

FAS Advogados
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Doing Business in Brazil Guide

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Introduction

Brazil has grown in economic and political importance over recent years, and despite challenging economic times, continues to be an essential part of any multinational's growth plans as well as a potentially lucrative market for many smaller companies. Three key factors responsible for the success and potential of the Brazilian market are its abundance of natural resources, the size of its internal market, and the relative institutional stability that Brazil enjoys.

1. Natural resources. Brazil is a country of continental proportions, spanning tropical and temperate zones, with more available arable land than any other country. It has become the world's leading exporter of many farm products, including beef, poultry, soy, coffee and sugar. Brazil also has some of the world's largest reserves of minerals, considerable oil reserves and hydrological and weather conditions that allow the significant generation of electricity from renewable sources.

2. Internal market. Brazil has the fifth largest population in the world and is the largest economy in Latin America. Economic and social reforms have reduced poverty and expanded the middle class to roughly half the population, increasing the number of consumers and first time buyers of cars, homes, domestic appliances and technology, and growing demand for better healthcare, education and other services.

3. Stability. Brazil has been a committed multi-party democracy since the end of the last military dictatorship in 1985. Inflation has been tamed and successive governments have maintained consistent

macroeconomic policies whilst reducing poverty and tackling inequality. These fundamentals allowed Brazil to maintain solid growth throughout the global financial crisis and made it the world's fourth most attractive destination for foreign direct investment in 2019.

This guide aims to demystify the process of doing business in Brazil, by providing a simple overview into those areas we are most commonly asked about by foreign companies either considering entering the Brazilian market for the first time or wishing to expand their Brazilian operations. This guide is not, however, intended as a substitute for legal advice and should not be relied upon as such.



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Eight Practical Issues

While the rest of this guide looks at certain issues in more depth, this short list sets out briefly a number of the key issues that investors should be aware of before deciding to do business in Brazil.

1. Resident representatives

Until recently, all officers ('administrators') in limitadas, the most common form of Brazilian subsidiary, and corporations were required to be Brazilian residents. The law has recently changed, so that officers may be foreign residents. In any case, any foreign officer will be required to appoint a Brazilian-resident representative for the duration of his/her appointment and for at least 3 years after.

2. Currency and exchange transferences

The Brazilian Real is a volatile currency, and cannot be transferred outside Brazil. Funds being sent into or out of the country – including foreign investment, and dividends paid to foreign investors – need to be registered with the Brazilian Central Bank. This can be done electronically, though any failure to register correctly can lead to delays and fines.

3. Governing law

Except for specific matters that Brazilian Law applies with exclusivity (e.g. disputes regarding real estate located in Brazil), the parties may choose the governing law and dispute jurisdiction of the contract. It must be done in expressly writing, otherwise, the governing law will depend on where the contract is made.

4. Taxation

Brazil has a complex system of inter-related tax regimes: as well as federal taxes, some taxes differ by state and even by city (see pages 14-17 for more details). The taxes applicable to foreign investors are also subject to frequent change, and while Brazil has double taxation treaties with a number of countries, there are a number of major economies with which it does not, including

Germany, the US and (other than for air and sea transport) the UK. In the end of 2022, Brazilian and UK government signed a double taxation treaty, but it is not yet in force in Brazil since there is a legislative procedure needed to internalize the treaty. Indeed, tax structuring can be crucial to the viability and competitiveness of Brazilian investments.

5. Appointing a local agent

The appointment of a local agent in Brazil is regulated by specific legislation, which imposes certain mandatory terms which can result in penalties on termination. Due to the scale of Brazil, appointing one agent with exclusivity for the whole country might not always be the best option. For more details, see page 7.

6. Employment liabilities

Brazil has a relatively litigious culture, strong unions, stringent employment laws and a judiciary inclined to protect employees in disputes, which means that companies should take care in dealing with their employment relationships. It should also be noted that Brazilian employment law can sometimes apply in situations where you might not expect it to, so this should also be considered where expatriate employees, on non-Brazilian employment or consultancy arrangements, work in Brazil.

7. Time taken to set up a company

The World Bank ranks Brazil as 124th out of 190 countries for the ease of starting a business. Although the time required has been reduced significantly in recent years. However, that does not include time required to obtain documents from foreign shareholders, to open bank accounts and obtain operating licences, which may increase this to around three months. This extended timescale must be borne in mind, and preparations to establish a company started as early as possible



8. LGPD

Brazil has implemented a comprehensive Federal Law that governs the processing of personal data. This law, known as “LGPD” (Portuguese acronym for “General Data Protection Law”), is comparable to GDPR and shares many similarities with European regulation. Except for a limited number of exceptions, LGPD applies to any individual or entity that processes personal data, irrespective of the means, the country in which its headquarters is located or where the data are located. Data protection is a highly important issue at present, and the Brazilian National Data Protection Authority is an autonomous government entity that is actively engaged in crafting targeted regulations for different aspects of LGPD. While they have yet to levy any sanctions, they are poised to do so with confidence when necessary. It is, therefore, of utmost importance for both national and international corporations wishing to operate in Brazil to fully comprehend the far-reaching implications of LGPD and the serious repercussions of non-compliance.

Market Entry Options

Initial considerations – whether to set-up permanently?

Once the decision is made to enter the Brazilian market, a further decision needs to be taken on how best to approach this. We consider below a number of options: appointing an agent or distributor, setting up or acquiring a Brazilian subsidiary, setting up a branch in Brazil, or entering into a joint venture with a Brazilian partner.

The best choice will depend on factors such as the level of commitment to the new market, the size of any investment, the business sector and local regulatory requirements, legal and tax treatment, familiarity with Brazil and investor risk profile.

An agency agreement with a local Brazilian representative may be appropriate, for example, as a first step in testing the market before making a more significant commitment. Selecting an agent with good local knowledge and contacts within the target market and sector can get things off to a good start.

Brazil is a country that places great emphasis on personal relationships and, accordingly, having people on the ground can be important to a business's success. For this reason alone, many foreign investors prefer a more permanent form of market entry, such as incorporating a subsidiary or entering into a joint venture with an established local player.

Other reasons which may justify setting up permanently in Brazil depend on the business sector. For investors wishing to sell goods or services in the oil and gas sector, for example, local content regulations apply. Local content requirements are also a factor in sectors that depend upon financing from the Brazilian Development Bank (BNDES).

For businesses seeking to win public sector work, Brazilian procurement rules often require foreign bidders to set up a local subsidiary or enter a consortium with a local partner. Procurement legislation also gives Brazilian bidders a margin of preference over foreign bidders, which allows government agencies to pay up to 25% more for Brazilian goods and services. Establishing a permanent presence in Brazil should enable foreign companies to compete fairly with local companies.

Option 1: Appointing an agent or distributor

Overview

Entering into an agency or a distribution agreement with a Brazilian individual or corporate entity can be a useful first step to test the local market before making a greater commitment if the right opportunity arises. An agent would charge a commission on sales of products or services and a distributor would sell on products purchased from the principal. Care has to be taken, as agency agreements are heavily regulated in favour of the agent.

