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CELIS Country Note

on

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by

**Michelle Ratton Sanchez Badin, Natália de Lima Figueiredo,
and Renato Baumann, CELIS Country Reporters for Brazil**

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Abstract

This Country Note examines Brazil's foreign investment regime, characterised by a formal openness to foreign capital and the absence of a unified screening mechanism. While Brazil does not maintain a cross-sectoral review framework, it applies a fragmented system of sector-specific laws, regulatory approvals, and complementary governance tools such as golden shares and state equity. Strategic sectors, including energy, telecommunications, media, defence, and rural land, are subject to various levels of legal restrictions or oversight, often justified on grounds of national security or public order. Recent geopolitical tensions, including U.S.-imposed tariffs and interest in Brazil's critical minerals, may prompt domestic debate about enhancing protective instruments. Although political resistance to a centralised screening mechanism remains, Brazil may move toward reinforcing sectoral controls and adopting more strategic, hybrid approaches to investment governance. The report analyses the legal, administrative, and supervisory frameworks shaping foreign investment and highlights the emerging policy discussions on balancing openness with national interest.

Authors

Michelle Rattón Sanchez Badin is Associate Professor at FGV São Paulo Law School (FGV Direito SP), where she has taught since 2004. She holds a Ph.D. from the University of São Paulo and was a Global Hauser Postdoctoral Fellow at NYU. Her research focuses on international economic law from a Brazilian perspective, including its legal instruments, actors, and broader social impacts. She co-coordinates the Centre for Global Trade and Development and the WTO Chairs Programme in Brazil, is a founding member of the Society of International Economic Law (SIEL), a former director of the Latin American Network of International Economic Law (RedLat-DEI), and of the International Law Association – Brazil.

Natália de Lima Figueiredo is Assistant Professor of Business Law at the Federal University of São Paulo (UNIFESP), co-director of the Latin American Network for International Economic Law (RedLat-DEI) and member of the Executive Council of the Society of International Economic Law (SIEL). She holds a Ph.D. in International Economic Law from the University of São Paulo and Maastricht University. Her research focuses on trade, investment, and competition law from a Global South perspective.

Renato Baumann is a former senior economist at Brazil's Institute for Applied Economic Research (IPEA) and a widely recognised scholar in trade and international economics. He holds a BA (1972) and MA (1976) in Economics from the University of Brasília, and a DPhil in Economics from the University of Oxford (1982). He served as Director of ECLAC's Brazil Office from April 1995 to November 2010. His research and professional expertise focuses on international trade relations, trade policy, and economic integration. He has received major academic awards in Brazil, including the BNDES prize for best master's dissertation and the Haralambos Simeonidis/ANPEC prize for best doctoral thesis, and he has authored more than ten books, including two textbooks.

Contact the authors: michelle.sanchez@fgv.br; natalia.figueiredo@unifesp.br;
renato.baumann@ipea.gov.br

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Renato Baumann

1. Political Background of Brazil's Foreign Investment Regime

1.1. Foreign Investment Policy

Brazil's political approach to foreign investment is generally characterised by formal openness and active promotion, tempered by sector-specific controls and evolving geopolitical concerns. The 1988 Federal Constitution enshrines the principle of equal treatment between domestic and foreign investors,¹ although some constitutional and legal carve-outs apply in certain sectors. In addition, successive governments have pursued liberalisation measures to attract foreign capital as a driver of infrastructure development and economic growth.²

Brazil actively encourages foreign direct investment (FDI) through its trade and investment promotion agency, Apex-Brasil, and through sectoral reforms that have removed restrictions and allowed foreign participation³ in areas such as private healthcare, fintech, civil aviation, and telecommunications. In 2019, for instance, Decree 10.029 transferred authority for approving foreign banking operations from the President to the Central Bank, streamlining entry into the financial sector.⁴ Privatisation waves have also opened up key infrastructure sectors to foreign capital.

¹ The formal dichotomy between a "Brazilian company of national capital" and a "Brazilian company" (with foreign equity participation) was anchored in Article 171 of the 1988 Constitution. That provision empowered the State to grant "special protection and benefits" to nationally-controlled companies operating in activities deemed strategic. Constitutional Amendment No. 6 of 15 August 1995 abolished this discriminatory regime by (i) abrogating Article 171 in its entirety (Art. 3, EC 6/1995); and (ii) revising Article 170, IX - which had formerly established a preference for nationally-controlled undertakings - so that preferential treatment is now confined solely to micro and small enterprises incorporated under Brazilian law.

² Meira, F. A. & Crêdo, G. P. C. (2024) '**Brazil**', in: Adkins, B. & Beighton, S. (eds.), *Foreign Direct Investment Regimes*, 5th ed., International Comparative Legal Guide, Global Legal Group Ltd., p. 35 Available at: https://www.pinheironeto.com.br/Documents/storage/files/artigos-qa/iclg-chapter-brazil-fifth-edition_en.pdf. Accessed 14 June 2025.

³ Guimarães, B. C. P., (2018) *A regulação do investimento estrangeiro direto e suas implicações para o caso brasileiro*, LL.M. dissertation, Escola de Direito do Rio de Janeiro – Fundação Getúlio Vargas, Rio de Janeiro. Available at: <https://repositorio.fgv.br/items/484749df-ed46-4dc9-901e-48979e33107d/full>. Accessed 14 June 2025.

⁴ Meira, F. A. & Crêdo, G. P. C. (2024) '**Brazil**', in: Adkins, B. & Beighton, S. (eds.), *Foreign Direct Investment Regimes*, 5th ed., International Comparative Legal Guide, Global Legal Group Ltd., p. 35 Available at:

Despite this liberal stance, Brazil retains longstanding restrictions in strategic areas such as nuclear energy, postal services, media, and rural land. These limitations are often constitutionally or statutorily defined and reflect concerns over national sovereignty, cultural protection, territorial integrity, and public order. Foreign investment in these sectors is either prohibited, capped (e.g., 30% in media), or subject to rigorous authorisation procedures, especially in border zones and coastal areas or in zones linked to defence and national security.

In addition to legal prohibitions, other policy considerations shape Brazil's controls over FDI. National interest, public order, and sovereignty remain key drivers of sectoral restrictions and interventions. Brazil also uses governance mechanisms such as golden shares, shareholding interests, and contractual conditionalities (e.g., R&D obligations in oil and gas contracts) to retain influence over strategic enterprises. These tools do not constitute a screening mechanism, but they function as *ex post* or *ad hoc* instruments to steer or constrain foreign investment when deemed necessary to protect national interests.

