FDI Guide

Brazil

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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

	Topic	Explanation/Description of what is expected	Brazil
1.	**Principle**	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	The FDI regime in Brazil is built by exception to a principle of freedom of investment. To summarise, this regime is based on registration and reporting requirements for certain situations (eg, equity investment and financial transactions), which are not dependent on government approval (or a review of the substance) as they are simply declaratory (the 'FDI Regime'). In addition to such registration and reporting requirements, it is also necessary to execute foreign exchange transactions to transfer funds to and from Brazil. Aside from the FDI Regime as described above, other legal regimes authorise investment in the Brazilian financial and capital markets. We note that a new piece of legislation (Federal Law No 14,286/21) with effect from 30 December 2022 will consolidate, modernise and simplify the FDI Regime in Brazil. Despite that, at this point, we do not expect such new legislation (and regulations thereunder) to bring restrictions in addition to those described herein. In addition to the FDI Regime, we note that, even though Brazil is generally open to foreign investment, prohibitions or restrictions do or may apply to foreign investment in certain limited

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			economic sectors, namely media, nuclear, post offices and telegraphs, and rural real estate (‘Restricted Sectors’). Also, prior governmental approval may be required for change of ownership or control of companies (or assets) operating in certain regulated sectors, irrespective of the origin of the buyer (ie, domestic or foreign), such as energy, financial institutions, healthcare, insurance, oil and gas, and telecommunications (‘Regulated Sectors’).
2.	**Legal regime** Authority(ies) in charge	Describe source(s). Name of authority in charge of applying the FDI rules (Minister/Agency/…).	The FDI Regime in Brazil is composed of different statutes and regulations. The main statutes of the FDI Regime are as follows: • Law No 4,131/62, which regulates FDI, among other matters, registration requirements with the Central Bank of Brazil (the ‘Central Bank’) and certain reporting requirements; and • Law No 4,595/64, which regulates the National Financial System and, among other matters, grants authority to: (i) the National Monetary Council (Conselho Monetário Nacional or CMN) to establish foreign exchange policy; and (2) the Central Bank to regulate foreign exchange transactions. These statutes are regulated primarily by the following rules: • CMN Resolution No 3,844/10 and Central Bank Circular Letter No 3,689/13 (which regulate FDI and its registration requirements, among other matters); and • CMN Resolution No 3,568/08 and Central Bank Circular Letters No 3,690/13 and 3,691/13 (which regulate the foreign exchange market). The prohibitions and restrictions that apply to foreigners in Restricted Sectors are generally set forth by the Brazilian Constitution (1988). The acquisition of rural land by foreigners is regulated by Law No 5,709/71. Regulated Sectors are regulated by specific laws and government agencies, including, most importantly: • energy: Law Nos 8,987/1995, 9,074/1995, 9,427/1996, 10,438/2002, 10,848/2004 and 12,783/2013 regulated by the Electric Energy National Agency (Agencia Nacional de Energia Eletrica or ANEEL); • financial institutions: Law No 4,595/1964, regulated by the CMN and Central Bank;

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			• healthcare: Law No 9,656/1998, regulated by the Health National Agency (Agencia Nacional de Saude Suplementar or ANS); • insurance: Law-Decree No 73/1966, regulated by the Private Insurance Superintendence (Superintendencia de Seguros Privados or SUSEP); • oil and gas: Law No 9,478/1997, regulated by the Petroleum National Agency (Agencia Nacional do Petroleo, Gas Natural e Biocombustiveis or ANP); and • telecommunications: Law No 9,472/1997, regulated by the Telecommunications National Agency (Agencia Nacional de Telecomunicacoes and ANATEL).
3.	**Transactions that may be subject to FDI** • Type • Materiality thresholds • Rights of evocation	Describe the nature of the transactions that may be subject to FDI rules. In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.	The acquisition of equity interests in Brazil and the obtaining of loans by Brazilian companies abroad are subject to the FDI Regime, absent exemptions based on type or materiality thresholds. The main requirement is to register the investment with the Central Bank. In addition, in Regulated Sectors, change of ownership or control of the Brazilian regulated entity may be subject to prior approval of the corresponding government agency.
		Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)? Are shares transfers involving a group company internal restructuring covered? Are greenfield investments covered?	The FDI Regime in Brazil is generally triggered by the direct acquisition of equity interest in Brazilian companies. In Regulated Sectors, the indirect acquisition of assets or shares exceeding certain thresholds or involving a change of control may be subject to the prior approval of the corresponding government agency, and internal restructuring may also be covered, depending on the specific circumstances of the case.
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	As mentioned above, the FDI Regime in Brazil does not contemplate a review of the substance of the investment. In Regulated Sectors, failure to obtain required prior approval before closing a transaction may result in penalties.

