



# **BANCO CENTRAL DO BRASIL**

## **Highlights on licensing procedures for foreigners**

(For more detailed information, see [Resolution no. 4122](#), of August 2<sup>nd</sup>, 2012)

### **I – LEGAL ASPECTS**

1. Both the establishment and the operation of institutions that integrate the Brazilian Financial System, as well as many other of their corporate acts, depend on previous approval by the Central Bank of Brazil (Article 10(X)(a) of Law no. 4595/1964, as amended by Law 7730/1989 and Resolution no. 4122/2012).

2. According to Article 192 of Brazilian Federal Constitution, foreign capital participation in domestic financial institutions shall be regulated by supplementary laws, passed by the National Congress and approved by a qualified quorum. Until such conditions are set down, the incorporation, in Brazil, of new permanent establishments of financial institutions domiciled abroad is barred and neither individuals nor legal entities domiciled abroad may increase their participation in the capital of financial institutions operating in Brazil (Transitory Constitutional Provisions Act – TCPA, Article 52).

3. However, according to Article 52(I) and (II) of TCPA, authorizations for foreign capital participation in domestic financial institutions, either resulting from international and reciprocity agreements or in the interest of the Brazilian Government, are excepted from the hindrances previously mentioned. In such cases, the requests of authorization are analyzed by the Central Bank and then submitted to the deliberation of the President of the Republic. If the foreign capital participation is recognized as being in the interest of the Brazilian government, the President shall issue a favorable Presidential Decree.

### **II – CENTRAL BANK’S AUTHORIZATION GUIDELINES**

4. Requests for the establishment of institutions that integrate the Brazilian Financial System in which there is either direct or indirect foreign



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participation shall include the following information (Article 1, heading, of Circular no. 3317/2006):

- a) percentage of intended foreign capital participation;
- b) importance of the venture for the Brazilian economy, including in what regards Brazilian relations with other countries, mentioning the type of expected contributions towards furthering the National Financial System, in the form of products or services to be offered, including its contribution to technologies and encouragement to competition;
- c) description by the legal entity domiciled abroad, as the case may be, of operations intended to be carried out within the country, including those performed by companies belonging to the same economic group;
- d) importance of the venture for the purpose of completing activities of the legal entity domiciled abroad or those of the economic group to which it belongs to, in supporting investments and other operations intended to be carried out in Brazil;
- e) rating of the legal entity domiciled abroad as well as of the economic group it belongs to, granted by a specialized rating agency;
- f) a list, as the case may be, of financial institutions that keep links, either direct or otherwise, of any nature with the legal entity domiciled abroad;
- g) a list of supervising authorities to which the legal entity domiciled abroad and the financial institution to which it has links of any nature, either directly or otherwise, are subordinated, as the case may be;
- h) other information deemed relevant to define the foreign participation sought as furthering the interests of the Brazilian government.

5. Regulation Annex I to Resolution no. 4122/2012, Articles 4 to 9, and its further amendments implemented by Resolution 4279/2013 and Resolution 4308/2014, set down the requirements and procedures concerning the authorization for establishing and operating universal banks, commercial banks, investment banks, development banks, foreign exchange banks, credit, financing and investment companies, real estate credit companies, mortgage companies, development agencies, leasing companies, securities brokerage companies, securities distribution companies and foreign exchange brokerage companies.



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6. A technically qualified person responsible for conducting the project before the Central Bank of Brazil must be appointed, and the group organizing the institution, which shall include representatives of the controlling shareholders and the holders of qualified participation, must be identified.

7. The control group is defined as the person or legal entity, or the group of people or entities bound by a shareholder agreement, holding shareholder rights corresponding to the majority of the voting capital of a corporation or 75% or more of the capital of a limited company.

8. Holders of qualified participation are individuals or legal entities which hold, directly or indirectly, a participation of 15% (fifteen per cent) or more in the institution's corporate capital.

9. Direct controlling shareholding of the institutions mentioned in Regulation Annex I of Resolution no. 4122/2012 can only be exercised by (Article 17 of Regulation Annex I of Resolution 4122/2012):

- a) individuals;
- b) domestic or foreign financial institutions and other institutions authorized to operate by the Central Bank of Brazil;
- c) other legal entities headquartered in Brazil whose sole corporate goal is the participation in financial institutions and other institutions authorized to operate by the Central Bank of Brazil.

10. The path towards getting the authorization to operate is a 6-stage process which can be summarized as follows:

- a) submission of a preliminary set of documents which include: i) drafts statements of purpose; ii) executive summary of the business plan; iii) list of members of the control group and holders of qualified participation; iv) statements concerning the fulfillment of conditions required for holding offices in the institution's bodies; v) identification of individuals and legal entities belonging to the institution's economic group; vi) statements and documents supporting that all or part of the members of the control group have knowledge



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about the business and market segment; vii) identification of the source of funds to finance the project; and vii) authorizations to the Brazilian Internal Revenue Service and the Central Bank of Brazil granting access to information to be used in the proceedings for authorization (Article 4 of Regulation Annex I of Resolution 4122/2012);