In addition, it is worth mentioning that since President Lula da Silva took office in 2023, there have been policy emphasis changes. Although openness to foreign investment continues, privatisations have been deemphasised in favour of public–private partnerships (PPP). In addition, Lula's administration has reactivated industrial policy tools (e.g. reactivated BNDES development bank role), which may signal a more strategic view of investments in general.⁵ In this sense, although in absence of formal screening, certain sectors might face informal political scrutiny if seen as counter to “reindustrialisation”.

From an international perspective, Brazil has also continued to engage on investment facilitation rather than protection. Brazil was involved in the finalisation of the Investment Facilitation for Development (IFD) Agreement at the 13th WTO Ministerial Conference (MC13) in Abu Dhabi, in 2024. This agreement provides global benchmarks to support the efforts of WTO members who are parties to the Agreement to improve the investment and business climate and make it easier for investors in all sectors of the economy to invest, conduct their day-to-day business and expand their operations. Additionally, Brazil has since 2015

https://www.pinheironeto.com.br/Documents/storage/files/artigos-qa/iclg-chapter-brazil-fifth-edition_en.pdf. Accessed 14 June 2025.

⁵ See action plan for Lula's new reindustrialisation plan “Nova Indústria Brasil” available at: <https://www.gov.br/mdic/pt-br/composicao/se/cndi/plano-de-acao/nova-industria-brasil-plano-de-acao-2024-2026-1.pdf>. Accessed on 31 July 2025.

developed a new model of investment treaty, i.e., Cooperation and Facilitation Investment Agreement (CFIA). CFIAs primarily focus on investment facilitation through institutional cooperation.

Brazil's treaty practice is also shaped by an explicit preference to avoid classic BIT-style exposure to investor-State arbitration. Although Brazil signed multiple BITs in the 1990s, none entered into force,⁶ and the post-2015 CFIA model was designed as an alternative centred on facilitation, institutional dialogue, and dispute prevention, rather than investor-State dispute settlement (ISDS). This choice reduced Brazil's direct exposure to the legal and fiscal risks associated with ISDS-driven litigation while preserving policy space; at the same time, it shifts the protection narrative toward domestic law, institutional "problem-solving" channels, and state-to-state mechanisms.⁷

Brazil's approach is thus defined by a combination of formal openness, sector-specific restrictions, and complementary governance safeguards. While foreign investors are welcomed in most sectors and receive in general national treatment under the law, those operating in sensitive areas must navigate a complex regulatory landscape, including political risks and fragmented oversight. The absence of a centralised screening mechanism means that responses to foreign acquisitions are institutionally diffuse and politically variable.

This *sui generis* model – open by default but guarded in certain strategic sectors – has remained stable for decades. However, recent developments, including geopolitical tensions, the weaponisation of trade policy by major powers, and heightened global competition over strategic resources (e.g., rare earth minerals), may prompt a re-evaluation of this framework. While a comprehensive screening law remains unlikely in the short term due to concerns over investor deterrence, the political space for a more structured system of oversight may be expanding.

⁶ United Nations Conference on Trade and Development (UNCTAD), "The Entry into Force of Bilateral Investment Treaties (BITs)," IIA Monitor No. 3 (2006) (New York and Geneva: United Nations, 2006), accessed February 26, 2026, https://unctad.org/system/files/official-document/webiteiia20069_en.pdf.

⁷ Brazil, Ministry of Development, Industry, Trade and Services (MDIC), *The Cooperation and Facilitation Investment Agreement* (last modified June 22, 2020), accessed February 26, 2026, <https://www.gov.br/mdic/pt-br/arquivos/CFIA-Presentation-EN.pdf>.

1.2. Key Features

1.2.1. Lack of a Unified Screening System

Unlike many major economies, Brazil does not have a centralised, cross-sectoral FDI screening mechanism or “one-stop” committee to vet foreign investments for national security. There is no Brazilian equivalent of a CFIUS-style review body; consequently, foreign investments are generally only reviewed under ordinary regulatory processes (e.g. antitrust, sectoral licensing) and not for broad national interest criteria.

It should be noted, however, that Brazil does have an inter-ministerial coordination body for investment policy: the National Investment Committee (CONINV), housed within the Brazilian Chamber of Foreign Trade (CAMEX) and created by Decree No. 9,885/2019. CONINV’s mandate is primarily coordinative, supporting an investment agenda and policy alignment.⁸ The idea to create it “arose from the need for a forum to discuss and coordinate matters relating to foreign direct investment (FDI) in Brazil and Brazilian direct investment abroad (BDI), in light of the various measures, projects, and actions carried out by different government bodies and agencies in an individualised, uncoordinated manner, and without an overarching governmental guideline or policy on the issue.”⁹

In practice, very little has been produced proactively by CONINV in recent years, particularly in terms of clarity regarding the development of proposals for public policies, guidelines and actions related to foreign direct investment in the country.¹⁰ CONINV has not operated as a

⁸ According to Decree 9,885/2019, CONINV is a consultative and deliberative body tasked with: (i) drafting proposals for public policies, guidelines, and actions related to inbound and outbound direct investment; (ii) monitoring how competent agencies implement CAMEX decisions on investment; (iii) proposing ways to harmonize the work of authorities with investment-related mandates; (iv) reviewing the efficiency and relevance of procedures, formalities, controls, and requirements applicable to direct investment and recommending improvements to CAMEX; (v) assessing investment promotion and facilitation proposals coming from its members and related CAMEX bodies (including the Direct Investment Ombudsman and the OECD National Contact Point) and forwarding relevant proposals to CAMEX; (vi) consulting public and private entities on investment matters under review; (vii) identifying and disseminating information and good practices on investment promotion and facilitation, including capacity-building for public and private actors; (viii) recommending the adoption of international standards on direct investment; and (ix) overseeing the activities of the Direct Investment Ombudsman and supervising the OECD NCP’s work on the OECD Guidelines for Multinational Enterprises, among others.

⁹ Brazil, Ministry of Economy, “Exposição de Motivos (EM) nº 00166/2019 ME” [Explanatory Memorandum], Brasília, June 19, 2019, accessed February 26, 2026, https://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Exm/Exm-Dec-9885-19.pdf.

