

Legal 500 Country Comparative Guides 2025

Brazil

Investing In

Contributor

CGM Advogados



Adriano Chaves

Corporate and M&A Partner | adriano.chaves@cgmlaw.com.br

Bernadete de Figueiredo Dias

Corporate and M&A Partner | bernadete.dias@cgmlaw.com.br

Martim Machado

Corporate and M&A Partner | martim.machado@cgmlaw.com.br

René Gelman

Corporate and M&A Partner | rene.gelman@cgmlaw.com.br

This country-specific Q&A provides an overview of investing in laws and regulations applicable in Brazil.

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Brazil: Investing In

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

As we enter 2025, Brazil continues to be one of the top destinations for FDI in the world.

Brazil started 2024 with signs that FDI and M&A activity would increase. Brazil's GDP grew 2.9% in 2023, our Central Bank was one of the first to start reducing the basic interest rate (and there was an expectation that the USA would start reducing soon). Also, the unemployment rate reached its lowest level (7.4%) since 2014, and the country had strong levels of trade balance (near US\$ 100 billion) and foreign direct investments (near US\$ 66 billion, the 2nd destination in FDI volume in 2023 according to the OCDE). S&P Global Ratings even upgraded Brazil's long-term rating to "BB" in late 2023, following the approval of a tax reform by Congress. It is also worth mentioning that valuations had come down to more reasonable levels.

Given the USA's delay in beginning reducing its interest rates and certain doubts about the Brazilian government's commitment to control its expenditures, that optimism suffered some impact. But it has not impacted FDI: official data released in November 2024 indicates that the FDI for the 12-month period ending in October amounted to US\$ 66 bi (a small increase when compared to the US\$ 63.8bi accumulated in October 2023). According to the OCDE, Brazil continued to be the 2nd destination for FDI in the first half of 2024.

The fact that Brazil is a democracy, the 9th economy in the world, with one of the largest internal markets of the Western hemisphere, means that it can hardly be ignored. In October 2024, Moody's increased Brazil's rating to Ba1 (one degree below investment grade), with positive perspective, which might work as an incentive for the government to drive in the right direction. The unemployment rate decreased to 6.2% in October 2024 (the lowest rate in years) and the government estimates that Brazil's GDP will grow more than 3% in 2024.

To give context, Brazil received US\$ 46.4 billion of FDI in 2021 (near 2.81% of GDP); a small rise when compared to 2020, the first year of the COVID19 pandemic. FDI grew more strongly in 2022, with 1,752 M&A deals announced

and a total FDI of US\$ 74.6 billion, followed by a retraction in 2023, when the country received US\$ 66 billion in FDI and a 9.3% decrease in the number of M&A deals.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

Brazil welcomes any form of FDI, the most common of which being the direct acquisition or subscription of equity issued by Brazilian companies (both controlling and minority interests, depending on the transaction envisaged by and the investment capacity and maturity of the foreign investors), as well as intercompany loans. These funds are commonly used to develop both greenfield and brownfield projects in the most varied markets, either individually or through joint ventures and franchises.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

In general, yes. However, certain exceptions apply due to national interest, security, or strategic concerns, where foreign ownership is restricted or requires government approval. Below are some examples.

Journalism and Broadcasting: Foreign participation in companies involved in journalism and broadcasting (including sound and image transmission) is limited to 30% of the voting and total capital stock.

National Defense: To be accredited by the Ministry of Defense as an Strategic Defense Company – EED, a legal entity must meet certain requirements, such as (i) having its headquarters, management, and industrial/service facilities located in Brazil, and (ii) ensuring that foreign shareholders cannot exercise more than 2/3 of the total voting rights that can be exercised by Brazilian

shareholders present in a general meeting.

Cabotage: The transport of foreign nationals or goods within Brazilian borders by a foreign vessel is prohibited, except for Brazilian companies enrolled in the "BR do Mar" program, which are allowed to charter vessels from their wholly owned foreign subsidiaries or from a wholly owned foreign subsidiary of another Brazilian company, with certain exceptions.

Rural Land Ownership: Restrictions apply to foreigners and to Brazilian companies with foreign ownership.

