

Franchising in Brazil

FRANCHISING IN BRAZIL

I. Brazil: essential data

Brazil is the largest and most important country of Latin America, occupying an area of over 8.5 million square kilometers. Its population includes more than 180 million inhabitants, being the majority – 81% – situated in urban areas. Its population is a real racial mix, including African, Spanish, Portuguese, Jew, Italian, Arabian, Japanese people and their descendents, among many others.

The official language is Portuguese and its political and administrative organization includes three main Branches of Power: the Judiciary, the Executive and the Legislative. It is based on the French civil system.

The country is formed by 26 States and one Federal District, comprising 5,563 towns and cities.

Although more than 70% of the population is catholic, Brazil has no official religion, and religious freedom is guaranteed by its Constitution.

The country accounts for three fifths of the South American economy's industrial production.

II. Economy in Brazil and the sector of distribution

Brazil's Gross Domestic Product is around R\$ 2,900 billion dollars in 2008, or around \$ 1,480 billion (services accounting for 64%, industry for 30,9% and agriculture for 5,1%).

The country trades regularly with over one hundred nations, 74% of its exports are represented by manufactured or semi manufactured goods, producing an income of € 125 billion. Its main partners are: the European Union (26% of the balance), the United States (24%), Mercosur and Latin America (21%) and Asia (12%).

The retail sector is well developed with a total revenue of \$ 62 billion in 2007 and around 5 million sq.m of stocking surface. 397 shopping centers are in operation in 2009, maintaining 720,890 job positions and generating sales of \$ 33,1 billion.

The franchise sector in Brazil is really developed, encompassing different fields, such as shoes, accessories, clothing, food, beauty products, vehicles, hotels and tourism, language schools, among others. It is estimated that the franchising system had revenues of more than \$ 28.20 billion in 2008 rising 19.5% from 2007.

Brazil counts 1,379 franchising networks, responsible for 648,000 direct employees and 2.595,000 indirect job positions.

III. The franchise law in Brazil

Franchise in Brazil is ruled by the Franchise Law, number 8.955 from December 15th, 1994. This law was developed according to the American Franchise Act.

It states, on its article 2, the definition of franchising as “the system by which a franchisor grants to the franchisee the right of use of a trademark or a patent, along with the right of exclusive or semi exclusive distribution of products and services and, eventually, includes the right of use of implantation technology and business management or operational system developed or owned by the franchisor before direct or indirect remuneration, expressly excluding any employment relationship between them”.

The procedures to the execution of a franchise agreement are the same as in France. Franchisor shall make available to the potential franchisee, 10 days prior the execution of the franchise agreement, a document (Circular de Oferta de Franquia) informing about the franchisors' company, its history, its financial situation by the presentation of the financial statements for the 2 previous years, and its legal situation by the presentation of the pending litigations regarding the trademarks, patents, intellectual property involving the franchisor or the franchisees.

Such documents must also present all the franchise details, such as the kind of business developed, the activities to be performed, the list of the other franchisees, the ideal franchisee profile, a description of the territory (and its exclusive or non exclusive characteristics), the necessary amount for implementing the franchise including the entry fee, the conditions for the purchase of the products, the necessary equipments, the initial stock, among others, as well as the payment conditions. It must also clearly describe all periodic fees (such as royalties, leases, marketing fees, insurance) plus the method used to calculate them.

The franchisee might argue the nullity of the agreement, if such conditions were not properly observed.

Franchise is well organized in Brazil, represented by the Brazilian Association of Franchising (Associação Brasileira de Franchising-ABF).

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