Characteristics

In both cases, there is no need to set up a Brazilian corporate entity and local responsibilities can be undertaken by the local party, so this option is quick to start. The local agent should have existing business contacts in the market and can therefore facilitate the introduction of new business opportunities.

As the agent will have significant responsibilities, trust is paramount. However, not all agents are reliable or perform as expected. Good knowledge of the local agent or distributor is important and due diligence should be carried out before entering into any agreement.

There are specific laws relating to the agency agreement, which should be considered. These laws tend to protect the agent rather than the principal and impose certain mandatory terms in agency agreements. If the parties have not agreed upon another choice of law and jurisdiction, Brazilian law will apply. Except otherwise agreed upon, the agent may be entitled to exclusivity in its area of operations and commissions may be payable even where sales are not introduced by the agent. These agreements might also be difficult to terminate and, on termination, require a substantial payment to the agent. Advice is essential on Brazilian legislation.

Taxation

Under an agency agreement, the end customer should be responsible for all import taxes on products purchased and imported into Brazil and the principal will pay all taxes in its country of incorporation. The agent will be responsible for taxes levied on its commission.

If the principal provides services from outside Brazil, payments from Brazilian clients to the foreign principal will be subject to withholding income tax at rates between 15-25% depending on the jurisdiction of the foreign principal and other taxes (CIDE, PIS-import, COFINS-import, ISS import), which can increase the cost by around 40% in total.

For distribution agreements, the Brazilian distributor should be responsible for all import taxes on products purchased and imported into Brazil from the principal and the principal will pay all taxes in its country of incorporation.

Option 2: Setting up a Brazilian subsidiary

Overview

The two most commonly used corporate vehicles in Brazil are the private limited liability company (in Portuguese, 'limitada') and the corporation ('sociedade anônima' or 'SA'). In a limited liability company, the liability of each quotaholder is limited to the value of their quotas, but all are jointly and severally liable for paying in the corporate capital, and in a corporation, the liability of the shareholders is limited to the issue price of the subscribed or acquired shares.

Greater administration requirements apply when setting up a subsidiary as compared with trading through an agent or distributor. The subsidiary and the shareholders need to register with the federal tax authorities (Brazilian Individual Taxpayers Registry "CPF" for individuals and Brazilian Corporate Taxpayers Registry "CNPJ" for companies) and Central Bank (Foreign Capital Information Report System). The subsidiary will need to obtain municipal registrations and depending on the activities to be developed by the subsidiary, the subsidiary will need to obtain state registrations and licences as well as registering with any other applicable regulator.

Characteristics

Limitadas are by far the most commonly used vehicles for subsidiaries (and corporate joint ventures) because they are simpler and cheaper to operate. A *limitada* requires at least one administrator (similar to a director), who must be a Brazilian resident individual and has extensive duties and powers of representation of the company (although these can be limited in the company articles). Following recent legislative changes, a *limitada* may now be held by one or more quotaholders, which may be Brazilian or foreign resident individuals or corporate entities.

Capital is divided into quotas (similar to shares in other jurisdictions) with a nominal value. There is generally no minimum quota capital and no requirement to pay up within a particular period. Foreign quota-holders must obtain a Brazilian tax registration number (CPF or CNPJ) and appoint an individual in Brazil to act as their legal representative to (as a minimum) accept service of any legal or administrative proceedings.

Corporations tend to be used for larger businesses and are similar to *limitadas*, except that they:

- may have a board of directors ('*conselho de administração*'), instead of an officer, with the *conselho de administração* being optional for private corporations. The *diretoria* comprises at least one individual and the *conselho de administração* comprises at least three individuals both cases their members are not required to be resident in Brazil;
- must have corporate books;
- have 'shares' instead of 'quotas'; and
- may offer securities to the public and create different classes of capital.

In both corporate vehicles, the rights of the parties regarding decision-making, distribution of profits, financing and other important matters can be regulated by way of a shareholders' (or quota-holders') agreement and the company's constitution. International concepts such as tag-along and drag-along rights, restrictive covenants and put and call options are all recognised.

Funds being invested into Brazil to finance a subsidiary need to be registered with the Brazilian Central Bank as foreign direct investment; when doing this it is necessary to state whether the funds are going in as equity or debt. Under Brazilian law, there is no time limit within which funds must be repatriated.

Taxation

Corporate taxes will generally be charged on profits (or presumed profits) in accordance with the following rates:

- income tax (IRPJ): 15%-25%
- social contribution on net profit (CSLL): 9%
- PIS contribution: 1.65%
- COFINS contribution: 7.6%

Taxes are also charged on the provision of services (ISS: 2%-5%) and sale of goods (ICMS: 7%-25%). After Brazilian taxes are paid, profits can be repatriated by way of dividends, which are not taxed in Brazil under Brazilian law. Interest payable on foreign loans to related parties or low tax jurisdictions and privileged tax regimes is subject to transfer pricing, thin capitalization rules. Moreover, interest is also subject to the withholding tax, the rate of which depends on the jurisdiction to which interest is being paid.

Option 3: Setting up a branch office

Overview

Branch offices of foreign entities are given special treatment under Brazilian law. They are not to be confused with subsidiaries or similar entities with 100% foreign ownership, which are regarded as Brazilian entities.

Characteristics

Branch offices of foreign entities are governed by the law of its head office, save for employment and certain tax liabilities. Branch offices of foreign entities need a Presidential decree to operate. Given the difficulties involved in obtaining a Presidential decree to commence operations in Brazil, branch offices of foreign entities are extremely rare.

Taxation

Specialist tax advice would be required, given that this option is rarely used. Nonetheless, as a general rule, foreign branches are taxed as regular Brazilian legal entities.



Option 4: Acquisition

Overview

Acquiring an existing local corporate entity (either a *limitada* or a corporation) is usually preferred by foreign corporate entities that do not have a widely known brand name in the country, but would like to develop business on an existing, functional platform.

Characteristics

Despite the usual due diligence exercise, there could be unforeseen post-acquisition employment, contractual and taxation liabilities. Brazil is a litigious society so such liabilities are quite common. Particular attention should be taken with respect to employment claims, as an employee has the right to claim damages for a backdated period of five years from the date of the claim and tax execution procedure as the Treasury has a period of up to six years to charge the debtor.

In order to check if there is any process the due diligence exercise is very important. The buyer will need the seller to provide certificates of good standing of the existing local corporate entity and its quotaholders or shareholders too from various government bodies². These certificates have the added advantage of reducing (but not eliminating) the risk of acquiring unknown liabilities.

Other certificates³ are also commonly requested from the seller. In addition, it is important for the buyer to be aware of contingencies that have not yet materialized with the analysis of documents and information about the existing local corporate entity, such as, for example, if the existing local corporate entity has debt or loans with banks, if contracts already signed can be terminated without penalties and fines, whether if applicable regulatory standards were being met, among other matters.

Taxation

There is no stamp duty or similar on the sale/purchase of shares. The seller is liable for tax on any capital gains.

After the acquisition is complete, the rules set out for Option 2 above apply to the acquired subsidiary.

As in other jurisdictions, an acquisition means inheriting the tax history of the company, so this needs thorough investigation in advance. It is common practice in Brazil to obtain certificates of good standing, demonstrating that the company has fulfilled its tax and social security obligations. In case the seller is a nonresident party, capital gains may be subject to the WHT. In such case, the attorney in fact of the nonresident buyer may be responsible for the collection of the WHT.

