

Central Bank changes foreign exchange rules to allow changes to LIBOR

The Brazilian Central Bank published, on March 24th, 2022, National Monetary Council (CMN) Resolution N. 5,011, which amends CMN Resolution N. 3,844, of March 23th, 2010, to allow the alteration of the registration of international loans made by Brazilian companies in the Electronic Declaratory Registry of Financial Operations (RDE-ROF) of an interest rate whose index had its disclosure terminated. For this type of amendment in the RDE-ROF, it will no longer be necessary to cancel the original debt registration, to create a new registration, and to carry out simultaneous exchange operations or international transfers in Brazilian reais.

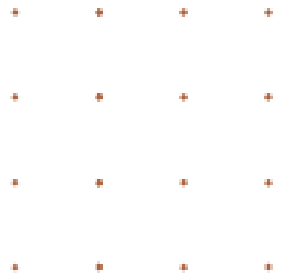
Nowadays, the foreign loan contracted by a Brazilian legal entity, whether directly, with one or more financial institutions abroad, or through the issue of securities in the international market, must be duly registered with the Central Bank under the RDE-ROF, as a precondition for the funds coming from abroad to enter the country.

In the same sense, the current exchange rules require that the renegotiation of a foreign credit transaction, such as the amendment of the interest rate, be done through simultaneous exchange transactions or international transfers in Brazilian reais, without the effective flow of funds.

In other words, to change the interest rate originally agreed upon in the debt instrument, the borrower in Brazil needs to contract a financial institution authorized to operate in foreign exchange to make two exchange transactions, as if it were paying the original debt to the foreign creditor (at the original interest rate) and receiving a new loan from the foreign creditor (at the new interest rate). The practical effect of conducting the two exchange transactions is to base the creation of the RDE-ROF of the "new transaction" with the new interest rate and the write-off of the previous RDE-ROF. In addition, for foreign exchange purposes, the new foreign loan transaction has a new term, counting from the date of execution of the exchange contract.

With the amendment of Resolution 3,844, which will become effective on May 2nd, 2022, Brazilian companies will be able to change the RDE-ROF of the foreign credit transactions of which they are borrowers, indexed to the LIBOR rate, without the need to enter foreign exchange contracts or form a new RDE-ROF, simply by changing the rate in the respective RDE-ROF. If the change is not made, the Brazilian company may not remit abroad, as interest, any amount other than the one corresponding to the interest rate already registered in the RDE-ROF. To the Central Bank, and to support the closing of the exchange rate for remittances abroad, the effective value to be remitted to the foreign creditor, by the Brazilian company, must correspond to the terms registered in the RDE-ROF.

It is important to mention that the change in focus is convenient because the LIBOR rate, or London Interbank Offered Rate, which has been applied to international financial transactions for many decades, such as loans, financing, bonds, derivatives, as well as international commercial and labor contracts, after going through a transition phase since December 2021, will be discontinued on June 30th, 2023.



For purposes of amending the RDE-ROF, the Brazilian borrower and the foreign creditor shall amend the debt instruments in force that are linked to LIBOR, expressly defining its substitute rate.