- Foreign individuals may acquire rural properties without restriction only if the area does not exceed 3 defined exploration modules (with measurements varying from one municipality to another). For areas between 3 and 50 modules, prior approval by the National Institute of Rural Settlement and Agrarian Reform (Incra) is required. For properties exceeding 50 modules, National Congress authorization is mandatory.
- In the case of legal entities, rural properties can only be acquired when intended for agricultural, livestock, industrial, or colonization projects that align with their corporate purposes. Such acquisitions require prior approval by Incra. For properties exceeding 100 modules, National Congress authorization is also mandatory.
- The foregoing does not exhaust the applicable requirements. Obtaining the necessary approvals is a complex procedure that must be strictly complied with. Please be aware that foreigners may acquire or lease up to 25% of the territorial area of each municipality. Additionally, individuals of the same nationality cannot own or lease more than 10% of a municipality's territory.

The following activities are monopolies of the Federal Union: (i) the exploration and production of petroleum and natural gas deposits, as well as other fluid hydrocarbons; (ii) the refining of both domestic and foreign petroleum; (iii) the import and export of basic products and derivatives resulting from the aforementioned activities; (iv) the maritime transportation of domestic crude oil or basic petroleum derivatives produced in Brazil; and (v) virtually all activities involving nuclear minerals and their derivatives (except for radioisotopes, whose production, commercialization, and use may be authorized).

This overview is not exhaustive, and other restrictions may apply depending on specific circumstances. See also Question #19.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

In general, yes. However, certain restrictions may apply to foreign investors depending on the business field of the relevant companies, as mentioned in Question #3.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

Virtually all domestic businesses are organized and managed through local companies rather than offshore entities. For a foreign company to operate directly in Brazil, it must open a branch or set up a subsidiary. Opening a branch requires the prior approval of the Federal Government, which can be time-consuming and more complex than opening a subsidiary.

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

The most common forms of domestic companies are the limited liability companies (the so-called "*sociedades limitadas*") and the corporations ("*sociedades anônimas*"). In both cases, the shareholders are not personally liable for the company's liabilities, but exceptions apply.

Sociedades limitadas are mainly governed by the Civil Code and its shareholders may choose to apply Law No. 6,404/76 ("Corporations Law") on a secondary basis. *Sociedades limitadas* are more flexible in terms of structure and operations, as there are less strict rules on shareholders' rights and obligations, simpler disclosure requirements and management structure. For those reasons, *sociedades limitadas* are considered more suitable for businesses without minority shareholders.

Corporations are governed by the Corporations Law, which provides detailed rules regarding the rights and obligations of shareholders, controlling shareholders and management. This corporate structure is more suitable when there are various groups of shareholders, as the Corporations Law allows a more efficient enforcement of shareholders agreements and requires a more robust

management structure. However, the process of incorporation is more complex and there are mandatory publication requirements.

- **Which form is preferred by domestic shareholders?**

According to the Ministry of Entrepreneurship, Micro-enterprises and Small Enterprises in the first quarter of 2024, *sociedades limitadas* were the corporate type with the highest volume of company registration requests in Brazilian Commercial Registries (84.3%). Corporations also have a significant share (approx. 11%).

- **Which form is preferred by foreign investors/shareholders?**

Sociedades limitadas.

- **What are the reasons for foreign shareholders preferring one form over the other?**

Sociedades limitadas are chosen by foreign shareholders due to their simplicity. Corporations are preferred by investors requiring a more sophisticated corporate structure, due to the number of shareholders, the need to establish arrangements among the shareholders (e.g., different share classes, non-voting or plural voting shares) or alternative fundraising options.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

- **Which governmental entities have to give approvals?**

In general, no governmental approvals are required for incorporating a company. However, due to national interest, security, or strategic concerns, or depending on the business activities of the legal entity (such as energy, private security or telecommunications services, airlines or financial institutions) prior approval or authorization from relevant regulatory bodies will apply.

- **What is the process for forming/incorporating a domestic company?**

First, one must perform a feasibility assessment before

the municipality where the domestic company will operate, to confirm that the intended corporate purpose may be carried out at the company's address. Once this assessment is completed, the company must file its incorporation documents with the Commercial Registry in the state where the company will be headquartered. The incorporation documents must indicate, among other information, the company's local address, corporate purpose, capital stock and management (officers and, where applicable, board of directors and board of auditors). The management members must be individuals. If such individuals are not resident in Brazil, they must appoint a Brazilian resident who will have the authority to receive the service of process on their behalf – see Question #8 in that regard. As the officer is responsible for the daily management of the company, for practical purposes, it is not efficient to appoint an officer that is not resident in Brazil, as all documents related to the domestic company, when signed abroad will be subject to notarization, apostille (in the event the country of issuance has not entered into an international treaty or bilateral agreement with Brazil dismissing such requirement), sworn translation (if not issued in Portuguese language) and registration with the relevant Registry of Deeds and Documents in Brazil. Following such registration, the company must then obtain a municipal license and register with various authorities, such as federal tax authorities to obtain a National Taxpayers Registry of Legal Entities (*Cadastro Nacional de Pessoas Jurídicas* – CNPJ), and, when applicable, state and municipal tax authorities.

