



Ministry of Industry, Foreign Trade and Services
Special Secretariat for Micro and Small Enterprises
Department of Registration and Business Integration

FOREIGN COMPANY

Opening of branch in Brazil

Brasilia, April 19, 2018.

Presentation

These Guidelines establish standards and procedures that must be observed when seeking authorization for nationalization or installation of an office, agency or branch of a foreign business corporation in Brazil.

In addition to guiding foreign companies, aiming at the standardisation of authorization requests within the Department of Registration and Business Integration, the provisions made in these Guidelines shall facilitate the understanding of the requirements demanded by the Civil Code and Normative Instructions [DREI No. 7](#), December 5th of 2013, thus making the authorization process by the Executive Branch more time efficient, avoiding demands and decreasing the costs arising from rework.

Furthermore, it should be clarified that [art. 1.134 of the Civil Code](#) does not refer to the case of a foreign company being a partner or shareholder of a national company. In these cases, the procedure is set forth in the Normative Instructions [DREI No. 34, of 2017](#) and [DREI No. 38, of 2017](#) and must be carried out directly before the Commercial Boards.

It is also important to point out that the guidance provided for this document does not overlap with the legislation regulating the matter.

Introduction

Under the terms of item X of Art. 4 of Law No. 8.934, November 18th of 1994, the Department of Registration of Business and Integration, without prejudice to the competence of other federal agencies, shall instruct and examine the processes of authorization for the nationalization or installation of office, agency, branch or facility of a foreign company in Brazil.

Thus, the foreign company that wants be established in Brazil or that obtains said permission but wishes to make any alterations in the contract or bylaws shall require **prior authorization** to the **Special Secretary of Micro and Small Enterprises of the Ministry of Industry, Foreign Trade and Services**¹.



In summary the procedure of governmental authorization for foreign companies works in the following way:

- **Submission of the request for authorization** ([Art. 1 and 2 of IN DREI No. 7, of 2013](#)):

The foreign business company must initiate the authorization process (installation and operation, alteration, cancellation or nationalization) with an application addressed to the Special Secretary of Micro and Small Enterprise of the Ministry of Industry, Foreign Trade and Services attached to the necessary documentation.

IMPORTANT!

- * Each document shall be filed in two copies (original document and one copy), being that at the end of the process the copy shall be returned to the company.
- * All documents originating abroad must be presented before and legalized by a Brazilian consular authority, or adapted under the terms of the Hague Convention.



Exceptions: Brazil/Argentina Agreement of October 16th of 2003;
Brazil/France Agreement ([Decree 3,598, 9/15/2000](#)).

¹ Currently the competence of the Special Secretary of Micro and Small Enterprise under Decree No. 8,803, July 6th of 2016 and Ordinance No. 1391 of July 11th of 2016.

* The original documents must be submitted to and translated by a public official translator enrolled in any Brazilian Commercial Board – [Art. 11 and sole paragraph of the IN DREI No. 7, of 2013](#).

* The authorization request must be docketed in the Department of Registration and Business Integration - DREI at the following address: **SAUS Quadra 2 Lote 1/A, Brasília – DF, CEP 70.070-020.**

- **Analysis of the process by the Department of Registration and Business Integration - DREI** ([Art. 15 of IN DREI no. 7, of 2013](#)):

The documentation shall be instructed and examined by the Department of Registration and Business Integration (DREI), who shall then manifest the approval or refusal of the request.

IMPORTANT!

* In the case of verified absence of some legal formality, the process shall be filed under requirement ([§§ 1 to 3 of Art. 15 of IN DREI No. 7, of 2013](#)).



* The company shall be notified and shall have a period of 60 (sixty) days to comply with the requirement.

* It is important that the foreign company includes a telephone number, address and e-mail on the request, for further communication.

- **Analysis of the process by CONJUR-MDIC/CGU/AGU:**

Should the documentation be in order, the Department of Registration and Business Integration (DREI) shall forward the process to the **Legal Consultancy, a sectoral body of the Attorney General's Office², and to the Ministry of Industry, Foreign Trade and Services**, which, in terms of [Art. 5 of Decree No. 9,260, December 29th of 2017](#) (Approving the MDIC Bylaws) has the competence to provide legal assistance and advice, within the scope of the Ministry.

