

INTERNATIONAL CAPITAL AND FOREIGN EXCHANGE MARKET REGULATION

TITLE : 3 - Foreign Capital in Brazil

CHAPTER : 3 - Financial Operations

SECTION : 1 - General Provisions

1. The registration of foreign capital dealt with in this chapter shall be made in the Financial Operation Registration – ROF module of the Electronic Declaratory Registration– RDE of Central Bank of Brazil Information System (Sisbacen), comprising the situations mentioned in the specific sections.
 2. The conditions previous to the registration in the ROF module of the RDE are:
 - a) accreditation in Sisbacen according to the instructions on the page of the Central Bank of Brazil on the Internet (www.bcb.gov.br) and
 - b) the provision of information of the individual or juristic persons involved in the operation in the Registry of Physical Persons and Legal Entities - International Capital (Cademp) through the use of PEMP500 and PEMP600 transactions of Sisbacen, as per instructions contained in the "Cademp - Manual do Declarante ", available at www.bcb.gov.br>> Foreign Exchange and Foreign Capital>> Manuals.
 3. The registration of each transaction on the ROF module of the RDE should be provided prior to the inflow of financial resources, the customs clearance or the provision of services in Brazil, by the borrower or his representative, through the following Sisbacen transactions, as per instructions contained in the "RDE-ROF Declarant Manual", available at www.bcb.gov.br >> Câmbio e Capitais Estrangeiros >> Manuais.
 - a) PCEX370, when performed by the borrower or its representative, and such transaction may also be accessed through the Serpro Network, in which case the prior registration is required with the Internal Revenue Service of Brazil;
 - b) PCEX570, when made through the bank network, at the request and on behalf of the borrower;
 4. The number of RDE-ROF, in the situation "finalized" and the updating of the information in the registration are requirements for any flows of resources to abroad.
 5. After the inflow of resources, customs clearance or the rendering of the service, the borrower must make the registration of the payment schedule in the RDE module of the ROF, essential for remittances of principal and interest or to carry out the shipments of merchandise, as appropriate.
 6. The transactions must be registered in the currency and on the conditions contracted and separate records should be provided for transactions involving different currencies or different financial conditions, which should be linked to each other.
 7. Once the inflow of resources, customs clearance or the rendering of the service occur, the changes of maturity date and financial conditions (renewal, refinancing or renegotiation) and borrower (assumption) are the responsibility of the original borrower, who shall update them in the RDE module of the ROF, by means of the mechanism provided for this purpose, writing off in the original registration and making a new record.
 8. It is granted the early settlement of foreign obligations relating to the transactions referred to in this chapter.
 9. The validity of each ROF is sixty (60) days, after which, if there is no entry of merchandise, resources or the contracting of services, it will be automatically cancelled except in the cases specified in this chapter.
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10. The transfer of resources abroad for payment by third parties of amounts related to a registered operation depends on the authorization from the Department of Financial System Surveillance and Information Management - Desig, it being granted to the co-responsible or to a third party determined by a court decision solely on cases where there is:
 - a) composition of debt or bankruptcy of the importer, provided that the co-responsible is either a natural or legal person established in Brazil;
 - b) default by the importer at the bank that issued the letter of credit for the transaction;
 - c) judicial judgment ordering the payment in Brazil to third parties.
11. The registration in the ROF module of the RDE does not exempt the requirement of compliance with other legal requirements for the modality of the contracted operation.
12. The payment of foreign obligations relating to the operation mentioned in this chapter, made directly abroad, must be registered in the ROF module of the RDE through specific writing off event.

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SECTION : 2 - Foreign Credits

