

The Top 5 Corporate Compliance Issues Facing Brazil

With its strong economy, the Brazilian market today is one of the world's most appealing destinations for international businesses and investors. Companies from North America, Europe, the Middle East and Asia are starting or expanding their operations there. In 2010 Brazil received \$48.5 billion USD in foreign direct investment (FDI) – the third highest in the world. Notwithstanding the vast potential of this lucrative market, foreign companies entering Brazil must be ready to confront a multitude of unfamiliar corporate compliance challenges.

Foreign investors and companies alike must learn to navigate Brazil's maze of laws and regulations, while understanding its bureaucracy. This article identifies and analyzes five of the major corporate compliance issues facing the modern foreign investor looking to succeed in Brazil.



The first issue involves applicable contract law. It is not unusual for international transactional attorneys to assume that Brazilian contract laws are similar to those of more familiar jurisdictions. This dangerous assumption can lead to unenforceable, or worse, unlawful contractual provisions under Brazilian law. Foreign attorneys must carefully consider the important differences between Brazilian contract law and that of their home countries to ensure that all contractual provisions are legally enforceable in Brazil.

For example, the United States allows parties leeway to contract for whatever the respective parties deem important. In Brazil, however, the right to contract is much more narrow in scope because Brazilian laws pre-determine much of the parties' rights and contractual obligations prior to contract formation. Furthermore, the general partnership provisions of the Brazilian Civil Code expressly prohibit a manager from unilaterally replacing himself in a partnership, even if the partnership agreement expressly permits a manager to do so. On the other hand, under U.S. partnership law, doing so would be lawful if agreed to under contract.

To navigate the myriad of risks involved in divergent contract laws, an experienced international attorney familiar with both Brazilian contract law and the laws of a respective corporation's home jurisdiction should be retained to carefully draft and revise all contracts being used in Brazil.

The second issue concerns the type of company (*sociedade*) to be established in Brazil. The Brazilian Civil Code and other applicable local laws provide for more than nine different types of corporate entities that can be used in Brazil. Before choosing the form of partnership or the type of company to be created, a foreign company should carefully consider its long-term plans for operating in Brazil.

Most businesses choose to become a limited liability partnership or a corporation. Such entities, however, are not always the best choice for incorporation under Brazilian law. For example, the Brazilian Civil Code bars limited liability partnerships, common in the United States and other jurisdictions, where one partner provides only services while the other partners contribute the capital necessary to sustain those services.

When the draft of the partnership or corporation agreement is not in compliance with the law, the government will enforce the partnership or register the certificate of incorporation. This will delay the company formation or, worse, bar the corporation from transacting business in Brazil.

After drafting the partnership or corporate registration documents and selecting the appropriate corporate entity, the third issue involves filing the appropriate incorporation documents with the correct government authorities. Here, bureaucracy often overrides efficiency. Foreign companies must learn to overcome hurdles that do not apply to domestic Brazilian businesses.

For example, a certified Portuguese translator must translate every document currently in a foreign language. Moreover, notarized documents must be given legal effect by the Brazilian consulate or a *cartório* in Brazil. This process can be costly and time consuming.

After fulfilling all the legal requirements and gathering all the documents, the filing must be prepared for three or four different governmental departments. In some cases, it is necessary to file the documents in one

department first, in order to be approved by another department. Navigating this bureaucratic maze requires guidance from professionals who not only know the law but know how to properly interact with local government officials and effectively respond to unforeseen procedural hurdles.

The fourth issue relates to the visa application for foreign investors. Unlike other countries, including the United States, two distinct government departments – the Department of Justice and the Department of Labor – handle Brazilian immigration services. Not surprisingly, the visa application process contains many hidden traps. An experienced local attorney can advise corporate clients on issues such as selecting the most appropriate type of visa, the correct duration and ensuring that the correct application form is used in order to obtain proper and timely approval.

Moreover, in recent years, the Brazilian Department of Labor has been denying many petitions for permanent residency visas. A foreign investor who wants to invest the required amount of money to gain permanent residency must first be approved by the Department of Labor and then file with the Department of Justice. This two-step process often proves to be time consuming.

The fifth major compliance issue relates to taxation. Brazil has one of the highest tax rates in the world, making it essential for newly established companies to choose the correct tax structure to protect against excessive taxation.

In some cases, companies are bound by the law to choose a specific tax bracket. For instance, companies that generate gross income over R \$48,000,000 (approx. \$30,000,000 USD) a year, are required by law to be placed in a very high tax bracket. Depending on the nature of the business, the attorneys and accountants involved must be able to distinguish in intricate detail the confusing myriad of tax laws and regulations to ensure compliance and minimize obligations.

Starting a business is never an easy task, especially in Brazil. Companies and investors alike must tread carefully in order to prevent unpleasant surprises. Lately, the Brazilian government has been proposing new laws and regulations to accelerate the process of company formation and reduce bureaucratic hurdles. This indicates that the government is sensitive to investors' vocal concerns about the inefficiencies of the current system.

Brazilian laws are evolving at a rapid pace, and so must the attorneys who practice in this jurisdiction. In order to provide the best legal service possible, international attorneys must be constantly informed of new developments and emerging legal and business trends. International law firms with a deep localized understanding of the dynamic Brazilian market can navigate clients through what can potentially be a legal minefield, helping them achieve success.

About the Author

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