² The Attorney General's Office is the institution that, either directly or through a subordinated agency, represents the Union, its autarchies and public foundations, including in activities of consulting and legal advice to the Executive Branch.

CONJUR-MDIC/CGU/AGU analyzes the legal aspects of the process and manifests its approval or refusal of the request.

- **Referral to the Special Secretary of Micro and Small Enterprise:**

After the DREI and CONJUR-MDIC/CGU/AGU analysis, the process shall be submitted to the Special Secretary of Micro and Small Enterprises that shall authorize or deny the request made by the foreign company.

IMPORTANT!

* The DREI and CONJUR-MDIC/CGU/AGU opinions are advisory, therefore, the jurisdiction over the authorization or denial of the request is exclusive to the Executive Power, by means of the Special Secretary of Micro and Small Enterprises.

* The government authorization occurs by means of a Decree published in the Official Journal of the Union.

- **Filing at the Commercial Board ([Art. 5 of IN DREI No. 7, of 2013](#)):**

Once the authorization is granted, the foreign company shall proceed with the registration in the Commercial Board.

IMPORTANT!

* The Department of Registration and Business Integration- DREI will be in contact with the legal representative and return a copy of each document, duly authenticated, and the foreign company must be registered in the Commercial Board of the Federative Unit where the branch or office will be established.



Any questions regarding the procedure and documentation may be answered by the Department of Registration and Business Integration – DREI:

E-mail: drei@mdic.gov.br

Telephones: (61) 3411-8320 / 8309

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1. Installation and Operation of the Office, Branch, Agency or Facility

- Arts. 1.134 to 1.138 of the [Civil Code](#).
- Arts. 1 to 5 of the Normative Instructions [DREI no. 7, of 2013](#).

- **Documentation required:**

a) Application addressed to the Special Secretary of Micro and Small Enterprise of the Ministry of Industry, Foreign Trade and Services (Articles 1 and 2 of the IN DREI no. 7/2013);

See item 5.1.

b) Act of deliberation about the installation of office, branch, agency or facility in Brazil (art. 2, I c/c art. 3 of the IN DREI No. 7/2013);

Act under which the foreign company (as per its legislation) shall act for the opening of the branch in Brazil. This act must be complete with:

- the activities that the company wishes to perform in Brazil, according to its bylaws;
- the highlighted capital, converted into Brazilian currency, destined to the operations in Brazil.

* In this act the appointment of the legal representative may also be included (item 'd').

IMPORTANT!

* The foreign business corporation shall not be able to perform, in Brazil, activities included in its social purpose but forbidden to foreign companies, and may only perform those depending on prior approval by the government organ - [Art. 12 IN DREI No. 7, 2013](#).

* The foreign business corporation shall operate in Brazil under the same business name, it may, however, add the expression "do Brasil" ("of Brazil") or "para o Brasil" ("for Brazil") – [Art. 13 IN DREI no. 7, 2013](#).

* **We suggest the verification of the Normative Instructions [DREI No. 14/2013](#) and [34/2017](#), which include specific standards geared to foreign companies.**

c) Entire content of the contract or bylaws (Art. 2, II of the IN DREI No. 7/2013);

Updated contract or social bylaws of the foreign company duly registered in the country of origin.

d) A list of members or shareholders, with the names, professions, domiciles and the number of quotas or shares held by them. Except when, as a result of applicable legislation, it is impossible to comply with such a requirement (Art. 2, item III of the IN DREI No. 7/2013);

Document containing all of the partners or shareholders, as well as a list of the members of all management bodies of the company.

e) Proof of the legality of corporation under the laws of its country of origin (Art. 2, IV IN DREI No. 7/2013);

Document issued by the registration authority in the country of origin.

f) Deliberation act on the appointment of a representative in Brazil, accompanied by the power of attorney which gives him/her powers and permission to address any issues and resolve them permanently, making him/her amenable to lawsuits or to being cited on behalf of the company (Art. 2, V c/c Art. 4 of IN DREI No. 7/2013);

Act in which the foreign company appoints and grants powers to a natural person who shall be its representative in Brazil.

