Cross-Border Listings Guide - Sao Paulo–B3 (formerly BM&FBovespa)

Quick Summary

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# Initial financial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

Under current Brazilian securities regulations, a foreign issuer may only have its securities traded in the Brazilian securities markets (such as stock exchanges or over-the-counter markets) through Brazilian depositary receipts (BDR) programs, which may either be sponsored or non-sponsored programs. In contrast, domestic companies may list any admissible securities in the securities markets, provided they register as issuer with the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários* - commonly known as the CVM).

Sponsored BDR programs are those made with the consent and participation of the foreign issuer, which agrees to abide by certain regulations imposed by the CVM. The requirements for the registration of the issuer are substantially similar to the requirements imposed on domestic companies which are registered as a Category A issuer (that is, an issuer authorized to list any type of securities, including shares, share certificates or any other security convertible into, or that grants the right to the holder to acquire, shares or share certificates).

On the other hand, non-sponsored programs may be initiated by any financial institution in Brazil, without the consent or participation of the foreign issuer, upon the acquisition of securities of the foreign issuer in the foreign market where they are originally traded, which are then kept in custody throughout the duration of the respective BDR program.

In order to qualify for a BDR program, the following requirements must be met:

The underlying securities must be of a listed foreign company, subject to the supervision of a securities and exchange commission (or similar regulatory government body) which has signed a mutual cooperation agreement with the CVM or signed the multilateral memorandum of understandings issued by IOSCO.

The foreign company may not be from any country deemed to have high risks of corruption and sponsorship of terrorism.

Under a sponsored BDR program, the foreign company must be registered with the CVM and must hire a custodian institution in the jurisdiction where it is originally registered as a listed company, as well as a local depositary institution duly authorized by the CVM and the Brazilian Central Bank.

*Accounting standards.* In the specific cases of Level II and Level III sponsored BDR programs, the financial statements of the foreign issuer must be prepared in compliance with International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board (IASB) and as approved by the CVM for application in the Brazilian market. These financial statements must be audited by an independent auditor registered with the CVM or the local regulatory agency subject to the review of a Brazilian registered auditor. These are the same requirements as those imposed on domestic companies.

# Types of BDR Programs

[Last updated: 1 January 2024, unless otherwise noted]

BDR programs are the mechanism available for a foreign issuer to have its securities traded in the Brazilian stock market. Currently, Brazilian regulations allow three different types of sponsored BDR programs:

*Level I.* A Level I BDR program permits the BDRs to be negotiated in organized over-the-counter markets or stock exchanges designated for Level I BDRs located in Brazil. Under this program:

Sponsorship by the foreign issuer is possible but not required.

The sponsoring company, if applicable, is required to disclose in Brazil the same information that it is required to disclose in its country of origin.

The foreign company is not required to be registered as a publicly-held company with the CVM.

The Level I BDRs, if sponsored, may be offered publicly, subject to certain restrictions related to the investors who may acquire the securities, according to the terms of CVM Resolution 160/22.

As a general rule, the acquisition of securities in the market is limited to qualified investors.

*Level II.* A Level II BDR program permits the BDRs to be traded in stock exchanges or organized over-the-counter markets located in Brazil. Under this program:

Sponsorship by the foreign issuer is required.

The sponsoring company must be registered as a publicly-held company with the CVM.

The Level II BDRs may be offered publicly, subject to certain restrictions related to the investors who may acquire the securities, according to the terms of CVM Resolution 160/22.

*Level III.* A Level III BDR program permits the BDRs to be publicly offered and distributed to the general public in Brazil and to be traded on stock exchanges or in organized over-the-counter markets located in Brazil. Under this program, the company must be registered as a publicly-held company with the CVM. In addition, they are additionally subject to general registration requirements for public offerings in Brazil. Level III BDRs may also be offered to professional investors through a fast-track automatic registration process of the public offering.

A Level II or Level III BDR program may only be initiated with the sponsorship of the foreign issuer, because the issuer will need to be registered with the CVM as a publicly-held company (Category A). Being a publicly-held company in Brazil involves the obligation of the foreign issuer to comply with Brazilian regulations concerning the disclosure of information to the market, similar to obligations imposed on a Brazilian publicly-held company.

Non-sponsored programs are restricted solely to Level I BDR programs. The depositary financial institution conducting a non-sponsored BDR program is responsible for making available in Brazil selected information disclosed by the respective company in its country of origin. The non-sponsored BDRs cannot be offered publicly in Brazil to Brazilian investors.

# Listing process

[Last updated: 1 January 2024, unless otherwise noted]

**Public offering process**

A public offering involves registering the issuer with the CVM (for Level III BDR programs, as a Category A issuer and for domestic companies, either as a Category A or a Category B issuer, depending on the securities being distributed). The CVM will typically review the public offering request (around 30 days, although the CVM may issue additional requirements upon analysis of the documentation) and the prospectus (if applicable in case of a standard public offering). As mentioned above, the public offering of BDRs in the Brazilian market is restricted to Level I (sponsored), Level II and Level III BDR programs. The following is a fairly typical process and timetable for the listing through a standard CVM Resolution 160/22 distribution of equity securities or equity-backed BDRs.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/sao-paulolisting-process.pdf)

# Corporate governance and reporting

[Last updated: 1 January 2024, unless otherwise noted]

Requirements for Brazilian publicly-held companies (both domestic and foreign) include the filing and/or disclosure of:

*Registration form (Formulário Cadastral),* containing general registration information on the issuer.

*Reference Form,* used for annual reporting, this contains broad and detailed information on the issuer and its operations for the relevant year.

*Quarterly filings (ITR),* to be made available by the corporation within 45 days following the end of the quarter or on the date of disclosure to its shareholders, if earlier.

*Financial information and the standard financial information form (DFP)*, which provides specific information concerning the company's financial situation.

*Other periodic corporate information,* including call notices for shareholders' meetings, a summary of decisions taken at the shareholders' meetings, minutes of the shareholders' meetings, and material facts and market announcements, among others.

# Fees

[Last updated: 1 January 2024, unless otherwise noted]

The initial listing fees with B3 range from BRL 3,975 for non-sponsored Level I BDR programs to BRL 84,413 for Level II and Level III BDR programs (approx. US$818 to US$17,389, respectively). Secondary listings are exempted. Initial listing fees for BDR programs must also be paid to the CVM, which shall correspond to 0.03% of the value of the offering. The annual fees to be paid to B3 vary - BRL 10,206 (approx. US$2,102) in connection with Level I non-sponsored and sponsored BDRs and BRL 54,674 (approx. US$11,263) in connection with Levels II and III BDR programs, plus a variable portion calculated by additional on variable component in the calculation of the final fee. Listed companies must also pay an annual fee to the CVM, which ranges from BRL 15,716 to BRL 559,815 (approx. US$3,237 to US$115,322).

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