

DOING BUSINESS IN BRAZIL



EDTECHS



MAY | 2021



ABOUT

THIS GUIDE

This is a guide for international companies interested in operating in the Brazilian edtech industry. Here, you will find a fast and introductory summary with indispensable information that must be taken into consideration when starting or investing in a company in Brazil.

We will begin by presenting legal insights regarding the Brazilian edtech sector, addressing topics like regulatory landscapes. Later, in the second chapter, we will present a short overview on the legal and political structure of the country, then an introduction to the Brazilian industry, presenting some specific legal matters on Commercial, Tax, Labor, Data Protection Law and Foreign Investment.

ABOUT US

Founded in 2004, Baptista Luz Advogados is a full-service legal boutique with practice in all the areas of Corporate Law. Our team performs in diverse sectors of the economy, such as technology, internet, financial institutions, advertising, entertainment, entrepreneurs. Our prominent areas of practice are technology, telecom and advertising, entertainment, financial institutions, real estate, transportation, retail, and agribusiness, among others. We have extensive experience with cross-border negotiations, and our branches are present in four different Brazilian cities: São Paulo, Florianopolis, Porto Alegre, and Londrina.

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01

TOPICS ON THE **BRAZILIAN EDTECH INDUSTRY**

The “**Doing Business in Brazil: EdTech Industry**” presents the peculiarities of the functioning of this market in Brazil to enable an efficient and safe investment. If you want to get deeper into any of the subjects, please contact us:

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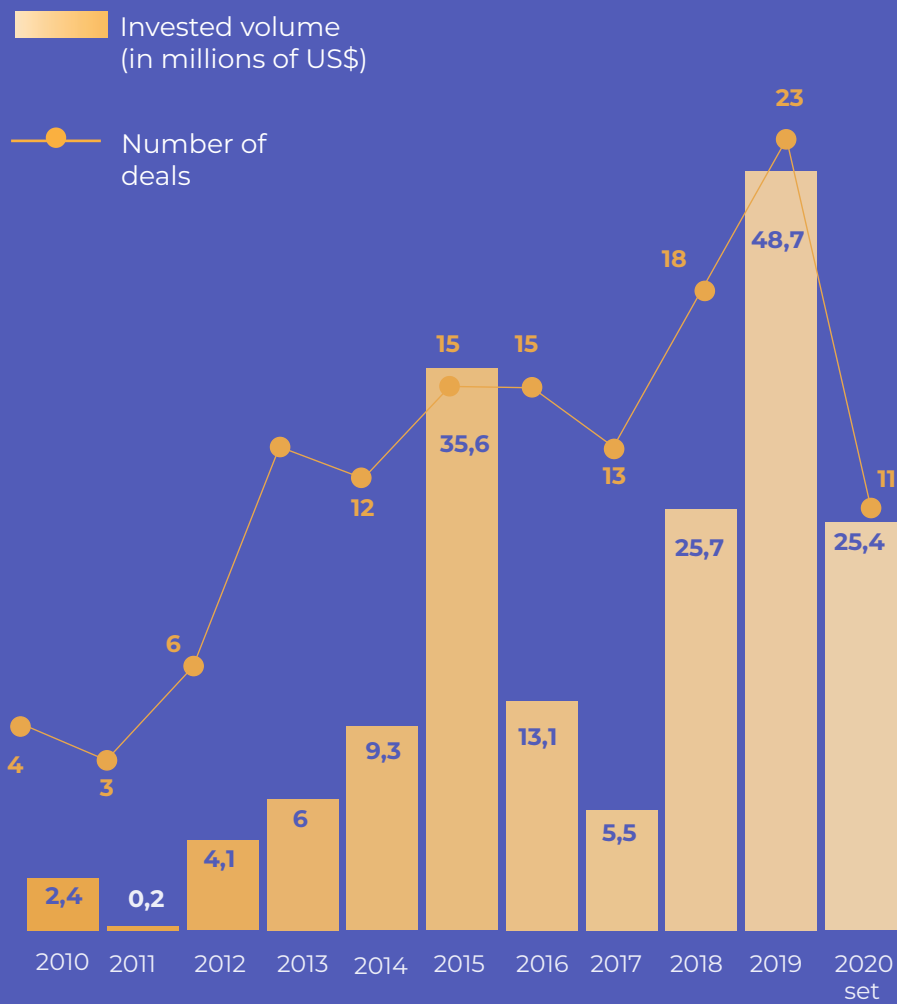
Enjoy your reading!

1

OVERVIEW

Education is what drives society. The use of technology for improving learning is a recent trend that will increasingly bring innovation to the sector.

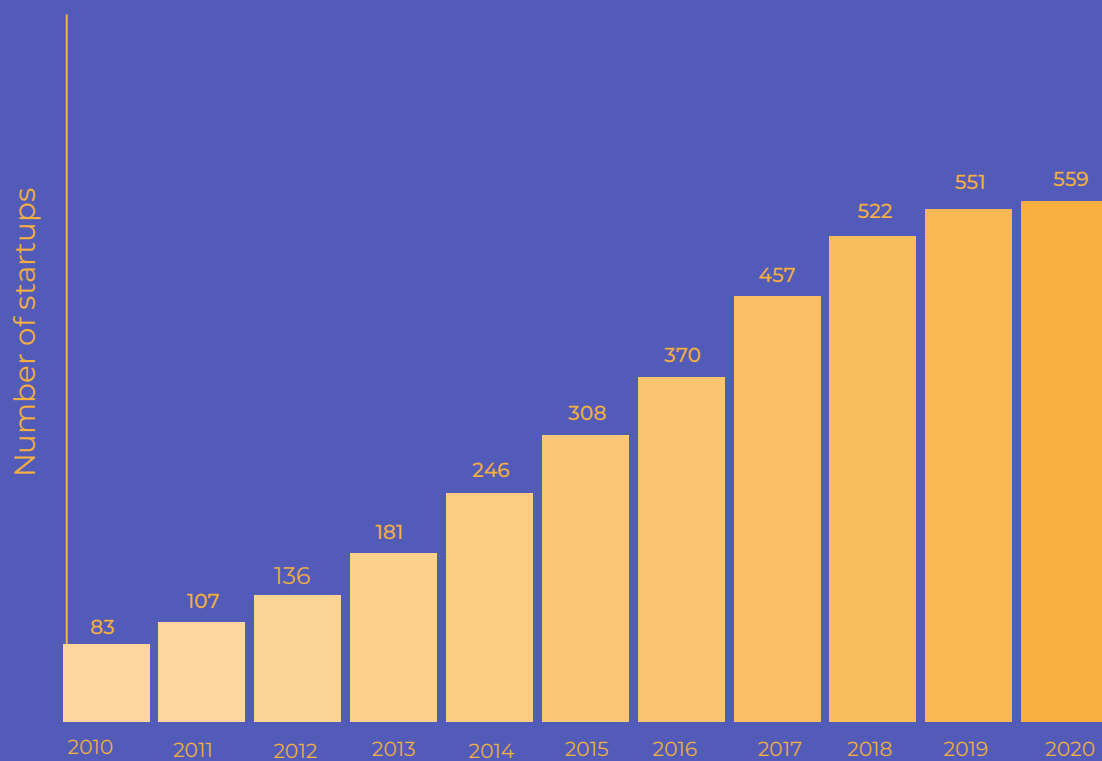
Among the numerous consequences of social isolation caused by the Covid-19 pandemic was the growth of certain digital sectors, especially the Brazilian Edtech. According to [EdTech Report 2020 published by Distrito](#), there are 559 Edtechs mapped in the Brazilian market, totaling an investment of US\$ 175.5 million between 2010 and 2020.



| Stage* | Volume of investment (in US\$ million) | Nº of deals |
|----------|---|-------------|
| Angel | 2.1 | 11 |
| Pre-Seed | 5 | 32 |
| Seed | 25.2 | 56 |
| Series A | 53.9 | 22 |
| Series B | 27.2 | 8 |
| Series C | 7 | 2 |
| Series D | 17.3 | 1 |

Number of educational technology (Edtech) startups in Brazil

- from 2010 to 2020



2 WHAT IS AN EDTECH?

Edtech is short for “Educational Technology”, which is any form of teaching or learning using technology, that is, that uses any technological application, tool or service to improve learning. This is the definition largely used in the educational sector.

3

EDTECH IN PRACTICE:

REGULATION IN BRAZIL

Brazil does not have specific regulation for edtechs, but only regulations for the education sector as a whole. Due to the statutory gap, activities in this sector have been regulated by court decisions. In a [recent](#) decision, i.e., the Federal Supreme Court in Brazil declared that a regulation in Rio de Janeiro on online education was unconstitutional.