Additionally, the company needs to register with the Ministry of Labour and Social Security, register with the Central Bank (in the event one or more shareholders are foreign investors) and open a bank account in Brazil to be capitalized. It is worth noting that additional requirements may apply to specific business sectors, such as healthcare, finance, insurance, etc.

Some of these actions may occur simultaneously and, depending on the nature of the company's activities, specific licenses and authorizations may apply, such as export-import license (the so-called 'RADAR'), sanitary, telecommunications or environmental licenses.

Lastly, companies registered with the CNPJ must disclose the ownership structure that leads to their final beneficial owner.

- **What is a required capitalization for forming/incorporating a company?**

In general, *sociedades limitadas* and corporations are not required to have a minimum corporate capital. However,

there are exceptions to certain types of businesses, such as financial institutions, insurance companies and outsourcing service providers. Additionally, minimum investment requirements will apply to seek a residence visa for foreign investors or officers. Also, the level of capitalization is subject to the tax impact of thin capitalization rules.

It is worth noting that the capital stock of a *sociedade limitada* may only be increased after it is fully paid up. Additionally, although each shareholder's liability is limited to the value of their equity, if the company's capital stock is not fully paid in, all shareholders will be jointly liable for the full payment of the corporate capital stock.

- **How long does it take to form a domestic company?**

The process typically takes 30 to 60 days for a holding company or simple services or software company, but can vary depending on the company's legal format and sector. Manufacturing, trading or retail companies may take longer, up to 6 months in general. This occurs because environmental licenses and other specific licenses and permits may be required depending on the company's activities. For example, a company in the food industry will likely need to undergo inspection by the local health surveillance agency, a company in the healthcare sector may need authorization from the National Health Surveillance Agency (Anvisa) to operate in the country, and industrial facilities may require an environmental license to operate.

- **How many shareholders is the company required to have?**

Sociedades limitadas in Brazil may have one or more shareholders. Corporations must have at least two shareholders, except for a wholly owned subsidiary (i.e. a company with a single shareholder), provided that the incorporation is executed by public deed and its sole shareholder is a Brazilian company.

- **Is the list of shareholders publicly available?**

The list of shareholders of *sociedades limitadas* is publicly available. In certain cases, the relevant registry where the company is incorporated may charge a fee to provide access to such information. For closely-held corporations, the shareholder's list is kept internally in a proper book and is not publicly accessible, but it can often be deduced from minutes of shareholders' meetings filed with the relevant Commercial Registry.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

In order to acquire shares of a Brazilian private company, a foreign investor must previously (i) obtain a tax enrollment with the Brazilian Federal Revenue Service and (ii) appoint one or more individuals residing in Brazil as an attorney-in-fact with powers to (a) receive service of process in accordance with the Corporations Law, and (b) represent such foreign investor vis-à-vis the Brazilian Federal Revenue Service. Additionally, if the foreign investor is a legal entity, it must identify its authorized representatives as well as the chain of corporate interest up to the individual deemed as its final beneficiary (or up to an entity classifying in one of the exceptions established in the applicable regulations), and submit additional documents on the foreign entity.

Non-resident individuals and legal entities are also required to register with the Declaratory Registry of Non-Residents (*Cadastro Declaratório de Não Residentes – CDNR*) from the Central Bank. The foreign investment resulting from the ownership of the shares of a Brazilian entity must also be registered in the Foreign Direct Investment System (SCE-IED) of the Central Bank, if the amount of the equity investment is equal to or greater than US\$ 100,000. Additionally, foreign investments may be subject to some restrictions and/or additional regulatory authorizations depending on the business field of the invested domestic company, such as mining, aerospace, banking, among others. See Questions #3 and #7.

