

# *FILMING IN BRAZIL*

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## LEGAL GUIDE

NORONHA-ADVOGADOS  
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# 1 Introduction

Brazil is the biggest country in Latin America, both in terms of geographic size and population. It is the largest country in South America, occupying almost half the continent, and has a population of over 176 million. Brazil's large size and diverse population provide for great cultural, economic, geographic and social diversity.

Brazil's size and location offer a wide variety of locations and climates, ranging from mountains to beaches, from pine forests to deserts, and include the world's largest intact rain forest, one of the world's largest rivers (the Amazon), one of the world's largest cities (São Paulo), and one of the world's most beautiful cities (Rio de Janeiro).

While the people of Brazil share a common language, Portuguese, the population is one of the most diverse in the world. The diversity of the Brazilian population results from intermingling between Portuguese settlers, Native Americans, and African slaves and, more recently, immigrants from Asia and Europe, including Germany, Italy, Poland, Japan and the Netherlands. Brazil's ethnic diversity has resulted in a rich, unique and varied cultural heritage in the arts, architecture, literature, music, dance, theater and film.

# 2 The Evolution of Brazil's Film Industry

Brazil's cultural diversity has been reflected in its film industry, which began to attract international attention with the *cinema novo* (new cinema) movement of the mid-1950's. Since that time, Brazilian films, such as Fábio Barreto's *O Quatrilho* (1996), Walter Salles' *Central do Brasil* (Central Station) (1998) and Fernando Meirelles' acclaimed *Cidade de Deus* (2002), have often been recognized for the quality and originality of their production. This recognition has included a number of highly successful short-length movies and documentaries. Since 1996, more than 30 Brazilian documentaries, including Paulo Sacramento's award-winning *The Prisoner of the Iron Bars*, have been shown in movie theaters to a total audience of almost 1 million viewers. The Brazilian film industry has become a frequent participant in many renowned international festivals, including the Cannes Film Festival, the Sundance Film Festival, and the International Film Festival in Berlin.

The international success of Brazilian films has been greatly facilitated by the Brazilian government. In the last ten years, the Brazilian government implemented two new tax policies, known as the AudioVisual and Rouanet Laws, which provide financial incentives for film production. In addition, the government has entered into several international agreements and treaties intended to foster international cooperation in the production of films. Aided by these new policies, Brazil has entered into an era known as the "Return of Brazilian Cinema" in which Brazilian Cinema has achieved unparalleled success and domestic and international investment in Brazilian film and video production has grown exponentially.

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Although every effort has been made to assure the accuracy of the information contained in this guide as of the date of publication, nothing herein should be constructed as giving legal advice. Obviously, the law is subject to change, and it changes very often in Brazil. In addition, the application of the law to specific circumstances can present complex issues that are beyond the scope of this guide. Noronha-Advogados will be pleased to provide more detailed information on request.

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### **3 Film Production Options in Brazil**

Brazil provides an excellent opportunity for high quality film production with relatively low costs. Brazil's size and geographic diversity provide a wide variety of potential shooting locations. The Brazilian film industry has the resources, expertise and experience to produce high-quality films. In addition, because the cost of living and the costs of doing business in Brazil are relatively low, overall production costs are far lower than in most other countries.

It is important, before investing in or beginning a production in Brazil (or any other country for that matter), to fully understand the Brazilian legal framework, including taxation, labour and social security issues, and to choose the best legal structure for the production. A number of possible structures exist, and each has different legal requirements and involves different tax consequences, both in Brazil and internationally. Depending on the circumstances, it might be best for a foreign investor to hire a producer in Brazil, to form a joint venture with a Brazilian entity or to establish an independent company in Brazil.

Because of the variety of possibilities available and the importance of the legal and tax issues involved with each, it is strongly advisable that foreign producers or foreign investors interested in film, video or television production in Brazil retain an advisor who is knowledgeable about both Brazilian law and international tax law.

#### **3.1 Filming Done Directly by a Foreign Production Company**

If the amount of production in Brazil will be minimal (if, for example, a music video is being filmed), or if for other reasons a foreign production company does not wish to enter into an agreement with a Brazilian production company or establish itself in Brazil, the filming can be done directly by the foreign production company. In such a case, some tax benefits will be unavailable, and the production company is responsible for meeting all legal requirements (including obtaining work visas and permissions to film) and arranging for logistical support (hotels, equipment, etc.).

