

CROSS-BORDER INVESTMENT AGENDA

Solutions to attract foreign capital and
facilitate investments in foreign markets





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PRESENTATION

The last few years have been marked by a period of structural changes in the economy, which have helped reveal the huge potential of the capital market in the corporate financing matrix. Even though the pandemic has momentarily shut down the issuance of marketable securities and diminished investors' appetites, we closed out 2020 with record results, typical of a mature segment.

The current level of interest rates, and that fact that they have been kept at historical lows, are factors that contribute to this status. The low basic rate (Selic) stimulates the pursuit of investment alternatives and portfolio diversification. In this scenario, decisions regarding allocation become even more relevant and strategic, as investors look after assets with higher returns and seek to mitigate the risks of their portfolios.

Cross-border investment is an indispensable opportunity for diversification, and will bring significant gains to the economy. While this has a relevant role in Brazilian financing, it is essential to offer product alternatives to investors. The topic has been a long-standing focus of ANBIMA and has taken on even more relevance in 2020, vis-à-vis the current macroeconomic scenario.

Over the past few decades, despite the fact that the Brazilian economy is still closed compared to countries with development levels similar to ours, we have experienced a process of trade opening that has allowed for the internationalization of consumption patterns. This movement has been positive because it has increased competition, bringing higher quality and more product options to consumers. Now, the challenge is to do the same with the Brazilians' savings.

Just as the opening of trade has brought advantages, the entry of foreign investments and the larger portion of local investments abroad will provide opportunities for Brazilians to make more appropriate allocations, given the low-interest scenario that the nation is experiencing.

The benefits of cross-border investment extend to the entire industry. For investors, it means a wider range of possibilities that suit their needs regarding terms, risks, and returns.

For companies, it is another source of long-term funds. And, for fund managers, it allows for greater diversification in the make-up of portfolios, currently concentrated primarily in government bonds.

This material, conducted based on a study requested to PwC consulting firm, maps out the best practices in developed and emerging markets – this last which compete with Brazil in attracting global capital. Based on this information, we propose changes, in the light of the best practices found around the world. The aim is to increase legal certainty, reduce costs generated by the multiple need for registering and providing information, promote tax equality, and provide greater flexibility to the rules for accessing the global market by local investors, and the domestic market by foreigner.

The maturity of the Brazilian industry and its players — achieved in recent years — has allowed for the advances proposed throughout this report. And all of this is done with due regard for information transparency, market stability, and investor protection.

The timing of the debate on the cross-border investment industry could not be better. It takes place simultaneously with the discussions, in the Brazilian Congress, of Bill 5387 — a legislative framework that will modernize Brazil's securities exchange laws and allow us to move toward convertibility of the real (BRL, or R\$). All this represents an opportunity for growth in the financial system, greater commercial inclusion of Brazilian companies abroad, and expansion of the capital market.

This material is intended to encourage debate on this topic, offering technical inputs and examples of successful experiences. Our intention is for this to be part of a 'living agenda', and to be the start of a discussion that can cover several possible paths with a single objective: the development of the country.

Good reading!

Carlos Ambrósio
President of ANBIMA





02 / CONTEXT

Capital markets around the world have been experiencing a process of integration in recent years, with a strengthening of the business environment and increased participation of investors with global reach. This fact, along with the significant lowering of interest rates, has helped cross-border investment become even more relevant in Brazil. Discussions about flexibilization, modernization and simplification of processes, laws and rules applicable to cross-border investments¹ have become essential for this trend to continue advancing.

This is one of the most opportune moments to give local investors freedom of choice plus the ability to diversify their portfolios through investments abroad, either through the direct purchase of assets or through investments via funds. We are also experiencing a favorable moment to attract more foreign investors to local financial and capital markets.

Regulators and self-regulators face the challenge of reconciling the development of the local market with greater openness to investments abroad, breaking down barriers that restrict the international flow of capital.

Some requirements currently in force make it impossible for Brazilian investors domiciled abroad — mainly individuals with lower-value portfolios — to maintain investments in Brazil.

Many of these obligations carry legacies from the past that deserves reflection. An example of this is the duplicity of information sent to regulatory agencies by different service providers.

Regulators have made decisions showing that there is consensus regarding the need for legal improvements to make the rules more flexible, to encourage cross-border investments. One example is Bill 5387, which paves the way for the necessary changes in Brazilian foreign exchange rules and, as already stated by the authorities, would simplify the system and respective cross-border investment, possibly attaining currency convertibility.

Conversely, the stronger presence of foreign investors in Brazil creates conditions conducive to the emergence of a new strategies and new product profiles, thereby increasing the volume

1. Flows of foreign investments to Brazil and flows of Brazilian investments abroad

of transactions and mitigating system and liquidity risks, according to a study by the Bank for International Settlements (BIS)². For this to happen, it is necessary to have legal certainty as well as a business environment that favors the attraction of foreign investments.

Countries that are more flexible regarding the entry of foreign investors have a greater share of the volume of this capital invested in local stock exchanges, in proportion to their GDP.

The table — with data from 2019 — shows the

percentages in two developed countries (US and UK) and one developing country (Mexico), Brazil's potential competitor in attracting global capital.

Brazil is behind Mexico, including with regard to the total volume invested in the stock exchange, even though Brazil has a higher GDP. In a simple calculation exercise, if it reached the market average of the sample (28%) and applied this increase of representativeness (28% – 7% = 21%) to the volume of B3 (Brazil's main stock exchange), there would be an injection of US\$ 61 billion in the local market.

