

# THE INVESTOR'S HANDBOOK FOR RENEWABLE ENERGY IN BRAZIL

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AN INSIDER'S GUIDE



**REA** CONSULT

## Preface

Favorable geographic conditions, growing electricity demand, progressive regulatory reform, and maturing supply chains, have made Brazil one of the most exciting countries in the world for renewable energy investment.

According to Bloomberg's **2019 Climatescope report**, Brazil ranks third most attractive in the world for clean energy investments. Brazil also ranks third globally in terms of installed capacity from renewable energy sources, after only China and the United States, according to **IRENA** analysis. Despite this, Brazil only ranks 7th in the world for installed wind power capacity and 22nd for solar.

The real renewable power in Brazil comes from hydroelectric, where it is only second to China. Large hydropower plants account for around 80% of domestic electricity generation, providing flexible and low-emission base power supply. However, further expansion is constrained by the remoteness and environmental sensitivity of remaining hydropower resources.

As a result, reforms in the Brazilian energy market over the last decade have focused on diversifying the country's energy mix. While natural gas plays a role in this new power landscape, the key focus has been to promote the development of wind and solar power generation by creating the technical, socio-economic, and political conditions required to encourage investment.

Transmission capacity and technology have improved to account for intermittent supply, new financing mechanisms have been put in place to suit a wide range of projects, and more supportive regulation has been established. From 2017 to 2020 (ytd) the average annual installed capacity growth of centralized solar power was approximately 35%. In the same period, distributed solar power grew by more than 120% on average, benefiting from the world's most progressive net metering regulation. The more mature wind sector saw an average increase in

the generation capacity of 8% per year, while total wind capacity is expected to double between 2017 and 2024.

There is a famous saying here, we say that "Brazil is not for beginners". Despite reform, Brazil is still an emerging market with many of the inefficiencies and cultural hurdles

you would expect of a populous Latin American country. However, those who can navigate Brazil's dense legal and regulatory jungle will discover a renewable energy market that is brimming with potential. Since I began working in the renewable energy sector, I have seen markets peak and stall. The conditions are right, now is the time for Brazil.

The Investor's Handbook for Renewable Energy in Brazil has been developed by REA Consult to support that journey. It serves as an insider's guide for those developing projects renewable energy in Brazil and anyone curious about the inner-workings of this lucrative market. A new chapter will be released every week, all free to read and share. See all the chapters published so far and **follow the evolving story here**



*Rachel E. Andalaft*

Founding Partner at REA Consult

REA Consult is a management and consulting firm committed to building bridges for international sustainable investments. Born in Brazil with offices in Europe, Asia, and South America, REA Consult has a global track record of supporting successful projects.

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## CORPORATE STRUCTURE FOR RENEWABLE ENERGY IN BRAZIL

A STRENGTHENING PATHWAY FOR FOREIGN  
CAPITAL PRESENTS OPTIONS FOR INTERNATIONAL  
INVESTORS LOOKING TO ESTABLISH EFFECTIVE  
SPECIAL PURPOSE ENTITIES

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△ Incorporation

△ Limited Partnership

△ Anonymous Partnership

△ Special Purpose Entity

# Corporate Structure for Renewable Energy in Brazil

For decades, Brazil applied protectionist policies which made establishing businesses as a foreigner almost impossible. Most major industries were state-owned and the market was largely closed until the 1980s when the country went bankrupt and the IMF compelled the government to follow a neoliberal course.

Today, a range of different options are available to foreign investors looking to establish corporate entities within the renewable energy sector.

## Incorporation

Project companies and investment vehicles for renewable energy assets are commonly incorporated in the form of a Specific Purpose Entity (SPE) – the equivalent of a Special Purpose Vehicle (SPV).

The SPE is an incorporated entity falling into the joint venture category (equity or corporate joint venture). It is not a type of partnership but a business model, initially derived from the freedom to hire and create partnerships according to private law.

The SPE's existence is attached to the accomplishment of a particular business, keeping its own interests completely detached from the interests of controllers.

In other words, the SPE is an instrument of its controller for the purpose of developing a particular project and, in some cases, the constitution of an SPE is necessary. Normative Instruction 10 of the Department of Business Register and Integration (DREI), for example, requires using the initials "SPE" as part of the official business name.

This is commonly the case for Public-Private Partnerships (PPPs), where article 9 of law 11,079/2004 establishes that *"before signing a contract, an SPE must be constituted, entrusted with implementing and managing the partnership's purpose"*.

For corporate purposes, it must be, necessarily, specific and clearly defined. The participation of the SPE in other partnerships is not accepted.

Lead time must also be pre-defined, which means it must be limited to the conclusion of the company's specific corporate purpose. Trade Boards are responsible for maintaining the start and finish dates of SPEs in their registers.

As said previously, this not being an autonomous type of partnership nor a new model of commercial partnership, the models of **Limited Partnership** or **Anonymous Partnership** must be adopted for an SPE to be constituted.



### Limited Partnership

This is one of the predominant partnership types in the Brazilian business scenario, and consists of an association type that establishes norms based on the amount invested by each associate.

Some of its main features:

- I. Companies constituted as Limited must carry the initials LTDA in their corporate names;
- II. They are composed by two or more partners (people partnership) and have no minimum amount for share capital;
- III. The partners' responsibility is limited and restricted to the company. Personal assets are protected in case of bankruptcy or debts. However, if the subscribed capital (the one allowed by the partner) is not completely paid off, the other partners answer for the failure to pay;
- IV. The formation of an Audit Committee is optional and serves as an oversight board;
- V. In case of loss in the company's capital, withdrawal or distribution of profits to the partners is forbidden;
- VI. A partner may be excluded from a Limited Partnership in two situations: when they do not pay the value agreed upon in the Articles of Association or when they endanger the company's existence and operation;
- VII. Profit distribution follows the Articles of Association;
- VIII. The constitution document is the Articles of Association.

