Global Financial Services Regulatory Guide - Brazil

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

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# 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.

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