² A certificate confirming there are no federal taxes due (Certidão Conjunta Negativa de Débitos Federal), a certificate confirming that social security contributions are in order (Certidão Relativa ao INSS) and a certificate confirming that the employee indemnity fund is in order (Certidões Relativas ao FGTS).

³ It is normal to ask for certificates confirming that there are no tax debts due to state or municipal authorities (Certidão Conjunta Negativa de Débitos Estadual and Certidão Conjunta Negativa de Débitos de Municipal respectively) and a certificate confirming that there are no employee debts due (CNDT – Débitos Trabalhistas).

Option 5: Joint venture

Overview

Using a joint venture is a good way to share the risk and cost of entering into a new market as well as capitalizing on local expertise. A joint venture may be incorporated (when a corporate entity is formed to undertake the business) or contractual. A contractual joint venture can use a traditional joint venture contract or a consortium agreement and the foreign investor may enter into such arrangement either through a foreign or Brazilian incorporated company. Legal, financial and tax advice will be required to select the optimum structure for each project.

Characteristics

Incorporated joint ventures

The most widely used joint venture structure involves setting up a Brazilian limitada (although a corporation can also be used) with the profits, ownership and control being split among the joint venture parties in accordance with their respective quota-holdings and a quotaholders' agreement.

Contractual joint ventures – consortium

The parties may alternatively choose to set up a consortium which is a regulated contractual joint venture. Consortia are often used for the purpose of participating in Brazilian public tenders and in some cases will be required by the tender rules.

The joint venture business in a consortium does not have a separate identity from the consortium members. Liabilities for a contractual joint venture are not ring fenced within a separate joint venture company, although the parties could form special purpose vehicles to participate in the consortium.

Key characteristics of consortium:

- Regulated by Law No. 6.404/76.
- Tender rules usually require a Brazilian company to be the consortium leader.
- No independent legal identity although it must obtain a CNPJ tax registration number.
- Insolvency of one member does not extend to the others or the consortium.
- Consortium agreement regulates the sharing of expenses and revenues and is registered in the commercial registry nearest to the consortium headquarters.
- No joint liability by law, but may be agreed in the consortium agreement. Public procurement rules may stipulate how liability is to be regulated.

Other contractual joint ventures

Parties who wish to enter into a contractual joint venture do not need to do so by way of a consortium, unless there is a specific requirement (such as under tender rules). Other types of contractual arrangements, such as alliances and asset sharing, can be used and are increasingly common.

Taxation

Incorporated joint venture

The rules are the same as those applicable to subsidiaries (Option 2).

Contractual joint ventures – consortium

The consortium is not treated as a separate legal entity. Rather, each member of the consortium is taxed separately.

Other contractual joint ventures

Each member is taxed separately on its sales and/or profits in accordance with usual tax rules.

Comparative summary of market entry options

Agent	Local subsidiary	Contractual joint venture	Incorporated joint venture	Acquisition
Speed of market entry				
Fast. Should benefit from local partner's market know-how and contacts.	Relatively slow. Takes around 1 month to form company depending on the corporate purpose. Can take longer to secure, licenses registrations, bank account etc.	Relatively fast as should benefit from local partner's existing structure, market know-how and contacts.	Slower than for contractual joint venture as need to form company or amend articles, secure licences, open bank account etc. but should benefit from local partner market know-how and contacts.	Fast, but due diligence exercise and integration can take time.
Level of investment / Commitment required				
Low. Rely on agent's existing structure.	No minimum capital investment. The set-up process is bureaucratic and therefore, depending on the corporate purpose, it is costly with expense of service providers and charges of public authorities.	Varies depending on the terms agreed with JV partners.	Same as for local subsidiary. Will also depend on JV terms agreed.	Potentially high. Need to pay purchase price and could take on existing liabilities (see below).
Financing				
Not relevant.	Can generate its own cash-flow. Broad range of options for additional finance: equity capital, loans from shareholders, third party investors, bank loans, share offers (corporation only).	Each party needs to contribute to meet operating costs and further financing requirements.	Same as for local subsidiary.	Same as for local subsidiary.
Income				
Receive contractual revenues subject to agent's commissions.	Post-tax profits can be distributed by dividend to shareholders (local and foreign) tax free.	Regulated by contractual terms and received separately by partners.	Same as for local subsidiary.	Same as for local subsidiary.

Control				
Little control over sales and marketing process.	Total control over business.	Regulated by joint venture agreement	Regulated by joint venture agreement and company constitution.	Total control over business.
Day to day administration				
Low, but important to monitor agent.	Need at least one resident or non-resident officer and external accountants. Monthly tax compliance, accounting and employment requirements.	Low, although responsibilities will be allocated under joint venture agreement.	Same as for local subsidiary.	Same as for local subsidiary.
Liability and risk				
Care needed to ensure agent does not acquire employment rights. Payment required for early termination.	In a limited liability company, the liability of each quotaholder is limited to the value of their quotas, but all are jointly and severally liable for paying in the corporate capital, and in a corporation, the liability of shareholders is limited to the issue price of the subscribed or acquired shares. Employee and tax liabilities can be passed on to quotaholders if the local subsidiary is unable to be solvent with such liabilities.	Liability or insolvency of one party does not necessarily affect the other, this will depend on the party that is taking and is exposed to the risk.	Same as for local subsidiary.	Same as for local subsidiary. Additionally, acquired company will have all pre-acquisition liabilities.
Mandatory rules?				
Protective rules in favour of local agent. Brazilian law applies and Brazilian courts will claim jurisdiction.	In general: Brazilian Civil Law No. 10,406/2022 for limited liability company and Law No. 6,404/1976 for corporations.	Special rules apply to consortiums especially those provided for by Law No. 6,404/1976. Apart from this, parties relatively free to agree terms subject to local law.	Same as for local subsidiary and parties relatively free to agree terms of the JV agreement, rules for resolving disputes (arbitration or court).	Subject to local law, parties relatively free to agree terms of acquisition agreement, including rules for resolving disputes (arbitration or court).

Tax				
Foreign taxes payable. Brazilian taxes are generally the responsibility of the agent or distributor.	Brazilian taxes apply: complex and often high total tax.	Parties taxed separately, with Brazilian parties subject to Brazilian tax. Withholding tax applicable on supply of services to Brazil from overseas.	Same as for local subsidiary.	Capital gain to the seller. Same as for local subsidiary.
Exit considerations				
Payments usually due for early termination of agency agreement. No independent business cannot sell.	Independent business created so normal exit routes potentially available: i.e. right of first refusal, drag-along, tag-along of partners, company sale, IPO or winding-up.	Termination subject to JV agreement.	Termination and sale or buy out subject to JV agreement. Right of first refusal, drag-along, tag-along of partners are common.	Same as for local subsidiary.

General Considerations

1. Foreign investment

Unlike in a number of other growth economies, there are no general restrictions on foreign investors, requiring Brazilian companies to be controlled by Brazilian nationals or making partnerships with Brazilian companies mandatory. Instead, there are specific rules that apply in certain cases and to industries of strategic importance, including but not limited to nuclear energy and media, as well as to the ownership of rural or border land and real estate.

