



Independent legal & accounting firms

Doing Business in Brazil

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MSI's guide on *Doing Business in Brazil* provides current information about the financial, regulatory and legal considerations that could affect business dealings within Brazil. For further assistance please contact our MSI members firms in Brazil.



Country overview

Population

Brazil has a total population of approximately 211.8 million inhabitants (July 2020).

Government

Brazil is a Federative Republic. The country has a presidential system established by the Federal Constitution, and the government is separated into three independent branches: executive, legislative and judicial.

The president is elected by direct vote for a four-year term, and can be reelected once for additional 4 years. The current president of Brazil is Jair Bolsonaro. He was sworn in on 1 January 2019 following the 2018 presidential election.

Languages

The official language of Brazil is Portuguese.

Currency

The Brazilian Real is the national currency in Brazil.

Economic summary

GDP (Nominal): US\$ 1.3 trillion (2020)
Income per capita: US\$ 6,525 (2020)
Inflation: 4.52% (2020)

*exchange rate of 1US\$ = BRL 5,39, valid on December 2020.

Main sectors of the economy

Brazil boasts the largest economy in Latin America and the world's ninth largest economy by nominal GDP. Brazil is a member of the World Trade Organization and several other trading groups. Brazil is also the only country in

Latin America to be a member of BRIC—acronym referring also to Russia, India and China, all deemed to be at a similar stage of newly advanced economic development.

Brazil's economy is largely based on services (~73%) and industry (~21%) while the agricultural sector remains one of the most productive in the world. The country is a top producer, manufacturer and/or exporter of aircraft, automobiles, sugar, ethanol, steel, coffee, orange juice, chicken, corn, soybeans, and beef, among others.

The top imports of Brazil are refined petroleum, vehicle parts, chemical fertilizers, telecommunications equipment and cars. China, the USA, Argentina and Germany are Brazil's main trading partners; transactions with these three countries represent more than 40% of Brazil's exports and imports.

Setting up a business

As a general rule, foreign individuals and legal entities headquartered abroad may carry out business in Brazil either by setting up companies or by trading in the stock market.

Foreign investors regularly set up new companies (subsidiaries, affiliates or joint ventures) or join already existing companies as shareholders or quota holders. The opening of a branch of a foreign entity in Brazil would require a prior authorization granted through a Presidential Decree, a time-consuming and bureaucratic procedure.

Legal types of business entities

Brazilian Law provides for several forms of business entities, with the most widely adopted being the limited liability company ("sociedade limitada") and the corporations ("sociedade anônima"). Other forms are less frequently used, but they can fulfill specific purposes, as the case may be.

The *sociedade anônima* may be publicly or closely held, requiring at least two shareholders, who may be individuals and/or legal entities. It is possible to set up a whole-owned subsidiary ("subsidiária integral") provided that the owner is a *sociedade anônima* headquartered in Brazil.

As a general rule, the shareholders are solely liable for the share capital to which they have subscribed while it remains unpaid. At least 10% of the capital must be paid up at the time of initial incorporation. All the shares must be registered and may be common or preferred. Common shares have voting rights, while preferred shares may have voting rights or not, or may have restricted voting rights, carrying some financial benefits such as higher dividends. The shares may be of different classes, each class carrying different rights, advantages and/or restrictions. The preferred shares cannot represent more than 50% of total shares.

The *sociedade anônima*'s corporate bodies are the General Shareholders' Meeting (Assembleia Geral de Acionistas), the Board of Directors (Conselho de Administração) and the Board of Executive Officers (Diretoria). The members of the Board of Directors and of the Board of Executive Officers

must be individuals. The Board of Executive Officers is mandatory and must have at least two executive officers, who must be residents in Brazil. The *sociedade limitada* may be set up by one or more individuals and/or legal entities. When owned by a single quotaholder, it is referred to as *sociedade limitada unipessoal*.

The capital of the *sociedade limitada* is divided into quotas. As a general rule, the liability of the quota holder(s) is limited to the value of its(their) respective quotas, being, in the case of multiple quota holders, jointly and severally liable for the unpaid capital stock. The *sociedade limitada* shall be managed by one or more individuals, resident in Brazil.

In general, no minimum capital is required for the incorporation of a *sociedade limitada* or a *sociedade anônima* in Brazil, except for certain types of activities, which are provided by specific legislation.

Further, there is also the individual limited liability enterprise (*empresa individual de responsabilidade limitada – "EIRELI"*), another type of legal entity which presents itself as an alternative to the *sociedade limitada unipessoal* and to the wholly-owned subsidiary of a *sociedade anônima*.

