



Licence agreements in Brazil

Ulrich Herfurth, lawyer in Hanover and Brussels
Renato Pacheco e Silva Bacellar Neto, lawyer in Sao Paulo

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In 2025, Brazil will still be by far the largest market in Latin America and a key economic centre in the southern hemisphere. With over 200 million inhabitants, a diversified industry, a strong agricultural and raw materials sector and a growing digital and technology scene, Brazil offers considerable potential for foreign companies. At the same time, the Brazilian market is characterised by pronounced regulation, formalised administrative procedures and a complex tax and foreign exchange regime.

Licence models are therefore a preferred instrument for European companies to tap into the Brazilian market. Technology, brand and software licences in particular enable market access and economic exploitation of intellectual property without having to make extensive direct investments immediately. However, a prerequisite for the success of such models is a contract design that is customised to the Brazilian specifics.

Licences for market entry in Brazil-

Direct market entry via own subsidiaries or production facilities in Brazil is associated with considerable administrative effort. Approval procedures, labour law obligations, local taxes and the country's federal structure place high demands on foreign investors. Added to this are exchange rate risks and a formalised foreign exchange law.

Licence agreements make it possible to reduce these hurdles. By working with local licence holders, market knowledge, existing distribution networks and regulatory experience can be utilised. At the same time, the licensor remains economically flexible. However, this is offset by the risk of losing control over technology, software or brands if protection mechanisms are inadequately designed.

Legal framework in Brazil

Contract law and regulatory integration

Brazilian contract law is based on the Civil Code (Código Civil) and is codified. Freedom of contract exists in principle, but is limited by mandatory legal requirements, particularly in intellectual property law, competition law, tax law and foreign exchange law. Licence agreements are widespread in Brazil, but are sometimes subject to special formal requirements and registration obligations.

A special feature of Brazilian law is the strong role of state authorities in the recognition and enforcement of licence agreements. Unclear or unregistered contracts can be treated unfavourably in terms of tax or foreign exchange law.

Federal structure and enforcement



Brazil is a federal state. While intellectual property law is regulated by federal law, administrative practice and the duration of proceedings can vary from region to region. The judicial enforcement of rights is possible, but often time-consuming. Arbitration proceedings are therefore becoming increasingly important.

Technology licences in Brazil

Property rights and expertise

Technology licences in Brazil regularly relate to patents, industrial designs and technical know-how. Patent protection only exists for patents registered and granted in Brazil. European or international patents have no direct effect.

Know-how is not recognised as an independent property right, but is protected by contract law, competition law and tort claims. Licence agreements must therefore contain detailed provisions on confidentiality, restriction of use, access control and contractual penalties.

Registration obligations with the INPI

A key speciality of Brazil is the role of the National Institute of Intellectual Property (INPI). Technology and know-how licence agreements must be registered with the INPI in order to be effective vis-à-vis third parties and to be able to pay licence fees abroad. Failure to register can result in tax disadvantages and payment restrictions.

The obligation to register has a direct influence on the drafting of contracts, as certain clauses - such as excessive exclusions of liability or non-compete clauses - can be objected to by the INPI.

Trade mark licences in Brazil

Fundamentals of trade mark law

Brazilian trade mark law is based on the Industrial Property Law. Trade mark protection arises through registration. Trademark licences are expressly

provided for and must also be registered with the INPI in order to be effective against third parties.

The licensor is obliged to check the quality of the goods or services marketed under the trade mark. A lack of quality control can lead to the weakening or, in extreme cases, the loss of the trade mark. Licence agreements must therefore contain clear quality standards, control rights and audit mechanisms.

Brands, distribution and parallel imports

In practice, parallel imports, imitations and trade mark-like signs are a relevant problem. Although there are legal means of enforcement, these are often time-consuming and cost-intensive. Licence agreements should therefore contain provisions on market surveillance, cooperation in legal enforcement and cost allocation.

Software licences and digital business models

Software as the subject of a licence

Software licences are playing an increasingly important role in Brazil, particularly in the areas of business software, FinTech, agricultural IT and Industry 4.0. Software is protected by copyright in Brazil. The licence agreement largely determines the scope of permitted use.

Licence agreements must regulate in particular

- Installation and usage rights
- Copies, modifications and further development
- Sublicensing and outsourcing
- Cloud and SaaS use

Open source, data and AI

Open source software is also widely used in Brazil. Licensors should agree disclosure obligations and assurances in order to avoid copyleft risks. At the same time, data rights, AI applications and automated decision-making processes are becoming increasingly important.



The Brazilian Data Protection Act (LGPD) places high demands on the processing of personal data and cross-border data transfers. Licence agreements must take these requirements into account and contain clear compliance regulations.

