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### Lex Mundi Global Foreign Investment Restrictions Guide

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Please provide a short summary of the Foreign Investment Restrictions adopted by your jurisdiction.

Historically, foreign investment has been welcomed in Brazil and it constitutes an important source of capital for the development of strategic sectors of the country's economy. As a general rule, foreign investment is not subject to government approvals or authorizations, and there are no requirements regarding minimum investment or local participation in the capital (except in very limited cases such as in financial institutions, insurance companies, and other entities subject to the regulating authority of the Central Bank of Brazil - "BACEN").

Foreign participation is, however, limited or forbidden in few areas of activities. According to Brazil's Federal Constitution, the use of foreign capital is prohibited in the following activities:

Development of activities involving nuclear energy. The Brazilian federal government has a monopoly over research, exploitation, processing, industrialization and sale of radioactive minerals and their byproducts, with only a few exceptions regarding radioisotopes in certain circumstances. This restriction applies to both domestic and foreign private investments;

Development of activities involving oil and natural gas. The Brazilian federal government has a monopoly over research and exploration of natural deposits of oil and natural gas, as well as over their refining and transportation. The importation and exportation of oil and natural gas byproducts are also a monopoly of the Brazilian federal government. These restrictions apply to both domestic and foreign private investment. However, the federal government may engage public or private companies in performing the aforementioned activities, provided that they abide by the conditions set out in law; and

Health services. Brazil's Constitution prohibits the direct and/or indirect participation of foreign companies or foreign capital within the national healthcare system, except under specific circumstances provided for in applicable law, such as Federal Law No. 13,097/2015, which authorizes foreign capital to invest in certain fields of healthcare, for instance: (a) donations from international organizations linked to the United Nations of technical cooperation entities and of financing and loans; (b) legal entities intended to install, operate or exploit general hospitals (including

philanthropic, specialized hospital, polyclinic, general clinic and specialized clinic) and family planning activities; and (c) health services maintained by non-profit organizations.

Foreign investments are permitted with certain restrictions in the following sectors:

Ownership and management of newspapers, magazines and other periodicals, radio and television networks. At least 70% of the total and voting capital of companies acting in the newspapers, magazines, and other periodicals sectors must be held directly or indirectly by native Brazilians or those naturalized for more than 10 years in Brazil, with foreign investment therefore limited to a maximum of 30% thereof[4];

Financial institutions. Foreign investments in the capital stock of financial institutions domiciled in Brazil require the prior authorization of the federal government derived from international treaties, reciprocity treaties or governmental interest;

Mineral resources. The research and extraction of mineral resources, as well as the use of the potential of hydraulic energy, may only be carried out upon authorization or concession by the federal government to Brazilians or companies incorporated under Brazilian law and headquartered in Brazil.

It is important to highlight that there is also a restriction for foreign capital related to activities conducted in border areas. In such cases, the foreign-invested company must not only request authorization from the National Defense Council (Conselho de Defesa Nacional - "CDN") to carry out the aforementioned activity, but must also meet certain requirements, such as at least 51% of its capital stock must be held by Brazilians, 2/3 of its employees must be Brazilian nationals, and the majority of its management must also be comprised of Brazilian nationals. Note, however, that a parent company can be a foreign entity if the subsidiary is incorporated in Brazil and the mining concession is not located within a border area.

Rural properties. Federal Law No. 5,709/1971 restricts foreign individuals and foreign companies authorized to operate in Brazil from owning rural properties in Brazil. In this context, any Brazilian legal entity controlled by foreign individuals or entities needs prior authorization from the National Institute of Colonization and Agrarian Reform (Instituto Nacional de Colonização e Reforma Agrária - "INCRA") or by the National Congress to acquire a rural property and/or enter into rural lease agreements, in Brazil. It is worth noting that only rural direct and indirect real estate acquisitions (i.e., real estate property title and acquisition of equity capital of a company that owns or leases rural real estate properties, respectively) are subject to the legal restrictions mentioned above. Urban real estate properties may be freely acquired and leased by foreigners and legal entities controlled by foreigners.

Further, when a rural property is located in a border area or in an area considered imperative to national security, the authorization for acquisition or lease will also depend on the prior consent of the CDN. Therefore, in these cases, CDN's and INCRA's prior authorization is required.

