



# The Legal 500 Country Comparative Guides

## Brazil: Fintech

This country-specific Q&A provides an overview of fintech laws and regulations applicable in Brazil.

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## 1. What are the sources of payments law in your jurisdiction?

The Brazilian Payments System (“SPB”) is currently governed by Federal Law No. 10,214/01, and Resolution No. 2,882/01, issued by the Brazilian National Monetary Council (CMN). In general terms, the SPB comprises the entities, systems and procedures related to transfers of funds and other financial assets, or related to the processing, clearing and settlement of payments in all forms.

In 2013, Federal Law No. 12,865/13 was promulgated with the purpose of governing payment schemes that are part of the SPB. This law sets forth the basic legal framework of the Brazilian payments industry, defining payment schemes, payment arrangers and payment institutions, among other matters. Federal Law No. 12,865/13 also determines that the Central Bank of Brazil (BCB) has authority to further regulate the payments industry, in accordance with the general principles set forth by the Brazilian National Monetary Council.

Shortly after Federal Law No. 12,865/13 was promulgated, the Brazilian National Monetary Council issued Resolution CMN No. 4,282/13, which established the general principles that should be observed by the Central Bank of Brazil while regulating the payments industry. The Central Bank of Brazil, in turn, has enacted a set of regulations to govern the main issues associated with the payments industry, in particular, **(i)** Circular BCB No. 3,682/13, which governs payment schemes and payment arrangers; **(ii)** Circular BCB No. 3,683/13 (later revoked and superseded by Circular BCB 3,885/18), which governs payment institutions; **(iii)** Circular BCB No. 3,680/13, which governs payment accounts; and **(iv)** Circular BCB No. 3,681/13, which governs risk management and governance of payment institutions.

In the subsequent years, the Central Bank of Brazil has enacted additional regulations to govern other aspects related to the operation of payment institutions, such as regulations on compliance, internal audit and cybersecurity policies. Furthermore, certain specific laws and regulations originally directed to financial institutions are also applicable to payment institutions, covering matters related to know your customer (KYC) and anti-money laundering (AML) obligations, ombudsman, internal controls, fees, bank secrecy obligations, special insolvency regimes, special liabilities of controlling shareholders, directors and officers, among others.

## 2. Can payment services be provided by non-banks, and if so on what conditions?

Yes. In Brazil, payment services can be provided by financial institutions (such as banks) and also by certain non-financial institutions (or non-bank entities), subject to the specific requirements and limitations set forth by the applicable laws and regulations. For purposes of this question, we highlight the following non-financial institutions that are able to provide payment services in Brazil: **(i)** payment institutions; and **(ii)** sub-acquirers.

### **(i) Payment Institutions**

In line with our comments to question 1 above, Federal Law No. 12,865/13 created a new type of entity called “payment institution”.

Payment institutions are different from financial institutions and are subject to a specific legal and regulatory framework. In this context, payment institutions are currently allowed by the payments regulation to start operations before obtaining a license or authorization to operate by the Central Bank of Brazil. This feature of the Brazilian payments regulation has been an important factor to drive the recent growth of the payments industry in the country.

The main regulation applicable to payment institutions is Circular BCB No. 3,885/18. This regulation was recently altered by Resolution BCB No. 24/20, dated October 22, 2020, and our comments below take into consideration the amendments introduced by this new regulation (which will enter in force on November 3, 2020).

Payment institutions are allowed to provide payment services, as listed in Federal Law No. 12,865/13, and must operate in the context of one or more payment schemes.

There are currently four types of payment institutions regulated in Brazil: **(i)** issuers of electronic currency (or e-money issuers); **(ii)** issuers of post-paid payment instruments; **(iii)** acquirers; and (iv) payment initiation service provider (“PISP”).

As a general rule, payment institutions that are issuers of post-paid payment instruments and/or acquirers are only obliged to file for an authorization with the Central Bank of Brazil if/when the regulatory threshold is reached: BRL 500 million in payment transactions, aggregated in the previous 12 months period.

The regulatory regime applicable for payment institutions that issue electronic currency was altered by Resolution BCB No. 24/20. Before Resolution BCB No. 24/20 was enacted, payment institutions that issued electronic currency were only obliged to file for authorization with the Central Bank of Brazil if/when one of the following regulatory thresholds was reached: **(i)** BRL 500 million in payment transactions, aggregated in the previous 12 months period; or **(ii)** BRL 50 million in funds held in prepaid accounts, aggregated in the previous 12 months period.