¹⁰ Rodrigo Jacobina Botelho, *Fundamentos Jurídicos para a Atração de Investimentos Estrangeiros Diretos* (doctoral thesis, Universidade de São Paulo, Faculdade de Direito, 2024), 85, accessed February 26, 2026, <https://www.teses.usp.br/teses/disponiveis/2/2133/tde-25062024-181953/publico/11053208DIC.pdf>

centralised clearance body with authority to approve, condition, or block individual foreign investments, and Brazil remains without a CFIUS-style “one-stop” national interest review.

Nevertheless, activities conducted within the Border Zone, a territory extending up to 150 kilometres inland from the national borders, are subject to heightened regulatory scrutiny due to their strategic relevance for national sovereignty and defence. The legal framework governing this area, particularly Law No. 6.634/1979 and Decree No. 85.064/1980, imposes a set of restrictions that apply both to domestic and foreign actors. These restrictions are grounded in constitutional principles and require prior approval from the National Defense Council (CDN) for a range of activities considered sensitive.

Specifically, prior authorisation is required for the transfer or concession of public lands, the construction of international roads, bridges, and airfields, as well as the installation of broadcasting infrastructure. The establishment or operation of industries deemed relevant to national security, designated by executive decree, is also subject to review. Additionally, companies aiming to engage in sensitive economic activities such as mineral exploration (excluding materials used in civil construction) and rural colonisation or land subdivision must obtain clearance from the CDN.

Beyond this approval requirement, companies of foreign capital operating in the Border Zone and involved in such activities must also comply with additional structural conditions, as established by Article 3 of Law No. 6.634/1979. These include: (i) a minimum of 51% of the company’s capital must be owned by Brazilian nationals; (ii) at least two-thirds of the workforce must be Brazilian; and (iii) the administration or management must be predominantly Brazilian, with these individuals holding effective decision-making power.

The legal framework further prohibits foreign individuals or legal entities from acquiring ownership, possession, or real rights over rural land in the Border Zone without specific governmental approval. Similarly, foreign participation in companies that hold real rights over such land is also subject to these legal limitations.

These provisions reflect Brazil’s enduring concerns with territorial integrity, strategic resource protection, and national control over critical infrastructure. While the framework does not categorically ban foreign investment in the region, it establishes a regime of prior scrutiny and structural requirements that functionally limit foreign influence in key sectors near Brazil’s borders.

Apart from this specific screening mechanism, overall, the key legal framework governing foreign capital (Law No. 4,131/1962) relies on registration and reporting rather than approval. All foreign equity investments must be registered with the Central Bank's electronic system, but this is a declaratory formality that confers legal rights (like profit repatriation) without any merit-based screening.

In most sectors, therefore, foreign investors can enter freely and receive national treatment as of right. The "screening" that does exist is fragmented across various agencies and laws. For instance, acquisitions in banking or finance still require Central Bank authorisation to ensure prudential soundness. This decentralised approach means Brazil's de facto "screening regime" is limited to a few sector-specific filters, as will be detailed in section 2 below, rather than an overarching policy.

1.2.2. Institutional Capacity and Transparency

Brazil's sectoral regulators and institutions generally have strong technical capacity within their mandates – for example, the Central Bank and antitrust authority (CADE) are professional and independent in assessing financial and competition issues. However, because there is no dedicated FDI screening authority, there is a capability gap when it comes to evaluating security or public interest implications of foreign investments. Decisions impacting those concerns are often made at the political level (the President or ministers) or via special legal instruments (as with golden-share vetoes), rather than through a transparent, rule-bound process. This raises concerns about consistency and transparency.

1.2.3. Political Interference and Consistency

Foreign investors in Brazil generally benefit from constitutional guarantees of equal treatment and legal protections for their investments. Rejections of foreign capital are rare and typically confined to sectors explicitly restricted by law. However, the absence of a unified investment screening mechanism means that foreign acquisitions, especially in politically sensitive sectors, are subject to oversight that is fragmented, and, at times, may be politically driven.¹¹

¹¹ For instance, the Federal Court of Accounts (TCU) reviewed the draft auction notice prepared by Anatel concerning the provision of services using 5G mobile connectivity technology. Discussions about this auction took place prior to its publication, in a context marked by the well-known technological rivalry between companies from the United States and China. There was, therefore, significant speculation about the geopolitical interests at play. After political negotiations between various ministries, the final version of the auction notice did not include any discriminatory measures against foreign companies, including Huawei of China. There had been public concern over national security issues and suspicions of potential espionage through 5G networks, and the Ministry of Defense was even consulted on the matter. However, in none of the official documents produced during the process

In addition, the fragmentation of rules across different authorities can undermine consistent enforcement. A foreign company acquiring a Brazilian conglomerate might have to seek separate clearances from multiple bodies (e.g. ANATEL for telecom licenses, ANP for oil leases, CADE for competition, Central Bank for any financial arm), each applying its own criteria in isolation. While each regulator may be effective within its domain, there is no single arbiter to ensure a coherent outcome if a foreign investment raises cross-cutting concerns.

This dispersion is not merely procedural: because regulatory mandates are compartmentalised across different authorities (e.g., competition enforcement, prudential supervision, and sector-specific licensing), Brazil lacks a dedicated institutional venue to consolidate cross-cutting risk assessments, such as national security, strategic dependencies, and data externalities, into a single, reasoned decision; as a result, “national interest” concerns are typically handled indirectly through sectoral instruments or addressed episodically through political interventions, rather than via an integrated, transparent administrative pathway.

The Brazilian government is aware of some of these shortcomings. Bills were introduced in 2020 to create a central FDI screening committee with authority to evaluate and block investments posing risks to security or public order, but so far these have stalled in the legislature.¹² As of 2025, Brazil’s foreign investment oversight remains defined by a combination of liberal default rules and targeted sectoral restrictions. Key features include the absence of an overarching review mechanism, a fragmented legal framework dispersed across multiple regulatory authorities, and, in some cases, reliance on case-by-case political or institutional safeguards. While this model has sustained Brazil’s general openness to foreign capital, it raises concerns about regulatory unpredictability and the lack of a coordinated approach to cross-cutting issues posed by foreign investment in strategic sectors.

2. Overview of Sectoral Regulations Affecting Foreign Investment

As previously mentioned, Brazil does not operate a unified FDI-screening system. Instead, it relies on a combination of constitutional norms, sector-specific laws, and contractual tools to manage foreign investment. This fragmented regime results in varying degrees of openness and control depending on the sector and perceived national interest.

was national security invoked as a decisive argument. See: Sanchez Badin, M. R.; Morais, A. M.; Kroetz, M. E. A.; Misra, M. *Infraestrutura crítica e o controle de investimento externo: a regulação do Brasil em contraste*. *Boletim de Economia e Política Internacional*, v. 36, p. 27–57, 2023.

