

Foreign Investments – Brazil

4373 Account



A presente instituição aderiu ao Código ANBIMA de Regulação e Melhores Práticas para os Fundos de Investimento.

November/2024

Regulatory Body

Ministry of Finance



Regulatory Body (National Monetary Council)

Establishes general guidelines for monetary, credit and foreign exchange policies



Autonomous Entities

CMN executive body

Regulates foreign exchange and payment system

Responsible for Monetary Policy



Regulates the securities market

Responsible for the registration and approval of international investors

Compliance agent for local companies



Specific Body

Tax regulations and procedures

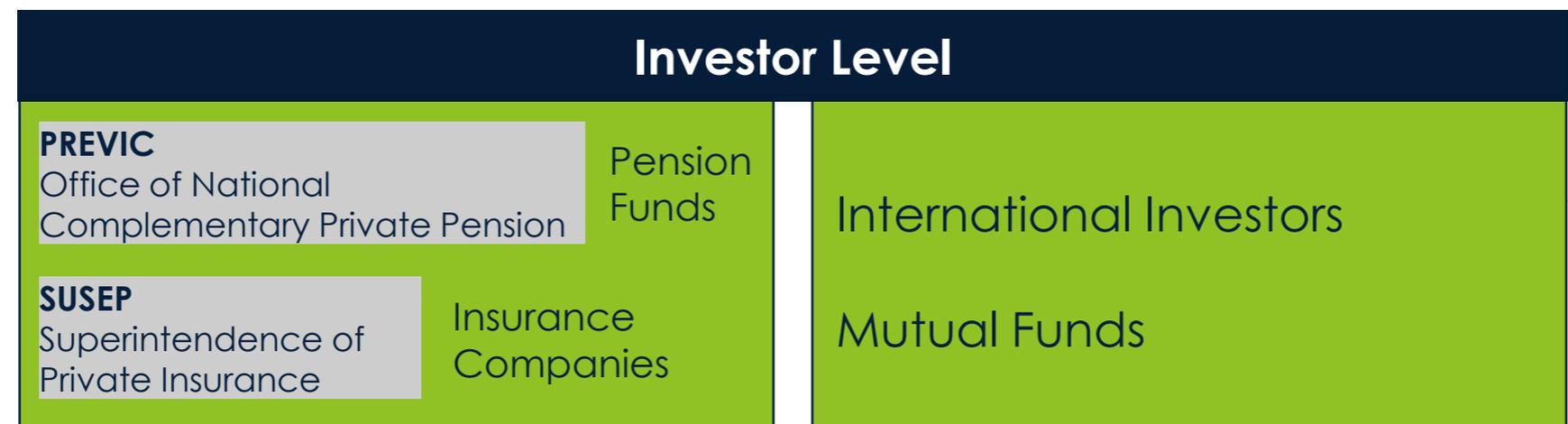
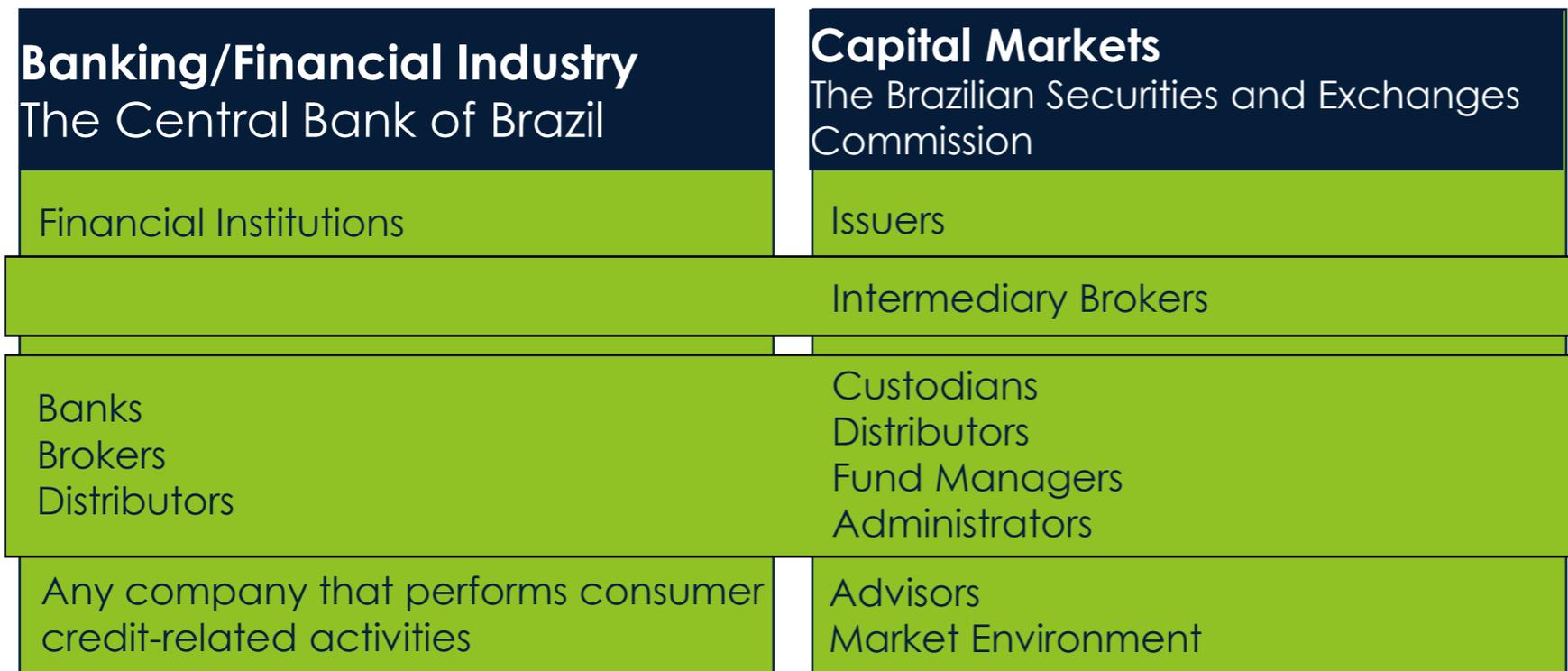
Tax collection surveillance

