

Franchise

In 25 jurisdictions worldwide

Contributing editor
Philip F Zeidman



2016

GETTING THE
DEAL THROUGH 

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DEAL THROUGH 

Franchise 2016

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Overview

1 What forms of business entities are relevant to the typical franchisor?

The most common corporate types in Brazil are the limited liability company (*limitada*) and the corporation (SA).

The *limitada* is a simpler form, involving lower costs and fewer formalities and governmental requirements for incorporation and operation. The form of a SA requires a higher level of formalities, such as the publication of its general meetings and financial statements. On the other hand, the SA form provides higher levels of corporate governance.

Franchisees usually organise their activities under a *limitada*. Franchisors use both the *limitada* and the SA form, depending on their size and governance needs.

2 What laws and agencies govern the formation of business entities?

The regulations for the *limitada* are set forth in the Brazilian Civil Code (Federal Law No. 10.406 of 10 January 2002), while regulations for the SA are contained in the Brazilian Corporations Law (Federal Law No. 6.404 of 15 December 1976) – provided that the Corporations Law also governs the *Limitada* form in specific aspects that eventually are not covered by the Civil Code. Alongside, ordinances, normative instructions published by the Department of Business Registration and Integration and operational ruling set forth by the Commercial Registries of each Brazilian State provide ancillary ruling for the formation of companies.

3 Provide an overview of the requirements for forming and maintaining a business entity.

The most usual procedure for a foreign investor to do business in Brazil is by organising a subsidiary.

Regardless of whether the entity is a *Limitada* or a SA, the subsidiary must have at least two shareholders, whether individuals or legal entities. These shareholders do not necessarily need to be domiciled in Brazil. In case the shareholder is domiciled abroad, there must be an attorney-in-fact domiciled in Brazil with powers to represent them as a shareholder at all times.

The subsidiary must have a permanent address in Brazil and its corporate purposes clearly described in its Articles of Incorporation or by-laws.

No minimum capital stock requirements are required and stock may be distributed among the shareholders as they find proper.

An individual resident in Brazil must be appointed as the subsidiary's officer. If that individual is a foreigner, they must hold a permanent Brazilian visa to be appointed. One of the requirements for a foreigner to obtain a permanent visa as officer of a Brazilian company is proof of direct foreign investment, by either of the shareholders, of 600,000 reais into the company, or 150,000 reais in addition to a business plan to create 10 new jobs within the next two years.

4 What restrictions apply to foreign business entities and foreign investment?

Foreign investors may not participate in nuclear energy, post and telegraph services, health-care services, press organisations and radio and TV broadcasting networks.

Foreign investment of up to 49 per cent of the voting capital is permitted in the cable TV, coastal navigation, mining and hydropower sectors,

provided that management is under a Brazilian born individual or one who has been naturalised for more than 10 years.

Minor participation of up to 20 per cent of the voting capital is permitted in the airline, road cargo and passenger transport sectors, provided the entity is managed by a Brazilian-domiciled individual.

5 Briefly describe the aspects of the tax system relevant to franchisors. How are foreign businesses and individuals taxed?

Brazilian laws provide for two types of calculation basis concerning corporation tax and the social contribution levied on taxable profits.

- Actual profits basis. This is similar to the calculation basis of corporation taxes in other jurisdictions, allowing for the deductibility of previous losses and deductible expenses.
- Presumed profits basis. This is permitted for companies whose annual gross revenue is up to 48 million reais. This tax regime presumes that the taxable profits correspond to a percentage of the company's annual gross revenue, depending on the company's losses and does not allow the company to deduct expenses. Consequently, this method of calculation is only advisable for highly profitable companies.

Brazilian-domiciled franchisors will be liable for the following taxes:

- corporation tax on profits (15 per cent on annual profits up to 240,000 reais and 25 per cent on profits surpassing this threshold);
- withholding tax on interest payments at 15 per cent;
- withholding tax on royalties or import of services of a management or technical nature (at 15 or 25 per cent depending on the nature of the operation);
- social contributions on taxable profits at 9 per cent;
- social security tax (usually at 20 per cent);
- tax on financial transactions (this varies, but the common rate is 0.38 per cent);
- tax on gross turnover or imports of goods and services of between 3.65 and 10.25 per cent; and
- municipal service taxes of between zero and 5 per cent (specific taxes are payable in this regard for operators of inter-state telecommunications and transport services).

