

RESOLUTION N° 4,373, of September 29th, 2014

Provides for non-resident investors' investments in the Brazilian financial and capital markets and gives other provisions.

The Central Bank of Brazil, in the form of the Article 9 of Law n° 4.595, of December 31st, 1964, makes public that the National Monetary Council, in extraordinary session held from the September 25th to September 29th, 2014, based on Articles 4 (V, VIII, XXXI) and 57 of the referred Law, on Article 1 of Law n° 4.728, of July 14th, 1965, on Article 3 of Law n° 6.385, of December 7th, 1976, and on Article 65, § 2, of Law n° 9.069, of July 29th, 1995, and in view of provisions in Law n° 4.131, of September 3rd, 1986, in Decree-law n° 1.986, in December 28th, 1982, of Decree-law n° 2.285, of July 23rd, 1986, in Article 52 of the Transitory Constitutional Dispositions Act of the 1988 Republic Constitution, in Article 32 of Law n° 8.383, of December 30th, 1991, in Law n° 10.303, of October 31st, 2001, in Law n° 11.312, of July 27th, 2006, and in Provisional Measure n° 2.189-49, of August 23rd, 2001,

DETERMINED:

Article 1.- The investments made by non-residents in Brazilian financial and capital markets, as well as the respective financial transfers to and from abroad, in domestic or foreign currency, must follow the dispositions of this Resolution, in addition to foreign exchange regulation and specific legislation.

§ 1 - The investments made through the **Depository Receipts** mechanism must observe the Rules established in the Annexed II of this Resolution.

§ 2 - The investments mentioned in the **caput** must be carried out in the same instruments and operational modalities available to Brazilian resident investors.

§ 3 - Dispositions of this Resolution do not apply to investments made by non-residents investors, holders of cash accounts in domestic currency, in savings accounts or in long-term deposit accounts held in the same bank whereas the cash account is held.

Article 2. – Hereafter are approved the Rules annexed to this Resolution, which discipline:

I – the investments made in the Brazilian financial and capital markets by non-residents with external resources flowed into the country, including when those resources are originated from accounts in domestic currency held by residents, domiciled or with headquarters abroad; and

II – foreign capital investments in the country through the **Depository Receipts** mechanism.

Article 3. – The investments made in accordance with this Resolution are subjected to registration within the Central Bank of Brazil, in the form of Annexed Regulations I and II.

Article 4 – The non-resident investors designated in Annexed Regulation I are subjected to registration with the Securities Commission of Brazil (CVM).

Article 5 – For the purpose of this Resolution, it is understood as:

I – non-resident investors: individual or collective, the legal or natural persons, the investment funds or other collective investment entities, with residence, headquarters or domicile abroad;

II – registration with the Central Bank of Brazil”: the input of relevant information the Central Bank Information System (Sisbacen) – Electronic Declaratory Registry (RDE).

Article 6 – Those responsible for the registration, indicated in the Regulations annexed to this Resolution, must make available to the Central Bank of Brazil the supporting documentation of all information declared in the RDE, for the period of 5 (five) years starting from the date of each information up-dating.

Article 7 – For the purposes of the registration object of this Resolution, the following situation are subjected to simultaneous foreign exchange transactions or international transfers in Brazilian Reais, without the actual delivery of the resources and independently from previous authorization by the Central Bank of Brazil:

I – the conversion of non-Brazilian residents’ assets into investments in the financial and capital markets object of this Resolution;

II – the transfer of non-residents’ investments through the **Depository Receipts** mechanism, in the terms of Annex II of this Resolution, to the modality of foreign direct investment in the country, object of Resolution n° 3.844, of March 23rd, 2010;

III – the transfer of non-residents’ investments through the **Depository Receipts** mechanism, in the terms of Annex II of this Resolution, to non-residents’ investments in the Brazilian financial and capital markets, in the terms of Annex I of this Resolution;

IV- the transfer of non-residents’ investments in the Brazilian financial and capital markets, in the terms of Annexed Regulation I of this Resolution, to the modality of foreign direct investment in the country, object of Resolution n° 3.844, of March 23rd, 2010, and vice-versa.

Article 8 – The infringement of this Regulation’s dispositions referring to the registration of foreign capital in the country implicate in the prohibition of financial transfers supporting the aforementioned registration, for as long as irregularities are not rectified, without compromising the application of penalties set forth in the current legislation or regulation.