Countries that are more flexible to the entry of foreign capital have greater volume invested in stock exchanges

Country	2019 GDP	Volume of the main local stock exchanges	Volume of foreign investor*	Representativeness of the main local stock exchanges/ GDP	Volume/ GDP
USA	21,433	33,100	5.296	154%	25%
United Kingdom	2,825	2,430	1.334	86%	47%
Mexico	1,222	414	143	34%	12%
Brazil	1,816	295	133	16%	7%
Amounts in USD billion			Average (excluding Brazil)	91%	28%

2019 data
Sources: IBGE, Country Economy, Investopedia, B3, Global Economy, ONS and Mexicanist.

(*) Volume of foreign investment on the main stock exchanges

2. Study "How should we design deep and liquid markets? The case of government securities". Basel.1999. Available at: www.bis.org/publ/cgfs13.htm

These investments would not be applied only to shares traded on the stock exchange. The Brazilian capital market also has investment funds and corporate debt securities, among other products that would benefit from a more attractive environment.

The more foreign capital a given economy receives, the greater the effect on improving not only macroeconomic and market liquidity

indices, but also the creation of jobs, income, and development.

There is a pressing need for a broad review of the rules, seeking flexibility to increase access of the investor to international markets. Throughout this agenda, we will present solutions for a new legislative and regulatory framework to stimulate cross-border investment.



03 EASING BRAZILIAN INVESTORS' ACCESS TO FOREIGN MARKET

This agenda listed actions necessary to facilitate the Brazilian investors' access to international markets and actions that seek to allow a wide-ranging diversification of portfolios.

Reduction of foreign exchange bureaucracy – identification of the purpose of remittances abroad



Solution

Creation of a generic code for remittances to be invested in the financial and capital markets abroad by individuals, possibly setting a ceiling

To remit funds for investment abroad, it is necessary to declare the nature of the remittance, which is a specific code for each category of investment – it is only made after defining its nature³. It is worth noting that remittances are sent in individual operations for each nature chosen. This makes the process bureaucratic and costly, due to the fees charged for international transfers.

Any error in the code registration may have

tax impact (there are different rates for each investment category) and a fiscal impact, if funds are sent for one purpose and invested in another category.

Our proposal is to have a single code for any remittance made by an individual to invest in the financial and capital markets abroad. Possible distortions can be resolved by setting a limit, in line with the profile of the small-scale investor.

3. BC (Central Bank of Brazil) Circular Letter 3690

Investment funds



Solutions

- Expansion in limits of foreign investments
- Offset of taxes paid abroad
- Tax exemption of losses with swaps abroad

In recent years, regulators have raised the limits for investment of funds in assets abroad, reflecting the development of the industry; the sophistication of managers, strategies and increased integration with international markets. This gave access to a wider range of products, thus allowing for greater portfolio diversification, increased returns, and improved distribution of risk.

Some additional adjustments, proposed below, would further expand the access of local investors to the foreign market through the funds:

Expansion of investment limits abroad of "555" funds

In early 2020, the CVM (Brazil's Securities and Exchange Commission) eliminated the limits for retail investors to acquire Level-I BDRs securities issued in Brazil that represent a security issued by publicly-held companies headquartered abroad).

There is also an urgent need to look toward other vehicles that promote cross-border investment, to give local investors freedom of choice and the capability for diversification that goes beyond BDRs.

However, there are certain limitations when the investment is made through funds, even though this is an extremely regulated investment vehicle and has authorized and well-trained professionals to select assets.

The regulation should be updated, allowing:

- Funds destined to any public to directly purchase up to 100% of their portfolios in marketable securities eligible for BDR leveraging, such as stocks and bonds;
- Funds for retail investors to invest all their resources abroad (in compliance with the requirements established in the current Annex 101 of CVM Instruction 555);

- The remaining investment percentages to funds for retail investors and qualified investors, which do not follow the specific rules contained in annex 101, to be revaluated.

It is essential to review the limits defined by CVM Instruction 555 for investment abroad by all investment funds, particularly those that are not restricted to qualified or professional investors.

It is also necessary to work toward equalization of local ETF (Exchange Traded Funds), regulated by CVM Instruction 359, regarding the treatment given to foreign funds. Review of these and other provisions will provide for a closer approximation to internationally used rules and standards, there by making the local market more competitive.

Offsetting taxes paid by funds abroad

In Brazil, income from funds is taxed at the source. When it occurs abroad, reciprocity agreements guarantee the right to deduct or offset taxes levied in the country that originated the income, both for individuals and for legal entities.

But when a fund invests outside its nation, there may be double taxation for the Brazilian investor, because there is currently no rule allowing offsetting for funds that have earned income or gains abroad that are subject to taxation in other countries.

The situation is aggravated for funds that invest in several countries and leads investors to focus on tax-free assets or markets, which is a competitive disadvantage. The suggestion is for the funds to be treated as transparent/neutral vehicles. The administrators would consider the income from these funds and the respective taxation occurring abroad as individualized for each shareholder. Thus, they could offset the taxes already levied abroad with the withholding taxes to be levied in Brazil. This model is already widely accepted in the United States and Luxembourg.

Tax treatment of swap losses abroad

Swap contracts have a different operating logic than other investments. In general, any amount invested in an investment supports losses. But swaps are based on the swapping of risk and profitability positions between investors (currencies, commodities, and other assets). At the end of the agreed term, whoever was unsuccessful must pay the counterparty.

Swap operations are subject to taxation like other investments, by withholding taxes when the income is remitted abroad. In the event of a loss associated with the swap operation, it is necessary to pay the counterparty and, to do so, a remittance is made. Under the current rules, the remitted resources are taxed.