Best Practices and Legal Framework

Procedures to be observed in offering instruments to investors (transparency is an obligation)

Roles and responsibilities for intermediaries (services may be outsourced, not responsibilities; fiduciary duties of diligence and loyalty are mandatory)

Fair market practices (constantly conduct and surveillance of good practices)



Adequate Regulatory Environment

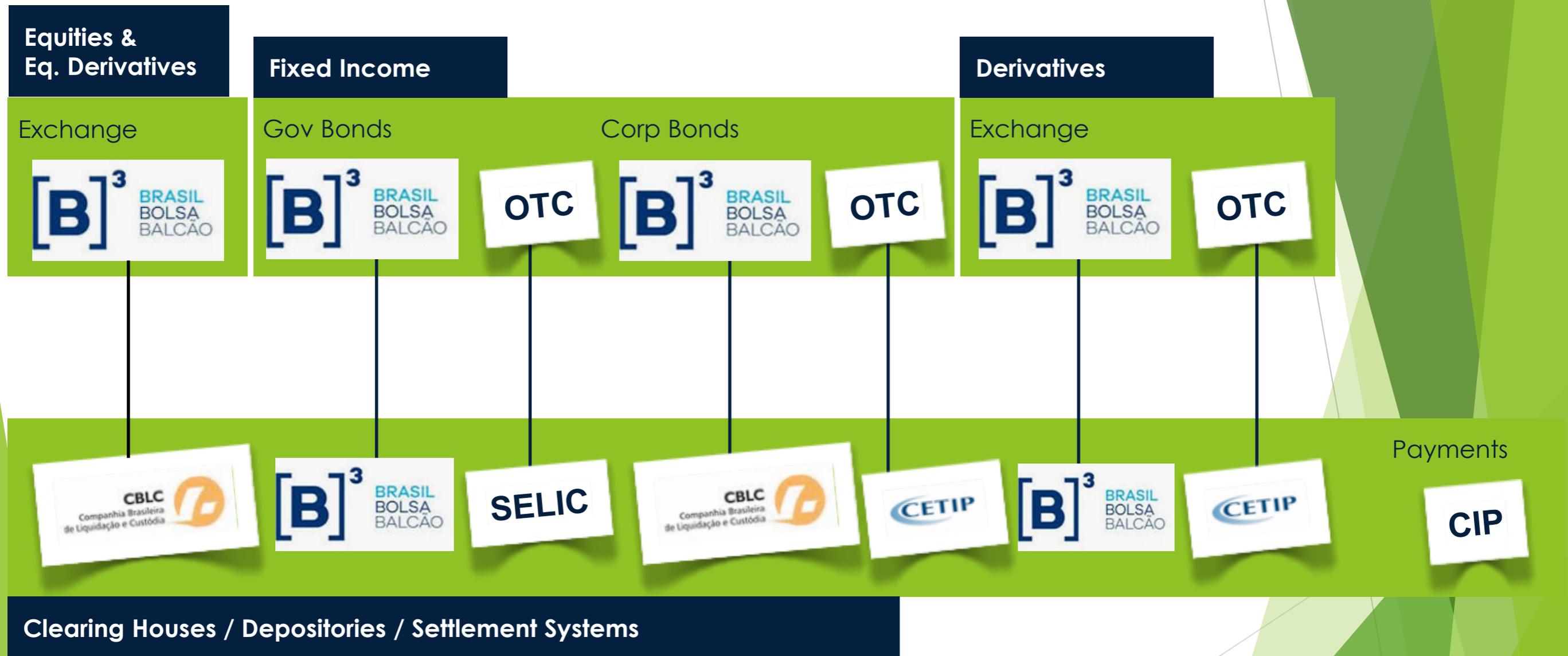
Focus on the long term

Control and best practices do not mean restrictions for the market, but the strength of its foundations

Regulator

Self-regulator

Market Infrastructure



Taxation for Foreign Investors

Revenues Tax

EKEKO does not provide legal and tax advice. You are encouraged to evaluate independently the tax implications before you make an investment decision.

Foreign Investors

Non Tax Heaven

Tax Heaven

Equities (on exchange)

0% limited to R\$ 20 thousand per month

15%

Dividends

0%

0%

Interest on capital

15%

25%

Government Bonds

0%

The applicable tax depends on the period the investor holds the security:

Corporate Bonds

15%

(general rule)

Up to 180 days: 22,5%

From 181 to 360 days: 20%

From 361 to 720 days: 17,5%

Over 720 days: 15%

Mutual Funds

15%

(general rule)

Taxation for Foreign Investors

Revenues Tax

Planner does not provide legal and tax advice. You are encouraged to evaluate independently the tax implications before you make an investment decision.

Foreign Investors

Non Tax Heaven

Tax Heaven

**Stock Funds,
futures and
forward contracts**

10%

15%

Swaps

10%

The applicable tax depends on the period the investor holds the security:

Up to 180 days: 22,5%
From 181 to 360 days: 20%
From 361 to 720 days: 17,5%
Over 720 days: 15%

Account Structure and Legal Framework

4) and it changes

Foreign Exchange

No restrictions in the foreign exchange market for inflows or repatriations

No minimum time frame for repatriation of invested funds

All FXs must be registered with the Central Bank

Each omnibus account is assigned a specific RDE number (Electronic Declaratory Registration). All FXs booked for passengers under its structure are registered under this RDE number.

IOF may apply (currently at a 0% on the inflow for Equities and Derivatives negotiated on Exchange and Fixed Income) – Decreto nr. 7.632 December 1st 2011 / Decreto nr. 8.023, June 4th 2013)

Account Structure and Legal Framework

4) and it change

Legal Framework

Brazil is a final **beneficiary country** in accordance with international recommendations

As per local regulation, securities must be held in segregated accounts in the name of final investors

The structure in place is the “omnibus-passenger”

The omnibus account is an administrative account that does not hold any assets – it is the main registration with local authorities (CVM and the Central Bank)

Assets are registered in individual accounts in the name of the final beneficiaries – passengers

Entities operating in the financial business are allowed to open omnibus accounts, but they are usually held by global custodians and international broker dealers

Omnibus hires a Legal Representative and a Local Custodian in Brazil

Account Structure

Broker opens individual custodian accounts for each passenger (final investor) under the Omnibus structure. The passenger accounts must be established in the final beneficiary's name.

Each passenger has one 'Equities' account and one 'Other Instruments' account

Passenger 1

Passenger 2

Passenger X

Safekeeping Other Instruments

Safekeeping Equities

Illustrative Chart of the Steps for the Non-Resident Investor

- ✓ Choice of the legal representative authorized by the Central Bank of Brazil, responsible for the presentation of the registration information to the Brazilian authorities under the Resolution 4.373 of the National Monetary Council.
- ✓ Choice of the fiscal representative, responsible for the tax obligations before the Brazilian authorities;
- ✓ Choice of the custodian, responsible for keeping the documents which back the operations up to date, for controlling the invested assets and to provide the investor with information on his/her investments;
- ✓ Signing of the contract of custody and supplying of information to the chosen trustee;
- ✓ Signing of the contract of legal representation with the entity chosen under the conditions above;
- ✓ Obtaining of registration in the National Register of Legal Entities of the Ministry of Finance (obligation carried out by the legal representative);
- ✓ Obtaining of registration in the Securities and Exchange Commission (obligation carried out by the legal representative);
- ✓ Registration of the investment injected in Brazil via electronic system made available by the Central Bank of Brazil (obligation carried out by the legal representative);
- ✓ Choosing of Planner (authorized broker in Brazil)
- ✓ Contract of brokerage and supplying of information to the broker.

