

## Guide to Beneficial Ownership Information in **Brazil**: Legal Entities and Legal Arrangements

The purpose of this country-specific guide is to provide assistance to investigators on the type of information that is available on the natural persons who control legal persons and arrangements, such as companies and trusts, or otherwise play an important role in a legal person and arrangement in **Brazil**, and the conditions that need to be met to be able to access such information. For ease of reference, the Contents of the guide are listed below.

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## I. Definitions and Company Formation Process

### 1. What is the definition of legal ownership in Brazil?

The main provisions regarding the formation of a legal entity in Brazil are those of the Civil Code. According to Article 966, it is considered “businessman” those who exercise professionally an economic activity organized for the production or circulation of goods or services. Before initiating any economic activity, it is mandatory for the legal entity to proceed with the registration of its businessman in the Board of Trade. The registration shall include his/her name, nationality, address, civil state, signature, capital, object and company headquarters.

### 2. What does “beneficial ownership” mean in Brazil?

The term beneficial ownership is considered under two perspectives: firstly, for the purposes of forming a legal entity, and secondly for the purposes of becoming a client and operating in the financial system.

With regard to the formation of a legal entity, the term “beneficial ownership” is defined under the Brazilian regulatory framework by the Normative Ruling 1634, of May 6th, 2016, issued by the Brazilian Revenue Service (RFB), according to which legal entities shall provide information on who their final beneficiaries are, as follows:

“Article 8 (...)

§ 1º (...) it is considered as beneficial owner:

- I. the natural person who, in the final instance, directly or indirectly possesses, controls or influences in a significant manner the legal entity; or
- II. the natural person on behalf of whom a transaction is conducted.

§ 2º It is considered significant influence, as set forth in §1º, when the natural person:

- I. possesses more than 25% of the entity’s capital, directly or indirectly; or
- II. directly or indirectly holds or exercises preponderance in the entity’s social deliberations and has the power to elect the majority of its managers, even without controlling it.”

Legal entities must provide this information when registering the entity, which means they must subscribe to the National Register of Legal Persons (CNPJ). The CNPJ database is administered by the Brazilian Revenue Service (RFB).

With regard to operating in the financial system, Brazil issued the Central Bank’s (BCB) Circular N. 3461 in 2009, obliging financial institutions to identify the beneficial ownership of their clients:

BCB Circular 3,461, of July 24th, 2009, Article 2º, § 2º:

“The registration information related to corporate clients must encompass the natural persons authorized to represent them, as well as the chain of partner participation, until it reaches the natural person characterized as the beneficial owner”.

Circular-letter 3,430 of December 30th, 2010, item 5:

“For the purpose of implementing § 2º of Article 2º of the Circular 3461, of 2009, there must be gathered information that allows the identification of the entities’ structure of property and control, identifying

the chain of partner participation until the natural person who exercises, in last instance, control over the corporate client. After identified the structure of property and control, there must be collected and kept up-to-date the registration information of those persons who have power to induce, influence, use or benefit from the corporate client for the practices of money laundering or financing of terrorism.”

Furthermore, according to Securities and Exchange Commission (CVM)’s Instruction 480/09, Brazilian publicly held companies must file with the CVM and keep updated the so-called Reference Form (shelf document), which contains all information regarding the company. The content of the Reference Form is provided for in Annex 24 of the abovementioned instructions, and, according to items 8 and 15, information regarding the economic group to which the company belongs and its ownership and controlling structure shall be disclosed.

Additionally, according to CVM Instruction 480/09, article 24, paragraph 3, the company shall update the corresponding fields of the Reference Form within 7 (seven) business days of the occurrence of any of the following:

- (i) change of direct or indirect controlling shareholders, or any variation in their stockholdings whenever the levels of 5% (five percent), 10% (ten percent), 15% (fifteen percent), and so on, of the same type or class of shares are exceeded, up or down.
- (ii) whenever any natural or legal person, or group of persons acting jointly or representing a common interest exceeds the levels of 5% (five percent), 10% (ten percent), 15% (fifteen percent), and so on, of the same type or class of shares are exceeded, up or down, since the company (issuer) is aware of such a variation.

### **3. How are legal entities (companies, partnerships, foundations, etc.) formed in Brazil?**

The formation process is initiated by registering the legal entity with the relevant Board of Trade (“Junta Comercial”). After registration with the Board of Trade, the legal entity proceeds to the tax registration (in all federative instances – Federal, State/Federal District and Municipal), followed by a final phase of licensing before relevant regulatory agencies.

