

Setting Up Your Company and Office in Brazil

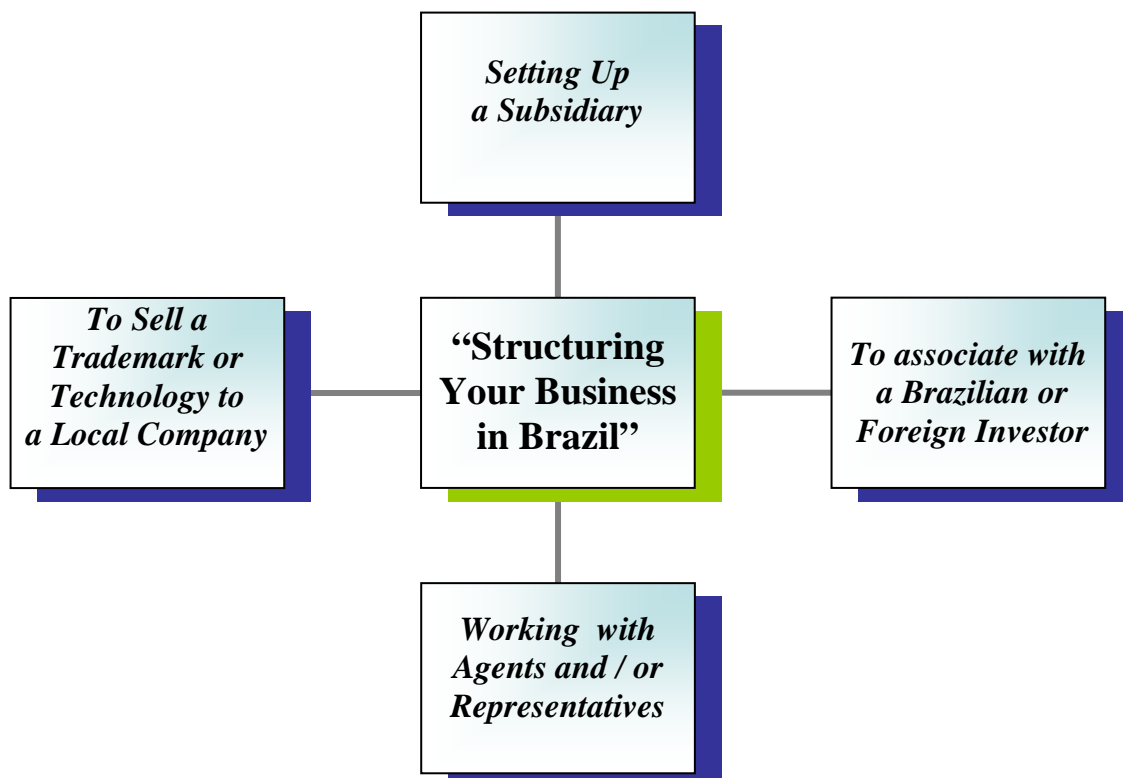
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As the “B” in BRIC, Brazil has been gaining a great deal of attention on the global business front, with many companies investigating how to get their businesses in the country. However, Garcia Lopez explains that while business legal structures in Brazil are similar to ones found in the United States and the United Kingdom, specific regulatory differences could have an effect on how you go about setting up your business in Brazil.

By Hector Garcia Lopez, GMS

The many ways available to structure your business in Brazil essentially are the same as any other place of the world. With the exception of some specific sectors where legislation puts restrictions on foreign capital, a foreign investor is free to set up a subsidiary to associate on a minority, majority, or equal basis with other Brazilian or foreign investors; work via one or more agents and/or representatives; or simply sell his or her trademark and/or technology on a lump-sum commission or royalty basis to a locally-based company (See Figure 1.).