As mentioned above, public procurement rules often require the formation of a consortium with a local partner or the establishment of a Brazilian subsidiary.

Brazil also has exchange controls which means that funds entering or leaving Brazil need to be registered with the Brazilian Central Bank and an exchange contract signed before the funds are liberated. Whilst a little bureaucratic, this is not usually a problem in practice.

2. Legal system

Brazil is a civil law country with a comprehensive written constitution and a system of codified laws which are passed by federal, state and municipal authorities.

Laws change frequently, particularly in areas like taxation and employment, which, when combined with a lack of binding precedent, can make it difficult to get concrete answers to legal problems.

The Brazilian court system also tends to be slow, which is one of the reasons that international contracts involving Brazilian companies are frequently subject to arbitration. The selection by Brazilian counterparties of arbitration as the method of dispute resolution is becoming increasingly common and is supported by the Brazilian Arbitration Act 1996 and by Brazil's ratification of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Arbitration allows the parties to select a foreign governing law, often UK or New York, which avoids some of the uncertainty inherent in Brazilian contract law.

This method of dispute resolution also has a number of other important advantages. In particular, it enables the parties to appoint an arbitrator who understands the commercial context of an agreement: which may not be the case with a court appointed judge, as there is relatively little sector specialisation within the Brazilian judicial system. It also makes it possible to select where hearings are to take place, which does not need to be in Brazil.

There are, of course, various strategic considerations that need to be taken into account in drafting arbitration clauses so that they provide the most advantageous dispute resolution mechanism for the circumstances, but the widespread use of these clauses in Brazil gives parties more flexibility.

3. Tax

The tax system is complex and consists of federal, state and municipal taxes, 3 different corporate tax regimes, different sales tax rates and rules within each of Brazil's 27 states, as well as different services tax rates and rules applicable for each municipality. The two most important corporate income tax regimes are the presumed profit regime (in Portuguese, *lucro presumido*) and the actual profit regime (*lucro real*).

Federal - Corporate Income Taxes (IRPJ and CSLL)

Companies whose gross annual income in the preceding fiscal year did not exceed BRL 78m may elect to be taxed either on the basis of actual profit or presumed profit. Presumed profit is calculated as a percentage of gross turnover (in most cases, the percentage applicable to gross revenues originated from services is 32% and 8% for the sale of products). This election can be made each year and the company may, if it meets the eligibility criteria, elect a different tax treatment in different years.

As a general rule of thumb, if a Brazilian company's real profit is equal to or higher than 32% for most services (or higher than 8% for manufacturing and sales activities and some specific services) then the presumed profit system will be the best option. The basis for calculation of the tax payable under the presumed profit system can vary substantially, however, and this must be considered in determining the optimal tax structure.

Where tax is based on actual profit, taxable income is equal to gross turnover less costs of sale, administrative and operational expenses and other deductibles permitted by law (which are substantially restricted in

Where tax is based on actual profit, taxable income is calculated upon the computation of revenues and expenses, adjusted by some additions (non-deductible expenditures) and exclusions (non-taxable revenues permitted by law) The taxable profits may be calculated quarterly or annually, as elected by the taxpayer. On the annual system, the taxpayer shall pay monthly estimates, which are consolidated in the end of the year, in case the estimates exceed the annual amount of taxes due, reimbursements/offsetting is allowed – subject to legal conditions.

Net operating losses can be offset against taxable income, subject to certain limitations.

As a general rule, for both presumed profit and actual profit regime, IRPJ/CSLL are due at a 34% combined nominal rate (IRPJ at a 15% rate and a surtax of 10% over the net income that exceeds annual income BRL 240,000.00 and CSLL at a 9% rate).

Federal - Social Contribution on Revenues (PIS and COFINS)

Gross revenues recorded by Brazilian companies are subject to incidence of the PIS/COFINS. Taxpayers may be subject to PIS/COFINS either based on the cumulative or the non-cumulative regime.

As a rule, companies that collect IRPJ and CSLL under the actual profit regime are mandatorily subject to PIS/COFINS under the non-cumulative regime.

Under the non-cumulative regime PIS/COFINS apply at a combined rate of 9.25% (1.65% for PIS and 7.6% for COFINS), and the taxpayers are entitled to tax credits of these contributions related to certain inputs/expenses that are applied/incurred for the production/manufacturing of the relevant products and/or rendering of services. Under this system, financial revenues are taxed at a 4.65% combined rate.

For companies that collect IRPJ and CSLL according to the presumed profit system, PIS and COFINS will be due under the cumulative regime, in which case they apply over the operational revenues only at a combined rate of 3.65% (0.65% for PIS and 3% for COFINS) and no tax credits are allowed to be registered. Under this system, financial revenues are not subject to PIS and COFINS.

Specific industries are mandatorily subject to the cumulative regime or to the one-time levy regime, where the importer or manufacturer collects PIS and COFINS in advance on behalf of the entire supply chain of the product up until the final consumer, which includes wholesalers and distributors.

Corporate income taxes	Details
Corporate income tax ('IRPJ')	<ul style="list-style-type: none"> Using actual profit, the IRPJ is levied at 15% on adjusted net income (additions and exclusions established by tax law) plus a surtax of 10% on the net income that exceeds annual income BRL 240,000.00 (or quarterly net income in excess of BRL 60,000, depending on the calculation period elected by the taxpayer). Using presumed profit, the rates are the same but are levied on presumed profit, which is calculated as a percentage of gross turnover ranging from 1.6% to 32%. In most cases, the percentage applicable to gross revenues originated from services is 32% and 8% for the sale of products.
Social contribution on net income ('CSLL')	<ul style="list-style-type: none"> Taxed in a similar manner to IRPJ at a rate of 9%.

Social Contribution on Revenues	Details
Contribution for the social integration programme ('PIS')	<ul style="list-style-type: none"> — Under non-cumulative regime, PIS is levied at 1.65% over the total revenues of the taxpayer. — Financial revenues are taxed at 0.65%. The taxpayer may obtain a tax credit for PIS related to certain inputs/expenses. Export revenues are exempt. — Under cumulative regime, PIS is levied at 0.65% over the operational revenues only and no tax credits are allowed to be registered. Under cumulative regime, financial revenues are not subject to PIS.
Contribution for social security financing ('COFINS')	<ul style="list-style-type: none"> — Under non-cumulative regime, COFINS is levied, generally at 7.6% over total revenues of the taxpayer. — Financial revenues are taxed at 4%. The taxpayer may obtain a tax credit for COFINS related to certain inputs/expenses. Export revenues are exempt. — Under cumulative regime, COFINS is levied at 3% over the operational revenues only and no tax credits are allowed to be registered. Under cumulative regime, financial revenues are not subject to COFINS.
Other federal taxes	Details
Contribution for the intervention in the economic domain ('CIDE')	<ul style="list-style-type: none"> — CIDE is levied at 10%, assessed on the value of payments, credit, delivery, use or remittance made by a Brazilian company to a foreign recipient, and is applicable to Brazilian companies paying royalties, fees or other amounts to a foreign entity pursuant to a technical and administrative service agreement or other agreement for the licensing or assignment of technology, trade names, patents and related rights. — It is also levied (at a fixed amount per cubic metre that varies according to the product) on the import and sale of oil and gas (and derived products), as well as ethanol. The taxpayer may obtain a tax credit to be offset against sales of the same product.
Financial transactions tax ('IOF')	<ul style="list-style-type: none"> — Applicable to a variety of monetary, currency, credit, insurance, securities and gold-backed transactions, including foreign currency exchange transactions made in connection with offshore payments of loans, services and royalties. — The rate may vary from 0% to 25%, with exchange and transfer of funds out of Brazil generally taxed at 0.38%.
Import tax ('II')	<ul style="list-style-type: none"> — Federal tax levied on import of goods and imposed at customs clearance of the imported goods. The tax basis is the custom value. — Rate may vary according to the tax classification number (the Tariff Code applicable in Brazil follows the Mercosul Common Nomenclature, usually referred to by the acronym "NCM") of the product.

