

Laws, administrative procedures and guidelines

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How to set up a company?

1. Types of companies

The Brazilian law provides support for various types of enterprises. In the establishment of subsidiaries and joint ventures, the most common are the Corporations (S.A.) and Limited Liability Companies (LLC.). This is due to the fact that, in both cases, participants have limited responsibilities. The law confers legal status to these companies as entities that are separated from its participants. The Brazilian law also provides for other forms of corporations, such as consortiums or special types of partnership that do not have legal status. In this case, the parties have individual rights and obligations for the common benefit of the group. These contractual structures are usually adopted to serve specific purposes or non-corporate businesses.

Another type of company included in the Brazilian law comprises of General Partnerships (partnerships), which imply unlimited liability of the partners. These companies are uncommon nowadays, since certain tax benefits from which they historically benefited from have been extended to other types of companies.

You can download a summary of the main regulations of foreign capital in Brazil [here](#).

2. Foreign Capital

Foreign capital may freely enter Brazil and is not subject to prior approval by the government, and there are no limitations in respect of the total amount of investment that can be made in Brazil, with a small number of exceptions:

2.1 Prohibitions:

- Activities involving nuclear energy;
- Healthcare services (except where otherwise stipulated in law);
- Mail and telegraph services; and Aerospace (launching and deployment of satellites, vehicles, aircraft or the commercialization of these goods, but the prohibition does not apply to manufacturing or trading of these goods).

2.2 Restrictions – In the following sectors, foreign capital may be subject to limitations or may require pre-authorization from public authorities:

- Acquisition or rental of rural property (may require authorization from the National Institute for Colonization and Agrarian Reform – INCRA or, in the case of large purchases, the National Congress);
- Financial institutions;
- Air transportation companies (the operation of passenger air transportation services is subject to concession – under current legislation, a concession contract can only be awarded to Brazilian registered companies, in which at least 80% of the voting capital is in the hands of Brazilians – entry of foreign capital is capped at 20% of ordinary shares of the company);
- Media, including television networks, magazines, newspapers and radio broadcasting stations (the

government prohibits foreign investment in the ownership and administration of media – the legislation stipulates that at least 70% of the total capital of media companies must be owned directly or indirectly by Brazilians born in Brazil or naturalized for more than ten years); and

- Mining sector.

3. Register of Foreign Capital

Investors are required to register all inflows of foreign capital into Brazil, with the Brazilian Central Bank, within 30 days from the entry of funds in Brazil.

This can only be done online through the Brazilian Central Bank's e-registration tool, RDE-IED (Electronic Declaration Registry), which is part of the Brazilian Central Bank's Information System (SISBACEN).

The recipient company of FDI and the foreign investor (through a representative) are liable for registration. For more information in Portuguese about registering foreign capital, please access to the Brazilian Central Bank's website: <http://www.bcb.gov.br>.

An unregistered investment is not eligible for repatriation, and dividends or profits generated by it cannot be remitted abroad through the commercial foreign exchange market.

However, it is important to note that nothing prohibits the foreign investor from repatriating or remitting dividends or profits abroad through the floating exchange market or transferring local currency abroad to purchase foreign currency outside Brazil.

Apart from the aspects relating to registration, repatriation and certain tax consequences, an unregistered investment is subject to the same rules applicable to registered

investments.

4. Taxation on foreign capital

Foreign capital that enters Brazil as FDI is not subject to any taxation. However, intercompany loans will be subject to the federal Tax on Credit, Foreign Exchange, Bonds and Securities Transactions and on Insurance Operations (IOF 5) at a rate (which can be reduced to 0%) that varies depending on the sector, the period of investment and other aspects. Even though intercompany loans are classified as FDI, The Federal Revenue Service (SRF 6) considers this kind of investment as an interest-bearing normal financial transaction that is subject to the same IOF rates applicable to domestic investors.

