

**Available for consultation at:

https://data.worldbank.org/indicator/SP.POP.TOTL?most_recent_value_desc=true. Accessed on October 16, 2020.

*** Available for consultation at: <https://globalfindex.worldbank.org/> . Accessed on September 21, 2020.

****Available for consultation at:

https://www.bcb.gov.br/content/cedulasemoedas/pesquisabrasileirodinheiro/Apresentacao_br_asileiro_relacao_dinheiro_2018.pdf. Accessed on September 21, 2020.

***** DISTRITO, FinTech Report 2020, São Paulo, Apr. 2020, available for consultation at: <http://conteudo.distrito.me/dataminer-fintech>. Accessed on September 21, 2020.

11. Access to talent is often cited as a key issue for fintechs - are there any immigration rules in your jurisdiction which would help or hinder that access, whether in force now or imminently? For instance, are quotas systems/immigration caps in place in your jurisdiction and how are they determined?

The current Brazilian immigration laws do not contain specific provisions aimed at encouraging or at hindering access to foreign talents in the fintech industry. Nonetheless, certain recent amendments to the immigration laws and regulations can be highlighted, as described below.

The main Brazilian immigration law is Federal Law No. 13,445, which is further regulated by Decree No. 9,199, both issued in 2017 (the “New Immigration Law”). The New Immigration Law simplifies a variety of administrative procedures required for admittance of immigrants in Brazil, by expediting the immigration process. These procedures tend to be more favourable for both local employers and foreign employees interested in working in Brazil.

Based on the amendments introduced by the New Immigration Law, the Brazilian Immigration Council (in portuguese, Conselho Nacional de Imigração or “CNI”) has issued additional regulations to govern the concession of residence and temporary visas.

One of the regulations that may be particularly useful for fintechs has created rules that facilitate the granting of 1-year temporary visas for foreigners when there is the possibility of transfer of know-how and technology under a cooperation agreement entered into between a Brazilian company and a foreign company (as per CNI Resolution No. 4/17).

Additionally, CNI has also facilitated the granting of residence and temporary visas in cases related to: (i) employment relationship in Brazil (as per CNI Resolution No. 2/17); (ii) investments by individuals in Brazilian companies (as per CNI Resolution No. 13/17); and,

more specifically, (iii) the representation of regulated entities headquartered abroad (as per CNI Resolution No. 9/17).

12. If there are gaps in access to talent, are regulators looking to fill these and if so how? How much impact does the fintech industry have on influencing immigration policy in your jurisdiction?

Since Brazil has a well-developed financial market and a dynamic fintech ecosystem, there is access to talented local professionals, who can supply the demands of fintechs in most areas of expertise.

Nonetheless, as mentioned in question 11 above, we understand that the Brazilian immigration policy does not hinder the access to foreign talent. Therefore, immigration of talented professionals is also an alternative to fill gaps in certain areas.

As a matter of fact, the Brazilian general immigration laws and regulations tend to be fairly flexible and incentivize the attraction of foreign talents to different sectors of the economy, including the fintech sector.

Nonetheless, we still believe that there is room for additional regulations aimed at increasing access to foreign talent, in particular for purposes of the fintech industry.

It is difficult to measure the level of influence of the fintech industry on the Brazilian immigration policy, given that the fintech industry is quite new and the improvement of immigration policies does not seem to be a top priority in the fintech industry's agenda.

13. What protections can a fintech use in your jurisdiction to protect its intellectual property?

For the purposes of this question, we can divide the Brazilian intellectual property legal framework into two main areas of protection: copyrights and industrial property.

Copyrights are protected by Federal Law No. 9,610/98 ("Copyright Law") and cover scientific, artistic, and literary intellectual creations. The Copyright Law grants to authors the exclusive rights of use, fruition, and disposal of their intellectual works. Brazil also provides protection to rights over software, as per Federal Law No. 9,609/98 and the Copyright Law. Protection of copyrights and software is granted irrespectively of prior registration with the local authorities.

