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ADVOGADOS

Brazilian Company Formation by Foreign Residents

- **Incorporation Process**
 - Limitations to foreign investment;
 - Corporate form options;
 - Main aspects: Limitadas x Corporations;
 - Necessary information and documentation.
- **Required Registrations**
 - Trade Board;
 - Federal Revenue Office;
 - Central Bank of Brazil;
 - Other registrations and formalities.
- **Estimate Timing**



Incorporation Process

Limitations to foreign investment

- Civil aviation;
- Journalism and broadcasting;
- Coastal navigation;
- Security services.

Prohibitions to foreign investment

- Nuclear Energy;
- Aerospace Industry (launching of satellites and other vehicles or modules);
- Post office and telegraphs;
- Health assistance

Incorporation Process

Corporate form options

▪ Most widely adopted forms of corporate organization in Brazil:

- Limited liability companies ("Limitadas"), regulated by Brazilian Civil Code (Law # 10.406/2002)

- Corporations ("Sociedades por Ações"), regulated by Brazilian Corporation Law (Law # 6.404/1976)

Incorporation Process

Corporate form options

▪ Brazilian Branch

- Regulated by the Brazilian Civil Code, Decree # 5.664/2006 and Normative Ruling # 81/1999;

- Lengthy process;

- Incorporation and future amendments subject to authorization from the Executive Power: delegation of powers to the Ministry of Development, Industry and Foreign Trade.

▪ On January 11 , 2012: EIRELI - the individual limited liability company

- Created by Law # 12.441/2011;

- Separation of personal assets from business assets;

- Paid-in capital of at least 100x minimum wage;

- One EIRELI per investor.

Incorporation Process

Key aspects: Limitadas x Corporations

LIMITADAS

Incorporation

▪ Entry into an incorporation agreement and approval of the articles of association;

▪ At least 2 quotaholders (either individuals or entities).

Corporate Capital

▪ Represented by quotas (amount of money, rights or assets contributed to the company)

▪No minimum capital requirement;

▪ No need to fully pay-in at incorporation;

▪ Capital may be paid-in cash or assets (no need for an appraisal report).

CORPORATIONS

Incorporation

▪Prospective shareholders hold a meeting to approve incorporation and to approve the by-laws;

▪At least 2 shareholders.

Corporate Capital

▪Types and classes of shares;

▪2 types of shares: common and preferred (non-voting or limited voting);

▪No minimum capital requirement;

▪10% pay-in in cash at incorporation;

▪Capital may be paid-in in cash or assets (appraisal report is mandatory).

2

Incorporation Process	
Key aspects: Limitadas x Corporations	
LIMITADAS	CORPORATIONS
Liability <ul style="list-style-type: none">• Limited to the amount of capital subscribed by each quotaholder;• All quotaholders have joint liability for paying-in the total capital. Management - Simple <ul style="list-style-type: none">• At least 1 officer;• Only individuals resident in Brazil.	Liability <ul style="list-style-type: none">• Limited to the issue price of the shares subscribed or acquired. Management - Complex <ul style="list-style-type: none">• Board of Directors (<i>Conselho de Administração</i>): optional, except for authorized capital companies;• Executive Committee (<i>Diretoria</i>): at least 2 officers, resident in Brazil;• One third of the Board may also be part of the Executive Committee.

Incorporation Process	
Key aspects: Limitadas x Corporations	
LIMITADAS	CORPORATIONS
Transfer of Quotas <ul style="list-style-type: none">• Requires amendment to the company's articles of association;• Only closely held companies;• No sale of securities to the market. Dividend <ul style="list-style-type: none">• No minimum required.• Possible unequal distributions.	Transfer of Shares <ul style="list-style-type: none">• Carried out upon record in the company's corporate books;• May be closely or publicly held. Dividend <ul style="list-style-type: none">• If the by-laws do not provide for a dividend – minimum of 25% applies;• No flexibility for unequal distributions.

Incorporation Process	
Key aspects: Limitadas x Corporations	
LIMITADAS	CORPORATIONS
Institutional Formalities <ul style="list-style-type: none">• Quotaholders' annual meeting;• Publications at the Official Gazette are not required, with few exceptions (i.e. capital reduction, liquidation, splits, mergers, FS of large cap limitadas R\$ 240 million assets or R\$ 300 million turnover);• Quotaholders' Meeting and Officers' Meeting books.	Institutional Formalities <ul style="list-style-type: none">• Shareholders' annual meeting;• Corporate deeds (i.e. minutes of SHM)/financial statements are subject to publication at the Official Gazette and other widely circulated newspaper;• Required books: Share Registry and Share Transfer; Shareholders' Meeting; Shareholder Meeting Attendance; Board of Directors' Meeting Minutes; Executive Committee's Meeting Minutes.

Incorporation Process

Other information

▪ Address of the headquarters;

▪ List of corporate purposes;

▪ Other special clauses the founders would like to include in the charter documents (i.e. limitations on management etc.).

Incorporation Process

Necessary documentation

▪ Power of Attorney from each foreign quotaholder/shareholder to receive service of process in connection with corp. litigation and take corp. action;

▪ Corporate documentation of each foreign corporate quotaholder/shareholder – evidence of existence and power to grant PoA;

▪ Personal identification documents of each individual foreign quotaholder/ shareholder and officers and/or directors (ID card or passport, and enrollment number with the federal taxpayers registry – CPF and CNPJ, as applicable).

Incorporation Process

Required Legalization

Documents executed outside of Brazil must be:

- notarized and legalized by the Brazilian Consulate of the jurisdiction of execution;

- translated into Portuguese by a sworn translator; and

- registered with the Registry of Titles and Deeds.

Registration Requirements

Trade Board

Filing in with the competent Trade Board – State of Choice (branches have to be registered);

Payment of applicable fees.

Federal Revenue Office

Tax ID numbers (CNPJ/CPF) for the Company and non-resident shareholders;

Appointing legal representatives in Brazil with powers to act on their behalf before tax authorities and receive services of process.

Registration Requirements

Central Bank of Brazil

Registering the foreign partner - CADEMP registration numbers;

Registering foreign investment in Central Bank’s electronic systems (RDE-IED);

Paying-in at incorporation: appointment of a representative to receive the investment on behalf of the company.

Other registrations and formalities

Registration with Municipal (ISS/Service Tax) and State Authorities (ICMS/VAT);

Registration with INSS (Brazilian Social Security) and Caixa Econômica Federal (FGTS/ statutory severance fund);

Opening and authenticating corporate and accounting books.

Estimate Timing

Sworn translation of foreign documents --- 3 to 5 days;

Registration of foreign documents with the Registry of Titles and Deeds --- 2 days;

Registration of foreign shareholders with CNPJ or CPF and with CADEMP --- 2 to 3 days;

Registration of corporate documents with the Trade Board --- 5 business days;

Company’s registration with CNPJ --- 5 business days;

Company’s registration with CADEMP and investor’s RDE-IED --- 1 to 2 days,

Company’s registration with Municipal and State authorities --- 20 business days;

TOTAL INCORPORATION TIME 20-22 BUSINESS DAYS – FULL REGISTRATION
READY TO OPERATE 40 BUSINESS DAYS OR LESS

Shelf companies – 5 to 10 business days;

Visas for foreign managers may take as much as 3 to 4 months;

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