Foreign-domiciled franchisors will be liable for the following taxes:

- withholding tax on payment of interest, including interest on shareholders' equity (at 15 or 25 per cent if the franchisor is located in a tax haven);
- withholding tax on royalties or import of services of a management or technical nature (at 15 or 25 per cent if the franchisor is located in a tax haven);
- social contributions on royalties or services of a management or technical nature (at 10 per cent); and
- tax on financial transactions, payable on some transactions, such as loans agreed by Brazilian companies and foreign exchange transactions (generally at 0.38 per cent).

Payments for royalties should not be subject to federal taxes on gross turnover and imports of goods and services or to municipal service taxes, provided that the franchise agreement specifies the amounts payable to a franchisor for royalties and services. A decision from the Supreme Court is still pending on the matter of whether these taxes should be levied on

payments for a general franchise agreement. In the meantime, the tax authorities will levy such taxes unless the franchise agreement is sufficiently clear.

6 Are there any relevant labour and employment considerations for typical franchisors? What is the risk that a franchisee or employees of a franchisee could be deemed employees of the franchisor? What can be done to reduce this risk?

There is no specific regulation related to employees of a franchisee and, as a consequence, the regular Brazilian Labour Laws are applicable to the employment contracts of a franchisee's employees.

The franchisee, as employer, is directly responsible for its employees.

Brazilian labour law provides that a franchisor has subsidiary responsibility over its franchisee's employment contracts and employees if the franchisor gives instructions to franchisee as to the operation of his or her business; and imposes controls, including on the number of employees and how they should develop activities and profit or contribution margins. Thus, the franchisor may be held liable as employer.

Although it is not possible to prevent employees of a franchisee from including the franchisor in labour claims, the obligation on a franchisee to indemnify the franchisor against any costs and to exclude the franchisor from the claim or to assume the defence on its behalf is valid. Consequently, the franchisor may claim damages from franchisee.

7 How are trademarks and know-how protected?

The Industrial Property Law (Federal Law No. 9,279 of 14 May 1996) regulates the granting of trademarks, as well as patents, utility models, industrial designs, besides prohibition against false geographical indications and unfair competition.

Know-how is protected under technology-transfer agreements, which can set confidentiality obligations. The technology transfer agreement can be included in the general franchise agreement.

8 What are the relevant aspects of the real estate market and real estate law?

In Brazil, the real estate market is regulated by the Brazilian Civil Code and the Urban Lease Law (Federal Law No. 8,245 of 18 October, 1991).

Regarding title to a property, the proof depends on a proper registration with the Real Estate Registrar, under a specific property registry.

Lease agreements are freely set between parties. It is important to note that a lessee is entitled to renew the lease maintaining the same conditions provided the lease has been held for five years with a written agreement and that the lessee has exercised the same activity in the property since the beginning of the lease agreement.

Recent changes to the Urban Lease Law included provisions for design-build developments, stipulating that such agreements cannot be terminated before a certain time freely stipulated by the parties, to amortise at least part of the investment made on the property by the lessor.

Laws and agencies that regulate the offer and sale of franchises

9 What is the legal definition of a franchise?

Article 2 of the Brazilian Franchise Law (Federal Law No. 8,955 of 15 December 1994) provides the following definition.

Franchise is the system by means of which one franchisor assigns to the Franchisee the right to use a trademark or patent, associated with the right to exclusive or semi-exclusive distribution of products or services, and, occasionally, also the right to use the implementation and business administration technology or operational system developed or owned by the franchisor, upon direct or indirect remuneration, without the establishment of any employment relationship.

10 Which laws and government agencies regulate the offer and sale of franchises?

The Brazilian Franchise Law regulates the mandatory content of the offer, based on the Franchise Offer Circular (COF), which sets out the required information a franchisor must provide to a prospective franchisee.

According to article 211 of the Industrial Property Law, the franchise agreement shall be registered with the National Institute of Industrial Property (INPI) to be valid before third parties.

11 Describe the relevant requirements of these laws and agencies.

Article 3 of the Brazilian Franchise Law sets out the information that must be contained in the COF, which must be provided, in clear and accessible written language and include the detailed description of the business (see question 17).

Regarding INPI, registration of the agreement depends on two elements: the temporary granting of the rights that involve, together with use of the respective trademarks, the necessary technology transfer; and the specification of the fee payable by the franchisee to the franchisor.

In addition, the Brazilian Franchise Association (ABF) includes all major franchisors in Brazil and has a very important role and is deemed as a self-regulatory body for the franchising business.

