

NORONHA ADVOGADOS

BRAZIL'S GLOBAL LAWYERS

Sao Paulo | Rio de Janeiro | Brasília | Curitiba | Porto Alegre | Recife | Belo Horizonte



London | Lisbon | Shanghai | Beijing | Miami | Buenos Aires

THE BRAZILIAN CORPORATE LAW

Presentation prepared for MBA Students of the University of Victoria
José Paulo L. Alves Pequeno
Partner – M&A Department
São Paulo – 14 April 2010

THE BRAZILIAN CORPORATE LAW

- (i) INCORPORATING A COMPANY IN BRAZIL
- (ii) JOINT VENTURES
- (iii) MERGERS AND ACQUISITIONS

(i) INCORPORATING A COMPANY IN BRAZIL

Types of Brazilian Companies

- limited liability
- Partners (Brazilian or foreign)
 - *Sociedade Limitada* (LTDA)
 - *Sociedade Anônima* (S.A.)

(i) INCORPORATING A COMPANY IN BRAZIL

(i).2 Types of Brazilian Companies

SOCIEDADE LIMITADA (LTDA)

- Articles of Association
- Objectives
- Capital:
 - divided into quotas / quotas registered in AoA
 - no minimum requirement (in general)
- Quotaholders: only one class / at least 2 quotaholders
- Management:
 - one or more individuals/partners or non-partners;
 - resident in Brazil (Brazilian or foreign with permanent visa)
- Registered address

(i) INCORPORATING A COMPANY IN BRAZIL

(i).2 Types of Brazilian Companies

SOCIEDADE ANÔNIMA (S.A.)

- By-Laws
- Share Capital:
 - always nominative shares / ordinary or preferred
 - payment in cash of at least 10 % upon incorporation
- Shareholders: at least 2
- Types:
 - Public: Listed/Stock Exchange Market
 - Closed: Private offerings of shares

(i) INCORPORATING A COMPANY IN BRAZIL

(i).2 Types of Brazilian Companies

SOCIEDADE ANÔNIMA (S.A.)

- Management:
 - Board of Directors (*“Conselho de Administração”*):
 - optional in closely held S.A.s
 - at least 3 members / shareholders / need not to be resident in Brazil
 - Executive Board (*“Diretoria”*):
 - at least 2 executive Directors / resident in Brazil
- Shareholders Agreement: transfer of shares, pre-emptive rights, voting rights etc.
 - specific performance
 - favours S.A.s in Joint Ventures

(i) INCORPORATING A COMPANY IN BRAZIL

INCORPORATING PROCEDURES

- 1 – Partners must obtain federal taxpayer's number;
- 2 – AoA or By-Laws filed with Commercial Registry
- 3 – If NewCo is S.A.: publication of Incorporation Meeting in the press;
- 4 – Register of NewCo with Federal Revenue Service (CNPJ);
- 5 – Open Bank Account and pay in Capital;
- 6 – Register foreign direct investment with Central Bank of Brazil;
- 7 – Register NewCo with State Tax Authority, if applicable; and
- 8 – Register NewCo with Municipality.
- 9 – Additional Registrations and Licenses depending on the business

Time Estimate: from 60 to 90 days.

(i) INCORPORATING A COMPANY IN BRAZIL

FURTHER REGISTRATIONS

Depending of the NewCo's activities, for example:

- SISCOMEX – international trade;
- Environmental State Department – mostly for industrial plants;
- Local Regulatory Councils – whenever NewCo's social objectives have special regulation.

Example: Regional Council of Engineering and Architecture, Regional Council of Commercial Representatives, Regional Council for Administration Technicians etc.

(ii) JOINT VENTURES

Only business perspective: there is no need to have Brazilian partners

(ii).1 Corporate Joint Ventures

- NewCo: LTDA. or S.A.

(ii).2 Non-Corporate Joint Ventures

- *Consortia*
- Partnerships (“*Sociedade em Conta de Participação*”)

(ii)

JOINT VENTURES

(ii).1

Corporate Joint Ventures

- Incorporation of a new company (LTDA. or S.A.)

- Agreements:
 - JV's Formation Agreement (pre-contract)
 - Shareholders/Quotaholders Agreement
 - Articles of Association/By-Laws

(ii)

JOINT VENTURES

(ii).2

Non-Corporate Joint Ventures

CONSORTIA

- Do not have a legal status separate from their members
- Registration with local Commercial Registry
- Registration with Federal Revenue Services (CNPJ)
- Obligations and liabilities undertaken by each member
- One member must be appointed as leader
- Registered address in Brazil

(ii)

JOINT VENTURES

(ii).2

Non-Corporate Joint Ventures

PARTNERSHIPS

(“Sociedades em Conta de Participação”)

- Do not have a legal status separate from their members
- Members: at least 2
 - Ostensive Member: only one
 - Undertakes obligations
 - Manage the JV
 - Secret Member: investors without managing powers
- Partnership Agreement: non-mandatory registry

(iii)

MERGERS AND ACQUISITIONS

(iii).1

Negotiations

(iii).2

Due Diligence Exercise

(iii).3

Shares Acquisition Agreement/Merger

(iii).4

Antitrust Authorities

(iii)

MERGERS AND ACQUISITIONS

(iii).2

Due Diligence Exercise

- Objective: identify contingencies and liabilities of the Target company
- Succession
- Perspectives: legal, environmental, tax and accounting etc.
- Legal DD: corporate status; licenses (business, special licenses) and certificates; agreements; bank accounts; indebtednesses of partners; Labour status; judicial claims in course (tax, labour, consumers, commercial); Real Estate (property acquisition or lease agreements); Industrial Property (trademarks, patents) and others.

(iii)

(iii).3

MERGERS AND ACQUISITIONS

Shares Acquisition Agreement/Merger

- Acquisition: shares/quotas of Brazilian companies or establishments
 - Shares/Quotas Purchase Agreement
 - 100% of target company's capital or another percentage
 - If not entirely acquired: Shareholders Agreement
 - Commercial Establishment Acquisition: assets of a company
 - Directly or through Brazilian holding company
- Merger: if the case, takes place after the acquisition of quotas/shares

(iii)

(iii).4

MERGERS AND ACQUISITIONS

Antitrust Authorities

- CADE: Federal Agency for Competition Control/Antitrust – (SDE/SEAE)
- M&A or other acts shall be submitted for CADE’s analysis if:
 - 1) Results on a participation of 20% of the “relevant market” (product or geography); or
 - 2) Any of the parties registers a gross turn-over in Brazil equal or superior to R\$ 400 mi.
- Deliver petition to SDE/CADE: Up to 15 business days after the signature of agreements.

THANK YOU !

JOSÉ PAULO L. ALVES PEQUENO

+55 (11) 5188.8090

jl@noronhaadvogados.com.br

www.noronhaadvogados.com.br