Global Financial Services Regulatory Guide - Brazil

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# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Broadly conceived, the Brazilian Financial System is composed of normative and supervisory authorities, which are segmented into different areas of expertise, as follows:

The National Monetary Council (Conselho Monetário Nacional or CMN) and the Brazilian Central Bank (“Central Bank”) are the rule making and supervisory authorities of the Brazilian monetary, credit and foreign exchange markets. These bodies are responsible for regulating and supervising public and private banks, government saving banks, brokers and dealers, consortium group managers, credit unions, and other non-banking institutions.

The Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários or CVM) is the supervisory authority of the Brazilian capital market. CVM is responsible for regulating and supervising stock exchanges, commodities and futures exchanges, publicly traded companies, public issuance of securities, securities portfolio management, etc.

The National Council of Private Insurance (Conselho Nacional de Seguros Privados or CNSP) and the Superintendency of Private Insurance (Superintendência de Seguros Privados or SUSEP) are (respectively) the normative and the supervisory authorities of the private insurance market, open supplementary pension plans and capitalization agreements. These bodies are responsible for regulating and supervising insurance and reinsurance companies, open pension funds, and capitalization companies.

The National Council of Complementary Pensions (Conselho Nacional de Previdência Complementar or CNPC) and the National Superintendency of Supplementary Pension (Superintendência Nacional de Previdência Complementar or PREVIC) are (respectively) the normative and the supervisory authorities of the pension funds sector. These bodies are responsible for regulating and supervising closed supplementary pension entities (pension funds).

However, in Brazil, "financial services" is a concept that includes in particular banking and finance activities, as well as the capital markets. More recently, certain payment services have been regulated and are carried on by payment institutions. Although they are not part of the Brazilian Financial System, certain payment institutions may be part of the Brazilian Payment System and, by law, are subject to regulation and licensing by the Central Bank, depending on its size, role and systemic importance.

Banking activities and financial services are regulated by statutory and infra-statutory laws enacted by the Brazilian Congress and by the CMN, respectively. The CMN is an ad hocregulatory body composed of the Ministry of Finance, the Ministry of Planning, and the Central Bank president. Its main role is to issue regulations and guidelines to execute public policy concerning credit and currency affairs (including monetary and foreign exchange policies).

The Central Bank is responsible for implementing and enforcing the regulations and guidelines set forth by the CMN. The Central Bank's main goal is to promote the stability and purchasing power of the Brazilian currency, as well as to strengthen the local monetary system and supervise the conduct of financial institutions.

The Central Bank is responsible for implementing monetary policies, as well as exercising control over foreign investments and inflow and outflow of capital in Brazil, as provided by Law No. 4,595/1964 and several other specific rules enacted by the CMN. The Central Bank is also competent in granting licenses to financial institutions, including securities brokers.

In respect of capital markets activities, CVM is the regulatory agency in charge of regulating public offerings of securities, registering listed companies, the trading of securities on public markets, custody of securities, and supervision of publicly traded companies, among others.

Pursuant to Law No. 4,595/64, only a licensed financial institution may perform banking and finance activities such as the collection, intermediation and investment of its own or third parties’ funds (whether in national or foreign currency), as well as holding custody of third parties’ financial assets.

Anti-money laundering (AML) rules in Brazil are in general governed by Law No. 9.613 of 3 March 1998, as amended by Law No. 12.683 of 9 July 2012. Decree 9.663 of 1 January 2019 approved the new by-laws of the Council of Financial Activities Control (Conselho de Controle de Atividades Financeiras or COAF), which is responsible for receiving and analyzing information on financial transactions considered to be linked to money laundering. COAF may commence administrative proceedings against offenders and apply penalties ranging from  suspending  the operation license of the  regulated entity to fines. In addition, specific supervisory bodies, such as the Central Bank and CVM, establish specific AML rules applicable to their regulated entities.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

Financial services are mainly regulated by Law 4,595/64 (which sets forth the rules applicable to banking, monetary and credit institutions and created the CMN), Law 4,728/65 (which regulates the capital markets and established measures for its development), and Law 6,385/76 (which further regulates the capital markets and created the CVM).

