

## Legal update

### Brazil sees increase in so-called “4.131 loans”

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#### **Banking & Finance**

The international bond market all but closed its doors to Brazilian companies in 2015. The political uncertainties, combined with the fall-out from the Lava Jato corruption scandal (which led Petrobras to delay publication of its financial results by almost six months and has resulted in the incarceration of top-level executives of several of the country’s largest corporations) dampened investor appetite for Brazil risk, thereby significantly raising the financing costs of Brazilian issuers.

However, Brazilian companies with good credit ratings are taking advantage of the exchange rate coupon (the difference between the internal and external interest rates) and currency volatility by accessing the external debt market through so-called 4.131 foreign loans. While no official figures exist as to the increase in the volume of “4.131” loans, the rise in this form of lending has been widely attested to by Brazilian bankers.

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#### **4.131 loans**

The foreign credit lines are known in Brazil as 4.131 loans in a reference to the law that regulates foreign capital in Brazil and the remittance of funds abroad<sup>1</sup>. The law applies to any investment that enters the country in the form of foreign currency, goods and services<sup>2</sup>.

Advances on such credit lines are loans in foreign currency made by a foreign lender. Therefore, the borrower benefits from the lower funding costs generally incurred by the foreign financial institutions, but is also subject to exchange rate volatility, as the repayment will also have to be made in foreign currency.

One of the main advantages of the 4.131 loans is they do not have to be related to trade finance transactions. Compared to other transactions, 4.131 loans also involve less internal bureaucracy and can be disbursed faster. Such loans were primarily used to address companies’ working capital needs in foreign currency, but can be made to any Brazilian entity, regardless of its foreign operations or cash flow. Unlike ACCs and ACEs<sup>3</sup>, 4.131 loans are not required to be covered by future export revenues.

#### **Opportunities**

According to bank specialists<sup>4</sup>, in the first couple of months of 2016 the cost of foreign loans was lower than the onshore alternatives. The difference in cost varies according to the amount and term of the loan, but the exchange rate coupon, which ultimately determines the cost of foreign loans, has presented windows of opportunity.

Increasing uncertainties in the local political and economic situation, resulting in the further deterioration of the local currency and a larger gap between internal and external interest rates, have created this favorable market for 4.131

loans. Higher funding costs for local financial institutions, also a result of market instability, contribute towards the utilization of the foreign currency instrument.

The foreign loans become more attractive, even for companies that do not have cash flow in the foreign currency, when made with a swap converting the loan to Brazilian reais and its interest rate to CDI (the local reference for interest rates), thereby eliminating the exchange rate risk.

## Registration of foreign loans with the Central Bank

It is important to note that one of the conditions of 4.131 loans is their registration with the Central Bank of Brazil, which is made in a declaratory form by utilizing the Central Bank's Information System (Sistema de Informações do Banco Central – Sisbacen).

Often overlooked or filed with inaccuracies, the registration is required for the disbursement of the loan and, if not made correctly, may prevent the transfer of funds. Information on the registration requirements and legal framework can be found in the following [article](#)<sup>5</sup>.

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## Footnotes

- <sup>1</sup> See [http://www.planalto.gov.br/ccivil\\_03/LEIS/L4131.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L4131.htm)
- <sup>2</sup> See generally [http://www.bcb.gov.br/rex/legCE/Ingl/Ftp/International\\_Capitals\\_and\\_Foreign\\_Exchange\\_Market\\_at\\_Brazil.pdf](http://www.bcb.gov.br/rex/legCE/Ingl/Ftp/International_Capitals_and_Foreign_Exchange_Market_at_Brazil.pdf)
- <sup>3</sup> ACCs (*Adiantamento sobre Contratos de Câmbio*) and ACEs (*Adiantamento sobre Cambiais Entregues*) are financial instruments offered exclusively to exporters. For more information on these products, please see [http://www.mdic.gov.br/sistemas\\_web/aprendex/default/index/conteudo/id/190](http://www.mdic.gov.br/sistemas_web/aprendex/default/index/conteudo/id/190).
- <sup>4</sup> See <http://www.valor.com.br/financas/4447056/emprestimo-em-dolar-volta-ser-alternativa>
- <sup>5</sup> Please note that this article was first published in 2014. All legal references, however, remain accurate.

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