RESOLUTION BCB Nº 279, OF DECEMBER 31, 2022

Regulates the Law No 14,286, of December 29, 2021, to provide for Brazilian capitals abroad

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The Board of Governors of the Banco Central do Brasil (BCB), in an extraordinary session held on December 30 and 31, 2022, based on art. 8, 10, 11 and 18 of Law No. 14,286, of December 29, 2021,

R E S O L V E S:

CHAPTER I
PRELIMINARY PROVISIONS

Article 1. This Resolution provides on flows, stocks and reporting of information on Brazilian capitals abroad, meaning values, goods, rights and assets of any nature held outside the national territory by residents.

Sole paragraph. For the purposes of this Resolution, financing, loans, commercial rights and credits granted to non-residents in the country are also considered Brazilian capitals abroad.

CHAPTER II
ON FLOWS AND STOCKS OF BRAZILIAN CAPITAL ABROAD

Article 2 The investment of Brazilian capital abroad can be carried out by any means regularly practiced in the international market.

Sole paragraph. Derivative operations abroad can be carried out by any means regularly practiced in the international market in exchanges or over-the-counter markets.

Article 3. Flows and stocks of Brazilian capitals abroad must comply with legal requirements and observe their economic basis.

Sole paragraph. Probatory documentation of flows and stocks of Brazilian capital abroad shall be kept for a period of 10 (ten) years, counted from the conclusion of the operation of

the Brazilian capital abroad, and the Central Bank of Brazil may, during this period, request it from the capital holder, whenever it deems necessary.

Article 4. Entities subject to specific regulations must also comply with the regulatory requirements applicable to their own activities in order to invest Brazilian capital abroad.

Article 5. The investment in corporate participation, when made through an international conference in shares or other assets, cannot characterize reciprocal participation between national and foreign companies.

§ 1. In this article international conference in shares or other assets means:

I – payment of capital in a Brazilian company by non-resident, through the delivery or the swap of corporate participation in a foreign company, headquartered abroad; or

II – payment of capital in a foreign company, headquartered abroad, by a resident, through the delivery or the swap of corporate participation in a Brazilian company.

§ 2. Until October 31, 2023, to carry out investments through international conference in shares or other assets, simultaneous foreign exchange operations will be required relating to foreign investment inflow in the country and Brazilian investment outflow abroad.

Article 6. Financial transfers related to Brazilian capital abroad must be done through an institution authorized to operate in the foreign exchange market, complying with the specific limits and conditions settled in the Law and the regulations.

Sole paragraph. In the case of the negotiation of derivative instruments abroad, the corresponding transfers must be made exclusively through a bank authorized to operate on the foreign exchange market.

CHAPTER III
ON THE REPORTING OF INFORMATION

Article 7. Information on Brazilian capital abroad must be reported to the Central Bank of Brazil on:

I – equity in non-resident companies;

II – Brazilian Depositary Receipts (BDRs) of securities issued by non-resident companies;

III – investment funds shares abroad;

IV – debt securities issued by non-residents;

V – loans and financings granted to non-residents;

VI – deposits with non-resident institutions;

VII – commercial credits granted to non-residents;

VIII – real state located abroad;

IX – virtual assets; and

X – derivatives traded abroad.

§ 1. The following information must also be reported:

I – exports revenues held abroad and their use; and

II – income from Brazilian capital abroad.

§ 2. For information reporting, the wealth abroad which was transferred through any arrangement, revokable or not, to a fiduciary agent abroad to be managed in favor of specific resident beneficiaries, is also considered Brazilian capital abroad.

Article 8. The resident legal person or natural person holding Brazilian capital abroad is responsible for the reporting of information.

Sole paragraph. Pursuant to this Resolution, the person responsible for the reporting of information shall be, as appropriate:

I – the depositary institution of BDRs;

II – the investment fund with resources abroad, through their managers; and

III – the beneficiary resident of the arrangements referred to in article 7, § 2.

Article 9. The reporting of information must be done through yearly and quarterly declarations sent electronically to the Central Bank of Brazil.

Article 10. The yearly declaration must be sent whenever the Brazilian capitals abroad, in the annual reference date, reach or surmount USD1,000,000.00 (one million United States dollars) or its equivalent in other currencies.

Sole paragraph. The reference date of the yearly declaration is December 31.

Article 11. The quarterly declaration must be sent whenever the Brazilian capitals abroad, in the quarterly reference date, reach or surmount USD100,000,000.00 (one hundred million United States dollars) or its equivalent in other currencies.

Sole paragraph. The reference dates of the quarterly declarations are March 31, June 30 and September 30.

Article 12. The limits established in articles 10 and 11:

I – in the case of residents, excepted those mentioned in art. 8, sole paragraph, items I and II, do not comprise:

a) BDRs;

b) shares of investment funds in the country with assets abroad;

II - in the case of a BDR depositary institution, are calculated individually by program authorized by the Securities and Exchange Commission; and

III – in case of investment funds, are calculated by the total amount of assets abroad.

Sole paragraph. If the assets of residents held abroad are kept in a deposit joint account or, by any way, belong jointly to two or more natural or legal persons, each one must consider the whole value of these assets to assess the obligation of declaration, but each one must declare solely the value of its respective proportion, even if the total amount declared individually is below the mandatory floor.

Article 13. The period for submitting the yearly declaration is from February 15 to April 5 of the year following the reference date.

Article 14. The periods for submitting the quarterly declarations are:

I – from April 30 to July 5, regarding the reference date of March 31;

II – from July 31 to September 5, regarding the reference date of June 30;

III – from October 31 to December 5, regarding the reference date of September 30.

Article 15. The person responsible for the reporting of information, according to this Chapter, must keep the probatory documentation supporting the information for the period of 10 (ten) years, counting from the reference date of the declaration, to be presented to the Central Bank of Brazil, when requested.

Article 16. The person responsible for the reporting of information is subject to the penalties imposed by the Law and the specific regulations.

CHAPTER IV
FINAL PROVISIONS

Article 17. The Central Bank of Brazil will publish on its website the Declarant's Manual containing instructions for filling out the declarations of Brazilian capitals abroad.

Article 18. The disclosure of data by the Central Bank of Brazil related to information obtained under this Resolution shall not identify individual situations.

Article 19. The following are revoked:

I – Resolution nº 3,854, of May 27, 2010;

II – Resolution CMN nº 4,841, of July 30, 2020;

III – Circular nº 3,624, of February 6, 2013;

IV – Circular nº 3,830, of March 29, 2017; and

V – articles 1 to 17 of the Circular nº 3,689, of December 16, 2013. (See Resolution BCB nº 164, of November 23, 2012)

Article 20. This Resolution comes into force on the date of its publication.

Otávio Ribeiro Damaso
Deputy Governor for Regulation