Excise tax ('IPI')	<ul style="list-style-type: none"> — Federal value-added tax levied on the importation of manufactured products, as well as on the sale of such imported products by the importer, and on the first sale of manufactured products after the manufacturing process. For IPI purposes, an industrial/manufacturing activity means any operation which modifies the nature, operation, finishing, presentation, or purpose of a product, or which improves a product for consumption, such as its conversion, processing, packaging, repackaging or restoration. — Rates range according to the essentiality principle as determined in the product's fiscal classification. — The taxpayer may obtain a tax credit to be set off against the IPI due on subsequent transactions.
PIS/COFINS on import of services	<ul style="list-style-type: none"> — Import of services are subject to PIS/COFINS-Import over the amount paid, credited or remitted abroad, before the assessment of the withholding income tax, plus the Service Tax (ISS) and the amount of PIS and COFINS levied on such value. — Importation of services are subject to a 9.25% rate (1.65% for PIS and 7.6% for COFINS). — If the importer calculates the PIS/COFINS due through the non-cumulative regime, PIS/COFINS-Import paid in customs clearance are considered as tax credit.
PIS/COFINS on import of products	<ul style="list-style-type: none"> — Import of goods are subject to PIS/COFINS-Import over the customs value of the imported good. — As a general rule, imports of goods are subject to a global rate of 11.75% (2.1% for PIS and 9.65% for COFINS). Rates can vary in the importation of specific goods. — If the importer calculates the PIS/COFINS due through the non-cumulative regime, PIS/COFINS-Import paid in customs clearance are considered as tax credit.
Withholding income tax ('WHT')	<ul style="list-style-type: none"> — Charged on loan interest (generally at 15%), lease payments (generally at 15%), royalties (generally at 15%), payments for technical and administrative services (generally at 15%) and other service payments (generally at 25%) made to offshore non-residents. — In case the beneficiary is located in a low tax jurisdiction (LTJ) the rate is 25%. — WHT rate is subject to reductions established by tax treaties between Brazil and the jurisdiction of the recipient. — Foreign tax credit (FTC) may apply abroad depending on the provisions of Tax Treaties or domestic laws.

State valued added tax ('ICMS')

ICMS is collected by each of the Brazilian states on the sale, supply or transportation of goods and certain services, as well as on imports. As a general rule, rates vary between 12% and 25% depending on the state and the relevant taxable activity (sale, supply or transportation). Interstate transactions with imported goods are subject to a 4% rate. The taxpayer may obtain a tax credit to be offset against sales of products.

Municipal service tax ('ISS')

ISS is charged on services, including engineering, construction and well drilling, as well as on service imports. The full list of applicable services is attached as an exhibit to Law No. 116/2003 and the applicable rates, not exceeding 5% for each service, are determined by each municipality. Companies engaged in various activities, including oil drilling, are taxed in the municipality where the activity occurs.

4. Administrators of Brazilian private limited companies

Appointment and Dismissal

The most usual way to appoint an administrator (the officer of a *limitada*) is by the articles of association (in Portuguese, *contrato social*) which, together with any amendments, must be registered with the Company Registry (*Junta Comercial*) in the state of incorporation. Quotaholder approval is required to do this, with the level of approval depending on whether or not the administrator is also a quotaholder.⁴ Dismissal of an administrator is a similar process requiring an amendment to the articles of association and quotaholders approval.⁵

Prerequisites

A *limitada* shall have at least one administrator, there is no maximum number. Administrators must be individuals who reside permanently in Brazil: neither foreigners with temporary visas nor corporate entities are permitted. These individuals must be at least 18 years old, and not prevented from exercising their duties if convicted of certain criminal offences.

Liability

Administrators are personally liable for any of their actions carried out on behalf of the company which: are contrary to the decisions of the quotaholders;⁶ are contrary to, or exceed, the corporate purposes of the company; exceed their powers as administrator; are illegal; or constitute fraud. The company may indemnify the administrator against liability to the company or third parties, except where such liability arises through a breach of Brazilian law.

Powers

The administrators' powers are set out in the articles of association which may establish routine actions that can be performed by one administrator individually, and provide that certain strategic actions are subject to joint representation (co-signature) with another administrator or require prior approval by the majority of the quotaholders.

5. Shareholder liability

The liability of the quotaholders of a *limitada* is limited to the value of its quotas, but all quotaholders are jointly and severally liable for paying in the corporate capital; except for situations involving the following, when the corporate veil may be pierced:

- fraud;
- infringement of the law (which may include non-payment of taxes)⁷ or the company's articles association/by-laws; or
- bankruptcy due to poor management (applicable only to cases involving consumer and labour rights).⁸

The liability of the shareholders of a SA (a Brazilian corporation: see page 8) is limited to the issue price of the subscribed or acquired shares, although the corporate veil will only be pierced (in the situations referred to above) if it is also proved that the shareholder in question actually agreed to or determined the actions of the managers in question. The Brazilian corporation therefore offers greater protection to shareholders from being held personally liable than a *limitada*. This advantage may be reduced, however, if the articles require certain actions to be subject to shareholder approval and that approval is given.

⁴ The appointment of an officer who is also a quotaholder is subject to approval by 50% of the quota capital plus 1 quota. The appointment of an officer who is not a quotaholder is subject to 2/3 of the quota capital (if the quota capital has not been fully paid by the quotaholders), or to approval by 50% of the quota capital plus 1 quota (if the quota capital has been fully paid by quotaholders).

⁵ For the dismissal of the quotaholding Administrator, the required quorum is 50% of the quota capital plus 1 quota. Dismissal of a non-quotaholding Administrator is subject to approval by 50% of the quota capital plus 1 quota.

⁶ This is not restricted to formal shareholder resolutions but is widely interpreted.

⁷ There is considerable debate concerning the extent to which a 'breach of law' will allow the piercing of the corporate veil and it is clear that not every failure to pay correct taxes amounts to a 'breach of law' in this sense.

⁸ When employment-related payments or indemnification are awarded by Brazilian labour courts.



