



BANCO CENTRAL DO BRASIL

RESOLUTION 4,373, DATED SEPTEMBER 29, 2014

Makes provisions on non-resident investments in financial and capital markets in Brazil and related issues.

The *Banco Central do Brasil*, according to art. 9 of Law No. 4,595 dated December 31, 1964, hereby announces that the *Conselho Monetário Nacional*¹, in its meeting held between 25 and 29 dated September, 2014, based on art. 4, sections V, VIII e XXXI, and art. 57 of said Law, on art. 1 of Law No. 4,728 dated July 14, 1965, on art. 3 of Law No. 6,385 dated December 7, 1976, and on art. 65, paragraph 2 of Law 9,069 dated June 29, 1995, as well as regarding the provisions from Law No. 4,131 dated September 3, 1962, Decree-Law No. 1,986 dated December 28, 1982, Decree-Law 2,285 dated July 23, 1986, art. 52 from Act of Transitory Constitutional Dispositions of the Constitution of the Republic of 1988, art. 32 of Law No. 8,383 dated December 30, 1991, Law No. 10,303 dated October 31, 2001, Law No. 11,312 dated June 27, 2006 and Provisionary Measure No. 2,189-49, dated August 23, 2001,

RESOLVED:

Article 1. Non-resident investments in financial and capital markets in Brazil and its financial transfers to and from abroad, in national or foreign currency, must obey the terms of this Resolution, in addition to foreign exchange rules and other specific legislation.

Paragraph 1. Investments through the Depositary Receipts mechanism must comply with Regulation in Annex II of this Resolution.

Paragraph 2. The investments described in the caput must be made in the same instruments and operational modalities available to investors resident in Brazil.

Paragraph 3. This Resolution does not apply to investments made by non-resident holders of deposit accounts in national currency in the country in savings accounts and time deposits in the same bank where the account is held.

Article 2. It is approved the Regulations annexed to the present Resolution governing:

I - investments in the financial and capital markets of external funds entered into the country, by non-resident investors, including funds from national currency accounts held by individual or legal entities resident, domiciled or headquartered abroad.

II - Foreign investments through Depositary Receipts mechanism.

Article 3. Investments covered by this Resolution are subject to register with the *Banco Central do Brasil*, as provided by Regulations in Annexes I and II.

¹ National Monetary Council



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Article 4. Non-resident investors mentioned in this Resolution must be registered with the *Comissão de Valores Mobiliários*² (CVM).

Article. 5 For the purposes of this Resolution:

I - Non-resident investor means personal or collective, individual or legal entities, funds or other collective investment entities that are resident, domiciled or headquartered abroad.

II – Register with the *Banco Central do Brasil* means the record of required information in *Sistema de Informações do Banco Central*³ (Sisbacen) – *Registro Declaratório Eletrônico*⁴ (RDE).

Article 6. The responsible representative for the register, as provided for by the Regulations in the Annexes, must keep the support documents of all information declared in the RDE for the period of five years after each update, available to the *Banco Central do Brasil*.

Article 7. For the purposes of the register mentioned by this Resolution, the following transactions are subject to simultaneous operations of foreign exchange or international transfers in reals, without effective delivery of funds and regardless of previous consent by the *Banco Central do Brasil*:

I – Converting claims of non-residents into investments in the financial and capital markets dealt with by this Resolution;

II – Transferring of investments through Depositary Receipts mechanism, as provided by Annex 2, to foreign direct investment, as set forth in Resolution 3,844, dated March 23, 2010;

III – Transferring of investments through Depositary Receipts mechanism, as provided by Annex 2, to non-resident investment in the financial and capital markets in the country, as provided by Annex 1;

IV – Transferring of non-resident investment in the financial and capital markets, as provided by Annex 1, to foreign direct investment in the country, as instituted by Resolution 3,844, dated March 23, 2010, and vice versa.

Article 8. The inobservance of the regulation concerning foreign capital register implies the forbiddance of transfers related to the register while irregularities are not remedied, regardless of the enforcement of penalties under the law or regulations in force.

Article 9. The *Banco Central do Brasil* and the *Comissão de Valores Mobiliários*, according to its competences, are authorized to issue supplementary rules and adopt the measures deemed necessary to carry out this Resolution, including the enforcement of penalties.

Article 10. This Resolution takes effect on March 30, 2015.

² Securities and Exchange Commission.