¹² Sanchez-Badin M R, Morais A M, Bonini C B (2021) Instrumentos de avaliação de investimento externo e o debate legislativo no Brasil. *Boletim de Economia e Política Internacional* (BEPI), no. 31, Sep–Dec 2021. IPEA.

2.1. Cross-Cutting Regulations

The Central Bank of Brazil (BACEN) is responsible for registering all foreign investments entering the country, pursuant to Laws No. 4.131/1962, 4.595/1964, and 11.371/2006. Through the Electronic Declaratory Registry (RDE), BACEN tracks capital flows, issues certificates of registration, and ensures compliance with monetary and exchange regulations. Registration is mandatory to allow remittances and earnings repatriation. Additional oversight comes from:

- a) CVM (Securities Commission): monitors capital markets and requires prior registration for portfolio investors;
- b) CADE (antitrust authority): reviews all mergers, including foreign-led ones, for antitrust implications;
- c) TCU (Federal Court of Accounts): audits concessions involving foreign capital, with power to influence tender designs;

Together, these institutions form a de facto monitoring system even in the absence of a formal screening mechanism.

This “monitoring” is best understood as compliance- and mandate-based oversight (competition, prudential, licensing, disclosure), rather than a coordinated, cross-government system that tracks FDI from a national-interest or security perspective once an investment is operating. After an investment is established and operating, Brazil’s ongoing interaction with foreign investors is usually routed through investment-promotion and facilitation channels, such as ombudsman/focal-point mechanisms and “aftercare” programs aimed at solving operational bottlenecks and supporting reinvestment, rather than through a centralised government framework that continuously reassesses foreign ownership dynamics or strategic dependencies.

2.2. Sector-Specific Regulation

The framework varies across four regulatory categories:

A. Sectors Prohibited to Private Actors

- *Nuclear energy* (Brazilian Constitution, Article 21, XXIII) and *postal services* (Brazilian Constitution, Article 21, X) are state monopolies, constitutionally reserved for the Union, reflecting long-standing national security concerns.¹³
- Though some liberalisation efforts (e.g., postal reform through Bill n. 591/2021) are underway, private or foreign entry remains limited without constitutional amendment.

B. Sectors with Restrictions on Foreign Participation

- *Border Zones* (Law No. 6.634/1979), *Rural Land* (Law No. 5.709/1971 and Attorney General's Opinion LA-01/2010), *Defence Products and Systems* (Law No. 12.598/2012, as amended by Law No. 14.459/2022), *Media* (Brazilian Constitution, Article 222) and *Cabotage*¹⁴ have specific legal or policy-based limitations on foreign ownership or control.
- Justifications include national security, territorial sovereignty, and cultural protection.
- In certain circumstances, approval from the National Defence Council, Senate, or other high-level bodies is required.

C. Sectors Subject to State Supervision (but not formally restricted)

- *Banking* (Article 192 of the Constitution, Article 52 of the Act of Transitional Constitutional Provisions, Decree No. 10.029/2019 and BACEN Circular No. 3.977/2020), *Telecommunications* (Article 21, XI of the Constitution and the General Telecommunications Law) and *Civil Aviation* (Article 21, XII(c) of the Brazilian Constitution and the Brazilian Aeronautics Code, as amended by Law No. 14.368/2022).
- Institutional reforms have gradually eliminated nationality-based barriers, though control remains with domestic agencies like BACEN, the National Agency for Telecommunications (ANATEL), and the National Agency for Civil Aviation (ANAC).

¹³ Kuramoto R, Appoloni C (2002) Uma breve história da política nuclear brasileira. *Caderno Brasileiro de Ensino de Física* 19(3):379–392. <https://dialnet.unirioja.es/servlet/articulo?codigo=5166006> (accessed 12 June 2025); Pessoa L H, Bernardes D S, Teixeira F A, Melo Júnior J A C C, Paula C E A (2021) A privatização do setor postal brasileiro: argumentos favoráveis e contrários. *Revista Brasileira de Administração Científica* 12(2):198–211. <https://doi.org/10.6008/CBPC2179-684X.2021.002.0016> (accessed 29 July 2025).

¹⁴ Brazil's Law No. 14.301/2022 (the *BR do Mar* Act) fundamentally reformed domestic maritime transport (cabotage) by allowing Brazilian navigation companies (EBNs, registered in Brazil) to charter foreign-flag vessels—under specific conditions—without the need to build or own Brazilian ships. As a result, The transport of foreign nationals or goods within Brazilian borders by a foreign vessel is prohibited, except for Brazilian companies enrolled in the “BR do Mar” program, which are allowed to charter vessels from their wholly owned foreign subsidiaries or from a wholly owned foreign subsidiary of another Brazilian company, with certain exceptions. CHAVES, Adriano; DIAS, Bernadete de Figueiredo; MACHADO, Martim; GELMAN, René. Brazil – Investing In. In: LEGAL 500 – Country Comparative Guides 2025. CGM Advogados. Available at: <https://www.legal500.com/quides/chapter/brazil-investing-in/>. Accessed on: 31 July 2025.

D. Sensitive Sectors with No Formal Restrictions, but High Oversight

- *Healthcare* (Organic Health Law - Law No. 8,080/1990, as amended by Law No. 13,097/2015), *Energy*,¹⁵ *Ports and Railways*,¹⁶ *Sanitation* (Law No. 14.026/2020), *Biosafety* (Law No. 11.105/2005), and *Aerospace*¹⁷ welcome foreign investment but remain tightly monitored due to their strategic importance.
- These sectors often require pre-approval for M&As and compliance with R&D, safety, or localisation obligations.

2.3. Complementary Safeguards in Absence of Screening Mechanisms

The federal government also wields certain ex-post instruments that allow it to steer or stop unwanted foreign investment. Three mechanisms stand out.

A. Golden-share vetoes in privatised “strategic enterprises”

The Brazilian government holds golden shares (special veto rights) in a handful of strategic companies, notably Embraer (aircraft) and Vale (mining) since their privatisations, IRB Brasil-RE (reinsurance), and Eletrobras (power utility) after its 2022 share sale. These give the state a veto over certain decisions (e.g. control change, asset disposals, brand use, location of headquarters, and in some cases the appointment or removal of senior management).

