



## The Sociedade Limitada in Brazil

By *PNST Pacheco Neto Sanden Teisseire*

Establishing a company in a foreign country can be challenging in terms of designing the legal structure and organising a streamlined and efficient incorporation process. Alliuris member firms provide corporate legal services, in particular for the formation of companies in their home country.

This article provides a brief overview of the legal form of a limited company in Brazil.

### Limitada



The *Sociedade Limitada* (Limitada) is the most popular form of company in Brazil, especially among foreign investors. It is an independent legal entity that can enter contracts in its own name. Its main advantages lie in the ease of administration and the limitation of responsibility.

### Choice of seat and place of incorporation

Brazil's federal structure must be considered when choosing a location. Different states and the federal district may have different laws, policies, and incentives in place. Commercial companies need a state license to trade the products and industrial companies must obtain production licenses by the City Hall and state environmental agency.

### Shareholder

A Limitada can be founded as a one-person company as well as multi-person company. Shareholder can be a natural person or a legal entity, foreigners can also be shareholders

of a Limitada. However, all shareholders residing abroad must designate an agent in Brazil who is authorized to accept service on their behalf, represent them before the tax authorities and manage their assets in Brazil. The authorized representatives must be natural persons residing in Brazil.

### **Management**

Management and representation of the GmbH are handled by the *Administração*, consisting of one or more managing directors. These can be shareholders of the Limitada or specifically appointed third-party managers. Until 2021, only Brazilian citizens or foreigners with a permanent residence permit and domicile in Brazil may be managing directors of a Limitada. As from 2021 it is possible to also have a foreign resident as a manager but he or she will need to appoint a representative in Brazil. In practice, this new possibility has not yet become a common reality but shall improve within the globalization's supply chains.

The shareholders' meeting is the supreme decision-making body. If the Limitada has more than 10 shareholders, shareholders' meetings (*Assembleia de Sócios*) must be held annually within four months of the end of the financial year, unless all shareholders agree to omit it. If the Limitada consists of less than 10 shareholders, the resolutions can be passed in company meetings (*Reunião de Sócios*).

### **Formation**

The required time for the formation of the company depends on the kind of company, whether a service, trade, or industrial company. In general, the formation of a company takes approximately 30 up to 90 days.

A private agreement among the founders, i.e., the articles of organization, is sufficient for the foundation. However, if the Limitada is to be operated as a commercial company (*Sociedade Comercial*), it must be registered in the Commercial Register (*Registro Público de Empresas Mercantis - RPEM*) with the competent state authority (*Junta Comercial*). Upon registration, the company receives its registration number (*Número de Inscrição no Registro de Empresas- NIRE*) and acquires its own legal personality.

The articles of association must be drawn up in Portuguese and must contain, among other, information on the shareholders and managing directors, the company's name, business object, purpose, and share capital as well as regulations on the distribution of profits and losses and the liability of the managing directors. Special attention must be paid to the presentation of the purpose of the Limitada, which should be described as detailed as possible to enable a correct tax classification of the companies' activities before the tax authorities.

Shelf companies are nowadays uncommon due to the risk of liability.

**Share capital**

In general, there is no minimum capital requirement for a Limitada. However, special regulations may prescribe a minimum capital, for example if a foreigner is to obtain a visum to work as a manager of the company. Nevertheless, it is advisable to provide the company with the appropriate capital in order to avoid complications. Capital transferred to Brazil from abroad must be registered with the Central Bank (*Banco Central do Brasil*).

In principle, the shareholders are liable for the company's capital only to the extent of their shares. In the event of misuse of the limitation of liability, the existence of the legal person may be ignored in the individual cause, granting creditors access to assets of the shareholders. Additionally, liability risk is particularly high in labour law disputes, as in this area the liability recourse is quickly affirmed.

**Registration with local authorities/ other authorities**

Once the Limitada has been registered with the commercial registry and the tax authorities, it must also be registered with the Caixa Econômica Federal and the National Social Security Institute. Depending on the type of business, a registration with other municipal and/or state authorities as well as a license may be required.

**Tax registration**

A Brazilian Federal Tax Number (CNPJ) for the Limitada can be obtained through a Brazilian lawyer. Once the CNPJ has been obtained, the Limitada must be registered with the Brazilian Federal Revenue Department for federal taxes and with the local authorities for municipal taxes. Foreign shareholders must also register in the Brazilian Tax Registry.

**Anti-money laundering measures**

Banks, lawyers, and other persons subject to the control mechanism must identify their clients and keep an up-to-date record. The identity of shareholders and managers is publicly disclosed.