6. Employment law

Brazil is a heavily unionised country and the employment laws are very rigid and formalistic. There is a culture of employees suing their employers and labour courts tend to be protective of employees. This is therefore an area where companies need to proceed with caution and ensure they are well advised. In particular, care needs to be taken in dismissing employees.⁹

The basic rules governing the relationships between employees and employers are set out in the Brazilian Consolidated Labour Laws (Consolidação das Leis do Trabalho or **CLT**), and in the social security statutes, jurisprudence, collective bargaining agreements and agreements developed by the International Labour Organization.

Although written employment contracts are not always required, it is sensible to use them whenever feasible, since the burden of proof regarding the terms of employment is usually placed upon the employer. Furthermore, although the vast majority of employment contracts are standard form, bespoke contracts are recommended for more senior staff or to deal with probation periods, overtime compensation, confidentiality, non-competition, bonuses and fringe benefits.

Employment agreements are generally for an indefinite term, but employees may be hired for up to two probationary periods, totalling a maximum of ninety days, provided that such term is agreed in writing in the employment contract. At the end of the ninety-day term, the employment automatically becomes indefinite unless terminated by either party.

⁹ Where an employee is dismissed without cause, in addition to severance (proportional Christmas bonus and vacation) the company is fined an amount equivalent to 40% of all deposits made to the relevant employee's Severance Indemnity Fund (FGTS), which is paid to the dismissed employee. This can amount to a significant fine if the employee has worked for the company for a long time.

¹⁰ For the purposes of this rule, foreigners who have lived in Brazil for more than 10 years and who are either married to a Brazilian or have a Brazilian child are considered to be Brazilian, as are all Portuguese nationals.

Summary of Key Mandatory Minimum Employment Terms

Monthly salary	Minimum wage. ¹¹ For 2023 this is set at BRL 1,320.00. This gets reviewed upwards each year. Different minimum salaries may apply depending on the function or profession and the state in which the employee works.
Christmas bonus	This equals to an additional month's salary but is reduced in proportion to the months worked during the year (including vacations). ¹²
Holiday pay	The employee is entitled to 30 days paid vacation and besides the normal monthly salary, an additional third of the employee's monthly remuneration is paid for any holiday period.
FGTS contribution	The employer must deposit 8% of the employee's monthly salary (including any additional remuneration and certain benefits) ¹³ to the employee in a Severance Fund Account, kept at Caixa Econômica Federal, a Brazilian state bank.
Social security (INSS) contribution	Rates vary from 26.8% to 28.8%, according to the activities carried out by the legal entity and is due over the monthly salary (including Christmas bonus and holiday pay) and is collected by the national Social Security Institute.
Daily working hours	Maximum of eight hours.
Weekly working hours	Maximum of 44 hours. ¹⁴
Overtime	Additional income is payable if an employee works extra hours (more than 8 hours per day or 44 hours per week). For each additional hour that an employee works, the Employer is required to pay an additional 50% of the employee's ordinary hourly wage.
Holiday entitlement	Vacations can be taken in three periods. One of the periods must be for at least ¹⁴ consecutive days and the other two must be for at least five consecutive days each. The employee is entitled to trade 1/3 of his entitlement back to the company for payment equal to the remuneration he receives for such days.
Maternity leave	120 days, ¹⁵ paid by the employer and reimbursed by the Social Security Institute. Additionally, the employee is entitled to remain in employment for at least five months commencing on the DOB (date of birth) of the child. ¹⁶

¹¹ Salary reduction is forbidden, unless permitted by union collective bargaining or convention.

¹² In the event the employee has been granted a salary increase, the Christmas bonus is calculated as if they had gained the increase at the start of the year.

¹³ Such as overtime, Christmas bonus and holiday pay. Some benefits are included in this calculation while others are not.

¹⁴ There is also a requirement to have at least one day off per week (which is typically on the weekend).



Paternity Leave	Five days, paid by the employer and commencing from the child's DOB. ¹⁷
Other time off	Employees who are asked to work during an election day have the right to two days off work. Time off also allowed upon the death of a spouse or relative (two days) or marriage (three days). There is also a large number of public holidays, which can vary depending on the city.
Strike	Employees have the right to go on strike in order to renegotiate their working conditions.
Dismissal notice	30 days' prior notice or payment in lieu of notice and three more days salary per full year of service. ¹⁸
Termination payments	Prior notice; penalty of 40% of FGTS fund balance in case of termination without cause; balanced workdays salary; Christmas bonus proportional; paid vacation proportional + 1/3.

7. Visas

There are many different categories of visas that can be issued to foreigners, but from our experience, the most important visas for international companies are those set out below. Where a temporary visa is required, the individual will have to register with the Federal Police shortly after arrival in Brazil and apply for a National Migration Registration number (RNM).¹⁸

¹⁵ Certain unions and government programs have established 180 days of leave.

¹⁶ This is known as the stability period. Union collective bargaining or conventions can extend this period.

¹⁷ Certain unions and government programs have established 20 days of leave

¹⁸ If the employer is the terminating party and opts not to make a payment in lieu of notice (often referred to as indemnifying the employee), the employee may opt between working for a 30-day notice period with reduced hours or a 23-day notice period working full time.

Visitor Visa

Visa type	Investment required?	Comments
Business Visa	No	<ul style="list-style-type: none"> — Restrictive in terms of the activities that can be undertaken. Suitable for business trips and short stays in the offices of a client or the Brazil office of an international group. Allowed purposes include attending meetings, fairs, corporate events, signature of contracts, business development and others. — The individual cannot be remunerated from within Brazil or enter into a contract with a Brazilian company or organisation to provide services. However, receipt of daily fee, travel expenses, and other costs or expenses are allowed. — Allows entry into Brazil for 90 days, renewable for a further 90 days.

Temporary Visas

Visa type	Investment required?	Comments
Technical Assistance Services	No	<ul style="list-style-type: none"> — Work permit for a foreign technical professional who is not employed by a Brazilian firm, to perform technical assistance services in Brazil under a contract, cooperation agreement and/or technology transfer agreement, as applicable, between a foreign and a Brazilian entity. Not suitable for administrative, financial or management functions. — Better to request at the Brazilian Consulate rather than in Brazil (faster and less bureaucratic). — Valid for up one year. The visa can be renewed for another year, subject to detailed justification for the need to continue the services without an employment relationship established in Brazil. — Suitable for engineers and project managers who need to work in Brazil on a temporary, medium term basis to service a client.
Technology Transfer Services	No	<ul style="list-style-type: none"> — Work permit for a foreign professional who is not employed by a Brazilian firm and who enters the country in order to work under a technology transfer contract. — A simplified training plan must be submitted, specifying the professional qualifications of the foreign professional, scope of training, number of Brazilian individuals to be trained, place of training, estimated duration and anticipated results. — Valid for up to one year and renewable for a further one year (i.e. a maximum of two years), subject to detailed justification for the need to continue the services without an employment relationship established in Brazil. — Suitable for engineers and project managers who need to work in Brazil on a temporary, medium term basis to service a client.

