

NEWSLETTER No. 88

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NEW LEGAL FRAMEWORK FOR FOREIGN EXCHANGE

On December 30, 2021, Law 14,286/2021 was published, covering the Brazilian foreign exchange market, capital held abroad by Brazilians, foreign capital in Brazil and the reporting of information to the Brazilian Central Bank (BCB).

The enactment of Law 14,286/2021 resulted from the need to modernize, simplify and consolidate legislation regarding the Brazilian foreign exchange market. Besides introducing new rules applicable to that market, the new Law revoked or altered various provisions of existing legislation on the theme.

To strengthen the activities of the BCB as the authority responsible for regulating transactions in the foreign exchange market, Law 14,286/2021 attributes new powers to the Bank, including attributions previously delegated to the National Monetary Council, such as:

- (i) regulation and monitoring of the flows and stocks of capital held abroad by Brazilians and foreign capital in the country;
- (ii) authorization, under the terms of regulations to be issued by the BCB, for holding executive positions, either defined contractually or in the bylaws, of financial institutions authorized to operate in the foreign exchange market;
- (iii) maintenance of deposit, compensation, settlement and custody accounts, in reais or foreign capital, held by international bodies, foreign central banks or institutions domiciled or with headquarters abroad, that render services for compensation, settlement and custody in the international market, with observance of the limits, time frames, forms and conditions to be established in regulations to be issued;
- (iv) request for Brazilian residents to provide information necessary to compile official macroeconomic statistics; and
- (v) requirement to exhibit documents and provide information about Brazilian capital held abroad and foreign capital in the country, or about the institutions authorized to operate in the foreign exchange market.

Law 14,286/2021 also establishes a new maximum limit for inflow and outflow of national or foreign currency without the intermediation of institutions authorized to operate in the foreign exchange market. The previous limit of BRL 10,000.00 is now USD 10,000.00 or the equivalent in other currencies.

According to Art. 19 of Law 14,286/2021, any financial transactions involving up to USD 500.00 (or its equivalent) carried out occasionally and non-professionally between individuals are not subject to any legal restriction.

Law 14,286/2021 also establishes that banks authorized to operate in the foreign exchange market can carry out payment orders in reais received from abroad or sent abroad, through use of accounts in reais held by foreign institutions, in the form of regulations to be issued by the BCB. For that purpose, the domestic bank must obtain sufficient information about the foreign institution in order to fully understand the nature of its activity, reputation and quality of financial supervision, as well as evaluate its internal controls in matters of combatting money laundering and financing of terrorism.

Article 12 of the new Law expressly institutionalizes the authorization to engage in private compensation of credits between residents and non-residents, again according to regulations to be issued by the BCB.

Another innovation involves the remittance abroad of amounts classified as profits, dividends, interest, royalties and for other purposes. These remittances can be carried out without the need for registration with the BCB, only depending on payment of any applicable income tax, as the case may be.

Furthermore, Article 13 of Law 14,286/2021 consolidates the situations when it is allowed to stipulate payment in foreign currency of obligations enforceable in Brazil, as follows:

- (i) in contracts and instruments referring to foreign trade of goods and services, or the financing or guarantee thereof;
- (ii) in obligations where the creditor or debtor is a non-resident, including from credit and commercial leasing transactions, except in contracts for lease of properties located in Brazil;
- (iii) in commercial leasing contracts formalized between residents based on resources obtained from abroad;
- (iv) in the assignment, transfer, delegation, assumption or modification of obligations mentioned in the preceding items, including when the parties are residents;
- (v) in the purchase and sale of foreign currencies;
- (vi) in indirect exportation as defined in Law 9,529/1997;

- (vii) in contracts signed by exporters in which the counterparty is holder of concession, permission or authorization or is a lessee in the infrastructure sectors;
- (viii) in situations established in regulations issued by the National Monetary Council, when the stipulation in foreign currency can mitigate the exchange rate risk or improve the efficiency of the transaction; and
- (ix) in other situations specified in legislation.