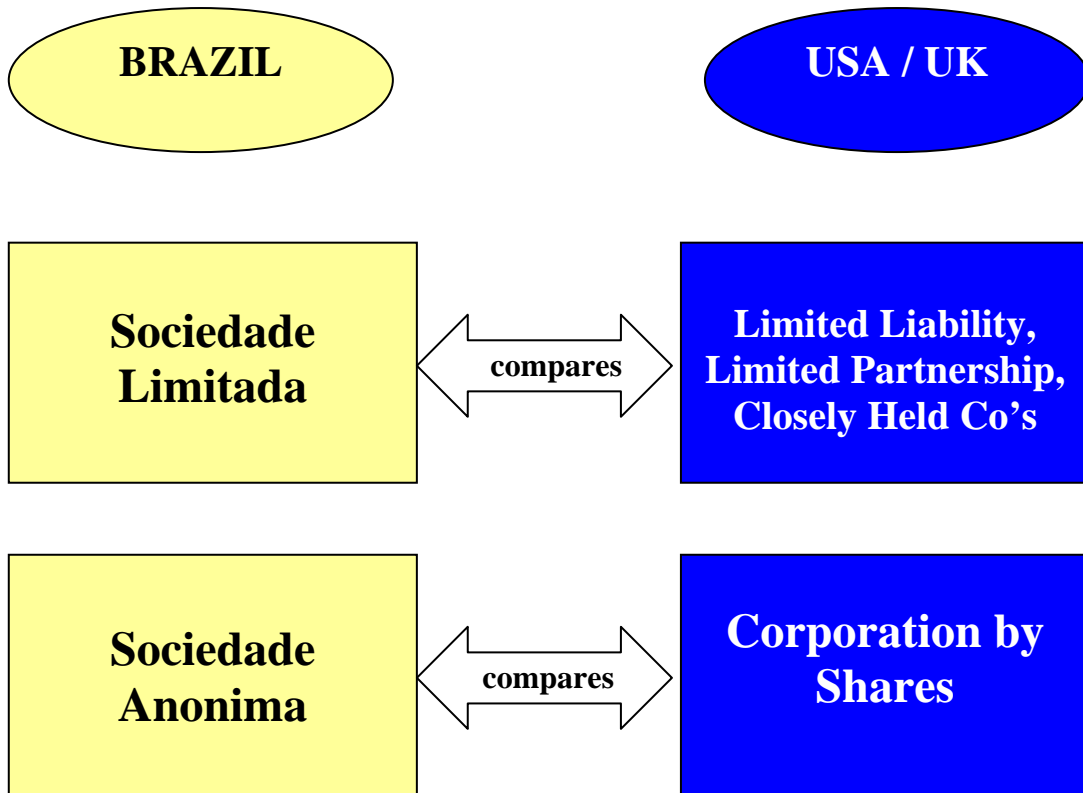
Figure 1:



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As Figure 2 Illustrates, Brazilian law provides for legal structures that are broadly similar to those found in the United States or the United Kingdom. However, the specifics of Brazilian company legislation may imply differences that could have an effect on a business.

Figure 2 :



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The Brazilian *sociedade limitada* can be compared with limited liability companies, limited partnerships, and closely held companies that can be found in other geographies. The capital is closed and there are no shares available for public sale. The liability of the partners is proportional to their stakes in the company.

The *sociedade anônima*, or SA, is a share company owned by shareholders, and basically comparable to a corporation-type of company. The capital is divided into shares that might or might not be publicly traded. Financial statements and corporate documents must be published periodically.

Business Structure

The very first step in moving into Brazil has to be deciding what type of structure best fits the business. Before coming to a final decision, it is preferable to keep an open mind during market research, establishing contacts, and becoming acquainted with local business practices and conditions.

The first priority typically will be to make your company's products and services available as efficiently and profitably as possible to the clients or consumers. There are several ways to enter the Brazilian market, including exporting, franchise development, appointing a representative, setting up a subsidiary, and creating a joint venture. Following are discussions of each method (See Figure 3.).

Figure 3 :



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Exporting

A simple way to test the Brazilian market is through an export scheme with no formal representation in the country. Many companies see this as a good first step in judging a market's receptiveness to one's goods and services, with a view to subsequently build up their presence. There are several firms that specialize in handling importation either on their own or for clients, and the potential exporter will have several choices at hand.

Exporting has many positive aspects. It has proven to be quick and easy to set up. It requires a minimum or no outlay beyond a few visits. It involves a minimum of commitment or organizational disruption. It can start on a small scale and then grow with market demand.

However, it is important to remember that when exporting, an organization selling directly to overseas consumers and/or end-users may face problems building customer relationships and in developing new outlets. A company selling via a distributor but has no physical presence may feel uncertain that its product is being handled properly. If the product is badly handled in the first stages, its chances in the new market may be at risk.

Appoint a Representative

When appointing a representative, companies may opt for a single agreement with national scope, or a number of regional agreements. A company might just seek a representative for the bigger market of the Southeast, centered in Sao Paulo, with a view to expanding later. The agreement is executed in a contract. It is advisable to include an option for the exporting company to have a formal participation in the representative company at a later date.

