

BRAZIL-EXTRACT GUIDE TO LATIN AMERICA PENSIONS INVESTMENT CONTEXT AND REGULATIONS –

The Guide complements the work done by Campollo Consulting LLC and Wall's Street Advisors Services LLC on Pensions Funds across 11 countries in Latin America, their asset allocation, returns and authorized investment products

*A source to the
region's Pensions
Investment Practices
and Regulators*

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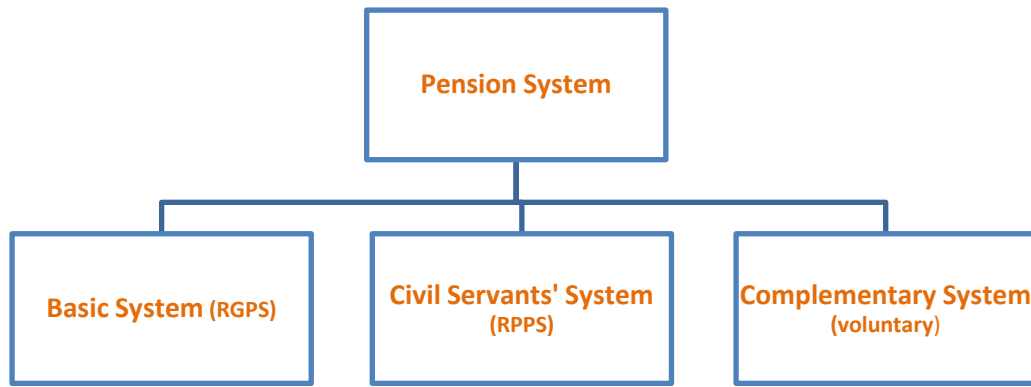
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Brazil – Pension Funds' Investment Context and Regulations



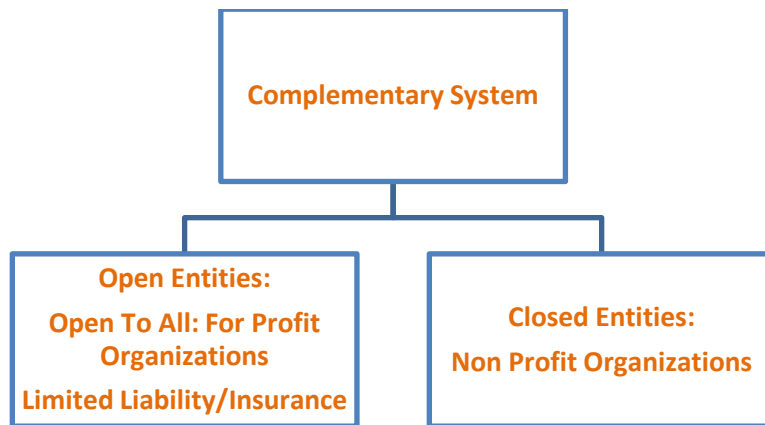
Brazil's pension system is divided into three schemes:

The first one is the Basic Social Security System, the Regime Geral de Previdência Social (RGPS), pay-as-you-go- financed single pillar system, managed by the National Institute of Social Security and is mandatory. This is the general regime of social security, covers the private sector workforce. It is financed through payroll taxes (shared by the employer and employee) revenues from sales taxes and federal transfers that cover shortfalls of the system.

The second one, the Civil Servant's System, Regime Propio de Previdência Social (RPPS), covers the public-sector employees, coordinated by the Ministry of Pensions and Social Assistance.

The third one, is the Complementary System, Regime Previdência Complementar (RPC), offered by the private sector which is voluntary and has the oldest system in Latin America. It's name is derived from its goal to complement the benefits of the Previdência Social and under this regime, both occupational and personal pensions are provided on a voluntary basis.

Previdência Complementar is divided into Closed Pension Funds and Open Pension Funds.