Resolution 4373 issued by the National Monetary Council (March 2014)

On September 29, 2014, by the National Monetary Council issued Resolution No. 4373 (Res. 4373/2014), that improves the regulation on investments made by non-residents in the Brazilian financial and capital markets, including those made through the Depositary Receipts (DRs) mechanism. The changes result from the joint work of the by the Brazilian Central Bank (Banco Central do Brasil – Bacen) and the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários – CVM), that simplifies procedures and clarifies the applicable provisions in order to reduce the compliance costs and to increase the legal certainty of the transactions.

Resolution 4373 issued by the National Monetary Council (March 2014)

According to Bacen, the main changes introduced by the new regulation are the following:

- ▶ **DRs:** May be backed in securities of any kind issued by Brazilian publicly-held corporations. Previously, only shares were admitted for this purpose. In the case of financial institutions and other publicly-held entities authorized to operate in Brazil by Bacen, DRs may also be backed in credit instruments eligible to compose their Equity Reference (Patrimônio de Referência – PR).
- ▶ **One sole normative act:** All the provisions regarding non-resident portfolio investments are now aggregated in one sole normative act. Repetitive and expendable rules have been eliminated and the forwarding of information to the regulators was optimized, contributing to the cost reduction.

Resolution 4373 issued by the National Monetary Council (March 2014)

- ▶ **Instruments and Operational Modalities:** Foreign investors remain entitled to invest in the Brazilian financial and capital markets through the same instruments and operational modalities available to investors that are resident in Brazil;
- ▶ **Investments from Non-Resident Accounts:** One of the major innovations of Resolution 4373 is to allow the possibility for foreign investors of making investments with funds in Reais held in their non-resident accounts in Brazil;
- ▶ **Registration with the Central Bank:** The electronic registration of investments remains a requirement to be fulfilled with the Central Bank by means of the Financial Transaction Register (Registro de Operação Financeira - ROF).
- ▶ **Symbolic Operations for Investment Migrations:** Resolution 4373 expressly allows the execution (regardless of prior authorization by the Central Bank) of simultaneous currency exchange transactions and of international transfers in Reais without effective delivery of funds in the following cases: (i) the conversion of non-resident's assets into investments in the financial and capital markets, (ii) the transfer of nonresident investor investments through the DRs mechanism to foreign direct investments and to investments in the financial and capital markets, and (iii) transfer of investments of non-resident investors in the financial and capital markets to the modality of foreign direct investments.

Resolution 4373 issued by the National Monetary Council (March 2014)

- ▶ **Tax Treatment:** There is no formal pronouncement yet from Brazilian tax authorities regarding Resolution 4373. However, in principle, it is not expected that Resolution 4373 produces significant changes to the general tax treatment currently applicable to foreign investments in the financial market. In general, gains accrued by foreign investors under transactions carried out in the Stock Exchange are tax exempt. The inflow and outflow of funds into Brazil for the investment in the financial market is currently subject to the IOF/FX at a zero percent rate.
- ▶ **Maintenance of Earnings Abroad:** The custodian may accept deposits in custody of the program of outstanding securities which are owned by resident investors, domiciled or headquartered in Brazil to back the issuance of DRs abroad. The earnings obtained through the sale of securities deposited in custody to back the issuance of DRs may be kept abroad, except in case of DR programs of financial institutions.
- ▶ **Approvals and Registers:** The CVM has the authority to approve DRs programs. In the case of financial institutions, prior authorization by the Central Bank is also required. The registration of DRs' investments must be executed by the custodian on behalf of the depository.
- ▶ **Depository Receipts:** Resolution 4373 revokes Resolution CMN No. 1927, dated as of May 18, 1992 ("Resolution 1927"), which regulates foreign investment through the issuance of DRs. The innovation of Resolution 4373 consists in the expansion of the role of securities that may back DRs. Resolution 1927 only allowed DRs to have stock as underlying assets. Resolution 4373 authorizes the use of any securities issued by Brazilian publicly traded companies, such as debentures, as well as eligible securities composing the Equity of Reference (Patrimônio de Referência) issued by financial institutions and other publicly traded companies authorized to operate by the Central Bank

Resolution 4373 issued by the National Monetary Council (March 2014)

