

Regulation of Foreign Investment in Brazil

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A Practice Note discussing the legal regime governing foreign investment in companies and industries in Brazil. It sets out the key legislation regulating foreign investment in Brazil, including the types of transactions and industries affected by such legislation and the authorization process, as well as related anti-money laundering laws and ownership disclosure requirements.

In addition to applicable anti-trust or merger control rules potentially impacting acquisitions or investments, cross-border transactions may trigger foreign direct investment rules in the target's jurisdiction. Counsel representing parties in cross-border acquisitions or investments must be aware of the types of transactions or protected industries that may trigger foreign investment notification or approval requirements, and the potential impact on the deal timeline or the parties' ability to close the transaction.

This Note provides an overview of the legal regime governing foreign investment in companies and industries in Brazil. It sets out the key legislation regulating such investments, the various types of foreign investment transactions that are subject to regulation, the roles and powers of the relevant regulatory authorities, and the penalties for non-compliance. It also summarises related anti-money laundering (AML) laws and ownership disclosure requirements (and their application to foreign entities).

This Note focuses on transactions where a foreign entity buys, or takes a stake in, a company incorporated in Brazil or its business and assets. It does not comment on any specific restrictions in Brazil relating to:

- Foreign acquisition of real estate, which may be subject to additional restrictions.
- Merger control, anti-trust, and competition law which is not dependent on the nationality of the acquiror or investor.
- Multinational free trade agreements or bilateral investment treaties.

For more information on regulations affecting foreign real estate transactions in Brazil, see [Country Q&A, Investing in Brazil, Question 13](#).

For more information on merger control rules and competition law affecting acquisitions in Brazil, see [Country Q&A, Merger Control in Brazil: Overview](#).

Unless otherwise stated, a reference in this Note to:

- Bacen means the [Brazilian Central Bank](#) (*Banco Central do Brasil*).
- CMN means National Monetary Council (*Conselho Monetário Nacional*).
- COAF means Brazilian Financial Activities Control Council (*Conselho de Controle de Atividades Financeiras*).
- CVM means the [Brazilian Securities Commission](#) (*Comissão de Valores Mobiliários*).

- FEL means Law No. 4131/1962 (known as the [Foreign Exchange Law](#)).
- RDE-IED means the [Bacen's Electronic Declaratory Registry of Direct Foreign Investment](#) (*Registro Declaratório Eletrônico - Investimento Estrangeiro Direto*).
- SISBACEN means the [Bacen Information System](#), an online system created to monitor foreign exchange transactions.
- SUSEP means Superintendency of Private Insurance (*Superintendência de Seguros Privados*).

Legal Framework for Foreign Investment in Brazil

Generally, foreign investments in Brazil are not subject to restrictions. Foreign investments in Brazil are not regulated by one single, codified corps of legislation, but instead are subject to various laws and regulations dealing with foreign investment in different situations and contexts.

Foreign investments and financial transactions are subject to registration and notification requirements (see [Foreign Exchange Law](#)). Additionally, foreign entities or individuals are prohibited or restricted regarding investments in certain Brazilian industries or rural properties (see [Restrictions or Prohibition on Foreign Investment in Certain Business Activities](#)). Foreign ownership of shares of Brazilian private companies also requires post-acquisition registration with the Federal Revenue Office (RFB) to obtain a taxpayer registration number (see [Registration and Disclosure and Ownership](#)).

Foreign Exchange Law

The foreign investment regime in Brazil is governed mainly by the FEL, which regulates the application of foreign capital brought into Brazil and the remittance of funds abroad. Recent amendments to the FEL become effective December 30, 2022, simplifying and consolidating legislation affecting the foreign exchange markets and international capital (see [Amended FEL](#)).

Current Foreign Exchange Law

Article 1 of the FEL defines foreign capital as:

- Goods, machinery, and equipment, entered in Brazil, destined to produce goods or services.
- Financial or monetary resources, introduced in the country, for application in economic activities.

(Article 1, FEL.)

