

Representation of financial institutions in Brazil: a window for new players

Expanding into international markets is a common strategy for big companies in search of new and potentially lucrative opportunities. Banks are no different. For them, however, regulatory barriers make the undertaking more difficult. Representation offices may be the best alternative for foreign financial institutions looking to Brazil.

Regulated by Resolution No. 2,592, dated February 25, 1999, and by Circular No. 2,943, dated October 20 of that same year, the representation in Brazil of financial institutions headquartered abroad requires prior authorization from the Central Bank of Brazil (CB) and can be exercised by any individual or corporation domiciled in Brazil.

The representatives are allowed solely to make commercial contacts and to transmit information of interest to the represented financial institution. Financial institution transaction such as the lending of money is prohibited and might characterize undue operation, subjecting the representative and the represented institution to administrative and criminal penalty, including imprisonment and fine, under Article 16 of Law No. 7,492, dated June 16, 1986.

The permission to make commercial contacts includes the possibility of presenting products offered by the represented financial institution, provided that there is no involvement of the representative in the transaction (e.g., as attorney-in-fact of the foreign financial institution for the purpose of executing documents) and as long as the presentation does not configure securities public offer in Brazil or other regulated activity such as portfolio management or securities consulting. The violation of the applicable norms to public offers or regulated activities might also subject representative and the represented institution to administrative and criminal penalty.

The representation may be exercised by a local financial institution, even if it controls or is controlled by the foreign financial institution. This may, however, be unadvisable considering the potential for overlap of financial and representational activities – muddying their clear distinction required for regulatory reasons. In this case, one option would be to segregate – physically and legally – the employees of the local institution acting as representatives.

A certain degree of discretion is conferred to the CB regarding the concession or denial of authorization to act as representatives and currently there are 60 representatives of foreign financial institutions in Brazil, with new authorizations having been granted in recent years. The list includes representatives of foreign banks controlled by Brazilian banks and of foreign banks with subsidiaries in Brazil.

Informal representation, i.e., that exercised by a local entity – such as a Brazilian corporation related to a foreign financial institution – without CB authorization could configure doing business in Brazil and, if so, would have consequence in the administrative, fiscal and criminal spheres. Formalizing the exercise of the representation and obtaining CB authorization is, therefore, crucial.

Although the powers of representation powers are limited in scope, the cost to representation is low in comparison with those of a financial institution, and there is little regulation of representation. For these reasons, representation offices may be an attractive alternative for financial institutions headquartered abroad interested in entering the Brazilian market.

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