In practice, the tax burden falls on the fund in Brazil, since the beneficiary may not even be aware that the gain comes from a party in Brazil and that Brazilian rules determine the withholding, expecting to receive the total income. When making the remittance through the authorized agent, the taxpayer must prove payment of the applicable income tax. Usually, the agent itself issues the payment form and withholds tax from the amount to be remitted. Hence, the Brazilian fund is burdened even further: in addition to the loss it had with the operation, it normally bears the tax levied on the foreign beneficiary's income. This not only inhibits such type of investment, but also burdens the industry with the creation of mirror funds abroad.

The following example helps to understand taxation on these transactions, as compared to other investments indexed passively to the same variables:

An investment fund acquires an asset indexed to the yen for R\$ 100, for example.

After a certain period, its investment depreciates (yen vs. dollar) by 10%, thus incurring a loss of R\$ 10. Current legislation does not provide for the paying of tax on this loss.

However, the fund can make the same investment, but contract a swap operation with the purchase of an asset in USD, which will serve to swap the change of the dollar to the yen.

In this case, the counterparty is abroad. If there is the same loss (a 10% drop in the yen vs. the dollar), there is an obligation to remit the amount lost abroad for payment by the counterparty.

Federal Revenue Service in Brazil (RFB) interprets that the remittance is not a loss, but rather income; in this situation, tax is levied at a rate of 15%.

Thus, we suggest that remittances abroad made because of losses on swap operations held in the funds' portfolios should not be taxed.

Increase of investment limits for private pension and insurance institutions



Solutions

- Increase in percentage of investment
- Permission to invest in closed-ended funds with no performance track record, complying with governance rules, and allocation in Private Equity Investment Funds that invest abroad

EFPCs (Closed-Ended Complementary Private Pension Entities) can allocate up to 10% of their resources to investments abroad, with certain restrictions⁴. Focusing on the evolution of the industry and the need for greater diversification, our proposals resemble those made for investment funds:

- Increase the maximum percentage for investment of each plan's guarantee resources in the foreign segment;
- Provide greater flexibility to the current rule that says that only funds constituted abroad with a performance track record of more than 12 months can be invested in by EFPCs, provided that the governance rules are followed (funds of managers in business for over five years and having of more than US\$ 5 billion in asset under management), since this type of investment

would only be possible at the beginning of the funds for certain classes of closed-ended funds;

- Allow investment in Private Equity Investment Funds (FIPs) that invest abroad, provided that the concentration limits that do not compromise the nature of the guaranteeing assets are complied with.

However, Open-Ended Complementary Private Pension Entities (EAPCs) and insurance companies can invest up to 10% of their reserves in assets subject to exchange-rate changes⁵. We suggest increasing this ceiling, which would make open-ended supplementary pension funds more attractive. For insurers and reinsurers, it would be possible to increase returns and expand protection by diversifying the portfolio of their technical reserves.

4. CMN Resolution 466

5. CMN Resolution 4444



Regulation of the international financial intermediary in Brazil



Solution

Normatization of intermediation process

Non-resident intermediaries can only prospect investors and offer investment⁶ alternatives in Brazil if they are registered with the CVM or hire a local institution to conduct the process here.

The offer of brokerage services abroad by hiring an authorized institution in Brazil is possible, but it still requires more guidance or specific rules through the formalization of the role of "introducing broker" in the country.

Good practices have been identified to guide local customers toward the international intermediary:

- Referral of the investor to the non-resident intermediary after individual analysis of goals, considering an appropriate risk profile;
- Evaluation of the demonstration of interest in the investment vehicle or asset by the investor itself, whenever there is;

- Transparency in communicating to the investor about risks, available protections, and operational flow with the international intermediary;
- Local and non-resident intermediaries carry out the investor's analyses independently, using their own methodologies, and do not share information with one another;
- Definition of minimum requirements for the professionals involved in conducting the local investor, such as proficiency in English and certifications.

In our view, local intermediaries should always check the good-standing of intermediaries who do not reside in their country of origin, and maintain the registration of the indicated investors for as long as they remain as their clients.

6. Guidance Opinion CVM 33



Tax equivalence for individuals investing in Brazil and abroad



Solution

Harmonization of the tax regime between investments in Brazil and abroad

Currently, there are several asymmetries between investments in the same product category in Brazil and abroad. The suggestions are aimed at harmonizing the rates and the possibility of offsetting losses and gains abroad, in line with what is already allowed in Brazil.

Fixed income

Fixed-income investments in Brazil and abroad are calculated differently, as shown in the table⁷ below: The proposal is to standardize the tax rules for investments of the same class.

The ideal would be the definition of a single rate for the same type of modality, facilitating tax payment by investors.

Taxation of income from investments in Brazil:		Taxation of income from investment abroad:	
Term (days)	Rate	Calculation basis (R\$)	Rate
Up to 180	22.5%	Up to 1,903.98	Exempt
181–360	20%	1,903.99–2,826.65	7.5%
361–720	17.5%	2,826.66–3,751.05	15%
>720	15%	3,751.06–4,664.68	22.5%
		>4,664.68	27.5%

7. Decree Law 1705 and Normative Instruction RFB 1500

Variable income

Taxation of investments in variable-income securities on the domestic and international markets is not uniform, and the rule on capital gains taxation prevents investors from offsetting losses and gains in stock trading⁸.

Moreover, if an investor buys international assets traded in Brazil (BDRs, ETFs and internationally issued debt securities), it pays a 15% tax rate.

This percentage can reach up to 22.5%, if applied directly to assets abroad.

Here again, equal modalities are treated in a different tax manner. We suggest harmonizing the rules for investing in shareholdings or funds in Brazil and abroad, as well as creating mechanisms to offset losses and gains⁹.