It is important to emphasize that the Ministry of Education - MEC is the highest Brazilian government agency. It establishes the rules and regulations on education that must be complied with by those wishing to innovate in the sector. Also at the federal level, we have the National Education Council (CNE), which helps create National Education policies and it exercises the normative attribution.

The Brazilian educational system is regulated by the Federal Constitution of 1988, in its Arts. 205 et seq., and by the [Law of National Guidelines and Standards for Education \(LDB\)](#) regulated by Law No. 9394, of 1996. Based on these regulations, the Brazilian government establishes educational programs that are designed based on the National Common Curricular Basis (BNCC).

The BNCC is provided for in the LDB as a set of learning guidelines for students to achieve educational goals. In other words, it aims to ensure that everyone has access to basic and indispensable knowledge, regardless of their origin, race or wealth.

According to the [current legislation](#), online learning (EAD) can only apply to basic education as a supplementary learning tool or in the event of emergency, as is the case with Covid-19. However, EAD can be widely used in higher education. According to [MEC Ordinance No 2,117/2019](#), higher education institutions that offer undergraduate courses in person can offer max. 40% of the courses online.

Due to Covid-19, [Law No 14,040/2020](#) was enacted providing, exceptionally, that schools and higher education institutions can use digital media for online classes, so as to abide by the minimum workload required for their courses during the pandemic.

Specifically regarding the technology sector, there are relevant regulations that, depending on the EdTech's business model, should be complied with, such as the Brazilian Civil Rights Framework for the Internet ([law n° 12.965](#)), the [General Data Protection Law](#) (lei n° 13.709, de 14 de agosto de 2018) and, in some cases, the [Consumer Code](#) (Law N° 8.078, from September 11, 1990).

4

SOLUTIONS PROVIDED BY EDTECHS

In order to better illustrate the types of innovations provided by edtechs in the educational sector, we quote a survey carried out by [ABStartups](#), which identified a few of the technologies developed:

Digital Learning Objects (ODAs)

it's the supporting resources for the academic activities, both inside and outside the classrooms, such as: texts, animation, videos, images, applications, web pages, that are combined to provide support to students throughout their learning process.

Educational games

playful software developed with an educational purpose, using games to help the learning process. In addition to educational games that encourage studying important topics, some of the versions also help children and young people with learning disabilities;

Online courses

it's the set of activities and classes available online that offer remote and digital learning. For example, the so-called "nondegree courses" that are shorter and focused on a specific course for professional or personal qualification in a specific area, and can be wither in person or online. Although they are not regulated by the Ministry of Education (MEC), they are legally recognized, under Law No. 9394/96, [Decree No. 5.154/04](#) and [CEE Resolution No. 14/97](#);

Management support tools

it's a technology for the management of schools and educational networks that help employees to easily navigate through the institution's digital platform.

Student assessment tools

It's a technology that enables to create, assign and monitor activities in order to assess the students, thus helping teachers and schools to receive the answers and feedbacks on how their teaching methods can be improved.

Mentoring environment

It's a technology that help teachers and tutors to interact with students and offer tutoring in a digital environment;

Educational hardware

it's an electronic device or fixture that support the educational process, such as computers, tablets and virtual reality glasses.

Categories



Tools for institutions

- Management of educational institutions
- Communication strategy for education
- Technologies for the classrooms
- Data analytics for education



New learning methods

- Online schools
- Gaming
- Inclusiveness & accessibility
- Differentiated education
- Virtual & augmented reality
- Corporate training



Financing education

- Student loan
- Scholarships
- Crowdfunding



Student led-learning

- Study & productivity
- Preparation for university tests & public competitions
- Vocation & careers



Cognitive content

- Books
- Video
- Other



Specific courses

- Languages
- Technology
- Finance & business
- Entrepreneurship
- Soft skills
- Other



Learning platforms

- Online classes
- Learning Management System (LMS)
- Marketplace for Classes & teachers
- Platforms for courses & classes

559

selected startups

15 | 2.7%

Financing Education

| | |
|--------------|----------|
| Scholarships | 8 1.4% |
| Student loan | 6 1.0% |
| Crowdfunding | 1 0.2% |

23 | 4.1%

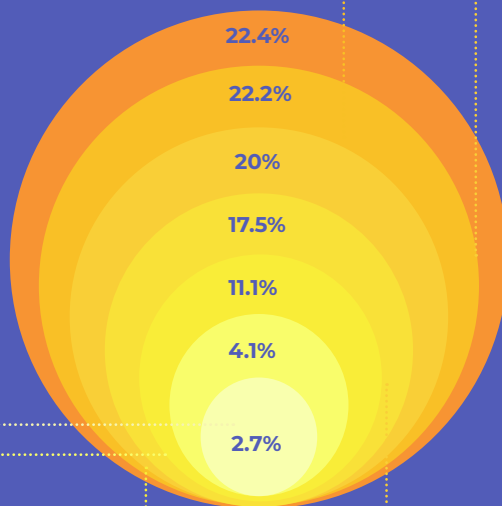
Cognitive content

| | |
|-------|----------|
| Books | 7 3.0% |
| Other | 4 0.7% |
| Video | 2 0.4% |

62 | 11.1%

Student-led learning

| | |
|--|-----------|
| Preparation for university tests & public competitions | 31 5.5% |
| Study & productivity | 16 2.9% |
| Vocation & careers | 13 2.3% |
| Inclusiveness & accessibility | 2 0.4% |



112 | 20%

Learning Platforms

| | |
|------------------------------------|-----------|
| For courses & classes | 42 7.5% |
| Online classes (EAD) | 4 0.7% |
| Learning Management System (LMS) | 15 2.7% |
| Marketplace for Classes & teachers | 14 2.5% |

124 | 22.2%

New learning methods

| | |
|-------------------------------|------------|
| Gaming | 34 6.1% |
| Differentiated Education | 28 5.0% |
| Corporate Training | 24 4.3% |
| inclusiveness & accessibility | 15 2.7 % |
| Virtual & augmented reality | 13 2.3 % |
| Online schools | 10 1.8% |

98 | 17.5%

Tools for institutions

| | |
|--|------------|
| Data analytics for education | 34 6.1 % |
| Communication strategies for education | 33 5.9 % |
| Technologies for classrooms | 19 3.4 % |
| Management of Educational institutions | 12 2.1% |

125 | 22.4%

Specific courses

| | |
|----------------------|-----------|
| Technology | 40 7.2% |
| Languages | 26 4.7% |
| Other | 21 3.8% |
| Finance and business | 21 3.8% |
| Health | 17 3.0% |

5 HOW BASIC EDUCATION WORKS IN BRAZIL

In order to standardize and organize basic education in Brazil – that ranges from preschool to high school, age groups were created for each level of education. When a student is significantly behind in learning, he/she is withdrawn from regular school and must attend Learning for Youth and Adults (EJA) to finish studies. It is important to remember that basic education is mandatory.

Currently, the competence of the Brazilian educational system is organized among the Federal Union, the States, the Municipalities and the Federal District, and divided as follows:

Preschool (from 0 to 5 years old)

competence belongs to the municipalities

Elementary school (from 6 to 14 years old):

part of the competence belongs to the municipalities, and part of to the States and Federal District