³ Central Bank Information System.

⁴ Eletronic Declaratory Register.



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Article 11. It is hereby revoked, as of March 30, 2015: Resolution No. 1,289, dated March 20, 1987; Resolution No. 1,927, dated May 18, 1992; Resolutions Nos. 2,247 and 2,248, both of February 8, 1996, Resolution No. 2,628, dated August 6, 1999, Resolution No. 2,689, dated January 26, 2000, Resolution No. 2,742, dated June 28, 2000, Resolution No. 2,786, dated October 18, 2000, Resolution No. 3,245, dated November 25, 2004, Resolution No. 3,349, dated February 23, 2006, Resolution No. 3,760, dated July 29, 2009, and Resolution No. 3,845, dated March 23, 2010.

Alexandre Antonio Tombini
President, *Banco Central do Brasil*



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REGULATION ANNEX I TO PRESENT RESOLUTION N° 4,373, DATED SEPTEMBER 29, 2014

NON-RESIDENT INVESTMENT IN FINANCIAL AND CAPITAL MARKETS

Article 1. Investments in the financial and capital markets of foreign funds entered into Brazil, by non-resident investors, including funds from national currency accounts held by individual or legal entities resident, domiciled or headquartered abroad must comply with the present Regulation.

Article 2. Prior to the commencement of its operations, the non-resident investor shall:

- I - Appoint one or more representatives in the country;
- II – Register with the *Comissão de Valores Mobiliários*;
- III – Establish one or more custodians licensed by the *Comissão de Valores Mobiliários*.

Paragraph 1. The representative mentioned in item I must be either a financial institution or institution authorized by the *Banco Central do Brasil*, which is not necessarily the same required by tax legislation.

Paragraph 2. If, in the date this Resolution becomes effective, the aforementioned representative does not comply with the conditions established in the first paragraph, the non-resident investor will have up to 180 (one hundred and eighty) days to regularize its representation.

Paragraph 3. The *Comissão de Valores Mobiliários* will rule on the register mentioned in item II.

Article 3. The constitution of the representative referred to in Item I of art. 2 of this Regulation must provide, explicitly, for the following powers and duties relating to the exercise of the representation function:

I - to accomplish and update the registers referred to in articles 3 and 4 of the present Resolution;

II - to provide to the *Banco Central do Brasil* and to the *Comissão de Valores Mobiliários* the requested information and to maintain, for a five years period, the individualized control, for each investor represented, of the inflows and remittances related to this Regulation as well as proof of complying with contractual obligations and of funds transfers;

III - to communicate, immediately, the *Banco Central do Brasil* and the *Comissão de Valores Mobiliários*, in their respective fields of authority, the annulment of the representation contract as well as the occurrence of any and all known irregularities; and

IV - to receive, on behalf of non-resident investor, summonses, subpoenas and notifications for judicial or administrative proceedings based on financial and capital markets law, related to operations associated to representation contract signed with the non-resident investor.



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Sole Paragraph. In case of inobservance of the obligations dealt with in this article and regardless of the applicable penalties, the representative shall be subject to cessation of the exercise of its functions, in which case the non-resident investor shall appoint a substitute.

Article 4. Financial assets and securities traded, as well as other modalities of financial operations carried out by the non-resident investor as a result of investments dealt with by this Resolution shall, according to their nature:

I - be registered, bookkept, safe kept or maintained in a deposit account in institution or entity with authorization to offer these services by the *Banco Central do Brasil* or by *Comissão de Valores Mobiliários*, according to each field of authority; or

II - be duly registered in clearing houses, settlement service providers or trade repositories licensed by the *Banco Central do Brasil* or the *Comissão de Valores Mobiliários*.

Article 5. Funds entered into the country under this Resolution must not be used in for acquisition or disposal of securities outside stock exchanges or other organized markets, except in situations allowed by the regulation of the *Comissão de Valores Mobiliários*.

Article 6. Whenever requested, the institutions mentioned on items I and II of article 4 of the present Regulation shall provide to the *Banco Central do Brasil* and to the *Comissão de Valores Mobiliários* the individualized records by final investor of operations investments dealt with by this regulation.

Article 7. Any transfer of investments or securities belonging to a non-resident investor not provided by this regulation is forbidden.

Article 7-A In compliance with the regulations in effect, it is permitted to deposit, in custody accounts and on demand deposits abroad, guarantees for operations under this Regulation and carried out within the framework of chambers and service clearing and settlement.