1. This section provides for the registration of loans granted to individual or juristic persons resident, domiciled or headquartered in Brazil by individual or juristic persons resident, domiciled or headquartered abroad, based on Regulation Annex II to Resolution No. 3844, of March 23, 2010, in the following modes:
 - a) foreign loans, including through the issuance of securities;
 - b) early reception of export proceeds operations, with maturity of more than 360 days;
 - c) foreign financing, with maturity of more than 360 days;
 - d) foreign financial leasing - leasing, with maturity of more than 360 days.
2. This section also provided for the registration of the import of merchandise, without the obligation of payment to non-resident, for paying up share capital of Brazilian companies.
3. The borrower of foreign resources, the importer and the leasing holder, through their representatives, as appropriate, are responsible for the registration dealt with in this section.
4. To make the registration and obtain the respective RDE-ROF number, the following must be informed:
 - a) all titleholders of the operation (debtor, creditors, agents, guarantors);
 - b) the financial conditions and the maturity of principal, interest and charges;
 - c) the manifestation by the creditor or lessee on the terms of the transaction, and the guarantor, if any;
 - d) other requirements requested when registering the transaction in the ROF module of RDE.
5. Costs and other conditions of operations in this section shall maintain compatibility with those usually observed in international markets and shall be clearly defined in the registration, not being accepted open maturity dates or charges undefined or bound, without limit, to financial results or to any way of measuring business performance of the borrower or third parties.
6. The contracting and renegotiation of credit operations in any foreign currency is free, except for transactions in which the borrowers or guarantors are bodies or agencies of the federal, states, Federal District and municipalities administration, which must first be accredited by Central Bank of Brazil - Department of Financial System Surveillance and Information Management (Desig) according to the specific regulations.
7. The accreditation of foreign credit operations, with no guarantee from the Union, of interest to the states, the Federal District, municipalities, their autarchies, foundations and non-financial firms, including their associated, controlled companies, affiliates and subsidiaries, and autarchies, foundations and non-financial companies of the Union, including its associated, controlled companies, affiliates and subsidiaries must meet the following criteria:

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- a) resources should be directed to the refinancing of their own financial obligations already contracted, with preference for the most expensive and with shorter deadline and, while not used in the settlement of such commitments, shall remain in earmarked account to be opened in the federal financial institution who will care for the releasing to occur only for its purposes;
 - b) the total amount of obligations incurred for the purpose of the preceding sub item shall be the object of provision, through monthly deposits in the earmarked account to be opened in a federal financial institution in order to guarantee the payment of the principal and interest on the foreign loan, divided by the number of months covered by the total time of payment;
 - c) the foreign creditor (underwriter, in the case of issuance of securities) must be an institution that traditionally maintains financial relations with Brazil or who holds risk rating less or greater than "BBB" or its equivalent, granted by international risk evaluators among those of greater projection, and
 - d) contracts for the operation must contain a clause that specifies that they are unsecured obligations of the Union and the creditors declare they are aware that they cannot count on the contribution of federal funds for the redemption of such transactions, if the debtor does not have the required conditions, at the time of their maturity.
8. The requirements listed on sub items "a" through "d" of item 7 of this section shall not apply to the accreditation of operations whose foreign creditors are multilateral organizations in which Brazil participates or official credit agencies.
 9. The requirements listed on sub items "a", "b" and "c" of item 7 of this section shall not apply to financing transactions for imports of merchandise and services.
 10. The contracting of lending operations by foreign banks controlled by states and the Federal District for the purposes set out in the legislation in effect, must also comply with the criteria mentioned in sub item "c" of item 7 of this section.
 11. To be allowed to raise funds abroad, the bank controlled by the state or the Federal District must hold, in at least one international risk evaluator agency, among those with the greatest projection, risk classification corresponding to investment degree, or at least equal to that obtained by the Union, in the same agency.
 12. The registration of the transaction described in item 7 of this section will only be completed after the inclusion in the ROF module of the RDE, of the following events:
 - a) manifestation of the National Treasury Secretariat (STN);
 - b) accreditation by Central Bank of Brazil;
 - c) order of the Minister of Finance for operations in which the Republic is included as debtor or guarantor;
 - e) resolution of the Federal Senate, if any.
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13. The foreign credit received by corporations in Brazil, not yet registered and not otherwise subject to registration with the Central Bank of Brazil must be registered pursuant to the provisions of Chapter 4 of this Title.

