

LEGAL
GUIDE

Foreign Capital in Brazil

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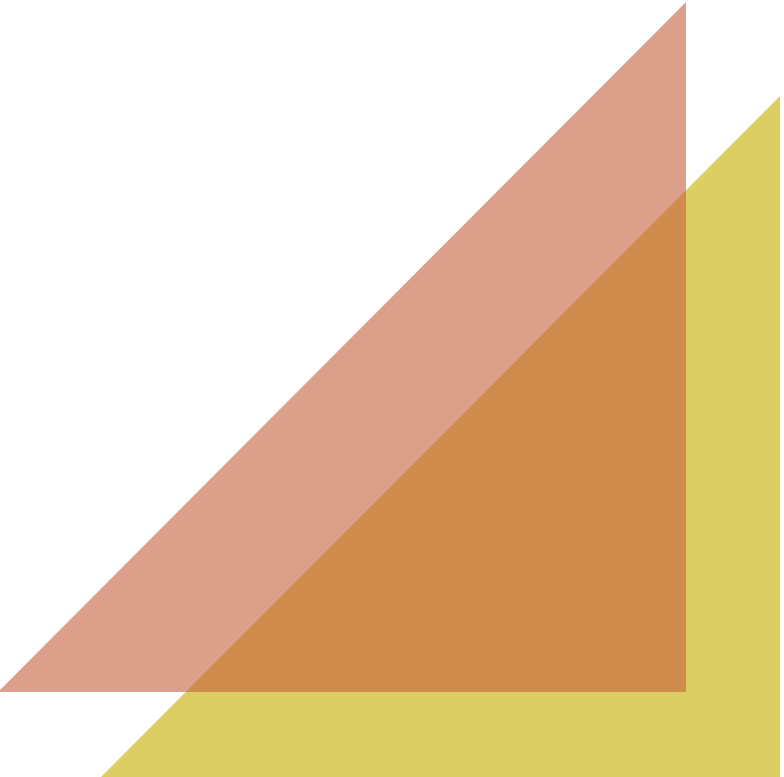


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I- Overview:

The rules for foreign capital in Brazil are governed by Law 4.131 (the Foreign Capital Law) of 3 September, 1962, and Law 4.390 of 29 August, 1964. Both of these laws were put into effect by Decree 55.762 of 17 February, 1965 and subsequent amendments, while foreign investments in the financial and securities markets are governed by Resolution 4,373 of 29 September 2014 of the Brazilian Monetary Council (portfolio investments or indirect investments).

When entering the country, the foreign capital destined to direct investments in Brazil must be registered/declared. According to the Foreign Capital Law, “foreign capital is considered to be any goods, machinery or equipment that enters Brazil with no initial foreign exchange disbursement, intended for production of goods and services, and any funds brought into the country for use in economic activities, provided that they belong to individuals or corporate entities domiciled or incorporated abroad.”

Thus, the definition of foreign capital encompasses goods, machinery and equipment brought into Brazil without any initial expenditure of foreign currency for use in the production of goods or services, as well as financial resources brought into the country to be invested in economic activities. Such assets will only be considered foreign capital if held by individuals or corporate entities resident, domiciled or with their registered office abroad.

II- Foreign Direct Investments

Electronic System:

Registration of Foreign Capital Foreign capital must be registered by means of an Electronic Statement of Registration – Foreign Direct Investment Module (RDE-IED), on the Central Bank Information System (SISBACEN).

The registration of foreign capital is made through the RDE-IED (Registro Declaratório Eletrônico – Investimento Externo Direto - Electronic Declaration Register), which is part of the Central Bank Information System (Sistema de Informações do Banco Central – SISBACEN)

This registration is essential for offshore remittances, capital repatriation and registration of profit reinvestment. In the case of direct investments, the responsible for the capital registration is the company or the representative of a foreign company in Brazil that is receiving the capital.