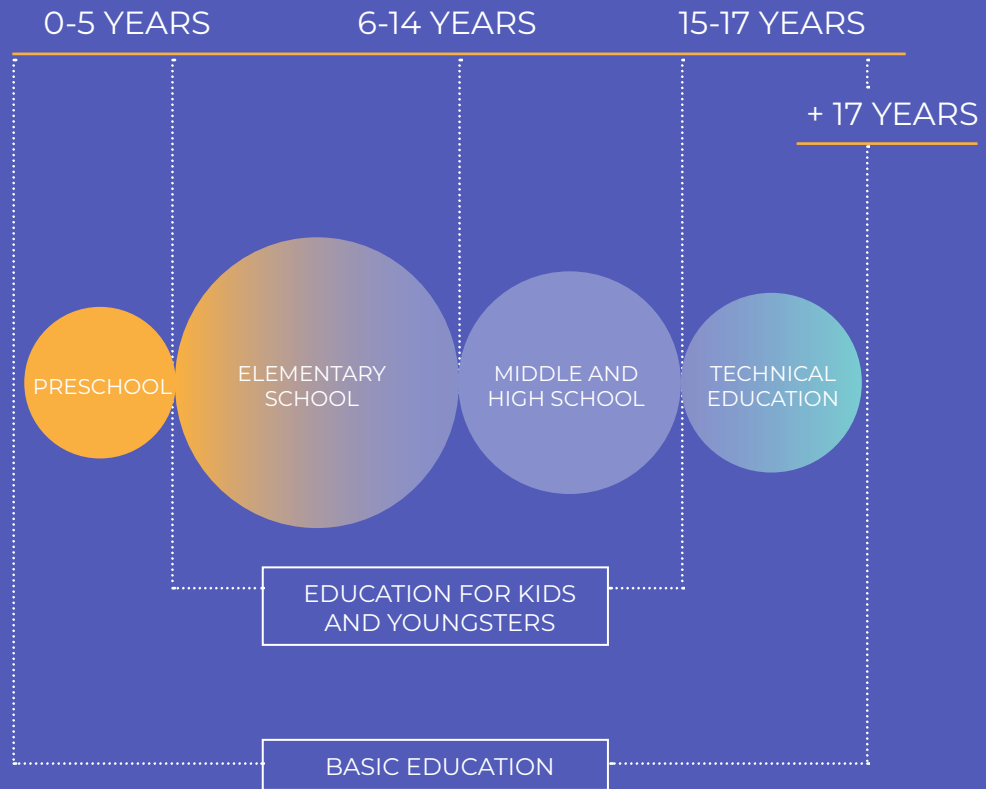
Middle & high school (from 15 to 17 years old):

States & Federal District

Colleges & universities (17+):


Federal Government

How basic education works in Brazil?



FINANCIAL RESPONSIBILITY

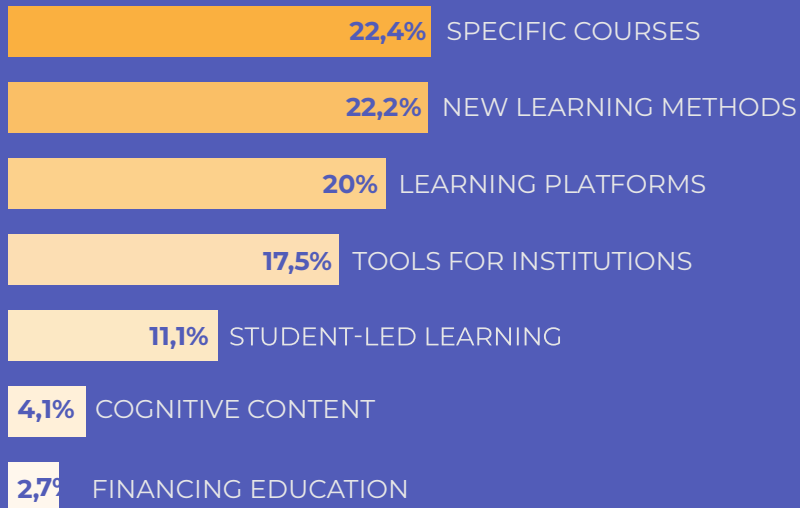
-  MUNICIPAL LEVEL
-  STATE LEVEL
-  FEDERAL LEVEL

 The size of the circle corresponds to the number of school registrations

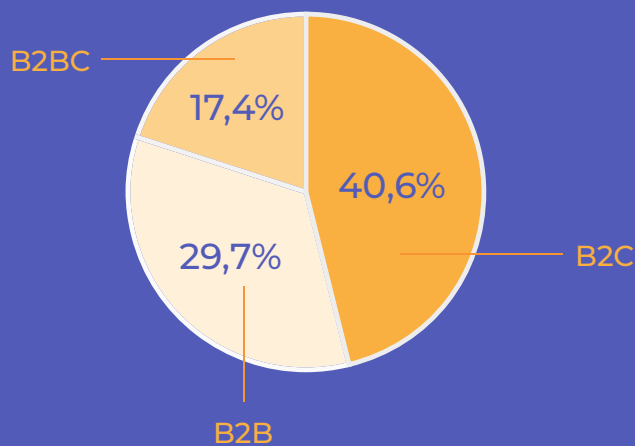
6 BRAZILIAN EDTECHS IN NUMBERS

**Report EdTech Distrito 2020*

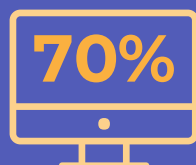
Sectors



Model

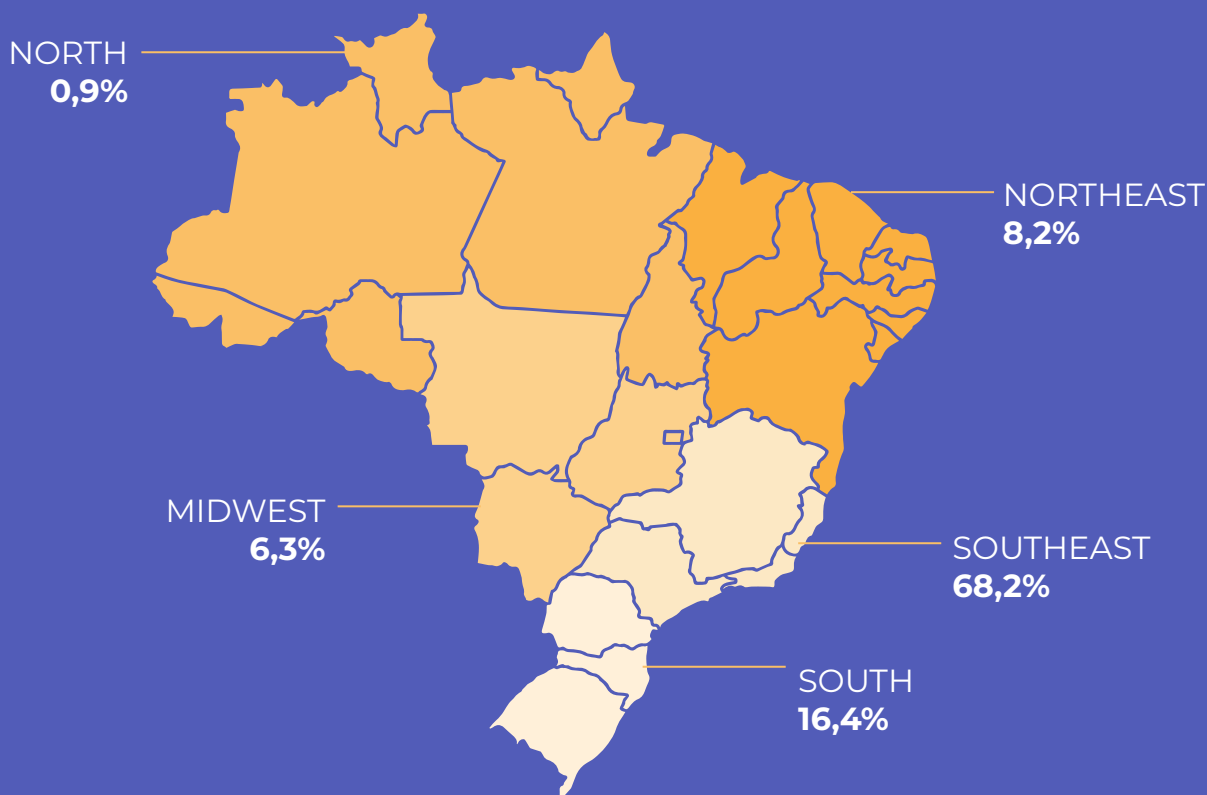


Access to the internet



70% of the Brazilian population is connected to the internet, well above the world average (57%);

Concentrated areas



Number of employees



Almost 70% of the edtechs have up to 20 employees. 15% of the edtechs have 100 to 500 employees, a number considered to be high in the startups universe.

Education

56.4 million

attended school or daycare in 2019.

50 million

20.2% of young people age 14 to 29, have not finished high school.

28.6% to 35.2%

the number of young Brazilians (20 to 24 years old), the so-called "nem-nem"¹ increased from 28.6% to 35.2% during the pandemic.