All legal entities doing business in Brazil are required to register with the Federal Tax Authority (RFB). This requirement applies not only to legal entities but also to individuals deemed to act as a business. Upon registration, the RFB issues a national tax identification number—the National Register of Legal Persons (CNPJ). The RFB may only issue the CNPJ number after the legal person is duly registered with the Board of Trade. The RFB then uploads the information related to the incorporation to the CNPJ database. Likewise, all Brazilian citizens and residents must have a CPF number (Cadastro de Pessoas Físicas - Register of Natural Persons) to be allowed to do business or any operations through financial institutions. All legal persons doing business in Brazil, including foreign legal persons who are physically located in Brazil, must obtain a CNPJ number.

There is an ongoing initiative designed to simplify and integrate the registries (REDESIMPLES). This initiative is expected to reduce bureaucracy and increase the quality of the registry information and the exchange of information between the several bodies involved in the process (Board of Trade, tax services and licensing agencies).

Foreign legal persons who wish to invest in a publicly-traded Brazilian company must also apply for a CNPJ number, even if they have no physical presence in Brazil. Foreign legal persons are obliged to

appoint, as their representative, a natural person in Brazil who is registered in the CPF.<sup>1</sup> In addition to the obligation to appoint a natural person with a CPF number as their representative, foreign legal persons must also provide information on the legal owners of the company.

Brazilian publicly held companies must file the so-called Reference Form (shelf document) with the CVM and keep it updated, which contains all information regarding the company. Information regarding the economic group to which the company belongs and its ownership and controlling structure shall also be disclosed.

#### **4. What is the role of Company Registries in Brazil?**

The Boards of Trade operate at the state level, and together they form the National System of Registry of Commercial Companies (SINREM), governed by the Department of Business Registration and Integration (DREI). As the central agency of the SINREM, DREI is responsible for setting the main rules and directives in terms of commercial registry in Brazil.

#### **5. How is basic information and information on beneficial ownership on legal entities obtained and recorded in Brazil?**

For all legal entities, the registration of the founder of the entity with the Board of Trade is mandatory. The founder's registration shall include his/her name, nationality, address, civil state, signature, as well as the company's capital, business purpose and company headquarters. The information held by the Boards of Trade is available to the public.

Registration with the Board of Trade is an initial, mandatory step, which is followed by registration in the National Register of Legal Persons (CNPJ). CNPJ is administered by the Brazilian Revenue Service (RFB). As described in question 2 above, legal entities must provide information about the beneficial owner when registering in the National Register of Legal Persons (CNPJ). The information held by the Federal Tax Authority (RFB) in the CNPJ/CPF database is currently available only to federal, state and municipal governments, the FIU, and judiciary system.

Additionally, Decree n. 8,777, enacted in May 2016, instituted the Open Data Policy for the Federal Executive branch, which aims to make governmental databases publicly available, in an open data format, which is defined by the Decree. The new regulation also establishes that public agencies and bodies must prioritize making publicly available, in an open data format, data of public interest, as defined in the Decree. Corporate data contained in the CNPJ is defined as data of public interest in the Decree.

Such data will be part of an Open Data Plan - to be elaborated by the RFB within 60 days - and shall be made publicly available in 180 days, given its priority status.

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<sup>1</sup> A natural person who is registered in the CPF does not necessarily need to be a Brazilian natural person. This could also be a foreign natural person who falls into CPF registration requirements, which include, among others, any person who wishes to operate in the financial or capital markets, including stock exchanges.

At the time of publication of this guide, the CNPJ database had not been made publicly available yet. The Office of the Comptroller General (CGU), which is responsible for overseeing the Open Data Policy, has developed a monitoring tool for the implementation of the Decree:

<http://paineis.cgu.gov.br/dadosabertos/index.htm>

Within this context, online publication of beneficial ownership information is planned in the near future and it will probably require legislative endorsement.

With regard to financial institutions and other legal entities regulated by the Brazilian Central Bank (BCB), it is their obligation to identify the natural person characterized as the beneficial owner of a company, as defined in the regulations listed below:

BCB Circular 3,461, of July 24th, 2009, Article 2º, § 2º:

The registration information for corporate clients must encompass the natural persons authorized to represent them, as well as the chain of partner participation, until it reaches the natural person characterized as the beneficial owner.