Under the new regulatory regime set forth by Resolution BCB No. 24/20, payment institutions that issue electronic currency: **(i)** and that are in operation by March 1st, 2021, may continue to provide payment services and will only be obliged to file for authorization with the Central Bank of Brazil if/when certain regulatory thresholds are reached (such thresholds will gradually decrease until June 30, 2023 – when all such payment institutions will be obliged to file for authorization by the Central Bank of Brazil to operate, irrespectively of reaching any specific threshold); or **(ii)** that wish to commence operations after March 1st, 2021, will be obliged to obtain prior authorization by the Central Bank of Brazil, before initiating the

provision of the relevant payment services.

Finally, the newly created PISPs will be obliged to obtain prior authorization to operate by the Central Bank of Brazil (please refer to our comments to question 4 below for additional details on the open banking ecosystem).

## **(ii) Sub-acquirers**

Due to the growing relevance of sub-acquirers in the Brazilian payments industry, on March 26, 2018, the Central Bank of Brazil created a regulatory definition of sub-acquirer by amending Circular BCB No. 3,682/13.

According to this definition, a sub-acquirer participates in one or more payment scheme(s), and: **(a)** enables the end user (merchant) to accept payments using a payment instrument issued by a payment institution or a financial institution that is part of the same payment scheme, and **(b)** takes part in the settlement of payment transactions and is a creditor of the acquirer.

Currently sub-acquirers are not subject to a license or authorization by the Central Bank of Brazil to operate, but are obliged to comply with certain (sparse) regulatory obligations imposed by the Central Bank of Brazil, as well as contractual obligations imposed by payment arrangers of the payment schemes to which the sub-acquirer participates. In order to operate, sub-acquirers also need to have in place at least one sub-acquiring agreement with a local acquirer and must comply with the respective contractual obligations imposed by the acquirer as well.

Sub-acquirers have played an important role in the payments industry over the past years, by contributing to the expansion of the acceptance of payment instruments in several sectors of the economy, in particular e-commerce and small businesses.

## **3. What are the most popular payment methods and payment instruments in your jurisdiction?**

In 2018, the Central Bank of Brazil published a research entitled “Brazilian’s Relationship with Money”<sup>\*</sup> with the purpose of analysing how Brazilians deal with money. This research covered, among other matters, the use of payment methods in Brazil.

The research indicated that the most commonly used payment method in the country was still cash, followed by debit card, credit card, automatic debit and electronic transfers, in this order.

Additionally, the use of credit transfer and prepaid cards has significantly increased since

2019. According to the “Retail and Card Payment Statistics” (base date 2019, published in 2020), prepared by the Central Bank of Brazil\*\*, the number of transactions using prepaid cards is rapidly increasing.

It is likely that the use of payment cards and mobile payments in general have further increased in 2020, due to the COVID 19 pandemic, and will continue to increase in the following years, as a result of changes in the economy, further development of e-commerce, increasing trust on mobile payments by the population, development of the instant payments ecosystem in the country and other measures. It was estimated that by 2022 about 60% of payments will be electronic.

\* Available for consultation at:

[https://www.bcb.gov.br/content/cedulasemoedas/pesquisabrasileirodinheiro/Apresentacao\\_br\\_asileiro\\_relacao\\_dinheiro\\_2018.pdf](https://www.bcb.gov.br/content/cedulasemoedas/pesquisabrasileirodinheiro/Apresentacao_br_asileiro_relacao_dinheiro_2018.pdf). Accessed on September 21, 2020.

\*\*Available for consultation at: <https://www.bcb.gov.br/estatisticas/spbadendos>. Accessed on September 21, 2020.

**4. What is the status of open banking in your jurisdiction (i.e. access to banks’ transaction data and push-payment functionality by third party service providers)? Is it mandated by law, if so to which entities, and what is state of implementation in practice?**

In Brazil, the development and regulation of open banking took place gradually. Initially, open banking was unregulated and certain entities started to offer services based on the users’ provision of authentication information (such as password, PIN etc.) in order to enable such entities to have direct access to clients’ financial data held with financial institutions. In general, these services were based on the aggregation of financial data, such as the services provided by Account Information Service Providers (“AISP”) in the European Union (“EU”).