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SECTION : 2 - Foreign Credits

SUBSECTION : 1 - Foreign Loan

1. This subsection provides for the registration in the ROF module of the RDE, of operations of foreign loan contracted directly or through the issuing of securities on the international market, regardless of the maturity of operation.
 2. The financial institutions and leasing companies may raise funds abroad, for free investment in the domestic market.
 3. The option mentioned in item 2 of this subsection includes, with respect only to financial institutions, the performance of operations of transfer of funds under item 4 of this subsection, subject to the provisions of item 7 of this subsection.
 4. It is understood as a operation of transfer of funds the contract bound to the raising of funds abroad through which a domestic financial institution extends credit to an individual or corporation resident, domiciled or headquartered in Brazil, by transferring under the same conditions of cost of the debt contracted abroad in foreign currency (principal, interest and incidental costs), including taxes applicable to the hypothesis.
 5. It is forbidden to charge, in the operations of transfer of funds, onus of any kind and in any capacity, in addition to commission fee for the service of financial intermediation.
 6. In the operations mentioned in the item 4 of this subsection, the financial institution must transfer to the borrower of the resources, in Brazil, the effects of resulting from exchange variation corresponding to the debt contracted abroad in foreign currency.
 7. The financial institutions and leasing companies may perform interfinancial transfer of funds on lending operations, included therein the operations of transfer of funds whose borrower in Brazil, is another financial institution or leasing company.
 8. In the case of foreign loan promoted by a public sector entity by issuing securities at the international market, the issuer must obtain authorization from the National Treasury Secretariat under the legislation in force, prior to the commencement of negotiations with financial institutions abroad.
 9. After obtaining the authorization of the STN for issuance of the securities, pursuant to item 8 of this subsection, the issuer must register the transaction in the ROF module of RDE for accreditation by Central Bank of Brazil, pursuant to item 6 of section 2 of this chapter.
 10. The issuer may not, in the situation described in items 8 and 9 of this subsection, grant a mandate to the winning agent of the bidding prior to the accreditation by Central Bank of Brazil.
 11. Fundraising by an individual or juristic person domiciled or headquartered in Brazil; through direct loan contracting or issuing of securities in the international market, designated in reals, must be registered in the same currency in which occurred the actual inflow of funds into Brazil.
 12. Regardless of the currency in which the registration referred to in item 11 of this subsection is made, financial transfers to abroad may, under the terms of the registration, be made in any currency.
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SUBSECTION : 1 - Foreign Loan

13. The transfers envisaged in item 12 of this subsection are limited to the amount corresponding to the value in local currency, required to settle the interest and costs of operation as well as to settle the debt principal.
14. The values on item 12 of this subsection may be paid, alternatively, through a transaction in a current account in Brazil, held by the foreign creditor or agent responsible for paying abroad the obligations of the operation.
15. After the completion of the ROF, even prior to the registration of payment arrangement, it can be made remittances abroad in payment of incidental costs.

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SUBSECTION : 2 - (Revoked) Circular no. 3580/2012

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SUBSECTION : 2.A - Advance receipt of export, with maturity over 360 days (NR)

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1. This subsection provides for the registration in the ROF module of the RDE, of the operations of advance receipt of export of goods or services, with more than 360 (three hundred sixty) days prior and limited to 1,800 (one thousand eight hundred) days prior to the date of shipment of the goods or of rendering of the service.
 2. The registration of the operation under this subsection requires the effective inflow of resources into Brazil.
 3. The operation of advance receipt of export with a maturity of more than 360 (three hundred and sixty) days may be linked to the exportation of borrower of the financing, of its parent company, of its subsidiaries, or of companies controlled by its parent company.
 4. The advances of funds to Brazilian exporters for the purpose foreseen in this subsection may be made by the importer or any corporation abroad including financial institutions.
 5. The inflow mentioned in this subsection may occur through an international transfer in reals, including payment orders coming from abroad in domestic currency or through foreign exchange contracting settled prior to shipment of the goods or of rendering of the service.
 6. The following procedures apply, depending on the form of inflow of funds into Brazil:
 - a) contracting of a foreign exchange transaction: the transaction must be contracted for immediate settlement, using the export exchange contract, group code 52, stating the number of ROF in the appropriate field;
 - b) international transfer in reals, including payment orders in domestic currency: the operation must be performed by indicating the group code 52 on screen record, stating the number of ROF in the appropriate field;
 - c) early settlement and within the statutory deadline of the export exchange contract contracted for future settlement, classified in groups 50 and 51: the operation must be performed by adjusting for group code 52, indicating the number of the ROF in the appropriate field.
 7. The amortization of the operations mentioned in this subsection shall be effected through the shipment of merchandise or the rendering of services, while interest may be paid through financial transfers or exports.
 8. If the shipment of the merchandise or the provision of services mentioned in item 8 of this subsection does not occur, the option will be given of the return to abroad of the resources that entered into Brazil as per this subsection, or of the transfer of the value registered to foreign direct investment or foreign loan.
 9. Upon completion of the ROF, even prior to the registration of the payment schedule, remittances may be made abroad in payment for incidental costs.

