

NORONHA ADVOGADOS

Brazilian and International Lawyers



Doing Business in Brazil – Legal Aspects

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PRESENTATION TOPICS

1. **Doing Business in Brazil - Entry Methods**
2. **Foreign Direct Investment**
3. **Taxation**
4. **Employment Law Overview**

1. Doing Business in Brazil - Entry methods

- ▶ Direct sales from the abroad : 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 Abroad (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**”)
- ▶ Single Owner Business (“**EIRELI**”)

In all cases the members/owner have limited liability.

- ▶ You will need:
 - ▶ local administrator(a resident in Brazil) and representative in Brazil for the shareholders/owner are required;
 - ▶ proper physical address for activity to be developed (Sanitary Agency Licensing for pharma/cosmetics products).

1.2.1 Limitada

- ▶ Easy and fast 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.

1.2.3. Single Owner Business (EIRELI)

New business type that has been recently made available for use by foreign individual or company as well.

Minimum Paid in Capital Requirement: R\$ 95,400 (approx. US\$ 25,000).

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 “**13th 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\$ 954);
- **risk premium**, in case the work involves risks to the worker’s personal safety (30% of the fixed salary);

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\$ 1,903.98: exempt;

between R\$1,903.99 to 2,826.65:	7.5%;
between R\$2,826.66 to 3,751.05:	15% ;
between R\$ 3,751.06 to 4,664.68:	22.5%;
above R\$ 4,664.68:	<u>27.5%.</u>

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

up to R\$ 1,693.72:	8%;
between R\$ R\$ 1,693.73 and R\$ 2,822.90:	9%;
above R\$ R\$ 2,822.91:	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.

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Thank you