12 What are the exemptions and exclusions from any franchise laws and regulations?

The Brazilian Franchise Law is only applicable to franchisors and franchisees operating in Brazil; in these cases, registration of the franchising agreement with the INPI is not mandatory. Franchise agreements with foreign franchisors, however, in order to be fully valid, must be registered at the INPI.

13 Does any law or regulation create a requirement that must be met before a franchisor may offer franchises?

The Brazilian Franchise Law does not present any such requirement, before issuing the COF.

The list of information to be disclosed is described in the COF (see more complete list in the answer to question 17).

14 Are there any laws, regulations or government policies that restrict the manner in which a franchisor recruits franchisees or selects its or its franchisees' suppliers?

The Brazilian Franchise Law does not present any restrictions as to the recruitment or selection of franchisees or suppliers, despite the mandatory information to be provided in the COF. However, it is possible to appoint the 'ideal franchisee' (see question 17, items (v) and (x)).

15 What is the compliance procedure for making pre-contractual disclosure in your country? How often must the disclosures be updated?

The Brazilian Franchise Law establishes that the COF must be provided by the franchisor to the franchisee at least 10 days before pre-contractual signing. However, the law does not specify how often the COF must be updated.

16 In the case of a sub-franchising structure, who must make pre-sale disclosures to sub-franchisees? If the sub-franchisor must provide disclosure, what must be disclosed concerning the franchisor and the contractual or other relationship between the franchisor and the sub-franchisor?

The Brazilian Franchise Law considers a sub-franchisor to be a franchisor, and a sub-franchisee to be a franchisee. In this sense, the obligation for the pre-sale disclosure in case of sub-franchising structure, remains under the sub-franchisor. If a sub-franchisor is a Brazilian entity, the sub-franchisor shall provide the COF with all the requirements applicable.

17 What information must the disclosure document contain?

As described in article 3 of the Brazilian Franchise Law, the disclosure to be made in the COF must contain the following information on the franchisor:

- (i) summarised background, type of company and full corporate name of the franchisor and of all the companies directly connected with, as well as the names by which they are known and their addresses;
- (ii) the balance sheets and financial statements of the franchisor for the two previous years;
- (iii) an accurate description of all the judicial claims involving the franchisor, the controlling companies and the owners of trademarks, patents and copyrights related to the operation and their sub-franchisors related to the franchise system, or claims which may prejudice its functioning;
- (iv) a detailed description of the franchise and a general description of the business and activities to be carried out by the franchisee;

- (v) a profile of the 'ideal franchisee': previous experience, level of education and other requirements he or she should have;
- (vi) requirements regarding the direct involvement of the franchisee in the operation and management of the business;
- (vii) specifications concerning: the estimate of total initial investment for the acquisition, implementation and start-up of the business; the value of the initial fees and guarantee, if applicable; and the estimated value of the premises, equipment and initial stock and payment conditions;
- (viii) clear information about applicable charges and other amounts to be paid by the franchisee to the franchisor or to third parties designated by the franchisor, detailing the respective basis for the calculation and purposes, indicating: the periodical remuneration for using the system, the trademark or for the services effectively provided by the franchisor to the franchisee (royalties); the rent for equipment or premises; the advertising fee or similar; the minimum insurance; and any other amounts due to the franchisor or to related third parties;
- (ix) a complete list of all the franchisees, sub-franchisees and sub-franchisors of the franchise system, as well as any that have left the franchise system in the preceding 12 months, with names, addresses and telephone numbers;
- (x) information regarding the territory, namely: whether the franchisor guarantees to the franchisee exclusivity or preference over a certain territory and, if so, in what conditions; and whether the franchisee is allowed to sell products or provide services outside the territory or whether the franchisee is allowed to export;
- (xi) clear and detailed information about the franchisee's obligation to acquire any property, services or products necessary for the implementation, operation or management of the franchise, exclusivity from suppliers designated and approved by the franchisor, providing the franchisee with a complete list of these suppliers.
- (xii) a description of what is effectively offered to the franchisee by the franchisor, concerning: system supervision; instruction services and others provided to the franchisee; training programme for the franchisees; training programme for the franchisees' employees; franchise manuals; assistance in the analysis and selection of the area where the franchise will be installed; and layout and architectural patterns of the franchisee's premises;
- (xiii) the situation with the INPI of the trademarks or patents whose use is being authorised by the franchisor;
- (xiv) information on the situation of the franchisee after the termination of the franchise agreement, particularly regarding: know-how or industry service to which the franchisee had access during to the franchise operation; and any non-compete provisions; and
- (xv) a draft of the franchise agreement and, if applicable, the standard franchise pre-contract, with the full text, including appendices and duration.