However, the absence of an open banking regulation in Brazil led to uncertainties and disputes between entities interested in offering aggregation services based on financial data and certain financial institutions that challenged this business model.

Meanwhile, the Central Bank of Brazil was evaluating the feasibility of implementing a regulated open banking ecosystem in the country and identifying the ideal structure to be adopted. In April 2019, the Central Bank of Brazil disclosed the fundamental requirements for the implementation of the open banking ecosystem in Brazil by means of a Letter (Comunicado) BCB No. 33,455/19, which presented the objective, definition, scope, regulatory strategy and actions towards implementation.

Afterwards, the Central Bank of Brazil has issued Public Hearing 73/19 to gather comments by market participants on the proposed regulation of the open banking ecosystem in Brazil.

In 2020, the Brazilian National Monetary Council and the Central Bank of Brazil enacted the Joint Resolution CMN and BCB No. 1/20 and the Circular BCB No. 4,015/20 to officially regulate and implement the open banking ecosystem.

Similarly to the EU model, the Brazilian open banking regulation only allows the direct participation of regulated institutions, such as financial institutions, payment institutions and other institutions licensed by the Central Bank of Brazil.

The Brazilian open banking ecosystem will enable regulated entities to share a significant amount of data and services, subject to prior consent by clients. In practical terms, this means that the Brazilian open banking ecosystem will enable the provision of account information services, payment initiation services and other services to be developed in the future.

As a general rule, participation in the open banking ecosystem for purposes of account information services will be mandatory for regulated institutions that are part of the prudential conglomerates under Segments 1 and 2 (which includes the largest financial institutions in Brazil).

Participation in the open banking ecosystem for purposes of payment initiation services will be mandatory for authorized financial institutions and payment institutions that offer deposit accounts and prepaid payment accounts to clients, respectively, and also to payment initiation services providers ("PISP").

PISPs are a new type of payment institution that was regulated by the Central Bank of Brazil on October 22, 2020, via Resolution BCB No. 24/20 (which has altered Circular BCB No. 3,885/18). Under the new regulation PISPs will be obliged to obtain a prior authorization to operate by the Central Bank of Brazil. Resolution BCB No. 24/20 will enter in force on November 3, 2020.

The Brazilian open banking regulations and Public Hearing 77/20 do not create a new type of regulated entity to provide account information services (AISP). These services may be provided by authorized financial and payment institutions, subject to the terms and conditions of the regulation.

The open banking in Brazil will be implemented in four different phases, from November 2020 to October 2021, as follows:

Phase I - November 2020: public access to information from participating institutions regarding their customer service channels and their products and services;

Phase II - May 2021: sharing of customers' or their representatives' registration information,

and transactional data related to products and services included in Phase I;

Phase III – August 2021: provision of payment initiation services and forwarding of loan proposals; and

Phase IV – October 2021: expansion of the scope of the open banking ecosystem, in order to include foreign exchange transactions, investments, insurance and open pension funds, among other products.

Finally, Joint Resolution CMN and BCB No. 1/20 also delegates to market participants the self-regulation of certain key operational aspects of the open banking ecosystem in Brazil (such as technological standards and procedures, standardization of layouts etc.). This self-regulatory initiative will be supervised by the Central Bank of Brazil and will occur alongside with the steps listed above for the implementation of the open banking ecosystem in the country.

## **5. How does the regulation of data in your jurisdiction impact on the provision of financial services to consumers and businesses?**

The Brazilian data protection framework presents a set of general and sectoral laws and regulations that impact the provision of financial services. Federal Law No. 13,709/18 (“General Data Protection Law”) has a very broad scope and applies to all entities that process personal data in Brazil (including financial institutions and payment institutions), while, from a sectoral perspective, there are relevant laws and regulations, such as Complementary Law 105/01 (“Bank Secrecy Law”, applicable to financial and payment institutions), Federal Law No. 12.414/11 (applicable to credit bureaus), Federal Law No. 12,865/13 (“Internet Law”, applicable to entities that sell products or offer services online), Resolution CMN No. 4,658/18 and Circular BCB No. 3,909/18 (that set forth cybersecurity requirements for financial institutions and payment institutions) and the Joint Resolution CMN and BCB No. 1/20 (that regulates the open banking ecosystem).

