

# Investing in Brazil

## A quick guide

Brazil has become an attractive destination for foreign investment. The World Cup and Olympics will only serve to heighten awareness of investment opportunities in Brazil. However, Brazilian legislation is a challenge for even the most experienced investors.

This guide briefly outlines the basic steps to follow when investing in Brazil, as well as key issues to be considered by any investor expanding into Brazil.

### Setting up a company

The incorporation of a Brazilian company is the first step to establishing a presence in the country and recommended for companies wishing to do business with Brazilian clients. It also provides foreign investors with legal protection in respect of the debts and obligations of its Brazilian business:

- ▶ Except for certain sectors (e.g. aviation, medicine, nuclear energy) there are no restrictions on the foreign ownership of a Brazilian entity.
- ▶ Choice of business entity will depend on the complexity of the deal and the investor's plans:
  - ▶ **Limited Liability Companies** (Sociedades Limitadas) have a simple structure, with only one class of share. They are not very flexible as certain matters require fixed levels of shareholder approval as provided by the Brazilian Civil Code.
  - ▶ **Corporations** (Sociedade por Ações) on the other hand, allow for different classes of shares, with or without par value. They are more flexible for management and are governed by a specific law for Corporations, which provide more legal certainty. They have higher ongoing costs due to the additional formalities imposed on them (e.g. publication of all corporate acts).
  - ▶ **Brazilian Branches** (Sucursais) require special approval from the Federal Government. Once incorporated, they must file all public filings made by the relevant parent company.

- ▶ All officers of Brazilian companies must be domiciled in Brazil. However, there are solutions to such restrictions and Brazil has a specific work permit for foreign citizens managing Brazilian companies.

### Mandatory registrations

- ▶ Articles of incorporation and subsequent corporate acts must be filed with the local State Companies House (Junta Comercial).
- ▶ Additional registrations will also need to be obtained from Federal, State and Municipal authorities.
- ▶ Foreign investors must be registered with the National Corporate Taxpayers Register of the Ministry of Finance (CNPJ/MF) and the Central Bank of Brazil ("BACEN").
- ▶ Direct investment carried out by foreign investors will also need to be registered with BACEN.
- ▶ Obtaining all authorisations can be a time-consuming process (in certain cases, taking up to 6 months).

### Defining the role of the Brazilian entity

- ▶ Brazilian entities must ensure that agreements with clients comply with Brazilian law. Certain activities may be subject to different legal frameworks (e.g. agency agreements).
- ▶ Extra care must be taken with respect to consumer relations, as Brazilian legislation is particularly protective of consumers.
- ▶ Services provided by Brazilian entities to group companies will need to be carefully structured, given transfer pricing regulations.

### Investing and repatriating capital

- ▶ Generally companies do not need prior authorisations for foreign exchange transaction; however, those transactions must be electronically registered with BACEN.



- ▶ Direct investment (equity) is the most tax-friendly alternative (no taxes on the repatriation of dividends), whereas high interest rates and taxes are levied on loans.

## Taxes

- ▶ Taxes are charged at Federal, State and Municipal level, and on a company's services, assets and income.
- ▶ Foreign companies and individuals will be taxed on their Brazilian income (15% to 25%).
- ▶ Higher income taxation of 25% for parties located in "tax havens" (defined as such by the Brazilian Internal Revenue).
- ▶ Dividends are income tax free with no distinction if paid to a tax treaty country or tax haven. Distributions must be authorised by the Brazilian Central Bank to the extent that the foreign investment was properly registered with BACEN.
- ▶ Tax incentives are provided in certain industries (e.g. IT, infrastructure).

## Immigration rules

- ▶ Foreign officers of Brazilian companies must hold a permanent visa. Visas require a minimum investment of R\$600,000 in the Brazilian company or R\$150,000 with a commitment to create a minimum of 10 jobs in Brazil within 2 years.
- ▶ Individual investors may be entitled to a permanent visa after investing R\$150,000 in a Brazilian company.

## Employment law

- ▶ Employment regime is considerably less flexible than in the US or the UK. Mandatory employees' rights and benefits are both provided for by the Brazilian Labour Code and by collective bargaining arrangements with relevant unions.
- ▶ Examples: 44 hour working week; 30 days of vacation for every 12 months worked; mandatory Christmas bonus; legal indemnification to be paid in case of dismissal without cause; maternity leave of up to 6 months.

- ▶ Social contributions (FGTS, INSS, PIS, PASEP) can amount to an additional cost of approximately 30% for the employer.

## Protecting intellectual property rights

- ▶ Patents, trademarks and designs are protected upon their registration with the Brazilian Patent and Trademark Office (Instituto Nacional de Propriedade Industrial – "INPI"), which can be time consuming (around 3-4 years for trademarks and 8 years for patents).
- ▶ Period of protection of IP rights follows the international pattern: 20 years for patents, 10 years for Trademarks, author's life + 70 years for copyright.
- ▶ Copyright registration is not required.
- ▶ Pharmaceutical patents require approval from the Brazilian Health Surveillance Agency (Agência Nacional de Vigilância Sanitária – "ANVISA").
- ▶ IP agreements involving foreign parties also require registration with INPI to allow the remittance of royalties abroad.
- ▶ Software rights are valid for the author's life + 50 years.

## Our Brazil group

Our Brazil Group has been created to:

- ▶ facilitate the investment in Brazil by overseas companies.
- ▶ support and enhance the increasing needs of Brazil-based businesses and High Net Worth Individuals and Families investing outside Brazil.

Our Brazil Group is led by Jan Curschmann (Hamburg, Honorary Consul of Brazil), Stefan Kroeker (Munich), Richard Bursby and Julia McKendry (London) and Nicolas de Witt (Paris). They are supported by Laura Mickelberg, a Brazilian qualified lawyer. The Group has a number of fluent Portuguese speakers with extensive experience of working in Brazil.

## Key contacts



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