Furthermore, the Brazilian intellectual property legal framework also protects industrial property, as per Federal Law No. 9,279/96 ("Industrial Property Law"). The Industrial Property Law grants protection to (i) invention patents and utility models; (ii) industrial design; and (iii) trademarks. As a general rule, protection under the Industrial Property Law

requires registration with the National Institute of Industrial Property (“INPI”), a public entity responsible for granting intellectual property rights.

The purely abstract knowledge and know-how by itself are not supported by industrial property rights. However, they can be protected by contractual provisions and clauses, such as non-disclosure and non-competition clauses.

14. **How are cryptocurrencies treated under the regulatory framework in your jurisdiction?**

The Brazilian banking regulatory framework in Brazil does not regulate cryptocurrencies. However, certain Brazilian public authorities and regulators – such as the Brazilian Internal Revenue Service, the Brazilian Securities Exchange Commission and the Central Bank of Brazil – have already issued opinions and raised concerns associated with cryptocurrencies.

The Brazilian Internal Revenue Service was the first public authority to deal with the matter, by explaining in the “Questions and Answers – Individual Tax Return”*, in 2017, that cryptocurrencies should be declared in the assets and rights section of the tax statement as “other assets”, such as a financial asset.

The Brazilian Securities Exchange Commission issued certain notes, reports and a FAQ with focus on the risks associated with Initial Coin Offerings (“ICO”), as explained in detail in our comments to question 15 below.

Under the discussions regarding the nature of ICOs, the Brazilian Securities Exchange Commission has stated that cryptocurrencies may be classified as a security in case the public offering involves “any collective investment instrument or agreement that creates the right of participation on profits or remuneration, including as a result of the provision of services, and whose profits derive from the efforts of the entrepreneur or from the efforts of third parties”, as per article 2, item IX, of Federal Law No. 6,385/76.

The regulator has also commented on the legal nature of utility tokens, which are digital assets that enable the holder to access a certain platform, product or service, similar to a license to use a product or service.

In 2018, the Brazilian Securities Exchange Commission stated that mutual funds would not be allowed to directly invest and keep cryptocurrencies on their respective portfolios, since this type of asset would not qualify as a financial asset under CVM Instruction 555/14 and, consequently, would not fulfil the applicable regulatory requirements (please refer to [Ofício Circular SIN No. 1/2018](#) issued by the Brazilian Securities Exchange Commission).

Later in 2018, the Brazilian Securities Exchange Commission has stated that mutual funds may indirectly invest in cryptocurrencies, by purchasing shares of foreign investment funds

that, in turn, invest in cryptocurrencies, subject to certain requirements and proper disclosure (please refer to Ofício Circular SIN No. 11/2018 issued by the Brazilian Securities Exchange Commission).

In the financial sector, the Central Bank of Brazil also issued letters and a FAQ stating that (i) cryptocurrencies are not official currencies issued, supervised and/or controlled by a sovereign Nation, thus, this type of asset is not backed by a Nation`s treasury; (ii) cryptocurrencies are different from the electronic currencies, governed by Federal Law No. 12.865/13 and respective payments regulations, which backed by Brazilian Reais (i.e., the Brazilian national currency); (iii) that users of cryptocurrencies may be investigated, if such cryptocurrencies are used for illegal activities; and (iv) in case of cross-border transactions, the foreign exchange regulations should be complied with, which results in the obligation to engage an authorized foreign exchange dealer to remit funds abroad and/or to receive funds in Brazil (please refer to Letter (Comunicado) No. 25.306/14 an Letter (Comunicado) No. 31.379/17 issued by the Central Bank of Brazil).

Finally, the Central Bank of Brazil has also stated that it is monitoring the use and development of cryptocurrencies in Brazil and around the world. Depending on how this issue evolves, the banking regulator stated that it may step up and regulate cryptocurrencies in Brazil.