Strategic Defense. Companies that develop strategic defense products must obtain the status of "Strategic Defence Company" (Empresa Estratégica de Defesa - EED). Furthermore, the supply of strategic defense products to the Brazilian Armed Forces is limited to companies holding an EED status, with management and headquarters in Brazil and whose direct or indirect foreign equity is limited to 40%. In order to obtain and uphold such status, direct and indirect corporate control and any equity over 2/3 of the voting shares of such companies must be held by Brazilian entities and/or individuals. Therefore, any direct and indirect acquisition of equity by foreign entities can only occur within such limits.

Worth noting that significant legislative amendments regarding the possession and importation of weapons in Brazil were recently approved by the President of Brazil. Furthermore, Decree No. 10,030/2019 revoked the former Decree No. 3,665/2000, which prohibited imports of controlled products, where there were similar products produced in

Brazil. With the end of the monopoly, foreign companies are now able to participate in biddings for the supply of weapons and ammunition to public security departments.

Maritime transportation. The total foreign equity of companies with cabotage transport activities is limited to 49%, and the majority of its management must be comprised of Brazilian nationals.

Additionally, except for long distance navigation, navigation in Brazil is restricted to Brazilian Shipping Companies ("EBN") i.e. shipping companies incorporated under Brazilian laws and duly authorized to operate by the National Agency for Ports and Navigation ("ANTAQ").

On a side note, with respect to the aviation sector, in June 2019 the President of Brazil approved a bill permitting (a) foreign carriers to operate domestically in Brazil and (b) 100% foreign ownership of airlines. Prior to this, at least 80% of the voting capital of companies offering public air services had to be held by Brazilian residents, with foreign investment therefore limited to a maximum of 20% of such voting capital.

Is your regime focused on economic protectionism, national security, or a combination?

Brazil does not focus its foreign investment regime on economic protectionism, national security nor a combination of both, but is rather centered on a liberal approach that, except for certain few industries (please see Question 1 above), allows foreign investors to allocate its resources in most of the existing sectors of the economy.

In this context, it is worth noting that Brazil has a number of agencies involved in promoting investment, most of which are governmental. Furthermore, Brazil offers a wide variety of incentives to investors, such as (i) tax exemption and deduction applicable to sectors deemed strategic by the Brazilian government, (ii) tax incentives applicable in "tax-free areas" and export processing zones, (iii) funding from public banks, particularly the Brazilian Development Bank, (iv) lower taxation on investment by non-residents in capital markets, (v) no taxation on the distribution of dividends, (vi) low-interest-rate levels (vii) incentives for the development of infrastructure projects in several sectors through public bidding processes and public-private partnerships (PPPs), and (viii) incentive policies for fostering investments in infrastructure, such as the Investments Partnership Program ("PPI").

Who is considered a "foreign investor" and are only investments from particular countries covered?

Brazil uses the term "foreign capital investment" as a reference point. The definition of "foreign capital" stands for goods, machinery and equipment brought into Brazil for use in the production of goods or services, as well as financial resources brought into the country to be invested in economic activities. Such assets are considered "foreign" capital when held by individuals or corporate entities resident or with their registered offices abroad.

Worth noting that direct investments may be made through the remittance of foreign currency as a capital contribution to a Brazilian company or for the purchase of existing equity interests, or through the contribution of assets to a company. It is also important to note that the Brazilian legal system does not differentiate foreigners based on their nationalities, therefore there are no specific and/or additional restrictions nor requirements for any particular country from where the investment originates.

What sectors are subject to Foreign Investment Restrictions screening?

Although there is no foreign investment screening in Brazil, there are specific approval processes that must be followed in relation to foreign investment in certain sectors. In this sense, any acquisitions of (i) financial institutions, (ii) rural land (including rural land lease) and (iii) rural land located on border areas (including possession and in rem rights constitution) and (iv) companies with mining activities in border areas will require the approval of the competent Brazilian governmental authorities (see the response to "Is the relevant authority's approval required prior to closing?" below).

Also worth mentioning that the Boards of Commerce are not permitted to file requests of company formation documents (or corporate document that transfers equity interest to a foreigner) if the partner(s)/shareholder(s) of the Brazilian company is(are) foreign legal entity(ies) and/or foreign individual(s), on the basis that the intended business venture is restricted for foreign investments.

What are the relevant thresholds?

Except for anti-trust filings, there are no threshold triggers for direct foreign investment filings in Brazil.