Class	Foreign assets and funds	Domestic assets and funds	
Shares	Capital gains	Assets	Exempt up to R\$ 20 thousand 15%
	Exempt up to R\$ 35 thousand		
	15%, up to R\$ 5 million		
	17.5% up to R\$ 10 million		
	20% up to R\$ 30 million		
	22.5% above R\$ 30 million	Funds	15%

8. Law 9250; Law 11033; Law 8981; IN RFB 1455

9. As already established for variable-income operations under the Brazilian regulation (Decree 9580, art. 841, §1).

Dividends

The same type of rate discrepancy occurs in the taxation of dividend gains¹⁰. If there is a double taxation treaty between countries, it will be possible to offset the tax paid abroad, if applicable.

Today, Brazilian law considers that dividends are exempt from taxation because the company's profit would have been taxed already.

The fact that the company operates in another country should not change this same rationale, since the profit would also have been taxed in the company's country of residence.

The solution, again, is to standardize the provisions, exempting the taxation of dividends from abroad, which is currently the case for those received from domestic companies.

Class	Foreign assets and funds	Domestic assets	
Dividends	Regressive table ("Carnê-Leão" – monthly payment of income tax due to income received from individuals or from foreign sources).	Assets	0%
	Exempted up to R\$ 1,903.98		
	7.5–27.5%: depending on the taxable income		

10. Law 9249, IN 1500, art. 55



One of the main findings regarding cross-border investment is the need for a new model of access to the Brazilian capital market for foreign investors. In this model, simplicity, and the pursuit of convergence with the best international practices must be prevalent. Only adjusting current mechanisms may not be enough to attract investors.

Bill 5387, introduced by the Central Bank of Brazil (BC) to modernize the foreign exchange market, is a major first step towards fostering the necessary changes in the economy and improving the conditions for the cross-border investment of the Brazilian market. The bill is based on three pillars: consolidation of standards, modernization of the Brazilian scenario, and simplification of requirements proportional to risks and amounts.

Of the three items, simplification is especially important for the solutions presented in this report. Require the same registrations, processes

and obligations of small-scale investors and institutional investors represents a disassociation with the current world, where there is a prevailing pursuit of practicality and ease to diversify portfolios.

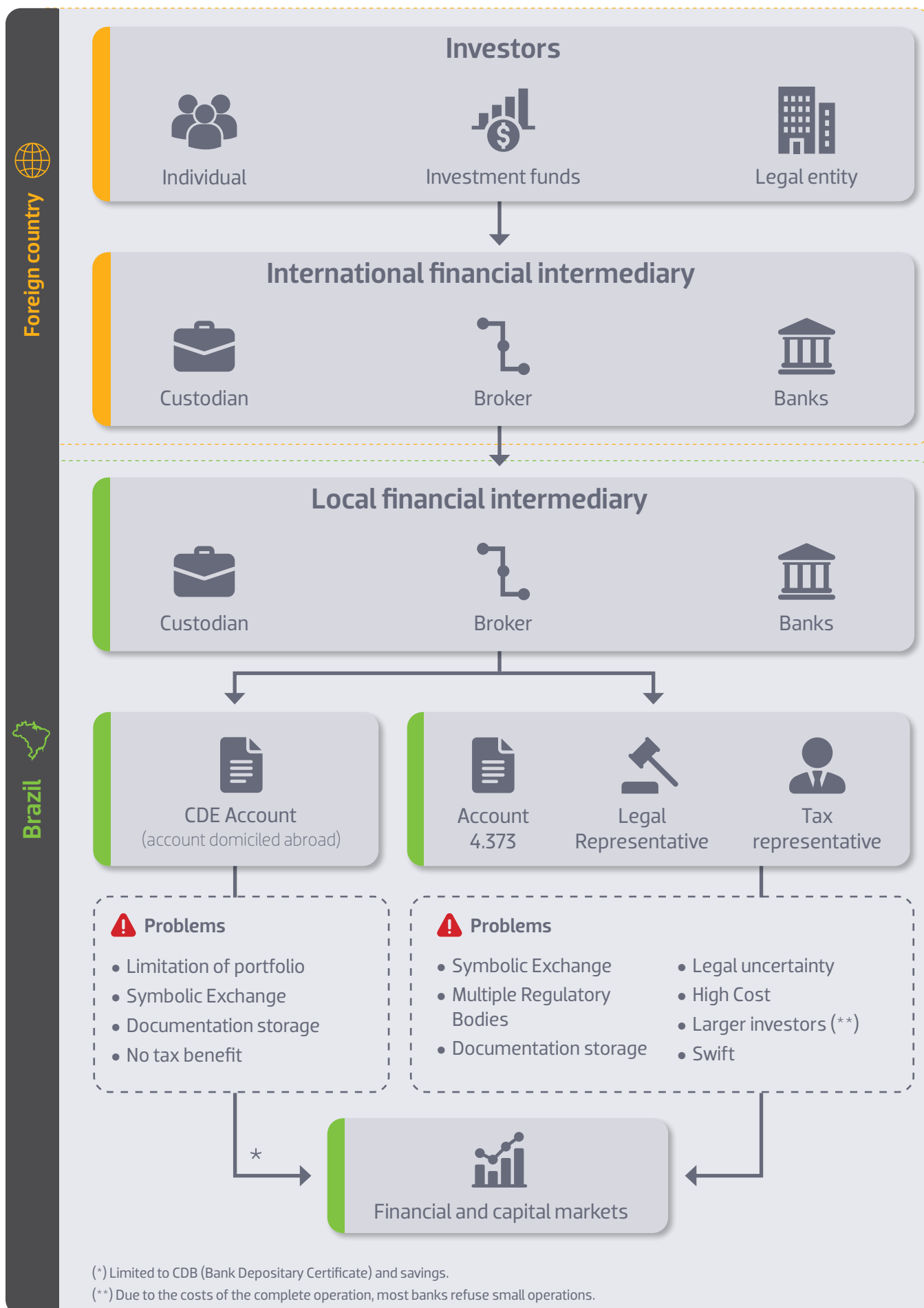
To outline the solutions presented herein, we mapped out the main problems in the current structures of access by foreign investors to the local market. We also analyzed the practices of benchmark countries – both, developed (US, UK, Luxembourg, and Hong Kong) and developing ones (Mexico and Chile), which can compete with Brazil for international capital.