- ▶ **Foreign Investors' Representation:** Before operating in Brazil the foreign investor shall appoint a representative, be registered with the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários) ("CVM") and appoint one or more custodians authorized by the CVM. Unlike Resolution 2689 which sets forth that the representative of foreign investors in Brazil could be either an individual or a non-financial corporation (even though, in such cases, an institution authorized to operate by the Central Bank needed to be named as co-responsible), Resolution 4373 requires the representative to be either a financial institution or an institution authorized to operate by the Central Bank. The instrument granting powers to the representative must include powers and duties expressly mentioned in Resolution 4373, namely the execution and maintenance of records, disclosure of information to the Central Bank and CVM, acceptance of subpoenas and notices, amongst others. Such representative must not necessarily be the same as the tax representative, who is responsible for taxes and fiscal issues on behalf of the investor before the Brazilian authorities;
- ▶ **Register and Custody of Financial Assets and Securities:** As stipulated by Resolution 2689, Resolution 4373 determines that the financial transactions executed by non-resident investors must (i) be registered, recorded in the applicable books, held in custody or maintained in deposit accounts at an institution or entity authorized by the Central Bank or by the CVM, or (ii) be registered in a clearing and settlement agency authorized to operate by the Central Bank or the CVM.
- ▶ **Investment Funds:** Foreign investments in investment funds registered with the Central Bank, including Mutual Funds of Investment in Emerging Companies (Fundo Mútuo de Investimento em Empresas Emergentes - FMIEE) and Real Estate Investment Funds (Fundo de Investimento Imobiliário - FII) are also subject to Resolution 4373. Resolution 4373 imposes the obligation of such funds to adapt their rules in order to fully comply with Resolution 4373 within 180 days from its entry into force.