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SUBSECTION : 3 - Foreign financing

1. This subsection provides for the registration in the ROF module of the RDE of foreign financing transaction with a maturity of more than three hundred and sixty (360) days, or its refinancing to the importer, of tangible or intangible assets:
 - a) directly by the supplier or other financial institution abroad;
 - b) by banks authorized to operate in the Brazilian exchange market, with funds from the credit lines obtained abroad.
 2. This subsection also provides for the registration, in the ROF module of the RDE, of the financing or refinancing operations, for non-resident, concerning:
 - a) rental, including simple foreign leasing and chartering;
 - b) provision of technology;
 - c) technical assistance services;
 - d) license to use / assignment of the trademark;
 - e) operating license / assignment of the patent;
 - f) franchise;
 - g) other modes, in addition to those listed in items "b" through "f" of this item, which will be endorsed by the National Institute of Industrial Property - INPI;
 - h) complementary technical services and / or expenses related to the transactions listed in sub items "b" to "e" of this item not subject to registration by the INPI.
 3. Each disbursement of the credit line on the outside represents a distinct form of credit, which must be registered in the RDE ROF module by the holder authorized bank, acting as debtor individually by the importer.
 4. The operations mentioned in this subsection shall be recorded in the currency of the domicile or headquarters of the title owner not residing in Brazil, in the currency of origin of merchandise or financing, or in another currency as agreed between the parties.
 5. After the completion of the ROF, even prior to the registration of the payment arrangement, remittances can be made abroad in respect of:
 - a) anticipated value, paid prior to shipment of merchandise;
 - b) cash value, paid at the time of clearance of merchandise;
 - c) interest arising in its grace period;
 - d) incidental costs.
 6. The registration of import of intangible assets that, by the standards of the Internal Revenue Service of Brazil, are not subject to the Import Declaration (DI), depends on the existence of commercial invoice and the term of delivery and acceptance, to be included
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SUBSECTION : 3 - Foreign financing

in the ROF module of the RDE.

7. The registration of financing of import of technology or franchise and related services depends on the registration of operation in the modality mentioned in subsection 1 of section 4 of this chapter, as well as the respective payment schedule.
8. To register the payment arrangement, besides the DI cleared or the receipt of the service rendered or the contract of exchange or international transfer in reals proving the inflow of resources, are required by the system information on:
 - a) date and details of the signed contract or other formal document setting out the financial terms of the transaction;
 - b) details of specific events for each mode of operation.
9. Operations originally contracted with deadlines for payment of less than three hundred and sixty (360) days and that, when being refinanced, reach a deadline for payment of more than three hundred and sixty (360) days, must be registered in the ROF module of the RDE in the form of this subsection prior to the rectification of DI.

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SUBSECTION : 4 - Foreign financial Leasing - *leasing*

1. This subsection provides for the registration in the ROF module of the RDE, of the operations of foreign financial leasing (financial leasing), with maturity of more than three hundred and sixty (360) days, and their renegotiations between an entity domiciled abroad and the lessee of the property in Brazil
 2. The contract of foreign financial leasing may have as its object capital merchandise, movable property and real estate, owned by foreigners, new or used, observing, for its entry into Brazil, the rules governing the import.
 3. In the case of financial Leasing agreement between lessor-buyer domiciled abroad and lessee-seller domiciled in Brazil (sale and leaseback), the value of the contract should be less than ninety per cent (90%) of the cost of the asset object of the leasing, whose acquisition shall occur through cash payment.
 4. It is considered as the useful life of the asset object of foreign financial leasing the one informed:
 - a) by the manufacturer in the case of a new asset;
 - b) by the manufacturer or a foreign or domestic specialized company, in the case of a used asset;
 - c) by a specialized company in the case of real estate.
 5. The rules concerning the registration of operations of financed imports shall apply to registration of the foreign finance Leasing operation, where applicable;
 6. The foreign financial leasing shall comply with the following rules:
 - a) the total period of the operation shall be limited to the economic life of the asset;
 - b) lease payments shall be consistent with those prevailing in the international market;
 - c) the contractual installments, in fixed payments, shall be distributed in time so that at any time during the contract period, the ratio of the total amount already sent abroad and the value of the Leasing does not exceed the ratio between the time already elapsed and total time of operation;
 - d) the contract must contain a clause for option to purchase or renew the term of the contract.
 7. After the completion of the ROF, even prior to the registration of the payment arrangement, remittances can be made abroad of amounts related to the security deposit and incidental costs.
 8. To register the payment arrangement, besides the Import Declaration (DI) cleared or, in case of sale and leaseback, of the contract of exchange or the international transfer in reals proving the inflow of resources, information are required by the system on:
 - a) date and specifications of the signed contract or other formal document setting out the financial terms of the transaction;
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SUBSECTION : 4 - Foreign financial Leasing - *leasing*