Analysis and solutions

The structure of the Brazilian market has a number of functions that could be consolidated or replaced by processes already provided for in legislation. Such changes would reduce the number of obligations and professionals involved, as well as costs for non-resident investors (NRIs).

Currently, all investments by non-residents

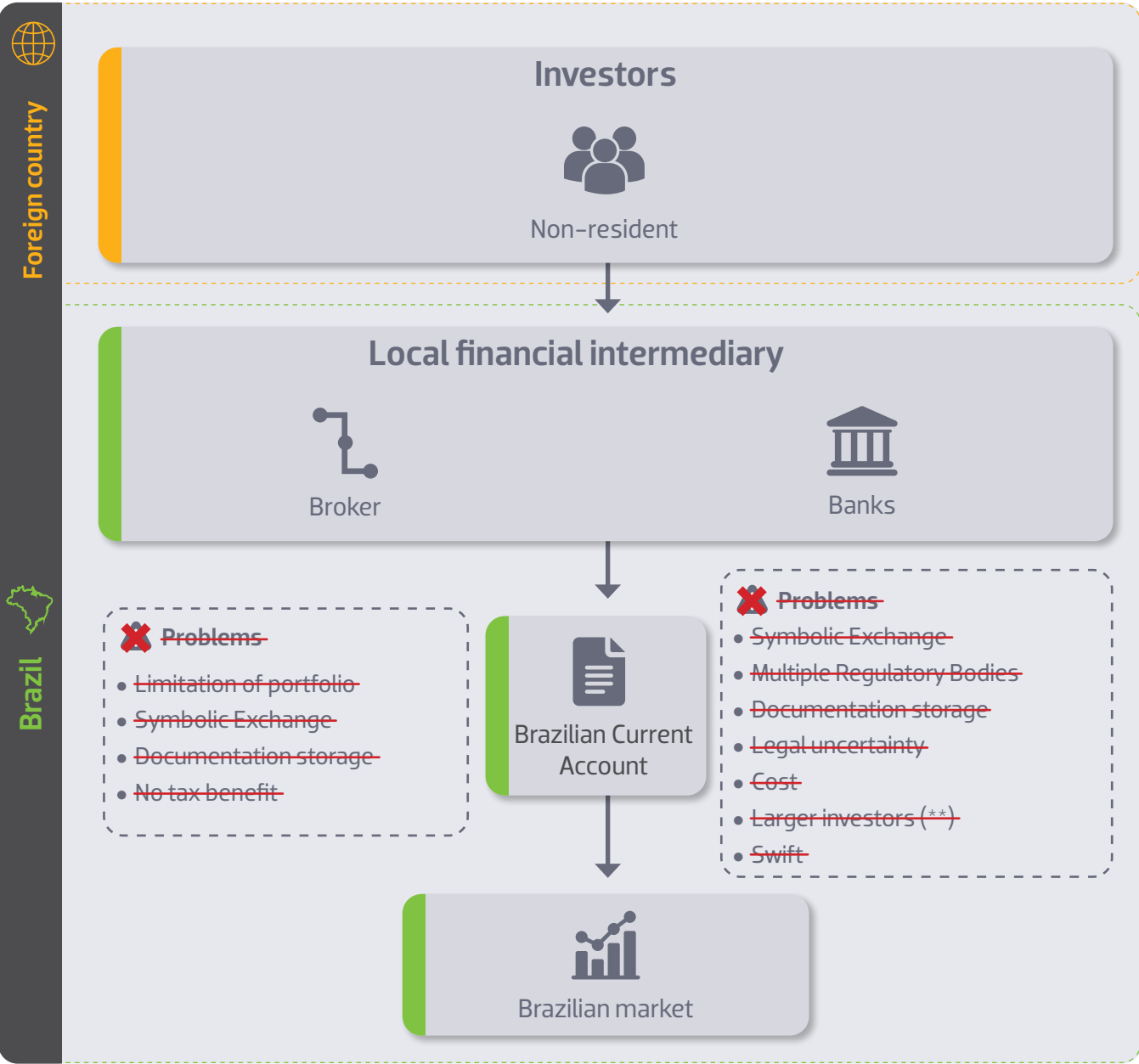
in the Brazilian market, including those from residents' accounts in Brazilian currency (whether domiciled or headquartered abroad) must comply with BC Resolution 4373, that contains the rules for this type of investor. Other standards were later published for definitions of specific items. The figure on the next page shows the current structure.



It is clear that the path taken by NRIs to access the national market is extensive and plagued by excessive red tape. Such investors need to have three representatives (a local intermediary, a legal/tax representative, and a custodian), register with three different bodies (CVM, BC and RFB), and take a long path to

invest resources in the local market.

The proposal focuses on simplifying the structure and making the entry process more fluid for these investors. The figure below shows how this would unfold, considering the implementation of the recommendations we make in this study.



The next pages detail the possible solutions to be implemented



Equate the treatment of the non-resident corporate investors to individual investors



Solution

Make the hiring of a local custodian optional for corporate investors and transfer the responsibilities to the local intermediary

BC Resolution 4852¹¹ got rid of the mandatory requirement for individual non-resident investors — who carry out operations simpler than corporate investors — to hire a local custodian. CVM Instruction 505, in turn, allows the international intermediary, respecting the requirements of the rule, to directly place orders on behalf of the client. This creates a direct channel of communication between the local market and NRIs, and allows the operation to take place in a more fluid and easier way.