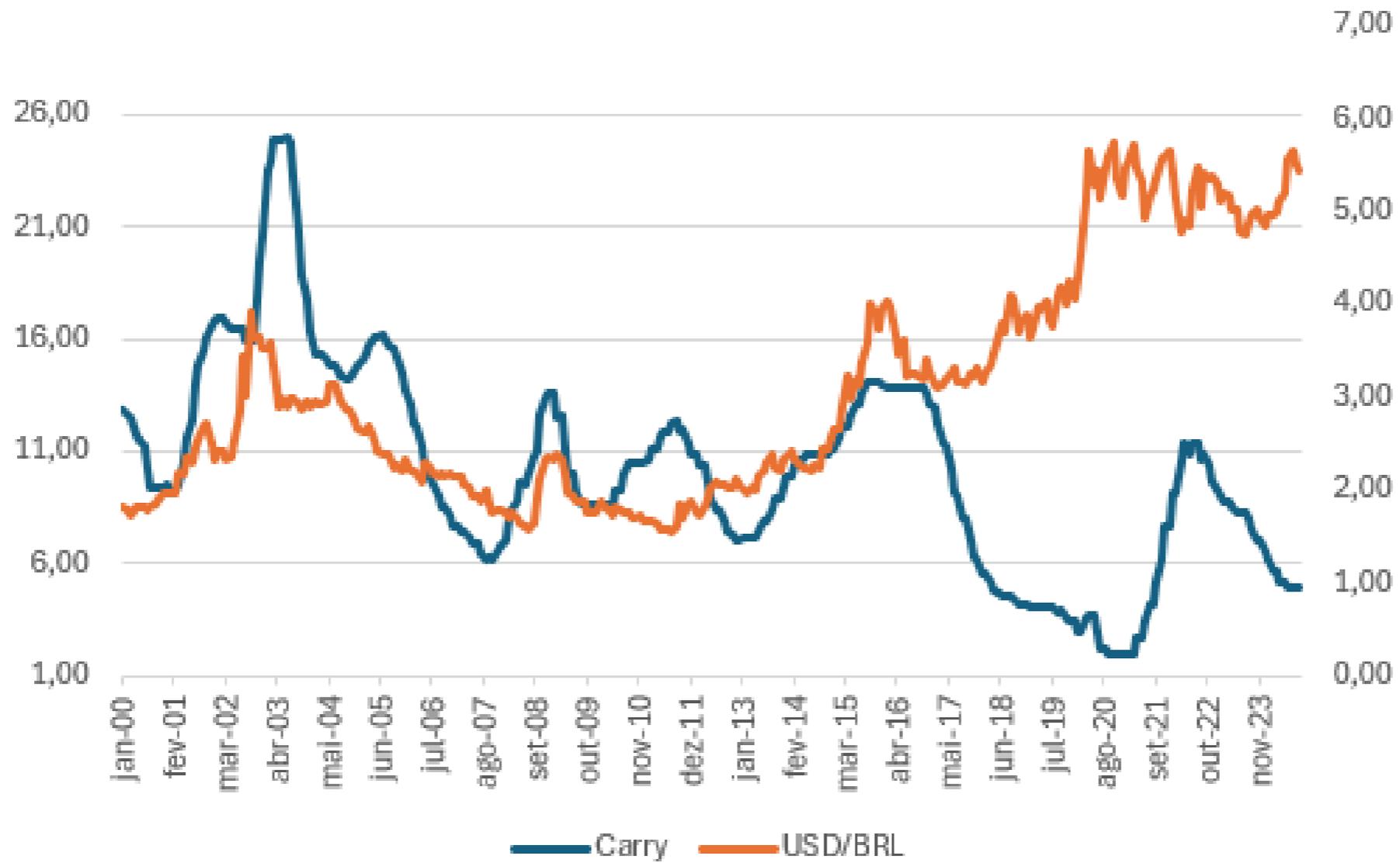
Appendix



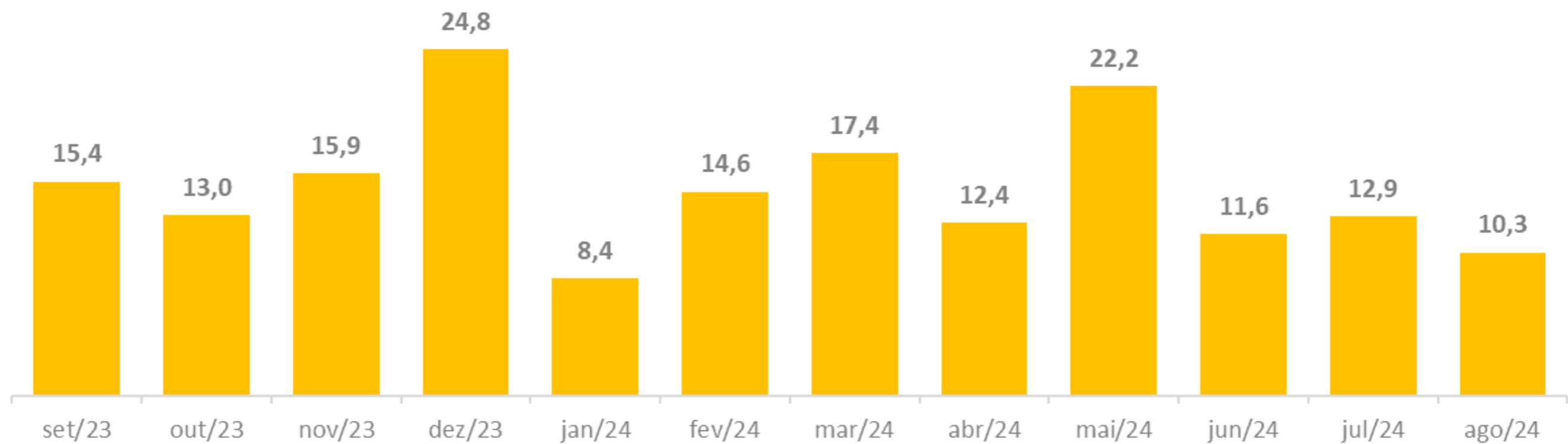