Competition law aspects

Brazilian competition law is enforced by the competition authority CADE. Licence agreements are generally subject to antitrust control, especially if they contain exclusivity clauses, price specifications or market foreclosure.

Technology licences are generally regarded as pro-competitive, provided they enable innovation and do not have any abusive effects. Nevertheless, non-challenge clauses, comprehensive exclusive rights or mandatory grant-back clauses can be problematic and should be carefully drafted.

Liability, warranty and force majeure

Brazilian licensees regularly expect assurances regarding the ownership and usability of the licensed rights. Guarantees of commercial success are uncommon, but can be discussed during negotiations.

Limitations of liability are generally permissible and strongly recommended. Contractual penalties (*cláusulas penais*) are common in Brazilian law and can be used to secure confidentiality and quality obligations.

Force majeure clauses are of particular importance in Brazil. In addition to natural disasters, political measures, import restrictions, strikes and infrastructural disruptions must be taken into account.

Dispute resolution and enforcement

The judicial enforcement of licence agreements in Brazil is possible, but often lengthy. International arbitration proceedings have therefore established themselves as the preferred means of dispute resolution. Brazil is a party to the New York Convention, which

means that foreign arbitration awards can generally be recognised and enforced.

The choice of a neutral place of arbitration (e.g. São Paulo, New York or Paris) and clear arbitration rules (ICC, CAM-CCBC) is common practice. Confidentiality and interim relief should be expressly regulated.

Licence fees

Licence fees in Brazil are often structured as ongoing royalties, minimum fees or one-off payments. The type and composition of the licence fees depend on the individual circumstances. A licence fee that is based on the current turnover of the replica products is most likely to be in the interest of the licensee. The manufactured or distributed items or quantities can also be used as a benchmark, irrespective of the revenue generated. In this way, the licensor also participates in the above-average success of the licensee, but runs the risk of only achieving low income in the event of poor results.

If the licensor wants to avoid this risk, it is better to agree a fixed payment that is paid either at the beginning or at annual intervals and is based on the sales figures that can realistically be achieved. A combination of both methods is also conceivable, so that initially a base of ongoing minimum fees is agreed, which can increase in line with sales. In particular, such an arrangement ensures that the licensee does not leave the acquired knowledge lying idle, but actually utilises it commercially for the benefit of both parties.

Taxes

If licences are agreed between affiliated companies in different countries, the licence fees must comply with the *arm's length* principle according to international tax regulations, i.e. they must be calculated as between unrelated third parties. The licensee's country of domicile does not recognise excessive royalties, for example to skim off the profits of foreign subsidiaries, but instead increases the taxable profit.

Withholding taxes on licence fees must also be taken into account, the amount of which can be reduced by



double taxation agreements. In addition, payments abroad are subject to foreign exchange law, which can trigger reporting and documentation obligations. The effective tax burden can be considerable.

It is therefore essential to have a clear contractual agreement on the economic burden of taxes and duties in order to avoid disputes at a later date.

In addition, payments abroad are subject to Brazilian foreign exchange law and must be processed via authorised banks. Registration with the central bank system may be required. Contracts should clearly stipulate who bears the economic burden of taxes and duties.

Conclusion

Brazil offers considerable opportunities for technology, brand and software licences in 2025, but places high demands on contract design, registration and compliance. Licence agreements must take into account the regulatory role of the INPI, tax and currency law peculiarities as well as competition law limits. Successful licence models in Brazil require an independent contract architecture that is geared towards the local framework conditions. If you want to tap into the Brazilian market via licences, you need not only economic attractiveness, but above all legal precision, realistic expectations regarding the enforceability of rights and a long-term protection strategy for intellectual property.

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The Alliuris Group consists of 20 law firms and 400 business lawyers within Europe, Asia and America.

Contact Ulrich Herfurth
Alliuris Communication
Web www.alliuris.law
Mail info@alliuris.org
Fon +49-511-307 56-20
Fax +49-511-307 56-21

Alliuris in Brazil

Firm Pacheco Neto, Sanden, Teisseire
Web www.pnst.com.br
Fon +55 (11) 3063-6177
Fax +55 (11) 3063-6176
Mob
Contact Renato Pacheco Neto
Language Portuguese, English, Spanish
Mail pnst_sp@pnst.com.br

IMPRINT

EDITORS: ALLIURIS A.S.B.L. ALLIANCE OF INTERNATIONAL BUSINESS LAWYERS | BRUSSELS

MANAGEMENT: Luisenstr. 5, D-30159 Hannover
Fon +49-511-307 56-20, Fax +49-511-307 56-21

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