

Foreign Investor Primer

Foreign Capital in Brazil

Law 4,131 (1962) is the basic legislation concerning foreign capital. It applies to any capital that entered the country in the form of foreign currency, goods and services. It is possible, as well, to invest using local currency, under Law 9,069 (1995). Law 11,371 (2006) obliges registry, with the Banco Central do Brasil (BCB), of foreign capital invested in the country in local currency, which is not subject to other form of registry.

Law 4,131 defines foreign capital as any goods, machinery and equipment that enters Brazil intended for the production of goods and services, as well as any inflow of funds to be used in economic activities, belonging, in both cases, to non residents. Foreign capital is assured identical juridical treatment to national capital, unless it is specified differently in law.

Brazilian legislation and regulation demand that all foreign investment in Brazil, regardless of its form, must be registered with the BCB. This registration is solely declaratory and by no means implies a previous authorization.

The registration of foreign capital is done at the Eletronic Declaratory Registration System – RDE, at the BCB's information system – Sisbacen. Instructions on how to access the Sisbacen are available on the website www.bcb.gov.br - option Sisbacen.

The foreign capitals are registered in specific modules, according to their classification, which are: foreign direct investment (IED), financial operations, such as loans, long- term imports financing, technical assistance and royalties contracts (ROF), and portfolio investments. Guarantees provided by international organizations in internal credit operations must be registered as well.

For each registration a RDE number is generated, which will be required for transfers through authorized banks such as those concerning capital return, interests, profits and dividends. No other previous authorization or examination is required for international transfers of capital.

The norms about international capitals are available at the BCB's website, www.bcb.gov.br - option "[Exchange and Foreign Capital](#)", both in Portuguese and English.

Direct Investment

Foreign Direct Investment is regulated by the National Monetary Council (CMN), through the Resolution 3,844 (2010) and BCB's Circular 3,689 (2013) and must be registered in module IED, in the RDE system.

Any foreign resident wishing to invest directly in Brazil must, initially, constitute a representative who, along with the company receiving the investment, is responsible

for the registration, according to instructions available on the [“Manual do Declarante do RDE-IED”](#) (only in Portuguese).

Once all forma issues regarding registration have been addressed, as well as issues regarding other government offices, observing the legality of purpose, there are no restrictions for international transfers related to the investment.

Investment in Financial Institutions

The participation of foreign capital in financial institutions is subject to the approval of the Brazilian Government, through a Presidential Decree. The Circular BCB No. 3,317 (2006) provides for procedures to be observed in the formalization of applications for participation or increase of foreign participation in the capital of financial institutions and other institutions authorized to operate by the Brazilian Central Bank. It is important to highlight that, according to art. 10 of Law 4,595 / 64 and Resolution CMN No. 4,222, of 2012, it is necessary authorization of the BCB so that financial institutions can operate in the country; install or transfer their headquarters, or dependencies, including abroad; be transformed, cast or incorporated.

Portfolio Investment

Investment in the financial and capital markets is regulated by CMN’s Resolution 4,373 (2014) and BCB’s Circular 3,689, and must be registered in module Portfolio, in the RDE system, available on [“Manual do Declarante do RDE-Portfólio”](#) (only in Portuguese).

Both institutional and individual investors may invest in Brazil, in the same products available to resident investors.

Nonresident investors may be legal or natural persons, that must name a representative in Brazil, obtain registration at the Securities and Exchange Commission of Brazil – CVM, and appoint an authorized custodian.

Foreign Credits

The foreign credits are regulated by CMN’s Resolution 3,844 and by BCB’s Circular 3,689.

The registration must be done by the debtor at the Central Bank’s website or Serpro net (when the debtor is an importer registered at Foreign Trade Integrated System – Siscomex). It can also be done by a financial institution on behalf of the borrower, according to instructions available on [“Manual do Declarante do RDE-ROF”](#). (only in Portuguese). Information about this system can be found at www.desenvolvimento.gov.br, the website of the Brazilian Ministry of Development, Industry and Foreign Trade (MDIC).

Foreign Exchange Market in Brazil

Resolution 3,565 (2008) establishes free negotiation between agents authorized to operate in the foreign exchange market and their clients. This applies to transactions of any nature, without set limits and without requiring Central Bank prior authorization. In other words, all foreign exchange transactions are permitted, observing the legality purpose and the responsibilities defined in the appropriate documentation.

Brazilian foreign exchange regulation establishes that all foreign exchange transactions are performed through authorized agents. Commercial banks can be authorized to perform any of the transactions authorized by the regulation. Development banks; savings banks; credit, financing and investment societies; foreign exchange or securities and stocks brokerage societies; securities and stock dealers societies can perform only specific transactions.

Foreign exchange transactions must be formalized by the use of a form designed by the BCB, namely, the "foreign exchange contract". This contract must be recorded in an electronic system (Sisbacen) so as to identify the client, the transaction, its value and related information. Foreign exchange transactions not exceeding US\$10,000.00 must be informed to BCB but are exempted of this formalization.

Brazilian exporters are allowed to maintain abroad their export revenues accordingly to CMN parameters without the requirement to render this resources. Nowadays, exporters can maintain 100% of the revenues.

In this sense, there is no restriction to receive or send foreign exchange transfers to and from abroad. These transfers may be done directly through an authorized bank without prior approval of the Central Bank. This provision applies to all legal residents in Brazil and for the purpose of any legal transaction including the accumulation of assets abroad.

Brazilian banks can open and maintain accounts denominated in Brazilian currency for residents abroad. Accounts denominated in foreign currency are allowed in Brazil only in specific cases for residents and non-residents alike.

Brazilian foreign exchange regulation is available at <http://www.bcb.gov.br/?EXCHANGEREGUL>.