



**PrimeGlobal**

*An Association of  
Independent Accounting Firms*



# DOING BUSINESS IN BRAZIL





## COMPANY FORMATION IN BRAZIL

Internationals are encouraged to visit Brazil, meet with advisors and have the right conversations before establishing a Brazilian business footprint.

### MAIN FORMS OF COMPANY/BUSINESS IN BRAZIL

Brazil's legislation encourages foreign investors to enter the Brazilian market in several ways and the format chosen can either be via:

- Partnerships
- Representations
- Branches
- Corporations (the most simple way)

Nonresidential individuals or legal entities can opt for any type of legal entity recognized by the Brazilian legislation, including, but not limited to Corporations, be them *Limitadas*, *S/As* or *EIRELIs* (Sole member ownership limited liability company). The decision about which one of them will be adopted on each case depends on several considerations, such as the nature of the business and the desired capital structure.

Type	Corporation (S/A):	Limited Liability Co. (Limitada)	<u>EIRELI</u>
Ownership	Private or Public	Private	Private
Number of members	Minimum of 2	Minimum of 2	1
Official Gazette	No need to publish	No need to publish	No need to publish
Capital share	Min. 10% of must be paid	Can be paid up over a year	Must be paid up

### SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

Any company established in Brazil is subject to Federal, State and Municipal taxes.

#### Federal taxes:

- Corporate taxes (IRPJ and CSLL);
- Social Contributions on Gross Revenues (PIS and COFINS);
- Tax on Financial Transactions (IOF);
- Excise tax (IPI).

#### State tax:

- State Value added tax (ICMS)

#### Municipal tax:

- Services tax (ISS)



As a rule, the following types of income are subject to taxation in Brazil:

- Income of companies resident in Brazil (all companies incorporated in Brazil under the applicable legislation are considered Brazilian tax residents);
- Brazilian source income paid to non-Brazilian residents.

A foreign entity can be deemed a taxpayer in Brazil if either:

- Makes direct sales from abroad;
- Qualifies as a permanent establishment.

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

Brazil is a civil law country and the Brazilian legal system is based on codes and legislation enacted by the federal, state and municipal legislatures.

In order to open a company in Brazil, it is necessary to observe the following procedures:

- Articles of Association – *Contrato Social*;
- Registering with the Board of Trade – *Junta Comercial*;
- Registering for the Company Taxpayer Number – *CNPJ*;
- Registering for a Business License – *Álvara de Funcionamento*;
- Obtain the State Registry – *Inscrição Estadual*;
- Authorization for issuing Invoices – *Notas Fiscais*;
- Registration with Social Security – *INSS*.

Besides following with the procedures above upon being established, Companies in Brazil are also required by law to keep their books according to the CFC (Federal Accounting Council) and comply with all tax requirements. Listed Companies must submit their financial statements at the end of each fiscal year to the Brazilian Securities Commission (CVM) and Private Companies to the State Official Gazette.

## CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

Brazil has a unique business environment as a result of the cultural influences received from immigrants from Europe and Asia, mostly during the previous century. This rich mixture of those different cultures contributed to creating an ambience where networking is a key player on developing a business in the country.

For that reason, the foreign investor should expect a great deal of socializing, because introductions from mutual acquaintances are very important, thus a great deal of business gets done that way. There is also a considerable amount of physical contact on the part of your Brazilian business associates, like touching elbows and arms or even back slapping between men. All in all, Brazilians need to feel comfortable with their business associates first, so there is little chance of 'getting straight down to the point' in the first business meeting.

## OTHER COUNTRY SPECIFIC ISSUES RELATED TO ESTABLISHING A COMPANY

Depending on the specific nature of the business there may be other registrations and licenses to be obtained upon the establishing of a company.



## PERMANENT ESTABLISHMENT IN BRAZIL: BRANCH OR SUBSIDIARY?

### DEFINITION OF A PERMANENT ESTABLISHMENT

According to the Article 5 of the Organization for Economic Cooperation and Development (OCDE, in Portuguese), "The term 'permanent establishment' means a fixed place through which the business of an enterprise is wholly or partially carried on. To fulfill the above concept it has to contain the following:

- A place of management;
- A branch;
- An office;
- A factory;
- A workshop, and
- Amine, an oil or gas well, a quarry or any other place of extraction of natural resources."