In summary, filing of a transaction or agreement with the Administrative Council of Economic Defense (“CADE”) is mandatory if, among other requirements, at least one of the groups involved in the transaction or agreement has registered gross revenues in Brazil (including export sales) in excess of BRL 750 million (approximately USD 150 million) in the year prior to the transaction, and at least one of the other groups involved registered gross revenues (including export sales) in Brazil in excess of BRL 75 million (approximately USD 15 million) in the year prior to the transaction.

Is notification under Foreign Investment Restriction rules mandatory?

As a general rule, there are no foreign investment notification requirements in Brazil. However, any acquisitions of (i) financial institutions, (ii) rural land (including rural land lease) and (iii) rural land located on border areas (including possession and in rem rights constitution) and (iv) companies with mining activities in border areas will require the approval of the competent Brazilian governmental authorities (see the response to "Is the relevant authority's approval required prior to closing?" below).

Is the relevant authority's approval required prior to closing?

Whilst there is no “general” foreign investment mechanism in Brazil, there are specific approval processes that must be followed in relation to foreign investment in certain sectors. As a result, as further described below, any acquisitions of (i) financial institutions, (ii) rural land (including rural land lease) and (iii) rural land located on border areas (including possession and in rem rights constitution) and (iv) companies with mining activities in border areas will require the approval of the competent Brazilian governmental authorities:

#### Financial institutions

Participation of foreign capital in financial institutions is only authorized if considered to be in the interest of the Brazilian government. Until September 2019, the recognition of the government’s interest was formalized by means of the issuance of a presidential decree. However, upon the enactment of Decree No. 10,029/2019, the competence for the recognition of the government’s interest in respect of foreign investment into Brazilian financial institutions has been attributed to the Central Bank of Brazil. Therefore, foreign investment in financial institutions is subject to the Central Bank of Brazil’s approval.

A foreign investment must be registered with the Central Bank of Brazil if: (a) it is in a productive activity that may, in whole or in part, be conducted by a foreign investor, and (b) the investment qualifies as a “foreign capital investment” under the Brazilian foreign investment regulations. This registration before the Central Bank of Brazil is essential for future payment of dividends to the foreign shareholders, repatriation of capital (in the event of capital investment), and/or payment of interest and principal (in the event of loans).

#### Rural land

Acquisition by a foreign legal entity or individual of rural lands not located on border areas is subject to authorization from the INCRA. A request for an exploitation project describing the intended use of such property must thus be

submitted to INCRA prior to the acquisition. An acquisition that is completed in breach of this obligation shall be deemed null and void.

#### Rural land located in border areas

For rural lands located on border areas authorization of the CDN is required for the acquisition of any in rem rights or any possession rights, by a foreign legal entity, a legal entity controlled by foreigners or foreign individual. A prior request for an exploitation project describing the intended use of such property must be initially submitted to INCRA. Issuance of CDN's and INCRA's prior authorization is a legal requirement to proceed with such transaction.

#### Mining activities in border areas

Authorization of the CDN is required for acquisitions by a foreign legal entity, a legal entity controlled by foreigners or foreign individuals involving companies with mining activities in border areas.

In addition, all foreigners who own real property, vehicles, vessels and aircraft in Brazil and/or hold bank accounts, investments or equity in Brazilian companies must be registered with the Federal Revenue Department of Brazil. Foreign partners of Brazilian companies must be enrolled either with the Federal Taxpayer's Registration number (Cadastro Nacional da Pessoa Jurídica - "CNPJ"), in the case of a foreign legal entity, or with the Individual Taxpayers' Registration number (Cadastro de Pessoas Físicas - "CPF"), in the case of a foreign individual.

#### What was the impact of COVID-19 on your foreign investment regime?

Brazil's response to the COVID-19 crisis has resulted in large-scale fiscal, macro-financial and foreign-exchange market changes as well as stimulus packages at federal, state and municipal levels of the country. Temporary measures aimed at mitigating the effects on business continuity have also been implemented, with certain legislation being amended to increase the legal security of business, as well as to stimulate and grow business activities after the state of emergency has been lifted.