These rights have been exercised in certain instances to block or reshape deals driven by foreign investors e.g., in 2018, where the Brazilian government prevented the hostile takeover of Brazilian company Embraer by Boeing.¹⁸ Additionally, the fact that the Brazilian government

¹⁵ Constitutionally under federal jurisdiction (Art. 21, XII, b), the electricity sector was liberalised in the 1990s, enabling private and foreign participation in all segments. Investors must establish a local subsidiary and fulfill reporting requirements under the oversight of the Brazilian Electricity Regulatory Agency (ANEEL). Key regulations include Resolution No. 948/2021 and Resolution No. 484/2012, which mandate pre-approval for shareholding changes and quarterly disclosures. The privatisation of Eletrobras (Law No. 14.182/2021) illustrates this opening.

¹⁶ Under Article 21, XII, f) of the Constitution, ports and railways are federal monopolies delegated via concession, permission, or authorisation. There are no nationality-based restrictions, but foreign investors must operate through a Brazilian subsidiary. Law No. 12.815/2013 (Port Law) and Law No. 14.273/2021 (Railway Legal Framework) foster private and foreign investment.

¹⁷ Article 21, XII, c) of the Constitution reserves airspace and airport infrastructure to the Union. While private and foreign capital may participate in manufacturing and services, activities such as launching satellites remain under state control unless authorised. The Brazilian Space Agency (AEB) oversees the sector and has recently regulated private participation via Ordinance No. 698/2021 and the Brazilian Space Regulation (REB). These rules impose nationality-neutral requirements but allow restrictive clauses in licenses based on national security or foreign policy interests.

¹⁸ Dias, M., Duzert, Y., & Teles, A. (2018). Boeing, Brazilian federal government, and Embraer: Golden share veto and the anatomy of a joint venture. *International Journal of Business and Management Studies*, 7(2), 71-80.

owns minority shareholding including golden shares in Vale encouraged presidential pressure for Vale to replace its CEO.¹⁹

B. Equity activism via BNDESPAR and other state-linked funds

Through its investment arm BNDESPAR, public pension funds and the FI-FGTS infrastructure fund, the Brazilian Development Bank (BNDES) regularly takes minority positions, often alongside concessional loans, in companies picked as “national champions” or deemed “strategic”. These shareholdings come with shareholder-agreement clauses that give the State a blocking vote on matters it deems sensitive, allowing it to shape international expansion strategies, mergers, or relocations that would shift corporate control abroad. An illustrative case is BNDESPAR’s 2018 vote against JBS’s plan to corporate restructuring and the transfer of the fiscal domicile abroad. While the policy can anchor long-term industrial goals, academics and the Federal Audit Court have criticised its lack of objective selection criteria, politicised allocation of subsidised credit and weak transparency, all of which blur the line between legitimate public-interest oversight and protection of favoured private groups.²⁰

C. Contractual conditionalities in concession and production-sharing agreements

In sectors opened to foreign capital, most visibly oil & gas after the 1997 and 2010 reforms, the State embeds industrial-policy obligations directly into the licence or Production Sharing Agreement (PSA). Key tools can include, for instance, R&D clauses requiring operators to reinvest a certain percentage of special-participation revenues in Brazilian research institutions²¹ and local-content targets compelling bidders to source minimum percentages of goods and services domestically.²²

¹⁹ Valor Internacional. Political pressure undermines Vale’s governance. 1 Mar. 2024. Available at: <https://valorinternational.globo.com/business/news/2024/03/01/political-pressure-undermines-vales-governance.ghtml>. Accessed on: 31 July 2025.

²⁰ CUERVO-CAZURRA, Alvaro et al. *The Impact of Government Equity Investment on Internationalization: The Case of Brazil*. Competitive Paper — FGV, 2014. Available at: <https://repositorio.fgv.br/server/api/core/bitstreams/40ea9bfa-1725-41fa-afe4-629191b55a67/content>. Accessed 30 June 2025; DUARTE, Bruno Elmôr; LEAL, Ricardo Pereira Câmara. *Principal-principal conflicts leading to activism of a large government-owned investor in Brazil*. Corporate Governance and Organizational Behavior Review, v. 5, n. 1, p. 15-25, 2021. DOI: 10.22495/cgobrv5i1p2. Available at: <https://doi.org/10.22495/cgobrv5i1p2>. Accessed 30 July 2025.

²¹ IBP – Brazilian Petroleum, Gas and Biofuels Institute. *The RD&I Clause in the Oil and Natural Gas Industry: An Innovation Driver in the Brazilian Economy*. Rio de Janeiro: IBP, Jan. 2024. Available at: <https://www.ibp.org.br/personalizado/uploads/2024/05/clausula-de-pdi-na-industria-de-oq-ingles.pdf>. Accessed 30 July 2025.

²² COLUMBIA CENTER ON SUSTAINABLE INVESTMENT (CCSI). *Local Content Policy in Brazil: Law, Enforcement and Impacts*. Fevereiro de 2020. Documento técnico/análise jurídica das políticas de conteúdo local no setor petrolífero brasileiro, incluindo atuação do CNPE, ANP e regulamentações definidas pela Lei

These contractual levers amount to a de facto, transaction-specific screening regime: the government cannot block the investment outright once the auction is won, but it can use non-compliance with local-content or R&D obligations and the threat of fines or licence termination to renegotiate terms or force technology transfer after entry.

3. Overview of Relevant Framework

3.1. Legal Framework

The Brazilian legal framework regulating foreign investment is grounded in the general principle of equal treatment between domestic and foreign investors, as established by the 1988 Federal Constitution, with a few carve-outs, as previously explained. Brazil does not maintain a single, unified foreign direct investment (FDI) screening law or cross-sectoral approval system. Instead, it relies on a fragmented regulatory architecture, where foreign investment is governed by sector-specific legislation, constitutional provisions, and case-by-case political discretion.

Foreign investment may be restricted or conditioned based on national interest, sovereignty, public order, protection of local cultural territorial integrity, food security, among others. Sectors of strategic sensitivity are subject to legal limitations or prior authorisation. These include nuclear energy (Constitution, art. 21, XXIII), postal services (art. 21, X), and defence products (Law 12.598/12), as well as media (Law 10.610/02), civil aviation (Law 7.565/86) and rural land (Law 5.709/71. In many of these areas, restrictions apply specifically to foreign-controlled entities, even if legally incorporated in Brazil.