In both cases, the resources brought into Brazil must belong to individuals or legal entities resident, domiciled, or headquartered abroad. Foreign capital must be used to produce goods, services, or other activities in Brazil. Foreign capital invested in Brazil is given the same legal treatment as national capital. (Article 2, FEL.)

The Bacen oversees transactions between foreigners and Brazilian persons or entities. All operations involving foreign exchange must be carried out with institutions authorized by the Bacen. There is no restriction on financial transfers from and to abroad, which are conducted directly in the authorized banking network without interference from the Bacen. (Article 3, FEL.)

- While Brazilian residents can hold foreign currency in foreign bank accounts, they cannot hold foreign currency in a Brazilian account. Foreign currency that is transferred to Brazil is subject to exchange into Brazilian *reals* before being

available to the recipient in Brazil. Transfers from abroad to Brazil, and vice-versa, are subject to exchange rules, and must be carried out through institutions authorized by the Bacen. (Law No. 4595/1964.)

- Currently, foreign investments and foreign financial transactions must be registered with:
- The RDE-IED.
- The Registry of Financial Operations (*Registro de Operações Financeiras*).

(Law No. 4131/1962, Law No. 9069/1995, Law No. 11371/2006, Ordinance No. 3844/2010, and Ordinance No. 3689/2013, Bacen.)

Foreign investment subject to mandatory registration includes:

- Foreign capital that enters the country in the form of direct investment or loan, whether in currency or goods.
- Remittances made abroad as return of capital or as income from such capital, profits, dividends, interest, amortization, as well as royalties, or by any other title that implies the transfer of funds out of the country.
- The reinvestment of profits from foreign capital.
- The monetary adjustment of the capital of the companies carried out in accordance with the legislation in force.

(Article 3, FEL.)

Registration allows the remittance of profits or interest on equity and capital repatriation, as well as the payment of principal and interest (Article 9, FEL). Registration is made by the representatives of both the receiving company and the non-resident investor electronically with the SISBACEN (Article 9, FEL; see [Foreign Investment Notification and Authorization Process](#)).

Article 4 of the FEL requires registration of foreign investments in the currency of the country of origin, and the reinvestment of profits simultaneously in the national currency and in the currency of the country to which they could have been remitted, converted at the exchange rate of the period during which the reinvestment was proven to have taken place. In case the capital is represented by goods, the registration must be done at their price in the country of origin or, in the absence of satisfactory proof, according to the values determined in the accounting of the company receiving the capital or by the evaluation criteria determined by regulation.

Investments in capital markets by foreign investors, including acquisition of shares or other securities, are also subject to registration with Bacen and the CVM. Individual and institutional foreign investors may make portfolio investments in the Brazilian capital markets, and must engage:

- A legal representative who is required to provide Brazilian authorities with the required investor's information and to register in the RDE-IED system.
- A tax representative who is required to meet all tax obligations incurred by the investor.
- An authorized local custodian who is registered with the CVM.

(See Resolution No. 4373/2014, National Monetary Council.)

Registration of foreign investment must occur within 30 days from the date of its entrance in the country. Failure to comply with the requirements within the established period, failure to provide required regulatory information, or the transmission

of incorrect or false information are subject to penalties. Non-compliance may lead to the imposition of a fine by the Bacen. (Article 5, FEL; see [Penalties for Non-Compliance](#).)

Registration with the Bacen is important because it is the only way for the foreign investor to remit profits, register reinvestments, and repatriate the capital initially invested. However, this registration requirement has been eliminated by Law No. 14286/2022 (the Amended FEL) and will no longer be required as of 31 December 2022.

Amended FEL

On 30 December 2021, the Amended FEL was passed to modernize business rules as they relate to currency exchange and treatment of foreign investors. The amendments go into effect on 31 December 2022. This new law affects the Brazilian foreign exchange market, Brazilian capital held abroad, and foreign capital held in Brazil. The Amended FEL consolidates over 40 legal acts affecting foreign investment and foreign capital to simplify the regulation of the Brazilian foreign exchange market, Brazilian capital abroad, foreign capital in Brazil, and information provided to the Bacen. Regulations implementing the Amended FEL will be published prior to 31 December 2022.