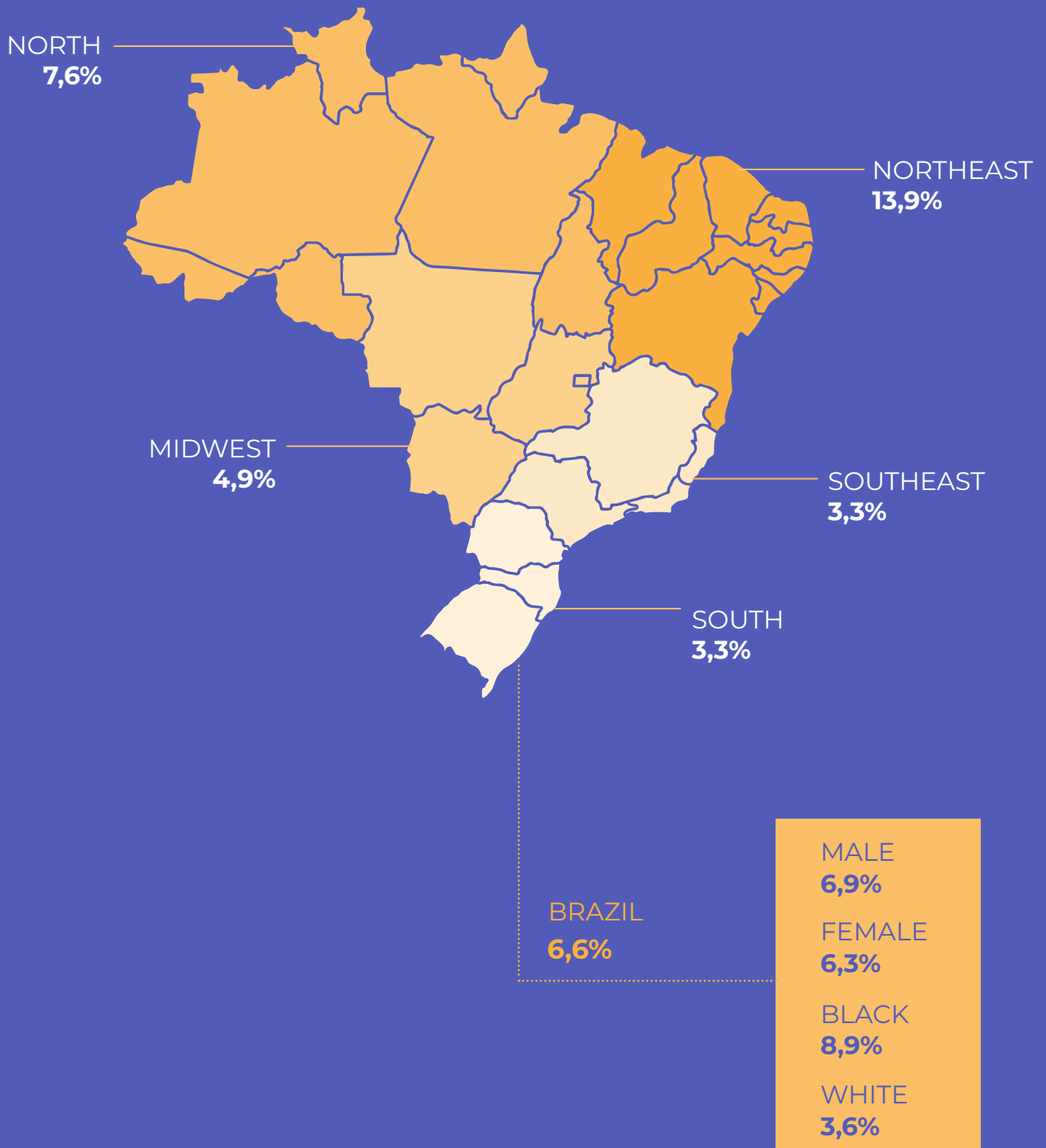
378.9%

Between 2009 and 2019 the number of subscriptions for Undergraduate Programs online increased by 378.9%;

¹ Who neither studies nor works.

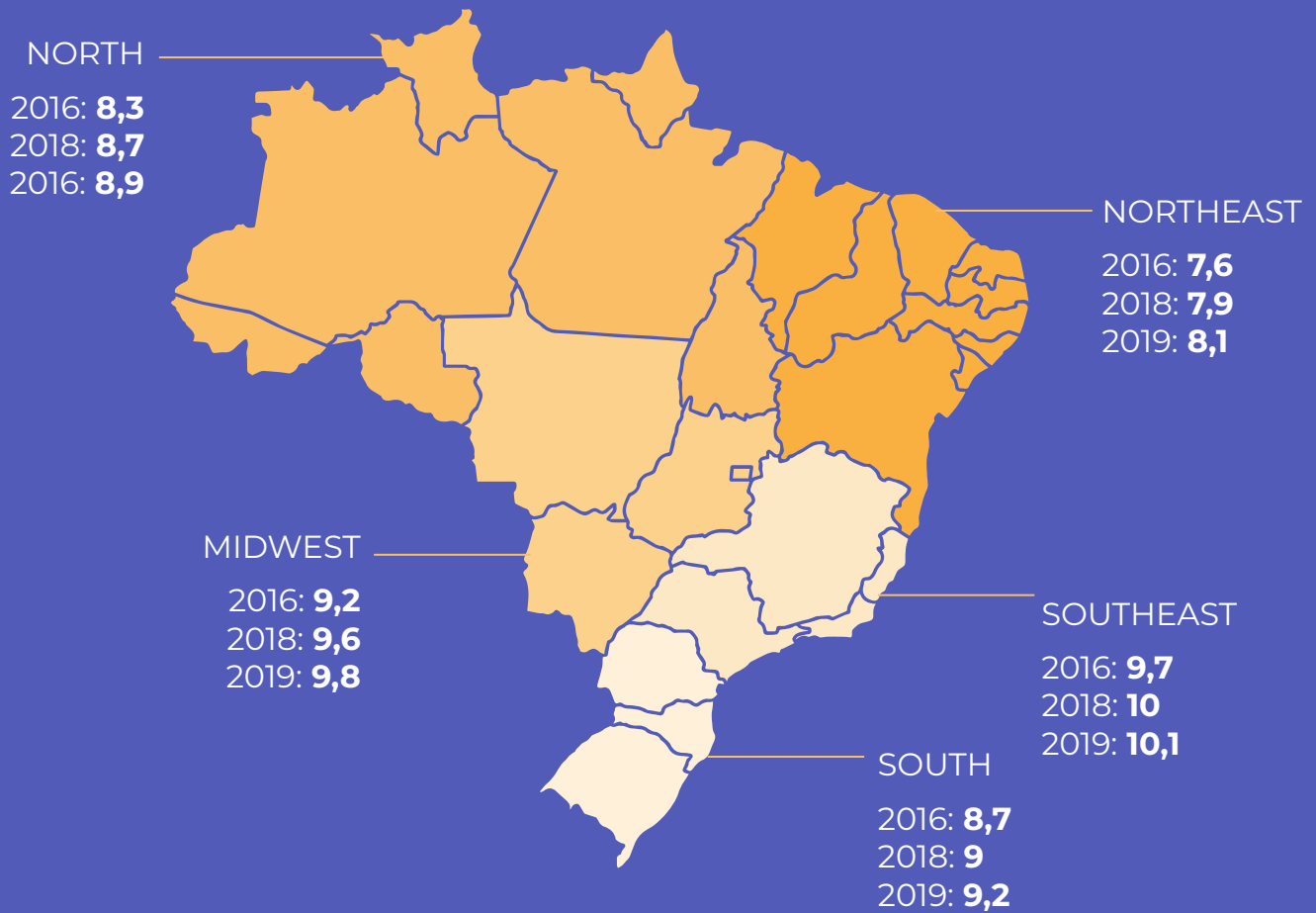
Illiteracy rate

Among people aged 15 and over (2019)



Education context in Brazil

Average number of years of education received by people ages 25 years and above



RACE

WHITE

2016: **10**
2018: **10.3**
2019: **10.4**

BLACK

2016: **8**
2018: **8.4**
2019: **8.6**

BRAZIL
6,6%

GENDER

MALE

2016: **8.7**
2018: **9**
2019: **9.2**

FEMALE

2016: **9.1**
2018: **9.5**
2019: **9.6**

7 THE CHALLENGES OF INTELLECTUAL PROPERTY IN **ONLINE** LEARNING

Droit d'auteur in Brazil

In Brazil, there is an intellectual property regime different from that of the United States, where artistic works are protected by “copyright”. The Brazilian legal regime, in the matter of intellectual protection, is more like the French regulation. That is why, in this article, we will use the term “droit d’auteur” instead of “copyright”. Droit d’auteur is regulated by Law 9.610/98. In general, the law sets out what are the requirements for a work to become protected, which uses of the works are allowed, which are the rights of the author and titleholder, which are the sanctions in case of violation, among others.

When obtaining droit d’auteur protection, **the author will have two types of guaranteed rights:**

Moral rights:

the author will have the right, for example, to always be credited for his/her work, to ensure its integrity, to make changes, or even to prevent the circulation of the work. It is worth mentioning that, in Brazil, these rights are exclusive to the author and perpetual, so that they cannot be assigned or licensed to another holder;

Patrimonial rights:

are the rights that allow the author to benefit economically from his/her work. Unlike moral rights, property rights can be assigned or licensed to third parties.