Several other statutory laws regulate specific services, products and other banking, finance and capital markets activities. The CMN and CVM are competent to issue intralegal  regulations, and in this regard, there is also a large volume of secondary and delegated intralegal regulations (e.g., resolutions, instructions and other normative instruments).

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

A. Financial Institutions: Law 4,595/64 provides that a legal entity is considered a financial institution (“Financial Institution”), when its principal or ancillary activity is the collection, intermediation or investment of financial resources for its own account or for third parties, in domestic or foreign currency, as well as the custody of assets belonging to third parties. In light of this broad definition, certain activities that are somehow related to, but do not constitute strict banking activities (e.g., capital markets transactions), have been considered as activities of Financial Institutions in Brazil. Therefore, the Brazilian Financial System includes banking and non-banking entities.

The entities described below play a key political and financial role in the Brazilian Financial System and are considered financial institutions:

A1. Commercial banks (Bancos Comerciais) (CMN Resolution 5,060/23): These banks can carry out typical commercial banking transactions, including the following: (i) raise funds from the public in the form of spot and term deposits or by issuing securities; (ii) grant credit operations, guarantees, sureties and warranties; (iii) carry out collection and payment services; (iv) operate in the foreign exchange market; (v) buy and sell operations, on its own account or on behalf of third parties, of precious metals on the physical market; and (v) intermediating the placement, on the over-the-counter market, of primary or secondary public distribution of securities, in compliance with the regulations of CVM.

A2. Investment banks (Bancos de Investimento) (CMN Resolution 5,046/22): Investment banks are private financial institutions specialized in temporary equity holding operations, the financing of productive activity to supply permanent and working capital, and the management of third-party resources.

A3. Savings banks (Sociedades de Poupança ou Empréstimos): These banks, mostly state-owned institutions, play a similar role to that of commercial banks as they receive savings deposits from the public. Caixa Econômica Federal (CEF), a public financial institution controlled by the Brazilian government, is currently the major savings bank in Brazil and one of the largest Brazilian Financial Institutions. Most of the loans under the Federal Housing Credit Program are granted by CEF, which also manages the funds of the National Unemployment Compensation Fund (FGTS), the Social Integration Program (PIS/PASEP), as well as domestic lotteries.

A4. Credit, financing and investment companies (Financeiras): Their main business involves financing consumer purchases of goods and services and trading credit instruments, such as promissory notes and bills of exchange.

A5. Securities brokers (Corretoras de Valores Mobiliários or CTVM) (CMN Resolution 5,008/22): CTVMs deal in authorized securities and other negotiable instruments at the Brazilian Exchange, under Laws 4,728/65 and 6,385/76. These companies may be established as corporations or limited liability companies, and they operate as intermediary parties in transactions between exchanges and investors. As such, they may carry out the following activities among others: (i) organize, manage and participate in consortia for underwriting and managing securities offerings; (ii) purchase and resell securities; and (iii) distribute and place securities in the capital market.

A6. Securities Dealers (Distribuidora de Títulos de Valores Mobiliários or DTVM): DTVMs are also subject to Laws No. 4,728/65 and 6,385/76. Their main business is to subscribe securities issued for resale or distribution, thus acting as intermediaries in the placement of public offerings. Their business is similar to that of CTVMs, and according to the Joint Decision of CVM and CMN 17/09, DTVMs are now able to directly deal at the stock exchange. Such companies' organization and operation are set forth in CMN Resolutions No. 5,008/22. They may be organized as corporations or limited liability companies.

A7. Foreign exchange brokers (Corretoras de Câmbio) (CMN Resolution 5,009/22): These institutions have as their exclusive corporate purpose the intermediation in foreign exchange operations and the practice of operations in the foreign exchange market under the terms and limits of the regulations in force. They may be organized as corporations or limited liability companies. The Central Bank may permit other Financial Institutions to deal with foreign exchange transactions (e.g., certain payment institutions).

