

Establishing a business in Brazil

Foreign companies opening a Branch in Brazil

The Brazilian government, through its Department of Registration of Business and Integration and other federal agencies, is responsible for authorizing the nationalization or installation of offices, agencies, branches, or facilities of a foreign company in Brazil.

To ease these procedures, the federal government allows foreign companies to request the opening of branches, agencies and establishments in Brazil through the gov.br website.

[Normative Instruction n. 77/2020](#), which came into force on April 1, 2020, also allows changes to the company's contract or bylaws to be equally requested online. The new instruction compiled the rules for the operation of branches of foreign companies in the country, revoking the four previous regulations regarding the matter.

Through the gov.br website the foreign company can fill in the application for the installation and operation of the Office, Branch, Agency or Facility in Brazil. The following documents are required:

Act of deliberation on the operation of an Office, Branch, Agency or Facility in Brazil;

Full content of the contract or bylaws;

List of partners or shareholders, as well as a list of members of all management bodies, with the names, professions, domiciles and number of shares or quotas, except when, due to the legislation applicable in the country of origin, it is impossible to comply with this requirement;

Proof that the company is constituted according to the law of the country of origin;

Act of deliberation on the appointment of the representative in Brazil, accompanied by a power of attorney that empowers him/her to accept the conditions under which authorization is given and full powers to deal with any issues and resolve them definitively, being able to be sued and to receive summons by society;

Declaration by the representative in Brazil that he/she accepts the conditions under which the authorization for operation by the Federal Government is given;

Last balance sheet; and

Proof of payment for the service.

The legal representative is the person in charge of filing the application process and he/she may be Brazilian or foreign citizen; however, he/she must have a domicile in Brazil.

The incorporation of a Brazilian subsidiary is not subject to a similar authorization process.

Types of companies in Brazil:

a. LIMITED-LIABILITY SOLE PROPRIETORSHIP - EIRELI ("Empresa Individual de Responsabilidade Limitada")

a.1 Applicable Legislation

[Law n. 12.441/2011](#), which amends provisions of the [Brazilian Civil Code](#);

[Normative Instruction n. 81](#), of June 6, 2020 (IN DREI n. 81/2020), issued by the Department of Corporate Registration and Integration (DREI), established the Registry Manual for each different type of company. Its Annex III corresponds to the Registry Manual for Limited-Liability Sole Proprietorship Enterprises.

a.2 Classification

Individual company;

For profit.

a.3 Legal name

Firm Name ("Firma"): Proprietor's full name, followed by "EIRELI";

Corporate Name ("Denominação"): Any words, in Portuguese or in a foreign language, except those restricted by article 22 of IN DREI n. 81/2020, followed by "EIRELI".

a.4 Owners

Only one proprietor; a one-person undertaking (meaning that once the individual opts for an EIRELI, he/she can run only one company of that type);

Individual (of Brazilian or foreign origin).

a.5 Articles of Organization/Incorporation

Articles of Organization;

Registration and filing at the Commerce Registry (“Junta Comercial”) of competent jurisdiction.

a.6 Capital

Given that the company relies on a sole proprietor, capital is not required to be divided into units of ownership;

The minimum capital required may not be less than one hundred times the sum of the highest minimum salary applied in Brazil on the date of filing for registration;

Once it is immediately paid in, capital may be increased at any time;

Capital may be reduced, as long as the minimum value required by law is maintained.

a.7 Payment

A statement, in the articles of organization, that capital has been fully paid in;

Any assets can be used for payment, provided they are susceptible to cash valuation.

a.8 Ownership/Partnership Liability

Limited to paid-in capital;

Unlimited: in case capital is yet unpaid, not observing the minimum capital requirement.

a.9 Control and Management

Controlled by the sole proprietor;

An EIRELI may be managed by one or more people, being the owner or a non-owner, as indicated in the articles of organization. The legal entity cannot be a manager;

A foreign individual may be appointed as manager, provided that he/she has a permanent visa and is not otherwise prevented from occupying management positions. Citizens from Mercosur countries (Argentina, Paraguay and Uruguay) and associated nations (Bolivia and Chile) who hold a 2-year Temporary Residence visa can be both owner and manager of an EIRELI, in accordance with IN DREI n. 81/2020.

a.10 Termination/Dissolution

Dissolution is determined by the proprietor through the registration at the correspondent Commerce Registry of a Dissolution Decision, containing: a dissolution resolution and the appointment of a liquidation representative.

b. LIMITED-LIABILITY COMPANY (Ltda.) ("Sociedade Limitada")

b.1 Applicable Legislation

[Brazilian Civil Code](#) (Law n. 10.406/2002; from Article 1.052 to Article 1.087);

[Normative Instruction n. 81](#), of June 6, 2020 (IN DREI n. 81/2020), issued by the Department of Corporate Registration and Integration (DREI), established the Registry Manual for each different type of company. Its Annex IV corresponds to the Registry Manual for Limited-Liability Companies

b.2 Classification

Business company formed by individuals or capital;

For profit.

b.3 Legal name

Firm Name ("Firma"): Name of one or more of the company's partners, with "e companhia" (& Cia.) and "limitada" (Ltda.), in full or abbreviated;