* Available for consultation at:

<http://receita.economia.gov.br/interface/cidadao/irpf/2017/perguntao/pir-pf-2017-perguntas-e-respostas-versao-1-1-03032017.pdf>. Accessed on September 21, 2020.

15. How are initial coin offerings treated in your jurisdiction? Do you foresee any change in this over the next 12-24 months?

The Brazilian Securities Exchange Commission has issued notes, reports and a FAQ, stating that, depending on the circumstances, ICOs may fall into the definition of public offering of securities, which are subject to the securities regulation.

The securities laws apply whenever the ICO involves “any collective investment instrument or agreement that creates the right of participation on profits or remuneration, including as a result of the provision of services, and whose profits derive from the efforts of the entrepreneur or from the efforts of third parties” and the cryptocurrencies are characterized as a security under article 2, item IX, of Federal Law No. 6,385/76.

In 2018, on a relevant administrative decision for the cryptocurrency sector, the Brazilian Securities Exchange Commission decided that the public offering of Niobium Coin - a crypto asset intended to be used to pay for services in a cryptocurrencies exchange platform offered by the Bolsa de Moedas Digitais Empresariais de São Paulo (Bomesp) - was not subject to the Brazilian Securities Exchange Commission regulation, since the Niobium Coin would not fall

into the definition of security.

With regard to the likelihood of changes on the securities regulator's position above in the near future, we understand that it will depend on how cryptocurrencies will be treated and regulated in other jurisdictions, as well as on the actual growth and potential impacts of ICO's in Brazil.

In this context, the International Organisation of Securities Commission (IOSCO) may play a relevant role in the efforts to regulate or not regulate ICO's in Brazil, since the Brazilian Securities Exchange Commission has already stated that it is taking part in discussions on this matter at an international level. In addition, if the Brazilian Securities Exchange Commission perceives any relevant risks associated with ICO's or considers that there is an unacceptable level of legal uncertainty in the market, it may move to regulate ICO's, irrespectively of any international developments in this area.

Finally, the Brazilian Securities Exchange Commission has recently created a regulatory sandbox in the capital market (please refer to Instruction CVM No. 626/20) with the purpose of incentivizing innovative business models and investment products. This may be an interesting opportunity for the participants of the crypto assets industry to test projects under the regulator's supervision and to have a potential impact over future regulations related to crypto assets and blockchain-based initiatives.

16. Are you aware of any live blockchain projects (beyond proof of concept) in your jurisdiction and if so in what areas?

The Brazilian private and public sectors have been developing projects that use blockchain technology for different purposes in several areas, including in the financial markets, insurance sector, health care sector and certification of documents or signatures.

One example of a Brazilian company that uses blockchain technology to offer products or services is OriginalMy, a company that provides services related to, among other things, store certified documents, information and evidence, certify signatures and offer know your customer solutions.

From the perspective of the public sector, we highlight the initiative to develop the Regulatory Entities' Information Integration Platform (in Portuguese, Plataforma de Integração de Informações das Entidades Reguladoras - "PIER").

PIER was launched on April 1, 2020, by the Central Bank of Brazil, the Brazilian Securities Exchange Commission and the Superintendence of Private Insurance and it is based on blockchain technology. The platform will be used to facilitate the exchange of information among the three regulators and aims at expediting authorization proceedings in the Brazilian financial system.

Although PIER's first stages are restricted to consultation of the Brazilian Securities Exchange Commission and the Superintendence of Private Insurance databases, the program has the potential to aggregate a variety of databases from other public entities, such as information from the judiciary, boards of trade and international financial stability bodies.

Finally, in line with a worldwide trend, the Central Bank of Brazil has created in 2020 a study group to discuss the issuance of a digital currency in Brazil (as per Ordinance No. 108,092/20). In a note, the banking regulator stated that the issuance of digital currency by central banks may be an opportunity to improve the current commercial transactions' model and is in line with the recent initiatives to develop instant payments in the country.

