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Currency Exchange Legal Framework Project

Against the backdrop of the global crisis caused by the Coronavirus and the reduction of foreign investments in Brazilian applications in 2020 (which made the last year the worst in direct investment performance in the country since the 2018 crisis), Bill 5387/2019 (“PL 5387/19”), also known as “Currency Exchange Legal Framework”, represents an important promise of change in the current rules related to the currency exchange rate regime. It aims at the modernization, simplification, and efficiency of the Brazilian currency exchange market, as well as at the reduction of bureaucracy, guaranteeing more autonomy to the Central Bank in this context and aiming at cost reduction for the remittance of values abroad.

One of the main changes intended with the implementation of the Currency Exchange Legal Framework is the possibility for individuals and more legal entities to be authorized to have accounts in foreign currency in Brazil. Today, only agents authorized to operate in foreign exchange, issue credit cards for international use, insurance companies, and tourism service providers can hold a foreign currency account in the country. However, even if the Legal Framework is approved, this possibility will depend on future regulation by the Central Bank.

Additionally, PL 5387/19 seeks not only to make the Brazilian currency more convertible in the international market – allowing payments to be sent abroad in Reais and also allowing foreign central banks and institutions domiciled or headquartered abroad that provide clearing, settlement, and custody services in the international market to maintain accounts in Reais in Brazil – but also intends make the need to register foreign credit operations for low value transactions more flexible.

If the project is approved with its current content, the limit for carrying cash in kind when entering and leaving the country will be increased from the current ten thousand reais (BRL 10,000.00) to ten thousand US dollars (USD 10,000.00) or its equivalent in other currencies, making life easier for tourists.

Private clearing of debts between residents and non-residents, which is currently prohibited, will be then authorized in cases to be provided for in regulation by the Central Bank, which will most likely require the resident party to provide information on the private clearing in deadlines and ways to be established.

As for the stipulation of payment obligations in foreign currency – today restricted to a few events established by Decree-Law 857, of September 11, 1969 –, the Currency Exchange Legal Framework proposal is to increase the cases in which the payment in foreign currency will be allowed for obligations due in the national territory. Therefore, the stipulation of payment in other currencies will be allowed in lease agreements made between residents in Brazil, if the funds were raised abroad; in cases of indirect export; in contracts entered into by exporters in which the counterparty is a concessionaire, permit holder, authorized representative, or lessee in the infrastructure sectors; and in all contracts and securities related to foreign trade, its financing and guarantees.

Also in relation to foreign trade, PL 5387/19 eliminates the restrictions on the use of revenues that exporters have in their accounts abroad, enabling them to use resources kept abroad from export for loan, for example, contrary to the current legislation, that only allows the use of such funds abroad in investments, financial investments, or payment of the exporter's own obligation. In addition, Brazilian financial institutions will be authorized to grant credit and financing, in Brazil and abroad, using resources raised locally or outside Brazil.

As one of the strong features of this proposal, in the sense of making the foreign exchange market more efficient, stimulating competition, and lowering the cost of small transactions in foreign currencies, the Currency Exchange Legal Framework authorizes fintechs to operate in the foreign exchange market. Bearing in mind that, according to the current rule, companies that operate in the financial market can only operate in foreign currency transactions if they are associated with a broker or a bank, which considerably limits the operation of fintechs.

PL 5387/19 also intends to regularize a common practice among individuals, which is the purchase and sale of currency in an occasional and non-professional manner, a transaction that is currently prohibited but which can now be authorized within the sales limit of up to five hundred US dollars (USD 500.00) or its equivalent in other currencies. Such authorization also opens space for fintechs to explore this market, creating platforms that bring sellers and non-professional buyers closer together.

It should also be noted that PL 5387/19 seeks to consolidate and change legislative provisions in force since the beginning of the 20th century, which impose rules that hinder exports and imports of goods and services, productive investment, and the free movement of capital, such as, for example, the collection of supplementary tax, currently applied on the income obtained from the sale of real estate when the owner is an individual or legal entity resident or headquartered abroad.

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In summary, PL 5387/19 is not only an attempt to improve the business environment in the country, by simplifying and speeding up the remittance and receipt of values, but it is also sure to be an attractive potential for the entry of funds into Brazil for foreign investors.

PL 5387/19 was approved by the Chamber of Deputies and is currently under analysis by the Federal Senate. It is also worth mentioning that the National Monetary Council and the Central Bank should be assigned the authority to adapt and remedy the legal text and infralegal rules changed in the Project, which is why its expected *vacatio legis* is 1 year.