The EIRELI may be set up by a single person, who may be an individual or a legal entity – domiciled in Brazil or abroad -- who shall own the entire capital, fully paid in, which shall not be lower than the equivalent to one hundred times the highest official minimum wage in Brazil. The same individual cannot hold more than one EIRELI, what is perfectly possible for the legal entities. The EIRELI is governed by its articles of incorporation (*ato constitutivo*) and by Law No. 10.406 of January 10, 2002 (the Brazilian Civil Code). The rules applicable to the *sociedade limitada* shall apply to the EIRELI, as appropriate.

Process of how to set up a business

The first step would be the enrolment of the investor with CDNR (former CADEMP), before the Central Bank of Brazil – BCB, and then with the Federal Revenues Office – RFB, i.e., legal entities with the CNPJ (Brazilian Register of Legal Entities), and individuals with CPF (Brazilian Register of Individuals). Such enrollments allow the remittance of investments to Brazil, as well as the payment of dividends and the repatriation of funds to the investors abroad.

The *sociedade anônima* may be incorporated by private or public subscription of the capital stock by the shareholders. The public subscription requires previous registration of the company as publicly-held at the Securities and Exchange Commission - CVM, as well as a prior authorization of the initial public offer – IPO. The subscription shall be intermediated by a financial institution. The private subscription of the capital may occur by a deliberation of the subscribers in a general meeting or by public deed.

The *sociedade limitada* may be incorporated by means of the execution of its articles of association, which shall be submitted to record before the competent commercial registry.

The start-up procedures the EIRELI and the *sociedade limitada unipessoal* are similar to those applicable for the *sociedade limitada*.

Any foreign or non-resident individual as well as any foreign legal entity engaging in a business in Brazil must appoint an attorney-in-fact resident in Brazil with powers to receive service of process in lawsuits involving the companies invested.

Financial year of taxes and financial accounts

The financial year is the same as the calendar year (January – December).

Accounting and auditing

Brazilian accounting is obliged to prepare financial statements in line with standards issued by the Accounting

Pronouncements Committee approved by the Federal Council of Accounting.

Auditing is mandatory for:

1. Corporations with shares in the Stock Exchanges (S.As.)
2. Large companies with:
 - 2.1. Annual gross revenue > R\$300 million;
 - 2.2. Total assets > R\$240 million;
3. Financial institutions or insurance companies (or any other business under authority of the Central Bank)

Economic and fiscal incentives

The Brazilian government provides benefits for some specific economic sectors designated to accelerate the development of regions and industries considered to be of economic importance. All tax concessions apply equally to local and foreign investors.

Regional incentives are stipulated by the government using fiscal incentives and development funds.

State incentives consist in the reduction of ICMS where these incentives are granted differently by each state according to local economic development.

Municipal incentives are granted as tax relief for who offers investments, jobs and development for the city.

Taxation

Brazil has a very complex tax system, in which taxation is imposed and collected by Federal, State and Municipal Tax authorities. Tax laws frequently change and shall be carefully observed.

Indirect Taxes

Unlike in many places, there is no charge of VAT (value added-tax) on the sales of services and goods in Brazil. As far as indirect taxes are concerned, there are the IPI, ICMS and ISS taxes.

The IPI (Tax on Industrialized Products) is a federal tax levied on both domestic and foreign industrialized products when imported. In addition to that, determined internal operations

with industrialized products may be subject to IPI.

In many aspects, IPI operates like a VAT. All industrialized products can be ultimately taxed, whether they are benefitted, processed, assembled, packaged or restored. However, IPI paid on a prior transaction can be used to offset the IPI arising out of a subsequent operation.

Rate varies according to the product, from 0% to over 100%. There is also a provision contemplating the suspension of the IPI vis-à-vis products used as raw materials, packaging materials and intermediary products acquired by predominantly exporting legal entities.

The ICMS (Tax on Operations relating to the Circulation of Goods and to the Rendering of either Interstate or Inter Municipal Transportation Services and also to Communication Services)

is a state tax with rates established freely by each State. ICMS is levied on a number of different operations including transportation of people and cargo, communication services, the entry of imported goods or the rendering of services abroad.

ICMS is a non-cumulative tax and, in general, taxpayers are entitled to tax credits in the amount of the tax paid in any previous transactions. The tax credit may be offset against future ICMS payables. In the event the purchaser is not an ICMS taxpayer, and depending also on whether the ICMS taxpayer's sales are subject to this tax, the ICMS may become a cost, in which case it will not be recoverable as a credit.

In the specific case of interstate transactions, ICMS is destined to the state of origin at the interstate rate, and the difference between the interstate ICMS rate and the internal ICMS rate is due to the state of destination.

ISS (Tax on Services of Any Nature) it is a municipal tax levied on the rendering of services. The rate to be charged usually varies from 2% to 5%, according to each municipality and the nature of the service provided.