Visa type	Investment required?	Comments
Work Visa – Local Labour Contract	No	<ul style="list-style-type: none"> — Work visa for a foreign professional who is to be employed by a Brazilian firm. — Valid for up to two years. Can be renewed under specific circumstances not yet defined by the Brazilian government. — Possible to convert to a permanent visa by application to the Ministry of Justice, provided that the foreigner has been carrying out the same activity in Brazil for a period of two years and the application is made at least thirty days prior to the expiry of the visa. — Proof of qualifications and professional experience is required. — The Brazilian firm applying for the visa will arrange this by getting declarations, diplomas and certificates from the institutions and companies where the foreign national studied and/or worked. — Normal employment tax and social security contributions payable by Brazilian company. — Suitable for longer term projects with a Brazilian company or where there is the intention to apply for a permanent visa.
Director or Administrator Visa	BRL 600,000 or BRL 150,000	<ul style="list-style-type: none"> — The foreign national must be appointed as an administrator, manager, officer or executive with management powers, of a new or existing Brazilian company, with potential to generate jobs or income, which must show that the equivalent of at least the following amounts in foreign currency have been invested into it as share capital, by a foreign company or person that is not the applicant: <ul style="list-style-type: none"> • BRL 600,000 per administrator, manager, officer or executive, or • BRL 150,000 per administrator, manager, officer or executive, and the commitment to generate 10 new employment positions within two years after the incorporation of the Brazilian company, or after the admission of the administrator, manager, officer or executive. — This is permanent provided that the foreign national remains a officer/administrator. — Suitable for senior positions such as country managers and managers of the Brazil office or subsidiary of an international group. — The visa is tied to the company that makes the visa application. — Accordingly, for groups of companies, it is sensible that the holding company makes the application so that the individual can work for various companies in the group without needing to seek further authorization.

Visa type	Investment required?	Comments
Investor Visa	BRL 500,000	<ul style="list-style-type: none"> — The foreign national must show that he or she has invested the equivalent of at least BRL 500,000 in foreign currency as share capital into a new or existing Brazilian company. — Alternatively, the temporary visa may be granted for investments of less than BRL 500,000, but not inferior to BRL 150,000, if the project in Brazil has the purpose of innovation, or involves scientific or technologic basic or applied research, and complies with one of the conditions determined by the Government. — In all cases, it is necessary to prepare an investment plan for a three year period, demonstrating that it is in the social interest of Brazil for the investment to be made with this being characterised by the creation of jobs and income in Brazil, the increase of productivity, the assimilation of technology, and the investment of resources into specific industry sectors. — The visa remains valid until the investor exits the company.
Family reunion	No	<ul style="list-style-type: none"> — Among others, a family reunion visa can be granted to persons married or in marital status to Brazilian nationals or to immigrants with a residency authorisation, or who have a Brazilian child or immigrant child with residency authorisation, or who are ascendant or descendant up to second degree to a Brazilian national or immigrant with a residency authorisation, or who have a Brazilian brother/sister or an immigrant brother/sister with residency authorisation who, if older than 18 years old, is economically dependent on them, or who has a Brazilian national under its care or guard. — Under a family reunion visa the foreign national will be authorised to stay in Brazil as long as the main visa holder.



8. Registration with the Regional Council of Engineering and Architecture (CREA)

Those carrying out construction or similar projects in Brazil will have to be aware of the registration requirements relating to CREA. The engineer legally in charge of a construction project in Brazil is called the *responsavel tecnico* ('RT'). The RT, whether Brazilian or foreign, must be registered with the local CREA for the relevant worksite. For foreigners, such registration requires a temporary or permanent work visa, as well as the validation of their graduate diploma by the local CREA. There is an additional cost involved in this, but if the documentation provided is acceptable to the relevant CREA, this can be obtained relatively quickly. In principle, if such registration is not obtained, the foreigner acting as RT, project manager or engineer on a construction project will be considered illegal.

In practice, however, not all expatriate project managers assume the role of RT, or project engineer, but appoint a local CREA-registered engineer for this purpose and supervise in consultation with the CREA-registered RT. As the RT will be ultimately responsible for the works, however, they will insist on retaining some control over the project.

If a foreigner is not to be engaged as an engineer or project manager (so as to avoid the requirement for CREA registration), it may be difficult to justify his application for a Technical Services Visa and would be necessary to consider alternative types of visa.

9. Compliance

Civil law

Brazil has a robust legal framework for preventing crimes of corruption (Law No. 12,846 of 2013), money laundering (Law No. 9,613 of 1998) and terrorism (Law No. 13,260 of 2016). As such, it is necessary to assess operational risks before starting business in Brazil to avoid your activity falling under any of these laws. Brazil has been increasingly concerned with keeping up with international regulatory developments regarding financial crimes and crimes against the public administration. The sanctions are severe and can even affect the assets of the companies' directors and officers.

Regarding the Anticorruption Law (Law No. 12,846 of 2013), companies that commit an offence under this legislation are at risk of a variety of sanctions including substantial fines, confiscation of assets and prohibition

from taking part in public bids. Notable offenses include active bribery, illegal sponsoring, bid rigging and obstructing investigations.

As to Anticorruption and AML/CFT Laws, having a suitable compliance programmes and training in place for staff at all levels is essential to prevent non-compliance in the first place. Presence of these programmes is even something that courts take into account when determining the level of sanction to be applied for non-compliance with the rules.

The Criminal Code

This applies to individuals only and sanctions include imprisonment of up to 12 years and fines. Offences include active bribery, passive bribery (requesting or receiving bribes), active bribery in international business transactions and seeking to influence public officials (Brazilian or foreign).

Extra-territorial reach and importance of compliance procedures

While international companies may already be subject to the extra-territorial reach of the US Foreign Corrupt Practices Act 1977, UK Bribery Act 2010 and similar laws, the fact that Brazil has now introduced similar rules (including a leniency regime) highlights the importance of having suitable compliance procedures in place and ensuring that anti-bribery measures are being strictly implemented.

10. Intellectual property

As one of the original signatories to the Paris Convention, Brazil has robust intellectual property protection, which is currently reflected in the Industrial Property Law of 1996 and Author's Right Law of 1998. Generally viewed as being TRIPs¹⁸ compliant, the former covers trademarks, geographical indications, patents, utility models and industrial designs, while the latter covers artistic creation such as music, books, films, paintings, amongst other artworks.

Trademarks

Some 150,000 trademark applications are filed each year in Brazil, with the vast majority now being filed online. Brazil is a signatory to the Madrid Protocol. With a life span of ten years, renewable for successive ten year periods, trademark designs are classified in accordance with the Vienna Classification, and goods and services classified using the Nice Classification of Goods.

Patents

Patents are valid for 20 years from the date of filing and

¹⁸The Agreement on Trade-Related Aspects of Intellectual Property Rights is an international agreement administered by the World Trade Organization.

utility models for 15 years. Classification is made in accordance with the International Patent Classification (IPC) and it currently takes from six to eight years before a patent is granted. Much of the delay in granting patents is because ANVISA (the Brazilian Health Authority) must review any patents with a pharmaceutical process or product. Foreign patents can be filed through the Paris Convention or Patent Cooperation Treaty, to which Brazil is a signatory.

Applications for patents are made with the Brazilian Patent and Trademark Office (INPI).¹⁹

Software

Computer software is protected by the Software Law, 1998, which protects the rights and interests of software owners for a term of 50 years following January 1st of the software being published (or its creation if no publishing date is available) and governs licensing agreements in this area. No registry is needed to benefit from this protection, although registering with the INPI provides greater legal certainty to its holder in case, for example, of a lawsuit demanding proof of authorship or ownership of the software.

