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## **Doing Business in Brazil - Legal Aspects**

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ADVOGADOS**

BRAZILIAN AND INTERNATIONAL LAWYERS



# PRESENTATION TOPICS

1. **Doing Business in Brazil - Entry Methods**
2. **Foreign Direct Investment**
3. **Taxation**
4. **Employment Law Overview**
5. **Legal Framework of the Oil Sector in Brazil**
6. **Local Content**
7. **Becoming a Supplier to Petrobras**
8. **Opportunity**

# 1. Doing Business in Brazil - Entry methods

- ▶ Direct sales from the UK : sell in Brazil via a distributor/agent
- ▶ Initiate your own operations in Brazil:
  - ▶ Partnership;
  - ▶ joint venture;
  - ▶ acquisition; or
  - ▶ set up on your own

The appropriate form depends on the product, service, financial and manpower capability and market knowledge/exposure.

## 1.1 Supply from the UK (Direct Sales)

► Imports into Brazil can be done by the importer itself or through accredited agents. Whatever the case is, the importer must be licensed to perform import activities with the system Radar/Siscomex.

# 1.2 Establishing a presence in Brazil

Which type of Company? Most frequently used company structures are :

- ▶ Sociedade Anônima (“**S.A.**”) and
- ▶ Sociedade Empresária Limitada (“**Limitada**”)

In both cases the members have limited liability.

- ▶ You will need:
  - ▶ local administrator(a resident in Brazil) and representative in Brazil for the shareholders are required;
  - ▶ proper address for activity to be developed.



## 1.2.1 Limitada

- ▶ Easier and faster to be established.
- ▶ Lower maintenance costs, less bureaucracy and legal requirements.
- ▶ Minimum of 2 partners (individuals or companies, national or foreigners).
- ▶ No minimum corporate capital requirement.
- ▶ Decisions must be taken by majority of votes, except for the cases of amendment to the articles of association, merger and winding up of the company, in which it must be taken by at least 75% of the votes representing the social capital.

## 1.2.2 Sociedade Anônima (S.A.)

- ▶ Normally utilized by ventures capable of gathering financial resources from a large number of investors.
- ▶ Publicity is one of the main principles applying to S.A.s.
- ▶ Ordinary and preferred shares.
- ▶ General rule applying to S.A.s : decisions are taken by the majority of voting shareholders.
- ▶ Obligations set forth in a Shareholders Agreement can be subject to specific performance and important matters can be decided: quorum for strategic decisions; management mechanisms; board of directors may be integrated by foreign individual; corporate governance policies; right of first refusal; tag along; etc.



## 2. Foreign Direct Investment

Foreign direct investment is subject to registration at the Central Bank of Brazil.

- ▶ Registration is essential to allow remittance of profits and repatriation.
- ▶ Loans to the subsidiary are also subject to registration.
- ▶ Central Bank regulations apply.

# 3. Taxation

Withholding tax on payments made to parties located abroad – technology transfer, services agreement etc.

Payable before remittance :

- ▶ Services (professional services, technical services and technical assistance) – 15% at source plus ISS 5%. In addition remitting party pays CIDE at 10%.
- ▶ Royalties – 15% income tax + 10% CIDE.
- ▶ **No withholding tax** on payments of dividends

## 3. Taxation

- ▶ Basic rate of income tax on corporate profits : 15%, with an additional surtax of 10% on taxable profits exceeding R\$ 240,000 (approximately £ 64,000) per year.
- ▶ Social Contribution on profits is 9% of taxable profits.
- ▶ Top tax rate on profits is therefore 34%.

# 4. Employment Law Overview

- ▶ Mainly governed by the Consolidated Labour Laws (“**CLT**”) and the Federal Constitution (“**CF**”).
- ▶ General rule: employment contracts for undetermined period of time.
- ▶ The elements that define an employment relationship are:
  - the rendering of services on a consistent basis by the same worker; and
  - the **subordination** of the worker to the employer, which involves the existence of the following requirements: absence of autonomy on the part of the worker; a hierarchical dependency of the employee in relation to the company; and submission of the employee to the orders and directives of the company.

# 4.1 Hiring Costs

Employees receive a fixed salary, to be established in the employment agreement, and will be entitled to various other rights, including:

- **annual year-end bonus** (the so-called “**13<sup>th</sup> salary**”);
- **annual remunerated holiday** which should correspond to the salary increased by at least 1/3;
- **weekly paid rest** ;
- **overtime payment**;
- **hazard premium**, in case the work environment is somehow unhealthy (minimum of 10% and maximum of 40% of the national minimum wage, which is presently R\$ 724);
- **risk premium**, in case the work involves risks to the worker's personal safety (30% of the fixed

## 4.2 Hiring Costs (Cont.)

- premium for night work (from 22:00 to 5:00 of the next day - minimum of 20% of the fixed salary);
- life insurance (for work-related accidents);
- Mandatory Fund for Unemployment Benefit (“**FGTS**”) - monthly deposit equivalent to 8% of the salary, which must be deposited by the employer in a blocked account of the employee, to be withdrawn by the worker under specific circumstances;
- Brazilian Social Security Institute (“**INSS**”) : employers are also required to contribute with 20% of the employees’ gross salary to the “**INSS**”;
- other rights established under a Collective Bargaining Agreement (CCT) agreed between the employers’ Union and the employees’ Union, such as annual adjustment of fixed salaries; meal voucher; health care; etc.