For 2021 and the following years innumerable infrastructure investment opportunities are expected in municipal, state and federal levels, supported by the advancement of projects involving privatization, public concession, PPPs and other forms of partnership with the private sector. At the municipal and state levels, each government can set out its pipeline and the conditions for partnerships, subject to the general frameworks and guidance established by federal legislation. At the federal level, worth noting the current policy for fostering investments in infrastructure, the Investments Partnership Program ("PPI"). PPI is applicable for key ventures with the private sector carried out by the federal government or state-owned companies (or delegated by the government to local authorities), as well as those included in the National Privatization Program.

#### How active has your agency been in reviewing, delaying, modifying or blocking foreign investments?

Brazilian regulatory authorities responsible for each of the prohibited and restricted sectors mentioned in the summary above typically do not take a proactive approach towards reviewing, delaying, modifying or blocking foreign investments, and when called upon to issue a decision such decision will be on an "approval" or "rejection" basis. In this context and for illustration purposes, below are some examples of the actions that can be taken by certain Brazilian regulatory authorities:

in relation to financial institutions, where required, a transaction cannot proceed to closing without clearance from the Central Bank of Brazil as such clearance is mandatory. In addition, the involved parties can be prosecuted/punished unless authorization is received from the Central Bank for such a purpose;

in relation to rural land property acquisition and rural lease (whether located on border / frontier areas or not) closing cannot occur before clearance is obtained, because the Notary Officer will request the proper clearance



certificate. In some cases, the acquisition occurs by means of a corporate transaction with no repercussion on real estate enrollment certificate. In these cases, in the context of the annual data update of the rural land properties by the relevant governmental agencies, corporate transactions and potential infringements are identified and the applicable penalties can be applied. Nota that, from 2019 onwards, INCRA changed the procedures with respect to the annual rural real estate data update and started to request corporate documentation related to the rural real estate title holders and rural tenants. On such annual update, INCRA is able to verify potential indirect title transfer of rural real estate properties and execution of rural leases;

in relation to the mining sector, the National Mining Agency (“ANM”) is in charge of inspecting mining activities, and may conduct inspections, notify, fine violators, adopt precautionary measures such as interdiction and shutdown, impose appropriate sanctions, execute a conduct adjustment agreement, establish and collect credits arising therefrom; and

the Boards of Commerce are not permitted to file requests of company formation documents (or corporate document that transfers equity interest to a foreigner) if the partner(s)/shareholder(s) of the Brazilian company is(are) foreign legal entity(ies) and/or foreign individual(s), on the basis that the intended business venture is restricted for foreign investments.

On what grounds can enforcers review and block a foreign investment? How active have they been in the past 6 months?

Restrictions to foreign investment are typically based on principles of national sovereignty and security, as well as public and national interest, which are all intrinsic to provisions set forth in the Federal Constitution. For instance, restrictions on foreign investment in (i) health services arise from the principle of public interest, therefore the presence of foreign capital is only allowed when it is necessary for the development of actions and health services in the country (e.g., to guarantee a unified health system to all Brazilian citizens), and (ii) activities of oil and gas industry arise from the principle of preservation of the national interests (e.g., national policies are applied for the rational use of energy sources aiming their preservation).

With respect to the Brazilian regulators’ activities in the past 6 months, there is no official information on how often such authorities review and/or block foreign investments.

Do you expect any regulatory developments over the next 6 months?

In relation to rural land, an ongoing claim concerning the constitutionality of Brazilian companies with foreign capital being treated in the same form as foreign companies for purposes of rural property acquisition is under analysis by the Federal Supreme Court. Such a judicial claim is currently awaiting judgment. If a favorable judgment is granted, Brazilian companies with foreign capital will be able to acquire rural land without the restrictions imposed by current laws that regulate the matter, thus simplifying and favoring foreign capital investment in Brazil. In addition, Bill 2,963/2019 is under discussion in the National Congress, which if sanctioned into law would authorize the acquisition of property and possession of rural properties by foreigners, subject to certain limitations, subject to certain limitations.

Regarding maritime transport in Brazil, the National Congress is currently working on Bill 4,199/2020, as part of the project named “BR do Mar”, which intends to increase the possibilities of using foreign vessels in navigation through Brazilian territory. Among several changes, one of the rules proposed by the Bill includes the possibility of bareboat chartering of foreign vessels for cabotage navigation in Brazil, regardless of the existence of a vessel construction contract in Brazil or the ownership of a Brazilian vessel. Such a proposed rule would be carried out on a gradual basis, where the number of foreign vessels allowed would progressively increase during a certain period of time.

