

# Legal Opinions for Foreign Counsel: Why Brazilian Law Requires Local Expertise

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## Abstract

Brazil presents one of the most complex legal environments in the world, characterised by a civil law tradition with constitutional supremacy, an extensive and overlapping regulatory architecture, a highly active judiciary, and unique procedural rules that differ substantially from common law jurisdictions. Legal opinions issued by qualified Brazilian counsel serve as essential instruments of legal intelligence for foreign lawyers, multinational corporations, diplomatic missions, and international investors seeking to navigate transactions or disputes with a Brazilian dimension. This article analyses the structural features of Brazilian law that necessitate local expertise, examines the purpose and standards of Brazilian legal opinions, and identifies the most critical areas in which reliance on foreign counsel alone creates unacceptable legal risk.

## 1. Introduction

International legal practice increasingly demands that counsel operating across borders understand not merely the substantive rules of foreign legal systems, but also their institutional context, procedural particularities, enforcement mechanisms and — critically — the unwritten conventions that shape how law is actually practised. Brazil is a jurisdiction in which all of these dimensions take on exceptional importance.

Foreign lawyers and in-house counsel regularly encounter situations in which a transaction, investment, litigation strategy or regulatory compliance programme requires an assessment of Brazilian law. In many cases, the initial instinct is to rely on international legal databases, translated statutes or the informal advice of

colleagues. Each of these approaches carries substantial risks that are seldom appreciated until a legal problem arises.

A formal legal opinion issued by qualified Brazilian counsel is the appropriate and professionally responsible solution. It provides foreign counsel with a documented, jurisdiction-specific analysis that meets the standards expected by international institutions, general counsel offices, financial regulators and courts. This article explains why Brazilian law is particularly demanding of specialised local knowledge and what foreign counsel should expect from a high-quality Brazilian legal opinion.

## **2. The Structural Complexity of the Brazilian Legal System**

### **2.1. A Civil Law System with Constitutional Supremacy**

Brazil is a civil law jurisdiction in which codified statutes form the primary source of law. The Brazilian Civil Code (Law No. 10,406/2002), the Code of Civil Procedure (Law No. 13,105/2015), the Consolidation of Labour Laws (Decree-Law No. 5,452/1943) and a vast array of sectoral legislation constitute the normative framework within which legal practice operates.

The Federal Constitution of 1988 — known as the *Constituição Cidadã* — occupies the apex of the Brazilian legal hierarchy and is one of the most comprehensive and directly enforceable constitutional texts in the world. Constitutional rights are justiciable before all levels of the judiciary, and constitutional challenges to legislation are both common and consequential. Any serious legal analysis in Brazil must therefore begin with a constitutional lens, regardless of whether the matter is ostensibly a private law dispute.

### **2.2. The Role of the Judiciary and Jurisprudential Uncertainty**

Unlike common law systems in which judicial precedent operates through a formal doctrine of *stare decisis*, Brazil follows a mixed approach. The binding effect of precedent (known as *precedentes vinculantes*) was significantly expanded by the 2015 Code of Civil Procedure, which introduced mechanisms such as the *Incidente de Resolução de Demandas Repetitivas* (IRDR) and the *recursos repetitivos* procedure in the Superior Tribunal de Justiça (STJ) and the Supremo Tribunal Federal (STF).

Nevertheless, the Brazilian judiciary remains characterised by a degree of interpretive pluralism that requires practitioners to monitor not only legislative developments but also the evolving positions of superior courts, regulatory bodies and administrative tribunals. A legal position that appears well-settled by statute may be subject to a pending constitutional challenge or a divergent line of jurisprudence that fundamentally alters the risk profile of a transaction.

### **2.3. Regulatory Fragmentation and Institutional Overlaps**

Brazil's regulatory architecture is notably fragmented. The financial system is overseen by the Banco Central do Brasil (BACEN) and the Comissão de Valores Mobiliários (CVM). Data protection is regulated by the Autoridade Nacional de Proteção de Dados (ANPD) under the Lei Geral de Proteção de Dados (LGPD — Law No. 13,709/2018). Environmental licensing involves the Instituto Brasileiro do Meio Ambiente e dos Recursos Naturais Renováveis (IBAMA) and state-level environmental agencies. Labour relations are supervised by the Ministério do Trabalho e Previdência.

Each of these regulatory bodies issues normative instructions, circulars and resolutions that have the force of subordinate legislation and are binding on those subject to their jurisdiction. A comprehensive legal opinion on any regulated activity in Brazil must account for this multi-layered regulatory environment, which cannot be adequately assessed without systematic knowledge of each relevant agency's current positions.

## **3. Legal Opinions in the Brazilian Context: Purpose and Standards**

### **3.1. What Is a Brazilian Legal Opinion?**

A legal opinion (*parecer jurídico*) is a formal, written legal analysis prepared by a qualified Brazilian attorney (*advogado*) or law firm, addressing specific legal questions relevant to a transaction, investment, regulatory matter or dispute. Legal opinions are addressed to a named recipient — typically a foreign law firm, a corporate client, an embassy or an international institution — and carry the professional responsibility of the issuing counsel.

In the context of cross-border transactions, Brazilian legal opinions are commonly required as conditions precedent to closing, as part of due diligence packages for private equity or mergers and acquisitions, as supporting

documentation for financing arrangements, or as advisory memoranda for clients assessing market entry or regulatory compliance strategies.

### **3.2. The Standard of Analysis Expected in International Matters**

Foreign counsel and international institutions expect Brazilian legal opinions to meet certain minimum standards of analytical rigour and structural clarity. A well-drafted opinion should identify the specific legal questions addressed, state the applicable law and the principal sources of authority, present the reasoning in a logical and structured manner, acknowledge significant areas of legal uncertainty or risk, and state clearly the conclusions reached.