A8. National Economic Development Bank (Banco Nacional de Desenvolvimento Econômico e Social or BNDES): BNDES is a state-owned Financial Institution controlled by Brazil's government, which acts as an auxiliary agency to implement the federal government’s credit and development policies. Its principal activities include financing industrial, agricultural and commercial equipment; production; and projects and economic activities in general.

A9. Banks with multiple portfolios or “multiservice banks” (Bancos Múltiplos) (CMN Resolution 5,060/23): A multiple bank consists of a financial institution set up with at least two of the following portfolios, one of which must be commercial or investment: (i) commercial; (ii) investment; (iii) development; (iv) real estate credit; (v) credit, financing and investment; and (vi) leasing. Operations carried out by multiple banks are subject to the same legal and regulatory rules applicable to the individual institutions corresponding to their portfolios. The main purpose of multiple banks is to enable a single financial institution to maintain different types of activities and portfolios (that is, allowing the performance of all activities pertaining to financial institutions), which in turn significantly increases the administrative efficiency among banking conglomerates.

A10. Leasing companies (Sociedades de Arrendamento Mercantil) (CMN Resolution 4,977/21): The main role of leasing companies is to perform financial or operational leasing transactions.

A11. Consortium groups managers (Administradoras de Consórcios) (Central Bank Resolution 234/22): A consortium groups manager is a legal entity that provides services with the main corporate purpose of managing consortium groups. Meanwhile, "consortium group" can be defined as a group of natural and legal persons with a previously determined duration and number of quotas and that is promoted by a consortium group manager with the aim of providing its members equal opportunity to acquire goods or services by means of self-financing.

B. Fintechs: Fintechs are companies that introduce innovations into the financial markets through the intensive use of technology and with the potential to create new business models. They operate through online platforms and offer innovative digital services related to the sector. There are several categories of fintechs (e.g., credit, payment, financial management, lending, investment, insurance, debt negotiation and multi-services). In Brazil, only two types of credit fintechs are allowed to operate in the Brazilian Financial System (with the previous authorization from the Central Bank), as follows:

B1. Direct credit companies (Sociedade de Crédito Direto or SCD) (CMN Resolution 5,050/22): An SCD's business model is characterized by the carrying out of credit operations through an electronic platform with its own resources. In other words, this type of institution cannot raise funds from the public. In addition to carrying out credit operations, SCDs can provide the following services: credit analysis for third parties; collection of credit from third parties; distribution of insurance related to the operations it grants through an electronic platform, and issuing electronic money.

B2. Company of credit between persons (Sociedade de Empréstimo entre Pessoas or SEP) (CMN Resolution 5,050/22): The SEP carries out credit operations between persons (known in the market as "peer-to-peer lending"). In this case, the fintech only acts as an intermediary for contracts between lenders and borrowers. The funds come from third parties, who only use the infrastructure provided by SEP to connect lender and borrower. Unlike SCD, SEP can raise funds from the public, as long as they are entirely and exclusively linked to the lending operation. In addition, SEP can provide other services, such as credit analysis and collection for clients and third parties.

C. Payment Institutions: Brazilian payment institutions are provided for in Law 12,865/13, which grants authority to the Central Bank to regulate and supervise those entities. Therefore, there are some Central Bank rulings that govern and detail the requirements and procedures for an entity to do business as a payment institution (“Payment Institution”) in Brazil.
According to Central Bank Resolution 80/21, there are four different types of Payment Institutions that are under Central Bank's rules: (i) issuer of electronic money (e-money); (ii) issuer of post-paid payment instruments; (iii) acquirer (Credenciador); and (iv) initiator of payment transactions.

C1. “Issuer of e-money” is defined as a Payment Institution that: (i) manages a prepaid payment account of an end user; (ii) provides payment transactions based on electronic currency deposited in this account; and (iii) converts such proceeds into physical or script currency, or vice-versa.

C2. “Issuer of post-paid payment instrument” is defined as a Payment Institution that: (i) manages post-paid payment accounts of a paying end user; and (ii) makes available payment transactions based on that account.