The financial sector was one of the first regulated sectors in Brazil to have specific laws and regulations governing data protection (or bank secrecy), given the sensitive nature of data on financial services and products. In this context, Federal Law No. 4.595/64, and later the Bank Secrecy Law determined that information regarding financial services and products provided to clients, both individuals and legal entities, is confidential and may only be disclosed on very specific situations, such as disclosure with the client’s consent.

Federal Law No. 12.414/11 regulated the enrolment of individuals and legal entities in databases designed to support credit score and, originally, also relied on consent. However, Complementary Law 166/19 implemented significant changes in Federal Law No. 12.414/11, in order to facilitate the inclusion of individuals and legal entity’s data in these databases. The Brazilian National Monetary Council and the Central Bank of Brazil also created certain



regulatory obligations to financial institutions regarding the sharing of clients' data with credit bureaus, with the purpose of supporting and strengthening this legal initiative (please refer to Resolution CMN No. 4,737/19 and Circular BCB No. 3,955/19).

In 2013, the Internet Law introduced specific provisions to address concerns associated with processing of personal data online. Among other obligations, the Internet Law required consent by the data subject for the data processing, the provision of clear and complete information about the processing to the data subject and the protection of certain rights of the data subject, such as deletion of personal data.

Five years later and influenced by the promulgation of Regulation (EU) 2016/679 (that created the General Data Protection Regulation – GDPR), Brazil finally established a general and comprehensive legal framework on data protection by promulgating LGPD. LGPD requires a lawful basis to process personal data, the provision of clear information to the data subject, internal security and organisational measures to protect personal data, mandatory adoption of certain controls regarding the sharing of personal data with third parties, among other obligations.

Since LGPD has entered in full force only recently, it is still unclear how such requirements will be applied and the impact that the law will have on the provision of financial and payment services in the country. Nonetheless, it is certain that LGPD will require the adaptation of business models of financial and payment services providers to the new legal obligations and that data privacy will have to be taken into account in the design of new products or services.

Certain operational challenges may arise as a result of LGPD, such as limitations on the use of personal data collected from clients, potential restrictions to share data with commercial partners and/or the need to comply with additional requirements in order to be able to transfer data to other countries. Entities that rely on the processing of a massive quantity of personal data for marketing, credit score or cross-selling will likely be more impacted by LGPD. However, we do not anticipate that LGPD will be a major hurdle or will decelerate the fast pace of financial and payment services development in Brazil.

In terms of data security, since 2018 financial institutions and payment institutions are required to comply with the Central Bank of Brazil's cybersecurity regulations, which mandate the implementation of cybersecurity policies and compliance with certain obligations in the outsourcing of cloud computing and data storage services. Therefore, it is expected that the impacts of LGPD requirements in this regard will be less relevant (given that the Central Bank of Brazil's regulation on cybersecurity tends to be more stringent).

Finally, with respect to open banking, the Central Bank of Brazil has determined that the freely given, informed, unambiguous and prior consent by the client is a requirement for sharing client's data or services with another institution within the open banking ecosystem.



Based on our comments above, financial and payment services providers are subject to a variety of data protection laws and regulations in Brazil. The applicability and impacts of each of such laws or regulations should be evaluated on a case by case basis, since they may vary according to the type of institution, the activity performed, and the ecosystem involved.

**6. What are regulators in your jurisdiction doing to encourage innovation in the financial sector? Are there any initiatives such as sandboxes, or special regulatory conditions for fintechs?**

One important measure to be highlighted was the permission that was granted to payment institutions to commence operations without the need of a prior license or authorization by the Central Bank of Brazil (please refer to our comments to questions 1 and 2 above). In this context, payment institutions were only required to file for authorization if/when one of the transactional volumes defined in the regulation was reached.

Therefore, in practice, this meant that payment institutions had the opportunity to test the viability of its business model, offering payment products and/or services before having to incur in all regulatory costs that are required from authorized payment institutions (the entity had only to bear such costs after reaching one of the thresholds and filing for authorization with the Central Bank of Brazil).

