

INSIGHT: INCENTIVIZED BONDS UNDER BRAZILIAN LAW

The Brazilian government enacted Law No. 14,801 on January 9, 2024 ("Law 14,801"), introducing the incentivized bond instrument. Building on the success of incentivized debentures under Law No. 12,431/2011 ("Law 12,431"), Law 14,801 aims to attract foreign capital by providing tax incentives for international bond issuances by Brazilian companies.

Incentivized bonds differ from local debt securities in that these are specifically targeted to non-resident investors, offering a zero percent Withholding Income Tax ("WHT") rate provided certain conditions are met.

From Incentivized Debentures to Incentivized Bonds

Incentivized bonds are related to incentivized debentures, which were introduced by Law 12,431 and have been widely used by Brazilian companies. Incentivized debentures are issued domestically and provide tax incentives to investors in order to encourage infrastructure investment. Eligible issuers include infrastructure concessionaires, permit holders, and project-specific entities ("SPEs").

Law 14,801 expands on this, extending similar tax incentives to bonds issued abroad by Brazilian companies, aiming to diversify funding sources for specific sectors. Legislators justified these tax incentives as a means of increasing foreign investment in infrastructure financing and innovation-driven sectors.

Incentivized Bond Framework

Eligible Issuers and Transactions

Eligible issuers under Law 14,801 include:

- Infrastructure or innovation sector concessionaires, permit holders, authorizers, or lessees structured as corporations (sociedades anônimas);
- SPEs created specifically for infrastructure or innovation projects; and
- Direct or indirect parent companies of the above, organized as corporations, provided proceeds fund qualifying projects.

Tax Benefits and Exceptions

The key benefit is a 0% WHT rate on interest payments made to non-resident investors (Law 9,481, Art. 1, as amended by Law 14,801); however, there are specific exceptions as follows:

- WHT at a 25% rate applies to investors domiciled in tax havens; and
- WHT at a 30% rate applies to related-party investors, which includes situations in which the investor exercises control or significant influence over the issuer; where both are under common control; or where there is direct or indirect ownership of 10% or more of voting capital.

Currently, there is a Provisional Measure (N. 1.303) under discussion in the National Congress that would impose a 5% WHT rate on interest payments made to non-resident investors (previously

subject to the 0% WHT rate) as of 2026. It is not possible to predict whether this Provisional Measure will become law.

Use of Proceeds

Proceeds must fund federally prioritized infrastructure or innovation projects. Decree No. 11,964/2024 specifies eligible sectors such as transportation, energy, sanitation, telecommunications, urban renewal, and energy transition technologies. Notably, prior ministerial approval is not required for most listed sectors. Issuers must verify, at the time of issuance, that the funded project meets the eligibility requirements. This includes demonstrating sector alignment and compliance with applicable technical criteria.

Offering Methodology

Issuances can be structured in various ways depending on the issuer's profile, regulatory considerations, and investor base. Common approaches include:

- Offerings conducted in reliance on Rule 144A and/or Regulation S, often used to access qualified institutional buyers in the United States and investors in other jurisdictions;
- Use of offshore special purpose vehicles ("SPVs"), including in securitization, co-issuance, or risk-allocation structures—provided that the underlying issuer is a Brazilian entity duly qualified under Law 14,801; and
- Incorporation of foreign exchange variation clauses, subject to express authorization by the Brazilian Ministry of Finance or other federal body designated by regulation.

For more detail on structuring options, see our previous article in this series: "[International Bonds as an Alternative to Debentures for Brazilian Issuers.](#)"

Issuers must register bond offerings and the resulting foreign credits with Brazil's Central Bank (Banco Central do Brasil or BACEN), ensuring proper capital inflow reporting and eligibility for tax benefits under Law 14,801/2024.

Feature	Incentivized Bonds	Incentivized Debentures	Infrastructure Debentures
Offering Location	Abroad	Brazil	Brazil
Tax Benefit	0% WHT	0% WHT	30% deduction (IRPJ/CSLL)
Currency	Foreign currency or BRL with FX clause (prior authorization required)	BRL (foreign indexation allowed)	BRL (foreign indexation allowed)
Project Eligibility ¹	As defined under Decree No. 11,964/2024	As defined under Ministry of Finance ordinances issued under Law 12,431	As defined under Decree No. 11,964/2024

¹ Although all three instruments support infrastructure and innovation, the legal criteria for project eligibility differ. Incentivized bonds and infrastructure debentures share the same regulatory definition set out in Decree No. 11,964/2024. In contrast, incentivized debentures under Law 12,431 follow separate eligibility criteria established by Ministry of Finance ordinances, which may include a broader set of sectors.

Legal Framework	Law 14,801 and Law 9,481	Law 12,431	Law 14,801
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While incentivized bonds mirror incentivized debentures insofar as eligible projects and investor tax exemptions, they differ with respect to offering jurisdictions, placement structures, and eligibility criteria. Infrastructure debentures benefit issuers directly via corporate tax deductions.

Regulatory Outlook and Practical Implementation

The regulatory framework established by Law 14,801 and Decree 11,964 is already in effect. Certain supplementary regulations, particularly regarding foreign exchange variation clauses and specific technical eligibility criteria, may still develop. However, Eletrobras has already provided a good illustration of the utility of the framework with its inaugural incentivized bond issuance in September 2024.²

Companies considering incentivized bonds must stay abreast of forthcoming regulatory clarifications and institutional guidance to ensure compliance and optimize structuring strategies.

Conclusion

Incentivized bonds offer Brazilian issuers a compelling means of accessing the international capital markets efficiently and on a tax-advantaged basis. Proper structuring and rigorous compliance evaluation can position these bonds as strategic complements or alternatives to other financing tools.

This note is part of a series of practical legal insights on the international debt markets for Brazilian companies. Follow our page for future updates.

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² Source: <https://valor.globo.com/financas/noticia/2024/09/19/eletrobras-inaugura-via-para-novos-bonds-de-infraestrutura.ghtml>

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