Open Pension Funds

Open Pension Funds (entidades abertas de previdencia privada) can be banks or insurance companies that offer retirement benefits to the public in general, and their establishment is subject to approval of the National Secretariat for Pension Funds, Secretaria de Previdencia Complementar (SPC). They can be either a profit or non-profit organization. They are ruled by the agency that supervises the insurance industry, Superintendencia de Seguros Privados (SUSEP). They are saving plans, defined contribution plans available to any person that opens an account in an organization.

Closed Pension Funds

Closed Pension Funds (entidades fechadas), also known as pension funds (fundos de pensao) are non-profit organizations that can be established by a single-employer or multi-employers and by labor unions to offer collective benefits and retirement to workers of companies. Closed Pension funds are ruled by the Secretaria da Previdencia Complementar (SPC) under the Ministry of Social Security.

Closed pension funds offer defined benefit plans, defined contribution plans or variable contribution (mixed).

The Pension System – Key Institutions and Regulations

The regulatory environment for open and closed private pension entities differs. The State Secretariat for Pension Funds supervises closed funds in regards to, amongst other areas, governance, disclosure, investment and fees. The National Board of Complementary Pensions, which is linked to the Ministry of Social Security, makes the main regulatory decisions. The supervision of open private pension entities is carried out by the Superintendence of Private Insurance, which is linked to the Ministry of Finance. The National Board of Private Insurance is in charge of setting the relevant regulations.

There are two Associations of Pension Funds at national level: Abrapp and APEP. The first one Abrapp - Associação Brasileira de Entidades Fechadas de Previdência Privada,

was created in 1978 and has as members pension funds sponsored by the Government-state owned companies and by the private enterprise. The second one APEP - Associação dos Fundos de Pensão de Empresas Privadas, was created in 1989 and comprises only the pension funds sponsored by the private sector.

The first comprehensive occupation pension legislation was issued in 1977 (Law n° 6.435), although less detailed precedents can be traced back to the beginning of the century. Pursuant to this law, Presidential Decree 81.240 of 1978 created the SPC as a supervisory body. The new federal Constitution came into effect in 1988, and article 202 thereof addressed private pension systems. The next major development came in 1998 when Constitution Amendment EC 20/98 reintroduced the concept of establishing pension plans complementary to social security and provided for a Complementary Law on pensions to be enacted. A complementary law project (PLC n° 9/99) was drafted in the following year, but it was never enacted.

The real breakthrough did not come until May 2001, when Complementary Laws n°108 and n°109 were enacted. Complementary Law n° 108 applies specifically to (i) closed pension funds sponsored by state controlled enterprises and organisations and (ii) those complementary pension plans that are now being created for civil servants (employees of the federal, state and local governments). Complementary Law n° 109 revokes all earlier pension laws and, together with Law n°108, forms the base of today's legislative framework. For extra clarity, it should be understood that public sector plans are covered by both Law n°108 and Law n°109, and private sector plans are covered by Law n°109.

The bodies involved in the various aspects of the regulation of closed pension funds ¹

- The Conselho Monetario Nacional "CMN" Resolution 3,792 of September 24, 2009 provides the regulation for Closed Pension Funds, or Entidades Fechadas de Previdencia Complementar "EFPC".
- Federal government. It enacts high level "complementary pension laws", including the critically important Law n°108 and Law n°109 of 2001.
- National Board of Complementary Pensions - CGPC (Conselho de Gestao da Previdencia Complementar). It is chaired by the Minister of Social Security and is comprised of five members representing the government (including the head of the SPC) and three individuals representing pension fund entities, pension plan sponsors, and plan members and beneficiaries. It is the dominant source of regulations covering a wide range of aspects of the operation of closed pension plans and funds. The SPC develops policies and prepares draft resolutions for consideration by the CGPC, but it is the CGPC (with its wider representation) that brings such regulations into effect.
- National Secretariat for Pension Funds - SPC (Secretaria da Previdencia Complementar known as PREVI). It issues lower level "instructions" to clarify various laws and regulations and generally to assist plan sponsors and pension

fund entities. The SPC legislative department also initiates regulations for implementation by the CGPC and the CMN.