However, this scenario was partially altered by Resolution BCB No. 24/20, which alters Circular BCB No. 3,885/18 and that will enter in force on November 3, 2020. Under this new regulation, the benefit mentioned above will only be applicable to payment institutions that operate as issuers of post-paid payment instruments, acquirers and/or, to a certain extent, issuers of electronic currency that are in operation by March 1st, 2021\*. Payment institutions that wish to initiate activities as issuers of electronic currency after March 1st, 2021, and the newly created payment initiation services providers will have to obtain prior authorization to operate by the Central Bank of Brazil (please refer to our comments to question 2 above).

In addition, the Central Bank of Brazil has stated its purpose of promoting financial inclusion, competitiveness, transparency, financial education and sustainability in a public document entitled Agenda BC#\*\*. This initiative focuses on resolving structural challenges of the Brazilian National Financial System ("SFN") by, among other measures, fostering technological innovation in the local market.

The Central Bank of Brazil has also adopted a number of measures in the last years aimed at promoting competition in the financial sector. These measures include the implementation of the open banking and instant payments ecosystems. Both initiatives are important steps to incentivize financial innovation, facilitate the flow of data and funds in the market and increase competition.

In addition to the implementation of these new ecosystems, the Central Bank of Brazil has

also incentivized innovation by launching, in May 2018, the Financial and Technology Innovation Laboratory (“LIFT”). Lift is a program designed to promote the collaboration among academia, market participants, technology companies and startups, with the purposes of enhancing the efficiency of the SFN, reducing the cost of credit, and promoting financial citizenship. LIFT’s two initial editions comprised 12 projects in 2018 and 17 projects in 2019, with the support of technology companies.

Finally, on October 26, 2020, the Brazilian National Monetary Council and the Central Bank of Brazil have enacted Resolution CMN No. 4,865/20 and Resolution BCB No. 29/20, which create a financial regulatory sandbox in Brazil. This regulatory sandbox is a controlled environment for testing financial and payment innovations, under the Central Bank of Brazil’s supervision. The regulatory sandbox framework was proposed by Public Hearing No. 72/19, which was subject to suggestions and comments by market participants. The regulatory sandbox will be available as of December 1, 2020.

\* Note that payment institutions that are issuers of electronic currency and that are in operation by March 1st, 2021, will be subject to decreasing thresholds and will ultimately have to file for authorization to operate by the Central Bank of Brazil, irrespectively of reaching any specific thresholds.

\*\* Available for consultation at: <https://www.bcb.gov.br/acessoinformacao/bchashtag>. Accessed on October 15, 2020.

## **7. Do you foresee any imminent risks to the growth of the fintech market in your jurisdiction?**

We do not foresee any major imminent risk to the growth of the fintech market in Brazil from a legal or regulatory perspective. On the contrary, as mentioned in question 10 below, the Brazilian fintech market seems to have a high growth potential for the next years, taking into consideration the considerable growth experienced in the recent past, the Central Bank of Brazil’s positive attitude towards financial innovation and competition, as well as a developed legal and regulatory framework.

Notwithstanding the foregoing, certain amendments to the payments regulation introduced by Resolution BCB No. 24/20 enacted on October 22, 2020, may impose a minor setback to new payment institutions that are interested in operating as issuers of electronic currency (e-money issuers).

As mentioned in questions 2 and 6 above, payment institutions that decide to operate as issuers of electronic currency after March 1st, 2021, will have to obtain a prior authorization to operate by the Central Bank of Brazil (instead of being able to commence operations without prior license or authorization). Although these changes to the regulation may increase costs and compliance requirements by certain new payment institutions, we do not

believe that the changes will pose a real threat to the general growth of the fintech market in Brazil.

#### **8. What tax incentives exist in your jurisdiction to encourage fintech investment?**

In Brazil, there are no specific tax incentives to encourage fintech investment. However, there are certain tax incentives that can be adopted by entities in this sector, such as Federal Law No. 11,196/05 (known as “Lei do Bem”). In other words: there are general tax benefits, which can also be used by fintechs, but are not limited to or specifically designed for fintechs.

In addition to Federal Law No. 11,195/05, we also highlight the Federal Law No. 155/16 (known as “Angel Investor Law”), which provides incentives for investors to act as “angel investors”, investing in companies at an early stage; and the activities performed by the Financier of Studies and Projects (Finep), which is a public company that promotes the sectors of technology, innovation and science development.

