

A stylized map of Brazil is centered on a green background. The map is filled with a solid orange color and is overlaid with various geometric patterns in white and green. These patterns include concentric diamonds, zig-zags, and grids. The text is centered over the map.

# DOING BUSINESS IN BRAZIL

*Our introduction to Brazil's  
legal environment.*



# About this guide

This guide's objective is to help international clients understand key aspects involved with the incorporation of a new company in Brazil. Therefore, we have developed this brief description of the most relevant legal matters that should be taken into consideration in such operations.

We will begin by giving a short overview on the legal and political structure of the country and then present specific legal matters on Brazilian Corporate, Tax, Labor and Data Protection Law as well as brief comments regarding foreign investment. This guide intends to be a fast and introductory summary to indispensable information that must be taken into consideration when starting or investing in a company in Brazil.

For more thorough information access our articles elaborated by the Research and Development Team on:

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# Brazil: **an overview**

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

The powers of the Union (defined by the Constitution) are the Executive, the Legislative and the Judiciary, being independent from each other. 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 National Congress consisting of two houses: The Chamber of Deputies and the Federal Senate, also elected directly by the citizens. The Judiciary has both Federal and State branches which have two higher courts: the Federal Supreme Court (for constitutional matters) and the Superior Court of Justice (for matters not regarding constitutionality). There are also other specialized courts to deal with electoral, labor and military cases.

Since the Brazilian legal tradition is of Civil Law, all norms must necessarily obey the Constitution and are submitted to it in a hierarchal organization. The Constitution addresses several different topics such as citizen rights and guarantees, principles for public administration, a framework for penal, labor, tax laws and others. More specific regulations are established by the legislative powers of the union, states and municipalities. The topics and limits of what each of them can legislate about is defined by the Constitution.



# Corporate Law

Corporate Law in Brazil is mostly regulated by: Federal Law n° 10.406 of January 10th, 2002 (“Brazilian Civil Code”) and Federal Law n° 6.404 of December 15th, 1976. The regulation that should be applied will depend on the company’s type. For that reason, we will present three of the most common company types and important legal aspects regarding each of them.

## COMPANY TYPES

There are three main types of companies that are used for most business operations in Brazil: *Empresa Individual de Responsabilidade Limitada* ("EIRELI"), *Sociedade Anônima* ("S.A.") and *Sociedade Limitada* ("Limitada"). The choice between one or another should be taken into account a few variables since depending on the company's characteristics it is recommended or discouraged to adopt one or the other type. Important factors that should be evaluated are the company's income, if it wants to access capital markets, its tax structures and others.

Below, are a few facts and characteristics about EIRELI, Limitada and S.A. companies:

### EMPRESA INDIVIDUAL DE RESPONSABILIDADE LIMITADA

- / EIRELI or *Empresa Individual de Responsabilidade Limitada*, which in English means "individual company with limited liability" is known to be one of the simpler company types.
- / To institute an EIRELI one can be either a private person or a legal entity.
- / The private person that institutes an EIRELI can only be part of one company of this kind.
- / The company's name will include the term "EIRELI" at the end so to be easily identified.
- / Most of what the law determines for Limitada companies also apply to EIRELI, and both are governed by the Brazilian Civil Code.
- / The individual company with limited liability will be made up of a single person who owns the total capital, duly paid, which shall not be less than 100 (one hundred) times the highest minimum wage in force in the Country.

### SOCIEDADE LIMITADA

- / Limitadas are governed by the Brazilian Civil Code.
- / The company is organized through the *Contrato Social* ("Articles of Association" in English).
- / To constitute and operate a Limitada there should be at least two quota holders (individuals

or legal entities, Brazilian or otherwise).

/ The responsibility of each quota holder is limited to the value of their quota of the capital stock, but the quota holders are all jointly liable for the full payment of the capital stock.

/ The management of a Limitada is carried out by one or more individuals (“*Diretores*”) residing in Brazil who can be quota holders or not. They are to be appointed in the Articles of Association or in a shareholders’ meeting and usually for a mandate with a pre-defined term.

