



OPENING UP SHOP

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It is not difficult to open a company in Brazil. However, there are several measures that must be observed to have the company fully qualified to start doing business in Brazil. Labour and employment law is known to be severe and very specific, therefore, it is an important aspect to be aware when expanding to Brazil.

TozziniFreire is a full-service law firm acting in 47 areas of

corporate law. We offer a unique structure with industry groups and international desks staffed by lawyers who are considered experts by the market and key national and international guides. Our labour and employment team is highly experienced in advising foreign corporations entering Brazil. The group is prepared to provide advice on any labour and employment aspect including but not limited to hiring structures, employment and

service agreements, mandatory employment rights, profit-sharing plans, stock options, flexible benefits, variable compensation, executive compensation, internal policies, health and safety matters, terminations and severance packages, collective bargaining agreements, union relationships and expatriates.

I. LABOUR AND EMPLOYMENT REQUIREMENTS

A) EMPLOYER POLICY REQUIREMENTS

In Brazil, labour relations are a matter of Federal law, so the States and Municipalities have no power to legislate over labour matters. Therefore, labour rights are nationally standardized, and the same labour costs and consequences will apply regardless of an employer's place of business or place of incorporation.

The basic principles concerning labour relations in Brazil are contained in the Labour Code, the so-called "CLT", enacted on May 1, 1943 and amended over the years

by scattered statutes. The most important change in the Labour Code occurred in November 2017, when the Labour Reform became effective changing more than 100 articles of the Code.

The Federal Constitution of 1988 also establishes rights for urban and rural workers and there are also regulations of the Ministry of Labour that must be observed when hiring workers in Brazil.

The Labour Code and Federal Constitution establishes several mandatory rights that must be observed by employers such as: minimum wage, annual vacation,

13 salaries per year, deposits in the "severance fund", severance package, maximum working hours per day and week, among others.

Considering that the mandatory rights are non negotiable and already established by law, it is not necessary to have employer's policies and/or employment handbooks related to the matter. Nevertheless, employers may provide additional rights to the ones established by law and may also implement their internal policies in Brazil as long as they are not in conflict with Brazilian law.

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Several international companies that open branches in Brazil opt to have written internal policies, even if they repeat some rights already established by law, to have all employees and even foreign executives responsible for the Brazilian branch aware of the applicable rights and conditions of the relationship. The code of conduct and employee handbook are the most common policies usually implemented in Brazilian branches.

In what regards health and safety at the work place, Brazilian companies must implement:

- Occupational health and medical control program (known as PCMSO);
- Environmental risk prevention program (known as PPRA); and
- Other bodies that vary in accordance with the risk factor of the company and number of employees, such as internal commission to avoid work-related accidents (known as CIPA).

B) EMPLOYMENT AGREEMENTS

In Brazil, workers may be hired in several ways, but the most common practice is the hiring of workers as employees.

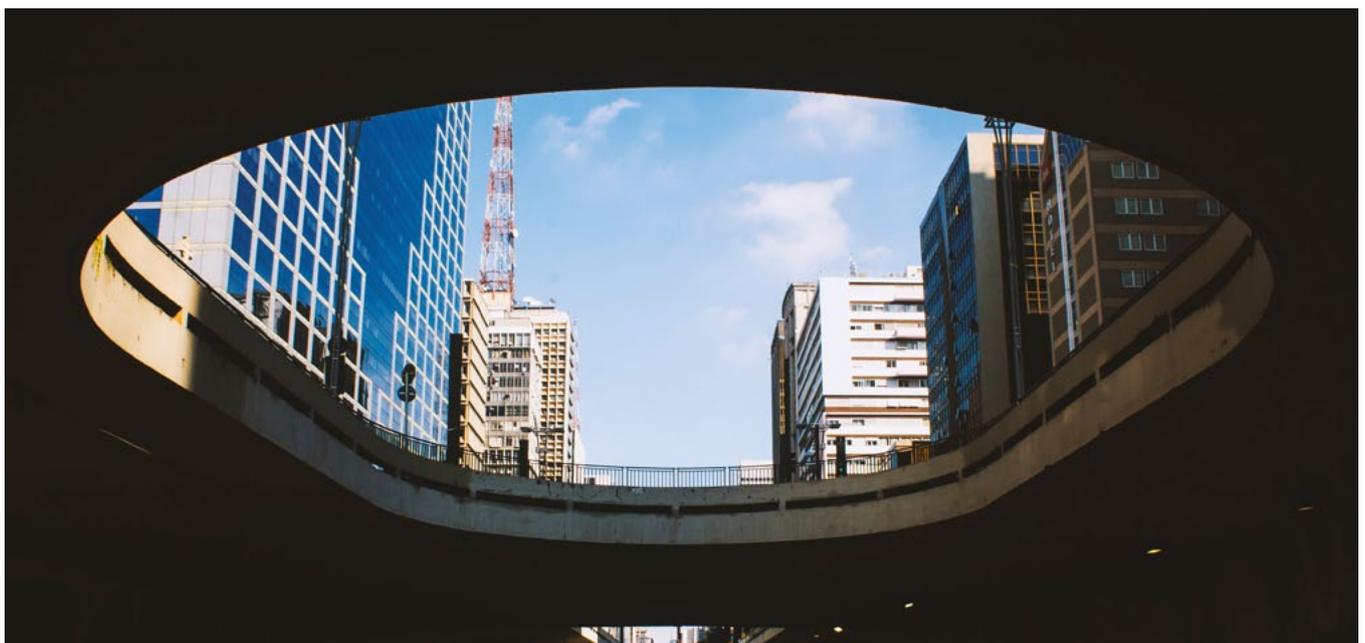
An employment relation is characterized by the simultaneous presence of four elements: (i) services rendered on a personal basis; (ii) on a permanent/habitual basis; (iii) with subordination, i.e., the services are rendered under the direction of a supervisor; and (iv) on an onerous basis, i.e., the individual must receive remuneration in consideration for the services rendered.