IMPORTANT!

* This person may be a foreigner, however, they should have domicile and residence in Brazil (documentation of proof must be attached to the document).

The power of attorney shall expressly empower the representative to accept the conditions under which the authorization is given, and to address any issues and resolve them permanently, including the possibility of being sued and or cited on behalf of the company.

It shall not contain expiration date or establish proxies.

g) Declaration by the representative in Brazil accepting the conditions under which the authorization was given by the Federal Government (Art. 2, VI IN DREI No. 7/2013);

See item 5.2.

h) Latest balance sheet (Art. 2, VII IN DREI no. 7/2013); and

i) A Collection Form referring to the payment for service (Art. 2, VII IN DREI No. 7/2013).

Proof of Payment of the "DARF" (Inland Revenue Collection Document) (code 6621; value: R\$ 240,00).

- **New branches:**

After the company is authorized to function in Brazil, a new authorization is required for the opening of other branches of the same company, to that end, observe the provisions of §§ 1 and 2 of Art. 5 of the IN DREI no. 7/2013.

- In the same federative unit:

The foreign enterprise shall file only the documents referred to in item IV of this article and in paragraph I of Art. 2 of the Normative Instructions, and the power of attorney, should it be the case.

- In a different federative unit:

The documentation referred to in the previous paragraph shall be filed in the Commercial Board of the location where the main branch is to be installed, and a simplified certificate or certified copy of the act filed in the main branch's Board is to be filed in the Commercial Board of the location of the other branches.

- **Legal publications:**

The foreign company shall disclose the financial results of its global activity, which shall be published in the Official Journal of the Union and of the state in which the company is located. Should it be the case, according to the Law of its country of origin, all of the publications will be obliged to report financial gains at the end of each fiscal year.

Parallel to this, the company shall also publish the balance sheet and the economic results of the subsidiaries or branches, in accordance with the terms provided for the type of company ([Art. 6 of the IN DREI No. 7/2013](#)).

2. Alterations in the Contract or Bylaws

- Art. 1,139 of the [Civil Code](#).
- Art. 7 and 14 of the Normative Instructions [DREI No. 7, 2013](#).

- **Documentation required:**

a) Application addressed to the Special Secretary of Micro and Small Enterprise of the Ministry of Industry, Foreign Trade and Services (Art. 7, I IN DREI No. 7/2013);

b) Act of deliberation which led to the alteration (Art. 7, II IN DREI No. 7/2013);

c) A Collection Form referring to the payment for service (Art. 7, III IN DREI No. 7/2013).

Proof of Payment of the "DARF" (Inland Revenue Collection Document) (code 6621; value: R\$ 160,00).

- **Alterations that depend on prior approval by the Executive branch:**

Any change in the contract or in the bylaws, in order to produce effects in the Brazilian territory, shall depend on prior approval by the Executive branch. May be listed as illustrative examples:

- Any changes in the contract or in the bylaws of the **foreign business corporation**, in particular changes in address, activities, denomination, partners or shareholders, members of management, merger, incorporation, division.
- Any changes that interfere in the **foreign company branch's** data, such as:
 - increase or reduction in share capital;
 - change of legal representative;
 - change in the company's name;
 - change in activities.

OBSERVATIONS:

In the case of a change of **address of the branch in Brazil**, prior approval is not required, only the communication of the new address to the Department of Registration of Business and Integration (DREI), for the purpose of updating the registry.

3. Cancellation of the Authorization for Installation and Operation of Office, Branch, Agency or Facility

- Art. 1,139 of the [Civil Code](#).

- Art. 8 and 14 of the Normative Instructions [DREI No. 7/2013](#).