/ The capital stock is divided into “quotas” which are non-physical representations of the company’s capital stock, and all quotas of a Limitada grant their owners a right to vote at the general quota holders meetings. Most decisions require the vote of quota holders representing 50%+1 quotas. For some special decisions (liquidation, merger etc.) the law requires approval by quota holders representing 75% of the capital stock.

/ A Limitada is a contract in its essence and therefore is primarily regulated by the terms and conditions of the Articles of Association. In a Limitada the Brazilian Civil Code provides the boundaries to which the Articles of Association should be developed, but within those boundaries the quota holders are basically free to choose the rules that shall apply to their company.

/ The Articles of Association may authorize a Limitada to distribute profits to its quota holders in a proportion that is different than that of the interest of each quota holder of the company.

/ The quota holders of a Limitada commonly execute a private Quotaholders’ Agreement to regulate matters such as distribution of profits, supermajority, transfers of quotas, non-competition, etc.

## SOCIEDADE ANÔNIMA

/ *Sociedades Anônimas* or simply S.A. are governed by Federal Law n° 6.404 of December 15th, 1976.

/ They are organized through the *Estatuto Social* (or “Bylaws” in English).

/ In most cases, at least two shareholders (individuals or legal entities, Brazilian or otherwise) are necessary for the incorporation of a S.A. The exception being the “fully controlled affiliate company” that may be created with only one shareholder for organizational purposes within

a group of companies.

/ The responsibility of each shareholder is limited to the value of their share of the capital stock. Shareholders are not jointly liable for the full payment of the capital stock.

/ The management of a S.A. is carried out by at least two officers (or Diretores, as said in Portuguese) residing in Brazil, being shareholders or not. They are to be appointed in a shareholders' meeting for a mandate with a pre-defined term.

/ At the discretion of the shareholders (except for listed companies in which the existence of the Board is mandatory) a S.A. may or may not have a Board of Directors with powers to vote and decide on several matters. The Directors in such case, must be individuals and shareholders of the company.

/ The capital stock is divided into shares, and there may be common and preferred shares. Generally, decisions must be made by shareholders representing 50%+1 of the shares, but there may be shares with no voting right (which is usually, but not necessarily, the case of the preferred shares). Also, the Bylaws and/or a shareholders' agreement may require supermajority for certain decisions to be made.

/ The S.A. is required to publish its Bylaws, its financial statements prior to the annual shareholders meeting and the minutes of the shareholders meetings.

/ The shareholders of a S.A. commonly execute a Shareholders' Agreement to regulate matters such as supermajority, transfer of shares, non-competition etc.





# Labor Law

Since Labor Law is a very important subject regarding the routine of any company we have selected a few important topics that should be taken into consideration when beginning a company here. Employment in Brazil is mostly regulated under a single rule, referred to as the Consolidation of Labor Laws or *Consolidação das Leis do Trabalho* ("CLT") in Portuguese, which has recently been amended by Federal Law nº 13.467 of July 13th, 2017, commonly known as the "Labor Reform".

## GENERAL FACTS

- / Employment is guided under the Principle of Prevalence of Reality. This means that the reality of the labor relationship prevails over the formality established by a contract.
- / Companies' labor responsibilities are solidary if they belong to the same economic group.
- / Regarding business succession, usually, labor liability is passed on.
- / Lifting the corporate veil is possible in some cases of fraud specially when done to get away with owning to labor related debts. This only happens if court ordered, however, it still is a very sensitive topic. Investors usually take this into consideration before doing any kind of equity-based investment.
  - The permitted work time is 44 weekly hours, being 8 daily hours with 2 possible extra hours if needed as overtime.
  - Overtime must be paid with a minimum increase of 50% over the usual hourly pay.
- / Night shift is paid with a minimum increase of 20% over the daytime hour.
- / It is possible to establish a bank of hours using an agreement between employee and employer, provided that the compensation occurs within a maximum period of 6 months.
- / In addition to their salary, employees must be paid an extra 13th salary once a year, usually in December. Should an employee have worked less than a year, the "thirteenth pay" should be proportional to the months worked until then.
- / Employers must deposit 8% of their salary into a separate bank account, as compulsory savings, administered by the Government, referred to as FGTS or Fundo de Garantia do Tempo de Serviço in Portuguese. An employee can only withdraw this amount in cases provided by law or if dismissed without cause.
- / Outsourcing activities are allowed.