Restrictions or Prohibition on Foreign Investment in Certain Business Activities

Under Brazilian law, foreign capital is prohibited in activities related to:

- Nuclear energy.
- Health services, except:
 - donations of international bodies associated with the UN, technical co-operation entities, and credit and loans;
 - legal entities with the intent to install, operate, and exploit general hospitals, including philanthropic hospitals, specialist hospitals, polyclinics, general clinics, and specialist clinics, as well as activities related to family planning;
 - non-profit health services maintained by companies to offer healthcare services for their employees and dependents; and
 - other cases regulated by specific legislation.

(Law No. 8080/1990 (Brazilian Healthcare Bill of Rights).)

- Postal and telegraph services.
- Aerospace industry.

Foreign capital is restricted in certain activities including:

- The acquisition and lease of rural land by foreign individuals living in Brazil, foreign companies authorized to operate in Brazil, and Brazilian companies under foreign control (see Section 190, Brazil Constitution; Law No. 5709/1971; Law No. 8629/1992; Decree 74965/1974; Normative Instruction of Brazilian Institute for Rural Settlement and Agrarian Reform (*Instituto Nacional de Colonização e Agrária*)(INCRA) 76/2013).
- Broadcasting, including radio and free-to-air television. The Constitution restricts ownership of Brazilian broadcasting companies to 30%.

- Telecommunications. Companies with licenses to provide telecommunication services must be organized under Brazilian law and have their principal place of business and administration in Brazil. In addition, the majority capital of the parent company must be owned by an entity domiciled in Brazil (Decree 2617/1998).
- Mineral resource prospecting and mining in border areas. Under the Constitution, the exploitation and use of mineral resources in Brazil can only take place under a specific federal authorization or concessions, and only by Brazilian citizens or companies organized under Brazilian law.

(See [Ministry of Foreign Affairs, Department of Trade and Investment Promotion, Legal Guide for Foreign Investors in Brazil](#).)

Other Legislation Affecting Foreign Investment

Regulation of foreign investment and foreign currency entering or leaving the country and its conversion is determined by the institutions authorized to operate in the exchange market, without any regulatory interference. In Brazil there are no legislative restrictions regarding currency conversions (see [Current Foreign Exchange Law](#)).

Foreign investors or companies interested in investing in Brazil have access to various benefits and tax incentives granted by the Brazilian government at municipal, state, and federal levels. To enhance the development of certain parts of the country, local authorities at municipal level grant incentives and tax benefits. At the state level, investment opportunities are promoted to attract foreign investors, which vary from state to state. At the federal level, there are Free Trade Zones and SUDENE (*Superintendência de Desenvolvimento do Nordeste*), as the federal government is devoted to promoting the development of certain areas or sectors by attracting foreign investors.

Brazil offers a wide variety of federal, regional, and local incentives to investors, including:

- Tax exemption and deduction applicable to sectors deemed strategic by the Government, for example the exemption of the IPI (Tax on Industrialized Products) for entities investing in research, development, and innovation in the Semiconductor Industry (Law No. 11484/2007).
- Incentives for the development of infrastructure projects in areas such as energy, telecommunications, oil and gas, logistics and transportation, through public bidding processes and public-private partnerships.
- Tax incentives applicable in "Tax Free Areas" for example, the Amazon Free Trade Zone (*Zona Franca de Manaus*) and Export Processing Zones.
- Funding from public banks, particularly the Brazilian National Development Bank (BNDES), which was created to provide long-term financing for projects that contribute to the country's development.
- Lower taxation on investment by non-residents in capital markets.
- No taxation on the distribution of dividends.

In addition, foreign investors are granted tax benefits for investments in less developed parts of the country, including:

- Amazon Free Trade Zone. This is a region created by the Decree-Law No. 288 of February 1967 in the Amazon state to grant tax benefits for both foreign and domestic investors to develop certain regions located far from the industrial center of Manaus. There is also an effort by the government to provide infrastructure to support local companies established in the Amazon state.