17. To what extent are you aware of artificial intelligence already being used in the financial sector in your jurisdiction, and do you think regulation will impede or encourage its further use?

Based on publicly available information, artificial intelligence has been used by different players in the payment card industry, in particular for the purpose of preventing frauds.

Visa, for instance, has stated that it is using artificial intelligence in connection with card payment authorization procedures, in order to increase the security of payment transactions and preventing losses associated with frauds*. Brazilian fintechs have also been using artificial intelligence in connection with the offering of financial or payments products and services. As an example, Nubank has been using artificial technology to assist it in the analysis of credit profiles of clients**.

In 2020, the Brazilian Federation of Banks - FEBRABAN" and Deloitte published the "FEBRABAN Banking Technology Survey"***, that comprises information about 90% of Brazilian banking industry. The survey concluded that 72% of the financial sector is investing in solutions involving artificial intelligence. Among the ongoing projects, financial institutions have stated that their top priorities are improving customer support, credit, biometric, robot advisor and legal activities.

Although the financial market has been investing in the use of artificial intelligence, it is still unclear how and to what extent the use of artificial intelligence will be regulated in Brazil.

Brazilian legislators and regulators have started discussions on this matter, but the directions of such initiatives are still unclear. The Decree No. 9,854/19, for example, regulates public initiatives regarding the internet of things (IoT). Additionally, there are several bills of law that aim to create a legal framework for the development and use of artificial intelligence, such as Bill No. 5,051/19, Bill No. 5,691/19, Bill No. 240/20 and Bill No. 21/20.

* Available for consultation at:

<https://www.visa.com.br/sobre-a-visa/noticias-visa/nova-sala-de-imprensa/inteligencia-artificia>

[l.html](#). Accessed on October 17, 2020.

** Available for consultation at:

<https://link.estadao.com.br/noticias/inovacao,o-que-esta-por-tras-dainteligencia-artificial-de-cr-edito-do-nubank,70003121159.amp>. Accessed on October 17, 2020.

*** Available for consultation at:

<https://cmsportal.febraban.org.br/Arquivos/documentos/PDF/Pesquisa%20Febraban%20de%20Tecnologia%20Banc%C3%A1ria%202020%20VF.pdf>. Accessed on October 16, 2020.

18. Insurtech is generally thought to be developing but some way behind other areas of fintech such as payments. Is there much insurtech business in your jurisdiction and if so what form does it generally take?

In general terms, the pace of innovation in the insurance sector in Brazil has not been as fast as the pace of innovation in the fintech sector up to this date. In this context, most insurtechs are still in early stages of development. Nonetheless, it is worth mentioning that almost half of the existing insurtechs in the country have emerged over the past four years, which demonstrates a growing trend in the sector.

The National Private Insurance Council has broad regulatory authority to, among other things, set forth guidelines and regulations for private insurance in Brazil. In addition, the Superintendence of Private Insurance, a public authority under the Ministry of Economy, is responsible for controlling and supervising the insurance, reinsurance, open private pension plans and capitalization industries.

The above-mentioned regulators have undertaken in recent years a number of initiatives to enable innovation in the insurance market. One of the main initiatives in this regard was the enactment of a regulation for the insurance regulatory sandbox, which authorizes the operation of new players subject to lighter regulatory requirements, in order to test innovative products or services in the local market (as per Resolution CNSP No. 381/20 and Circular SUSEP No. 598/20).

Additionally, the insurance regulators have implemented other innovations that affect the functioning of the ecosystem as a whole, such as the permission to issue electronic insurance policies and rules regarding the registration of insurance policies, under the Operations Registration System (“SRO”) (as per Resolution CNSP No. 383/20 and Circulars SUSEP No. 599/20 and 601/20). Registration of insurance policies is an important step for the development of the insurance market, since it increases transparency and facilitates access to documents and information by clients and other beneficiaries.