One of the advantages of appointing a qualified representative is the higher chance of the product having a good entry into the market. A representation agreement can provide the exporter with a much better feeling about the potential of the product in the new market.

On the flipside, appointing a representative carries more expenses, administration, and set-up costs than the simple export scheme. The selection of the right representative is crucial to the business. Such relationships also may involve some direct or indirect financial support by the exporters for participation in joint marketing.

Create a Joint Venture

The creation of a joint venture is a proven method for different types of companies to bring their products or services to the Brazilian market. In economic and commercial terms, the joint venture will seek to complement the existing strengths of the incoming company.

Joint ventures give the investor's product or service the benefit of local knowledge of markets, business practices, and the like, hence potentially increasing the speed of the launch, business growth, and the chances of success. It also may reduce the need for capital.

However, joint ventures create potential conflicts concerning business practices, strategies, ethics, and the like. An investor wanting to use a joint venture as a means to acquire local-market knowledge and operating skills must ensure that such knowledge transfer really will occur, forcing him to be committed with the local partner as a consequence.

Set up a Subsidiary

A foreign investor is allowed to set up a company in Brazil without the participation of a local investor. Many multinationals have operated successfully in this manner for several years. There is a good supply of local executives who can be hired to provide local knowledge from the start, reducing the advantage of the joint venture. The positives of setting up a subsidiary include total control, avoiding the potential conflicts of a joint venture. Also, profits accrue wholly to the investor.

However, successful penetration in a new market requires both the knowledge of how the market works and of the potential acceptance of the product or service to be offered. Additionally, the potential investor needs to be advised and prepared for the possibility of failure.

Develop a Franchise

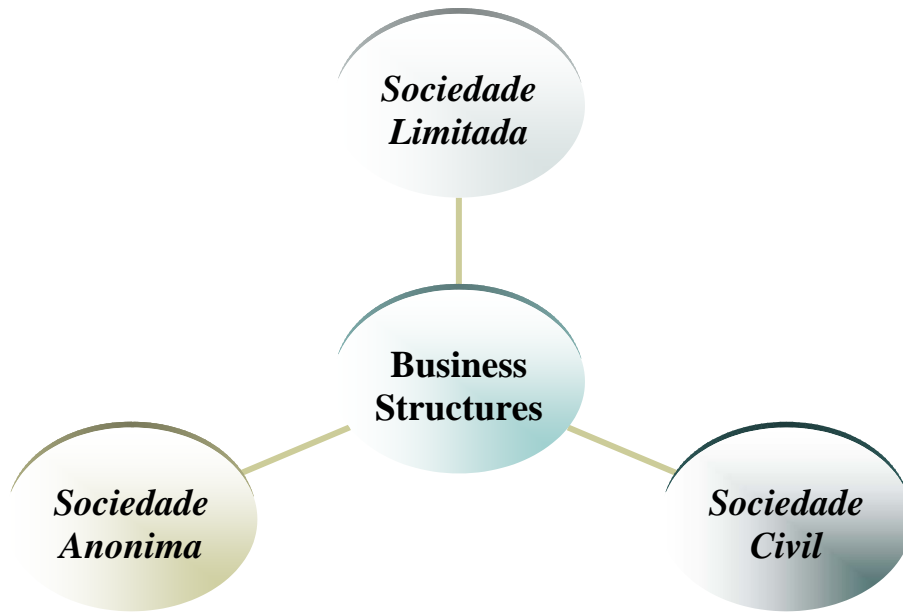
Franchising in Brazil has grown during the last several years, mainly in the fast food and retail service sectors. United States companies with a Brazilian presence include Pizza Hut, McDonalds, Dunkin' Donuts, Alpha Graphics, and others. Foreign franchise companies may choose to formalize a presence in Brazil, either via a subsidiary or a joint-venture, and use this company to franchise to local operators. In this situation, franchising royalties will accrue to the local subsidiary or joint venture, which may remit them as regular profits.

Deciding on the Structure that Best Fits Your Business

Foreign companies wishing to establish a presence in Brazil could adopt one of the following legal structures (See Figure 4.):

- the limited liability company or *sociedade limitada*;
- the *sociedade civil*—a special form of limited liability company that cannot engage in trade; or
- the joint stock corporation or *sociedade anônima*.