18 Is there any obligation for continuing disclosure?

Beyond the franchisor's obligation to provide updated disclosure to potential franchisees, there is no legal obligation for continuous disclosures to the franchisees already in the scheme.

19 How do the relevant government agencies enforce the disclosure requirements?

No governmental agency has specific powers to enforce the disclosure requirements presented in the COF.

20 What actions can franchisees take to obtain relief for violations of disclosure requirements? What are the legal remedies for such violations? How are damages calculated? If the franchisee can cancel or rescind the franchise contract, is the franchisee also entitled to reimbursement or damages?

In case of violations of disclosure requirements, the franchisee may file a claim or commence mediation or arbitration proceedings for indemnification, if so stipulated in the franchise agreement. Annulment of the contract and repayment of all the amounts already paid to the franchisor, such as affiliation fee and royalties, duly adjusted for inflation by the variation of the basic remuneration of savings deposits plus damages, could be sought as a final resort.

21 In the case of sub-franchising, how is liability for disclosure violations shared between franchisor and sub-franchisor? Are individual officers, directors and employees of the franchisor or the sub-franchisor exposed to liability? If so, what liability?

Under Brazilian laws, the franchisor and sub-franchisor shall be liable pursuant to their respective contractual obligations. Before franchisees, the sub-franchisor shall be held liable for all issues arising out of the franchise agreement. Unless the joint liability of the franchisor and sub-franchisor is expressly stipulated, the sub-franchisor shall be held liable. The sub-franchisor may have a right of redress against the franchisor.

With regard to individual responsibility, as a general rule, officers, directors and employees of a franchisor or sub-franchisor may only be held liable in cases of misconduct, gross negligence or fraud.

Despite the general rule, in case of bankruptcy or the end of activities of a franchisor or sub-franchisor, creditors (suppliers, employees and tax authorities) may require the inclusion of referred individuals in their personal capacity in their claims. The pursuit and inclusion of such individuals in claims are more frequently encountered in labour and tax claims.

22 In addition to any laws or government agencies that specifically regulate offering and selling franchises, what are the general principles of law that affect the offer and sale of franchises? What other regulations or government agencies or industry codes of conduct may affect the offer and sale of franchises?

Besides specific rules of the Franchise Law, the offer and sale of franchises in Brazil is also affected by the Brazilian Civil Code and the general principles of contract law, especially contractual good faith. The ABF rules and code of practice are also influential as ABF counts more than 1,000 members and has a strong presence in franchise-related matters.

23 Other than franchise-specific rules on what disclosures a franchisor should make to a potential franchisee or a franchisee should make to a sub-franchisee regarding predecessors, litigation, trademarks, fees etc, are there any general rules on pre-sale disclosure that might apply to such transactions?

There are no rules determining the formulation of specific disclosure to such transactions, besides those required in the COF pursuant to the Brazilian Franchise Law (see question 17, items (ix), (xi) and (xiii)).

24 What actions may franchisees take if a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises? How does this protection differ from the protection provided under franchise sales disclosure laws?

In case a franchisor engages in fraudulent or deceptive practices in connection with the offer and sale of franchises, the franchisee, pursuant to the Brazilian Franchise Law, is allowed to claim for the annulment of the contract and to require repayment of all the amounts already paid to the franchisor, such as the affiliation fee and royalties, duly adjusted for inflation. In some cases it may also be possible for a franchisee to seek a criminal prosecution.

Legal restrictions on the terms of franchise contracts and the relationship between parties in a franchise relationship

25 Are there specific laws regulating the ongoing relationship between franchisor and franchisee after the franchise contract comes into effect?

The ongoing relationship between a franchisor and franchisee, after the execution of the franchise agreement, is regulated in all material aspects by the franchise agreement itself and by the Brazilian civil law.

26 Do other laws affect the franchise relationship?

No, see question 25.

27 Do other government or trade association policies affect the franchise relationship?

Yes. In this sense, the influence of the ABF cannot be disregarded.

28 In what circumstances may a franchisor terminate a franchise relationship? What are the specific legal restrictions on a franchisor's ability to terminate a franchise relationship?