A structural challenge for any “control-based” approach in Brazil is that most companies operating in the country, whether ultimately Brazilian or foreign-owned, are typically incorporated as Brazilian legal entities and are registered under the same national taxpayer identification number for companies (the CNPJ, similar to a corporate tax ID). As a result, “foreignness” is not always visible at the operational level, and enforcement depends on identifying the ultimate controlling party and the beneficial owner(s) behind locally incorporated entities. This is particularly relevant for rules that turn on “foreign control,” such as restrictions on rural land ownership, activities in border areas, and certain defence-related constraints. In response, Brazil has strengthened beneficial-ownership transparency requirements: in 2025,

9.478/1997, Lei 12.351/2010 e Resolução ANP 726/2018. Available at: <https://ccsi.columbia.edu/sites/ccsi.columbia.edu/files/content/docs/our%20focus/extractive%20industries/Local-Content-Brazil-CCSI-February-2020.pdf>. Accessed 30 July 2025.

the Federal Revenue Service updated the applicable framework (IN RFB No. 2,290/2025) and implemented the e-BEF, the Federal Revenue's Digital Final Beneficiary Form, a mechanism to collect and update beneficial-owner information linked to corporate tax registration, with administrative consequences for non-compliance.

Although there is no general "national interest" or "net benefit" test, investment policy is often shaped by broader political and economic considerations. Past interventions, including the use of golden-share vetoes in Embraer, illustrate how tools may be used to protect perceived national interests outside a formal investment screening framework.

In Brazil, "national security" and "national interest" operate more as justificatory languages embedded in sectoral rules than as a unified legal test applied through a centralised process. This creates a recurring tension: policy documents and strategic planning increasingly emphasise sovereignty, critical infrastructures, and the safeguarding of national interests, yet the administrative architecture for inward investment remains fragmented and does not provide a single forum for translating these broad concepts into consistent, transparent, transaction-level decisions.

3.2. Administrative Framework

As previously mentioned, Brazil does not operate a centralised investment screening authority. Administrative control is exercised by sectoral regulators with varying mandates and discretionary powers. These include the Central Bank (BACEN) for financial institutions, the National Telecommunications Agency (ANATEL) for telecommunications and broadcasting, the National Civil Aviation Agency (ANAC) for air transport, the National Health Agency (ANS) for the supplementary health sector, the National Mining Agency (ANM), and the National Water and Sanitation Agency (ANA).

Each of these agencies oversee authorisation procedures, licensing, and regulatory compliance within its domain, including for mergers, acquisitions, or control transfers involving foreign investors. Legal reforms have gradually shifted approval powers from the Presidency to specialised agencies. For instance, Decree 10.029/2019 and Circular BACEN 3.977/2020 streamlined foreign entry into the financial sector by delegating approval authority to BACEN.

Some sectors, notably energy and mining, require prior consent from the National Defense Council (CDN) for operations involving border zones. In other areas, such as broadcasting and

civil aviation, ANATEL and ANAC retain discretion to assess changes in control that may affect public interest, and IBAMA in cases with an impact on environmental issues.

In the absence of a formal screening process, additional governance and contractual tools can serve de facto screening purposes. These include:

- golden-share vetoes in privatised companies (e.g., Embraer, Vale);
- equity activism by state-linked investors such as BNDESPAR;
- contractual conditionalities in concession and production-sharing agreements, including mandatory R&D and local content clauses.

While such tools do not constitute a formal ex ante screening system, they are often used to steer or limit foreign participation in politically sensitive transactions.

3.3. Supervisory Framework

Once a foreign investment is established, it remains subject to regulatory oversight, especially in sectors deemed strategic or sensitive. Ongoing supervision includes obligations to disclose ownership structures, notify changes in corporate control, and comply with sector-specific rules on nationality, voting rights, and technological transfer. For example:

- ANEEL and ANM require pre-approval for shareholding changes in the electricity and mining sectors;
- ANAC mandates authorisation for foreign-controlled airlines and airport operators;
- ANATEL reviews ownership modifications in telecommunications and broadcasting;
- Brazilian Space Agency (AEB) imposes licensing conditions for private participation in space launch activities;
- Strategic Defense Companies (EEDs) must limit foreign voting rights and demonstrate continuity of national control.

While supervision does not formally differentiate between foreign and domestic capital, in practice foreign investors in sensitive sectors may face heightened regulatory attention.

In sum, Brazil presents itself as a formally open destination for foreign capital, but the absence of a unified investment screening mechanism is offset by a dense and fragmented patchwork of sectoral rules, administrative controls, and political instruments. While this approach enables flexibility, it also generates uncertainty, as certain key decisions may rely on opaque or ex post interventions rather than a transparent and rule-based review system.

4. Developments to Follow

4.1. Expected Legal Developments and Ongoing Discussions

Brazil has debated adopting a formal FDI screening mechanism in recent years, most notably through proposals such as Bill No. 2,491/2020 and Bill No. 3.122/2020 which was introduced in Congress, but has not advanced.²³ These Brazilian bills envision the creation of a foreign investment screening system within the framework of existing national regulatory structures. Bill No. 2,491/2020 essentially includes BACEN, the Brazilian System for the Defense of Competition (SBDC), and the National Congress in this new screening process; and Bill No. 3,122/2020 broadly refers to the powers of BACEN and the Executive Branch.

This reflects Brazilian policymakers' awareness of global trends and the fact that Brazil's choice not to screen is an ongoing policy decision, not an oversight. Although Brazil has previously debated the adoption of a unified investment screening mechanism, as of the first quarter of 2026, there is no consolidated legislative effort to establish a centralised regime for the review of FDI. The prevailing political and economic consensus continues to favour an open investment environment, and a unified screening framework is widely seen as potentially harmful to Brazil's competitiveness and attractiveness to foreign capital, as it may introduce additional bureaucratic procedures. Legislative inertia on this front reflects a broader reluctance to introduce perceived barriers to investment inflows in a context of economic volatility and persistent infrastructure and industrial financing needs.

This position, however, may be undergoing reassessment in light of recent geopolitical developments. In July 2025, the United States, under President Donald Trump, announced 50% tariffs on a broad range of Brazilian exports which would be effective as of August 1, 2025. The announcement followed earlier tariffs and was accompanied by sanctions against Justice Alexandre de Moraes of Brazil's Supreme Federal Court, directly linking trade measures to domestic judicial decisions, specifically, the judgment of former extreme right-wing President Jair Bolsonaro and rulings related to platform regulation and big tech accountability.²⁴ Although key commodities like iron ore, fertilizers, alums, and Embraer

²³ Sanchez-Badin M R, Morais A M, Bonini C B (2021) Instrumentos de avaliação de investimento externo e o debate legislativo no Brasil. *Boletim de Economia e Política Internacional* (BEPI), no. 31, Sep–Dec 2021. IPEA.