## FACTS ABOUT HIRING

- / Records of a person's work status and past work experiences must be registered in a personal document called the Work and Social Security Booklet or Carteira de Trabalho e

Previdência Social, in Portuguese.

/ There is the possibility of hiring an employee either by undetermined or predetermined periods.

/ Temporary contracts are authorized in order to grant transitory substitution of the staff and to fulfill complementary demand of services limited to 180 days, either consecutive or not, renewable for 90 days only if the same conditions remain.

/ Negotiation between employees and employers is allowed, including over variable remuneration (for example, premium - without effects on labor funds and levy on social contributions).

/ Collective bargaining prevails over the law (with the participation of the trade union).

/ Labor relations are flexible, especially towards the regulation of work on demand, home office and self-employment.

## FACTS ABOUT VACATION

/ Employees are entitled to 30-day vacation period every 12 months, which may be granted in up to three periods: two of them no less than 14 days long and the third no less than 5 days long.

/ Vacation time is paid, although the law determines that it should be 1/3 more than the usual salary.

## FACTS ABOUT TERMINATION

/ Programs of voluntary resignation can be implemented.

/ Termination payment shall be made within 10 days after the end of the contract 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 delivery.

/ Employees who suffered labor accident are guaranteed employment for a period of 12 months as from 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, such is referred to as prior notice, otherwise the period will have to be indemnified.

## **SOCIAL SECURITY**

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



# Tax Law

In this section we will present some of the main topics of Tax Law applicable to companies in Brazil. The Brazilian Tax System is very complex having several specific norms and resolutions, for that reason, we will briefly explain some of the most common corporate taxes and how they work.

As it was already said, the Brazilian Constitution provides many guidelines for the Tax Law System. The several tax regulations obey what was previously determined by the Constitution. Complementary to that, Federal Law nº 5172 of October 25th, 1966 also helps provide general rules.

## CORPORATE INCOME TAXES (IRPJ AND CSLL)

/ Companies domiciled in Brazil are subject to two Federal Corporate Income Taxes, the *Imposto de Renda de Pessoa Jurídica* (“IRPJ”) and the *Contribuição Social sobre o Lucro Líquido* (“CSLL”). All companies have the right to calculate both taxes on their taxable income. The taxable income is the net income of the company pursuant to the Generally Accepted (in Brazil) Accounting Principles (the Brazilian GAAP), with some adjustments (additions and reductions) provided for by the law. This is the so-called “real profit regime”.

/ Tax losses incurred by companies (in the “real profit regime”) may be carryforward. However, tax losses carryforward can only be used to offset taxable incomes of subsequent fiscal year up to a maximum of 30% of each year’s taxable income.

/ There is no state or local Income Tax in Brazil.

/ The IRPJ is calculated at a tax rate that ranges between 15% and 25% according to the amount of taxable income produced by the company in the respective fiscal year.

/ The CSLL is calculated at a flat rate of 9%.

/ Alternatively, both taxes may be calculated with basis on a “presumed income”, which is the product of the multiplication of the company’s revenues by certain presumed profit margins set forth in the Tax Law (different activities have different presumed profit margins). Such regime is called the “presumed profit regime” and is only applicable to companies that have expressly chosen to submit themselves to such special regime. Once a company has chosen to pay its Corporate Income Taxes under the “presumed profit regime” it cannot go back to the “real profit regime” before the end of the respective fiscal year.

/ Not all companies may choose to pay their Corporate Income Taxes under the “presumed profit regime”. For instance, companies with annual revenues higher than R\$78.000.000,00 may not benefit from such regime.