In case the provision of services involves a sale of goods, ISS applies to the total amount of the transaction, except when there is a specific provision determining the applicability of the ICMS to the value of the products sold.

ISS also applies to the import of services.

In general, ISS is due at the place of establishment of the services provider or, in the absence of one, at the place where the services provider is domiciled. There are exceptions to the aforesaid rule most of them dealing with civil construction.

Participation exemption

The Brazilian tax system does not have participation exemption rules in place. Profits derived from foreign controlled companies are deemed distributed to the Brazilian controlling company and subject to taxation by the end of each calendar year.

Please note that the distribution of profits from Brazilian companies to foreign or local shareholders is not subject to Taxation in Brazil.

Income tax

Brazilian residents are taxed on their gross income, including domestic and foreign. Brazil has a progressive personal taxation system with rates ranging from 7.5% to 27.5%.

Corporate income tax

A fixed rate of 15% on annual income is taxable under a unitary system with a surcharge of 10% on taxable income over 240,000 Brazilian Real.

Capital gains

Capital Gains are subject to income tax, with rates varying from 15% to 22.5%, depending on the capital gains' total amount.

Registration procedures

Persons and companies are registered with the tax authorities and are given a fiscal registration number. Communication with the tax authorities by way of tax returns and tax assessments is largely done electronically.

Registration fees and average timelines vary depending on the state and on the nature of the company as it is necessary to pass processes in different bodies.

Wage tax

Wage income is subject to individual income tax, levied based on progressive rates that vary from 0% to 27.5% depending on the income monthly earned.

Withholding taxes

As a general rule, cross border payments trigger withholding taxation, with rates varying according to the remittance's nature. The most common types of remittances are subject to the following taxation: (i) dividend exempt; (ii) interest payments: 15% / 25% (tax haven jurisdictions); (iii) technical Services: 15% / 25% (tax haven jurisdictions), (iv) royalties: 15%/ 25 % (tax haven jurisdictions).

HR/ Labour Law

Employment law

Labor relations in Brazil are regulated in detail by the Consolidation of Labor Laws ("CLT"), which contains over 900 articles, plus sparse legislation on specific topics and articles of the Federal Constitution.

The CLT is very extensive and the ability of the parties to an employment agreement to avoid or waive statutory rights and obligations is very limited.

A Labor Reform in 2017 has modified over 100 articles of the CLT, with the purpose of (i) giving more space for negotiations with unions and with white collar employees and (ii) encouraging the creation of jobs.

Written contracts are not generally required and in case of discrepancy between the daily practice of the employment relationship and the written contract (if any), the reality prevails. They are however recommended.

Employment agreements are generally open-ended but employers are allowed

to terminate them at any time, without cause, upon previous notice and severance payment. Exceptions are made to certain protected temporary conditions such as pregnancy and sick leave.

Following the pandemic of COVID-19 the number of companies adhering to working from home or hybrid systems has significantly grown. Legal mechanisms were also created to allow salary reductions and suspensions with Government financial support in exchange for guarantee of continued employment.

Social security

Both employers and employees pay social security (INSS) contributions. These contributions are used to insure health, accidents at work, maternity, occupational diseases, retirement and unemployment.

Employees' contribution rates range from 8% to 11% of the monthly salary and it is deducted from salary. The employers' contribution is 20%, plus additions classified per business sector, number of accidents and level of hazard in the workplace.

There are sectors temporarily benefiting from paying INSS at reduced rates on top of revenue.

Pension

The age for retirement varies according to several parameters but is generally set at the age of 65 for men and 62 for women. Another criteria used for retirement is the number of years of pension contribution (minimum 35 years for men and 30 for women).

Payroll

When starting a business and employing staff, the company must register with the tax authorities. Wage tax and social security is paid monthly to the tax authorities. Without a taxpayer number the company will not be able to comply with payroll obligations.

Visa and work permits

Legal requirements for work permits vary according to the purpose of the

application and normally include a job offer from a Brazilian employer, special educational background and know how.

Labour laws limit the number of foreign employees to 1/3 of headcount or 1/3 of payroll.

Foreign investments allow companies to bring foreign administrators to the business. Minimum registered amount of investment varies from BRL150,000 to BRL600,000 depending on the business plan.

Mercosul Treaty allows certain Latin American citizens to apply for residency based exclusively on nationality. This is extensive to Argentina, Paraguay, Uruguay, Bolivia, Chile, Peru, Colombia and Ecuador.

Contact us

The information provided in this guide cannot be exhaustive and we recommend anyone considering doing business in Brazil should seek professional advice from our member firms before making any business or investment decision.

Contact our member firms in Brazil to discuss your requirements:

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