- National Monetary Council - CMN (Conselho Monetário Nacional). The National Monetary Council periodically issues “resolutions” concerning closed pension fund investments. The most important is CMN Resolution n°3.456 of June 2007. It is a comprehensive document that establishes quantitative investment limits for the assets of closed pension funds.
- Exchange Commission - CVM (Comissão de Valores Mobiliários). Roughly equivalent to the Securities and Exchange Commission, it issued Deliberation n°600 in October 2009 concerning pension plan accounting and expensing by publicly listed companies.
- CVM-SPC. Acting together, they periodically issue “joint decisions” covering matters of mutual interest or overlapping responsibility.

The Supervisory Body

The SPC is the supervisor of closed pension funds. It was created in 1978, pursuant to Law n° 6.435/1977 and Presidential Decree 81.240/1978. In the watershed year of 2001, Article 74 of Law 109 continued the regulatory and supervisory roles of the SPC and the CGPC - under the auspices of the Ministry of Social Security - until a law is passed that creates new regulatory and supervisory agencies.

The SPC is currently funded, at a very low level, by the Ministry of Social Security (of which it is a department). A major restructuring of the SPC was undertaken in 2003 - subsequent to the election of President Lula who had included private pension issues as a priority during his election campaign. Technical departments were established to replace the general coordination approach. A technical analysis department was created, and there was a reallocation of actuaries and other specialists into the areas responsible for handling different authorization requests. Auditors were hired into the SPC. Later, more auditors were hired, and routine supervisory activities were decentralized into regional offices – with the supervisory professionals in Brasilia retaining responsibilities for the coordination and unification of procedures. The CGPC (the primary source of regulations) was formally restructured by a 2003 presidential decree. However, further comprehensive restructuring of the SPC at that time was conditioned on the creation of PREVIC.

Creation of Previc

The first steps to create Previc were taken in 2004. The Executive Branch forwarded the proposals to the President of the Republic who in turn signed MP (medida provisória) n°233. This temporary law entered into force on its date of publication, but it needed to be approved by the Congress within 120 days; otherwise, it would simply expire. The House of Representatives voted for the law, but the Senate refused, so the Previc envisaged by MP233 was not created.

The issue remained dormant until 2008, when Projeto de Lei nº3962/08 (“Cria a Superintendência Complementar – PREVIC”) was sent to Congress. The Executive Branch believed that a law project (projeto de lei) would be received more favourably than a provisional law (medida provisória). The objective is to create a supervisory agency that is adequate to the size and complexity of the Brazilian private pension system and is independent of political interference. Among the features of the new agency are the Tatic (a fee or levy to be paid by the pension funds to finance the work of Previc), a chamber to solve any disputes, the CRPC - Appeal Chamber for Complementary Pension Plans (Câmara Recursal), and the replacement of the CGPC - National Board of Complementary Pensions by the CNPC - National Regulatory Board for Complementary Pension Plans.

Variable Contribution Plans

In common with many other countries, many Brazilian plan sponsors were reluctant to continue their traditional defined benefit pension plans and were looking for better alternatives than full conversion to pure defined contribution plans. However, the commonality ends there. Brazil subsequently developed its own unique brand of hybrid plans, known as “variable contribution” plans (sometimes called “mixed” plans).

Article 7 of Law 109 identifies the three basic types of plan (DB, DC and variable contribution) and opens up the possibility of other benefit plan designs that may evolve.

CGPC Resolution nº 16, de 22 de novembro de 2005 then defines the three types of plans in slightly more detail. Article 2 and Article 3 include the traditional definitions of DB and DC plans. Article 4 then describes variable contribution plans as “the combination of the characteristics of defined contribution and defined benefit.”

