

## **DOING BUSINESS IN BRAZIL**

How does it work to start your business  
in Brazil?



**VERNALHA, DI LASCIO,  
MESQUITA**

---

& ASSOCIADOS

# HOW TO OPEN YOUR BUSINESS IN BRAZIL?

---

This Presentation contains certain general aspects involving foreign investments in Brazil and also the costs related to the incorporation of companies in the Brazilian territory.



---

**IN ORDER TO FACILITATE YOUR UNDERSTANDING, THE EXPLANATION HAS BEEN DIVIDED IN FOUR (4) PARTS, AS FOLLOWS:**

- Part I: ***FOREIGN CAPITAL***, providing an overview about foreign investment in Brazil;
- Part II: ***TYPES OF BUSINESS ORGANIZATIONS***, quick overview regarding the main aspects related to common forms of corporate organizations;
- Part III: ***DOCUMENTS AND TERMS***, with the main steps to incorporate a company in Brazil;
- Part IV: ***TAX***, Brazilian Tax System.



01

# FOREIGN CAPITAL

---

Providing an overview about foreign investment in brazil.

# FOREIGN CAPITAL

---

## I. General Features

*According to Brazilian law, “foreign capital is considered to be 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 it belongs to individuals or companies resident or headquartered abroad”.*

## II. Registration before the Central Bank of Brazil (BACEN)

All capital subscription by a non-resident individual or company in order to acquire interest in a newly incorporated company or in an existing Brazilian company must be registered as foreign investment, through Bacen’s electronic registration system called RDE-IED (*electronic registry – foreign direct investment*). The registration must occur no later than thirty (30) days from the entrance of the funds in Brazil and shall be made in the foreign currency actually invested, which will be converted into Brazilian currency.

# FOREIGN CAPITAL

---



## III. Foreign Loans

Foreign loans must also be registered through BACEN electronic registration system called RDE-ROF (*electronic registry – financial transaction registry*), although, it does not require its prior approval.

All following transactions must be registered before RDE-ROF:

- Loans in Brazilian or foreign currency obtained directly from the lender or by foreign placement of bonds, including those convertible into or exchangeable for, shares or quotas;
- Credit transactions related to exports; and
- Export prepayment transactions, with due dates exceeding three hundred and sixty (360) days.
- The transaction must be registered before rde-rof prior to the entrance of funds in Brazil.
- The tax rates may vary according to the terms of the loan agreement and are usually subjected to withholding tax over the interest payments.



# FOREIGN CAPITAL

---

## IV. Currency Investments

After the registration of the investor and the Brazilian company before the BACEN system, there is no preliminary official authorization required for investment in currency. The investment to subscribe for capital or to buy stake/shares in an existing Brazilian company shall be remitted to Brazil through any banking establishment authorized to deal in foreign exchange.

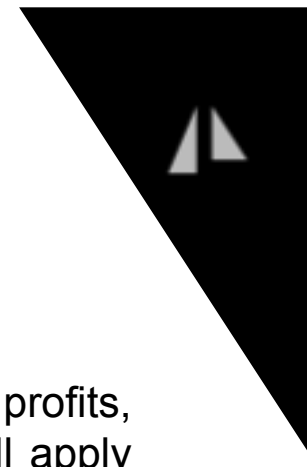
Registration of the investment shall be done by the Brazilian company receiving the investment and the legal representative of the foreign investor within 30 days from the exchange agreement for the remittance, through the RDE-IEF.

## V. Investment by Conversion of Foreign Credits

Investment by foreign credit conversion is subject to preliminary authorization from BACEN directly through its electronic system. The Brazilian company has 30 days to incorporate the funds into its capital and register the investment at RDE.

# FOREIGN CAPITAL

---



## **VI. Remittance of Profits**

There are normally no restrictions on the distribution and remittance of profits, dividends and interest on capital investments abroad. Withholding tax shall apply over interest on capital investment payments and may vary according to the country of the investor headquarter (usually, 18% to 25%).

## **VII. Reinvestment of Profits**

If the foreign investor decide to reinvest rather than remit profits, such profits are eligible for registration as foreign capital along with the original investment.

## **VIII. Repatriation**

Foreign capital registered before the central bank may be repatriated to its country of origin at any time without authorization. Returns in excess of the registered amount will be considered capital gains from the foreign investor, and thus subject to withholding income tax.