For the purposes of the Electronic Statement of Registration, foreign direct investment is defined as permanent holdings in Brazilian companies or, in accordance with common market practices, long-term ownership by non resident investors; individuals or corporate entities residing, domiciled or incorporated abroad, through ownership of shares or stock in Brazilian companies, or investments in foreign companies authorized to operate in Brazil.

Foreign investments to be made and registered are not subject to prior review or verification by the Central Bank. The declaratory nature of the statement implies that the Brazilian company receiving the investment and/or the representative of the foreign investor are responsible for the registration.

All foreign investments must be registered with the Central Bank of Brazil. Such registration is required for remittances abroad, repatriation of capital and registration of profit reinvestment.

III- Types of Foreign Investments:

The types of direct foreign investments may be the remittance of foreign currency as a capital contribution to a Brazilian company or for the purchase of existing equity interests, or through contribution of assets to a company.

As informed above, the foreign investment must be registered with the Central Bank if it is in a productive activity that may, in whole or in part, be conducted by a foreign investor, and the investment qualifies as a foreign capital investment under the Brazilian foreign investment regulations. Thus, in relation to investments in business activities such as trade, manufacturing or rendering of services, the initial investment, capital repatriations and dividend remittances must be registered with the Brazilian Central Bank.

Registration of a foreign investment must be submitted electronically to the Brazilian Central Bank by the company receiving the investment (the investee), using the Central Bank's electronic system for direct foreign investments (RDEIED).

This electronic registration must be made within 30 days of the date of the liquidation of the currency exchange agreement and does not require preliminary approval, considering it has a declaratory nature.

Foreign investments should be registered in the currency of Brazil. Profits should be remitted in the currency of the country where the investor is resident or has its head office (or where the branch making the investment is located). Reinvestments of profits should be registered in the currency of the country to which the profits would otherwise have been remitted.

It's important to pay attention that Brazilian entities and foreign investors must update information concerning their investments with the Brazilian Central Bank whenever a corporate act modifies the company's equity structure, and must do so within 30 days of the modification.

In a recent change, the Central Bank system started requiring Brazilian companies to disclose the country in which the foreign investor is incorporated or resident (as the case may be) and also the country in which the ultimate beneficial owners reside.



IV- Other Types of Foreign Investments:

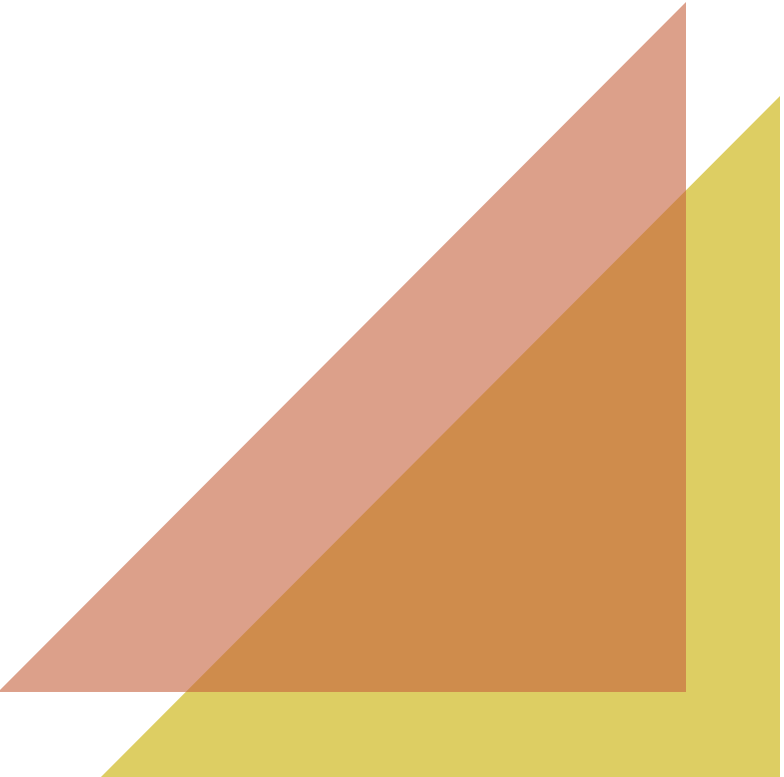
There is the option of indirect investments for foreign investors, such as invest in the Brazilian financial and securities markets using the same fixed income instruments (i.e., bonds, notes, certificates of deposit and debentures), derivative instruments (i.e., swaps, futures, forwards and flexible options), securities (i.e., shares, stock options and stock index warrants), mutual funds, private equity and other investment funds, and other financial instruments available to Brazilian residents, with certain exceptions.