²⁴ BBC. *Why Trump's tariffs on Brazil are more about political retaliation than trade*. 31 July 2025. Available at: <https://www.bbc.com/news/articles/cwy0147vxyqo> [last accessed 31 July 2025].

aircraft were later exempted from the tariff increase, many Brazilian sectors such as coffee, meat, and textiles would continue to face the barriers.²⁵

The legal basis for that broader IEEPA-based tariff strategy was significantly narrowed by the U.S. Supreme Court in *Learning Resources, Inc. v. Trump* on February 20, 2026. By a 6-3 vote, the Court held that the International Emergency Economic Powers Act (IEEPA) does not authorize the President to impose tariffs. Chief Justice Roberts explained that the Constitution assigns the power to impose duties to Congress, that IEEPA does not mention tariffs or duties, and that interpreting it otherwise would grant the President extremely broad tariff authority.²⁶

Following that ruling, Trump issued an order the same day ending the additional ad valorem duties imposed under IEEPA, expressly including the Brazil order, but he simultaneously proclaimed a new 10% across-the-board import surcharge under Section 122 of the Trade Act of 1974, effective February 24, 2026, for up to 150 days, i.e., until July 24, 2026, unless Congress extends it.²⁷

As of the time of this writing, the next moves remain uncertain: Trump has said he wants to raise that temporary rate to 15%, has indicated that he will continue to pursue other legally available tariff routes, and the administration has already pointed to Section 301 and national-security pathways, while the new Section 122 tariff has itself since been struck down by a federal court.²⁸

At the same time, the dispute remains active: Brazil's WTO challenge against the U.S. tariff measures is still in the consultations phase, and the Office of the United States Trade Representative stated in February 2026 that its ongoing Section 301 investigations, including those involving Brazil, could still lead to responsive action, including tariffs.²⁹ Accordingly,

²⁵ REUTERS. *Trump hits Brazil with tariffs and sanctions; key sectors excluded*. 30 July 2025. Available at: <https://www.reuters.com/world/americas/trump-hits-brazil-with-tariffs-sanctions-key-sectors-excluded-2025-07-30/> [last accessed 31 July 2025].

²⁶ U.S. Supreme Court, *Learning Resources, Inc. v. Trump*, 607 U.S. (2026), decided February 20, 2026.

²⁷ The White House, "Imposing a Temporary Import Surcharge to Address Fundamental International Payments Problems," and related Fact Sheet, February 20, 2026.

²⁸ ASSOCIATED PRESS. Federal court rules against new global tariffs Trump imposed after loss at the Supreme Court. 2026. Available at: <https://apnews.com/article/trump-global-tariffs-trade-court-df01218b89ca925015fe41c700d6beb9> [last accessed 12 May 2026].

²⁹ WORLD TRADE ORGANIZATION (WTO). United States - Tariff Measures on Certain Products from Brazil (DS640), status accessed 12 Apr. 2026; Decision." 20 Feb. 2026. Available at: <https://ustr.gov/about/policy-offices/press-office/press-releases/2026/february/ambassador-greer-issues-statement-supreme-court-ieepa-decision>. Accessed on 14 April 2026.

although the 2025 Brazil-specific IEEPA tariff was terminated, Brazilian exporters remain exposed to a fluid and unstable U.S. trade environment.

In parallel, Brazilian officials are closely monitoring growing U.S. interest in the country's rare-earth minerals, critical inputs for global high-tech value chains and central to U.S. efforts to secure strategic mineral supply chains. There is concern that this interest could be leveraged by the U.S. as a bargaining tool in ongoing tariff negotiations with Brazil.³⁰ In March 2026, U.S. officials stated that they were discussing a possible federal-level arrangement with Brazil on critical mineral supply chains, while a separate agreement was signed with the state of Goiás covering geological mapping, regulatory cooperation, technological linkages, and value-added rare-earth processing. These developments suggest that Brazil-U.S. relations are currently marked by a dual dynamic of continuing trade frictions and targeted strategic engagement in sectors relevant to economic security.³¹

The weaponisation of trade policy by the United States has highlighted the asymmetries in Brazil's current foreign investment regime. Without a unified or explicit mechanism to screen investments based on national interest, Brazil remains formally open to foreign capital, including in sensitive sectors such as telecommunications, space, energy infrastructure, critical minerals and data governance. While sectoral regulators exercise some ex-ante control, and golden shares and state equity participation offer ad hoc levers of intervention, the lack of a transparent and structured legal framework exposes the country to strategic vulnerabilities.

In this evolving context, Brazilian policymakers may begin to explore legal alternatives. While the political resistance to a comprehensive screening law persists, the creation of the new Trade Reciprocity Law in response to U.S. tariffs signals a broader willingness to use legal tools to defend national interests.³² Brazil's new Economic Reciprocity Law (Law No. 15,122/2025) empowers the Executive Branch to adopt countermeasures when unilateral foreign actions are deemed to harm Brazil's international competitiveness. These measures can include suspending trade-related concessions and certain investment-related concessions

³⁰ VALOR INTERNACIONAL. *US eyes Brazil's rare earths as Lula government pushes for talks*. 25 July 2025. Available at: <https://valorinternacional.globo.com/foreign-affairs/news/2025/07/25/us-eyes-brazils-rare-earth-as-lula-government-pushes-for-talks.ghtml> [last accessed 31 July 2025].

³¹ REUTERS. "US in talks with Brazil on critical minerals, US diplomat says at signing of Goias state deal." 18 Mar. 2026. Available at: <https://www.reuters.com/world/americas/us-hosts-critical-minerals-event-brazil-amid-diplomatic-strains-2026-03-18/>. Access on 14 April 2026.

³² BRAZIL. Presidency of the Republic. *Brazil enacts Economic Reciprocity Law*. 15 April 2025. Available at: <https://www.gov.br/planalto/en/latest-news/2025/04/brazil-enacts-economic-reciprocity-law> [last accessed 31 July 2025].

as well as selected intellectual property–related obligations. Decree No. 12,551/2025 sets out the procedural steps and governance for deciding and implementing such countermeasures. Although this is not an FDI screening mechanism, it signals a broader shift toward “economic security” and national-interest defence tools that may increasingly shape how Brazil frames and debates foreign investment in sensitive contexts.