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4.	**Sectors falling under the FDI scope**	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply. Are there sector-specific stricter limits on foreign investment that will apply such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	Please see above.
5.	**Qualified investors**	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	As a rule, foreign investors are not offered different treatment based on their origin or characteristics under the FDI Regime or in Restricted or Regulated Sectors (subject to sanctions and financial action task force monitoring, as the case may be from time to time).
6.	**Procedure** 6.1 Before or post-closing filing		Registration with the Central Bank required by the FDI Regime must be complied with as a *mandatory pre-condition* to effect fund transfers to and from Brazil in connection with such investments. Therefore, this procedure is typically carried out before closing. Updates to the original registration are generally subject to a 30-day deadline (ie, compliance may take place ex post). Improper registration (eg, outdated) may subject the company in Brazil to the imposition of a fine by the Central Bank in an amount up to BRL 250,000 (approximately EUR 45,000) per violation. In addition, improper registration may prevent the execution of fund transfers to and from Brazil in connection with investments. In Regulated Sectors, when prior approval by the relevant government agency is required, filing is logically carried out before closing. Certain post-closing notifications to government agencies for information purposes may also apply.

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7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	Typically, mandatory.
8.	6.3 In the case of post-closing, what are the powers of the authority?		Please see above.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	Not applicable.
10.	6.5 Timing of various steps (i) Filing	How much lead time is required?	Registration with the Central Bank required by the FDI Regime is typically completed in up to two business days. In Regulated Sectors, the required lead time varies depending on the sector, government agency and complexity involved; generally, a decision may take from two to eight months.
11.	(ii) Review by Authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or *de jure*.	No review of substance is carried out in connection with the registration of investments with the Central Bank as required by the FDI Regime (ie, registration is declaratory). In Regulated Sectors, the timeframe is generally not mandatory.
12.	(iii) Negotiation with authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	The registration of any foreign investment in Brazil with the Central Bank, as required by the FDI Regime, is declaratory and, therefore, is not subject to commitments or conditions. Please see above. In Regulated Sectors, although it may be possible to hold meetings with the relevant government agency to expose the merits of the proposed transaction, interactions must generally be formalised through formal filings.

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		Are there any guidelines issued by the authority?	Generally, no; government agencies do not issue guidelines for negotiating with the authority.
13.	(iv) Filing fees	Is there a filing fee?	There is no fee for registering foreign investment with the Central Bank. In Regulated Sectors, generally, filing fees do not apply, or are not material.
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	Only general information is required from the investor for its registration with the Central Bank (eg, name, legal nature, country of origin and address). Also, no threshold for identity or nationality of minority passive shareholders, or information on other FDI approvals by other authorities is required. In Regulated Sectors, in addition to general information as exemplified above, additional, more detailed information may be required, including: (1) the amount of equity ownership to be held in the Brazilian company by the foreign investor; (2) rights of the foreign investor in the Brazilian company; (3) information on any other investments held by the foreign investor; (4) organisational structure chart of its economic group; (5) identification of the origin of the funds that will be used in the transaction; and (6) financial statements of the investor (actual information requirements vary from sector to sector).
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	Please see above.
16.	**Conditionality of approval** (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	In Regulated Sectors, generally, the relevant government agency may impose conditions and not approve a proposed transaction until they are satisfied.

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17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	In Regulated Sectors, the government agencies' reviews tend to focus on the potential impact of the transaction on the Brazilian target company.
18.	(iii) Risk of veto	Describe a topical case. Statistics	In Regulated Sectors, generally, if the transaction does not negatively affect the Brazilian target company, it is approved by the relevant government agency. The risk of veto is usually tied to that assessment by the relevant government agency.
19.	**Role of other national authorities**	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	In Regulated Sectors, generally, the decision is made by the relevant government agency.
20.	**Sanctions**	Describe the type of sanctions that may be imposed by the authority in the case of:	
		• breach of conditions and/or commitments attached to the approval; and	Not applicable.
		• investment carried out without prior approval.	In Regulated Sectors, failure to obtain required prior approval before closing a transaction may result in penalties.
21.	**Covid – special regime**	Please describe specific rules applicable as a result of the Covid-19 pandemic.	Not applicable.