#### **3.2 International Coproduction with a Brazilian Company**

Coproduction is a generic term that covers a variety of production arrangements between two or more companies undertaking a film, television or video project. International coproduction refers to a coproduction between two or more organizations from different countries. As the costs of production have risen, international coproductions involving local production companies have become common in the global film, video and television industry. While foreign companies can often provide much needed financing, technical expertise and access to worldwide distribution networks, local companies can provide knowledge of the local culture and customs, as well as assistance with logistical matters. In addition, international coproductions provide an economic benefit to the country where production occurs, strengthen the country's film production and distribution sector and will also likely increase distribution of the film within that country. In many cases, an international coproduction can receive legal and tax benefits afforded to domestic productions.

##### **3.2.1 Service Agreement with a Brazilian Production Company**

A foreign company can opt to produce a film by engaging the services of a production company in Brazil, this will make it easier to navigate through bureaucratic hurdles and accelerate the production start up, while retaining complete control over the production itself. Because of its experience producing films in Brazil, a

local production company will be able to assist with obtaining necessary production equipment and with meeting legal requirements, such as obtaining visas for foreign cast and crew members, and will also be able to provide useful assistance with logistical support, including equipment rentals, transportation, lodging, catering, and other services. In addition, the Brazilian producer or production company brings a knowledge of local customs, culture and locations as well as of local creative personnel, artists, actors and crew members necessary for the production.

### **3.2.2 Joint Venture with a Brazilian Production Company**

Another option is entering into a joint venture with a Brazilian production company. A joint venture is an enterprise entered into by two or more entities, in this case the foreign producer and an independent producer in Brazil, for profit, for a limited purpose, in this case the production of a film or video. There is no need to establish a new organization in order to form a joint venture: The joint venture does not have a legal status separate from its participants; the participants contract rights and obligations individually for the common benefit of the group. A joint venture agreement is a simple contract that clearly defines all of the obligations and rights of the parties. These obligations may be more than financial: Depending on the structure of the joint venture agreement, the parties may contribute specified services, production equipment or other capital. Services may include production services, administrative services, logistical support, provision of technical know-how, governmental relations, obtaining financing, or direction of the enterprise's commercial activity. A joint venture provides great flexibility and can involve various arrangements from a straightforward co-financing arrangement where one party provides partial funding while another undertakes the actual production, to more complex arrangements that involve joint creative control over the project. When the production is completed, the joint venture is terminated.

The involvement of a local, Brazilian production company provides the joint venture with valuable local knowledge and tax benefits unavailable to a foreign production company working alone.

### **3.3 Establishing a Production Company in Brazil**

Where a foreign production company intends to film a large-scale production involving a sizable cast and crew or to produce a number of films in Brazil over an extended period of time, it may be best to establish an independent legal entity in Brazil.

Under Brazilian Civil and Commercial Laws, a number of different legal entities can be formed, without any requirement that the shareholders and/or partners be residents of Brazil (the entity should, however, have a resident director or other representative in Brazil). These include:

- the unlimited partnership (*Sociedade em Nome Coletivo*);
- the limited partnership (*Sociedade em Comandita Simples*);
- the partnership with ostensive/silent participation (*Sociedade em Conta e Participação*);
- the limited liability company by quotas (*Sociedade por Quotas de Responsabilidade Limitada (LTDA.)*);
- the branch of a foreign company (*Filial*); and
- the corporation (*Sociedade Anônima (S.A.)*).

In Brazil, the most common company structures are the corporation and the limited liability company by quotas. This is because in both cases the participants have limited liability. The other structures, however, are useful for specific purposes.

If a production company is established in Brazil it will be subject to tax, social security and labour laws. Brazilian counsel should be retained to provide advice on which structure is best and to assist in the formation of the company.

## **4 Investment in Brazil: Foreign Capital and the Exchange Market**

Whether a foreign entity is filming a production in Brazil or investing money in (or providing other assets to) a Brazilian production company, capital invested in the project will be governed by Brazilian law.

Foreign capital, defined as either (1) “funds brought into the country to be used in economic activities,” or (2) “any goods, machinery and equipment that enter Brazil . . . and are intended for the production of goods and services,” is governed by Laws 4.131 (the Foreign Capital Law) and 4.390, of September 3, 1962 and August 29, 1964, respectively. Both laws are regulated by Decree 55.762 of February 17, 1965, as amended.

To remit funds to and from Brazil, a foreign investor must convert the foreign currency into reais through a Brazilian financial institution by means of a foreign exchange transaction. These transactions must comply with Brazilian foreign exchange regulations.