The remittance of profits and dividends and the repatriation of the foreign capital abroad are exempted from the collection of Income Tax (IR7) when leaving Brazil. But this only applies if the capital amount to be remitted abroad is the same as the amount registered with the Brazilian Central Bank. Capital repatriated with value greater than the initial amount registered will be considered as a capital gain and will be subject to a 15% or 25% IR, unless when otherwise stipulated in applicable tax treaties signed between Brazil and the other country involved.

When remittance or repatriation is not desirable, reinvesting profits is an option. Reinvestment can be registered as foreign capital with the Brazilian Central Bank, thereby increasing the calculating basis for tax imposed on future divisions of capital.

Finally, to stimulate FDI, Brazil has signed Double Taxation Treaties (DDTs) with 28 countries. Please check the integrity of each convention document at <http://www4.planalto.gov.br/legislacao>

5. Visas

Nationals of most European and Latin American countries, as well as some other countries, do not need a visa to enter Brazil for business trips up to 90 days. A list of visa requirements per country is available in the following link: http://chicago.itamaraty.gov.br/en-us/visa_requirements_by_country.xml

In any case, it is strongly recommended that investors who plan to visit Brazil must check with the Brazilian consulate in their own country whether they require a visa, before confirming their travel plans.

For investors who need a visa to enter Brazil, it is recommended to apply for a business visa that is valid for up to five years (if there is reciprocal arrangement in their country of nationality) and allow a maximum stay up to 90 days at any one time, which can be extended for a further 90 days upon request at the Federal Police.

6. Step by step

Please see the regulations for the register of foreign companies, in the terms of Instruction DREI no. 7/2013 (available in Portuguese at <https://www.gov.br/economia/pt-br/assuntos/drei/legislacao>)

Choose the corporate type for the company. For this, it is important to consider the types of businesses in Brazil. Hire a local accountant to present all the documents to the Board of Trade of the Brazilian state where you intend to set up the company. Please browse the websites of these state boards at: <https://www.gov.br/economia/pt-br/assuntos/drei/juntas-comerciais>

This professional should provide service throughout the whole process, in addition to preparing and registering the following documents:

I. Articles of incorporation/bylaws. It is necessary to define the method for calculating taxes on revenues when opening the company – basing on the “National Simple” (Simples Nacional) for small businesses, Taxable Income or Estimated Profit – as well as making other decisions, such as the company’s name, the legal representatives in charge of the company’s administration, etc. Legal assistance is also recommended in the preparing of the articles of the incorporation/by laws;

II. Power of attorney given to the Brazilian Representative;

III. Copies of the personal documents of the representatives, including the visa; and the address voucher of the registered office;

IV. Corporate taxpayer ID number (CNPJ);

V. State and Municipal Inscriptions;

VI. Municipal License / Operation Permit (Alvará ou Licença de Funcionamento); and

VII. National Institute of Social Security (Previdência Social) and Special Fund for Unemployment – FGTS Registrations.

Note that all foreign documents must be translated into Portuguese by a sworn translator (whose contact information is available at the local Board of Trade) and notarized in the Bureau of Registry of Deeds and Documents (Cartório). The paperwork must be also notarized by a Brazilian consulate located in the associate’s country of origin.

7. Opening a Bank Account

A final important point related to this topic is opening a bank account in Brazil. The Brazilian banking sector is considered as one of the most modern in the world. State-owned banks, private banks, investment banks and other financial institutions, both domestic and international, compete in the retail banking industry in Brazil.

To open a business account, the companies need to fill out certain forms and submit legal documents, such as:

- Identification, legal proof of registration and registration status with the National Registry of Legal Entities of the Ministry of Finance/Federal Revenue of Brazil with an issue date not more than 30 days;
- Identification of Legal Partners and Managers – Submit documents and information for the registration of taxable persons who are shareholders or officers of the company/organization (ID, CPF, proof of residence);
- Chattel property, real estate and livestock (e.g. proof of property ownership, proof of payment of property tax or ITR of the last year, Certificate of Registration and Licensing of Vehicles);
- Authorization for registration information collection – SCR (Credit information system);
- Authorization for registration information collection – REFIS (Taxpayers Program).

Source: [Apex Brasil](#)