## 4.2 Hiring Costs (Cont.)

- Employees costs :

1. **Income tax -**

up to R\$ 1,787.77: exempt;

between R\$1,787.77 to R\$ 2,679.29: **7.5%**;

between R\$2,679.30 to R\$3,572.43: **15%** ;

between R\$ 3,572.43 to R\$ 4,463.81: **22.5%**;

above R\$ 4,463.81: **27.5%**.

2. Employee's contribution to the **INSS**: between 8 and 11%

up to R\$ 1317.07: **8%**;

**between** R\$ 1317.07 and R\$ 2,195.12: **9%**;

above R\$ 2,195.12: **11%**.

## 4.3 Hiring as non-employee - Risks

- Other ways of hiring a worker, without an employment relationship (no payment of rights and benefits):
  - sales agent – individual or company
  - administrator/director (but these can also be employees – it depends on the case)
- Although the above can be at a first glance less costly than a formal employment relationship, there may be a risk, depending on the case, of the worker bringing a claim against the contractor party in the future, alleging employment relationship, if the elements that characterise the status of an employee exist, especially, the element of **subordination** in the rendering of services.
- The court could easily be in favour of the contracted party and consider the above alternatives as fraud with the aim of avoiding payment of rights and benefits to the employee.

# 5. Legal Framework of the Oil Sector in Brazil

- ▶ Petrobras was created in 1953 as a State company - monopoly until 1995.
- ▶ Constitutional Amendment number 9, of 9 November 1995: the Federal Government may hire State or private companies to perform oil industry activities.
- ▶ State ownership of natural resources remain.
- ▶ 1997: Petroleum Law (No. 9478, of 6 August 1997), with the legal framework for the exploration of oil and gas in the country.
- ▶ 2010: with pre-salt discoveries, Law 12.351, of 22 December 2010, which amended the Petroleum Law and introduced the production sharing agreement regime (PSA) for exploration and production of oil and gas in Brazil.

## 5.2 New regulatory structure

- Concession, authorisation and PSA regimes for E&P activities.
- PSA regime exclusively in the pre-salt and in strategic areas.

- ▶ Petrobras will always be the operator in all blocks under a PSA and will have at least 30% of participation in the consortium.

## 6. Local Content

- ▶ Local content (“LC”) is the percentage of local services and equipment used in E&P activities under a PSA or a Concession Agreement.
- ▶ Present both in the concession and in the PSA regimes, as well as in the downstream contracts with Petrobras.
- ▶ It is a policy of the Brazilian Government to enhance the national industry of goods and services supply.
- ▶ Under the PSA system, Petrobras will be the sole buyer, as it is the operator.



## 6. Local Content

- ▶ LC percentage is determined in the invitation to bid and detailed in the concession agreement or PSA by a specific clause.
- ▶ ANP has four Regulations that deal with the matter: ANP Resolutions No. 36, 37, 38 and 39.

## 6. Local Content - Certification

- ▶ 2007: ANP created a system for LC certification.
- ▶ Contracted parties must request their goods and services suppliers for the respective local content certification.
- ▶ The measurement of LC percentage and issue of certificates are made by ANP-accredited certification firms.
- ▶ By attaching these certificates to invoices, contracted parties will demonstrate that goods and services are produced or provided in Brazil.

# 7. Becoming a Supplier to Petrobras

- ▶ Obtaining a CRCC (Certificate of Registration and Registry Classification) number is the first step for a company seeking to be a supplier of goods or services to Petrobras.
- ▶ Purpose is to allow prior evaluation of companies that wish to take part in Petrobras' procurement process.
- ▶ Waiver of CRCC registration when there is no equivalent product or service in Brazil. In such case, bidding is not required and Petrobras will contract with the foreign supplier directly.

# 7.1 Registration

- ▶ Petronect website : **[www.petronect.com.br](http://www.petronect.com.br)**
- ▶ Identification: contact information, scope of supply and local representative is required.
- ▶ Usually, Petrobras takes 30 days to evaluate the process of registration.
- ▶ Once approved by Petrobras, the company is automatically migrated to Petronect and will be ready to be invited to participate of Petrobras' bidding processes

## 7.2 Types of Supplier

- Goods Suppliers which comprise:
  - ▶ Trader and Manufacturer
  - ▶ Manufacturer only (non trader – sales via a reseller/distributor)
  - ▶ Distributor/ Reseller – sells goods produced by third parties who are “technically qualified”
- Services Supplier – only Brazilian companies

## 8. Opportunity

- ▶ Pre-Salt area is located approximately 170 Km from the Brazilian coast and is on average 7 Km deep.
- ▶ Massive technological investment is required to explore oil in such depth.
- ▶ Foreign companies can contribute with technology, research development and know-how.





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**Thank you**