
**International
Capitals and
Foreign Exchange
Market in Brazil**

Introduction

The Brazilian economy has undergone deep changes in the last years, reflecting in a positive manner on its fundamentals. This process, along with the significant favorable global scenario, has allowed a considerable liberalization in the treatment applicable to the exchange operations and to capital flows.

The regulatory structure has been improved in the sense of a higher flexibility of the exchange market and of the procedures of registration of international capitals.

This document presents, in a summarized way, the basic concepts and the treatment that is currently applicable to these resources.

International Capitals

According to Brazilian legislation, the concept of “international capital” is divided into foreign capital in the country and Brazilian capital abroad.

All foreign capital must be registered with the Central Bank of Brazil. Registration is through self- declaration in an individual manner, within 30 days of entrance into the country. This applies to capital in foreign or local currency, goods or services. Brazilian capital invested abroad must be registered with the Central Bank of Brazil, through a yearly declaration.

The registration has the sole purpose of allowing the authorities to conduct analysis on flows and stocks of capital.

Foreign Capital in Brazil

For many years, the registration of the foreign capital used to be subject to preliminary examination by the Central Bank. After the preliminary examination, a paper certificate was issued. This document was necessary for any subsequent remittances abroad. In 1996, the Central Bank began the substitution of this process for the current one. Presently, the registration is declared electronically. It does not require previous examination and/or specific authorizations by the Central Bank of Brazil.

Law 4,131, dated 09.03.1962, 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. Portfolio investments and investments in local currency are subject to specific regulation.

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 of inflow of funds to be used in economic activities. Foreign capital is assured identical juridical treatment to national capital.

There are some dispositions that should be observed with regards to foreign investments in specific sectors of the economy: investment in financial institutions, nuclear energy, newspapers, magazines and other publications, as well as radio and television chains, among other activities.

Further information about these exceptions may be obtained at the Ministry of Foreign Relations' website: <http://www.braziltradenet.gov.br/ARQUIVOS/Publicacoes/Manuais/PUBGuiaLegal.pdf>

The registration of foreign capital is done at the Central Bank of Brazil's website, www.bcb.gov.br - option Sisbacen, on the Electronic Declaratory Registration System (*RDE*).

The foreign capitals are registered in specific modules, according to their classification, such as: foreign direct investment (FDI), credits (loans, long-term imports financing, technical assistance and royalties contracts) and portfolio investments. Guarantees provided by international financial institutions should be registered as well.

For each registration an *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 transfers of capital abroad.

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

Foreign Direct Investment (FDI)

FDI is regulated by Central Bank Circular 2.997, dated 08.15.2000. The registration should be done by the company receiving the foreign direct investment and by the non-resident investor's representative, in accordance to the instructions available on the Central Bank's website, option "Câmbio e Capitais Estrangeiros/Manuais/Manuais do Registro Eletrônico/RDE-IED Manual do Declarante" (only in Portuguese).

Portfolio Investments

Investment in financial and capital market is regulated by *CMN* Resolution 2.689, dated 01.26.2000 and Central Bank's Circulars 2.963, dated 01.26.2000, and 2.975, dated 03.29.2000.

Both institutional and individual investors can invest in Brazil. Non-resident investors may invest in the same financial products available to Brazilian investors.

To invest in Brazil, a non-resident investor needs to name a representative that will be responsible for providing information the required registration with the Central Bank and with the Securities and Exchange Commission of Brazil – CVM. If the representative is a natural person or a non-financial legal representative, the investor must name a financial institution that will be co-responsible for the his or hers obligations. The institution must be nominated through a formal "Agreement for Representation".

Foreign Credits

The foreign credits are regulated by *CMN* Resolution 2.770, dated 08.30.2000, and by Central Bank Circular 3.027, dated 02.22.2001.

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 displayed at www.bcb.gov.br >> Sisbacen>> Câmbio e Capitais Estrangeiros/Manuais/Manuais do Registro Eletrônico/RDE-ROF Manual do Declarante (only in Portuguese). Information about this system can be found at www.desenvolvimento.gov.br, the Brazilian Ministry of Development, Industry and Foreign Trade (MDIC)'s website

Operations involving public entities must be previously submitted to the National Treasury Secretary.

Brazilian Capitals Abroad

There are no restrictions for resident persons or companies in Brazil to invest abroad, once the legality purpose and responsibility of the transaction are defined in the appropriate documentation.

Financial transfers linked to investments outside of Brazil made by financial institutions, and those made by financial funds of any nature, must observe the dispositions set by the National Monetary Council. And, according to the competence of each respective area, they must also observe specific regulations set by the Central Bank and the Securities and Exchange Commission (*CVM*).

Resident persons or companies holding valuables of any nature, currencies, assets or claims outside the national territory must declare them to the Central Bank of Brazil (National Monetary Board Resolution 2.911, dated 29.11.2001).

The Foreign Exchange Market in Brazil

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. 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. Tourism agencies and tourist lodging facilities can be authorized to negotiate with limited amounts of foreign currencies in cash and/or in travelers checks.

All foreign exchange transactions must be registered by using a form designed by the Central Bank of Brazil, namely, the “foreign exchange contract”. The contract must be recorded in the Sisbacen system so as to identify the client, the transaction, its value and related information.

Residents and non-residents alike are allowed to open and maintain accounts denominated in Brazilian currency in authorized Brazilian banks. Accounts denominated in foreign currencies are permitted to residents and nonresidents only in a few specific cases.

In recent years, the Brazilian foreign exchange market has experienced several important changes, in the direction of simplification and deregulation. Until February 2005, transfers abroad were limited to a set of transactions covered in specific Central Bank regulations. Assumptions of commitments abroad that could result in requests for outward remittances were subject to prior and formal approval by the Central Bank of Brazil. Transactions not clearly regarded in regulation were subject to prior Central Bank of Brazil analysis in each specific case. Furthermore, the regulation established that the procedures to be observed required specific documentation for each transaction.

In March 2005, the Central Bank introduced a new approach to foreign exchange regulation in Brazil. The regulatory burden was significantly reduced by *CMN* Resolution 3,265, which 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.

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.

In the case of exports and imports, the conditions specified in Siscomex (Foreign Trade Integrated System) must be followed.

In 2006 Law 11,371 entered into effect. It further simplified and deregulated procedures applicable to export receipts and import payments. Since then, Brazilian exporters are allowed to maintain abroad up to 30% of their export revenues. These revenues can be used to honor the exporter's foreign commitments without prior authorization by the Central Bank. And they may be used as well, to build foreign assets abroad.

Law 11,371, however, forbids the granting of inter-company loans or mutual operations with the proceeds of such export transactions.