C3. “Acquirer” is a Payment Institution that, without managing payment accounts: (i) enrolls persons to accept payment instruments issued by Payment Institutions or by financial institutions (banks) that participate in the same "payment scheme"\*; and (ii) takes part in the payment transaction settlements as creditor before the issuer, pursuant to the rules set forth under the payment scheme.

C4. "Payment transaction initiator" is defined as a Payment Institution that provides a payment transaction initiation service (a) without managing a payment account and (b) without (at any time) holding the funds transferred in the provision of the service.1

D. Crypto-assets: Crypto-assets are allowed in the Brazilian jurisdiction. Law 14,478/22 ("Brazilian Digital Assets Law") governs crypto activities and the provision of services related to that. However, this law only establishes generic principles and parameters applicable to digital asset service providers. Pursuant to the Brazilian Digital Assets Law, all digital asset service providers will be required, upon the enacting of the regulation, to obtain a license before beginning to operate. Firms currently operating as digital asset service providers will have at least six months to obtain the applicable license after the new regulation is enacted. The Central Bank, which is the Brazilian federal body that has been given the power to regulate the authorization process, operation and activities of digital asset service providers, has not yet issued regulations on the matter.

E. Securities consultants, securities analysts, investment advisors and securities portfolio managers: A few years ago, the CVM made an effort to revise and supplement its rules in order to regulate and supervise (in a more comprehensive and complete way) some activities and services provided by various agents in the Brazilian securities market. In this sense, the following services in Brazil are regulated and require prior authorization from the CVM: securities consultancy, securities analysis, investment advisory, and securities portfolio management.

E1. Securities consultancy consists of providing professional, independent and individualized recommendations and advice on investments in the securities market, with the adoption and implementation of such recommendations/advice being the sole responsibility of the client. This professional shall have the technical and practical knowledge to help its clients find the product that will best meet their personal objectives and needs. Securities consultancy can only be carried out by individuals or companies previously authorized by the CVM and in accordance with the terms of CVM Resolution 19/21.

E2. A securities analyst is a natural or legal person who, in a professional capacity, prepares analysis reports for publication, disclosure or distribution to third parties, even if restricted to clients. The expression "analysis report" means any texts, monitoring reports, studies or analyses on specific securities or on specific issuers of securities that may assist or influence investors in the investment decision-making process. This activity involves in-depth technical knowledge, and its exercise is regulated by the CVM (CVM Resolution 20/21) and the market's own self-regulation. Thus, securities analysis can only be carried out by professionals who are qualified and duly authorized by the CVM.

E3. Investment advisors (formerly known as an Autonomous Investment Agents) are natural persons who act in: (i) prospecting and attracting clients; (ii) receiving and registering orders and transmitting these orders to the appropriate trading or registration systems; and (iii) providing information on the products offered and the services provided by institutions that are part of the securities distribution system and by which they have been contracted.

These professionals may act as natural person or through a company incorporated for this exclusive purpose, but they must always carry out their activities through and on behalf of institutions that are part of the securities distribution system.

According to CVM Resolution 178/23, Ancord is the accrediting body for investment advisors. As such, the certification exam, accreditation, registration updates and cancellation of investment advisors shall be carried out directly with Ancord.

E4. Asset management companies are not financial institutions nor payment institutions and therefore do not need authorization from the Central Bank to operate. However, if their services involve the management of a portfolio of securities, the company will require the authorization of the CVM.

Asset management companies duly accredited by the CVM are allowed to manage securities portfolios for individuals, entities or investment funds (please refer to CVM Resolution 21/21).
Note that asset management companies may not trade securities directly on a stock exchange, but only by means of a duly authorized stock brokerage firm registered with the relevant stock exchange. They can, however, trade fixed-income securities directly.

Certain Brazilian asset management companies also discharge services and perform activities that are ancillary to asset management activities, which may require additional licenses from the CVM.