It is import to clarify that a building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

### DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

There are several manners for a foreign investor to enter the Brazilian market into, but the most usual are via the opening of branches and subsidiaries. Between those two, it is much simpler to open a subsidiary, thus for a branch it is necessary to obtain a presidential permit via an issued decree.

#### Branches

- Require prior approval by means of a presidential decree (currently delegated to the Brazilian Ministry of Development, Industry and Foreign Trade, where the National Department of Trade Registration, known as DNRC, will evaluate the request);
- Any amendments of the Articles of Association require approval from the federal government;
- Company must develop activities within twelve months of the publication of the authorization, failing to do so will cause such authorization to automatically expire;
- Any breach of public policy or act outside its corporate purposes may give the federal government reason to cancel the authorization.
- The branch's foreign parent company may have unlimited liability for its debts.
- A branch is subject to Brazilian law and courts with regards to its business and transactions carried out in Brazil;
- The foreign company must have a permanent representative in Brazil and such person must have the power to deal with all matters, and receive legal and official documents, including judicial summonses, in the parent company's name.
- The branch must publish its financial statements in the Official Gazette and a widely circulated newspaper. The parent company must publish all financial statements required in the country of origin and its administration acts in the Official Gazette and a widely circulated newspaper.



### Subsidiaries

The incorporation of a subsidiary is more popular than setting up a branch for most foreign investors in Brazil mainly because it is much simpler and faster than setting up a branch.

For the types of subsidiaries that exist in Brazil, please refer to the topic "MAIN FORMS FOR COMPANIES / BUSINESS IN BRAZIL" on the first page of this guide.

## TAX AND ACCOUNTING OBLIGATIONS

Companies in Brazil are required by law to keep their books according to the CFC (Federal Accounting Council) and comply with all tax requirements. Listed Companies must submit their financial statements at the end of each fiscal year to the Brazilian Securities Commission (CVM) and Private Companies to the State Official Press.

In Brazil, fiscal information is available in real time, thanks to the implementation of a program called SPED (Public System of Digital Bookkeeping). There is a list of information that needs to be sent by the companies periodically to the corresponding government bodies:

Federal:

- DCTF (Federal Tax Debits and Credits Statement - monthly;
- EFD CONTRIBUIÇÕES (Digital Tax Accounting for PIS and COFINS) – monthly;
- SPED ECF (Digital Fiscal Bookkeeping) - annually
- SPED ECD – (Digital Accounting Bookkeeping) - annually
- GFIP (Unemployment Compensation Fund Contribution and Social Security Information Form ) –monthly
- RAIS (Annual Social Information Report)- annually
- CAGED (General Ledger of Hired and Dismissed Workers) – according to hires and dismissals
- DIRF (Withholding Income Tax Statement)- annually

State (in case ICMS – Value-added tax on Sales and Services – is applicable):

- GIA (Brazilian Excise Tax Form) - monthly
- SPED ICMS/IPI (Public System of Digital Bookkeeping ICMS/IPI – Tax on Manufactured Products) - monthly

## REGISTRATION FORMALITIES

Companies must be registered with:

- the Board of Trade;
- the Federal Revenue;
- State Registration (*Inscrição Estadual* – for companies with production of goods and/or sales of goods);
- Municipal Registration (*Inscrição Municipal*), for companies that provide services);
- Social Welfare;



## HOW TO HIRE MY FIRST EMPLOYEE IN BRAZIL

### MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Companies that are incorporated in Brazil do not need prior authority to contract Brazilian nationals as employees. However, the employee must have an employee work and social security booklet (CTPS). On admission, the employee must complete a medical examination and present the CTPS to the employer. The employer must record the content of the employment contract in the employee's CTPS. Those contents must include:

- the company's name, tax registration number, address and activities;
- the number of the employment registration card or page of the employment registration book where the employee was registered;
- the employee's position, date of admission and form of payment; and
- the company representative's signature.

The company must also register each individual's employment in its employment registry. The employer must update this registration throughout the employee's employment, recording details such as holidays taken, work accidents and illnesses, and termination of employment.

The regional Employment Department must authenticate the company's first employment registration book or batch of employment registration cards, subject to inspection by the Ministry of Employment.