Given the local requirements, it is not feasible for a foreign investor to purchase local operational assets for use in Brazil directly by a foreign entity. Such purchase could be achieved through a Brazilian vehicle, which would develop the relevant activity. Also, the acquisition of certain assets by foreign investors may be restricted, such as rural real estate properties.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

Foreign investors do not require prior approval to acquire shares of public companies listed on the Brazilian organized market. However, they must comply with the requirements established by the Brazilian Securities and

Exchange Commission (CVM) according to CVM Resolution No. 13/2020, and by the Central Bank and CVM Joint Resolution No. 13/2024, which replaces Resolution No. 4,373/2014 as of January 01, 2025.

Under current regulations, a foreign investor, or “non-resident investor in Brazil” (INR), must, before investing and trading in local market, obtain registration as an INR with the CVM. They are also required to appoint one or more representatives in Brazil – these must be financial institutions or intermediaries authorized to operate by the Central Bank, as well as clearinghouses and settlement service providers overseen by the Central Bank under the framework of the Brazilian Payment System – unless the INR is an individual investor that meets certain conditions. Once those requirements are fulfilled, registration is granted automatically, enabling the INR to trade shares on the stock exchange.

Regarding the acquisition by an INR of shares of publicly-held corporations outside the organized market, the CVM stipulates that, under specific circumstances, such as acquisition through public offerings of securities distribution (e.g., an IPO), participation in a public tender offer (OPA), and acquisitions made upon a prior justified request approved by the CVM, an INR may privately acquire such shares. This flexibility allows INR to conduct transactions directly, without the need for intermediation through stock exchange or regulated over-the-counter markets.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

In Brazil, there is an obligation to carry out a mandatory public tender offer (OPA) when an investor directly or indirectly acquires control of a publicly traded company. According to the Brazilian Corporations Law, and CVM Resolution No. 85/2022, an investor who acquires control of a company must launch an OPA to the remaining shareholders holding shares with full and permanent voting rights. Also, the Brazilian Corporations Law stipulates that the acquirer of the controlling interest must offer to the minority shareholders at least 80% of the price per share paid to the controlling shareholders. For companies listed on the “Novo Mercado” segment – which encompasses companies with the highest standards of corporate governance – this percentage must be 100%

11. What is the approval process for building a

new facility in the country (in a greenfield or brownfield project)?

The approval process for building a new facility in Brazil, whether for a greenfield or brownfield project, generally follows several key steps.

First, securing property rights is essential, as it is necessary to have legal rights to the property, whether as the owner, tenant, or otherwise.

The next step involves applying for construction permits before the local municipality. For this purpose, the authorities will assess the project prepared by licensed professionals and the intended use of the facilities, considering its location. The project must consider, among other things, the safety regulations issued by the Fire Department. A traffic impact study may also be required by the municipality. Further, depending on the impact on traffic, the authorities may condition the issuance of the construction permit upon the adoption of compensatory measures to reduce such impacts on local traffic.

Additionally, depending on the nature and size of the facility, environmental licensing is required, and this process is divided in three stages: (1) the Preliminary License, which assesses the future location and concept of the development, confirming its environmental viability and setting basic requirements for the subsequent stages; (2) the Installation License, which authorizes the start of construction and the installation of equipment; and (3) the Operation License, which allows the facility to begin operations.

Once construction of the facilities is completed, one must request the issuance of a Use Permit by the municipality and also a certificate of good standing issued by the Fire Department. The issuance of such permits may be preceded by an inspection.

Beyond these basic steps, depending on the nature and intended use of the facility, further approvals may be required from various authorities to ensure compliance with specific regulations. These might include sanitary regulations, safety standards, and industry-specific requirements.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another

governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

As a rule, transactions in Brazil must be denominated and settled in domestic currency. However, Brazilian law permits the use of foreign currencies for payment of obligations enforceable in Brazil in certain circumstances, to wit:

- contracts and securities related to the foreign trade of goods and services, the financing of such foreign trade and its guarantees;
- obligations for which either the creditor or the debtor is a non-resident in Brazil, including, without limitation, obligations arising from financing or leasing transactions, but excluding obligations related to lease agreements for real estate located in Brazil;
- leasing agreements that, despite being entered into by and between Brazilian residents, are based on funds raised abroad;
- purchase and sale of foreign currency;
- indirect export transactions (as defined by law);
- contracts entered into by exporters and concessionaires, permit/authorization holders or lessees operating in the infrastructure sector; and
- other situations set forth in applicable laws and in regulations that may be from time to time enacted by the National Monetary Council (CMN), where the payment in a foreign currency may mitigate the foreign currency exchange risk or improve the efficiency of the transaction.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- in an acquisition, or
- to pay to contractors, or
- to pay salaries of employees?