Opinions prepared for international use are typically drafted in English — or in bilingual format — and must use terminology and analytical frameworks that are accessible to readers trained in common law systems. This requires not merely translation but genuine legal translation: the ability to explain civil law concepts in terms that foreign counsel can evaluate and rely upon.

## **4. Critical Areas Requiring Local Expertise**

### **4.1. Corporate and Contract Law**

Brazilian corporate law — governed primarily by the Lei das Sociedades por Ações (Law No. 6,404/1976) and the Civil Code — contains important features that differ materially from common law equivalents. The *desconsideração da personalidade jurídica* (piercing of the corporate veil) is more readily applied in Brazil than in most common law jurisdictions, with direct implications for the liability exposure of shareholders, directors and corporate groups.

Brazilian contract law incorporates broad principles of good faith, social function of contracts and objective liability that operate as mandatory legal constraints, limiting the parties' contractual freedom in ways that are not always apparent from the text of a contract. The validity and enforceability of contractual provisions — including arbitration clauses, limitation of liability clauses and choice of law provisions — must be assessed against this background by counsel with expertise in Brazilian private law.

### **4.2. Labour Law: A Jurisdiction of Exceptional Complexity**

Brazilian labour law is widely regarded as one of the most complex and employee-protective systems in the world. The Consolidation of Labour Laws (CLT) establishes extensive mandatory rights for employees, including strict rules on working hours, overtime, annual leave, profit-sharing, the Fundo de Garantia por Tempo de Serviço (FGTS — a mandatory severance fund), and termination procedures.

For foreign companies establishing or acquiring operations in Brazil, and for diplomatic missions employing local staff, a thorough understanding of Brazilian labour law obligations is essential. Misclassification of employees as independent contractors — a common error in technology and services companies — is subject to severe retrospective liability, including unpaid benefits, social security contributions, and significant fines.

#### **4.3. Data Protection and Digital Compliance**

The Lei Geral de Proteção de Dados (LGPD) entered into force in 2020 and is modelled in part on the European General Data Protection Regulation (GDPR). However, it contains important differences in scope, legal bases for processing, data subject rights and enforcement mechanisms that require specific analysis by Brazilian counsel.

For foreign companies processing personal data of Brazilian residents — including companies that do not have a physical presence in Brazil — LGPD compliance is not optional. The ANPD has progressively increased its enforcement activity, and non-compliance carries the risk of administrative fines of up to 2% of the company's revenue in Brazil in the previous financial year, capped at BRL 50 million per violation.

#### **4.4. Foreign Investment and Capital Repatriation**

Foreign direct investment in Brazil is subject to registration requirements administered by BACEN. Capital repatriation — the remittance of dividends, interest on net equity, royalties and proceeds from the sale of Brazilian assets — requires compliance with Brazilian exchange regulations, tax treaty provisions and transfer pricing rules. The tax implications of cross-border transactions involving Brazilian entities are particularly complex, involving federal, state and municipal taxes that interact in ways that frequently produce unexpected results for foreign investors.

## 5. Common Pitfalls for Foreign Counsel Without Brazilian Expertise

The legal literature and professional experience in cross-border practice document a consistent set of errors made by foreign counsel who attempt to assess Brazilian legal issues without adequate local expertise. These include:

- a) Relying on statutory translations without accounting for subsequent legislative amendments, regulatory interpretations or judicial departures from the statutory text;
- b) Applying common law analytical frameworks to civil law problems, particularly in the areas of contract formation, good faith obligations and tortious liability;
- c) Underestimating the practical significance of Brazilian procedural law, including the time and cost of judicial enforcement and the availability of interim injunctive relief;
- d) Failing to identify state-level variations in tax and regulatory requirements, which in Brazil can be as commercially significant as federal-level rules;
- e) Overlooking anti-corruption and compliance obligations under the Lei Anticorrupção (Law No. 12,846/2013), which imposes strict liability on legal entities for acts of corruption committed on their behalf.

## 6. The Role of Robinson Chambers in Cross-Border Legal Advisory

Robinson Chambers provides legal opinions, advisory memoranda and regulatory analysis to foreign counsel, multinational corporations, embassies and diplomatic missions requiring qualified Brazilian legal expertise. All advisory work is delivered in English and Portuguese, meeting the standards expected by international law firms, general counsel offices, financial institutions and governmental bodies.

Our practice operates at the intersection of Brazilian and international law, with a particular focus on financial regulation, administrative law, corporate compliance, and legal matters involving diplomatic missions and foreign nationals in Brazil. We understand the needs of international clients who require legal intelligence that is simultaneously technically rigorous, institutionally aware and practically oriented.

Foreign counsel who engage Robinson Chambers can expect formal legal opinions that clearly identify the applicable legal framework, honestly assess areas of legal uncertainty, and provide actionable conclusions — the same standards applied by leading international law firms to their own jurisdiction-specific advisors.

## 7. Conclusion

Brazil's legal system is sophisticated, comprehensive and frequently counterintuitive for practitioners trained in other traditions. The investment in qualified local counsel is not a formality — it is a substantive risk management decision that directly affects the legal and commercial outcome of any transaction, regulatory engagement or dispute with a Brazilian dimension.

A well-prepared legal opinion from qualified Brazilian counsel provides foreign lawyers and their clients with the legal certainty, professional accountability and institutional authority they need to proceed with confidence in one of the world's most complex and rewarding legal markets.

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