Finally, Law 14.286/2021 limits the amount that institutions operating in the foreign exchange market must deposit with the BCB in case of cancellation of contracts to purchase foreign currency, to the amount advanced contractually. The way to calculate the charges owed to the BCB and the situations where this payment is waived will be defined by the National Monetary Council.

Law 14,286/2021 will take effect on December 30, 2022 (one year after its publication).

More information, as well as the full text of Law 14,286/2021, can be obtained at the site of the Presidency of the Republic (www.planalto.gov.br).

CVM SUBSTANTIALLY ALTERS THE INFORMATION REGIME OF ISSUERS OF SECURITIES AND INTRODUCES THE “COMPLY OR EXPLAIN” APPROACH REGARDING ADOPTION OF ESG PRACTICES

On December 22, 2021, the Brazilian Securities Commission (CVM) issued Resolution 59/2021, altering: (i) CVM Instruction 480/2009 (“[CVMI 480](#)”), covering the activities of issuers of securities admitted for trading in regulated securities markets; and (ii) CVM Instruction 481/2009 (“[CVMI 481](#)”), containing rules on information, proxy requests, remote participation and voting in shareholders meetings (“[Resolution](#)”).

The reform promoted by the Resolution aims to reduce the cost of observance of formal rules of issuers and improving access to information by investors, by eliminating redundancies in the regime for providing information and simplifying requirements.

Besides this, the Resolution introduced obligations to provide information related to ESG practices (Environmental, Social and Corporate Governance).

Among the main alterations are the following:

- (i) reduction of the period during which information stated in the reference form must be maintained by issuers already registered, including when information is provided in the context of a public offering of securities;
- (ii) limitation of the requirement for comments of executives involving items related to the income statement and cash flow statement in the reference form, maintaining the need for such comments only in cases of significant alterations;
- (iii) reformulation of the presentation of risk factors in the reference form;
- (iv) adoption of the model dubbed “comply or explain” regarding information related to ESG practices, in which issuers have freedom to report their corporate governance policies or to explain the failure to implement a practice; and
- (v) requirement for additional clarifications about (v.1) diversity of the managers and employees and (v.2) detailed information broken down to the hierarchical level in the case of employees.

The Resolution will take effect on January 2, 2023.

More information, as well as the full text of the Resolution, can be found at the CVM’s website (www.gov.br/cvm).

CVM ADHERES TO THE ENHANCED MULTILATERAL MEMORANDUM OF UNDERSTANDING OF IOSCO

On December 16, 2021, Brazilian Securities Commission (CVM) reported it had concluded the process for adhesion to the Enhanced Multilateral Memorandum of Understanding (“EMMOU”) of the International Organization of Securities Commissions (“IOSCO”).

The EMMOU consists of an expanded version of the Multilateral Memorandum of Understanding of 2002 (“MMOU”), of which the CVM was already an adherent. The MMOU was established as a global benchmark for international cooperation regarding compliance with and enforcement of laws and regulations regarding issuance of securities. The document contains various obligations for cooperation among the adherent securities market authorities.

According to the preamble of the EMMOU, because society and technology have evolved since the formalization of the MMOU of 2002, the cooperation among securities market authorities must also

evolve. Thus, the objective of the EMMOU is to increase the efficiency of investigations and compliance with the laws and regulations about securities.

In summary, the adherence to the EMMOU facilitates and modernizes the exchange of information among securities market authorities of the participating countries, which can share information on investigations and other matters in a more agile and secure manner, with a greater number of regulators.

To adhere to the EMMOU, the CVM underwent a process of evaluation in which it had to demonstrate the ability to comply with the document's provisions. The CVM qualified as a signatory in category A1, meaning full adherence to the EMMOU, for satisfying all the requirements for adherence in that position.

According to the CVM, "the adherence means recognition that the Brazilian regulatory framework meets the standards of developed markets in relation to sharing of information with foreign authorities."

Besides the CVM, the securities market authorities of the United States, United Kingdom, Switzerland, Bahamas and Hong Kong, among others, have adhered to the EMMOU.

More information about the EMMOU can be found at the website of IOSCO (www.iosco.org).

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