- **Manaus Free Trade Zone.** Article 92-A of the Transitional Constitutional Provisions Act (*Ato das Disposições Constitucionais Transitórias* (ADCT)) extends the status of Manaus Free Trade Zone until the year of 2073.

In the Northeast, tax benefits depend on each state. Local governments establish their own rules for specific fields of investment. The federal government can also provide tax benefits and incentives through the Development of Northeast - SUDENE. For example, Law No. 12249 of 2010 instituted the Special Regime of Incentives for the Development of Infrastructure of the Oil Industry in the North, Northeast and Mid-West (REPENEC), which benefits entities with an approved project for the implementation of infrastructure works in the petrochemical, oil refining, and production of ammonia and urea from natural gas (Article 2, REPENEC). These benefits include but are not limited to the suspension of the collection of the IPI and Import Tax.

How Foreign Investment Is Governed in Brazil

Type of Transactions Subject to Registration or Exchange Restrictions

Until 30 December 2022, all foreign investments and foreign financial transactions must be registered before the Bacen within 30 days from the date of entrance in the country. This registration is done online on the SISBACEN without any quantitative restrictions or any interference from the Bacen's authorities (see [Current Foreign Exchange Law](#)).

Article 23 of the FEL requires foreign exchange transactions to be carried out with institutions authorized to operate in foreign exchange, with the intervention of an official broker. In addition, operations that do not fit into the investment categories specified in the Classification Code adopted by Bacen, or that are classified as "Others" and "Miscellaneous", may only be completed through Banco do Brasil S.A. (Article 23, paragraph 1, Profit Remittance Law.) Article 23 is effective until 31 December 2022 as it was revoked by the Amended FEL.

To maintain foreign exchange control with the country's banking authority, the Bacen has the authority to determine that foreign exchange transactions regarding capital movements may be performed, in whole or in part, before a financial foreign exchange market, separate from the export and import market. One such case would be the remittance of funds by the foreign importer in anticipation of the export-import closing and currency exchange. (Resolution of the Central Bank No. 3568/2008.)

In addition, whenever a serious disparity in the balance of payments occurs or whenever there are serious reasons to foresee the imminence of such a situation, the Bacen may impose restrictions for a limited period on imports and remittances of income from foreign capital, the Bacen being granted a total or partial monopoly on exchange transactions (Article 28, Profit Remittance Law). Article 28 is effective until 31 December 2022 as it was revoked by the Amended FEL.

Foreign Investment Notification and Authorization Process

The registration of foreign investments and foreign financial transactions before the Bacen is mandatory. Registration is made by the representatives of both the receiving company and the non-resident investor through the SISBACEN.

This registration is a declaration, in which the declarant is responsible for the veracity of the information provided.

To make the declaration, a log-in and password must be created in the RDE-IDE module of the SISBACEN. When funds from abroad are received, the necessary information about the transaction must be filled out in the system within 30 days from the date of its entrance in the country. (Article 5, FEL.)

Those responsible for the registration must keep the supporting documentation for the information declared updated and available to the Bacen. Failure to maintain and produce the supporting documentation for any event registered with the RDE-

IED as required by Bacen may result in fines and penalties. The parties must also comply with other legal and regulatory provisions applicable to the registered operations, especially those of a tax nature.

Once the registration is complete, the Bacen will provide the interested party with a certificate, containing the necessary information to characterize the operation, including:

- Name of foreign investor.
- Recipient of the investment in Brazil.
- Nature of the investment.
- Currency of the investment.
- Amount invested.
- Date of the operation to which the investment is linked.
- Date of the inflow of funds.
- This registration certificate assures the holder the exercise of the respective foreign exchange rights, dispensing the need of further proof of the existence and qualification of that investment.

The registry at the Bacen is treated as a title to foreign exchange rights, which is obtained when the RDE-IED login is created and when the information contained in the registry is updated, which are requirements for any movement of funds abroad.

If the parties do not comply with the registration requirements, financial transfers to the receiving company can be prohibited until the improprieties are corrected, without prejudice to the application of penalties under the legislation or regulations in force (see [Penalties for Non-Compliance](#)).