Duration of individual employment contracts Employment contracts normally last indefinitely: fixed terms are allowed only in specific circumstances. The term is indefinite when:

- the contract states it is indefinite;
- the contract does not stipulate a term;
- a fixed-term contract is renewed more than once; and
- an existing fixed term contract is terminated, but the same parties contract again for a fixed term within 6 months. (This does not apply where the termination was connected with the rendering of specialized services or the occurrence of certain events.)

For a company, the main advantages of having a fixed-term contract are that it is more flexible and brings lower benefit contributions and severance payments.

Fixed-term contracts are allowed for the first 90-day, trial employment period. If the employment continues, the contract will become a contract for an indefinite term; or for a maximum two-year term where:

- the nature of the services, considering the temporary character, justifies a present term or;
- the services are related to business in transition or;
- upon collective negotiation in other cases.



## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

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Since the law establishes most provisions of an employment contract, it is not common to have an extensive written contract with lower-level employees. Employees have a work booklet (CTPS) which the employer signs stating the position and salary thus establishing the formal labor contract (see the section below on documentation). Special terms of employment for a variety of occupations are set forth in the law.

Individual employment contracts may be in writing or implied from the relationship between the individual and the company to which it provides services. Foreign employees living abroad and transferred to Brazil must sign an employment contract and submit it to the Ministry of Employment before entering the country.

A foreign employee may not be admitted unless he presents his or her Foreigner Identity Card (issued by the Brazilian authorities).

## CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

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Yes, provided that the person is registered as an independent worker, but there is a time-limit for that of 6 months. There is a Labor Reform currently under way in the Congress that will amend and modernize the labor relations that were set by the CLT (Consolidation of Brazilian Labor Laws) in 1943.



This is an example of a standard template of a financial statement in Brazil, in BRL (R\$) – Brazilian Reais:

#### SITUAÇÃO PATRIMONIAL EM 30 DE ABRIL DE 2017

##### ATIVO

Conta	Classificador	Nome da Conta	Saldo Inicial	Débito	Crédito	Saldo Final
1	1000000000	ATIVO	2.002.752,49	1.407.222,48	1.141.149,07	2.268.825,90
2	1010000000	ATIVO CIRCULANTE	1.855.593,31	1.407.222,48	1.140.561,85	2.122.253,94
3	1010100000	DISPONIBILIDADES	400.872,99	419.476,73	308.436,13	511.913,59
6	10101002000	BANCOS CTA MOVIMENTO	400.872,99	419.476,73	308.436,13	511.913,59
8	10102000000	CRÉDITOS A RECEBER	1.454.720,32	987.745,75	832.125,72	1.610.340,35
11	10102002000	CLIENTES	1.070.185,94	523.102,41	450.046,82	1.143.241,53
16	10102004000	ADIANTAMENTOS A EMPREGADOS	38.811,62	0,00	9.836,62	28.975,00
27	10102008000	IMPOSTOS A RECUPERAR	0,00	26.555,63	26.555,63	0,00
35	10102009000	IMPOSTOS A COMPENSAR	340.530,11	438.087,71	345.686,65	432.931,17
42	10102010000	OUTROS CRÉDITOS	5.192,65	0,00	0,00	5.192,65
57	10200000000	ATIVO NÃO CIRCULANTE	147.159,18	0,00	587,22	146.571,96
58	10201000000	ATIVO REALIZÁVEL A LONGO PRAZO	114.000,00	0,00	0,00	114.000,00
59	10201001000	APLICAÇÕES FINANCEIRAS	114.000,00	0,00	0,00	114.000,00
74	10203000000	IMOBILIZADO	33.159,18	0,00	587,22	32.571,96
75	10203001000	IMOBILIZADO	37.284,10	0,00	0,00	37.284,10
85	10203002000	(-) DEPRECIACÃO ACUMULADA	-4.124,92	0,00	587,22	-4.712,14