Circular-letter 3,430, of December 30th, 2010, item 5:

For the purpose of implementing § 2º of Article 2º of the Circular 3,461, of 2009, information must be gathered which allows the identification of the entities' structure of property and control, identifying the chain of partner participation until the natural person who exercises, in the last instance, control over the corporate client. After the structure of property and control is identified, information must be collected and kept up-to-date of those persons who have power to induce, influence, use or benefit from the corporate client for the purpose of money laundering or financing of terrorism.

The BCB exercises supervision over financial institutions and other institutions that require its authorization to operate, which allows the BCB to assess the requirements of prevention of money laundering and countering the financing of terrorism provided by BCB Circular 3,461/2009. Among these are requirements related to the identification of the beneficial owner. Non-compliance with the rules and regulations subject the institutions to sanctions defined in Article 12 of Law n. 9,613/1998.

**6. How are legal arrangements (express trusts and trust-like agreements) formed in Brazil?**

There are no such legal arrangements within the Brazilian legal system.

**7. How is information on legal arrangements obtained and recorded in Brazil?**

There are no such legal arrangements within the Brazilian legal system.

## II. Types of Legal Entities

There are many types of legal entities able to be formed in **Brazil**. This Guide will provide information on two commonly used entities:

### **Empresa de Responsabilidade Limitada / Sociedade limitada (Ltda.)**

Type of legal entity	Empresa de Responsabilidade Limitada / Sociedade limitada (Ltda.)	
What is the minimum number of natural persons required for formation?	2	
	Yes	No
Is there a requirement to register with the company registry?	x	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)	x	
Is there a residency requirement for directors?	x	
Are bearer shares/share warrants permitted?		x
Is a Trust and Company Service Provider required to form?		x
Is a registered agent in the jurisdiction of formation required?	x	
Is the entity required to hold financial account(s) in jurisdiction of formation?	x	
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	x	
Does the jurisdiction allow for nominee directors?	x	
If so, are they required to disclose their status as nominee directors?	x	
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	x	
Does the jurisdiction allow for nominee shareholders?		x
If so, are they required to disclose their status as nominee shareholders?		
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?		

### Sociedades por Ações (S.A.)

Type of legal entity	Sociedades por Ações (S.A.)	
What is the minimum number of natural persons required for formation?	0 <sup>1</sup>	
	<b>Yes</b>	<b>No</b>
Is there a requirement to register with the company registry?	X	
Is there a requirement to provide verification for identity of natural persons (shareholders, representatives of bodies corporate and beneficial owners)	X	
Is there a residency requirement for directors?	X	
Are bearer shares/share warrants permitted?		X
Is a Trust and Company Service Provider required to form?		X
Is a registered agent in the jurisdiction of formation required?	X	
Is the entity required to hold financial account(s) in jurisdiction of formation?	X	
Are tax filings required in the jurisdiction of formation (even if there are no direct tax liabilities)?	X	
Does the jurisdiction allow for nominee directors?	X	
If so, are they required to disclose their status as nominee directors?	X	
If so, are the nominee directors required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	
Does the jurisdiction allow for nominee shareholders?	X	
If so, are they required to disclose their status as nominee shareholders?	X	
If so, are the nominee shareholders required to obtain information on and/ or disclose the identity of natural person(s) on whose behalf they are acting?	X	

Note:

<sup>1</sup> At least two persons are required, but they may be legal persons.

### III. How to Access Information

#### Registry

The registry in **Brazil** is called Receita Federal do Brasil

The Company Register is available online at:

[http://www.receita.fazenda.gov.br/PessoaJuridica/CNPJ/cnpjreva/Cnpjreva\\_Solicitacao.asp](http://www.receita.fazenda.gov.br/PessoaJuridica/CNPJ/cnpjreva/Cnpjreva_Solicitacao.asp)

Contact information for the registry is provided here:

Agency: Receita Federal do Brasil – Coordenação-Geral de Pesquisa e Investigação

Address: SHCS Quadra 6 Bloco J Lote 6/3 Edifício Camilo Cola - Asa Sul, Brasília - DF, 70297-400

Phone: +55 61 3412-9320

In general, the following information is publicly available online (free or for a nominal fee, with no log-in requirements):

1. Name of Legal Entity
2. Entity Number (if any)
3. Type of Legal Entity
4. Date of Incorporation
5. Current Status (active, etc.)
6. Principal Address of Business
7. Principal Purpose of Business
8. Registered Capital
9. Registered Agent Information
10. Officer/ Director Information (incl. power of representation)
11. Shareholder/ Member Information
12. Application/ Certificate of Formation

The following information is also publicly available, but not online (may be obtained by the public in person at the offices of the RFB):

1. Articles of Incorporation
2. Annual/ Biennial Reports
3. Shareholder Register information

In general, the following information is not available to the public and is not available online, but may be available to law enforcement, through specific procedures listed in further detail below:

1. Bank Account Information: only available through a judicial order
2. Beneficial Owner Information
3. Fiscal Documents
4. Shareholder's share



## Register update

Legal entities are required to keep the information reported to the registry up-to-date. Sanction/enforcement powers depend on the type of registry. For example, the registries held by the Brazilian Revenue Service (RFB), the Securities and Exchange Commission (CVM), and the Central Bank of Brazil, for example, have the relevant sanction/enforcement powers.