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1 A "payment scheme" is a set of rules and procedures that govern the rendering to the general public of a given payment service, which is accepted by more than one payee, by means of direct access by the end users, payees and payers.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

According to Law 4,595/64, some activities are “exclusive activities of financial institutions,” and as such may be performed only by licensed financial institutions in Brazil. The “exclusive activities of financial institutions” encompass the collection, intermediation or allocation of their own or third parties’ funds in the local or foreign currency (which generically encompasses all banking and financial services).

The custody of third-party assets is also considered as an activity of financial institutions. Support services connected to the financial system but not associated with financial institutions may have less stringent licensing requirements.

Under local law, foreign financial institutions may only conduct activities in Brazil after making an application requesting the Central Bank's authorization. However, cross-border business, such as cross-border loans made by foreign entities to persons domiciled in Brazil and foreign investment in Brazilian capital markets, do not depend on local licenses for foreign parties to enter into the transactions (e.g., the lending bank or the foreign investor). However, such cross-border business usually requires local registration, such as with the Central Bank's Foreign Capital Reporting System - Foreign Credit (SCE-Crédito) in the case of cross-border loans, and enrollment with the taxpayers' registry in the case of cross-border loans and investments in the capital markets.

# 5. What are the requirements to obtain authorization in your jurisdiction?

## What are the requirements to obtain authorization in your jurisdiction?

The CMN is responsible for, among other things, regulating the incorporation, business guidelines, activities and operating authorization of financial institutions , pursuant to Law 4,595/64. In turn, the Central Bank is responsible for regulating and supervising the day-to-day activities of financial institutions, as well as for conducting and deciding the processes involving such requests for authorization to operate in the Brazilian Financial System. The same controls and limits may apply to Brazil's foreign banks as are applied by their regulatory agencies to Brazilian banks either operating or desirous of operating in their country.

Currently, if a foreign financial institution wants to start offering its products and services in Brazil, it will have to incorporate an entity in Brazil and fulfill the same requirements applicable to any local entity in order to obtain authorization to operate from the Central Bank. It is important to note, however, that only the following persons can be direct controlling shareholders of a financial institution based in Brazil: natural persons; institutions already authorized to operate by the Central Bank; financial or similar institutions based abroad; or legal entities based in Brazil whose exclusive corporate purpose is to hold equity stakes in institutions authorized to operate by the Central Bank.

According to CMN Resolution 4,970/2021, the minimum requirements for obtaining authorization from the Central Bank are the following:

Economic and financial capacity of the controlling shareholders (either individually or jointly) compatible with the capital required to structure and operate the institution, as well as the contingencies arising from market dynamics

Lawful origin of the funds used to pay up the equity capital or for the acquisition of the corporate control and qualified holdings

Economic and financial viability of the business

Compatibility of the information technology infrastructure with the complexity and risks of the business

Compatibility of the corporate governance structure with the complexity and risks of the business

Unblemished reputation of those occupying positions in bodies established by the articles of association or bylaws, as well as of the controlling shareholders and holders of qualifying holdings (in the case of natural persons)

Management's knowledge of the business, the segment in which the institution intends to operate, market dynamics, sources of operating resources, management of the business's activities and the risks associated with them

Technical qualification of directors and officers compatible with the duties to be performed during their term of office

Compliance with the minimum equity capital and asset requirements set out in the regulations in force

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

Since 1 September 2022, the process of obtaining authorization to operate as a financial institution before the Central Bank has been simplified with the publication of CMN Resolution 4,970/2021 and Normative Instruction 299/2021.

In order to obtain authorization to operate as a financial institution in Brazil, the applicant must submit the following documents and information to the Central Bank:

Completed application form, in accordance with the model provided by the Central Bank

Declaration, signed by the controlling shareholders, that they meet the requirement of economic and financial capacity compatible with the capital needed to structure and operate the institution, as well as the contingencies arising from market dynamics

Information and documentation proving compliance with the economic and financial capacity requirement relating to the controlling shareholder

Statement of the lawful origin of the funds used by the controlling shareholders and holders of qualifying holdings to pay up the equity capital