##### PASSIVO

Conta	Classificador	Nome da Conta	Saldo Inicial	Débito	Crédito	Saldo Final
104	20000000000	PASSIVO	954.134,52	683.225,31	671.648,15	942.557,36
105	20100000000	PASSIVO CIRCULANTE	387.723,46	683.225,31	671.648,15	376.146,30
106	20101000000	OBRIGAÇÕES SOCIAIS	14.155,61	102.573,11	101.885,92	13.468,42
107	20101001000	OBRIGAÇÕES COM PESSOAL	0,00	88.417,48	88.417,48	0,00
114	20101002000	ENCARGOS SOCIAIS	14.155,61	14.155,63	13.468,44	13.468,42
119	20102000000	OBRIGAÇÕES	373.567,85	580.652,20	569.762,23	362.677,88
120	20102001000	FORNECEDORES	0,00	13.842,34	13.842,34	0,00
122	20102002000	IMPOSTOS A RECOLHER	159.295,40	531.537,73	515.319,31	143.076,98
131	20102003000	RETENÇÕES NA FONTE	18.192,13	18.192,13	13.350,98	13.350,98
146	20102006000	OUTRAS OBRIGAÇÕES	0,00	28,87	262,50	233,63
151	20102007000	PROVISÕES	196.080,32	17.051,13	26.987,10	206.016,29
168	20300000000	PATRIMÔNIO LÍQUIDO	566.411,06	0,00	0,00	566.411,06
169	20301000000	CAPITAL SOCIAL	420.557,25	0,00	0,00	420.557,25
170	20301001000	CAPITAL INTEGRALIZADO	200.000,00	0,00	0,00	200.000,00
172	20301002000	CAPITAL À INTEGRALIZAR	220.557,25	0,00	0,00	220.557,25
181	20302000000	LUCROS E PREJUÍZOS ACUMULADOS	145.853,81	0,00	0,00	145.853,81
182	20302001000	LUCROS E PREJUÍZOS ACUMULADOS	145.853,81	0,00	0,00	145.853,81

**RECEITAS**

Conta	Classificador	Nome da Conta	Saldo Inicial	Débito	Crédito	Saldo Final
186	30000000000	RECEITAS	2.367.350,47	82.388,14	523.103,18	2.808.065,51
187	30100000000	RECEITAS OPERACIONAIS	2.367.350,47	82.388,14	523.103,18	2.808.065,51
188	30101000000	RECEITA BRUTA	2.785.873,25	0,00	523.102,41	3.308.975,66
189	30101001000	RECEITA COM SERVIÇOS	2.785.873,25	0,00	523.102,41	3.308.975,66
195	30102000000	(-) DEDUÇÕES DA RECEITA BRUTA	-418.522,78	82.388,14	0,77	-500.910,15
198	30102002000	(-) IMPOSTOS S/RECEITA	-418.522,78	82.388,14	0,77	-500.910,15

**DESPESAS**

Conta	Classificador	Nome da Conta	Saldo Inicial	Débito	Crédito	Saldo Final
216	50000000000	DESPESAS	1.318.732,50	181.730,51	18.666,04	1.481.796,97
217	50100000000	DESPESAS OPERACIONAIS	1.318.732,50	181.730,51	18.666,04	1.481.796,97
218	50101000000	DESPESAS ADMINISTRATIVAS	1.292.699,13	179.405,36	17.403,37	1.454.701,12
219	50101001000	DESPESAS COMERCIAIS	133.971,54	34.364,84	15.584,04	152.752,34
223	50101002000	DESPESAS COM PESSOAL	779.932,78	94.118,23	1.819,33	872.231,68
241	50101003000	DESPESAS COM SEDE	154.786,85	22.978,39	0,00	177.765,24
255	50101004000	DESPESAS GERAIS	95.812,95	14.361,66	0,00	110.174,61
270	50101005000	DESP COM SERVIÇO PROFISSIONAL	124.337,80	13.582,24	0,00	137.920,04
273	50101006000	DESPESAS TRIBUTÁRIAS	3.857,21	0,00	0,00	3.857,21
283	50102000000	DESPESAS E RECEITAS FINANCEIRA	26.033,37	2.325,15	1.262,67	27.095,85
284	50102001000	DESPESAS FINANCEIRAS	32.141,67	2.325,15	0,00	34.466,82
293	50102002000	(-) RECEITAS FINANCEIRAS	-6.108,30	0,00	1.262,67	-7.370,97

**RESUMO  
BALANCETE**

ATIVO	2.268.825,90	D
PASSIVO	942.557,36	C

DESPESAS	1.481.796,97	D
RECEITAS	2.808.065,51	C

<b>Diferença</b>	<b>0,00</b>	
Resultado do Período	1.326.268,54	C