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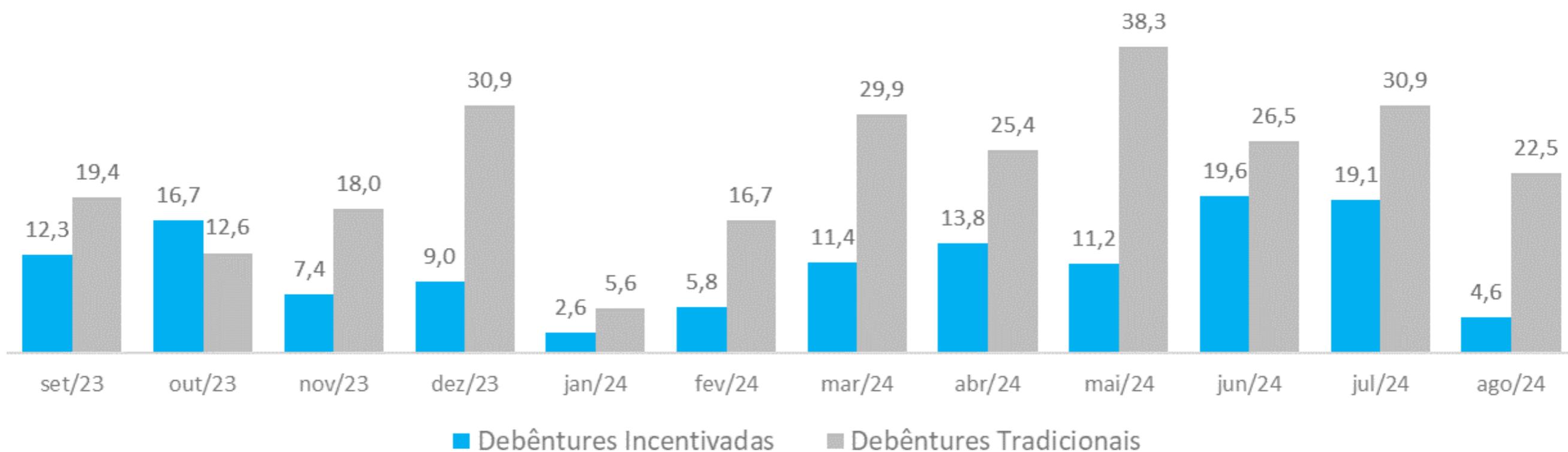
Carry Trade Brazil