The Superintendence of Private Insurance also intends to develop a market for Insurance-Linked Securities (ILS) and has carried out Public Hearing No. 14/20 to debate the proposed

regulation with the market. The ILS are a way to finance risks linked to insurance or reinsurance, enabling a more efficient allocation of risks in the market.

Finally, the Superintendence of Private Insurance has been closely monitoring the developments of open banking and is studying the creation of an open insurance ecosystem in Brazil.

19. **Are there any areas of fintech that are particularly strong in your jurisdiction?**

The Central Bank of Brazil defines fintechs as “financial-technology-intensive startups that technologically enable financial innovation - new business models, applications, processes, or products - with an associated substantial effect on financial markets and institutions and the provision of financial services”*.

In line with the broad definition above, the Brazilian fintechs ecosystem is very diversified and involves a wide variety of areas, such as credit, payments, back office, investments, foreign exchange, debt negotiation, crypto assets etc.

According to the 2020 edition of Distrito Fintech Report, a research carried out by Distrito - a company specialized in the fintechs industry - in 2019 the Brazilian financial industry had 742 fintechs**.

In this scenario, the research pointed out that the payments sector is particularly strong in the Brazilian fintechs ecosystem (representing 16,4% of the fintech’s market). According to the report, the payments segment was followed by credit and back office services (with approximately 15% of the market each).

* Available for consultation at: https://www.bcb.gov.br/en/financialstability/fintechs_en. Accessed on October 18, 2020.

** Available for consultation at: <http://conteudo.distrito.me/dataminer-fintech>. Accessed on October 18, 2020.

20. **What is the status of collaboration vs disruption in your jurisdiction as between fintechs and incumbent financial institutions?**

According to the “FEBRABAN Banking Technology Survey”, published by FEBRABAN and Deloitte in 2020*, the collaboration between incumbent financial institutions and startups, fintechs and big techs is fundamental to foster innovation in the financial sector.

In this sense, the research also pointed out that 68% of the incumbent financial institutions have entered into at least one strategic partnership with startups, fintechs or big techs. The solutions provided by startups, fintechs and big techs to incumbent financial institutions

involves both front-office and back office solutions.

Although the partnership model is very common among incumbent financial institutions and fintechs, many incumbent financial institutions have adopted different strategies to promote innovation and disruption in the financial market. Thus, some financial institutions are also investing in the acquisition of fintechs, internal development of new technologies or even incorporation of new entities that operate under a fintech business model, as detailed in our comments to question 21 below.

In this scenario, although the fintech boom may potentially represent a disruption in the way that financial services are provided to end users, this does not mean that incumbent financial institutions are becoming obsolete and/or will be extinct in Brazil.

On the contrary, fintechs' growth represents an opportunity for incumbent financial institutions to aggregate value to their traditional services through the implementation of new technologies that may further benefit their clients. It is also worth mentioning that incumbent financial institutions have large client databases and the financial resources to carry out substantial investments in technology and innovation.

Therefore, in view of the above, we note that the majority of the incumbent financial institutions in Brazil are aware of the changes brought by technology and fintechs to the financial sector and are working on a variety of initiatives in order to adapt to the demands of clients and new market trends.

* Available for consultation

at: <https://www2.deloitte.com/br/pt/pages/financial-services/articles/pesquisa-febraban-tecnologia-bancaria.html>. Accessed on October 18, 2020.

21. To what extent are the banks and other incumbent financial institutions in your jurisdiction carrying out their own fintech development / innovation programmes?

As mentioned in question 20 above, the incumbent financial institutions are fully aware of the changes to the financial market brought by fintechs and innovation programmes.

According to the "FEBRABAN Banking Technology Survey", the majority of incumbent financial institutions in Brazil that took part in the research have undertaken at least one initiative aimed at developing innovation programmes*.