In that sense, as set forth by Article 9 of Normative Ruling 1,634, of May 6th, 2016, issued by the Brazilian Revenue Service (RFB), the entities that do not provide information regarding the beneficial owner within the deadline or that do not provide the required documents will have their inscription under the CNPJ suspended and will be forbidden to transact with bank institutions, including with respect to moving bank accounts, financial investments and taking out loans.

	Online Access (free or for nominal fee, no log-in requirements)	Other Public Access (available in person only or via pre-registration requirement)	Law Enforcement Access only	For Information/ documents accessible only by Law Enforcement, please describe how an investigator may access information
Name of Legal Entity	X			
Entity Number (if any)	X			
Type of Legal Entity	X			
Date of Incorporation	X			
Current Status (active, etc.)	X			
Principal Address of Business	X			
Principal Purpose of Business	X			
Registered Capital	X			
Registered Agent Information	X			
Officer/ Director Information (incl. power of representation)	X			
Shareholder/ Member Information	X			
Memorandum		X		
Articles of Incorporation	X			
Application/ Certificate of Formation	X			
Annual/ Biennial Reports	X			
Shareholder Register	X			
Register of Charges	X			
Bank Account Information			X	Judicial order
Payment Records		X		
Historical Documents (example: past annual filings)		X		

## Other Channels

The explanation below outlines the channels by which foreign authorities may obtain information on legal entities, legal arrangements, or relevant persons from different sources in **Brazil**.

Channels through which foreign authorities may obtain information

### Legal entities/ Relevant Individuals (directors, shareholders, managers, associates, family members, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals		x		X		
Records/ documents		x		X		

### Legal arrangements/ relevant individuals (trustees [nonprofessional], settlers, beneficiaries, protectors, etc.)

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with relevant Individuals		x		X		
Records/document s		x		X		

### Financial Institutions

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		x		X		
Accounts records/ documents		X		X		

### Trust and Company Service Providers

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		x		X		
Accounts records/ documents		X		X		

**Other Designated Non-Financial Businesses and Professions**

	Information/ Intelligence Sharing Inquiry		Explanation	Mutual Legal Assistance Request		Explanation
	Yes	No		Yes	No	
Interviews with personnel		x		X		
Accounts records/ documents		X		X		

#### IV. Other Useful Sources of Information

Resource Name	Web Link
Normative Ruling n. 1634	<a href="http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=73658">http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?idAto=73658</a>
Normative Ruling n. 1729	<a href="http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&amp;idAto=85256">http://normas.receita.fazenda.gov.br/sijut2consulta/link.action?visao=anotado&amp;idAto=85256</a>
Guide for MLA and Asset Recovery (Portuguese)	Available for download <a href="#">here</a>
G20 Guide on Requesting International Cooperation in Civil and Administrative Proceedings (English)	Available for download <a href="#">here</a>

##### Case examples:

There have been some successful cases of mutual legal assistance requests received formally by the Brazilian Central Authority, where it was possible to cooperate with other countries providing information from data bases at Boards of Trade, including information about company ownership. In Brazil, these kinds of documents can be obtained without the necessity of a judicial order.

In addition, it was also possible to cooperate with bank records of companies and other bank documents with relevant information, including the identity of the beneficiary or ownership of the legal entity. These sorts of bank documents are confidential, but Brazilian Courts are able to authorize a breach of confidentiality if the MLA requests demonstrate the cause, the connection between the crime and the bank account and the necessity of such diligence. This kind of cooperation, in general, usually takes 6-10 months, but can be obtained in less time, depending on urgency.

In general, the main reason why a mutual legal assistance request is denied is typically lack of information about the investigation and/or the crimes and lack of information about the connection between the crimes and the company or bank account (“probable cause”). Information of this nature is necessary to convince a judge to authorize the diligence regarding the identification of the beneficial ownership and provide a positive answer for the MLA request.