In addition, another initiative to encourage small fintechs is Bill No. 6,625/13, which provides for a differentiated tax regime for initiatives that fall under the Special Treatment System for New Technology Companies (SisTENET). This Bill is still under discussion, and the proposal is to guarantee total exemption from federal taxes for 2 years (extendable for an identical period of time) to companies classified as startups. To take advantage of the benefits, a fintech must have a quarterly gross revenue of up to BRL 30,000 and maintain a maximum of four hired employees.

#### **9. Which areas of fintech are attracting investment in your jurisdiction, and at what level (Series A, Series B etc)?**

In general terms, fintechs are growing in Brazil due to a local demand for more practical, accessible and affordable financial and payment services. According to the Brazilian Association of Fintechs, in the first half of 2020, fintechs represented the sector which attracted the largest number of funding rounds in Brazil.

When considering all the funds raised by fintechs in the period, the largest number of investments were made in early stages (Angel and Seed funding), however investments in later stages (Series A, B, C) correspond to a greater amount invested. In the first half of 2020, the most attractive fintech areas for investments in Brazil were: (i) credit for small companies, due to the growth in demand for lower interest rates and better conditions during the Covid-19 pandemic; (ii) solutions for remitting funds abroad; (iii) digital banks; and (iv) payment solutions.

#### **10. If a fintech entrepreneur was looking for a jurisdiction in which to begin operations, why would it choose yours?**

We can highlight at least three main aspects that justify a move to the Brazilian market: (i)

size and potential of the local market; (ii) recent growth of the fintech sector, and (iii) legal and regulatory efforts to create a favorable legal and regulatory framework.

Brazil has around 211 Million inhabitants, ranking as the 7th most populous country in the world\*, and has a Gross Domestic Product – GDP of around USD 1,8 Trillion, ranking as the 9th highest GDP in the world\*\*.

Therefore, the Brazilian market is already a significant market and still has a lot of potential for further development, considering that a relevant part of the local population is still unbanked (researches indicate that, in 2017, around a third of Brazilian adults are unbanked\*\*\*, although this number may have decreased in 2020, as a result of governmental financial support granted to the population during the Covid-19 pandemic). In addition, according to the Brazilian's Relationship with Money report\*\*\*\*, prepared by the Central Bank of Brazil, the majority of Brazilians still use cash as a form of payment, instead of more complex forms of payment, such as payment cards, online transfers etc.

The fintech sector is amongst the fastest growing sectors in Brazil and the country is well renowned for its vibrant fintech ecosystem. After a period of economic challenges and turbulence during the 80's and 90's, Brazil managed to develop a robust financial market, albeit highly regulated and more concentrated. During the last years, however, new market participants (in particular fintechs) were able to enter the market by offering innovative products and services at competitive costs. Throughout 2019, the sector attracted USD 910 Million in investments, corresponding to 35% of the venture capital investments in Brazil accounted for in the period\*\*\*\*\*.

Finally, the Central Bank of Brazil has adopted in the past years a favourable position towards financial innovation and has fostered competition in the financial and payments industries. In addition to the measures adopted to encourage the entry of new participants and offer of new products and services (please refer to our comments to question 6 above), the Central Bank of Brazil has been opened to discussions and suggestions, evidenced by the increasing number of public hearings proposed since 2017 (including public hearings related to credit fintechs, open banking, instant payments and regulatory sandbox).

Furthermore, the Brazilian regulations are usually in line with international regulatory frameworks adopted in well-developed jurisdictions (in particular the European Union), such as the rules governing open banking and instant payments.

The combination of a relevant economy, a dynamic fintech ecosystem and an innovation-friendly regulator tends to provide good business opportunities for fintech entrepreneurs.

\* Available for consultation at:

[https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most\\_recent\\_value\\_desc=true](https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true).

Accessed on October 16, 2020.

\*\*Available for consultation at:

[https://data.worldbank.org/indicator/SP.POP.TOTL?most\\_recent\\_value\\_desc=true](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](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 and 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”<sup>\*</sup>.

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<sup>\*\*</sup>.

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).

<sup>\*</sup> Available for consultation at: [https://www.bcb.gov.br/en/financialstability/fintechs\\_en](https://www.bcb.gov.br/en/financialstability/fintechs_en). Accessed on October 18, 2020.

<sup>\*\*</sup> 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<sup>\*</sup>, 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).