Article 9 – The Central Bank of Brazil and the Securities Commission, within their respective areas of competence, are hereafter authorized to issue complementary rules and to undertake any measures considered necessary in order to execute this Resolution’s dispositions, including the application of penalties.

Article 10 This Resolution comes into effect on March 30th, 2015.

Article 11 - Resolutions n° 1.289, of March 20th, 1987, n° 1.927, of May 18th, 1992, n° 2.247 and n° 2.248, both from February 8th, 1996, n° 2.628, of August 6th, 1999, n° 2.689, of January 26th, 2000, n° 2.742, of July 28th, 2000, n° 2.786, of October 18th, 2000, n° 3.245, of November 25th, 2004, n° 3.349, of February 23rd, 2006, n° 3.760, of July 29th, 2009, and n° 3.845, of March 23rd, 2010 are revoked, beginning on March 30th, 2015.

Alexandre Antonio Tombini
President of the Central Bank of Brasil

This text do not substitute the one published in the Union Official Gazette on October 10, 2014, Section 1, pages. 20/21, and in Sisbacen.

***ANNEXED REGULATION I TO THE RESOLUTION N° 4.373, OF SEPTEMBER 29TH,
2014***

NON-RESIDENTS' INVESTMENTS IN THE FINANCIAL AND CAPITAL MARKETS

Article 1 – the investments made in the Brazilian financial and capital markets by non-residents with external resources flowed into the country, including when those resources are originated from accounts in domestic currency held by residents, domiciled or with headquarters abroad; should comply with this Regulation

Article 2 – Before initiating their operations in Brazil, the non-resident investor must:

I – designate one or more representatives in the country;

II – register with the Securities Commission; and

III – constitute one or more custodians authorized by the Securities Commission.

§ 1 – The representative aforementioned in item I must be a financial institution or another institution authorized to function by the Central Bank of Brazil, not necessarily the same as required by tax legislation.

§ 2 – If, on the date this Resolution comes into effect, the representative aforementioned in item I does not comply to what is disposed in § 1, the non-resident investor will have 180 (one hundred and eighty) days to ensure its representation has been regularized.

§ 3. – The Securities Commission will take regulate the non-resident investor's registration provisioned in item II of this article.

Article 3 – The instrument designating the representative mentioned in item I of Article 2 of this Regulation must have provisions establishing the following powers and obligations related to the duty of representation:

I – execute and keep updated all registrations aforementioned in Articles 3 and 4 of this Resolution;

II – provide all required information to the Central Bank of Brazil and to the Securities Commission and maintain, for 5 (five) years, individualized control by represented non-resident investor, of all capital inflow and outflow executed in compliance with this Regulation as well as the supporting documentation for the fulfilment of contractual obligations and of funds' transfers;

III – immediately communicate to the Central Bank of Brazil and to the Securities Commission, in accordance with their respective areas of competence, the termination of the

representation contract, as well as the occurrence of any irregularities that has become aware of; and

IV – receive, in name of the non-resident investor, any citations, subpoenas and notifications related to court or administrative proceedings established based on financial and capital market legislation, connected to the operations described in the representation contract signed with the non-resident investor.

Sole paragraph. – In case of non-compliance with any of the obligations described in this article, the representative may be subjected to the impediment of his representation functions, without affecting eventual applicable penalties, having the non-resident investor the obligation to indicate a new representative.

Article 4 – The financial assets and securities traded, as well as all other modalities of financial transactions carried out by a non-resident investor within the scope of this Regulation, must, according to their nature:

I – be registered, recorded, kept under custody or maintained in deposit accounts of an institution or entity authorized to provide such services by the Central Bank of Brazil or the Securities Commission, within their respective areas of competence; or

II – be dully registered in clearinghouses, settlement or registration system providers, properly authorized by the Central Bank of Brazil or the Securities Commission.

Article 5 – It is prohibited to use any resources which entered the country in accordance to the dispositions of this Regulation in transactions aiming the acquisition or sale of securities outside of the organized market, except in the situations described in the Securities Commission’s regulation

Article 6 – The institutions aforementioned in items I and II of Article 4 of this Regulation must, whenever instructed to do so, provide to the Central Bank of Brazil and to the Securities Commission, in individualized form by final investor, all registrations related to the investments this Regulation provides for.

