

# Trading Vehicles: Overview (Brazil)

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Practice note: overview | Law stated as of 01-Mar-2022 | Brazil

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A Practice Note outlining the key corporate features of different trading vehicles that are commonly used when setting up a business in Brazil. It includes an overview of the main forms of companies and commercial partnerships; in particular, a *Sociedade Anônima* (S.A.) and a *Sociedade Limitada* (Ltda.).

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Most jurisdictions offer several alternative methods for establishing a business and engaging in local commercial activities. Common alternatives range from registering as a sole proprietor or trader, to forming or incorporating an entity with one or more owners and with a separate legal personality. Variations of trading vehicles exist across jurisdictions based on the development of local laws as influenced by local economic and political systems and cultural norms.

When entering a new market, whether by establishing a new subsidiary, joint venture, or through acquisition of an existing business, it is important to understand the differences among the trading vehicles available in the jurisdiction. Many trading vehicle types may appear similar to, or the same as, stock corporations, limited liability companies, or partnerships from an investor's home jurisdiction and seem distinguished by name only. Several differences, however, may exist in the details. Understanding the differences may help a foreign investor choose a trading vehicle that best suits its business purposes in the new jurisdiction.

This Note sets out the key corporate features of the main trading vehicles used for carrying out commercial activities in Brazil. It discusses:

- Stock corporations and other limited liability companies (see [Types of Companies](#)).
- General and limited partnerships (see [Types of Partnerships](#)).

Charitable organizations and those set up mainly for not-for-profit purposes (such as foundations and associations) are outside the scope of this Note.

This Note does not consider tax-related issues arising from the choice of trading vehicle, or the differing tax treatment that applies to each type of vehicle.

For more information on establishing a business presence in Brazil, see [Practice Note, Establishing a Direct or Indirect Presence in Brazil](#).

Unless otherwise stated, a reference in this Note to:

- Civil Code means Law No. 10,406/2002, as amended, the [Brazilian Civil Code](#) (*Código Civil Brasileiro*).
- Corporations Law means Law No. 6,404/1976, as amended, the [Brazilian Corporations Law](#) (*Lei das Sociedades por Ações*).

## Companies and Partnerships: Overview

### Types of Companies

Brazilian companies can take the following forms:

- **A *Sociedade Anônima* (S.A.).** An S.A. is a limited liability stock corporation that is closest conceptually to a UK public limited company or a US corporation. For more information, see [Sociedade Anônima \(S.A.\)](#).
- **A *Sociedade Limitada* (Ltda.).** An Ltda. is a limited liability company that is closest conceptually to a UK private limited company or a US limited liability company. For more information, see [Sociedade Limitada \(Ltda.\)](#).
- **A *Sociedade Limitada Unipessoal* (SLU).** An SLU is a sole shareholder limited liability company. For more information, see [Sociedade Limitada Unipessoal \(SLU\)](#).

An Ltda. is the most common type of business entity used by foreign investors establishing a presence in Brazil through a local subsidiary.

### Types of Partnerships

Brazilian partnerships can take the following forms:

- **A *Sociedade em Nome Coletivo* (SNC).** An SNC is a general partnership in which all partners have unlimited liability for the obligations of the partnership.
- **A *Sociedade em Comandita Simples* (SCS).** An SCS is a limited partnership with two types of partners, with one type of partner having unlimited liability for the obligations of the partnership, and the other type of partner having liability limited to their level of capital contribution.
- **A *Sociedade em Comandita por Ações* (S em C por A).** An S em C por A is a limited partnership by shares.

Although these types of partnerships are legally available and regulated by the Civil Code and Corporations Law, in practice they generally have found no acceptance in Brazil, especially for trading vehicles purposes, and would not be recommended for use by foreign investors.

### Sociedade Anônima (S.A.)

A *Sociedade Anônima* (S.A.) is a limited liability stock corporation that is closest conceptually to a UK public limited company or a US corporation. An S.A. is regulated by the Corporations Law, which is a detailed legal framework and allows for more sophisticated corporate governance structures, enhanced financing flexibility, and transparency for an S.A. in comparison to *Sociedades Limitadas*. Consequently, they are best designed for joint ventures and business arrangements that are more complex.

### Key Features of an S.A.

An S.A. is formed between two or more persons or entities residing in Brazil or abroad. The capital of an S.A. is divided into shares and the liability of the shareholders is limited to the issuance price of the subscribed shares. As they must be for profit, the primary purpose of an S.A. is to earn profits for subsequent distribution through dividends to its shareholders.

An S.A. may take the form of privately held (*fechada*) or publicly held (*aberta*) companies depending on whether the intention is to have securities issued and traded on the over-the-counter market or the stock exchange. The securities of privately held corporations are not available to the public.

An S.A. may be formed either by public or private subscription of its shares by a minimum of two or more persons or entities residing in Brazil or abroad. In either case, a minimum of 10% of the capital paid in cash must be paid upon incorporation.

A public subscription requires the prior registration of the share issuance with the [Brazilian Securities and Exchange Commission](#) (*Comissão de Valores Mobiliários* (CVM)) and the distribution of the shares for subscription must be intermediated by a financial institution. Upon subscription of all shares, the founding shareholders must call a General Shareholders' Meeting to deliberate on the formation of the company.

A private subscription requires the approval from all shareholders in the context of a General Shareholders' Meeting or the execution of the public deed of incorporation of the S.A.