The Brazilian Franchise Law does not stipulate any special or specific provision regarding a franchisor's ability to terminate any franchise relationship, as the parties are free to stipulate these conditions in the franchise agreement. The general Brazilian civil law applies and a party may therefore terminate with cause, based on the breach of any obligation contained in the agreement by the other party, or without cause, based on the principle that no one is obliged to remain party to a contract indefinitely. Nonetheless, the civil law also stipulates that a party may not terminate an agreement without compensation in cases where one party has undertaken significant costs to fully comply with contractual obligations.

29 In what circumstances may a franchisee terminate a franchise relationship?

The Brazilian Franchise Law does not stipulate any special or specific provision regarding a franchisee's ability to terminate any franchise relationship. The parties are free to stipulate these conditions in the franchise agreement.

30 May a franchisor refuse to renew the franchise agreement with a franchisee? If yes, in what circumstances may a franchisor refuse to renew?

Unless automatic renewal is prescribed in the contract or the contract is for an indefinite period, a franchisor shall observe the conditions contained in the agreement and abide by those conditions. Where a franchisor decides not to renew the agreement in spite of its contractual obligations, such refusal may cause the franchisor to indemnify the franchisee.

31 May a franchisor restrict a franchisee's ability to transfer its franchise or restrict transfers of ownership interests in a franchisee entity?

It is possible for a franchisor to stipulate restrictions on the transfer of a franchisee entity, as well as providing for the termination of the franchise agreement if the franchisee assigns the business without cause or the franchisor's prior consent, waiving any indemnification.

32 Are there laws or regulations affecting the nature, amount or payment of fees?

No. The Brazilian Franchise Law only requires that the COF provides the payment conditions, which may be a flat amount, or based on a floating fee calculated at a percentage of sales or of the price for each unit sold or purchased by the franchisee from its suppliers, on the profits earned.

33 Are there restrictions on the amount of interest that can be charged on overdue payments?

The parties are free to stipulate penalties for default. The usual penalty varies between 2 and 10 per cent of the overdue sum, but in no case is it to exceed the overdue principal amount.

Interest of up to 12 per cent a year can be levied in addition to any penalty, according to the Brazilian Civil Code, article 406, and the National Tax Code, article 161, section 1.

34 Are there laws or regulations restricting a franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency?

No legal restrictions applies to the franchisee's ability to make payments to a foreign franchisor in the franchisor's domestic currency, provided registration of the agreement at the INPI is made in order to allow the remittance of the royalties as a deductible expense for the franchisee.

35 Are confidentiality covenants in franchise agreements enforceable?

The information and know-how to be assigned to franchisee can be considered confidential and trade secrets, critical for the maintenance of the franchising business and protected and enforceable under Brazilian laws.

36 Is there a general legal obligation on parties to deal with each other in good faith? If so, how does it affect franchise relationships?

The Brazilian Civil Code, which is applicable to franchise agreements, stipulates that the parties shall perform their obligations in good faith, pursuant to articles 113, 187 and 422.

37 Does any law treat franchisees as consumers for the purposes of consumer protection or other legislation?

No, the Consumer Protection Code (Federal Law No. 8,078 of 10 September 1990), describes the consumer as the individual or company that is the end-user of products or services and is considered at a disadvantage (financial and technical) to the supplier. This does not apply to franchisees, provided that the object of the franchise is the sale of products or services licensed under the instructions of the franchisor. Further, as the franchisee will profit using the assets and knowledge provided, he or she cannot be considered to be at a disadvantage.

38 Must disclosure documents and franchise agreements be in the language of your country?

Yes, both the disclosure documents and franchise agreements shall be clearly and accessible written in Portuguese, with detailed description of the business. However, it is also possible to have those documents in more than one language.

39 What restrictions are there on provisions in franchise contracts?

No specific legal restrictions are applicable to the provisions in franchise contracts; the parties are free to agree on terms, to the best of their interests. Nonetheless, conditions or terms that are considered abusive or that impose excessive burdens may be challenged by the franchisee.

40 Describe the aspects of competition law in your country that are relevant to the typical franchisor. How are they enforced?

Defence of competition is regulated by Federal Law No. 12,529 of 30 November 2011 under the Administrative Council for Economic Defence, an executive body of the Brazilian Competition Defence System.

The Law sets forth anti-competitive practices to be avoided by franchisors and franchisees, which include: agreeing, combining, manipulating or adjusting prices in collusion with competitors; limiting or preventing access of new companies to the market; using deceptive means to cause a price to surge for third parties; and unjustifiably selling goods or providing services below the cost price.