The majority of Brazilian variable contribution plans are pure defined contribution as regards the retirement benefit accumulation, but they then typically include one or both of two features that clearly distinguish the whole plan from being classified as DC. It is these features that make Brazilian plans very interesting and quite different from general international practices. They are:

Risk benefits – those benefits payable on death or disability before retirement. Most plans in other countries that are pure DC for the retirement benefit accumulation simply refund the accumulated employee and vested employer contributions in the event of pre-retirement death or disability. Alternatively, or in addition, there are separate group life insurance and group long term disability (LTD) insurance contracts that provide defined benefit lump sums, survivor pensions and LTD payments. Under this scenario, the pension plan (in isolation) stays as pure DC, and there are no actuarial issues. In contrast, in Brazil, these risks can be retained in the pension plan and thus can involve actuarial risks for the pension fund.



1 Ricardo Penha Pinheiro and Colin Pugh. Article prepared for Global Forum of IOPS Oct 2010 in Rio de Janeiro, Brazil. Ricardo Pena Pinheiro is a PhD is an auditor of the Brazilian Revenue agency of the Ministry of Finance and he works at the National Secretariat for Pension Funds (SPC) of the Ministry of Social Security

BRAZIL MANAGERS AND PENSION STAFF

	BRA003 1	BRA002 3	BRA000 3	BRA000 2	BRA000 1	BRA000 7	BRA0004	BRA000 5	BRA0006	BRA0008	BRA000 9
BRAZIL MANAGERS AND PENSION STAFF	Capef	CBS	Funcef	Petros	Previ	Sistel	FUNDACA O CESP	VALIA	ITAUBANC O	BANESPRE V	FORLUZ
Acrux Admon de Recursos	0	5	0	0	0	0	0	0	5	5	0
Andrade Gutierrez - Angra Partners Gestão de Informações e Investimentos LTD	0	5	4	4	0	0	0	0	5	5	0
Angra Partners Gestão de Recursos e Assessoria Financeira Ltda	0	5	4	4	0	0	0	0	5	5	0
Angra Partners Consult Emp Part LTDA	0	5	0	0	4	0	0	2	5	5	0
Atico Administracon de Recursos	0	5	0	0	0	0	0	0	5	5	0
Atlantica Administradora de Recursos	0	5	0	0	0	0	0	0	5	5	0
Banco ABN Amro Real S.A.	0	5	4	0	4	0	0	0	5	5	0
Banco Alfa de Investimentos	0	5	0	0	0	0	0	0	5	5	0
Banco BMG	0	5	0	0	0	0	0	0	5	5	0
Banco Banif	0	5	0	0	0	0	0	0	5	5	0
Banco BBM Gestor de Recursos	0	5	0	0	0	0	0	0	5	5	0
Banco Bonsucesso SA	0	5	0	0	0	0	0	0	5	5	0
Banco Brascan S.A.	0	5	0	4	0	0	0	2	5	5	0
Banco BVA	0	5	0	0	0	0	0	0	5	5	0
Banco do Estado do Rio Grande do Sul	0	5	0	0	0	0	0	0	5	5	0
Banco Fator SA	0	5	0	0	4	0	2	0	5	5	0
Banco Fibra	0	5	0	0	0	0	0	0	5	5	0
Banco Indusval	0	5	0	0	0	0	0	0	5	5	0
Banco Itaú S.A.	0	5	4	4	4	1	2	0	5	5	0
Banco Itaucard	0	5	0	0	0	0	0	0	5	5	0
Banco J. Safra S.A.	0	5	4	4	0	0	0	1	5	5	0
Banco do Brasil	0	5	0	0	0	0	0	0	5	5	0
Banco do Nordeste	4	5	0	0	0	0	0	0	5	5	0
Banco Mercantil do Brasil	0	5	0	0	0	0	0	0	5	5	0