Penalties for Non-Compliance

Violations of the Bacen's registration requirement include:

- The investment registration is made after the deadline.
- The information provided is incorrect or incomplete.
- The registration is not performed.
- The information provided is false.

(Circular No. 3857/2017, Bacen.)

Violations of the registration requirement may result in a penalty, including:

- If the registration is made after the deadline a penalty of 1% of the amount subject to registration, limited to BRL25,000.00.
- If the registration provides incorrect or incomplete information, 2% of the amount subject to registration, limited to BRL50,000.00.

- Failure to make a registration or failure to present supporting documentation of the information provided to Bacen, 5% of the amount subject to registration, limited to BRL125,000.00.
- Providing false information in a registration, 10% of the amount subject to registration or declaration, limited to BRL250,000.00.

(Circular No. 3857/2017, Bacen.)

In case of irregularities, the Bacen may also suspend the registration of the recipient company in the RDE-IED. With registration suspended, the company is unable to carry out foreign exchange operations. To remove the suspension, it is necessary to correct all pending registrations. These penalties may only be applied after the conclusion of an administrative proceeding. All penalties presuppose administrative procedures where defense may be produced. (Circular No. 3857/2017, Bacen.)

Industry Sectors in Brazil with Additional Notification or Approvals

In Brazil, no industry sector requires any additional foreign investment notification besides the registration of the operation in SISBACEN. See [Restrictions or Prohibition on Foreign Investment in Certain Business Activities](#).

Anti-Money Laundering Laws

Pursuant to the Anti-Money Laundering Act, money laundering is a criminal offence (Article 1, Law No. 9613/1998 (AMLA)). The AMLA provides a mechanism for prevention, detection, and punishment of violations. Under existing legislation, money laundering includes hiding or disguising the nature, origin, location, disposition, remittance or ownership of property, goods, rights, or values arising directly or indirectly from a criminal offence. Such criminal offence presupposes the intention to perpetrate it, and mere negligence does not qualify as an element for the commitment of such crime. (Article 1, paragraphs 1 and 2, AMLA.)

The AMLA also imposes anti-money laundering administrative duties on financial services and certain other providers, including:

- Customer identification, including Know-Your-Customer procedures.
- Record-keeping of customers and transactions, among other information.
- Implementation of anti-money laundering policies and control structures.
- Responding to requests made by COAF.
- Reporting suspicious money laundering transactions to COAF.

(Articles 9-11, AMLA.)

Specific regulatory or supervisory authorities.

The duties prescribed by the AMLA are applied to the relevant entities by regulations issued by specific regulatory or supervisory authorities. For instance, financial institutions licensed by the Bacen must:

- Establish adequate anti-money laundering internal policies and structures.

- Properly identify clients (both individuals and legal entities, including identification of politically exposed people), employees, business partners, and services providers.
- Keep records of transactions.
- Monitor transactions and report suspicious transactions to COAF.

(Circular No. 3978/2020.)

COAF

Administrative rules issued by COAF apply to entities that perform any of the activities listed in Article 9 of the AMLA that are not subject to a specific regulatory or supervisory authority, such as entities that sell, or intermediate the sale of, high-value goods (movable goods with a unit value equal to or higher than BRL10,000.00) (Article 14, AMLA).

Law No. 13810/2019 requires the entities listed in Article 9 of AMLA to freeze the assets of parties penalized by the United Nations Security Council and to inform COAF of the actions taken. An entity listed in Article 9 must comply with Law No. 13810/2019 in accordance with procedures detailed by rules issued by:

- Its relevant regulatory or supervisory authority (such as the Bacen in case of licensed financial institutions).
- COAF if that entity is not subject to a specific regulatory or supervisory authority.

Penalties for Breach of Anti-Money Laundering Laws and Regulations

An individual or entity in breach of anti-money laundering laws and regulations may be subject to administrative and criminal penalties. Criminal penalties are applicable only to individuals.