41 Describe the court system. What types of dispute resolution procedures are available relevant to franchising?

The Brazilian judicial system is extremely complex, abounding in divisions and formalities. To summarise, there is the division of the courts, where all cases commence in the first to the third courts of instance. The major obstacle caused by this system is that it is slow. This is mainly due to the large number of appeals they handle and the subsequent compliance with all the instances. A simple point of order can take over 10 years to be judged.

In an ongoing conflict situation, we believe that the most reliable method of resolution is the non-adversarial approach. Ideally, the parties involved should seek to settle their differences via mediation and arbitration chambers. This would enable them to settle the matter in the speediest, least bureaucratic and most efficient manner compared with a court of justice. Certain arbitration centres in Brazil have been created to deal with lower-profile cases, with lower costs and would be the ideal forum for disputes among franchisors and franchisees.

42 Describe the principal advantages and disadvantages of arbitration for foreign franchisors considering doing business in your jurisdiction.

Among the many advantages available, the following are particularly marked:

- speed: an average of six to 18 months to conclusion;
- specialised arbitrators: these are individuals specialised in the subject matter and have considerably greater in-depth familiarity thereon than any judge;

Update and trends

Bills of law

There are currently two bills (PL Nos. 3234/2012 and 4.386/2012), which intend to revoke and replace the Franchise Law. The most significant changes proposed are:

- an amendment of the definition of franchise, broadening its concept to include production of goods;
- franchise agreements will not constitute a consumer relation, nor the formation of an economic group;
- improvement of the COF to require disclosure of further and more detailed information;
- franchises may only be offered at least two years after conclusion of the franchise business concept, the company name or brand have been explored in Brazil or abroad by the franchisor, a related company, or another company of the economic group;
- the possibility for state-owned or partially government-owned companies to adopt franchise system in their operations;
- franchise contracts producing legal effects only in Brazil to be governed by Brazilian law;
- franchise contracts that produce cross-border legal effects will be governed by Brazilian law, unless the parties expressly agreed otherwise;
- to determine that the foreign party shall permanently hold a qualified attorney-in-fact resident in Brazil, with powers to represent such party in or out of court, including powers to receive service of justice and summons; and
- the possibility for parties to settle disputes by arbitration.

The complete law proposals can be found using the following links (only Portuguese version available):

- www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=534807; and
- www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=554195.

Increase in the franchising market

The Brazilian franchising market has increased its turnover and the number of franchisors and franchisees.

Turnover increased 7,7 per cent in 2014 compared with 2013 (127 v 118 billion reais), as informed by ABF.

The increase in the number of franchisors and franchisees is indicated in the tables below:

Amount of franchisors			Amount of franchisees		
2013	2014	Increase	2013	2014	Increase
2,703	2,942	8,84%	114,409	125,641	9,81%

- confidentiality: the parties can stipulate the need for secrecy and confidentiality regarding the case;
- autonomy: the parties are free to choose both the rules that will govern the case and the actual arbitrator, and can request that the conflict be judged according to non-Brazilian standards; and
- the legal validity of the sentence: an arbitration sentence holds the same validity as a sentence delivered by a court of justice.

However, there are also some disadvantages, namely:

- the difficulties involved in the choice of arbitrator: an in-depth check on a potential arbitrator is essential to avoid the possibility of an unfavourable decision;

- a lack of specialised professionals: the number of qualified arbitrators is relatively low and accordingly, their fees are very high; and
- no appeal: arbitration decisions may not be appealed on merit.

43 In what respects, if at all, are foreign franchisors treated differently from domestic franchisors?

The Brazilian Franchise Law does not differentiate between Brazilian and foreign franchisors. The only difference is the need to register a foreign franchising agreement to allow remittance of royalties as a deductible expense.

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Aviation Finance & Leasing	Executive Compensation & Employee Benefits	Oil Regulation	Shipbuilding
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Climate Regulation	Fund Management	Pensions & Retirement Plans	Structured Finance & Securitisation
Construction	Gas Regulation	Pharmaceutical Antitrust	Tax Controversy
Copyright	Government Investigations	Private Antitrust Litigation	Tax on Inbound Investment
Corporate Governance	Insurance & Reinsurance	Private Client	Telecoms & Media
Corporate Immigration	Insurance Litigation	Private Equity	Trade & Customs
Cybersecurity	Intellectual Property & Antitrust	Product Liability	Trademarks
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