Sole Paragraph. The acceptance of the guarantees mentioned in the caput is subject to authorization by the *Banco Central do Brasil*, in compliance with the regulations in effect, to clearing and settlement systems.

[\(Article 7º-A included by Resolution 4.569, dated 5/26/2017.\)](#)

Article 8. Non-resident investment registered in the *Banco Central do Brasil* related to investment funds must comply with the present Regulation, including *Fundo Mútuo de Investimento em Empresas Emergentes*⁵ (FMIEE) and *Fundo de Investimento Imobiliário*⁶ (FII).

Sole Paragraph. The compliance of non-resident investments in FMIEE and FII shall take place in up to 180 (one hundred and eighty) days from entry into force of the present Resolution.

⁵ Mutual Investment Funds in Emerging Companies

⁶ Real Estate Investment Funds



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REGULATION ANNEX II TO PRESENT RESOLUTION 4,373, DATED SEPTEMBER 29, 2014

NON-RESIDENT INVESTMENT THROUGH DEPOSITARY RECEIPT MECHANISM

Article 1. Non-resident investments in Brazil through the mechanism of Depositary Receipt must comply with the present Regulation.

Article 2. The following definitions apply to the aims of this Regulation:

I – Depositary Receipts: certificates issued abroad by depositary institution that represent the assets listed below, held in specific custody in the country:

- a) securities issued by Brazilian public traded companies;
- b) credit instruments eligible for regulatory capital issued by financial institutions or other public traded companies authorized by the Banco Central do Brasil.

II – custodian institution: the licensed institution by *Comissão de Valores Mobiliários* to provide custody services.

III - depositary institution, depositary bank or the issuing bank: institution that, backed by the assets listed above, issues the respective Depositary Receipts abroad.

IV – sponsor company: the issuer of the assets listed above in Brazil underlying the Depositary Receipts Program that has subscribed a specific contract with the depositary institution;

Article 3. Funds that enter the country and are invested in the aforementioned assets in order to be a part of a Depositary Receipt Program, sponsored or unsponsored, are subject to the present Regulation.

Article 4. Funds that enter the country for the acquisition of the aforementioned assets, either on the primary or on the secondary market, are eligible to the register of the Depositary Receipt program as long as they are traded in organized markets.

Article 5. The Depositary Receipts Programs must be approved by the *Comissão de Valores Mobiliários*.



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Sole Paragraph. The *Comissão de Valores Mobiliários* shall rule the approval process mentioned in the **caput**.

Article 6. Financial institutions headquartered in Brazil must request permission to the *Banco Central do Brasil* in order to be part of Depositary Receipts Programs, prior to approval from *Comissão de Valores Mobiliários*.

Sole Paragraph. The issue of Depositary Receipts of financial institutions headquartered in the country backed by common stocks or debt instruments eligible for regulatory capital convertible to common stocks are limited to the foreign share percentage allowed in legislation in force.

Article 7. The register mentioned in Article 3 of this Resolution shall be accomplished by the custodian institution in the name of the depositary institution.

Sole Paragraph. The register of the foreign funds referred to in Article 3 of this Regulation shall be accomplished as defined by the *Banco Central do Brasil*, binding to the issuer company, to the amount and to the security or debt instrument eligible for regulatory capital underlying the Depositary Receipts Program.

Article 8. The custodian institution can accept deposit in custody of the Program of the assets listed in sub items “a” and “b” of item I, article 2, of this Regulation which are outstanding and owned by investors resident, domiciled or headquartered in Brazil, for the purpose of backing the issuance of Depositary Receipts abroad.

Article 9. The issuing companies, as well as individual or legal entities, resident, domiciled or headquartered in the country, that have deposited securities in custody for backing the issuance of Depositary Receipts may keep the funds of its disposal abroad.

Paragraph 1. If there is no entrance in the country of the obtained amount from the disposal mentioned in the **caput**, the custodian institution must update the investment register with the *Banco Central do Brasil*.

Paragraph 2. The option mentioned in the **caput** does not apply to Depositary Receipt Programs sponsored by financial institutions or other institutions licensed by the *Banco Central do Brasil*.

Article 10. The custodian institution is responsible before the *Banco Central do Brasil* for the processing and controlling of the disposals mentioned in article 9 of this Regulation.