In the law, there are two important actors: the author and the titleholder. The author is the one who creates the work

and will have moral and patrimonial rights over it. The author is the one who will be able to assign or license its patrimonial rights to third parties, through contracts. The third parties that become holders of patrimonial rights, then become owners of the work. Note that holders do not have moral rights, which are non-transferable and only belongs to the author.

As mentioned, the transfer of property rights, whether for free or for a fee, can occur in two ways: **through license or assignment, however, both must be provided in writing:**

License:

can be considered an authorization for use, in which there is no exclusivity. In this case, the author can license his work to as many companies as he wants. In addition, the license will have a fixed term;

Assignment:

the author transfers, usually exclusively, his/her patrimonial rights to third parties. When a transfer is made, it is important that the contract state what is being transferred and under what conditions (period and amount, for example).

For a work to obtain protection, no registration is necessary, it is enough that it contemplates two requirements: **materiality and originality.**

Materiality

determines the need for the work to be externalized, since mere ideas or mental projects are not protected. Therefore, for a novel to gain protection, it must be fixed on some medium, be it a physical book or a digital file - how creation is externalized is irrelevant;

Originality:

the work must have characteristic features that allow it to be distinguished from the others, albeit similar.

Another aspect that deserves attention, is the term of protection of the works, which is the temporal limitation of the patrimonial rights of the author or the holders. After a certain period, the works enter the public domain and can be used by anyone, without the need to request authorization or financially compensate holders of patrimonial rights. However, it is important to note that even though the work is in the public domain, some moral rights are still preserved, such as the claim of authorship and the guarantee of the work's integrity.

The terms for the protection of copyright rights are shown in the table below:

Temporal limitation of authors rights in Brazil

| Wich works? | How much protection time? | Legal Basis |
|---|---|-------------|
| Works in general, including posthumous | 70 years from the January 1st following the death of the author | Art.41 |
| Works in indivisible co-authorship | 70 years from the January 1st following the death of the last surviving co-author | Art.42 |
| Anonymous or pseudonimas works | 70 years from the January 1st following the first publication | Art.43 |
| Photographic and audiovisual works | 70 years from the January 1st following the disclosure | Art.44 |
| Works whose authors have passed away without leaving successors | The death extinguishes the copyright of the author. | Art.45, I |
| Related rights over phonograms | 70 years from the January 1st following the fixation. | Art.96 |
| Related rights over the issues of radio-use companies | 70 years from the January 1st following the transmission. | Art.96 |
| Related rights of interpreting or performing artists | 70 years from the January 1st following the execution and public representation | Art.96 |

Resource: Valente; Freitas, 2017

Online learning and droit d'auteur in practice

When hired to offer online courses, the teacher will create intellectual works that can be subject to droit d'auteur protection. Thus, both the content of the lectures, syllabus and even applied tests, can be owned by the teacher.

It is worth pointing out that droit d'auteur offers temporary protection for the expression of an idea, and not for the idea itself. Therefore, if a teacher offers a geography course, he/she will not have any protection over the contents of the geography subject, but over the way he/she expresses the content.

Thus, when hiring a teacher, the company or startup must be careful to include in the contract forecasts for which the teacher assigns or licenses the patrimonial rights of the content taught. Still, even if the contract is signed, the company/startup must still credit the teacher for the content, given the existence of the moral right.

In addition, in the educational context, the law brings situations in which the authorization of the author/titleholder is not necessary for the use of a certain work:

- Theatrical reproduction or musical performance for didactic purposes is permitted in educational establishments, as long as there is no intention of profit;
- Students' class notes do not represent a violation of the teacher's rights, however, they can only be published with the teacher's authorization;

- Reproduction of literary, artistic, or scientific works for the exclusive use of the visually impaired is permitted, if they are not for commercial purposes.

It should be noted that in all cases of reproduction there must be an indication of authorship (moral right).

In practical terms, when the didactic material is authored by the teacher, the teacher has the *droit d'auteur* on the work, and it is up to him/her to deliberate on the circulation or economic exploitation of the material produced. However, as seen, there are cases in which educational institutions, companies, or startups, through contractual provisions, hold the patrimonial right of the works produced by their teachers. For that, a contract with such forecasts must be signed.

As for the classes offered by the teacher, in addition to the authorial provision, it is important that the teacher allows his/her image and voice to be broadcasted, shared, recorded, and hosted on different platforms. For this, it is also necessary that the teacher, through an image and voice authorization agreement, allow the company/startup to make use of their rights. This contract must provide for each use that will be given to the content, including in which countries the company/startup intends to circulate it. In cases where students have their image and voice displayed in class, it is also important that they sign authorization terms.

02

BRAZIL AN OVERVIEW:

The Federative Republic of Brazil is formed by states, municipalities and by the Federal District. The federate states are entitled to adopt their own Constitutions and laws according to the autonomy established by the Federal Constitution. Different from other federations, Brazilian municipalities also have restricted autonomy, with their own executive and legislative powers.

The Union (defined by the Constitution) is divided into the Executive, the Legislative and the Judiciary branches, which are independent powers. The head of the Executive is the President of the Republic, which is both the Chief of State and the Head of Government, being directly elected by the citizens. The Legislative is formed by the

02

National Congress consisting of two houses: The House of Representatives and the Senate, also directly elected by the citizens. The Judiciary involves the Federal and State courts, with two higher Courts: The Federal Supreme Court (for constitutional matters) and the Superior Court of Justice (for non-constitutional matters). There are also other specialized Courts which handle electoral, labor, and military cases.

Since Brazil follows Civil Law, all regulations must necessarily abide by the Constitution and must follow a hierarchal organization. The Constitution addresses several different topics such as people's rights and guarantees, principles for public administration, a framework for penal, labor, tax, and others. Other specific regulations are established by the judicial system of the union, states, and municipalities. The Constitution defines their legislation topics and limits.

CORPORATE LAW

Corporate Law in Brazil is generally regulated by the [Law No. 10,406/2002](#) of January 10th, 2002 (“Brazilian Civil Code”) and by [Federal Law No. 6,404](#) of December 15th, 1976. The regulation to be applied will depend on the type of company. Therefore, we will present the commonly used company types and their important legal aspects.

_company types

There are three main types of companies that are used in most business operations in Brazil: Empresa Individual de Responsabilidade Limitada (Limited Liability Sole Proprietorship) (“EIRELI”), Sociedade Anônima (Joint-Stock Company) (“S.A.”) and Sociedade Limitada (Limited Liability Company) (“Limitada”). Depending on the company’s characteristics, a different company type will be more suitable for its operation. The choice between each type should consider variables such as its corporate structure (e.g., number of partners and distribution of corporate power), its desire to access capital markets, its tax structure, among others. The following sections describe the main features and characteristics of EIRELI, Limitada and S.A. companies:

_sociedade Limitada (limited liability company)

- The Limitadas are governed by the Brazilian Civil Code.
- They are constituted by a Contrato Social (“By-laws”), by one or more quota holders.
- Quota holders can be Brazilian or foreign individuals or legal entities).
- The Limitada’s capital stock is divided into “quotas” (which are portions of the capital stock, similar to a share of a corporation).
- All quotas of a Limitada grant their owners a right to vote at the general quota holders meetings. Most decisions require the approval of quota holders representing at least 75% of the capital stock.
- The responsibility of each quota holder is limited to the value of their quotas, but the quota holders are all jointly liable for totality of the capital stock.

- The management of a Limitada is conducted by one or more officers residing in Brazil who can be quota holders or not. They must be appointed in the By-laws or in a quota holders' meeting, for a definite or indefinite term.
- A Limitada is a contract in its essence and therefore is primarily regulated by the terms and conditions of the By-laws. The Brazilian Civil Code provides the framework of the By-laws, but within those boundaries the quota holders are free to choose the rules that shall apply to their company.
- The By-laws may authorize a Limitada to distribute profits to its quota holders in a different proportion from their equity interest.
- The quota holders of a Limitada may execute a private Quota holders' Agreement to regulate matters such as profit distribution, assignment of quotas, non-competition obligations etc.
- In 2020, after the beginning of the COVID-19 pandemic, the Brazilian Civil Code was amended to allow quota holders meetings to take place entirely online.