# FOREIGN CAPITAL

---



## IX. Restrictions on Foreign Investment

Foreign capital participation is prohibited/restricted in the following sectors of Brazilian economy:

- Increase of foreign capital shareholding in financial institutions, which are subject to BACEN and National Monetary Council (CMN) approval, such as banks, security brokers or distributors, investment banks or funds;
- Purchase of rural real estate property situated on international borders;
- Investments in newspapers, magazines and other publications, as well in broadcasting and TV companies;
- Investments in airline companies;
- Development of activities involving nuclear energy.

# FOREIGN CAPITAL

---

## X. Enrollment before the Ministry of Finance – Corporate Taxpayer’s Registry (CNPJ/MF)

As from 2002, all foreign companies owning assets or investments in Brazil are subject to registration under the ministry of finance corporate taxpayer’s registry (*Cadastro Nacional de Pessoas Jurídicas - CNPJ/MF*) of the secretariat of federal revenue (*Secretaria da Receita Federal – SRF*), as much as any Brazilian companies.

## XI. Enrollment with the Ministry of Finance Individual Taxpayers Registry (CPF/MF)

Non-resident individuals owning assets (real estate, vehicles, aircraft, vessels, current accounts, investments in the financial market, corporate shares, etc.) In Brazil must enroll under the CPF/MF (*Cadastro de Pessoa Física do Ministério da Fazenda*) of the secretariat of federal revenue.

## XII. Attorney-in Fact

Both foreign companies and non-resident individuals **must appoint** a Brazilian resident individual, duly enrolled with the CPF/MF, by granting the attorney-in-fact full powers to: (i) receive summons; and (ii) manage the assets of the Brazilian entity/individual located in Brazil.

## TYPES OF BUSINESS ORGANIZATIONS

---

Quick overview regarding the main aspects related to common forms of corporate organizations

# TYPES OF BUSINESS ORGANIZATIONS

---

## I. Corporation (S/A)

The S/A is the corporate form, which most closely resembles a corporation. It is governed by law n. 6.404 of December 15<sup>th</sup>, 1976 (“the corporation law”) and its relevant amendments. S/A companies must, in principle, have at least two shareholders, which are liable only to the extent of the share capital for which they have subscribed and remains unpaid.

A S/A company may be formed by public or private subscription. At least 10% of the subscribed capital, whenever in cash, must be paid up and deposited in a commercial bank. In the event of payment of subscribed capital by any means, such as by contributing assets for the amount subscribed, an appraisal of such assets is mandatory.

This type of company may be either publicly or closely-held. A publicly-held company must be registered at the Brazilian securities commission (Comissão de Valores Mobiliários – CVM), along with the securities its issues, which may be bought and sold on the stock exchange or on the over-the-counter market. The securities of a closely-held company are not available to the general public.

# TYPES OF BUSINESS ORGANIZATIONS

---

## II. Limited Liability Company (Limitada)

The “Limitada” is a type of business organization which may perfectly replace a S/A whenever the members (equivalent to shareholders in corporations) choose not to submit the company to the S/A law. The Limitada presents a simpler formation process and a faster performance regarding corporate resolutions.

*Limitadas* are similar to limited-liability companies, limited partnerships and closely-held companies under English and American laws.

A *Limitada* is required by law to have at least two members, who, with few exceptions, do not need to be Brazilian nationals. In fact, the members do not need even to be resident in Brazil. In case the company becomes held by only one member, the plurality of members must be re-established within 180 days.

The liability of the members is limited to the amount of their respective quotas (shares) subscribed in the company, but they are all solely responsible in paying up the entire company’s capital.

## DOCUMENTS AND TERMS

---

The main steps to incorporate a company in brazil

## DOCUMENTS AND TERMS

---

The following documents are necessary for setting up a Brazilian company by foreign investor:

- Certified copy of the articles of association/bylaws of the company;
- Power of attorney granted by the foreign investor to a Brazilian resident, that must include, beyond other powers, the powers to: (1) manage the corporate participation of the foreign investor in Brazil; (2) represent the foreign investor in Brazil before third parties and government, and (3) to receive service of process in judicial lawsuits brought against to the foreign investor; e
- Certified copy of the document of election of the legal representative of the foreign investor, in case of a legal entity.

The documents described above shall: (i) contain the acknowledgement of the Brazilian consular authority at the foreign investor's civil domicile; (ii) be accompanied by the translation made by sworn translator; and (iii) be registered before the registry of deeds and documents.