If the elements above are not present in a labour relationship, the parties are free to structure it in a different way other than a formal employment agreement, such as: (i) independent contractors/consultants, (ii) service providers/outsourced workers, (iii) temporary workers, (iv) interns and non-employed officers, among others, provided

that the specific rules and regulations regarding such other forms are complied with.

However, whenever the elements of an employment relationship are present and the employee is hired in any other form other than as an employee, the individual is able to request acknowledgement of employment before a Court, with the consequential payment of all labour and social security rights. The non employee agreement executed by the parties will be disregarded because in Brazil, for employment purposes, the facts prevail over formal documents.

In what regards employment agreements, although it is not mandatory to have written agreements because verbal agreements are also valid, it is recommendable and common to execute one. The agreements may be for: (i) indefinite term, (ii) fixed term, or (iii) intermittent work. The most adequate term varies in accordance with each type of activity to be performed.



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II. CORPORATE LAW REQUIREMENTS

The two most used company forms in Brazil are the Sociedade Limitada (“Limitada”) and the Sociedade Anônima (“S.A.”), roughly comparable in other jurisdictions to, respectively, limited liability companies and corporations. Although Brazilian laws provide for several types of company forms other than the Limitada and the S.A., these other forms have enjoyed virtually no acceptance in practice, especially because most of them provide for unlimited liability of their respective members.

The selection of a Limitada or an S.A. as the company form will take into account the desired ownership structure, legal flexibility, cost and confidentiality considerations,

among other factors, as specific circumstances may warrant. According to our experience, the Limitada is the most suitable corporate form for most of the 100% owned subsidiaries. Therefore, the requirements listed below relate to the incorporation of a Limitada. If needed, we can provide you with the requirements for the incorporation of an S.A.

A Limitada needs at least two (2) partners, also known as quotaholders, whether or not Brazilian resident individuals or legal entities. A partner who is not a Brazilian resident must appoint a Brazilian resident as its attorney-in-fact, with powers to receive service of process on behalf of the nonresident partner with

respect to company matters. The Limitada shall be managed by at least one (1) manager, who must be a Brazilian citizen or a foreigner resident in Brazil, holder of the appropriate visa.

The incorporation of a Limitada requires the execution of its Articles of Association (Contrato Social) in the Portuguese language. As required by law, some items must be necessarily included in the Articles of Association, including (i) the name of the partners and respective personal data; (ii) the name of the Limitada, which must include its purpose and the expression “Limitada” (or its abbreviated form “Ltda.”) and may not be identical or similar to the name of a pre-existing company;



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(iii) the address of the head office; (iv) the company purposes, which must be clearly described; (v) the company duration, which may be determined or undetermined; (vi) the company capital and whether or not it is fully-paid and payment term; and (vii) each partner's participation in the capital and a statement that the liability of each partner is limited to the company's subscribed capital.

In general, no prior governmental consents or approvals are required for the incorporation of a Limitada. Once the partners or their representatives sign the Articles of Association, the following steps have to be taken in order to have the company fully qualified to do business in Brazil:

- The Articles of Association must be filed and registered with the competent Board of Trade having jurisdiction over

the company, together with the powers-of-attorney from the foreign partners (which must be previously translated into Portuguese by an official translator and registered with the competent Registry of Deeds and Documents);

- The company must be registered with the following authorities:

- Federal tax authorities, which will grant to the company a corporate taxpayer identification number. In addition, tax regulations currently require all foreign partners to obtain their own registration with the tax authorities;

- State and Municipal tax authorities. If the company will be solely engaged in rendering services, the State tax identification may not be needed;

- Ministry of Labour;

- Social Security authorities; and

- Export-import agency if the company will be engaged in the importation or exportation of goods.

- The company must obtain a municipal license to do business. This license is obtained together with the municipal tax identification; and

- Once the foreign equity investment is made, it must be registered within 30 days with the Central Bank of Brazil for exchange control purposes.

As a full-service law firm, we have the required expertise to assist and advise your organization with the incorporation of a company in Brazil.



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III. PAYROLL AND BENEFITS PROVIDERS

In Brazil, the vast majority of smaller employers outsource payroll and benefit responsibilities to third party companies. In what regards larger employers, they usually have their own internal teams processing payroll, however there are larger employers that prefer to outsource payroll and benefit responsibilities to third party companies who specialize in these areas.

Depending on the preference, we would be happy to recommend payroll providers to fit your business requirements.

TozziniFreire has assisted clients from many different industry sectors in managing their labour

and employment needs in Brazil and we are pleased to offer our services to assist your organization in commencing its operations in Brazil.

If you have any questions, please contact

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We look forward to working with you.



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