There is no minimum capital requirement for an S.A., but, for certain activities, specific laws set forth minimum capital requirements, such as for financial institutions and companies with an unlimited import license.

There are no physical stock certificates. The ownership of an S.A. is proven by the registration on the books of the company:

- *Livro de Registro de Ações Nominativas* (Stock Registry Book).
- *Livro de Transferência de Ações Nominativas* (Stock Transfer Book).

Any shareholder of an S.A. not residing in Brazil must appoint a Brazilian resident individual as its attorney-in-fact with powers to receive service of process in connection with company matters. Foreign shareholders are also required to register with the [Brazilian Federal Revenue Office](#) (*Receita Federal do Brasil* (RFB)) and the [Central Bank of Brazil](#) (*Banco Central do Brasil*).

The by-laws of an S.A. must be drafted and executed in Portuguese, and include the following:

- The company name, which must include a reference to the main activity to be engaged in by the company, and the expression "*Companhia*," "*Sociedade Anônima*," or "S.A."
- The address of the principal place of business.
- The purpose of the S.A.
- The capital amount, payment terms, and apportionment among the shareholders.
- The number and classes of shares, if applicable, and correspondent rights and obligations.
- The management structure.
- The required shareholders' meetings.
- Routine governance matters.

An S.A. will be deemed formed by the filing of its by-laws (and further incorporation documents) before the Board of Trade (*Junta Comercial*) of the state in which the corporation is to be established, and its publication in the Official Gazette and another newspaper of wide circulation of the place where the company will have its principal place of business.

The administration of the S.A. is vested in two or more directors. Fundamental matters of an S.A. require approval from shareholders representing at least 50% of the shares vested with voting rights.

An S.A. is required to open and maintain certain corporate books, such as:

- A Stock Registry Book.
- A Stock Transfer Book.
- A Book of Minutes of the General Shareholders' Meetings.
- A Book of Shareholders' Attendance.
- A Book of Minutes of Meetings of the Board of Directors.

An S.A. is required to publish its corporate documents and annual financial statements in a newspaper of wide circulation in the location where the S.A.'s headquarters is located, in summary form and with simultaneous disclosure of the entirety of the documents on the page of the same newspaper on the internet, which must provide digital certification of the authenticity of the documents by an accredited certification authority ([Law No. 13.818/2019](#)).

## **Sociedade Limitada (Ltda.)**

A *Sociedade Limitada* (Ltda.) is closest conceptually to a UK private limited company, a US limited liability company, and other types of European private limited companies. An Ltda. is the most common type of business entity used by foreign investors establishing a presence in Brazil through a local subsidiary, representing approximately 99% of the registered entities before the Boards of Trade of the Brazilian States.

### **Key Features of an Ltda.**

An Ltda. has a contractual nature, which subsists between one or more persons or entities residing in Brazil or abroad and having a sole class of shareholders (or quotaholders). Prior to September 2019, an Ltda. required a minimum of two or more shareholders (see [Sociedade Limitada Unipessoal \(SLU\)](#)).

The main characteristic of an Ltda. is that by force of law each shareholder has limited liability to the amount it has paid for its quotas (which stand for shares). However, all shareholders are jointly and severally liable for the full payment of the amount of the subscribed capital.

There is no minimum capital requirement for an Ltda., but, for certain activities, specific laws set forth minimum capital requirements, such as for companies with an unlimited import license.

Shares/quotas are created and stated exclusively in the articles of association of the company. Transfers or assignments of the quotas are done through amendments to the articles of association.

Any shareholder not residing in Brazil must appoint a Brazilian resident individual as its attorney-in-fact with powers to receive service of process in connection with company matters. Foreign shareholders are also required to register with the RFB and the Central Bank of Brazil.

The administration of the Ltda. is vested in one or more managers. Fundamental matters of an Ltda. require approval from shareholders representing at least 75% of the share capital.

An Ltda. is not required to publish its financial statements, which may be an advantage for foreign investors in terms of costs savings and confidentiality. Notwithstanding, as of April 2015, an Ltda. incorporated in the State of São Paulo and falling into the definition of a "large company" is also obligated to publish its financial statements. This issue though has generated many debates and is still controversial. A large company is defined as a company or group of companies under the same control which has had, in the previous fiscal year, either:

- Total assets exceeding BRL240 million.
- Annual gross revenues exceeding BRL300 million.

## Sociedade Limitada Unipessoal (SLU)

In 2019, a major step was taken against excessive bureaucratization in Brazil. [Law No. 13.874](#), published on September 20, 2019, allows an Ltda. to be incorporated with a sole shareholder as a *Sociedade Limitada Unipessoal* (SLU).

Foreign investors sought this alternative to circumvent the second shareholder requirement. Before [Law No. 13.874](#), an Ltda. that was established as a subsidiary of a foreign company was almost entirely owned by one of the shareholders (the parent company), with a pro forma second shareholder to fulfill the minimum legal requirement. Usually, this second shareholder was a foreign company of the same group, a foreign individual, or even an individual resident in Brazil such as the manager of the company, resulting in several issues in the event of decease or resignation.

An SLU is an Ltda., but with just one shareholder, and therefore is subject to the same legal framework as an Ltda.

The SLU replaced the *Empresa Individual de Responsabilidade Limitada* (EIRELI), which was a single member limited liability company. EIRELIs are nowadays being converted into SLUs as set forth in [Law No. 14.195/21](#).

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