- **Documentation required:**

a) Application addressed to the Special Secretary of Micro and Small Enterprise of the Ministry of Industry, Foreign Trade and Services;

b) Act of deliberation about the cancellation; and

c) A Collection Form referring to the payment for service

Proof of Payment of the "DARF" (Inland Revenue Collection Document) (code 6621; value: R\$ 160,00).

4. Nationalization of Foreign Companies

- Art. 1,141 of the [Civil Code](#).
- Art. 9 and 10 of the Normative Instructions [DREI No. 7, 2013](#).

The nationalization of the foreign company occurs when the company decides to transfer its headquarters to Brazil. In this case, the foreign company shall have already obtained authorization for installation and operation of an office, branch, agency or facility in Brazil.

- **Documentation required:**

a) Application addressed to the Special Secretary of Micro and Small Enterprise of the Ministry of Industry, Foreign Trade and Services (Art. 9, I IN DREI No. 7/2013);

b) Act of deliberation about the nationalization (Art. 9, II IN DREI No. 7/2013);

c) Bylaws or social contract (as the case may be) prepared in accordance with Brazilian Laws (Art. 9, III IN DREI No. 7/2013);

Observe Normative Instructions DREI No. 38/2017.

d) Proof of payment of capital, in the form stated in the contract or bylaws (Art. 9, IV IN DREI No. 7/2013);

e) Declaration by the representative in Brazil accepting the conditions under which the authorization of nationalization was given by the Federal Government (Art. 9, V of the IN DREI No. 7/2013);

f) A Collection Form referring to the payment for service (Art. 9, VI of IN DREI No. 7/2013).

Proof of Payment of the "DARF" (Inland Revenue Collection Document) (code 6621; value: R\$ 175,00).

5. Models

5.1. Application for Authorization or Approval Addressed to the Special Secretary of Micro and Small Enterprise

MR. SPECIAL SECRETARY OF MICRO AND SMALL ENTERPRISE OF THE
MINISTRY OF INDUSTRY, FOREIGN TRADE AND SERVICES

NAME OF THE FOREIGN COMPANY, herein represented by its legal representative (name, nationality, marital status, occupation, identification document, social security number, resident and domiciled), as provided for in Art. 1,134 of the Civil Code and Normative Instructions DREI No. 7, 2013, REQUIRES authorization for installation and operation of a branch (office, agency or facility) in Brazil, attaching to this request the essential documents, as follows:

- I. Act of deliberation regarding the installation of office, branch, agency or facility in Brazil.
- II. The entire content of the contract or bylaws.
- III. A list of the company's partners or shareholders, with names, professions, domiciles and the number of shares held, except when, as a result of applicable legislation, it is impossible to comply with such a requirement.
- IV. Proof of the company's legality in its country of origin.
- V. Act of deliberation regarding the appointment of a representative in Brazil, accompanied by the power of attorney which gives him/her powers to accept the conditions under which the permission was given and to address any issues and resolve them permanently, including the possibility of being sued and/or cited on behalf of the company.
- VI. A Declaration by the representative in Brazil accepting the conditions under which the authorization was given by the Federal Government.
- VII. Latest Balance Sheet.
- VII. A Collection Form referring to the payment for service.

Place and date.

Name
Legal Representative

- Include contact information: telephone number, address and e-mail.
- Attach the Power of Attorney, in case of appointment of counsel for the filing of the application.

5.2. Declaration by the Legal Representative Accepting the Conditions in which the Authorization was Given

DECLARATION

I [NAME OF LEGAL REPRESENTATIVE], [NATIONALITY], bearer of identity document [DOCUMENT TYPE, DOCUMENT NUMBER, DATE OF ISSUANCE OF THE DOCUMENT], SSN [SOCIAL SECURITY NUMBER], with residence and address at [COMPLETE ADDRESS – INCLUDING ZIP CODE], declare that I ACCEPT the conditions under which the authorization was given by the Federal Government, for the installation and operation of the branch (office, agency or facility) in Brazil of company [NAME, ADDRESS], pursuant to Normative Instructions DREI No. 7, of December 5th of 2013.

Place and date.

[NAME]
LEGAL REPRESENTATIVE