Detailed business plan

Declaration, signed by the controlling shareholders and by the holders of qualified holdings, who are natural persons, that they meet the requirement of an unblemished reputation and the conditions established by the legislation and regulations in force

Declaration signed by the controlling shareholders and holders of qualifying holdings, other than natural persons, that they meet the conditions established by the legislation and regulations in force

Authorization, signed by the controlling shareholders and holders of qualifying holdings: (a) to the Brazilian Internal Revenue Service to provide the Central Bank with the Individual Income Tax Return or the Corporate Economic and Tax Information Return, as the case may be, relating to the last three financial years, except in the case of a legal entity based abroad or an investment fund, for the exclusive use of the Central Bank in the respective authorization process; (b) to the Central Bank for access to information about them in any public or private registration and information system, including judicial or administrative processes and procedures and police investigations; and (c) to the Central Bank to carry out the processing and shared use of personal data held by them, including those considered sensitive and covered by secrecy, under the terms of the legislation in force

Declaration, signed by those elected or appointed to positions in bodies provided for in the bylaws or articles of association, that they meet the requirements of an unblemished reputation and, in the case of directors and officers, technical training compatible with the duties to be performed during their term of office, as well as the conditions established by the legislation and regulations in force

Authorization, signed by those elected or appointed to positions in bodies provided for in the bylaws or articles of association, to the Central Bank to: (a) access information about them, in any public or private registration and information system, including judicial or administrative processes and procedures and police investigations; and (b) carry out the processing and shared use of personal data held by them, including those considered sensitive and covered by secrecy, under the terms of the legislation in force

Declaration, signed by the entity, of: (a) being aware of the legal and regulatory requirements and conditions to which those elected or appointed to positions in bodies provided for in the bylaws or articles of association are subject for the exercise of their positions, as well as the hypotheses of ineligibility; (b) having carried out research regarding those elected or appointed to positions in bodies provided for in the bylaws or articles of association, in public and private registration and information systems, and that they meet the legal and regulatory requirements and conditions necessary for the exercise of their positions; (c) having verified that the directors and officers elected or appointed have the technical training compatible with the duties to be carried out during their term of office; (d) having been authorized, by those elected or appointed to positions in bodies provided for in the bylaws or articles of association, to have access to any information, protected by legal secrecy or not, or documents related to the analysis by the Central Bank of their names for the exercise of the positions and for the duration of their mandates; and (e) having been authorized, by those elected or appointed to positions in bodies provided for in the bylaws or articles of association, to be aware of the processing of the respective authorization, monitoring or supervision processes and to obtain copies of documents contained therein, including those containing data of their ownership protected by any kind of secrecy, even those considered sensitive, under the terms of the legislation in force

Most recent version of the bylaws or articles of association

Shareholders' or quota holders' agreement or a declaration of its non-existence

Usufruct agreement relating to the controlling shareholders' holdings or a declaration of its non-existence

Declaration that the management meets the requirement to know the business, the segment in which the institution intends to operate, the market dynamics, the sources of operating resources, the management of activities and the risks associated with them

The Central Bank may carry out a pre-operational inspection of the institution in order to assess the compatibility between the organizational structure implemented by such institution and the requirements for granting operating authorization to it. If any incompatibility is found, the Central Bank will set a deadline for correction, after which, in the event of non-compliance, it will reject the authorization request.

The Central Bank, before or after issuing operating authorizations, may: (i) request any additional documents and information it deems necessary, as well as request them from other public administration bodies and authorities abroad; and (ii) summon the controlling shareholders, holders of qualifying holdings, and directors and officers of the institution for interviews.

The application procedure is the same for the controllers of financial institutions that are Brazilian residents or foreign investors. The assumption by a foreign financial institution of the status of controlling shareholder of a financial institution based in Brazil is subject to the non-objection of the regulatory body of the country of origin.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Brazil does not have any financial services “passporting” arrangements with other countries.

# 8. Authors and contact information

## Authors and contact information

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***Trench Rossi Watanabe and Baker McKenzie have executed a strategic cooperation agreement for consulting on foreign law.***

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