Article 7 – Hereafter are prohibited all transfers of investments or securities belonging to non-resident investor in transactions not covered in the Central Bank of Brazil’s or the Securities Commission’s regulations.

Article 8 – The foreign investment registered with the Central Bank of Brazil resulting from applications in investment funds must be governed by the dispositions of this Regulation, including Investment Mutual Funds in Emerging Companies (FMIEE) and Real Estate Investment Funds (FII).

Sole paragraph. The regularization of non-resident investor applications in FMIEE and FII must occur in at most 180 (one hundred and eighty) days after this Resolution comes into effect.

**ANNEXED REGULATION II TO RESOLUTION N° 4.373, OF SEPTEMBER 29TH,
2014
NON-RESIDENT INVESTORS INVESTMENTS THROUGH DEPOSITARY
RECEIPTS MECHANISM**

Article 1. – The investments made by non-resident investors through the **Depository Receipts** mechanism are subject to the dispositions of this Regulation.

Article 2 For the purpose of this Regulation, it is understood as:

I – **Depository Receipts:** the certificates issued abroad by a depository institution, representative to the assets listed below, deposited in specific custody in the country:

a) Securities issued by Brazilian publicly owned companies;

b) Credit securities eligible to constitute Reference Equity (PR) issued by financial institutions and other publicly owned institutions authorized to function by the Central Bank of Brazil;

II – Custodian: an institution in Brazil authorized by the Securities Commission to provide custody services;

III – Depository institution, depository bank or issuing bank: a foreign institution which, based on the assets listed in indents “a” and “b” of item I, issues the corresponding **Depository Receipts**;

IV – Sponsor company: the company in Brazil issuing the assets listed in indents “a” and “b” of item I, subject of the **Depository Receipts** program and signatory of a specific contract with a depository institution.

Article 3 – The resources entering the country for acquisition of the securities listed in indents “a” and “b” of item I of Article 2 of this Regulation with the purpose of participating in **Depository Receipts** programs, sponsored or non-sponsored, are subjected to this Regulation’s dispositions.

Article 4 – Resources entering the country for the acquisition, both in the primary and secondary markets, of securities listed in indents “a” and “b” of item I of Article 2 of this Regulation, qualify for registration in **Depository Receipts** programs, as long as they are traded in organized markets.

Article 5 – The Securities Commission has the competence and the power to approve the **Depository Receipts** programs.

Sole paragraph. The Securities Commission will set the rules regarding the approval process for **Depository Receipts** programs referred in the **caput**.

Article 6 – The financial institutions with headquarters in Brazil must apply to the Central Bank of Brazil for authorization to participate in **Depository Receipts** programs, previously to the approval conferred by the Securities Commission.

Sole paragraph. The issuance **Depository Receipts** that have as underlying assets shares with voting rights or debt instruments eligible to constitute the PR (convertible into shares with voting rights), issued by distributed by financial institutions headquartered in Brazil, is limited to the maximum foreign participation percentage in the terms of the current legislation.

Article 7 – The registration aforementioned in Article 3 of this Resolution must be made by the custodian institution, in name of the depository institution.

Sole paragraph. The registration of the resources entering the country as per Article 3 of this Regulation must be performed in the way to be yet defined by the Central Bank of Brazil, remaining tied up to the issuing company, to the quantity and to the security or debt instrument eligible to constitute the PR object of the **Depository Receipts** program.

Article 8 – The assets listed in indents “a” and “b” of item I of Article 2 of this Regulation, in circulation and belonging to investors that are resident, domiciled or have headquarters in the country, can be accepted by the custodian institution for deposit in the Program’s custody with the finality of underlying the issuance, abroad, of **Depository Receipts**.

Article 9 – The issuing companies, as well as the natural or legal person, resident, domiciled or headquartered in the country, that have deposited securities in the Program’s custody in order to underline the issuance of **Depository Receipts**, may maintain abroad the product of their sale.

§ 1 - Should the value obtained from the sale referred in the **caput** do not enter the country, the custodian institution must update the investment registration with the Central Bank of Brazil.

§ 2 –. The possibility granted by the **caput** does not apply to **Depository Receipts** programs sponsored by financial institutions and other institutions authorized by the Central Bank of Brazil.

Article 10 – The custodian institution is responsible towards the Central Bank of Brazil for the processing and the control of the sales aforementioned in Article 9 of this Regulation.