- b) technical interview with the members of the institution's control group. Such interview may be waived by Central Bank if the information presented in the preliminary set of documents is enough to identify the proposal of project; if the future owners of controlling interest have demonstrated the necessary knowledge about the business and market segment; or if the request for authorization to operate is formulated by a financial institution or other institution authorized to operate by the Central Bank of Brazil (Article 5 of Regulation Annex I of Resolution 4122/2012);
- c) within 60 days after the approval of the proposal of the project, compliance with the following conditions: i) publication of the statement of purpose; ii) submission of the complete business plan, containing at least a five-year forecast regarding the financial market and operation plans; iii) submission of drafts of the acts of incorporation; iv) demonstration of economic and financial capability compatible with the size, nature and purpose of the project; and v) absence of restrictions that may affect the reputation of owners of controlling interest and holders of qualified participation (Article 6 of Regulation Annex I of Resolution 4122/2012);
- d) within 180 days after the favorable manifestation of the Central Bank of Brazil regarding the compliance with the conditions mentioned above: i) formalization of the corporate acts incorporating the legal entity; ii) implementation of the organizational structure as envisaged in the business plan; and iii) submission of a request of inspection to the Central Bank of Brazil in order to verify the structure implemented. The aforementioned term of 180 days may be extended for up to 90 days, justifiably, at the discretion of the Central Bank of Brazil (Article 7 of Regulation Annex I of Resolution 4122/2012);
- e) inspection conducted by the Central Bank of Brazil, within 90 days from the receipt of the request mentioned above, in order to assess the compatibility between the organizational structure implemented and that envisaged in the business plan (Article 8 of Regulation Annex I of Resolution 4122/2012);
- f) within 90 days after the Central Bank of Brazil confirms the adequacy of the organizational structure: presentation of documentation regarding the



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amendment of the bylaws or articles of association of the legal entity, in order to adjust its capital to the amount envisaged in the business plan; election of the institution's directors, officers and other members of bodies established in bylaws or articles of association and evidence of the source of funds used in the venture (Article 9 of Regulation Annex I of Resolution 4122/2012).

11. Once the Central Bank of Brazil verifies the fulfillment of the conditions mentioned in step "f" above, it will issue the institution's authorization to operate.

12. Finally, it is important to highlight the following:

- a) studies developed by the Central Bank conclude that better supervisory practices tend to be favored if foreign groups operate in the Brazilian Financial System by means of subsidiaries, rather than branches. The reason is that subsidiaries are formally incorporated in the Brazilian Financial System, being subject to the domestic legal and regulatory framework, potentially reducing cross-border regulatory problems, more likely to appear when foreign companies operate in Brazil as branches;
- b) there are no substantial differences between the legal and regulatory framework applicable to financial institutions controlled by Brazilian residents and those controlled by foreigners, whether established as branches or subsidiaries. Therefore, both Brazilian and foreign financial firms must operate in compliance with the same set of rules.

### **III – CAPITAL REQUIREMENTS**

13. Minimum paid-in capital and stockholders equity specified below shall be permanently complied by financial institutions and other institutions authorized to operate by the Central Bank of Brazil (Article 1 of the Regulation annex II to Resolution no. 2099/1994, as amended by Resolutions no. 2607/1999 and 3334/2005; Article 5 of Resolution no. 2828/2001; Article 9 of Resolution no. 3345/2005; Article 5 of Resolution no. 3426/2006, Article 4(I) of Resolution no. 3567/2008):



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- a) commercial bank and universal bank with commercial portfolio: R\$ 17,500,000;
- b) investment bank; development bank; corresponding portfolios of an universal bank and savings bank: R\$ 12,500,000;
- c) credit, financing and investment company; real estate credit company; leasing company; corresponding portfolios of a multiple bank; as well as foreign exchange bank: R\$ 7,000,000;
- d) development agency: R\$ 4,000,000;
- e) mortgage company: R\$ 3,000,000;
- f) securities brokerage company and securities distribution company qualified to conduct repurchase operations and to perform firm guarantee transactions of security subscription for future sale, margin account or swap transactions with the entire assumption of counterparts' rights and obligations: R\$ 1,500,000;
- g) securities brokerage company and securities distribution company conducting activities not mentioned in subparagraph (f) above: R\$ 550,000; and
- h) foreign exchange brokerage company: R\$ 350,000.

15. In the case of universal banks, minimum capital requirements depend on the portfolios held. The minimum capital requirement for such institutions will be the sum of the requirements of each portfolio.

16. For instance, an universal bank with a commercial bank portfolio and a leasing portfolio would have to meet the following minimum capital thresholds:

MINIMUM CAPITAL = CAPITAL REQUIRED BY PORTFOLIO 1 + CAPITAL REQUIRED BY PORTFOLIO 2

MINIMUM CAPITAL = R\$ 17,500,000 (COMMERCIAL BANK PORTFOLIO) + R\$ 7,000,000 (LEASING PORTFOLIO)

MINIMUM CAPITAL = R\$ 24,500,000

17. In Brazil, the institutions may establish up to 10 branches without additional capital requirements. For each additional branch in the States of Rio de Janeiro and São Paulo an additional, an additional 2% shall be added to the required paid-in capital; in other states, the surcharge is one percent (1%).



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18. For universal banks, commercial banks, investment banks or development agencies to operate in the foreign exchange market, there is an additional paid-in capital threshold of R\$ 6.500.000. For further information on the foreign exchange market, please see the "International Capital and Foreign Exchange Market Regulation – RMCCI", available at <http://www.bcb.gov.br/rex/LegCE/Ingl/Ftp/RMCCI-I.pdf>.

19. With the exception of development agencies and micro-entrepreneur small sized enterprise credit companies, the minimum paid-in capital shall be reduced by thirty percent (30%) if the institution is headquartered and has at least ninety percent (90%) of its branches operating outside the States of Rio de Janeiro and São Paulo.