Payments in foreign currency are only permitted in connection with specific transactions (the "permitted transaction(s)"). Therefore, in the context of a permitted transaction, payments can be denominated and made in a foreign currency. Regarding payments to employees, they would be lawful in Brazil under a permitted transaction, but may not be actually feasible when the employer is a foreign party and the employee is a party in Brazil because a foreign party (for reasons unrelated to foreign currency exchange laws and regulations) cannot currently be the employer of record of an employee in Brazil. Salaries payable by an employer in Brazil to an employee in Brazil must be denominated and made in domestic currency.

In order for payments in a foreign currency to be made or received by a party in Brazil, such party has to enter into a foreign currency exchange contract with a Brazilian bank or other financial institution authorized by the Central Bank to deal with foreign currencies (exceptions apply to payments not exceeding USD 10,000 or its equivalent in other currencies). Under such contract, the party in Brazil will either purchase foreign currency from the authorized Brazilian bank or institution (if it is the party required to make the foreign currency payment), or sell foreign currency to such Brazilian Bank or institution (if it is the party receiving the foreign currency payment). In the first case (payment to be made by the party in Brazil), the party will use domestic currency to purchase foreign currency, and the Brazilian bank or institution involved in the foreign currency exchange contract will then cause such foreign currency to be transferred to the intended recipient abroad. In the second case (payment received by the party in Brazil), the Brazilian bank or institution will receive foreign currency from the party in Brazil and will transfer the corresponding amount in domestic currency to such party. During that process, the Brazilian bank or institution involved in the foreign currency exchange contract will be required to ensure that the payment to be made or received by the party in Brazil is properly characterized by identifying the parties involved and the nature of the underlying transaction, and duly supported by appropriate documentation (e.g., contracts, invoices, among others, depending on the nature of the underlying transaction).

Furthermore, permitted transactions involving foreign currency payments may have to be reported to the Central Bank depending on the nature of the payment and the amounts involved. For instance, foreign direct investments in Brazil involving more than USD 100,000 (or its equivalent in other foreign currencies) and loans to borrowers in Brazil involving more than USD 1 million (or its equivalent in other foreign currencies) must be

reported to the Central Bank prior to being made.

The existing requirements for foreign exchange contracts and to the reporting of certain transactions to the Central Bank are meant to give the Central Bank greater visibility over permitted transactions with foreign currencies (for information and control purposes), but are not intended to limit or otherwise restrict such transactions. As a rule, the terms and conditions of permitted transactions can be freely negotiated by the parties, and permitted transactions reportable to the Central Bank do not have to be approved by such authority prior to being concluded.

- **Is there a limit on the amount of foreign currency in any transaction or series of related transactions?**

No, the amount of foreign currency involved in a permitted transaction will be relevant only to determining whether such transaction will have to be reported to the Central Bank.

- **Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?**

No, a foreign investor can transfer any amount of foreign currency into Brazil as long as such investor complies with the appropriate requirements to effect such transfer (as applicable, execution of a foreign currency exchange contract and reporting of the underlying transaction to the Central Bank).

- **Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?**

No, a foreign investor can freely buy any amount of domestic currency in Brazil as long as such investor complies with the appropriate requirements to effect such purchase (see above).

- **Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?**

Yes, from a local perspective, a foreign investor can buy domestic currency (i.e. the Brazilian Real, BRL) outside Brazil and have such currency transferred to Brazil to finance acquisitions, pay for goods or services, or pay salaries. However, this process requires (a) the involvement of an institution outside Brazil that is subject to financial regulation and supervision in its country of origin and maintains a bank account in Brazil at a bank that is authorized by the Central Bank to deal with foreign

currencies, and (b) compliance with applicable Brazilian foreign currency exchange regulations and reporting requirements.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

No approval will be needed for a foreign investor to be able to transfer domestic or foreign currency out of Brazil, but such investor will have to comply with the appropriate requirements to effect such transfer (see above).

- **Whose approval is required?**

N/A.

- **How long does it take to get the approval?**

N/A.