EMISSÃO DE TÍTULOS DE SECURITIZAÇÃO Σ(CR, CRA, CRI e FIDC) em R\$ bilhões

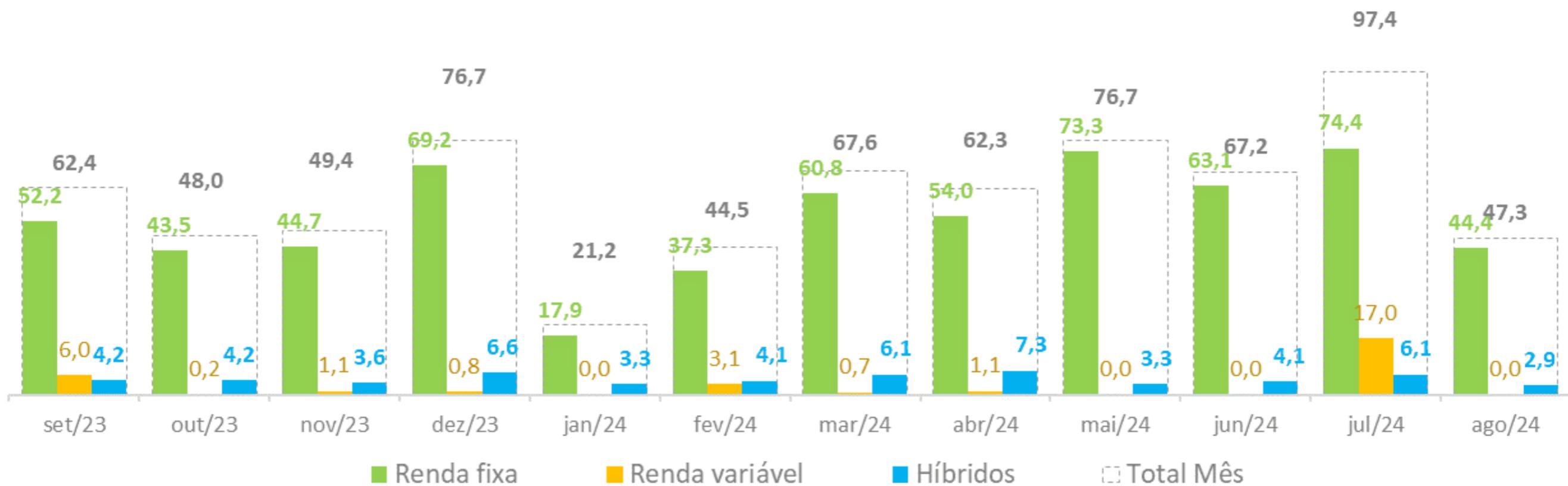


EMISSÃO DE DEBÊNTURES TRADICIONAIS E INCENTIVADAS (LEI 12.431) Volume em R\$ bilhões