### Anonymous Partnership

The Anonymous Partnership is currently regulated by Law 6,404, of December 15, 1976 (S.A. Law). According to article 1, *"the anonymous company or partnership will have its capital divided in stocks, and the partners' or shareholders' responsibility will be limited to the emission price of the acquired or subscribed stocks"*.

Main features of Anonymous Partnerships:

- I. The Anonymous Partnership may be open or closed. In accordance with article 4 of the S.A. Law, *"the company is open or closed depending on whether or not its securities*

*emissions are admitted to negotiation in the securities market"*. Hence, only in the open capital S.A. it is possible to negotiate in the Stock Exchange;

- II. The partner's or shareholder's responsibility is limited to the price of the stocks that they subscribe to or acquire;
- III. The basic structure of an S.A. is composed by the Meeting of Incorporation, the Board of Directors, the Executive Board, and the Audit Committee;
- IV. The constitution document is the By-law;
- V. It is a capital partnership, in which the distribution of results happens through dividends;
- VI. The Anonymous Partnership's denomination must be accompanied by the expressions "company" or "anonymous partnership", in full or through abbreviation.

Structure of Anonymous Partnerships:

- △ **Meeting of Incorporation:** It is the meeting of the Anonymous Partnership's shareholders, through which company interests and decisions are discussed;
- △ **Board of Directors:** It has the role of counseling the Executive Board in the company's decisions. Composed by at least three members elected during the Meeting of Incorporation and with a well-established tenure;
- △ **Executive Board:** It is the organ with the obligation to manage the company and legally represent its interests. It must be composed by at least two directors (shareholders or not) elected by the Board of Directors or by the Meeting of Incorporation, in case there is no Board of Directors;
- △ **Audit Committee:** It acts as an assessor to the Meeting of Incorporation, analyzing the accounts rendered by the directors and voting on the company's financial statements. The Audit Committee must have at least three to five members, shareholders or not, elected at the Meeting.

## Holding SPEs

One of the ways of implementing SPEs are holding companies, which are characterized as partnerships that detain other companies' equity stakes, controlling them or not.

In this case, they are considered pure holdings, since their corporate purpose meets, exclusively and exceptionally, a specific business: to detain and manage corporate participation in other companies.

Provided the activity is not prohibited by law and is not listed a restricted activity, to invest in a Brazilian SPE a foreign holding must constitute a legal representative through power of attorney, as per legal requirements.

Thus, nothing stops the participation of a holding in a Brazilian company, in any percentage, as long as all the bureaucratic legal procedures applied to it are verified.

There are a few prohibitions for certain activities – like nuclear energy, medical assistance, telegraphic service, post-office, and aerospace – and restrictions or license requirements for others (financial institutions and radio, TV, and newscast companies).

**The definition of foreign capital is made by Law 4,131/1962, and it says:**

*Article 1. For the purpose of this law, foreign capital is considered to be the assets, machinery, and equipment entered in Brazil with no initial expenditure of currency, intended for the production of goods or services, as well as the financial or monetary resources, introduced in the country, for application in economic activities as long as, in both hypotheses, they belong to individuals or corporations, domiciled or with headquarters abroad.*

All foreign capital must be recorded in Brazil's Central Bank, in a declaratory and individualized way, in foreign or national currency, before the first entry of resources in the country.

The record of foreign capital entered in Brazil is made electronically, directly in the Central Bank's Information System (**SISBACEN**), in the Electronic Declaratory Record (RDE) system, in the Direct Foreign Investment (IED) module.

In addition, Brazilian norms have created the Non-Resident Declaratory Register (CDNR), which is demanded from individuals or corporations not resident in the country and who wish to record operations involving foreign capital in the Electronic Declaratory Record – Financial Operations Record (RDEROF) system and in the RDE-Portfolio of Brazil's Central Bank.

The Central Bank prescribed about foreign capital in the country, as well as its record, through Resolution 3,844/2010.

**In conclusion**, despite the impediments in which Brazil still ties itself up, Brazilian policies have strengthened the pathway of foreign capital for internal investments in the past few years, disarming the systemic bureaucracy which used to drive off foreign capital.

Business in Brazil is still unique, however, bureaucratic complications, cumbersome taxation, and inflation broadly termed as "Custo Brasil", or "the Brazil Cost", still cause frustration for international business people. Making experienced local knowledge an essential addition to any renewable energy venture.

In Chapter 4, we take a deep dive into the complex world of taxation for Specific Purpose Entities (SPE) within Brazil's renewable energy sector.

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Please note that the energy field is dynamic, and the material and data presented herein could change.

## Sources

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ABDI	BlueSol	CNJ	Iberdrola
ABEEólica	Brazil Government	CTGAS-ER	Instituto Acende
ABSOLAR	Canal Energia	EPE	MME
ANEEL	CBFT	EXAME	ONS
BDNES	CCEE	IBD Group	Valor Sectorial Energia

[www.rea-consult.com](http://www.rea-consult.com)

Email: [info@rea-consult.com](mailto:info@rea-consult.com)

Sao Paulo, Brazil: +55 16 99203 1714 (+WhatsApp)

Cologne, Germany: +49 221 9865 8918

Prague, Czech Republic: +420 725 353 006

Beijing, China: +86 132 6908 3763



**REA CONSULT**