

Doing Business in Brazil

The best legal form for a new company in Brazil



The decision of start doing business in Brazil requires, among many details, a very strong legal knowledge to correctly set up and establish a new company. To expose the key aims about the theme, the Brazilian Advisor of globobroking.com Mr. [Eduardo Borges Leal](#), and the Brazilian Partner Mr. [Rafael De Conti](#), will elucidate the main legal questions a foreign company has to attempt to before coming to Brazil to start a business, such as the most common types of legal entities, control power inside the companies, among other questions.

Question: When someone wants to start a business in Brazil, what are some key aims to be successful?



According to the Brazilian Advisor of globobroking.com, Mr. Eduardo Borges Leal: “One of the key aims is to provide the best legal form for a new company in Brazil. For this proposal, our conversation will be fragmented in two parts. Firstly, it will be explained how to set up a company in Brazil. Secondly, it will be informed the whole procedure to establish a business in this country”.

Question: Do you agree, Mr. De Conti?



“Our work demands a deep research work on the client's profile considering the economic sector and other details. First, I'd like to say that our approach is always tailor-made. So, to find the best legal form for a new company in Brazil we need to get involved with the client to understand each detail, including shareholders/quota-holders wills, tax impact according to the operation's structure, among many others issues...nd yes, I agree that one of the key aims to have success in Doing Business in Brazil is correctly decide which legal form best fits to the business” - answered Mr. Rafael De Conti, the Brazilian partner of globobroking.com

“Brazil is a very welcoming country for foreign investors. The easiest way to start up an undertaking is to be a partner or a shareholder of a Brazilian Company. In this way, a parent company, by its agents, could acquire shares of a Brazilian Company or the foreign investors should be partners in a new Brazilian undertaking. Of course, in a basic structure, the foreign partners should acquire more than fifty per cent of the shares in order to manage the Brazilian Company. In these cases, the Company ruled by Brazilian law can be a subsidiary of the foreign parent company” - observed Mr. Eduardo.

Mr. De Conti also commented: “An important point on what Eduardo said is that the partners can be foreigners. A company located in Brazil is considered a Brazilian company because the legal entity is recorded in Brazil. In the past, this criterion was the capital, I mean, from which jurisdiction came the capital. Although it is possible to have foreign partners in a Brazilian Company, according to the Brazilian Civil Codex, the managers shall live in Brazil. They can be foreign professionals, but they should live in Brazil. In this perspective, at the side of the corporate issues, the demand for immigration legal services is common.”

“For instance, the partners can live in the US, but the agents of the foreign partners, as well as the managers, must live in Brazil”, said Mr. Eduardo.

Question: But why not opening a branch instead a company?

“It would not be recommended setting up a branch in Brazil due to the fact that Brazilian Ministry of Development, Industry and Foreign Trade must evaluate and approve it. The difference between a subsidiary and a branch is simple: a subsidiary has its own legal personality and it is ruled by the law of the host country. On the other hand, a branch does not have a legal personality and there is also the approval issue ” - explained Mr. Eduardo and added Mr. De Conti: “A branch is not a good option, not at all”

Question: Let's come back to the control power issue. So, the owners can be foreigners but not the managers? Is that it?

“The owners (partners) can be all foreign persons. In other words, it is not compulsory to have a Brazilian citizen as an owner too. However, this company must have a Manager living in Brazil. The Manager cannot be one of the owners of the company because he has to live here. In fact, that manager will be the legal representative of the company in Brazil. So, he will act on behalf of the company and will be responsible for all legal issues in the country. In this case, foreigners and that want to be a manager should apply for a Permanent Brazilian VISA” - said Mr. Eduardo.

“It is important to understand that there are three areas on control power. First, we have the owners, they can live abroad; second, there are the agents of these owners in Brazil – without them, there is no possibility to act in Brazilian jurisdiction, once, e.g. they are responsible for signing the amendments of the Articles of Association in a basic structure; and third, there are the managers. If the owner lives in Brazil, he can be the manager. If the owner lives abroad, it is necessary an agent for him – and this agent can be, or not, the manager of the Brazilian company” - added Mr. De Conti.

Question: And what do you have to say about the time and the steps to set up a Brazilian Company, as well as the types of corporate vehicles available in Brazil?

“In Brazil there are two basic types of companies: 1) Limitada (Ltda): It is

similar to an American Limited Liability Company. It is the most common type of company in Brazil. This company is owned by partners which are responsible for company's debts only in a few situations (i.e. in the case of the company has no patrimony to guarantee the payments because the use of the company was not legal). 2) S.A (Sociedade Anonima): The owners of this company are shareholders. So, it is mandatory to have the Shareholder's meeting, the board of directors and other obligations. The company needs to apply the shareholders model, it means, the board of directors will rule the company in accordance of shareholders, etc” - said Mr. Eduardo.

“ Well, I can say that even existing more than the two kinds of legal entity mentioned by Eduardo, these are the most common types seen in the market. In addition, I will quote a paragraph that I wrote in my Course of Corporate Law – Class 1, Fundamentals of Corporate Law, when I talked about Theory of Agency: 'A Legal Entity is not just an aggregation of persons; it is more: it is a person whose birth is given by a contract between its members (the basics parts of any Entity), a contract by which each member agree to have some of their actions and powers represented by a Collective Entity. And this Entity, which is a person by itself, is represented by persons'. So, understand the synergy among the persons related to the business is a key factor even to decide what kind of legal form” - commented Mr. De Conti

And completed Mr. Eduardo: “Many times, it is recommended to choose the Limitada option. Thus, in order to set up a Brazilian Ltda, these are the mainly requirements: 1) Articles of Association/By-laws: the owners must inform the name of the company, the real seat (head office), the register office (the official address), the main activity and the structure of the partnership (who will be the manager?). 2) The articles of Association will be registered by the Brazilian Board of Trade; 3) After that, it will be registered in the Brazilian tax entity in order to obtain the company tax number called CNPJ. It is the number that the Company will use to pay Brazilian Taxes like Income Tax 4) The legal representatives also need to register the company in the State and Municipality entities to obtain the business license (a document authorizing business activities in the country) and other tax numbers, called IE, for the Federative States, and CCM for

Municipalities. 5) Finally, the company must be authorized by Brazilian tax authorities to issue invoices. Regarding the number of employees, it is not a problem. The employees must have a work permit and the company will pay all taxes and other incomes of the Brazilian office”.

“Of course, there are also other important points such as, but not limited to, the bank account, the need to make the Registry of Foreign Capital into the Brazilian Central Bank, the specific bureaucratic process in the Regulatory Agencies according the economic activities, negotiation of agreements with third service providers, and many other details according to each kind of business. I know that in the Doing Business of World-Bank our beautiful Brazil is not in a good rank when we talk about 'Ease of doing business'...and it is exactly because of this that we, the lawyers, always need to be consulted in the Doing Business in Brazil” - commented Mr. De Conti

As presented in this interview, Brazil has a welcoming and complex market for foreign investors that want to start doing business in the country. By providing a tailor-made legal consulting service and understanding deeply the client, it is possible to decide correctly the best form for a new company, using the all the needed legal tools to successfully establish the company in Brazil.

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