

Foreign Capital in Brazil

Legal Definition

[Law n. 4.131 of 1962](#) is the primary law that regulates foreign capital in Brazil. The law guarantees that foreign capital in Brazil will be treated on an equal footing with domestic capital unless the investment falls within one of the few exceptions. It's important to stress that, since 1995, [Brazilian law](#) considers that companies incorporated in the country are national companies, regardless of national or foreign control.

The same law defines foreign capital as being an asset, machinery or equipment which enters Brazil, as well as financial or monetary resources, intended to produce goods and services or to be used in economic activities in the country. In all cases, it must belong to individuals or legal entities residing, domiciled, or with headquarters outside Brazil.

You can find below concise information about the entry of capital in Brazil for productive investment:

Legal Framework:

Law n. 4.131 of September 3, 1962 (Foreign Capital Law) and [Law n. 4.390 of August 29, 1964](#).

[Decree n. 55.762 of February 17, 1965](#), and its subsequent amendments.

[Law n. 11.371 of November 28, 2006](#) (provides for exchange transactions, registration of foreign capital), as well as rules of the National Monetary Council (CMN) and the Central Bank of Brazil (BCB) - in particular, [CMN Resolution n. 3.568 of May 29, 2008](#) and [BCB Circular 3.691 of December 16, 2013](#) (for exchange transactions); [BCB Circular n. 3.689 of December 16, 2013](#) (for registration of foreign capital); and [BCB Circular n. 3.857 of November 14, 2017](#) (for administrative regulation).

Definition of Foreign Direct Investment (FDI)

For registration purposes, FDI is defined as permanent interests in companies in Brazil, held by an investor (individual or legal entity) not resident in the country or resident, domiciled or headquartered abroad, through the ownership of shares or quotas representing the capital stock of Brazilian companies, and the outstanding capital of foreign companies authorized to operate in Brazil.

Registration at the Brazilian Central Bank (BCB)

The registration at BCB is made through the Electronic Declaratory Registry - RDE-IED, in the case of FDI or the Financial Operations Declaratory Registry - RDE-ROF, in the case of financial transactions (such as Direct Loans, Securities, Import Financing, Advance Receipt of Exports, Leasing and Property Rights (royalties), including renegotiation, assumption and conversion transactions).

The Non-Resident Declaratory Register – RDE-CDNR is required of individuals or legal entities that are not resident in the country and wish to register transactions involving foreign capital in the

RDE-ROF and in the RDE-Portfolio. The RDE-Portfolio allows the registration of foreign investments in the financial and capital markets, investment funds and DRs (Depository Receipts).

The registration of non-residents is usually done through a Brazilian company. Regarding FDI, it is mandatory that a foreign company constitute a legal Brazilian entity with a registered number known as CNPJ (the acronym in Portuguese for “National Register of Legal Entities”) which acts as a representative of the non-resident in Brazil. This registration must be done prior to the electronic registration at BCB.

The Brazilian company is required to keep documents supporting the registration for 5 years, counting from the registration date, for presentation to BCB if requested.

The registrations are done in the electronic system of Banco Central – SISBACEN -, informing the amount invested in foreign currency and its equivalent in national currency (art. 4, Law n. 4.131/1962). Such registration is necessary and mandatory for future remittances of profits abroad, repatriation of invested capital and registration of reinvestment of profits, among others.

Taxes

Foreign capital that enters the country destined to FDI is not subject to taxation, except for the Tax on Credit, Exchange and Insurance Operations or Related to Securities (IOF).

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No Restrictions on Most FDI

Foreign capital may enter freely into Brazil and is not subject to prior approval by the government. There are no conditions regarding the total amount of investment that can be made in Brazil.

A small number of exceptions exist in accordance with the Brazilian Constitution and federal laws, prohibiting or limiting FDI in specific sectors:

Prohibitions:

Activities involving nuclear energy (Some nuclear radioisotopes are available to the private sector for medical uses. Regarding the production of nuclear energy, the Angra 3 Nuclear plant concession is expected to establish a new legal model allowing the participation of foreign companies. The Brazilian government is also considering allowing foreign companies to participate in uranium mining);

Mail and telegraph services, except parcel delivery;

Aerospace (launch and deployment of satellites, vehicles, aircraft). The prohibition does not apply to the manufacturing or trading of these goods or to the launch of satellites, vehicles and aircraft authorized by Brazil and the USA in Alcantara Space Center, in accordance with Decree n. 10.220/2020.

Restrictions and Limitations*:

Acquisition or rental of rural property (authorization requirements from the National Institute for Rural Settlement and Agrarian Reform (INCRA) may apply or authorization by the National Congress may be demanded for larger areas);

Financial institutions (permission from the BCB may be demanded on specific circumstances)

Media, including television networks, magazines, newspapers, and radio broadcasting stations (the government prevents foreign investment in the ownership and administration of media – the Brazilian Constitution of 1988 stipulates that at least 70% of the total capital of media companies must be owned directly or indirectly by Brazilians born in Brazil or Brazilians naturalized for a period of at least ten years)

Mining sector in general, with specific provisions for operations on border regions or indigenous territory;

Health assistance provision by foreign companies is restricted to a specific set of possibilities, relating to (i) the establishment and operation of hospitals and clinics; (ii) the establishment and operation of family planning research organizations; (iii) support health services provided by companies to their own labor force; (iv) activities related to donations from United Nations bodies; and (v) other cases provided in specific legislation.

* Foreign capital may be subject to limitations, or prior authorization from public authorities may be required

It is worth noticing that restrictions to foreign capital on air transportation companies were wiped out by [Law n. 13.842 of 2019](#).