

# Landlord and tenant in Brazil

Prepared

By

**OCUPANTES**  
The Tenant Rep Company

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## LEASING OFFICES IN BRAZIL

### 1) Introduction - Use local legal support

Lease agreements in Brazil are governed by statute. In fact a lot of business relationships are governed by legislation – nothing like the Anglican Common Law found over much of the globe. Real Estate in Brazil is mainly affected by a specific Tenancy Law, as well as a Civil Code that covers generalities about relationships and contracts, property ownership among many other issues. Leases are therefore only a few pages long, not 50 to 100, more like 10 pages sometimes 20! Due to local nuances, it is recommended that tenants and purchasers of real estate retain the services of *local* lawyers. If you are a client with a centralized legal department, please analyze this document with care but do rely on local legal advice.

If you are new to Brazil, you may need specialist consultants to assist you through the whole bureaucratic process of opening your Brazilian office. Also consult the relevant Chambers of Commerce and research particular regulations that may apply to your line of business – for example, if you are a pharmaceutical company, your installations will need additional approvals by the ANVISA, a local regulatory body.

Be prepared: opening your business in Brazil from 3 to 6 months, so you may first like to consider a temporary office solution. Also note that 99% of companies open “wholly owned subsidiaries” rather than “branches” – it is simpler, and the “system” is rather weak in handling “branches”.

Check out some of the steps to open your business at:

<http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=28>

Other sources of information are:

[http://www.brasilemb.org/trade\\_investment/trade2.shtml](http://www.brasilemb.org/trade_investment/trade2.shtml)

<http://www.gringoes.com/>

### 2) Basic tenancy knowledge

Here are the basics about Brazilian Leases. For a more detailed report about Brazilian Lease practices, please contact us at +5511 5182.3455 or visit our site [www.ocupantes.com.br](http://www.ocupantes.com.br). In addition, we would be more than happy to offer a presentation about the current state of the office market.

- Leases in Brazil *must* be in portuguese. There is no validity to a document written in English.
- Do not expect to be able to use your standard lease model; many landlords will have their own model.
- Leases must be signed by someone authorized to do so under the subsidiary’s Articles of Association or with power-of-attorney.

- Currency *must* be in local currency, the Real.
- In Brazil there are condominium laws (“strata-ownership”). This means that one building may have several owners, in fact suites on a floor may have different owners. Landlords in office buildings therefore have no control of the common areas, which are managed by third parties, unless the landlord owns the whole building.
- The tenancy laws are more favorable to the tenant than to the landlord.
- Most leases tend to range from 3 to 5 years. Build-to-suit and Sale & Leaseback leases tend to be at least 10 years.
- Landlords and tenants have a more “personal” approach than in many other countries. Some landlords are private individuals, and even if not, the decision maker may take things personally. That is the culture. An element of ego and must be expected and respected. Reaching gentlemanly agreements on issues is surprisingly common.
- All leases are annually adjusted by a CPI index, normally the “IGPM” index.
- Legislation permits that either party ask for a review of the rent to market level after completing three years. If the market is tenant favorable, the tenant will ask for the review.
- If you have a five-year lease, legislation gives you security to renew for another five years, at a market rent, and subject to reaching agreement with the landlord between 6 and 12 months before lease end. If no agreement is reached by 6 months before termination, the issue must be taken to the court, otherwise the right to renew is lost.
- Except for Build-to-Suit or Sale & Leasebacks, the tenant can *break the lease term at any time*, subject to payment of a fine. Such fines, established in the lease, are low when compared to the need in other countries to ride out the lease to the end.
- Rents are “triple net”, i.e. as well as rent, you will be paying for property tax, insurance and common area maintenance. Your ratio of common area charges is cast in stone, no point in arguing it, but beware not to pay for things that are the landlord’s responsibility, such as structural repairs.
- Expect to have to provide a guarantee of some form, often a Bank Letter of Credit, which is costly. Many landlords are reluctant to accept international parent company guarantees.

### 3) Negotiating and Renegotiating Leases – Some Hints

	<b><i>New Lease</i></b>	<b><i>Extending a Lease</i></b>
<b><i>1) Start Early</i></b>	If you are taking a new lease, consider that you may take as much as three months to decide on the site, two months to negotiate the lease, two to four months to fit out the space. Use local legal and broker support.	If you are renewing a lease, you can gain leverage by starting the process early. Show that you are giving the matter thought.
<b><i>2) Consider Alternatives</i></b>	A professional adviser can provide a full list of the alternatives available on the market, together with technical information of the building and costs. The landlord must realize that you have alternatives.	Even if you do not wish to move, the alternatives will give you leverage. The landlord must remain aware that you have alternatives. And maybe you will be surprised by a good alternative.

<p><b>3) Compare the alternatives, qualitatively and financially.</b></p>	<p>Use basic cash-flows to compare the costs of all alternatives, including fit-out costs. Use scoresheets to compare alternatives and to generate internal debate about the alternatives.</p> <p>During a visit never say that you like the space.</p>	<p>Use basic cash-flows to compare the costs of all alternatives, including fit-out costs, and to work out the break-even point, i.e. what rent makes it worth while remaining at the current location.</p>
<p><b>4) Have a plan B</b></p>	<p>A property either exists or doesn't. You are unlikely to find a property that exactly matches all your criteria. Even so, have a Plan B, especially if the market has few alternatives to offer.</p>	
<p><b>5) Use local specialists</b></p>	<p>Brazilians often believe that they know what there is to know about real estate. Even if someone in your organization does, can that person be fully dedicated to handle the job? Consider hiring a dedicated broker, and, in order to avoid conflict of interest, one specialized only in Tenant Representation. Showing the landlord that the broker is authorized to represent you transmits comfort and knowledge that he will not be approached by 5 other brokers touting the same tenant.</p>	<p>Brazilians often believe that they know what there is to know about real estate. Even if someone in your organization does, can that person be fully dedicated to handle the job? Consider hiring a dedicated broker, and, in order to avoid conflict of interest, one specialized only in Tenant Representation.</p>
<p><b>6) Rental Evidence</b></p>	<p>Comparable evidence in Brazil may well be hard to come by – even so, expect to be provided with evidence of some transactions.</p>	<p>Expect to be provided with evidence of other transactions.</p>
<p><b>7) Find an Architect and Project Manger early.</b></p>	<p>While architects often act as project managers, consider the alternative of using an independent project manager on a fixed fee basis. The project manager will be your eyes on the issues of cost and quality control. Retain these services soon after retaining the broker, forming a project team prepared to initiate fitout work as soon as the lease is signed.</p>	