The whole process for incorporation of a Brazilian company shall endure about thirty (30) working days, as from the receipt of all the necessary documentation.

# TAX SYSTEM

---

Brazilian tax system.

04



# TAX SYSTEM

---

Taxation in Brazil is divided among three tax authorities – federal, state and municipal – and some taxes will be applicable according to the business activities developed in the country. As a rule, exporting goods and services will be subject to tax exemption, except for corporate income tax.

The main corporate taxes are:

## **I. Corporate Income Tax (*IRPJ*) and Social Contribution on Net Profit (*CSLL*)**

IRPJ and CSLL are federal taxes levied on corporate profits on a quarterly or annual basis. There are two systems for corporate income tax assessment: the so-called actual profit and the presumed profit systems.

As a general rule, companies may choose to be taxed under either option, provided they did not have a annual revenue of R\$ 78.000.000,00 in the precedent year.

Under the actual profit system, income tax is assessed on an amount to net profit adjusted by additions and deductions. The losses of the preceding tax years may decrease the income tax assessment up to 30% of the current year profit.

# TAX SYSTEM

---

## I. Corporate Income Tax (*IRPJ*) and Social Contribution on Net Profit (*CSLL*)

Under the presumed profit system, the IRPJ and CSLL taxable basis is determined based on a given percentage over the corporate gross income, according to the type of business activity.

Generally, the percentage for ascertaining the taxable basis is 8% (e.g. manufacturing, trade) and the CSLL is 12%, but some businesses have a specific base (e.g. services: 32%).

Under both systems the corporate income tax rate is 15%. There is a 10% supplementary tax over the portion of net profit in excess of R\$ 20.000,00 per month.

The CSLL current rate is 9%, irrespective of the company having chosen to be taxed under the actual profit or presumed profit system.

Dividends based on profits paid to residents or non-residents are not subject to income tax (both withholding and corporate tax).

# TAX SYSTEM

---

## II. Withholding Tax (*IRRF*)

IRRF is treated, as a rule, as an advance payment of income tax due on a creditor's receipt of a certain amount. IRRF is due on several domestic or cross-border transactions. It is assessable by the paying source whenever the payee is an individual or company, both resident and non-resident.

In the event that the individual or corporate payee is a resident of any country or jurisdiction where income tax rate is lower than 20% (the so-called tax-haven), the IRRF tax rate will be higher (usually 25%), as compared to the ordinary tax rate (in general 15%).

## III. COFINS and PIS Social Security Contributions

COFINS and PIS are federal taxes levied monthly on corporate gross income. The rates range from 3% and 0,65%, respectively, for companies taxed under the presumed profit system to 7.6% and 1,65% for those that have chosen to be taxed under the actual profit system.

However, it should be noted that companies taxed under the actual profits system are entitled to some credits eligible for offsetting the related social contribution liabilities.

# TAX SYSTEM

---



## IV. Tax on Credit Transaction, Exchange and Insurance Tax or Securities Transaction (*IOF*)

IOF is a federal tax levied on the following operations:

- Exchange;
- Insurance;
- Securities transactions;
- Gold, cash assets and commercial papers, and
- Credit transactions carried out by: financial institutions, credit management institutions, risk selection, payable and receivable accounts, credit transactions originated from credit commercial sales or service rendering (*factoring*) and corporations in general.

## V. Service tax (*ISS*)

ISS is a municipal tax and, therefore, while the general rules will apply to all municipal laws dealing with the tax, certain specific rules may vary, including its respective tax rates, which may vary from 2% to 5% according to the service rendered. ISS is also assessed and calculated on the gross income of the services rendered.

# TAX SYSTEM

---



## **VI. Employer's Social Security Contributions**

Companies are also subject to a number of contributions to social security. The combined rate varies according to each company and the activities it develops but it usually ranges from 26.8% to 28.8% of the total payroll.



**VERNALHA, DI LASCIO,  
MESQUITA**

& ASSOCIADOS

**CURITIBA**

Av. Pres. Getúlio Vargas, 3545

Água Verde

80.240-041 Curitiba / PR

**SÃO PAULO**

Av. Angélica, 321 Conj. 153

Higienópolis

01.227-000 São Paulo / SP

[WWW.VERNALHA.COM.BR](http://WWW.VERNALHA.COM.BR)