Corporate Name ("Denominação"): Any words, in Portuguese or in a foreign language, except those restricted by article 22 of IN DREI n. 81/2020, followed by "limitada" (Ltda.), in full or abbreviated.

b.4 Owners

1 (one) or more partners;

Individuals or legal entities, of Brazilian or foreign origin.

b.5 Articles of Organization/Incorporation

Articles of Organization/Bylaws;

Registration and filing at the Commerce Registry ("Junta Comercial") of competent jurisdiction.

b.6 Capital

Divided into membership units;

No minimum capital requirement;

An increase in capital is admitted, providing all subscribed membership units are paid in;

The capital may be subject to reduction in the following cases:

(i) the occurrence of losses; or

(ii) capital is excessive pursuant to the company's corporate purpose.

b.7 Payment

The articles of incorporation must establish the means and deadline for payment;

Any assets can be used for payment, provided they are susceptible to cash valuation.

b.8 Ownership/Partnership Liability

Limited to paid-in capital;

In cases in which capital has not been fully paid, the partners shall be deemed unlimitedly and jointly liable.

b.9 Control and Management

Control defined by number of membership units;

Resolutions are made during meetings (up to 10 partners) or general meetings (more than 10 partners);

The company may be managed by one or more people, partners or non-partners, as indicated on the articles of organization;

The company may be managed by a non-partner, if unanimously approved by partners when capital has not been paid, and if approved by 2/3 (two-thirds) when capital is fully paid;

A foreigner may be appointed as manager, provided that he/she has a permanent visa and is not otherwise prevented from occupying management positions.

Citizens from Mercosur countries (Argentina, Paraguay and Uruguay) and associated nations (Bolivia and Chile) who hold a 2-year Temporary Residence visa can be both owner and manager of an LLC, respecting IN DREI n. 81/2020.

b.10. Termination/Dissolution

Dissolution occurs in the following cases (as in Article 1.033; Article 1.034; and Article 1.087 of the Brazilian Civil Code):

At the end of its term;

Unanimous resolution of all partners;

Resolution of partners representing an absolute majority, in companies with an open-ended duration;

Insufficient plurality of partners not reconstituted in 180 days;

Expiration of company's license to operate;

Court decision;

Bankruptcy;

Judicial or extrajudicial liquidation will take place after the company is terminated. The remaining assets will be distributed to the members proportionally to their respective membership units.

c. CORPORATION (S.A. or Cia.) ("Sociedade Anônima")

c.1 Applicable Legislation

[Law n. 6.404/1976](#), a.k.a. "Lei das S.A.", supplemented by Law n. 10.303/2001.

[Normative Instruction n. 81](#), of June 6, 2020 (IN DREI n. 81/2020), issued by the Department of Corporate Registration and Integration (DREI), established the Registry Manual for each different type of company. Its Annex V corresponds to the Registry Manual for Corporations

c.2 Classification

Business corporation formed by either public or private capital (either publicly or closely held companies);

For profit.

c.3 Legal name

Corporate Name (“Denominação”): Fictitious business name and/or founder's, shareholders' and involved people's names, with “Sociedade Anônima” (S.A.) or “Companhia” (Cia.), in full or abbreviated. The latter cannot be placed at the end of the legal name.

c.4 Owners

At least two shareholders for closely held companies and three for publicly held ones;

Individuals or legal entities (of Brazilian or foreign origin).

c.5 Articles of Organization/Incorporation

Articles of Incorporation/Bylaws;

Registration and filing at the Commerce Registry (“Junta Comercial”) of competent jurisdiction.

c.6 Capital

Divided into shares;

No minimum capital requirement, but shareholders must pay in at least 10% of the issuance price of the shares subscribed in cash;

The articles of incorporation establish the number of shares, and whether the shares will have an even value or not;

Capital may be increased in the following cases:

Issuance of shares provided for in the articles of incorporation;

Conversion of bonds (debentures) and participation certificates into shares;

Resolution of the Annual General Meeting regarding capitalization or reserves or issuance of new shares;

The capital may be reduced in the case of a loss or capital that is excessive for the company's corporate purpose.

c.7 Payment

A deposit receipt of at least 10% of the issuance price of the shares subscribed must be submitted for registration;

Any assets can be used for payment, provided they are susceptible to cash valuation.

c.9 Ownership/Partnership Liability

No liability: shares subscribed and paid in;

Limited to the shares that shareholders have subscribed for and have not yet paid in.

c.10 Control and Management

Control defined by shareholders with voting rights. The controlling shareholder owns a majority portion of the voting capital;

In compliance with company's articles of incorporation, corporate management will be performed by the Board of Directors ("Conselho de Administração") and the Executive Committee ("Diretores"), or solely by the Executive Committee;

The chair of the Executive Committee, whether a shareholder or not, must reside in Brazil;

The members of the Board of Directors may reside abroad, provided they appoint a representative resident in Brazil.

c.11 Termination/Dissolution

Dissolution comes into effect either by court order or by the ruling of administrative authorities with jurisdiction. Incorporation, merger and spin off are forms of dissolution;

Judicial or extrajudicial liquidation will take place after the company is terminated. The remaining assets will be distributed to the shareholders proportionally to their respective shares.