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## CMN Resolution nº 4033/11

On December 01, 2011, the Brazilian Monetary Council (*Conselho Monetário Nacional* – “**CMN**”) published Resolution No. 4033, of November 30, 2011 (“**CMN Resolution No. 4033/11**”), which revokes CMN Resolution No. 3,443 of February 28, 2007 (“**CMN Resolution No. 3443/07**”) and allows banks authorized to operate in the foreign exchange market, with a minimum net worth of R\$ 5 billion, to use funds raised in foreign (“**FX**”) markets to extend credit abroad, among other provisions.

Below is a brief summary of the provisions regarding such matters, given by CMN Resolution No. 4033/11.

### **Article 1 of CMN Resolution No. 4033/11 – amendment on the limitations for Brazilian banks regarding to foreign investments – change on government securities**

Previous CMN Resolution No. 3443/07 established, in its article 1, the modalities of foreign investments that Brazilian banks authorized to operate in the FX market in Brazil were allowed to perform<sup>1</sup>. CMN Resolution No. 4033/11 maintained such provisions, but changed the wording in item II of its article 1: from “*securities issued by foreign governments*” (expression in item II of article 1 of previous CMN Resolution No. 3443/07) to “**sovereign debt securities issued by foreign governments**” (item II of its article 1 of current CMN Resolution No. 4033/11).

### **Article 2 of CMN Resolution No. 4033/11 – inclusion of new rule allowing for Brazilian banks to use funds raised in foreign markets to extend credit abroad**

CMN Resolution No. 4033/11 also allows Brazilian banks with a minimum net worth of R\$ 5 billion and authorized to operate in the FX market to use funds raised in foreign markets to extend credit abroad. Such credit may only be granted to Brazilian companies, their Brazilian subsidiaries and/or foreign companies whose shareholder holding the largest share of the voting capital is, directly or indirectly, an individual or legal entity domiciled in Brazil. CMN Resolution No. 4033/11 also allows

such banks to acquire securities issued by or under the responsibility of any such companies in the primary market.

### **Article 3 of CMN Resolution No. 4033/11 – clarifications on the adequate management of assets, liquidity and risks**

Furthermore, similarly to what had already been set forth by paragraph 2 of article 1 of the previous CMN Resolution No. 3443/07, article 3 of CMN Resolution No. 4033/11 provides that banks shall adequately manage the assets, the liquidity and risks associated with the abovementioned transactions, and shall also accomplish their commitments and meet their customers' interests.

### **Article 4 of CMN Resolution No. 4033/11 – envisage of future regulation of CMN Resolution No. 4033/11 by the Central Bank of Brazil (“BACEN”)**

Also according to CMN Resolution No. 4033/11, article 4, the BACEN shall regulate the rules set forth by Resolution No. 4033/11 and provide for, among other provisions: **(i)** limits, supply of information and credit history of those entities involved in the abovementioned transactions; **(ii)** registry of information in the registration system, and financial settlement of assets; and **(iii)** performance of simultaneous FX transactions for the registration of foreign capital from the transactions mentioned in article 2 of CMN Resolution No. 4033/11.

### **Effectiveness and Repeal of CMN Resolution No. 3,443/07**

CMN Resolution 4033/11 entered into force on the date of its publication (i.e., 12.01.2011), and expressly revokes CMN Resolution No. 3,443/07. Therefore, the specific regulation that allows such transactions now cesses to be previous CMN Resolution No. 3443/07, as CMN Resolution No. 4033/11 comes into force to regulate the matter.

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<sup>i</sup> Such modalities were: **(i)** securities issued by the Brazilian government; **(ii)** securities issued by foreign governments; **(iii)** securities issued by or which represent liability of financial institutions; and **(iv)** time deposits in financial institutions. .