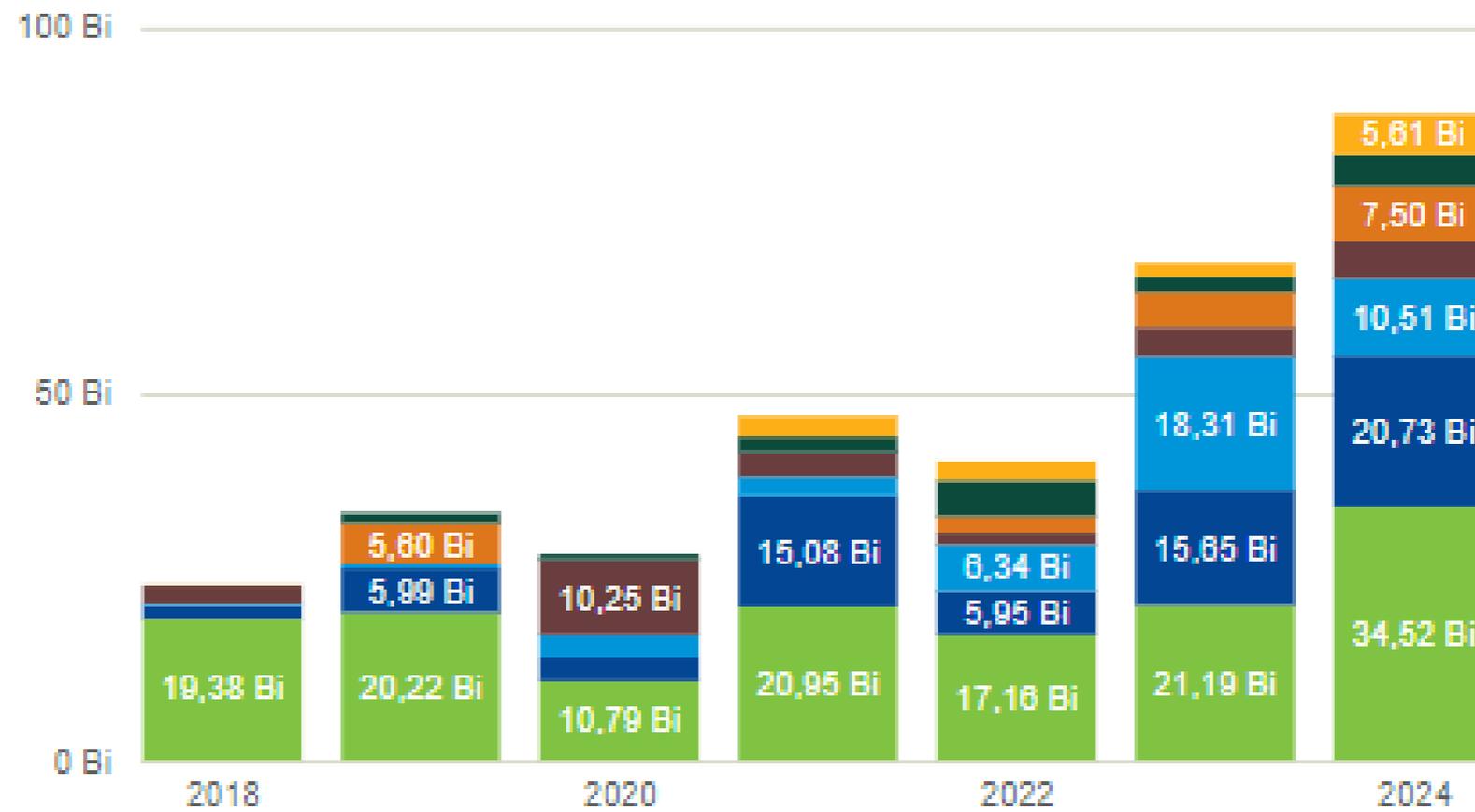
OFERTAS ENCERRADAS POR MODALIDADE DE ATIVOS

Volume em R\$ bilhões



Ofertas de debêntures incentivadas para o investidor por setor*

● Energia elétrica ● Transport... ● Saneamento ● Outros ● Petróleo e ... ● Bioenergia ▶





Debêntures incentivadas para o investidor

As debêntures incentivadas instituídas pela Lei nº 12.431/2011, relacionadas aos projetos de investimento em geral (Art. 1º Lei 12.431/11) e especificamente aos projetos de investimento na área de infraestrutura (Art. 2º Lei 12.431/11) definidos como prioritários e regulamentado pelo Decreto nº 8.874/2016, usufruem de benefícios tributários para o investidor e constituem um mecanismo de funding de longo prazo, via mercado de capitais, em alternativa às fontes tradicionais de financiamento.

Total: **329,64 Bi**

Representatividade dos setores

Energia Elétrica: 144,21 Bi

44%

Transporte e Logística: 68,50 Bi

21%

Saneamento: 41,63 Bi

13%

Outros: 28,60 Bi

Petróleo e Gás: 20,16 Bi

Bioenergia: 15,57 Bi

TI e Telecomunicações: 12,98 Bi

Ofertas de debêntures incentivadas para o investidor por rito/distribuição

ICVM

Resolução 160

Total

177,68 Bi

Total

151,96 Bi

ICVM 400: 32,29 Bi

Rito Ordinário: 300,00 Mi

ICVM 476: 145,39 Bi

Rito Automático: 151,66 Bi

● ICVM/400 - REGISTRADA ● ICVM/476 - ESFO... ● RCVM/160 - RIT... ● RCVM/160 - ...

