
Title: The Annual and Five-Year Census of Foreign Capital in Brazil

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Abstract:

Local legal entities with foreign/non-resident ownership/participation, investment funds with foreign/non-resident shareholders and legal entities that owed debts to commercial foreign lenders on December 31, 2015, of US\$ 1 million or more (payable within 360 days), must submit to the Central Bank of Brazil, a statement for the Five-Year Census of foreign capital, by August 15, 2016.

The Central Bank of Brazil ("BACEN"), through Circular No 3.795, of June 16, 2016, established new regulations governing the Annual and Five-Year Censuses of foreign capital in Brazil.

The Five Year Census takes place in the years ending in zero (0) or five (5), while the Annual Census takes place every year. Both censuses have a base date of December 31, of the previous year¹. Therefore, in 2016, the statement for the Five-Year Census must contain information reflecting the data base of December 31, 2015².

The Five-Year Census statement must be submitted by: (i) legal entities based in the country with direct foreign/non-resident ownership of capital, regardless of value; (ii) investment funds with foreign/non-resident shareholder investments collected by a fund administrator; and (iii) legal entities with debts to commercial foreign lenders of US\$ 1 million or more (payable within 360 days).

¹ Circular No 3.795, Article 1, single paragraph, and Article 4, paragraph 1.

² The exchange rate on December 31, 2015 was US\$ 1 for BRL 3.9042 (buying) and BRL 3.9048 (sell).
Source: Central Bank.

On the other hand, the Annual Census statement must be submitted by: (i) legal entities based in the country with direct foreign/non-resident ownership of any value, and with net equity equal to or in excess of US\$ 100 million (or the equivalent); (ii) investment funds with foreign/non-resident shareholder investments collected by a fund administrator and with net equity equal to or in excess of US\$ 100 million (or the equivalent); and (iii) legal entities based in the country with a total outstanding balance of short-term debt owed to foreign entities/non-residents (payable within 360 days) of an amount equal to or in excess of US\$ 10 million (or the equivalent).

Some entities are excluded from the obligation³ of submitting foreign capital statements during any of the Censuses such as, individuals; Government entities; legal entities that are beneficiaries of foreign credit transfers granted by Brazilian-based institutions; and non-profit entities supported by the contributions of non-residents.

³ Circular No 3.795, Article 4, paragraph 4.

This new regulation primarily regulates the requirements and particularities of each Census (Annual and Five-Year), as concerns submitting foreign capital statements.

In addition, Circular 3.795 dictates what content should be included into a census statement. Census statements should provide information relating to: (i) the corporate structure of the legal entity based in Brazil, with specifics of any foreign/non-resident partners or investors; (ii) the economic and financial data of the legal entity based in Brazil; and (iii) information regarding any liabilities owed to foreign/non-resident creditors by the Brazilian entity⁴.

It is worth mentioning that all the documentary evidence used in filing a foreign capital statement must be kept for a period of five years, from the date of submission⁵. In addition, the Central Bank at its sole discretion may request any additional information it deems necessary, to complement the information already provided⁶.

In view of the above, it is imperative that companies verify whether they meet the criteria established by Circular No 3.795 and if so, duly submit the Annual and Five-Year Census statements, between July 1st, 2016, and August 15, 2016.

Almeida Advogados has a team specialized in foreign investment, fully qualified to clarify any questions, as well as to help your company with any problems related to this issue.

⁴ Circular No. 3.795, Article 3.

⁵ Circular No 3.795, Article 5.

⁶ Circular No 3.795, Article 7.