/ The presumed profit margin set forth by Brazilian law is of approximately 8% for activities like retail, wholesale, manufacturing and sale of real estate.

/ A 32% presumed profit margin is applicable to services in general and real estate leasing, as well as intermediation activities. It is important to emphasize that this regime cannot

be applied to certain activities, requiring the use of the real profit regime, especially the companies that have profits, income or capital gains from abroad.

/ In summary, companies which actual profit margin is higher than the profit margin presumed by the tax law will actually have a benefit if they choose to adopt the “presume profit regime”. Companies with a lower actual profit margin (or with losses) should choose the “real profit regime”.

## THE SOCIAL INTEGRATION PROGRAM (PIS) AND THE SOCIAL SECURITY TAX ON REVENUES (COFINS)

/ The *Programa de Integração Social* (“PIS”) and the *Contribuição para o Financiamento da Seguridade Social* (“COFINS”) are both federal taxes created to fund the Brazilian social security.

/ They are both calculated on the companies’ gross revenues on a monthly basis.

/ There are two basic regimes for the calculation of such taxes: the value-added regime and the “old” regime.

/ The value-added regime was created in 2002 and is today the standard regime, i.e., is the regime that applies to all companies, except for those that have been kept in the old regime by the law.

/ The value-added regime allows companies to deduct from their revenues the cost of certain acquired goods and hired services, provided that such goods and services are acquired from/provided by a Brazilian company and are used by the acquiring/hiring company to produce goods or the provision of services.

/ In the value-added regime, the PIS and COFINS rates are respectively 1.65% and 7.6%.

/ In the old regime, which is much simpler, companies calculate the PIS and the COFINS on the amount of their revenues at tax rates of 0.65% and 3% respectively.

/ Because in the value-added regime the allowed deductions from the revenues are not so broad as expected and the tax rates are substantially higher, to many companies (especially services companies) the old regime is preferable to the value-added one.

- / Companies that pay the Corporate Income Taxes in the “presumed profit regime” are automatically obliged to pay the PIS and the COFINS in old regime.
- / There is no assessment of PIS or COFINS on revenues from exportation of goods and services.

## MUNICIPAL TAX ON SERVICES (ISS)

- / Most services are subjected to the *Imposto Sobre Serviços* (“ISS”), a Municipal Tax that is calculated on the revenues of services companies.
- / Since the ISS is a Municipal tax its rates may vary from city to city but its minimum and maximum rates are 2% and 5%.
- / The ISS is owed to the Municipality in which the provider has the infra-structure necessary to provide the services.
- / Since taxes in Brazil can only be created by law, ISS is instituted by the legislative of each Municipality.





# 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”), was finally approved after eight long years of debates, public consultations and other discussions, and it will come into force in February 2020. In this section we will present relevant information about this new regulation that profoundly impacts on how companies must adjust practices so not to be sanctioned.

## THE BRAZILIAN GENERAL LAW FOR DATA PROTECTION (LGPD)

- / 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 legal norms at the federal level that directly and indirectly deal with the protection of privacy and personal data in a sector-based system. The LGPD is replacing and/or supplementing this sectoral regulatory framework.
- / Although the LGPD has already been enacted it will only begin to be enforced in 2020, 18 months after its publication. This time-lapse was given for companies, organizations and public institutions to adapt their activities.
- / The LGPD focuses on the concept of personal data and determines legal basis authorizing its use in some cases, such as when consent is given or based on the legitimate interest of the data controller. This law also establishes obligations and limits that should be applied to entities that process personal data.
- / Any foreign company that has at least a branch in Brazil, or that offers services to the Brazilian market and collects and process personal data of data subjects located in the country (regardless of the nationality) will be subject to the LGPD, even if it not established in the country.
- / The LGPD brings the definition of “sensitive personal data”, being information which may subject the person to discriminatory practices, such as data on racial or ethnic origin, religious belief, political opinion, health or sexual life data. Such “sensitive personal data” also allows unequivocally and persistent identification of the data subject (for example: genetic data or biometric). This kind of data should be treated in a differentiated manner, with additional security, and with different legal basis, such as the express consent of the data subject.
- / The LGPD has 10 legal basis that must be considered when processing personal data while the GDPR has 6. Some of them are legitimate interest, unambiguous consent, protection of life and health integrity, protection of credit, etc.