_empresa individual de responsabilidade Limitada (EIRELI)

- EIRELI or Empresa Individual de Responsabilidade Limitada ("Limited Liability Sole Proprietorship) is a company type governed by the Brazilian Civil Code, and subject to most of the rules applicable to Limitadas.
- It is constituted by a single person (private individual or legal entity) who owns the total capital of the company, which shall: (i) be fully paid-in at the time of its constitution; and (ii) be at least the amount of 100 times the highest minimum wage in Brazil.

- An individual can only participate in 1 EIRELI (though this restriction is not applicable to legal entities).
- Initially, the EIRELI was introduced as an alternative to Limitadas, since this company can be constituted by one single member (at the time, Limitadas had to have at least two quota holders). However, in 2019 the Brazilian Civil Code was amended, allowing the Limitadas to be constituted by a sole member. Therefore, the number of EIRELIs shall decrease in the future, since the formation of Limitadas with one quota holder currently represents an easier alternative in respect to single-member structures.

_sociedade anônima (Joint-Stock Companies)

- Sociedades Anônimas or simply S.A. are governed by Federal Law nº 6,404 of December 15th, 1976.
- They are constituted by the Articles of Incorporation.
- 2 or more shareholders (Brazilian or foreign individuals or legal entities) are necessary for incorporating an S.A. The only exception to this rule is the wholly owned subsidiary (“subsidiária integral”), which is an S.A. with a sole Brazilian shareholder company. The constitution documents of a wholly owned subsidiary must be registered by public deed. Alternatively, an existing S.A. can be converted into a wholly owned subsidiary through the acquisition of all its shares by a Brazilian company.
- At least 10% of the capital stock must be paid-in at the time of the incorporation of an S.A.
- The capital stock is divided into shares. There are three different types of shares, however the most commonly issued are: (i) common shares, which provide standard financial and voting rights; and (ii) preferred shares, which provide their owners political and economic privileges within the company, such as priority in profit distribution and capital stock repayment. Also, preferred shares may

have restricted voting rights or even no voting rights at all.

→ Preferred shares – and, exclusively in privately held S.A., common shares – can be divided into different classes, each providing different benefits and restrictions.

→ Each shareholder must pay-in the total price of their shares (and their liability is limited to that amount). However, they are not liable for the payment of all the capital stock (unlike the members of Limitadas).

→ Usually, decisions must be made by shareholders representing more than half of the shares with voting rights present at the shareholders' meeting. However, the articles of incorporation and/or a shareholders' agreement may require supermajority for certain decisions.

→ An S.A. can only distribute profits to its shareholders in the proportion to their equity capital.

→ The management of an S.A. is performed by at least two officers residing in Brazil. They must be appointed in a shareholders' meeting for a maximum of a 3-year term of office.

→ Shareholders of an S.A. may also decide to institute a Board of Directors (“Conselho de Administração”) with powers to vote and decide on several corporate matters (in some cases, such as publicly held S.A., Board of Directors is mandatory).

→ The articles of incorporation must provide for an Audit Committee (“Conselho Fiscal”), which will supervise the administration of the company (namely the actions taken by its officers and directors). The Audit Committee may operate permanently or only during specific fiscal years (at the shareholders' request).

- An S.A. needs to publish the minutes of every general shareholders meeting, as well as its annual financial statements. Exceptionally, privately held S.A.s (i) with less than 20 shareholders and (ii) up to BRL 10 million in total equity do not need to publish their financial statements.
- S.A. shareholders may hold a Shareholders' Agreement to regulate matters such as voting rights, transfer of shares, non-competition obligations etc.
- An S.A. must keep and update corporate books to register information such as share ownership, share transfers, minutes of shareholders, officers and board meetings.
- In 2020, after the beginning of the COVID-19 pandemic, the S.A. law was amended to allow shareholders meetings to take place entirely online.

LABOR LAW

Employment in Brazil is regulated by different regulations, but the most important is the Labor Code (also known as “CLT”), which has recently been amended by Federal [Law nº 13,467](#) of July 13th, 2017, commonly known as the “Labor Reform”.

_general comments

- Labor rights are considered a public interest in Brazil. As a rule, an employee cannot waive such rights. Although the Labor Reform provided more flexibility to this rule, an agreement enclosing such topic can be considered null and void, as it positions the employee in disadvantage.
- When terminating an employment relationship, the employee can file a claim demanding his/her labor rights from the employment relationship up to two years after the termination. In any case, labor rights can only be claimed for a five-year period prior to the respective claim.
- Whenever a company undertakes the business of another company, the employment contracts (and the same labor rights) will continue valid and in force. As a rule, the company undertaking the business will assume the previous labor liabilities (if applicable).
- The corporate veil can be lifted in some cases of fraud specially when it performed in order to defraud labor related debts. This only occurs by Court order; however, it still is a very sensitive topic. Investors usually take this into consideration before doing any kind of equity-based investment.
- In addition to their salary, employees must be paid an extra 13th salary once a year, usually in December.
- Employers must deposit 8% of employee's salaries into a separate bank account, as a compulsory pension saving, administered by the Government, referred to as FGTS or Fundo de Garantia do Tempo de Serviço in Portuguese. An employee can only withdraw the amount in cases provided by law or if dismissed without cause.

_hiring employees in Brazil

- Records of a person's work status and past work experiences must be registered in a personal document, the Social Security Card (Carteira de Trabalho and Previdência Social, or CTPS).
- As a rule, employment contracts must be executed for an undetermined term. Only in some specific cases provided by law, companies can hire for a determined term.
- Companies can also hire temporary workers through licensed agencies which provide temporary workforce. This type of contract can be executed to temporarily replace a regular employee (e.g. maternity leave) or to fulfill complementary service demand, limited to 180 days, either consecutive or not, renewable for 90 days and under the same conditions.

_working hours

- The work time limit is 44 hours per week, being 8 hours per day and 2 possible overtime hours, as applicable.
- Overtime must be increased at least by 50% over the usual hourly pay.
- Companies can implement a "bank of hours" which is a programme to compensate overtime hours against days-off and avoid the payment of overtime hours, as long as they follow some specific rules.
- Night shifts have to be increased by at least 20% over daytime hour.

_working from home

Labor law also allows some employees to work remotely, outside the company.

It is the company's duty to supply the work equipment and ensure the safety of the labor environment from an ergonomic point of view.

The remote work authorizes the company to evaluate its employees by their productivity rather than the time of their availability.

_main labor rights

→ Mandatory labor rights in Brazil include (but are not limited to):

- 30-day remunerated vacation period every 12 months of service, which may be granted in up to three periods, as long as one of the periods is of, at least, 14 days and none of them is lower than 5 days.
- vacation bonus equivalent to 1/3 of their base salary to be paid whenever the employees take vacation
- Christmas bonus of one monthly salary to be paid in December. If an employee worked less than a year, the “thirteenth salary” should be proportional to the months worked.
- Prior notice of at least 30 days for the first year of employment plus 3 days per working year. The notice period is considered a working period for all legal purposes, even if the employer chooses to make the payment in lieu of the notice period.
- Government Severance Indemnity Fund ("FGTS"): Under the FGTS system, the employer must deposit every month 8% of the previously worked month.

FGTS payments are made to a blocked account on behalf of the employee. The employee will be allowed to withdraw such amount in certain specific situations provided by law, including in case of termination without cause. If an undetermined term employment agreement is terminated without cause, the employer must also pay a fine equal to 40% of the deposits made to the benefit of the employee under the FGTS.

_termination of employment relation

- Programs of voluntary resignation can be implemented.
- Severance pay needs to be made within 10 days of the contract termination, otherwise a fine will be applied in the amount of the employee's salary.
- Pregnant employees are protected from work termination during pregnancy and 5 months after the child's delivery.
- Employees who suffered labor accident are safeguarded for a 12-month period as of the time of discharge by the social security.
- Employer is required to notify employee of the termination of his employment contract 30 days in advance, known as prior notice, otherwise the period will have to be indemnified.

_non-competition

- There is no specific legal provision governing non-competition arrangements in Brazil non-competition agreements are valid after termination of employment provided that (i) there is a limit on time and geographic area and (ii) the employee receives compensation suitable to the restriction imposed by such non-competition duty.

- The amount of this compensation usually ranges from 50% to 100% of the employees' salaries for the period in which he/she would be prevented from working in certain activity/places.
- The lower the indemnification and the broader the geographic area, the higher the risk of the non-compete arrangement being considered unenforceable by Brazilian courts.
- During the employment contract, the employee is obliged not to compete with the employer under the penalty of dismissal for cause

_social security

- The social security system is financed with monthly employee contributions (11% of the employee's salary, limited to R\$621.00) which is withheld by the employer, plus monthly employer contributions (up to 28%).