Economic and moral rights

While there is no single body before which copyright is registered, it is protected by the Author's Rights Law of 1998. The moral rights and economic rights of the author are protected and rules as to who can and cannot reproduce a work are set out. An artwork enters the public domain 70 years after the death of the author, and the 1998 law is in line with the Berne Convention, to which Brazil is a signatory.

Copyright and moral rights

While there is no single body before which copyright is registered, it is protected by the Copyright Law of 1998. The moral rights and economic rights of the author are protected and rules as to who can and cannot reproduce a work are set out. A copyrighted work enters the public domain 70 years after the death of the author, and the 1998 law is in line with the Berne Convention, to which Brazil is a signatory.

Registration of agreements with the INPI

Interestingly, the INPI also plays a role in recording certain types of agreements and licences and, as such, it is obligatory to record with the INPI contracts which license the use of trademarks or patents, franchise agreements, any agreements which transfer technology and those providing know-how. This is crucial to allowing royalties to be remitted abroad and so that

certain tax deductions can be applied on these royalties.

11. Recognition of foreign documents

In order for foreign public documents and documents signed outside Brazil to be recognised in Brazil, they need to be notarised and then legalised in the Brazilian Consulate of the relevant country and in Brazil they must be translated by sworn translator and registered before the Titles and Documents Registry Office.

With Brazil's accession to the Hague Apostille Convention on 14 August 2016, the legalization process has been simplified for documents executed in other Hague Convention countries. Foreign documents executed in such countries will only be required to bear an 'apostille'.

12. Regulatory Compliance

Brazil is a country with highly regulated economic activities. Thus, it is necessary for companies to check whether they fall under the regulation of a specific agency. The competences of these agencies range from defining product layout, to safety standards and sanctions for non-compliance with the rules. Some sectors, such as banking, also have self-regulation, in which market players themselves formalise rules to be followed. Regulatory agencies have a lot of power in Brazil, so even their decisions, investigations and sanctions can be used in a civil or criminal lawsuit.

Moreover, courts generally tend not to substantially change what has already been decided by the agencies. Finally, general compliance policies, such as AML/CFT and anti-corruption, may also be defined by these agencies, and companies must follow all applicable rules, whether defined by law or in regulatory agencies' own rules, under penalty of severe sanctions in case of

¹⁹ Since 2009 INPI has become a World Intellectual Property Organisation recognised International Searching and International Preliminary Examining Authority.

Name	Industry Sector	Main responsibilities
Administrative Council for Economic Defense (CADE)	Market Competition	— Investigates and punishes of anticompetitive behaviour, such as the formation of cartels and abuses of dominant market position. CADE is responsible for reviewing certain mergers and acquisitions so that they do not result in negative market concentration.
Central Bank of Brazil (BCB)	Finances	— Regulates monetary policy and manages the country's financial system. This includes setting interest rates, regulating financial market infrastructures and managing the country's foreign exchange reserves.
Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA)	Environment	— Monitors and controls deforestation, manages protected areas, and enforces environmental laws.
Brazilian Securities and Exchange Commission (CVM)	Securities and Capital Markets	— Registration and supervision of publicly traded companies, investment funds and asset managers.
National Agency of Petroleum, Natural Gas and Biofuels (ANP)	Energy (Petroleum, Natural Gas and Biofuel)	— Regulates and supervises the exploration, production, and distribution of energy, including granting licenses and overseeing safety standards.
National Civil Aviation Agency (ANAC)	Aviation (Airlines, Airports and Traffic Control)	— Grants concessions, regulate safety standards, overseeing customer service, and promoting competition.
National Electric Energy Agency (ANEEL)	Energy (Electric)	— Regulates and supervises the generation, transmission, and distribution of electric energy. It is responsible for granting concessions, regulating tariffs, ensuring the quality of service, and promoting competition.
National Health Agency (ANS)	Health Insurance	— Approving health insurance plans, regulating prices and benefits, overseeing customer service, and enforcing consumer protection rules.
National Health Surveillance Agency (ANVISA)	Health	— Approval and monitoring of pharmaceuticals, food, and medical devices.

National Land Transportation Agency (ANTT)	Transport (Land)	— Regulates and supervises land transportation (highways, railways, urban transportation). Its main responsibilities include granting concessions, regulating tariffs, ensuring safety standards, and promoting competition.
National Telecommunications Agency (ANATEL)	Telecommunications	— Regulates and supervises land transportation (highways, railways, urban transportation). Its main responsibilities include granting concessions, regulating tariffs, ensuring safety standards, and promoting competition.

Below is a list of some federal regulatory agencies and their responsibilities:

13. Data Protection

The processing of personal data is regulated by Federal Law 13,709 of 2018 – LGPD (Portuguese acronym for General Data Protection Law), a comprehensive regulation comparable to GDPR and with many similarities, including most of its definitions and its extraterritorial scope of application.

For the LGPD, “personal data” is information about an identified or identifiable individual. There is also a special category for personal data (legally named “sensitive personal data”) concerning racial or ethnic origin; religious belief; political opinion; trade union or religious, philosophical or political organisation membership; data concerning health or sex life; genetic or biometric data, when related to a person.

Except for a limited number of exceptions, LGPD applies to any individual or entity that processes personal data, irrespective of the means, the country in which its headquarters is located or where the data are located.

To comply with LGPD, the entity must carry out its processing activities within certain principles, such as purpose limitation, data minimisation, necessity, transparency, security, and accountability, in addition to one of the existent legal basis (there are ten (10) legal bases for processing personal data and eight (8) for sensitive personal data under the LGPD). Consent is one of them, and whenever necessary, organisations must obtain valid and explicit consent from individuals before processing their personal data, and individuals have the right to revoke their consent at any time.

The LGPD grants various rights to individuals, including access to their personal data, request corrections or deletions, object to processing, and obtaining

information about sharing with third parties.

Transfers of personal data to countries or international organisations outside of Brazil are regulated by the LGPD as well, which shall only occur under certain conditions, such as obtaining individual consent. Other transfer mechanisms (such as when the recipient country has an adequate level of data protection regulation or through specific contractual clauses for a given transfer, standard contractual clauses, binding corporate rules, regularly issued stamps, certificates and codes of conduct) still depend on regulation to be issued by Brazilian Data Protection National Authority (ANPD).

Organisations acting as data controllers must appoint a data protection officer (DPO, in Portuguese, encarregado de tratamento de dados), which may be either an individual or an entity; it is good practice for processors to appoint a DPO as well, although not mandatory. DPO will be responsible for handling data protection-related matters with the data subjects and the ANPD, including notifications in the event of a data breach that poses a risk of harm to individuals.

Non-compliance with the LGPD can result in significant penalties ranging from warnings, fines of up to 2% of a company’s annual revenue in Brazil or up to BRL 50 million or even the partial or total prohibition of carrying out personal data processing.

Due to its comprehensive coverage, many provisions of the LGPD are still pending additional detailing and specific regulation by ANPD, which may include rules, instructions and guidelines directed to specific niches and industries.



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