**Foreign investment control**

In general, foreign investments are treated the same way as Brazilians. However, all inward investments must be registered with the Central Bank and there are restrictions in certain strategic sectors. Foreign investments are excluded from classified government contracts, aviation, communications, mining and hydroelectricity and coastal and freshwater shipping. Additionally, several sectors are controlled by the governments and require a concession or authorization.

**Customs (Export / Import)**

Companies operating in the field of import and export must apply for a customs license called RADAR number. The customs number is issued by the tax agency.

**Bank Account**

A Bank account shall be opened once the company has been registered with the Commercial Registry and the Brazilian Federal Revenue Department. Information on the Ultimate Beneficial Owner can be required by the banks for the sake of compliance standards.

**Accounting**

All Brazilian companies are required to file and publish an annual financial statement. An audit is not required for a Limitada. While the Brazilian Law requires to keep corporate books, there is no sanction, so most companies do not keep them.

**Formation Expenses**

The formation costs include all the above measures and steps. These costs amount to approx. BRL 15,000 – 30,000 (EUR 3,000 – 6,000) depending on the kind of company and its structure. Legal advice costs for the draft of the standard formation documents as well as the managing director contract amount to approx. BRL 9,000 (EUR 1,800). In the event that individual changes to the formation documents are necessary, costs are calculated on the basis of hourly rates.

**Corporate Tax**

The basic corporate income tax rate in Brazil amounts to 15%. Additionally, a 10% surtax on income exceeding 240,000 BRL per year and a 9 % social contribution on pre-tax profits are charged.

**Trade and Turnover Tax**

There are two types of VAT in Brazil: the ICMS (tax on the circulation of goods and transportation and communication services), and the IPI (tax on industrialized goods). The ICMS standard rate is 17%, but it can vary depending on the federal state. In Rio de Janeiro the rate is 19%. The IPI rate depends on the type of goods produced, and ranges from 0% to 330%, with an average of about 10%.

**Staff**

If necessary, we can also use our connections to recruit suitable employees or managing directors for your company.

+++

## THE ALLIURIS GROUP

ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS

### Members

- 4|5|3 Lawfirm, Barcelona/Madrid, Spain
- ATPR Sociedade de Avogados, Lisbon, Portugal
- BCO Bazán Cambré Orts, Buenos Aires, Argentina
- Brand & Partner, Moscow, Russia
- Brauneis, Vienna, Austria
- BHD Buhler Duggal & Henry LLP, New York, USA
- Bustamante Sinn, Abogados, Santiago de Chile, Chile
- Deustua Halperin, Lima, Peru
- Farthouat & Associés, Paris, France
- FDL Studio legale e tributario, Milan, Italy
- Hammurabi & Solomon Partners, New Delhi, India
- Herfurth & Partner, Hanover, Germany
- Hristova Lawfirm, Sofia, Bulgaria
- Karytinis Partners, Athens, Greece
- Laytons ETL, London, UK
- LEXTRUST Avocats, Luxemburg, Luxemburg
- Steenaert, Utrecht, Netherlands
- Muheim, Zug, Switzerland
- Nyborg & Rørdam, Copenhagen, Denmark
- PNST Pacheco Neto Sanden Teisseire, Sao Paulo, Brazil
- Saône Rhône, Cabinet Juridique, Lyon, France
- Yamaner & Yamaner, Istanbul, Turkey

### Imprint

<p><i>Contributed by / Authors</i></p> <p>Renato Pacheco Neto  <b>Pacheco Neto, Sanden, Teisseire</b>                  Sao Paulo  <a href="http://www.pnst.com.br">www.pnst.com.br</a></p> <p>All information in this publication is provided to the best of our knowledge and does not constitute legal advice. Neither Alluris nor PNST assume any liability for the provided information, except in cases of intent or gross negligence. Reproduction, including excerpts, requires prior permission from the editors..</p>	<p><i>Published by</i></p> <p>ALLIURIS A.S.B.L.                  Alliance of International Business Lawyers                  Avenue des Arts 56,                  B-1000 Brussels / Belgium</p> <p><i>Editors</i></p> <p>Chief editor (responsible): Ulrich Herfurth</p> <p><i>Management</i></p> <p>ALLIURIS A.S.B.L.                  Luisenstr. 5                  D-30159 Hannover                  Fon ++49 511 30756-0                  Fax ++49 511 30756-10                  Mail <a href="mailto:info@alluris.org">info@alluris.org</a>                  Web <a href="http://www.alluris.org">www.alluris.org</a></p>
--	--