- b) data of specific events for each modality of operation.

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SUBSECTION : 5 - Import of merchandise without the obligation of payment to a non-resident,
intended for the integralization of capital

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1. This subsection provides for the registration in the ROF module of the RDE, of the operations of importing assets without the obligation to pay to non-resident, for the integralization of capital of Brazilian companies.
 2. The importation of assets mentioned in this subsection is initially registered in the ROF module of the RDE and then in the IED module of the RDE, as foreign direct investment in the form of chapter 2, section 2, subsection 1 of this title.
 3. The registration in the ROF module of the RDE should be made in the appropriate modality with linking in the Import Declaration (DI) cleared, when appropriate, or by invoice or equivalent document that characterizes the importation of intangible.
 4. An intangible asset, for purposes of the registration mentioned in this subsection, does not include the transfer of technology subject to annotation of the INPI, mentioned in Chapter 3, Section 4, subsection 1 of this title.

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SECTION : 3 - Guarantees provided by international institutions

1. This section provides for the registration of guarantees on credit operations, made in Brazil, between juristic persons domiciled or headquartered in Brazil by international organizations in which Brazil participates, which shall be made in declaratory form and electronically with Central Bank of Brazil, based on Regulation Annex IV to Resolution no. 3844, of March 23, 2010.
 2. The registration of foreign capital in this section shall be made in the Financial Operations Registration - ROF module of the Electronic Statement Registration – RDE of the Central Bank Information System (Sisbacen).
 3. The financial institutions may accept in their credit operations, the guarantees mentioned in this section.
 4. The guarantees shall be registered by the debtor of the domestic credit operation on the occasion of the signature of the contract of guarantee, and shall appear on the registration:
 - a) the parties of the security operation and the guaranteed credit operation;
 - b) the amount in national currency and the financial conditions and the term of the portion of the credit operation in Brazil supported by the guarantee;
 - c) fees and commissions under the guarantee obtained abroad;
 - d) other requirements requested on the screens of the ROF.
 5. The duration of the registration mentioned on item 1 of this section is equal to the maximum time allowed for the accomplishment of the guarantee.
 6. Remittances abroad for the payment of fees and commissions under the guarantee may be made by the debtor or the creditor of the internal credit operation.
 7. The inflow of funds into Brazil, for the accomplishment of the guarantee provided, makes effective the corresponding foreign operation, whose record shall be made in the currency which effectively entered into Brazil.
 8. The debtor of the domestic credit operation shall inform, in the respective ROF, the expiration date that corresponds to the inflow in every inflow of resources into Brazil.
 9. For purposes of this section, the beneficiary of the resources entering Brazil for the compliance with the guarantee is the creditor of the internal operation which, on the date of transfer by the foreign guarantor, is properly identified in the ROF.
 10. Regardless of the currency in which the registration referred to in item 7 of this section is made, the transfer abroad may be made, supported by the registration, of the foreign currency amount corresponding to the amount in national currency, of the credit and legal and conventional additions due to the guarantor.
 11. The provisions and procedures contained in this chapter shall apply to operations included this section, where applicable.
 12. The payment of foreign obligation regarding the operation in this section, made directly abroad, must be registered in ROF module of the RDE, through specific writing off event.
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SECTION : 4 - *Royalties*, Technical Services and the like, Foreign Operating Leasing, Renting and Freightage