The condition for a foreign investor purchase or sell securities traded on stock or commodities exchanges, electronic systems or organised over-the-counter trades (OTC), and securities or financial instruments traded on OTC markets is that they are organised by entities authorised by CVM.

However, foreign investors may purchase Brazilian depositary receipts (certificates representing securities issued by foreign publicly held companies, issued for purposes of trading on the Brazilian securities market).

Finally, to invest in the Brazilian financial and securities markets, a foreign investor need to appoint an agent in Brazil (who must be a financial institution or institution authorised by the Brazilian Central Bank), register with CVM and enter into a custody agreement with a financial institution authorised to provide custodian services, in accordance with CVM Instruction 560 of 27 March 2015.

Note that transfer or remittance of such investments abroad is not permitted, except in cases of merger, amalgamation, spin-off, corporate reorganisation or succession.



V- Restrictions to the Foreign Investments:

In general, Brazil does not impose restrictions on foreign investments. However, some industries and assets are subject to specific laws and requirements from governmental authorities, such as:

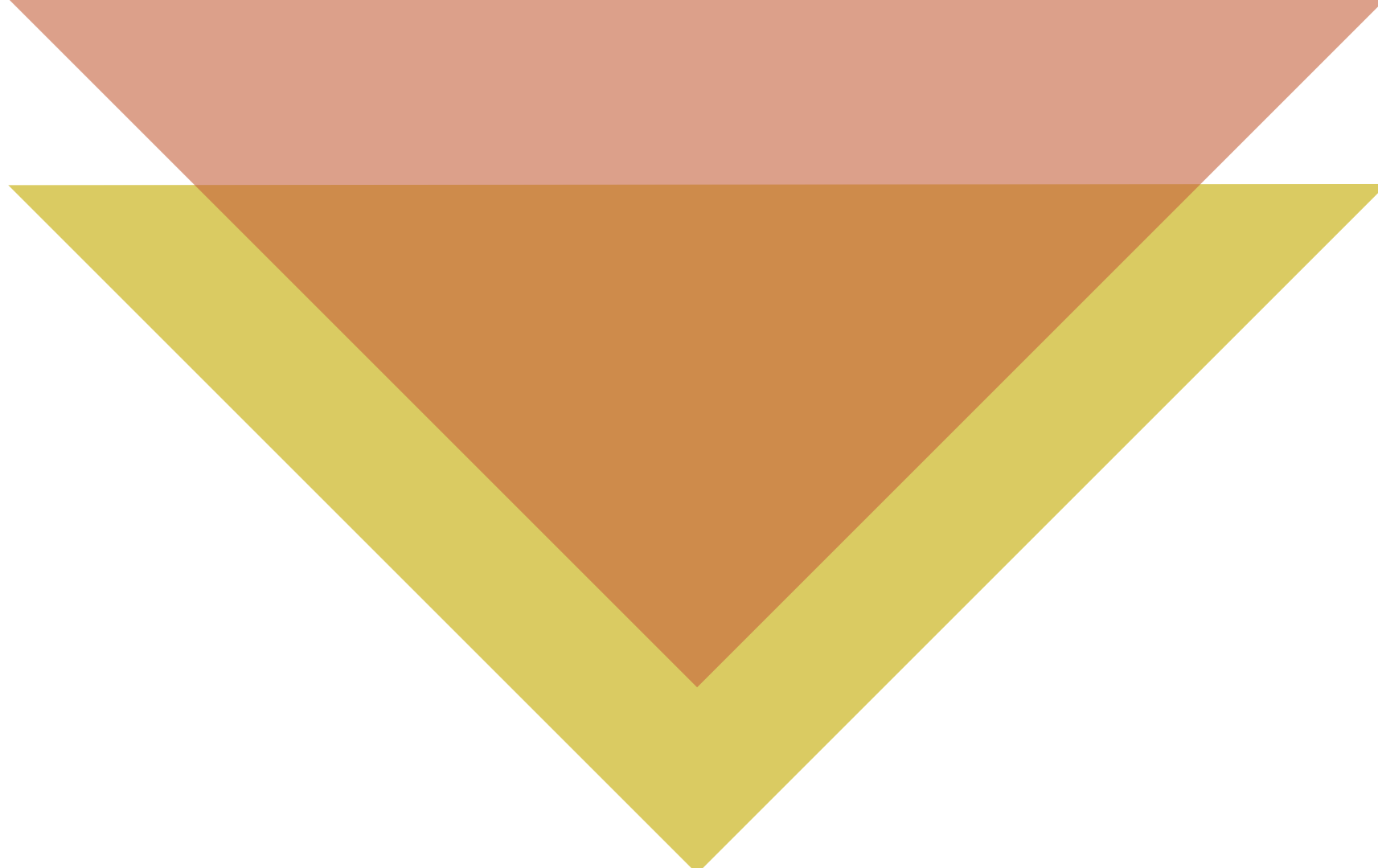
a) rural land: this restriction is also applicable to corporate transactions resulting in the direct or indirect transfer of rural land; the acquisition of rural land by Brazilian entities controlled by a foreigner, a foreigner residing in Brazil or a foreign entity authorised to operate in Brazil is subject to specific legal requirements;