None of the countries analyzed requires the figure of the custodian along the same lines as Brazil.

In these markets, this role is carried out by the financial institution that provides the intermediation service and operates on behalf of the investor, such as the financial intermediary.

As in several countries (e.g. in the case of the mapped international benchmarks), hiring a custodian isn't mandatory, and the intermediary itself assumes the responsibility of attending to NRIs.

For such a change to take place, the list of duties of the NRI stipulated in art. 2, Annex I of Resolution 4575 would need to be adjusted.

11. Resolution 4852 and CVM Instruction 505 (art. 2, Annex I)

Legal representation



Solutions

- Unifying records and creating a single registration with all necessary information for the three bodies (CVM, BC, and RFB)
- Reduction of duties performed in duplicate, maintaining only one service provider responsible
- Use of letters rogatory and international cooperation mechanisms to reach foreign investors in the event of crimes against the financial system

The legal representative is the central figure in the operationalization of the NRI's portfolio, but the transactions are made by a hired local intermediary. In this structure, some duties are performed in duplicate¹².

The legal representative in Brazil is responsible to register with the Brazil's CVM, BC, and RFB, perform periodic reporting of information and record keeping, as well as receiving (in the name of the investor) subpoenas and notifications in the event of crimes against the financial system or other lawsuits¹³.

In other countries, some of these roles are performed by brokers, and communications are centralized to attend to the various regulators. The main concern of the oversight agencies is to carry out customer identification procedures, such as AML (anti-money laundering), KYC (know your customer), and so on.

While relieving NRIs, release of the custodian does not extinguish the service, which may be optional for those who deem it necessary; therefore, this only reinforces its value to those investors who effectively carry out transactions with multiple local intermediaries that justify centralized control.

12. Resolution 4373, CVM Instruction 560, IN RFB 1585, Law 8981, BC Circular Letter 3689, CVM Instructions 542 and 505

13. CVM Instructions 460 and 505

Bearing in mind the new means for these activities to be carried out, our suggestion focuses on three pillars:

Unification of records

We propose creating a connected infrastructure that can perform a single registration, sufficient to feed the databases of all three agencies (CVM, BC and RFB).

This registration could be done by a private centralizing entity, in partnership with the regulatory agencies, or fed by the foreign investors themselves, with controls to ensure the authenticity of such information. This model would remove part of the registration burden and bring greater confidence to the process, since it would be established and audited by the regulatory agencies themselves.

Periodic information

With the exception of the registration information obtained directly from the NRI or its international representative, the local intermediary is already responsible for concentrating data on the transactions carried out.

Since this greater operational load is concentrated in the constant updates of the NRI's information, it should be responsible for carrying out the update in a centralized manner, meeting the demands of both the CVM and the BC.

Other responsibilities

The possibility of financial crime by non-residents is one of the factors that most contribute toward the excessive regulation for the entry of foreign investment. The authorities seek, in the legal representative, a way to access the offending investor, serving subpoenas and citations in the name of the NRI.

The countries evaluated all have KYC and AML regulations and procedures, conducted by local and international financial institutions, which carry out intermediation between the investor and the local markets. This demand does not completely rule out the chance that a crime will be committed, but it reduces the chances of future problems. In the event of a crime, countries use legal instruments and/or international cooperation agreements with the NRI's country of residence to reach it.

In Brazil, the conventional and firmly established manner to subpoena a person residing in another country is through letters rogatory, regulated in the Codes of Civil Procedure, the Code of Criminal Procedure, and in a Resolution of Brazil's Supreme Court (STJ). Although issuing this document is a bureaucratic and costly process, using it and releasing the legal representative from such obligations makes the local market more attractive to international investors.

International comparison

None of the countries analyzed requires a specific third-party representative, in addition to the local intermediary, which operates on behalf of the client. In other countries, the main functions performed by the Brazilian legal representative are performed by the brokers or by other means developed by the jurisdictions.

In the case of registrations, the main concern of international regulators is to carry out customer identification procedures (KYC, AML, etc.), most of which do not even require registrations, or do so in a centralized manner. The provision of information also takes place centrally by the broker in the countries studied, as shown in the figure below.

Most of the countries analyzed require only the local intermediary to be defined

Findings in international regulations						
Responsibility for registration with the regulatory agency	✗	✗	✗	✗	✗	✗
Need for registration with multiple regulatory bodies	✗	✗	✗	✗	✗	✗
Need to present periodic information for multiple regulatory entity(ies)	✗	✗	✗	✗	✗	✗
	Centralized disclosure					
Periodicity of information submitted to the regulatory agency about accounts and non-residents	✓	✓	✓	✓	✓	✓
	Annual	Only if the limits are exceeded	Annual	Annual	Annual	Annual
Agent responsible for receiving subpoenas, notifications, and prosecuting crimes	✓	✗	✗	✗	✗	✗
	Chilean agent is responsible	Internal agency + global cooperation	Global cooperation	Global cooperation, treaties and confiscation of assets	Global cooperation and legal guarantees	Laws with extraterritorial effect + global cooperation

Tax representation



Solutions

- Alternatives for reducing the burden of subsidiary liability
- Centralization of tax responsibility at the local intermediary, and only in operations with self-payment of taxes
- Optimization of tax registration (CPF [SSN] and CNPJ [EIN])
- Ending the differentiation of tax regimes for residents of tax havens
- Adherence to international information-sharing systems, to meet the demand for data by local intermediaries

The Brazilian tax environment, and consequently tax representation, are complex, demand high levels of control, and generate high costs for institutions, which are ultimately being passed on to the NRIs (in the form of letters of guarantee or sureties).