_union

- In Brazil there are unions representing employees and unions representing employers
- As a rule, union representation is determined based on the core business of the employer and the place where the employees work (i.e. employers and employees may not choose their unions). The parties cannot choose the union that will represent them
- CBAs are entered into between (i) employer(s) and employees' unions (known as Company's CBA) or (ii) employees' union and employers' union (known as Collective Convention)

- All companies and relevant employees shall observe the Collective Convention, even if they are not affiliated to the Union (including the mandatory salary increase).

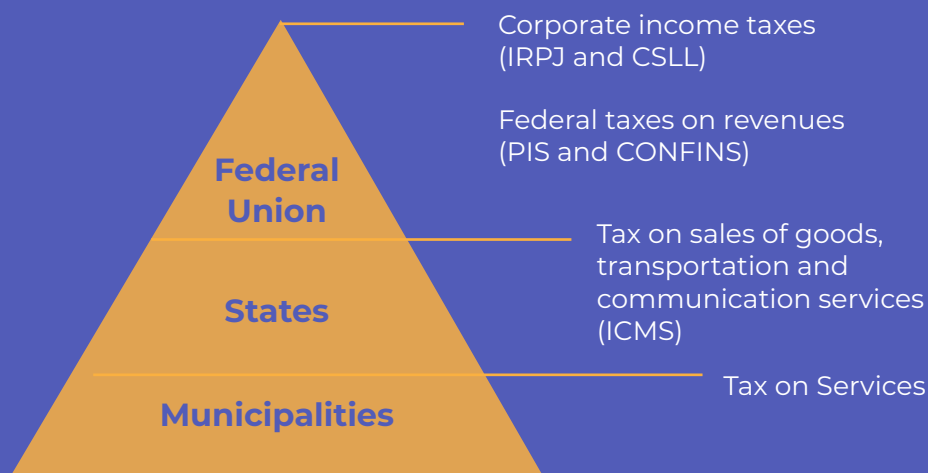
TAX LAW

The taxes in Brazil are levied upon by the three levels of entities of the federation: Federal Union, States and Municipalities. The Federal Constitution and the Brazilian Tax Code (Law n. 5,172 of 1966) provide the general rules for tax collection, and each entity is entitled to specifically regulate the taxes within its jurisdiction, observing the general rules.

This multiplicity of entities editing tax laws makes the Brazilian tax system one of the most complex in the world, which is why several tax reform proposals are currently being analyzed by the National Congress.

Due to the complexity of the Brazilian tax system, this material is not intended to exhaust all matters related to tax payment in Brazil, but to be a practical overview of relevant matters to the advertising and technology industry and serve as a guidebook for investors interested in the Brazilian EdTech market.

Although existing other taxes which have not been mentioned, we will summarize in this material the main aspects of the taxes below, which are relevant to the online education market in Brazil:



corporate income taxes (IRPJ and CSLL)

There are two corporate income taxes in Brazil: Corporate Income Tax (IRPJ) and Social Contribution on Net Income (CSLL), both levied upon the same tax base and charged by the same tax authority (Brazilian IRS "RFB"). Usually, the IRPJ and the CSLL accumulate together approximately a rate of 34%, however the calculation may change according to the company's tax regime.

As a rule, legal entities can adopt two different taxation systems for calculating federal taxes, that can be changed every year: the Presumptive Profit Method or the Actual Profit Method.

Presumptive Profit Method (Lucro Presumido)

If the company opts for the Presumptive Profit Method, the tax base of the IRPJ and of the CSLL will be determined by a fixed percentage, which is generally 32% for service providers and 8% for activities like retail, wholesale, manufacturing and sale of real estate, applied on the total gross revenue (without possibility of deduction of any costs or expenses).

Actual Profit Method (Lucro Real)

This method is mandatory for companies with revenues exceeding BRL 78MM/year. If the company opts (or is required due to its annual revenue) for the Actual Profit Method, the calculation basis for the IRPJ and the CSLL will be determined based on the regular company's accounting profit, with certain adjustments provided for in Brazilian tax laws.

IMPORTANT

If a company has more deductible expenses, it will pay less IRPJ and CSLL taxes, under the Actual Profit Method. For this reason, when evaluating which method to choose, the company should verify whether it has deductible costs/expenses for IRPJ/CSLL purposes, or if it is preferable to apply the fixed percentage on the revenues as the basis for calculating IRPJ/CSLL (according to the Presumptive Profit Method rule).

Federal taxes on revenues (PIS and COFINS)

PIS and COFINS are federal social contributions levied upon gross revenue ("PIS/COFINS"). These taxes are estimated, monthly, on the company's total gross revenue. The calculation method and the PIS/COFINS rates may

vary according to the applicable tax regime. There are two possible tax regimes for PIS/COFINS: non-cumulative and cumulative.

As a rule, the cumulative PIS/COFINS regime, of a 3.65% rate, is applicable to companies taxed based on the Presumptive Profit Method. On the other hand, the non-cumulative PIS/COFINS regime, which a 9.25% rate, must be applied by companies taxed by the Actual Profit Method. The difference between these regimes (in addition to the rate) is that, while in the non-cumulative regime it is possible to discount certain costs/expenses stated by the law from the payable PIS/COFINS taxes, in the cumulative regime it is not allowed.

Despite the general rule, there are some revenues which are required, by the Brazilian law, to be taxed according to the cumulative PIS/COFINS regime, even if the company adopts the Actual Profit Method, such as the revenue deriving from national software licensing, IT services, telecommunication services, education services, the sale of newspapers, magazines or other periodicals, among other activities.

It is also important to mention that revenues resulting from the export of goods or services are not taxable by PIS and COFINS.

_tax on sales of goods, transportation and communication services (ICMS)

ICMS is a non-cumulative state tax which is levied upon the sale of goods and upon the provision of transportation or communication services. It has a complex calculation and collection system. Their rates vary according to several factors (approximately 4% to 37%), such as the nature, origin, and destination of the transaction. In addition, the

ICMS tax burden also varies due to tax benefits granted by states to specific sectors of the economy or companies.

Besides other controversies related to the ICMS, the concept of "communication service" generates discussions, since tax authorities usually extend this concept to charge the ICMS on activities that do not necessarily trigger such tax.

A crucial rule of the Brazilian tax system is that the same activity cannot be taxed by ICMS and ISS. In this scenario, several activities are in the middle of a "fiscal war" between states (ICMS) and municipalities (ISS), since they can be classified as selling merchandise, communication services or other services.

In the past years, some of the activities in this field of uncertainties have already been expressly removed from the concept of "communication service" and, consequently, from the levy of ICMS, either by the Judiciary, either by the legislation itself.

Faced with this problem, several tax reform proposals aim to unify the ICMS and ISS, since technological advances and modernization of commercial transactions do not always allow to clearly classify an activity as a "selling merchandise", a "communication service" or other services.

_municipal tax on services (ISS)

ISS rates may vary from 2% to 5%, depending on the city where the Company will develop its activities and the nature of the service provided.

In cases where the service is provided directly by foreign companies, the responsibility for issuing Nota Fiscal de Serviço (in the case of a legal entity) and collecting the ISS for the municipality is transferred to the service contractor in Brazil, as the service importer.

In cases where Brazilian companies provide services abroad, the transaction will be exempt from ISS only if the "result" of the service occurs abroad. Currently, is controversial the scope of the term "result" in relation to service exports and ISS exemption.

DATA PROTECTION

The Brazilian General Data Protection Law nº 13.709 of August 14th, 2018, popularly known in Brazil as Lei Geral de Proteção de Dados (LGPD), is in effect since September 18th, 2020, and the sanctions of the law will be enforceable in August 2021. In this section we will present relevant information about this new regulation that profoundly impacts on how companies must adjust their practices not to be sanctioned.

/ LGPD: the Brazilian general data protection law

- The LGPD was in great part inspired on the General Data Protection Regulation (GDPR) of the European Union. The objective is to regulate the processing of personal data both online and offline, in public and private sectors ensuring higher legal protection.
- Brazil already has more than 40 regulations at the federal level that directly and indirectly deal with the protection of privacy and personal data in a sector-based system. The LGPD will set forth general principles and rules that will work as a guide of interpretation for those other regulations.
- The LGPD focuses on empowering data subjects and requires that a processing activity must have one of the legal basis listed in the law, such as consent or legitimate interest of the data controller. This law also creates obligations and limits that should be applied to entities that process personal data.
- The LGPD applies to any foreign company that (i) process personal data in Brazil (including collection of data), or (ii) that offers services to the Brazilian market, or (ii) process personal data of data subjects located in Brazil (regardless of the nationality or residence) will be subject to the LGPD, even if it not established in the country.
- The LGPD differentiates between “personal data” and “sensitive personal data”. The latter is defined as data on racial or ethnic origin, religious belief, political opinion, health, or sexual life data. Such “sensitive personal data” also

could allow unequivocally and persistent identification of the data subject (for example: genetic data or biometric). Since sensitive personal data may pose higher risks to the data subjects, the LGPD establishes stringent requirements for processing it. For example, it prioritizes the use of consent as the legal basis for processing and imposes specific conditions for sharing health data.