- **Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?**

No, the amount of foreign or domestic currency to be transferred will be relevant only to determine whether the transfer will have to be reported to the Central Bank.

- **Is the approval required for each transfer or can it be granted for all future transfers?**

N/A.

14. Is there a tax or duty on foreign currency conversion?

Yes. A federal tax on financial transactions (referred to by the acronym "IOF") is levied on foreign currency exchange transactions related to the conversion of foreign currency. Although the maximum IOF rate is 25%, exemptions and significantly lower rates apply to many foreign currency exchange transactions depending on their nature or purpose. Currently, most foreign currency exchange transactions are subject to IOF at a rate of 0.38%, including foreign currency exchange transactions related to foreign direct investments in Brazil. Foreign

currency exchange transactions related to loans made to a borrower in Brazil are currently subject to a 0% IOF rate, regardless of the terms and conditions of such loans (amount, tenure, purpose, etc.). IOF rates may be changed at any time without prior notice, and changes (to both increase or reduce IOF rates) have been common in the past.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

Yes. Please refer to the answer to Question #14.

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

No. Also, please see the last part of the answer to Question #8.

17. When is a stamp duty required to be paid?

Stamp duties are not applicable in Brazil.

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

The formalities for the transfer of shares will vary depending on the type of the entity. The transfer of shares in *sociedades limitadas* is performed through an amendment to such company's Articles of Association, which must be registered with the relevant Commercial Registry to be effective vis-à-vis third parties. The transfer of shares in a closely-held corporation is evidenced in its book of transfer of shares, which must be signed by the transferor and the transferee. In addition, the information about the transfer shall also be reflected in the corporation's book of shares, which is filled in by the company's management. As one can see, it is easier to transfer shares in a closely-held corporation (as compared with a *sociedade limitada*), as the transfer does not depend on the filing of a corporate document with any authority. After the transfer, in both cases, the enrollments of the Brazilian entity must also be updated to reflect the new ownership, which may include, among others, the update of the information submitted in the

Foreign Direct Investment System (SCE-IED) of the Central Bank, if the amount of the investment is equal to or greater than US\$ 100,000.

Can the shares be held outside of the home jurisdiction?

The shares of Brazilian companies cannot be in bearer format and, as such, are not transferable by mere delivery and may not be held outside of their home jurisdiction; instead, they are registered in the name of the holder, as explained above.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

In general, the transfer of shares of a Brazilian company held by a foreign investor is not subject to approval by authorities and/or third parties, except in the event such entity is engaged in regulated business activities, in which case prior approvals from the relevant regulatory bodies may apply. See Questions #3 and #7. Regardless of the recipient of the shares being a foreign or domestic shareholder, the transfer of shares must comply with the provisions set forth in the Brazilian company's bylaws and the shareholders' agreement (if any), such as right of first refusal to acquire the shares offered to third parties or a veto right against a transfer. Depending on the amount, the transfer of shares by the foreign investor should also be reported to the Central Bank.

Are changes in shareholding publicly reported or publicly available?

The corporate documents of *sociedades limitadas* include, among others, the information on such companies' shareholding and are available for public consultation with the relevant registry where the company is incorporated. As regards closely-held corporations, the information on the shareholding is not public. See the last query of Question #7.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the

parent company that's been acquired has a subsidiary in your jurisdiction), could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

As a rule, there is no mandatory FDI screening in Brazil as broad as the mechanism to assess whether FDI may affect security or public order as the ones existing in the USA (i.e. the Committee on Foreign Investment in the US – CFIUS) or Europe. However, Brazilian Law No. 6,634/79 forbids foreign entities or individuals to own 51% or more of the capital stock and control the management of companies located on the Brazilian border zones (150 km from border) and conditions certain activities in the border zones to prior consent of the Brazilian National Security Council (*Conselho de Segurança Nacional*), such as mining, real estate developments, exploiting rural land, construction of bridges and airports, and industries of national security interest as defined by the Council, among others.

Other than that, there are declaratory obligations to be fulfilled by all foreign investors – see Question #8 in that regard. It is important to highlight that the obligation to inform the investments received from foreign investors lies with the Brazilian residents (whether legal entities or individuals) and that they have 30 days as from the entrance of the funds in national territory to conclude the declaratory registration of such investment with the Central Bank.

Foreign investments in the capital markets are subject to specific, yet similar rules. See Question #9.

