

## New Rules on Foreign Investment in Brazilian Markets

On September 29<sup>th</sup> of this year the Brazilian National Monetary Council (“CMN”) issued Resolution No. 4.373 relative to the Brazilian financial and capital markets foreign investment regime, which was previously regulated by Resolution No. 2.689, dated January 26, 2000, and by Resolution No. 1.289, Attachment V, dated May 18, 1992 (concerning Depositary Receipts – “DRs”). The new resolution, however, makes few substantive changes.

Resolution No. 4.373 states that any investment made by a foreign investor in the Brazilian financial and/or capital markets – including investments made through deposit accounts in local currency held by non-Brazilian residents (formerly known as “CC5 accounts”) – will be subject to the regime established by the Resolution, which requires Central Bank of Brazil (“BCB”) and Brazilian Securities Commission (“CVM”) filings and the hiring of local (Brazilian) service providers. Resolution No. 2.689 does not contain express rules governing transactions made through accounts in local currency.

Resolution No. 4.373, Attachment I addresses the investment of funds “entering” Brazil, which language infers that local source investments received in foreign investor Brazilian accounts (e.g., from the sale or rental of real property in Brazil) are not subject to the “New 2.689” rules. The regulation does, however, consider a debit to an account held by a non-Brazilian resident (for example, to purchase securities in the stock exchange) as equivalent to the entry of funds into the country. It can be determined, therefore, that amounts in *reais* in accounts held by non-Brazilian residents are subject to Resolution No. 4.373 whenever invested in financial or capital markets, regardless of their origin. Exception is made to investments in savings deposits or time deposits at the same bank in which the account is held, as per an express provision of the resolution.

Two important situations addressed in Resolution No. 2.689 are relegated by Resolution No. 4.373 to future CVM and BCB regulation: cases in which securities of foreign investors may be traded outside of organized markets, and in which assets may be transferred abroad to other investors.

As respects DRs, Resolution No. 4.373 establishes that they may now be backed by any publicly-traded Brazilian corporation security, as well as by debt instruments issued by publicly-held financial or similar institutions and eligible as part of their regulatory capital. Currently, DRs can be backed only with shares or other securities representing interest on shares.

The amounts resulting from the sale of DRs can be held abroad, and there will not be any obligation to bring such amounts into Brazil except when the DRs are sponsored by financial institutions or other BCB-authorized institutions.

Resolution No. 4.373 will take effect on March 30, 2015, when Resolutions Nos. 2.689 and 1.289 and other related regulation shall be revoked.

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