→ The LGPD will be enforced by the National Data Protection Authority (Autoridade Nacional de Proteção de Dados – ANPD) which can request documents (e.g. data protection impact assessments), receive complains from data subjects, do investigations, receive notifications on data breaches, and impose administrative sanctions (e.g. fines, restrictions on data processing). A data subject which is also legally categorized as a consumer, in accordance with the Brazilian Consumer Protection Code, can also request its rights to consumer protection authorities, like state prosecutors. The LGPD also sets forth rules to allow the international transfer of personal data. The main rule refers to the level of regulatory adequacy of a third country, where the ANPD verifies if a country's data protection regulations are in accordance to the LGPD. If the data needs to be transferred to a country that has not been verified yet by ANPD or does not have adequate regulations, other legal instruments are necessary to allow the transfer, such as the use of standard clauses and binding corporate rules.

→ Administrative sanctions may be applied in cases of violation of the LGPD. Possible sanctions are notices and fines, that may vary from 2% of the company's, group's or conglomerate's turnover in Brazil of the last fiscal year, limited in total to R\$ 50,000,000.00 (fifty million reais) per infraction. The infractions are applicable only to the Brazilian part of an economic group and to the turnover acquired in Brazil, different from what happens in the European regulation.

/ Children's personal data

- The LGPD requires the use of consent as the legal basis for processing personal data of children. The consent must be given, at least, by one of the parents or the legal representative of the child.
- The definition of “children” is not established in LGPD, but in the Child and Adolescent Statute (Law nº 8.069/1990). It defines “children” as any person less than twelve years old, and an adolescent is someone between twelve and eighteen years old. The age of majority in Brazil is eighteen years old.
- For consent to be valid it must be: (i) freely given – meaning that the data subject must have the possibility of denying it and the consequence of denial should not affect other rights and freedoms; (ii) informed – data subject should understand the purpose for which consent is required; (iii) unambiguous – data subject should take an affirmative action to demonstrate his or her consent. In this scenario, broad, implicit, or general consents will not be considered valid under LGPD. In the case of processing activities of children's personal data, LGPD further requires that consent must be “specific” and “highlighted”, but the law does not define these concepts.
- Like the GDPR, LGPD states that controllers must do “reasonable efforts” to verify that consent was given by the parents or a legal representative, considering the available technologies. However, LGPD does not detail, neither exemplify, what constitutes a “reasonable effort”.
- The obligation to provide adequate information on data processing activities must consider the physical-motor, perceptive, sensorial, intellectual, and mental characteristics of the children. In other words, the processing activities must be explained both to children and adults.

- Controllers shall not condition access to games, internet applications or other activities to the provision of personal information of children beyond what is strictly necessary for the processing activities. The “strictly necessary” requirement is not further detailed by LGPD.

FOREIGN INVESTMENTS

foreign equity investments

Foreign equity investments in Brazil is governed by the [Federal Law n° 4,131](#) of September 3rd, 1962 (“Foreign Capital Law”) and by the [Federal Law n° 4,390](#) of August 29th, 1964. According to the Foreign Capital Law, foreign capital is considered to be: “any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, intended for the production of goods or services, as well as any funds brought into the country to be used in economic activities, provided that they belong to individuals or companies resident or headquartered abroad”.

_registration of foreign capital

- Registration of foreign equity investments must be made through the RDE-IED (Portuguese abbreviation for Registro Declaratório Eletrônico – Investimento Externo Direto) System. It is part of the Brazilian Central Bank Information System (Sistema de Informações do Banco Central – SISBACEN).
- Foreign equity investments can be defined as ownership of equity interest in a Brazilian company by a nonresident investor. This nonresident investor can be either an individual or a legal entity and the equity interest can be shares or quotas representing the capital stock of the Brazilian company.
- In order to acquire equity from a Brazilian Company, the foreign investor must first obtain a taxpayer ID. For this purpose, if the foreign investor is an individual, the person must obtain a CPF (Cadastro de Pessoas Físicas) from the Brazilian Federal Revenue Office (Receita Federal do Brasil). If the foreign investor is a legal entity, however, the entity must enroll in SISBACEN, and obtain a CNPJ (Cadastro Nacional de Pessoa Jurídica). Following such registers, as applicable, the investee shall update the RDE- IED in order to record the foreign investment under a permanent number for that investor-investee case, and subsequent changes/additions are made under the same case number.
- Since 2000, the conclusion and register of foreign investments are not subject to preliminary review or verification by the Central Bank of Brazil. The RDE-IED compliance is thus declaratory, based on a statement of the investee, which means that the Brazilian investee and/or the representative of the foreign investor are responsible, themselves, for any information declared in the foreign investment registration.
- All foreign investments must be registered with the Central Bank of Brazil. This registration is essential for remittances of profits, capital repatriation and profit reinvestment.

_currency investments

- No preliminary authorization is required for foreign investments in currency. Funds allocated for subscribing capital stock or to acquire equity of an existing Brazilian company can be remitted to Brazil through any bank establishment authorized to deal in foreign exchange. However, for closing the exchange transaction an RDE-IED, a registration number for the foreign investor and the Brazilian investee is required.
- The registration of the investment must be made through the RDE-IED System by the Brazilian investee.

_basic documentation for the foreign investor

Although there may be practical differences between a foreign investment in a Limitada and in a Sociedade Anônima, the basic documentation the foreign investor may be required to present in Brazil is the following:

- Basic corporate documents (Certificate of Incorporation) evidencing the existence of the foreign investor.
- Corporate documents (certificates of incumbency, minutes of the meeting of the Board, resolutions etc.) demonstrating the powers of the foreign investor's authorized representative.
- A Power of Attorney duly signed by the foreign investor's authorized representative(s) granting a Brazilian resident individual all the powers required by the Brazilian law to act on behalf of the foreign investor before the Brazilian authorities.
- If you are a foreign individual, the documents required are: **power of attorney for a person residing in Brazil and an identification document.**

Important: Usually, all foreign documents to be accepted by Brazilian authorities must be notarized and apostilled in the country where the foreign investor is domiciled and, after that, translated into Portuguese by a sworn translator and registered before a Brazilian notary.

foreign debt investments

“mútuos conversível”

→ Foreign investors may also invest in Brazilian companies by celebrating convertible debt agreements with the investee. In Brazil, the most used debt legal agreement is called Mútuo Conversível and it is similar to a Note Purchase Agreement, provided however that no Convertible Promissory Note is issued to the investor.

→ As expected, a debt agreement does not infer an immediate equity acquisition. However, in this investment structure, the foreign investor lends money to the investee expecting that upon a maturity date such debt will be paid by the delivery of Company equity to the investor;

→ Provided that a debt agreement does not imply in a foreign investor owning capital stock in Brazil, its registration procedure does not have as many bureaucracies as registering an equity investment.

-> Therefore, to invest in Brazilian companies under a debt agreement such as a Mútuo Conversível, foreign investors do not need to worry about registrations, granting power of attorneys or notarizing documents. In this debt scenario only the investee will need to formalize such relation with the investor with another Brazilian Central Bank System, the RDE-ROF (Portuguese abbreviation for Registro Declaratório Eletrônico - Registro de Operações Financeiras).

_investing in a holding company

- It's very common that foreign investors don't feel comfortable to invest directly in Brazil, either through equity or debt instruments, especially because Portuguese is not a very simple language to be understood by a foreigner and the Brazilian legal system is complex and is very different from the American legal system, the common-law.
- When such situations occur, foreign investors require the Brazilian company to form a holding company in an English-speaking country, such as the United States, the Cayman Islands or the British Virgin Islands, that will own 99.99% of the Brazilian operating company. With this structure, the foreign investor will be able to invest using agreements in English, translations being therefore unnecessary, as well as the documents in another language and the aforementioned procedures.
- By requiring the investee to form a holding company, however, the foreign investor needs to bear in mind that such procedure will be more expensive for the investee, as the investee will need to constitute the offshore company and maintain such entity in compliance with the regulations of the respective country. Therefore, it's very important to verify which will be the best investment structure for the investor and for the investee in each specific case.

