice fining them for not complying with such legal obligations.

### **Taxes**

The Federal Government levies taxes on: import duties (*Imposto sobre Importações - II*), export duties (*Imposto sobre Exportações - IE*), income (*Imposto de Renda - IR*),



manufactured products (*Imposto sobre Produtos Industrializados - IPI*), financial transactions (*Imposto sobre Operações Financeiras - IOF*), and property of rural land (*Imposto sobre a Propriedade Rural – ITR*).

As to the social contributions, they can only be levied by the Federal Government and are used to fund social programs. There is a lot of contributions, among them we list the most important ones: Social Contribution on Net Income (*Contribuição Social sobre o Lucro Líquido - CSLL*), Contribution to the Social Integration Plan (*Contribuição ao Programa de Integração Social - PIS*), Contribution for Financing of the Social Security (*Contribuição para o Financiamento da Seguridade Social - COFINS*), Social Security (*Instituto Nacional de Seguridade Social" - INSS*)

and Contribution for Intervention in the Economic Domain (*Contribuição de Intervenção no Domínio Econômico - CIDE*)

The Brazilian States are allowed only to impose taxes on inheritance and donation (*Imposto sobre a Transmissão Causa Mortis e Doação de Bens e Direitos - ITCMD*), on transactions related to the circulation of goods, interstate and intermunicipal transportation and on communication (*Imposto sobre a Circulação de Bens e Serviços - ICMS*), and on the ownership of motor vehicles (*Imposto sobre a Propriedade de Veículos Automotores - IPVA*).

On its turn, the Municipalities can only levy taxes on services (*Imposto sobre Serviços - ISS*), on real state transfer (*Imposto sobre a Transmissão Inter Vivos de Bens Imóveis e Direitos - ITBI*) and on urban property (*Imposto sobre a Propriedade Territorial Urbana - IPTU*).

In the following section, it is selected some taxes that have a considerable impact on businesses in Brazil.

### ***Most relevant taxes relating to business***

- a. **Income tax (IR)**: Corporate income tax is levied on net profit of corporations generated by operations carried out in Brazil. There are three methods of calculation to corporate tax: (a) real profit basis; (b) presumed profit basis and (c) arbitrated. The first two methods may be elected by companies, provided certain conditions are met, the third method is necessary when the accounting is not in compliance or there are errors or fraud involved. Companies with total gross revenue above US\$ 27 millions per year and others identified by law must calculate through the real profit basis on quarterly or annual balance sheets.



The taxable income is calculated by adjusting the net profit by summing legal additions and subtracting some legal deductions (most related to capital expenditures to the net profits). This calculation basis is taxed on 15% regardless of the corporation business. In addition to that, there is a 10% supplementary tax on the portion of net profit which exceeds R\$ 20.000,00 (about US\$ 11,000.00). The presumed profit method is a method of calculation in which the net profit is calculated as a percentage of gross revenues (such percentage varies depending on the company activity).

Tax losses can be carried forward in full, but its compensation is limited to 30% of the net income each year.

- a. **Tax on Financial Transactions (IOF)**: It is a tax levied on financial transactions related to exchange, securities, credit, gold and insurance. The tax rates vary according to the nature of the taxable transaction

- b. **Tax on Manufactured Products (IPI)**: It is a value-added tax levied on the output and on the importation of industrialized goods. The amount of tax due in one operation may be offset by the credits proceeding from the tax paid on the purchase of raw materials, intermediary products and packaging materials. IPI tax rates vary greatly, according to the degree of essentiality of the good, but the average tax is 10%.
- c. **Social Contribution on Net Income (CSLL)**: this tax is levied on profits before income tax. Its rate varies from 9%, to industrial activities, to 15% for the financial sector.
- d. **Contribution to the Social Integration Plan (PIS)**: This tax is levied monthly on the gross income from the sales of goods and services. Its rates are 0,65% or 1,65%, according to criteria determined by law.
- e. **Contribution for Financing of the Social Security (COFINS)**: Like PIS, it is levied monthly on gross income from the sales of goods and services. Its rates are 3% or 7,6%, according to criteria determined by law. There is also a contribution of PIS/COFINS on import of services and goods, levied on the custom value of goods or the price paid for the services.
- f. **Contribution for the Social Security National Institute (INSS)**: The employers are required to contribute an additional 20% of the total payroll value to the Social Security system.
- g. **Tax on the Circulation of Goods and Services (ICMS)**: It is the most important State tax. It is a value-added tax levied on operations regarding the circulation of goods, on interstate and intermunicipal transportation and on communication services. Each State determines its own tax for internal and interstate operations. The average intrastate rate is 17% and

the average interstate rate is 12% (but it depends on the destination).

- h. **Service Tax (ISS)**: This municipal service tax is levied on the revenue derived from the rendering of certain services listed in a Federal law. The rates vary from 2% to 5%, depending on the type of service provided and the city where the service provider is established.

***Dividends***

The distribution and remittance of profits abroad almost have no restrictions according to the Brazilian legislation. Profits paid by a Brazilian company to a foreign investor are not subject to any withholding tax. But an income paid, credited, remitted or delivered to non-residents, must pay tax at a rate of 15%.

***Repatriation  
of capital***

According to the Brazilian legislation, foreign capital invested in the country may be repatriated at any time and there is no minimum period of investment. But it is not completely free of tax: the amount invested registered with the competent Brazilian authority does not have to pay any tax, but the amount that exceeds the value registered will be treated as a capital gain, subject to a 15% withholding tax or 25%, in case of investors residing in tax havens.





***Free Economic  
Zone of Manaus***

Special tax incentives can be granted to companies interested in building plants in this region of the State of Amazonas, within the Amazon Jungle. It is possible for a ny company to establish an affiliated company in this region and benefit from exemptions of taxes.

Each of the three levels of government allows tax deductions or exemptions to incentive investment in this area. The tax on import duties (“II”) can be reduced up to 88% if the imported goods are for the internal consumption at the Free Zone as raw materials or supplies entering into an industrialization process. Law sets exemption of tax on manufactured goods (IPI), as well as PIS and COFINS, and on import duties to raw materials, parts and components used in the manufacture of the products indicated in the manufacturer’s project in accordance with the basic productive process established by the competent authorities for such product. This benefit depends on a

prior approval of a specific project before the Superintendence of The Free Economic Zone of Manaus (SUFRAMA).

The Federal Government granted a deduction of 75% in the corporate tax. The State of Manaus can retribute between 55% up to 100% of the tax related do the circulation of goods, interstate and intermunicipal transportation and on communication. The Municipality exempts the tax on urban property and other municipal taxes.

From a legal point of view, these are some of the main aspects to be analyzed in order to start planning a business in Brazil, but the specification of each investment to be made shall be studied in a case-by-case basis for a successful implementation.

We remain available for any clarification you may deem necessary.

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