The relevant regulatory or supervisory authority, such as Bacen in the case of financial institutions, may apply penalties for violation of administrative procedures, cumulatively or separately, to a regulated or supervised entity referred to in Article 9 of AMLA, as well as to its officers (Article 12, AMLA), including:

- An admonition.
- A fine limited to the lowest of:
 - twice the value of the transaction;
 - twice the actual profit obtained or which would be obtained from the transaction; or
 - the amount of BRL20 million.
- In the case of an officer of a regulated or supervised entity, temporary suspension for a term of up to ten years of their ability to act as an officer to the entities referred to in Article 9 of AMLA. This penalty is applicable only to "serious breaches" of anti-money laundering laws and regulations or to a specific failure in relation to a previous breach that was punished with a fine.
- Revocation of the authorization to perform a business activity, an operation, or to operate. This penalty is applicable only in cases of a specific failure in relation to a previous breach punished with a temporary suspension.

Individuals convicted of money laundering crimes are subject to imprisonment from three to ten years plus fines (Article 1, AMLA). The penalty is increased by one-third to two-thirds if the crime is repeatedly committed by an individual or is committed through a criminal organization (Article 1, AMLA). This penalty may be decreased if the individual cooperates with the law enforcement authorities by providing information regarding the relevant crime (Article 1, AMLA).

The main regulators of the AMLA are COAF, Bacen, CVM, SUSEP, and CMN, while enforcement agents are state and federal police and prosecutors.

Registration and Disclosure of Ownership

Post-investment requirements for non-Brazil shareholders include:

- Filing of new articles of association with the local Board of Trade of the State where the company is headquartered (Article 2, Law No. 8934/1994).
- For all non-Brazilian resident companies and individuals holding an equity interest in a Brazilian company, registration is required before the Federal Revenue Office (RFB) to obtain a Corporate Taxpayer Register of the Ministry of Economy (CNPJ/ME) number or Individual Taxpayer Register of the Ministry of Economy (CPF/ME) number (Article 3, Federal Revenue Rules No. 1863/2018 and No. 1548/2015 (*Instrução Normativa da Receita Federal*)). Registration with the Board of Trade automatically enrolls legal entities and individuals with the RFB. This requirement similarly applies to non-Brazilian companies and individuals holding asset and rights subject to public registration in Brazil, such as real estate, vehicles, vessels, aircraft, bank accounts, investments in the financial market, investments in the capital market, and other activities subject to the rules of the RFB.
- For domestic and foreign companies registered with the CNPJ/ME, providing tax authority documents that identify the ultimate beneficial owner within 90 days of enrollment with CNPJ/ME (IN RFB 1634/2016).

Registration with the Bacen is also required, and the target company's corporate structure must be updated in its registry at the SISBACEN. For the Bacen, the update of the SISBACEN is enough to prove the existence and conclusion of the transaction (see [Current Foreign Exchange Law](#) and [Foreign Investment Notification and Authorization Process](#)).

Registration with the Bacen does not exempt the involved parties from complying with other legal and regulatory provisions applicable to the transaction, including but not limited to tax, corporate, and administrative matters.

For more information on registration requirements for a foreign company establishing a direct or indirect presence in Brazil see [Practice Note, Establishing a Direct or Indirect Presence in Brazil](#). For information on joint ventures law in Brazil and rules relating to joint ventures with foreign members, see [Country Q&A, Joint ventures in Brazil: overview](#).

Practical Implications of Foreign Investment Restrictions on Private M&A Transactions

Inflow of foreign investment primarily occurs via:

- Remittances by the foreign shareholder to pay for inaugural subscribed capital and subsequent capital increases.
- Loans by the foreign shareholder or financial institutions.

In both cases, the foreign investment notification occurs through a manual update in the SISBACEN. The recipient of the investment or loan is responsible for completing the update. Approval usually takes one day for completion.

Notification of the foreign investment or loan does not affect the transaction timetables as the notifications are approved immediately.

Additional COVID-19 Restrictions on Foreign Investment

In Brazil, there are no temporary COVID-19 restriction measures affecting foreign investments.

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