It is possible that Brazil will move toward reinforcing existing sectoral oversight powers, introducing new disclosure or notification obligations for foreign investors in critical sectors, or enhancing the institutional role of national security bodies in cross-border investment governance.

A related trend is the growing securitisation of economic and infrastructure policy. Brazil’s updated National Defense Policy and Strategy (Decree 12,725/2025) emphasise the protection of “critical infrastructures” as part of national sovereignty and security from a military perspective. They also situate the National Defense Council (CDN) as an institutional locus for assessing investments and the exploitation of national resources in security-relevant contexts. While this does not create a general FDI screening regime, it may increase political and institutional pressure to treat certain inward investments, especially in strategic minerals, communications, cyber, space, and logistics, as matters of national security, including from a military standpoint, potentially reinforcing sectoral controls and discretionary scrutiny.

These changes would stop short of a CFIUS-style review mechanism, but they may nonetheless amount to a gradual shift toward more strategic state engagement with foreign capital.

What emerges is a scenario of cautious institutional reflection. Brazil is not expected to adopt a comprehensive screening mechanism in the short term. Still, the perceived risks of inaction, particularly in an increasingly adversarial international environment, are becoming more visible. There are certain proposals in Brazil, legislative initiatives such as Bill No. 2,491/2020 and Bill No. 3,122/2020, along with similar proposals pending in Congress, seeking to establish a formal screening mechanism for foreign investments in sectors considered strategic or sensitive. These proposals generally envisage prior review procedures—often coordinated by interministerial bodies—for transactions involving national security, critical infrastructure, or key technologies. While partly inspired by screening frameworks adopted in other jurisdictions, they remain contested due to concerns that a centralised mechanism could introduce additional bureaucratic layers and affect Brazil’s traditionally open investment environment.

The country's next steps may involve a hybrid approach: preserving an open investment posture while incrementally reinforcing legal and institutional tools to screen, monitor, and, if necessary, constrain foreign investment in critical areas.

Annex 1: Relevant Laws, Ordinances, Regulatory Guidelines

| <i>Instrument</i> | <i>Purpose/Context</i> | <i>English Translation Availability</i> |
|---------------------------------------|--|---|
| 1988 Federal Constitution of Brazil | General principle of equal treatment; restrictions in specific sectors like nuclear energy, media, and postal services | EN translation available at https://www.constituteproject.org/constitution/Brazil_2017.pdf |
| Attorney General's Opinion LA-01/2010 | Interprets Law 5,709/1971; applies restrictions to companies controlled by foreigners | No official EN translation available |
| BACEN Circular No. 3.977/2020 | Operationalises Decree 10.029/2019 | No official EN translation available |
| Bill No. 2,491/2020 | Proposes FDI screening mechanism | No official EN translation available |
| Bill No. 3.122/2020 | Alternative proposal for FDI screening | No official EN translation available |
| Bill No. 591/2021 | Proposes postal service reform | No official EN translation available |
| Decree No. 10.029/2019 | Delegates authority on foreign bank approvals to Central Bank | No official EN translation available |
| Decree No. 85.064/1980 | Implements Law 6,634/1979 | No official EN translation available |
| Law No. 10.610/2002 | Regulates media ownership | No official EN translation available |

| | | |
|------------------------|--|--------------------------------------|
| Law No. 11,371/2006 | Taxation and financial provisions affecting foreign investment | No official EN translation available |
| Law No. 11.105/2005 | Biosafety Law | No official EN translation available |
| Law No. 12,598/2012 | Defines rules for defence products and strategic defence companies | No official EN translation available |
| Law No. 13.097/2015 | Allows foreign capital in healthcare | No official EN translation available |
| Law No. 14.026/2020 | New sanitation framework | No official EN translation available |
| Law No. 14.368/2022 | Amends aviation law; liberalises foreign ownership | No official EN translation available |
| Law No. 14.459/2022 | Amends Law 12,598/2012 on defence sector | No official EN translation available |
| Law No. 4,131/1962 | Foreign capital regulation; registration and reporting at Central Bank | No official EN translation available |
| Law No. 4,595/1964 | Regulates the financial system; Central Bank structure | No official EN translation available |
| Law No. 5,709/1971 | Regulates acquisition of rural land by foreigners | No official EN translation available |
| Law No. 6,634/1979 | Regulates activities in the border zone | No official EN translation available |
| Law No. 7.565/1986 | Regulates civil aviation | No official EN translation available |

| | | |
|---|---|--------------------------------------|
| (Brazilian Aeronautics Code) | | |
| Law No. 8,080/1990 (Organic Health Law) | Regulates healthcare system | No official EN translation available |
| Law No. 9.472/1997 | General Telecommunications Law | No official EN translation available |
| Decree 9,885/2019 | It creates CONINV within CAMEX and describes its structure | No official EN translation available |
| Decree 12,725/2025 | Updated National Defense Plan | No official EN translation available |
| IN (Ordinance) RFB 2,290/2025 | It alters rules and creates/operationalises the e-BEF framework for beneficial owners | No official EN translation available |

Annex 2: Relevant Administrative and Court Cases

- BRAZIL. Federal Supreme Court (STF). Petition for Breach of Fundamental Precept – ADPF 342. Petitioner: Brazilian Confederation of Agriculture and Livestock (CNA). Rapporteur: Justice Alexandre de Moraes. The case challenges restrictions on foreign ownership of rural land on constitutional grounds. Decision is pending.
- BRAZIL. Federal Supreme Court (STF). Original Civil Action – ACO 2.463. Petitioner: National Confederation of Industry (CNI). Rapporteur: Justice Alexandre de Moraes. The case seeks to resolve conflicts over the interpretation and application of legal restrictions affecting foreign acquisition of rural property. Decision is pending.

Annex 3: Relevant Literature

- BAUMANN, R.; SANCHEZ BADIN, M. R.; MORAISS, A. M. INSTRUMENTOS DE AVALIAÇÃO DO INVESTIMENTO EXTERNO. Radar: Tecnologia, Produção e Comércio Exterior, v. 27, p. 1–16, 2020.
- BOTELHO, R. J. *Fundamentos Jurídicos para a Atração de Investimentos Estrangeiros Diretos* (doctoral thesis, Universidade de São Paulo, Faculdade de Direito, 2024), 85, accessed February 26, 2026, <https://www.teses.usp.br/teses/disponiveis/2/2133/tde-25062024-181953/publico/11053208DIC.pdf>
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