Foreign investments in certain regulated sectors (e.g. financial institutions) or in respect of certain regulated assets / activities (e.g. rural land) might also be subject to the prior approval of the applicable local regulatory authority – please refer to Question #3 for details.

- **With which agency is it required to be made?**

FDI screening for national security interest in the border area is subject to approval by the National Security Council.

The declaratory obligations mentioned above are to be made vis-à-vis the Central Bank. For regulated sectors, please refer to our comments on Questions #3 and #7 above.

- **How long does it take to obtain an FDI approval?**

FDI screening for national security interest in border zones are not common and may take an indefinite period of time.

The declaratory registration made via Central Bank's electronic system may be concluded within hours, generally speaking.

For regulated sectors, the timing will depend on the applicable agency. For financial institutions, we estimate that one year would be required.

- **Under what circumstances is the mandatory FDI filing required to be made?**

See above.

- **If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?**

Yes, should the transaction be related to a regulated sector or activity and/or subject to prior authorization by governmental authorities.

- **If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?**

In principle, the answer is no. However, the indirect change of control of Brazilian companies in certain regulated sectors (e.g., financial services) or in respect of regulated activities / assets (e.g. rural land) would trigger the necessity of prior authorization from the regulatory authority in Brazil.

- **Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?**

Yes, certain restricted sectors (e.g., financial services) require prior approval of the applicable regulatory authority (e.g., the Central Bank, for financial services) even in case of a change of indirect control.

20. What are typical exit transactions for foreign companies?

Foreign companies in Brazil typically follow their global exit strategies based on their investment goals and market conditions. A common approach is selling the

business or shares to strategic buyers, often in related industries, facilitating market consolidation. Divestment to private equity or financial buyers is also frequent, attracting entities seeking to grow and later sell the business for profit. For larger, established investments, an Initial Public Offering (IPO) can be a viable exit.

Foreign companies may opt to dissolve and liquidate local subsidiaries or transfer shares to third parties or joint venture partners to exit the Brazilian market. Asset sales, focusing on specific business units, and mergers to create synergies are other typical strategies.

In recent years, private equity funds have led significant buyouts in Brazil, with exits typically through trade sales or secondary buyouts. When other strategies are unsuitable, liquidation of the Brazilian entity may be the last resort.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

During the COVID-19 pandemic in 2020/2021, Brazil experienced a surge in IPO activity, with 73 IPOs and 51 follow-ons, according to the Brazilian Financial and Capital Markets Association (ANBIMA). This was driven by a reduction in the Brazilian benchmark interest rate (SELIC), making the stock market an attractive capital-raising option. However, as the SELIC rate rose, equity transactions decreased.

The decision of where to list (domestic X foreign stock markets) depends on factors such as (i) the company size, (ii) the company's business sector (e.g., technology, mining, payment solutions), (iii) the capital needs, and, in special, (iv) the lead underwriter advisory on the most suitable market, considering the company's goals.

In general, Brazilian companies often conduct an IPO in the Brazilian domestic stock market targeting local investors, while targeting foreign investors under Rule 144A and Regulation S, both under the U.S. Securities Act of 1933. Sometimes, Depositary Receipts are issued for trading abroad, such as American Depositary Receipts.

The choice of a foreign exchange is influenced by factors such as the industry fit, investor base, and company scale. For example, the New York Stock Exchange (NYSE), one of the largest in the world, usually has large corporations listed from all industries and without focusing on any specific sector. NASDAQ is popular among tech companies, while the Toronto Stock Exchange (TSX) tends to attract a significant number of

mining companies. London's AIM is also considered for smaller companies that are not ready yet for the traditional stock market.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

When selecting a dispute resolution mechanism, the key aspect to consider should be the jurisdiction where the decision will be enforced. For parties with interests in Brazil, choosing Brazilian arbitration centers and/or courts is often advantageous, as they provide a more effective solution for resolving disputes. In particular, we note that both court and arbitration decisions issued outside Brazil will need to be homologated by the Superior Court of Justice (STJ) in order to be enforced in Brazil.

Brazil has well-established arbitration institutions which are widely respected and efficient in handling complex cases, such as the International Chamber of Commerce (ICC) and the Brazil-Canada Chamber of Commerce (CAM-CCBC), among others.