The exchange markets in Brazil are subject to Central Bank of Brazil rules, and operate with floating exchange rates. The most common markets are the commercial floating exchange rate market and the “tourism” floating exchange rate market. The commercial exchange market is restricted to transactions that in certain cases require the prior approval of, and/or registration with, the Central Bank, while the tourism exchange market is open to transactions that do not require any approval from monetary authorities.

There are both direct and indirect investment options in Brazil. Direct investment is made by acquiring equity in an existing Brazilian company or by creating a corporate entity in Brazil. Indirect investments are those made in the financial and securities markets.

While no preliminary official authorisation is required for remittances of funds into Brazil, the law requires that direct foreign investments be registered with the government by the foreign investor or the Brazilian company within 30 days. Only when registration is complete is the foreign investor permitted to remit profits and dividends abroad or to repatriate foreign capital invested in Brazil.

## **5 Tax System and Labour Law in Brazil**

The basic aspects of the Brazilian tax system were established by the Federal Constitution of 1988, which distributed power to levy and collect taxes between the Federal Government, States, the Federal District and Municipalities.

### **5.1 Federal Taxes**

The basic rate of taxation on income or corporate profits (including capital gains) as adjusted for tax purposes is 15% with an additional surtax of 10% on taxable profits exceeding R\$ 240,000 (approximately US\$ 80,000) per annum.

### **5.2 Relevant State and Municipal Taxes**

ICMS is the main state tax. It is imposed on operations related to the circulation of goods, including importation, interstate and intermunicipal transport and communication services. The average rate is 18%.

ISS is a municipal tax levied on the rendering of certain services. The average rate is 5%.

### **5.3 Social Contributions**

In addition to taxes, there are a number of monthly contributions employers in Brazil must make:

- the Contribution to the Social Integration Programme (PIS) (1.65% of net sales);
- the Social Contribution on Profit (CSSL) (9% of taxable profit);
- the Social Contribution on Billing (COFINS) (3% of net sales);
- the Social Security Contribution (INSS) (20% of employer payroll (employee must also contribute an average of 9% his/her salary)); and
- the Provisional Contribution on Financial Transactions (CPMF) (0.38% of most financial transactions).

### **5.4 Labour Law in Brazil**

Brazilian labour legislation is essentially regulated by Law-Decree 5.452 of 01 May 1943, the *Consolidação das Leis do Trabalho* (CLT). Promulgated during a period when the government strictly regulated employment relationships, the CLT took some autonomy away from the parties involved in employment relations.

According to Article 443 of the CLT, employment agreements can be either written or implied, but certain basic employee rights and employer obligations (such as minimum compensation, severance pay, and vacation) are prescribed by law. Once the employee has been hired, the employer is legally required to follow these labour regulations, they cannot be negotiated between the parties. (The Brazilian judiciary has, however, demonstrated a tendency in recent judgements toward accepting more flexibility in the employment relationship.)

The current minimum wage in Brazil is R\$ 240 (approximately US\$ 80) per month.

Note that it is possible to hire temporary workers, through an employment agency, with no direct employer-employee relation.

## **6 Financial Incentives for Producing Films in Brazil**

Two tax initiatives implemented by the Brazilian government have stimulated the development of the country's film industry by creating tax incentives that make investments in film productions more attractive to the private sector. International coproductions allow foreign entities to participate in Brazilian film, television and video projects and to receive the benefits of these tax policies.

It is important, however, that foreign entities interested in participating in Brazilian productions first retain an advisor thoroughly versed in Brazilian and international tax law in order to obtain the maximum benefit from the new tax policies.

### **6.1 *Lei do Audiovisual* (AudioVisual Law)**

The "AudioVisual Law" (Federal Law 8.685/93, modified by Provisional Law 2228/01, and further regulations), allows individuals and corporations to invest a portion of their income tax (3%), as deductible expenses, with a limit of 3 million reais per project, in Brazilian film, television or video projects, thus offering the possibility of making a profit with no risk. In other words, individuals and corporations have the option of paying their taxes to Brazil's Ministry of Finance or investing a percentage of these taxes in a film. In order to qualify for investments under the AudioVisual Law, the project must have received prior approval from the Brazilian National Agency of Cinema (ANCINE).

In addition, Article Three of the AudioVisual Law allows foreign film distributors in Brazil to invest up to 70% of any tax due on earnings, profits or other payments in Brazilian film productions (the subsequent production(s) must have received prior approval from ANCINE).

