

# Main Types of Business Organizations in Brazil

## Limited Liability Company (LLC)

## Joint-Stock Company (Business Corporation)

## Eireli (Individual Company Of Limited Liability)

### Applicable Legislation

- Law No. 10,406/2002 – Brazilian Civil Code (from Article 1,052 to Article 1,087).
- Normative Ruling No. 98, of December 23, 2003, issued by the National Trade Registry Department (DNRC), establishing the Manual on Registry Acts of *Sociedade Limitada*.

- Law No. 6,404/1976, supplemented by Law No. 10,303/2001.
- Normative Ruling No. 100, of April 19, 2006, issued by the National Trade Registry Department (DNRC), establishing the Manual on Registry Acts of *Sociedade Anônima*.

- Law No. 12,441/2011, which amends provisions in the Brazilian Civil Code, introducing item VI to Article 44 and Article 980-A to Book II, Special Part. Additionally, it also amends the sole paragraph of Article 1,033.
- Normative Ruling No. 117, of November 22, 2011, issued by the National Trade Registry Department (DNRC), establishing the *Manual on Registry Acts of Empresa Individual de Responsabilidade Limitada*.

### Classification

- Business company formed by individuals or capital.
- For-profit.

- Business corporation formed by either public or private capital (either publicly- or closely-held companies).
- For-profit.

- Individual company.
- For-profit.

### Legal Name

- Corporate Name: name of one or more of company's partners + "Limitada" or "Ltda."; or
- Denomination: corporate object + "Limitada" or "Ltda."

- Denomination: fictitious business name or shareholders' civil name + company's core business + "Sociedade Anônima" or "Companhia" or "S.A." or "Cia." (the latter cannot be placed at the end of corporate denomination).

- Corporate Name: holder's name + "Eireli"; or
- Denomination: corporate object + "Eireli".

### Partners Composition

- Two or more partners.
- Individuals or legal entities (of Brazilian or foreign origin<sup>1</sup>).

- At least two shareholders for closely-held companies and three for publicly-held ones.
- Individuals or legal entities (of Brazilian or foreign origin).

- Only one holder – a one-man undertaking\*.
- Individual<sup>2</sup> (of Brazilian or foreign origin).
- *\*Once the individual opts for an Eireli, he/she can run only one company under that modality.*

### Articles of Association / Incorporation

- Articles of association/Bylaw.
- Registry and filing at the competent Board of Trade (Junta Comercial).

- Articles of incorporation/Bylaw.
- Registry and filing at the competent Board of Trade (Junta Comercial).

- Incorporation document (private instrument).
- Registry and filing at the competent Board of Trade (Junta Comercial).

### Corporate Capital

- Divided in quotas.
- No minimum corporate capital is legally required.
- An increase of the corporate capital is admitted as soon as all the subscribed quotas are paid. Preferential rights are granted to keep the original share of the existing partners in the corporate capital.
- The corporate capital may be subject to reduction in the following cases: (i) occurrence of losses; or (ii) corporate capital is excessive pursuant to the company's corporate object.

- Divided into shares.
- No minimum capital is required, but shareholders must integrate at least 10% of the issuance price of the shares subscribed in cash.
- The bylaws will establish:
  - the number of shares; and
  - whether the shares will have nominal value or not.
- The corporate capital may be increased in the following cases:
  - issuance of shares provisioned in the bylaws;
  - conversion of debentures and participation certificates into shares;
  - deliberation of the Annual General Meeting regarding capitalization of profits or reserves or issuance of new shares.
- The corporate capital may be reduced in the case of loss or excessive capital pursuant to the company's corporate object.

- Given that the company relies on a sole holder, it is not required that the corporate capital is divided into quotas.
- The minimum corporate capital 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, the corporate capital may be increased at any time.
- The corporate capital may suffer a reduction, respected the minimum value required by law.

### Paying In

- The articles of association shall establish the time limit for payment.
- Any assets shall be used for paying in, provided that they are susceptible to cash assessments.

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- Any assets shall be used for paying in, provided that they are subject to expert assessment.

- Statement, in the incorporation document, that the corporate capital has been fully paid in.
- Any assets shall be used for paying in, provided that they are susceptible to cash assessments.

### Partners Liability

- Limited to the capital that has been paid in.
- In case the corporate capital has not been fully paid in, the partners shall be deemed unlimitedly and jointly liable.

- No liability: share subscribed and paid.
- Limited to the shares shareholders subscribed and have not yet paid for.

- Limited to the capital that has been paid in.
- Unlimited: in case the corporate capital has not yet been paid in, unobserving the required minimum value.

### Control and Management

- Control defined by the number of quotas.
- Resolutions are taken during meetings (up to 10 partners) or general meetings (more than 10 partners).
- The company may be managed by a non-partner, should that be provisioned in the articles of association.
- A foreigner may be appointed to be the manager provided that he/she has permanent visa and is not otherwise prevented from occupying management positions<sup>3</sup>.

- Control defined by shareholders with voting rights. The controlling shareholder owns a major portion of the voting capital.
- In compliance with company's bylaws, corporate management will be performed by the Board of Directors and the Executive Office, or solely by the Executive Office.
- The chair of the Executive Office, whether shareholder or not, must reside in Brazil<sup>4</sup>.
- The members of the Board of Directors may reside abroad, provided that they appoint a Brazilian-resident representative.

- Control exercised by the sole holder.
- An Eireli may be managed by its owner or by a non-owner, as indicated on the incorporation document.
- A foreigner may be appointed to be the manager, provided that he/she has a permanent visa and is not otherwise prevented from occupying management positions<sup>5</sup>.

### Termination/ Dissolution

- The dissolution occurs in the following cases: (i) at the end of its term; (ii) unanimous resolution of all quota holders; (iii) resolution of quota holders representing an absolute majority, in companies with an undetermined term of duration; (iv) insufficient plurality of quota holders; (v) expiration of company's license to operate; (vi) court decision; and (vii) bankruptcy (Article 1,033; Article 1,034; and Article 1,087 of the Brazilian Civil Code).
- Judicial or extrajudicial liquidation shall take place after the company is terminated. The remaining assets shall be distributed to the quota holders proportionally to their respective quotas.

- The dissolution comes into effect either by court decision or by the ruling of competent administrative authorities. Incorporation, merger and spin-off are forms of dissolution.
- Judicial or extrajudicial liquidation shall take place after the company is terminated. The remaining assets shall be distributed to the shareholders proportionally to their respective shares.

- Compliance with *Sociedade Limitada's* rules, wherever applicable.

<sup>1</sup> Foreign shareholding in business activities in Brazil is limited to the constitutional restrictions and constraints that discipline foreign shareholding in Brazilian companies. Normative Ruling No. 76/1998, issued by the National Trade Registry Department (DNRC), disciplines the filing of acts of commercial companies or cooperatives with foreign shareholders that are resident and domiciled in Brazil; individuals, of Brazilian or foreign origin, resident and domiciled abroad; and legal entities headquartered abroad. Its annex brings a list with business activities that are either restricted or forbidden to foreign shareholding.

<sup>2</sup> As understood by the National Trade Registry Department (DNRC).

<sup>3</sup> For further information see the Annex of the Normative Ruling No. 76/1998, issued by the DNRC (only in Portuguese).

<sup>4</sup> Individuals of foreign origin are entitled to exercise managing positions provided that they have a permanent visa. Individuals of foreign origin are entitled to be members of a company's Audit Board if they reside in Brazil.

<sup>5</sup> For further information see the Annex of the Normative Ruling No. 76/1998, issued by the DNRC (only in Portuguese).

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