Uncertainties in legal interpretations are an additional barrier that keeps foreign investors away from the local market.

The solution to reformulate the role played today by the tax representative is centered upon four pillars:

Alternatives for reducing the burden of subsidiary liability

The legislation¹⁴ assigns subsidiary liability to the legal representative in the event of non-compliance with tax regulations, further underscoring the burden of this activity. Tax credits on investments in the local market are mostly paid at the issuing source.

In such cases, the tax representative is responsible only for the paying taxes of investors residing in tax havens, or in operations in which NRI is responsible for self-payment (purchase/sale of over-the-counter derivative assets and

14. Law 8981

other operations in which the non-resident is liable for withholding taxes on behalf of third parties, for example). It must be a financial institution authorized to operate by the Central Bank of Brazil, which makes the activity overly costly.

The first proposal is to prohibit operations that require self-payment without a tax representative. Hiring would be only to operations in which the NRI is required to demonstrate and pay the tax on its own behalf or on behalf of third parties. In general terms, the sale of securities outside the organized market — where the buyer is also an NRI (stock exchange environment), given the fact that the NRI is tax exempt on the stock exchange — would be subject to the definition of tax representative who makes the necessary payments to the tax authorities.

If hiring is necessary, we suggest allowing tax advisory or accounting offices to act in tax payment and registering with the authorities, like what local investors do, which would further reduce costs for NRIs.

The second solution is to centralize tax responsibility at the local intermediary who is already the one who places the purchase/sale orders and concentrates the necessary information to meet the regulatory requirements.

This would provide greater security for tax payment, and would also further simplify the

non-resident investment structure.

For NRIs who use more than one local intermediary, it is necessary to have adequate controls that allow the exchange of information, to avoid losing out on the tax benefit for the foreign investor.

Optional tax registration

The tax representative is also responsible for registering any individual or legal entity wishing to invest in the country, by obtaining either an Individual Taxpayer Identification Number [CPF] or Corporate Taxpayer Identification Number [CNPJ] from Brazil's Federal Revenue Service. This registration is required for issuing tax payment forms as well as feeding the Federal Revenue Service's database.

It is used when there is a need to issue tax payment forms or for statistical monitoring by treasury authorities. The current suggestion is for registration to be mandatory only for foreign investors who intend to carry out transactions with self-payment of taxes.

Another suggestion is for the local intermediary — who is already responsible for registering and maintaining the NRI's records and portfolio with the CVM and the BC — to also assume responsibility for registration with the Federal Revenue Service and other obligations with the tax authority.

End of tax regime differentiation for residents of tax havens

The special taxation regime¹⁵, with tax exemptions and reductions, is one of the biggest benefits for foreign investors. However, those domiciled in tax havens, aside from being obligatorily submitted to the entire process of registering and hiring representatives, are also prevented from enjoying the tax advantages (exemptions and reduced rates). This makes the Brazilian capital market unattractive to them.

The proposal is that tax haven residents are included in the scope of the special taxation regime. This suggestion is in line with Interpretative Declaratory Act 5, of 2019, which includes the understanding that the factor that defines the origin of the investment is the party who invests directly in Brazil, i.e., regardless of whether or not the final beneficiary is domiciled in a country considered a tax haven.

The change would also eliminate the legal uncertainty related to periodic reclassifications of the list of countries considered tax havens.

Adherence to international information-sharing systems

There is a major ongoing discussion as to how to define the concept of final beneficiary and the

operational difficulty in obtaining information at the required level of granularity and properly up-to-date. The debates have been evolving, but there is still a need for clear definitions in the rules, providing greater legal certainty.

Our proposal is to eliminate the responsibility for submitting information about the final beneficiaries by the local intermediaries¹⁶. This is because the main roles of this process — facilitating valuation to prevent money laundering and identify Brazilian investments in offshore structures — can be supplied by mechanisms and processes already existing in local regulation.

One example refers to CVM Instructions 505 and 560, which provide that the local intermediary must ensure the integrity of the information of its clients, who assume the duty to submit the documents necessary for their identification, following the regulatory compliance criteria.

Another process that already exists is the identification of Brazilians who invest in offshore structures. Today, this data can be obtained by the authorities through international information-sharing agreements, such as FATCA¹⁷ and CRS¹⁸.

15. Section II, Chapter III of IN RFB 1585, and in Section IV of Law 8981

16. Under the provisions established in Chapter IV of RFB (Federal Revenue Service) Regulatory Instruction 1863.

17. Fatca: US tax evasion law, which requires reporting by foreign financial institutions to the US Internal Revenue Service (IRS), on accounts held by US taxpayers

18. CRS: model for exchanging tax and financial information among different countries

End of symbolic exchange



Solution

Eliminating symbolic exchange and centralizing records in the RDE-Portfolio

For each change in the portfolio, the foreign investor is required to make an exchange operation, known as symbolic or simultaneous. The transaction does not imply currency exchange or financial flow, but rather has the function of feeding the BC's databases. None of the countries evaluated for this study require any equivalent procedure.

This operation involves bureaucracy and rework for investors, and can be eliminated by using the data already registered in the RDE-Portfolio¹⁹, specifically in the "Transaction

Declaration" section, to feed the statistical bases of all tax and regulatory authorities. "RDE-Portfolio" could also be used by all interested regulatory bodies as a central source of information, which would result in major breakthrough on the path toward unifying the records.

Centralization does not impair the statistics used by the authorities. It is only necessary to define the frequency of updates, and a longer term is recommended, aimed at lowering the costs of compliance.