The AudioVisual regulations also provide for a total exemption from the CONDECINE (*Contribuição para o Desenvolvimento do Indústria Cinematográfica* - Contribution for the Development of the Cinematographic Industry). The CONDECINE is a 11% tax on all royalty payments (including copyright) remitted abroad. The exemption applies only if the foreign entity has invested at least 3% of its total investment in Brazilian film projects. In May 2003, this benefit was extended to cable television companies for international programs produced in Brazil and to international coproductions involving a Brazilian company.

Additional tax incentives are available in many Brazilian states and cities.

## **6.2 *Lei Rouanet* (Rouanet Law)**

The Rouanet Law (Federal Law 8313/91 and Decree 1494/95), gave individuals and corporations – for the first time in Brazil’s history – a tax credit for investments in the cultural field. The law provides for an income tax reduction of up 4% for companies (6% for individuals) that either sponsor or make a donation to a Brazilian film, television or video production. The reduction is based on the total amount provided to the production. The donation or sponsorship must comply with the National Program of Cultural Support and the production must have received prior approval from Cultural Ministry (or ANCINE for short length movies).

In addition, it is also possible for entities to add up to 40% of any donation made to a qualifying Brazilian production, or up to 30% of any sponsorship of a qualifying production, to their operating expenses, thus increasing the entity’s operational expenses deduction.

## **7 International Treaties and Agreements**

Brazil has film coproduction treaties with Argentina, Canada, France, Germany, Italy, Portugal and Spain. In addition, on November 11, 1989, Brazil, Argentina, Colombia, Cuba, Ecuador, Nicaragua, Panama, Venezuela, Peru, Mexico, the Dominican Republic and the United States signed the *Acuerdo Latinoamericano de Coproducción Cinematográfica* (the Latin American Agreement on Film Coproduction). These treaties establish the terms which, when met, enable international coproductions to qualify for various types of governmental support, assuring that coproduced material is eligible for investor tax credits.

## **8 Legal Requirements for Film Production in Brazil**

In order to produce films, videos or television programs in Brazil, certain legal requirements must be met: work visas must be obtained for any foreign cast or crew members from the Ministry of Labour (*see* item 8.1), permissions to film must be obtained from the proper authority(ies) (*see* item 8.2), and provisions must be made to import any required production equipment (*see* item 8.3).

### **8.1 Visas for Foreign Production Crews**

Foreign citizens are permitted to engage in paid activities in Brazil provided that a work visa has been issued by the Ministry of Labour. The visa may be temporary or permanent, the duration will depend on the type of visa and on the activities. Temporary work visas are granted to foreigners wanting to working Brazil as an artist, athlete, scientist, professor, technician or other professional.

Foreign production companies unaffiliated with a Brazilian production company must apply directly to the Ministry of Labour for visas for members of their production crew and cast. Unfortunately, the procedure is bureaucratic and takes some time.

When a foreign production company is either affiliated with a Brazilian production company and/or employs a cast and crew of which 33% are Brazilian, visas for any foreign production crew or cast members can be obtained by the Brazilian company through ANCINE. The following information must be provided to ANCINE:

- an outline of the film to be shot in Brazil;
- name and address of the Brazilian associate;
- names, nationalities, dates and places of birth, and passport numbers of crew members intending to travel to Brazil;
- length of time required for filming;
- date and place of arrival in Brazil;
- date and place of departure from Brazil;
- list of production equipment to be transported to Brazil.

After the necessary information is provided, ANCINE will provide an authorization to film in Brazil and will forward all necessary information to the Ministry of Foreign Affairs, which will then authorize the consulate(s) to issue the visas. The consulate will issue temporary work visas, the period of which can be expected to be compatible with the film production schedule.

## **8.2 Permission to Film**

As noted above, when a foreign production company is associated with a Brazilian film company (or employs a cast and crew of which 33% are Brazilian), ANCINE provides both visas and an authorization to film in Brazil. Unaffiliated foreign production companies must not only apply to the Ministry of Labour for visas, they must separately apply to ANCINE for an authorization to film in Brazil.

In addition, all productions must obtain permission to film from local (state, city) authorities.

Additional authorizations are required in certain specific circumstances. For example, in order to use a minor (under the age of 18) in a film production, it is necessary to obtain prior authorization from the Infants and Youngsters Court. Filming Native Americans requires prior authorization from the National Foundation of the Indian (FUNAI).

## **8.3 Temporary Importation of Production Equipment**

While production equipment (cameras, lights, etc.) can be rented or purchased in Brazil, Brazilian law also authorizes the temporary importation of foreign equipment for a limited period. A company can bring their own production equipment, or rent equipment for a determined time abroad and bring it to Brazil, and pay import duties proportionate to the period of time the equipment will remain in the country.