

## VGL NEWS

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### **MODIFICATIONS TO FOREIGN EXCHANGE REGULATIONS AND BRAZILIAN INVESTMENTS ABROAD**

After decades of expectation and several debates within the foreign exchange and foreign capital department of the Central Bank of Brazil (*Banco Central do Brasil* – “BACEN”), the new Brazilian foreign exchange regulations were promulgated by the National Monetary Council (*Conselho Monetário Nacional* – “CMN”) by means of Resolutions (*Resoluções*) no. 3,265, dated March 4<sup>th</sup>, 2005, and no. 3,266, dated March 4<sup>th</sup>, 2005.

Said regulations were subsequently regulated by Circular (*Circular*) no. 3,280, dated March 9<sup>th</sup>, 2005, which set forth the International Capitals and Foreign Exchange Market Regulation (*Regulamento do Mercado de Câmbio e Capitais Internacionais* – “RMCCI”). The introduction of these modifications represents a fundamental step in the process of Brazilian capitals’ participation in a global investment context, due to the modernization of the rules that finally allow, without great bureaucracy, the remittance of proceeds abroad by individuals and legal entities located in Brazil.

Such rules have led to the elimination of the subjectivity and infinity of criteria formerly applied by the agents who were responsible for carrying out foreign exchange operations and international transfers of reais, who had an unfounded concern of being penalized by monetary authorities and by members of *Ministério Público* (Public Attorney/Prosecutor Office).

In addition to the unification of the commercial and the floating rate markets, and of the probable elimination of the utility of the so-called parallel market, bound to serve hereinafter exclusively for the purposes of unlawful or criminal activities, the new exchange regulation meets the desire of Brazilian society, in the sense that it widens the permission for the execution of Brazilian investments abroad, both in relation to individuals and legal entities, without any limitation in value, including, but not limited to the following events:

- (i) the set-up of funds abroad (*disponibilidades no exterior*), meaning financial proceeds to be deposited in the financial market abroad, in time (long-term) deposits or cash deposits and subsequently freely used by the remitter in the purposes permitted by Brazilian authorities;
- (ii) direct investment in the equity of non-resident legal entities (except for the stock exchange market, which will be subject to future regulations);
- (iii) granting of loans to non-residents;
- (iv) installation and maintenance of offices abroad;
- (v) investments in real estate and other assets or rights; and
- (vi) investment in the capitals and derivatives market (in this case, only after the enactment of specific rules that will be set forth regarding this matter).

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In this sense, there has been a substitution of the previous requirement for the performance of these operations by means of the international transfer of reais mechanism for the remittance of proceeds abroad or through a prior authorization of BACEN, regarding Brazilian investments abroad carried out by non-financial legal entities for amounts that exceeded US\$ 5 million per year.

We feel it is important to clarify that, unlike what the Brazilian press has been publishing, the mechanism for the international transfer of reais has not been discontinued. In reality, BACEN has granted permission for non-resident bank accounts to be free managed/handled and, mainly, granted any and all non-resident individual or legal entity permission to convert foreign currency (and therefore remit abroad) the balance existing in such accounts (whereas in the past such option was only guaranteed to financial institutions abroad that were correspondents of Brazilian banks).

As a corollary of the authorization for the conversion of the balance of non-resident bank accounts into foreign currency for all non-resident individuals and legal entities; and also the free access to the Exchange Market to individuals and legal entities resident in Brazil, provided there is documentary support, there was no sense in keeping a rule that forced the involvement of foreign correspondent banks for the transference of proceeds abroad in the events not expressly indicated in our former exchange regulation. As a matter of fact, for this reason and with the objective of hindering its undue use, the use of such non-resident accounts of foreign correspondent banks in favor of third parties has been expressly prohibited by the new regulation.

Therefore, a new foreign exchange regulation has come into effect and this new regulation greatly facilitates the life of Brazilians interested in investing their proceeds abroad without fear of repression by monetary or tax authorities. In this sense, legal entities may benefit from such mechanism since they will not have to observe any limitations in value (as was the case in the past) and individuals may equally be benefited since they will have access to the Exchange Market in order to remit their funds abroad, through an exchange transaction, and invest such funds in accordance with their own judgment.

In sum, the new foreign exchange regulations will enable a greater control and supervision by BACEN, since foreign exchange operations will be widely documented and registered by financial institutions authorized to operate in the Exchange Market, at the same time that they will be extremely welcome, since they will greatly facilitate the life of Brazilians that are interested in legally investing abroad.

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