Figure 4 :



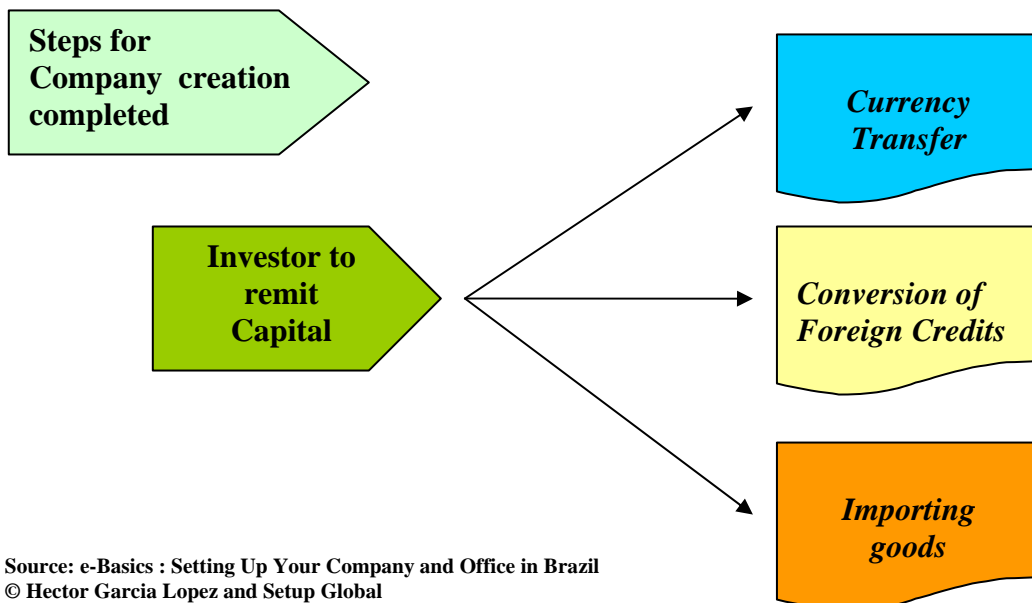
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Registration of the Foreign Investment

Once the formalities for establishing a company in Brazil are complete, the foreign investor can remit the capital to be used for its incorporation. This investment may be made in the form of a currency transfer, a conversion of foreign credits, an importation of goods, and the like.

The rules for bringing in capital essentially are the same regardless of the type of company being established. However, there are different procedures for the different types of capital incorporation. The following presents an overview of these procedures (See Figure 5.).

Figure 5 :



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Cash investment. This does not require prior official authorization. Money for paying for capital or acquisition of an equity stake in an existing Brazilian company may be sent to Brazil via any bank authorized to deal in foreign exchange.

Conversion of foreign credits. Investments in this form are subject to the prior authorization of the Brazilian Central Bank (*Banco Central do Brasil*). Once authorization has been obtained, it is necessary to perform a symbolic exchange operation, representing the purchase and sale of foreign currency. The company then has 30 days to incorporate the investment to its capital.

Importing goods. Investments done via the importation of goods and equipment requires prior approval from the Central Bank or Secretariat of Foreign Trade (SECEX). The goods, machinery, and equipment must be destined for the manufacture of products or rendering of services.

Importation of Goods—Special Note

The importation of used goods or importation under fiscal incentive can be used for capital incorporation only if similar products are not available locally. Second-hand goods must be used in projects that promote Brazil's economic development. Once customs clearance has been obtained for these imported goods, the Brazilian company has 180 days to incorporate them and then 30 days to apply for registration of the investment.

Registration of Foreign Capital

Foreign capital must be registered at the Brazilian Central Bank, which will issue a certificate of registration for the money invested. Investments will always be registered in the currency in which they were brought in. Foreign capital must be registered with the Central Bank to allow the investor to make future use of the commercial/ financial exchange market for remittance of profits, repatriation of capital, and registration of reinvestments.

Remittance of Profits—Double Taxation Treaties

In general, Brazil places no restrictions or limits on the distribution and remittance of profits abroad. Remittances are not subject to any withholding tax. Brazil has signed double-taxation treaties with several countries, including Argentina, Austria, Belgium, Canada, the Czech Republic, China, Denmark, Ecuador, Finland, France, Germany, Holland, Hungary, India, Italy, Japan, Luxembourg, Norway, the Philippines, Portugal, Slovakia, South Korea, Spain, and Sweden.

Reinvestment of Profits

In accordance with the Foreign Capital Law, reinvestments are defined as “profits earned by companies established in Brazil and attributed to residents overseas, which are reapplied in the same companies which they preceded or in another sector of the domestic economy.”

If a foreign investor opts to reinvest profits, rather than remit them abroad, then these profits are subject to new registration as additional foreign capital associated with the original investment.

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