19. The system provided by the Central Bank of Brazil for registering foreign capital in the nation. "RDE-Portfolio" particularly allows the registration of foreign investments in financial and capital markets, investment funds, and Depositary Receipts (DRs)

**Measures to facilitate access to the international market by local investors**

Solution	Description
Reduce the foreign exchange bureaucracy	Simplify the remittance coding system.
Losses with foreign derivatives	Eliminate the requirement of withholding tax on remittances abroad, to cover losses on investments.
Funds S55 – Foreign investment	Increase the limits for foreign investment.
Taxes paid abroad by investment funds	Enable the offsetting of taxes paid abroad with the withholding taxes owed by the shareholders.
Investment limits abroad applicable to insurance companies and private pension plans	Extend the limits, respecting the risk classifications and concentration applicable to the asset segments.
Introducing broker	Propose the regulation of the figure of foreign intermediaries in Brazil.
Tax equivalence	Propose tax harmonization to local investors when investing in local assets or overseas.

Measures to facilitate foreign investment in Brazil

Solution	Description
End of symbolic exchange	Eliminate symbolic currency exchange operations for changing portfolios (e.g. fixed income to variable income investment).
Equal treatment of non-resident corporate investors and individual investors	Remove the obligation of hiring a specific custodian for the foreign investor, making it optional, combined with the consolidation of responsibilities of the local intermediary (broker, for example).
Legal representation	<p>Propose alternatives for the fulfillment of the duties relating to the activity of legal representation, namely:</p> <ul style="list-style-type: none"> • Registration with the competent bodies (Federal Revenue Service – RFB, Brazil's Securities and Exchange Commission and Central Bank): unified registration and under the responsibility of the financial intermediary. • Sending periodic information: documentation and registration of portfolios can be done in a unified manner and under the financial intermediary's responsibility, as the primary source of such information. • Receipt of subpoenas in the event of financial crime: use of letter rogatory and international cooperation mechanisms to reach foreign investors who violate the rules.
Tax representation	<p>Remodel the roles relating to the activity of tax representation by modifying duties such as:</p> <ul style="list-style-type: none"> • Alternatives for reducing the burden of subsidiary liability, given that the end of criminal liability has been proposed. • Centralize tax liability at the local intermediary in self-payment operations. In the case of tax exemption or withholding taxes, hiring a tax representative is optional. • Optional tax registration to those who carry out operations that require self-payment of taxes. • Ending the differentiation of tax regimes for residents of tax havens. • Broad-based adhesion to and use of international information-sharing systems (Fatca/CRS) to meet the needs of information reporting by local intermediaries.

06 ANNEX: INTERNATIONAL BEST PRACTICES



To provide a clearer view of the different regulatory, operational and tax requirements between the countries analyzed, we created tables to show their positions regarding different characteristics.

Captions:



Record



Operations



Tax



Exchange/Currency



Regulatory



Unfavorable



Indifferent



Favorable



Undefined

	Affirmative						
Financial market accessibility for retail investors (<i>green for very accessible</i>)							
Differentiated treatment between small and large investors (<i>green for favorable to small investors</i>)							
Ease of residents to invest abroad (<i>green for very accessible, integrated system</i>)							
Frequency of investment abroad by residents (<i>green for common</i>)							
Ability for foreign investors to change investments outside the portfolio (<i>green for possible</i>)							
Government control over the outflow of financial resources (<i>green for very permissive</i>)							
Limitation of money to invest abroad (<i>green for none</i>)							
Possibility of opening a bank account in foreign currency (<i>green for possible</i>)							
Foreign investor's need to have a tax code (<i>green if not necessary</i>)							
Differentiated treatment between local and foreign investors (<i>green for favorable to foreigners</i>)							

Main practices for entry of foreign investors



Record

Free registration

Small-scale foreign investors do not need to be registered, only with intermediaries, in the integration process.

Easy online Tax ID

Allows the procedure to be 100% online, through the website.



Operating

Free flow resources

Offers the possibility to reallocate resources not only to change the investment portfolio, but also to use them for ordinary payments and other matters without symbolic foreign exchange operations.

No bank account

If the goal is only to invest, there is no need for a common bank account, just a broker/distributor account.

Without symbolic exchange

Applies other controls to comply with BC statistics.



Tax

CRS-based tax UBO

Less expensive disclosure procedure for small amounts, plus the possibility of greater trust in the exchange of information.

Non-differentiated special regime for tax havens



FX

Pricing Methods

Financial assets priced in different currencies.

Issue of foreign currency

Possibility of issuing private securities in foreign currencies, treated as debt. Any foreign exchange gains or losses recognized in the entity's income are not treated as taxable.

Checking account in a foreign currency

Possibility to open and operate a bank account in foreign currency.



Regulatory

Different procedures for small and large amounts

Onerous process reserved for operations that have higher risk and are more representative.

Global presence

Hong Kong is working on expanding free trade agreements with other countries, aimed at expanding its presence in other markets.

Main practices for exit of foreign investors



Record

Registration limit

BC recently raised the limit to US\$ 1 million – previously it was US\$ 10,000.



Operating

Automatic exchange of information

There is an automatic exchange of financial account information between financial institutions and local authorities – using technology such as blockchain to facilitate the process.

Easy access to the global capital market

Integrated system of financial instruments in partnership with other countries.

Allow local investors to access foreign financial products and make transactions easily.



Tax

Tax offset

Ability to offset the tax burden of direct and indirect taxes on investments abroad (if any) for all entities.

Harmonizing overseas financial investments with local investments

The source of revenue as the only one able to tax.



FX

Simplify foreign exchange outflows

Simple record of outflows of financial resources, indicating the purpose.



Regulatory

Regulated introducer broker

The introducer broker must comply with local rules.

No restriction

No limit to the amount that local investors can invest abroad (individuals, entities and funds).



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