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The resolution time for a contract dispute depends on the chosen method. Arbitration, which is widely used due to its confidentiality, typically results in a final decision within 2 to 4 years, significantly faster than court proceedings. The Brazilian judiciary can take longer, with court cases often lasting between 6 to 8 years due to appeals and procedural requirements. Cases which do not require extensive evidentiary steps may be resolved within a shorter timeframe, while complex cases can take much longer.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Yes. Brazil has a legal system that offers comprehensive protection to foreign investors, ensuring fair treatment under the law. While the judicial process may be slower and involve more red tape when compared to some other jurisdictions, we do not see any trend in treating foreign investors differently from local ones.

For foreign investors, arbitration is often preferred due to

its speed and confidentiality. However, in recent years, Brazil has implemented several reforms aimed at modernizing its judicial system, reducing delays, and improving the efficiency of dispute resolution. The digitalization of judicial processes, the creation of specialized courts, and the simplification of procedures are examples of initiatives aimed at expediting the administration of justice. Moreover, the National Council of Justice (CNJ) has promoted management practices within the courts, with the goal of reducing the time required to process cases and improving the quality of decisions.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Brazil has a reputation for treating foreign investors equally, and instances of abuse are rare. Foreign and domestic companies enjoy equal protection under the law. The fact that court proceedings can be lengthy and involve red tape can be frustrating, but ultimately foreigners can expect to receive a fair treatment.

26. Are international arbitral awards recognized and enforced in your country?

Yes, Brazil recognizes and enforces international arbitral awards. Law No. 9,307/1996 (Brazil's Arbitration Law) is aligned with international standards, and the country is a signatory to key conventions like the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, approved in Brazil by Decree No. 4,311/2002.

The Superior Court of Justice (STJ) is responsible for recognizing/homologating foreign arbitral awards in Brazil, which process ensures compliance with fundamental principles of Brazilian law and international conventions.

Such homologation only occurs if: (i) there are no other legal proceedings involving the same parties, cause of action and claim brought in Brazil that has reached the status of *res judicata*, (ii) such award fulfills all formalities required for its enforceability under the laws of the jurisdiction wherein it was issued; (iii) such award is issued by a competent arbitration tribunal after proper service of process on the relevant party; (iv) is not subject

to appeal; (v) except if otherwise provided in a treaty, is translated into Portuguese by a sworn translator registered as such in Brazil and is authenticated by a Brazilian Consulate in the jurisdiction wherein it was issued; (vi) is not contrary to Brazilian national sovereignty, public policy, morality or human dignity (as per the Law of Introduction to the Brazilian Law Rules, the Code of Civil Procedure and the STJ's Regiment.

However, it is worth noting that, like domestic decisions, the enforcement of international decisions may be limited by (i) bankruptcy, insolvency, fraudulent transfer, judicial and out-of-court reorganization proceedings, moratorium, liquidation and other laws of general application relating to or affecting the rights of creditors, (ii) possible unavailability of specific performance, summary proceeding (*processo executivo*) or injunctive reliefs; and (iii) concepts of materiality, reasonableness, good faith and fair dealing, such as contractual conditions providing that a certain act or fact shall be determined solely by one party (*condição potestativa*). Enforcement of indemnification and contribution provisions resulting from both court and arbitral decisions may also be limited by considerations of public policy.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Brazil has entered into some bilateral investment treaties (the so called 'BITs') which include, among others, foreign investment protection provisions between the signatory countries, such as, for example, the one entered by and between Brazil and the United Arab Emirates (UAE), signed in 2019 and ratified in 2023, and the one entered into by and between Brazil and Mexico, signed in 2015 and ratified in 2018, both of which include the extension, to foreign investors of such signatory countries, of the same mechanisms of compensation of loss that are granted to domestic investors in the event of war or other armed conflict, revolution, state of emergency, insurrection, riot or any other similar events. In addition, Brazil is a signatory of the convention which established the Multilateral Investment Guarantee Agency – MIGA, an international financial institution member of the World Bank Group which offers political risk insurance and credit enhancement guarantees against financial losses and other adverse events.

Contributors

Adriano Chaves
Corporate and M&A Partner

adriano.chaves@cgmlaw.com.br



Bernadete de Figueiredo Dias
Corporate and M&A Partner

bernadete.dias@cgmlaw.com.br



Martim Machado
Corporate and M&A Partner

martim.machado@cgmlaw.com.br



René Gelman
Corporate and M&A Partner

rene.gelman@cgmlaw.com.br