Under this perspective, the most common innovation program developed by financial institutions is the "acceleration program", which has been implemented by 61% of the financial institutions that took part in the research. The acceleration programmes are usually structured by incumbent financial institutions in order to enable their participation in the

development of new technologies.

By using acceleration programs and incubators, incumbent financial institutions are encouraging the creation of fintechs that may end up providing innovative services to the market in general and/or to the sponsoring financial institution itself. These initiatives are also important measures to associate the brands of incumbent financial institutions with technology and innovation.

Among the main acceleration programmes developed by Brazilian incumbent financial institutions we highlight the following: (i) “Cubo”, an initiative by Itaú Unibanco; (ii) “Radar Santander”, an initiative by Santander; and (iii) “InovaBra”, an initiative by Bradesco. It is important to highlight that the financial institutions mentioned above are among the main financial institutions in the country.

Finally, fintech development/innovation programmes carried out by incumbent financial institutions are not limited to acceleration programmes. Instead, the programmes may also involve venture funds, innovation labs, coworking and hackathons.

* Available for consultation

at:<https://www2.deloitte.com/br/pt/pages/financial-services/articles/pesquisa-febraban-tecnologia-bancaria.html>. Accessed on October 18, 2020.

22. **Are there any strong examples of disruption through fintech in your jurisdiction?**

Fintechs may help promote competition, increase efficiency of the financial system, reduce interest rates, and, ultimately, accelerate financial inclusion (one of the main obstacles of the Brazilian market), by making available innovative products and services to clients.

One example of disruption by fintechs in the Brazilian market is the development and offering of e-wallets (payment services, usually based on prepaid payment accounts) by fintechs, big techs and major retailers. During the last two years, the offering of such payment services has increased dramatically and a part of the Brazilian population that did not have access to deposit accounts or credit cards have opened prepaid payment accounts. These e-wallets present an increasing variety of features, which may include the online and offline payment of products/services, peer-to-peer transfers, payment of bills, receipt of wages etc.

Once the instant payments ecosystem becomes fully operational (which is expected to happen in November, 2020), the use and relevance of such e-wallets may increase, given that prepaid payment account holders will be able to use the respective accounts to make payments or transfers to any other deposit or prepaid payment accounts held by payees (provided that the respective financial institutions and/or payment institutions are part of the instant payments ecosystem).

In addition, fintechs were also involved in the development of peer-to-peer loans in Brazil. Although lending is the sole domain of financial institutions, many fintechs started to operate as “banking correspondents” of authorized financial institutions. In this capacity, fintechs managed to develop sophisticated and highly technological online platforms to offer loans on behalf of financial institutions.

As a result of the rapid growth of this business model, the Brazilian National Monetary Council decided to regulate credit fintechs and issued Resolution CMN No. 4,656/18, creating two new types of financial institutions in the country: the Direct Credit Company (“SCD”) and the Peer-to-Peer Lending Company (“SEP”).

In general lines, SCDs are financial institutions that carry out the following activities, exclusively through electronic platforms: lending, financing and acquisition of credit rights. SEPs, in turn, are financial institutions that perform, exclusively through electronic platforms: peer-to-peer lending and peer-to-peer financing transactions.

Since Resolution CMN No. 4,656/18 was issued, the Central Bank of Brazil has authorized more than 40 SCDs and SEPs. This indicates a growing demand for these entities and also represents an important step to deal with two of the main challenges of the Brazilian financial system: the limited access to credit and high interest rates.

Fintechs also had an important role in the development of the open banking ecosystem in the country. Even before the Central Bank of Brazil decided to regulate open banking, certain fintechs started to offer products and services based on the concept of open banking (i.e., products and services that require direct access to clients’ financial data held with financial and payment institutions). These initiatives have probably helped to accelerate the process of regulation and implementation of the open banking ecosystem in Brazil (which will likely be very disruptive in the following years).