1. This section provides for the registration with Central Bank of Brazil, based in Regulation Annex III to Resolution no. 3844, of March 23, 2010, of the following contracts, when made between an individual or juristic person resident, domiciled or headquartered in Brazil and an individual or juristic person resident, domiciled or headquartered abroad:
 - a) use or cession of patents, industry or commerce trademarks, supply of technology or other contracts of the same kind, for purposes of financial transfers abroad as payment of royalties;
 - b) rendering of technical services and the like;
 - c) foreign operational leasing with a maturity of more than three hundred and sixty (360) days;
 - d) rent, including foreign single leasing and freightage, with a maturity of more than of three hundred and sixty (360) days.
2. The registration in this section shall be made, in a declaratory form and electronically in the Financial Operations Registration - ROF module of the Electronic Statement Registration - RDE of Central Bank Information System (Sisbacen).
3. The registration of contracts mentioned in item 1 of this section is the responsibility of the individual or juristic person resident, domiciled or headquartered in Brazil celebrating mentioned contracts.

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SECTION : 4 - *Royalties*, Technical Services and the like, Foreign Operating Leasing, Renting and Freightage

SUBSECTION : 1 - *Royalties*, technical services and the like

1. This subsection provides for registration in the ROF module of the RDE, of the transactions entered into between an individual or juristic person resident, domiciled or headquartered in Brazil, and an individual or juristic person resident, domiciled or headquartered abroad, concerning:
 - a) license of use or cession of trademark;
 - b) license of exploitation or cession of patent;
 - c) provision of technology;
 - d) technical assistance services;
 - e) other modalities which will be endorsed by the National Institute of Industrial Property - INPI;
 - f) complementary technical services and expenses related to the transactions listed in paragraphs "a" to "e" of this item not subject to recording by the INPI.
2. The electronic declaratory registration of the operations listed in sub items "a" to "e" of Item 1 of this subsection is effected after obtaining the Annotation Certificate granted by the INPI.
3. The operations mentioned in this subsection are automatically submitted for review by the INPI, whose approval depends on the registration of the payment scheme, which is a requirement for the effectuation of remittances abroad.
4. To make the registration and acquire the respective RDE-ROF number, the following should be informed:
 - a) all titleholders of the transaction (the transferee, transferor or the like);
 - b) the amount, deadline and terms of payment;
 - c) other requirements requested when registering the transaction in the ROF module of the RDE.

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SECTION : 4 - *Royalties*, Technical Services and the like, Foreign Operating Leasing, Renting and Freightage

SUBSECTION : 2 - Foreign Operating Leasing, Renting and Freightage

1. This subsection provides for the registration in the ROF module of the RDE, of the transactions entered into between an individual or juristic person resident, domiciled or headquartered in Brazil and an individual or juristic person resident, domiciled or headquartered abroad, relating to foreign operating Leasing, equipment rental, including simple foreign Leasing and freightage, with a maturity of more than of three hundred and sixty (360) days, as well as their extensions.
2. The foreign operating Leasing contract may have as its object the capital assets, movable property and real estate, owned by foreigners, new or used, complying for its entry into Brazil, with the rules governing import.
3. The foreign operating Leasing shall comply with the following rules:
 - a) lease payments shall include the cost of leasing of the asset and services pertaining to their disposal of the lessee, and the present value of payments may not exceed ninety percent (90%) of the cost of the asset;
 - b) the contract deadline shall be less than seventy five percent (75%) of the useful life of the asset;
 - c) the price for exercising the option of purchase must correspond to the market value of the leasing asset; and
 - d) the contract may not contain provision for payment of guaranteed residual value.
4. The useful life of the asset object of the foreign operating Leasing that is the one informed:
 - a) by the manufacturer in the case of a new asset;
 - b) by the manufacturer or by a foreign or domestic specialized company, in the case of an used asset;
 - c) by a specialized company in the case of a real estate.
5. To make the registration and acquire the respective RDE-ROF number, the following must be informed:
 - a) all titleholders of the operation (lessee, owner or the like);
 - b) the amount, maturity and terms of payment;
 - c) other requirements requested when registering the transaction in the ROF module of the RDE.
6. After completing the registration, even prior to the registration payment arrangement, remittances can be made abroad of amounts related to the security deposit and incidental costs.
7. Operations originally contracted with deadlines for payment of less than three hundred and sixty (360) days and that, when being renegotiated, reach a deadline for payment of

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more than three hundred and sixty (360) days, must be registered in the ROF in the form of this subsection prior to the rectification of DI.