/ The national data protection authority created by the LGPD was vetoed by the Brazilian President due to formal legal aspects. However, he already mentioned that the authority will be created through a separate law. Until that happens there is a doubt to whom should enforce it by 2020.

/ The LGPD also establishes rules to allow the international transfer of personal data. The main rule is the adequacy level, when a third country is considered by the National Data Protection Authority to have an adequate level of protection of personal data. If the data needs to be transferred to country that is yet to be considered adequate, other legal instruments are necessary, such as standard clauses, binding corporate rules and an express and separate consent to the transfer.

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



# Foreign Investments

**Foreign investment in Brazil is governed by Federal Law n° 4.131 of September 3rd, 1962 (“Foreign Capital Law”) and n° 4.390 of August 29th, 1964.**

*According to the Foreign Capital Law, foreign capital is considered as: “any goods, machinery and equipment that enter Brazil with no initial disbursement of foreign exchange, and are intended for the production of goods and 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 investment must be made through the RDE-IED (which in Portuguese is the *Registro Declaratório Eletrônico – Investimento Externo Direto*) System. It is part of the Central Bank Information System (*Sistema de Informações do Banco Central – SISBACEN*).
- / Foreign direct investment is defined as the permanent ownership interest held in a Brazilian company by a nonresident investor, whether an individual or a legal entity, through the ownership of shares or quotas representing the capital stock of the Brazilian company.
- / The foreign investor must first enroll in SISBACEN, thus obtaining a taxpayer number ID (called *CNPJ* or *Cadastro Nacional de Pessoa Jurídica*). The RDE-IED records the foreign direct investment under a permanent number for that investor-investee case, and subsequent changes/additions are made under the same number.
- / Since 2000, the foreign investment to be performed and registered is not subject to preliminary review or verification by the Central Bank of Brazil. The RDE-IED control 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 information used for registration of the foreign investment.
- / 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 used to subscribe capital stock or to buy shares of an existing Brazilian company can be remitted to Brazil through any banking establishment authorized to deal in foreign exchange. However, for closing the exchange transaction an RDE-IED registration number for the foreign investor and the Brazilian investee is required.
- / Registration of the investment must be made through the RDE-IED System by the Brazilian company receiving the investment.

## BASIC DOCUMENTATION FOR THE FOREIGN INVESTOR

/ Although there may be practical differences between a foreign investment in a *Limitada* and in a S.A., basic documentation the foreign investor may be required to present is the following:

- Basic corporate documents (Articles of Association/Incorporation, Bylaws etc.) evidencing existence and good standing of the foreign investor.
- Corporate documents (certificates of incumbency, minutes of Board meetings, resolutions etc.) evidencing powers to represent the foreign investor.
- Power of Attorney duly signed by the legal representative(s) of the foreign investor, granting a Brazilian resident individual all powers required by Brazilian law to act on behalf of the foreign investor before Brazilian authorities.
- Usually, all foreign documents to be accepted by Brazilian authorities must be apostilled in the country where the foreign investor is domiciled and, after that, they must be translated into Portuguese by a sworn translator and registered before a Brazilian notary.



# About Baptista Luz Advogados

Founded in 2004, Baptista Luz Advogados covers most areas of Corporate Law. Among our clients we have outstanding companies and economic groups, both domestic and international, investment funds, angel investors and entrepreneurs. We also have the opportunity of performing in diverse sectors of the economy, particularly telecommunications, technology, Internet, financial institutions, advertising and cosmetics. We have extensive experience with cross-border negotiations and for that reason we are not only present in three different Brazilian cities (São Paulo, Florianópolis and Londrina) but also have a unit in Miami.

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