b) frontier areas: the approval by the Secretary of the National Security Council is needed for acquisition, rural lease or other rights over real estate property located within frontier areas require prior;

c) financial institutions: another restriction is related to financial institutions; in this case, participation of foreign capital in financial institutions is limited to specific situations, such as a presidential decree attesting the importance of the foreign capital for the national financial system or non-voting stock;

d) air transportation services: in this case, foreign capital is limited to 20 per cent of the voting stock (and up to 100 per cent of non-voting stock) and subject to approval by the aeronautical authorities; the provision of air transportation services in the operation of a regular transport carrier is subject to prior concession, given to Brazilian entities in which at least 80 per cent of the voting stock is owned by Brazilians and administration of which is conducted exclusively by Brazilians; recent discussions by the Federal Government and the National Congress, however, assessed the possibility of raising the 20 per cent threshold to 49 per cent or even allowing foreign investors to hold up to 100 per cent of the voting stock of Brazilian companies, under specific conditions;

e) newspapers, magazines and other publications, and radio and TV broadcasting: there are restrictions on foreign investments in the ownership and management of newspapers, magazines, other publications, radio and TV (e.g., a limit of up to 30 per cent on equity interest, and only Brazilians may occupy managerial positions regarding selecting and directing topics);



f) mining: considering the extraction of all natural resources depends on governmental concessions, only Brazilian companies (with or without foreign investors holding equity) may develop mining businesses, and they must request and obtain authorisation from the Ministry of Mines and Energy to operate in the mining industry.

Lastly, some activities are prohibited in Brazil for foreign investors, as a) activities involving nuclear energy; b) health services, except for prime healthcare operators, family planning activities and research, hospitals, clinics (generic or specialised), polyclinics, non-profit healthcare services and companies for the assistance of their employees; c) mail services; and d) the aerospace industry (including the launching of satellites, vehicles and spaceships).

