

FinTech in Brazil: overview

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A Q&A guide to FinTech in Brazil.

The Q&A provides a high level overview of the financial services sector; the FinTech sector; regulatory environment for alternative finance activities, payment platforms, investment/asset management and Insurtech; regulatory compliance; government initiatives; cross-border provision of services and the future of FinTech. This Q&A is part of the global guide to FinTech.

To compare answers across multiple jurisdictions, visit the FinTech *Country Q&A tool*. For a full list of jurisdictional Q&As visit www.practicallaw.com/fintech-guide

Overview of financial services sector

1. What are the types of entities that form the financial services sector in your jurisdiction?

The Brazilian financial services sector is formed of the following:

- **Institutions authorised to operate by the Central Bank of Brazil.** This includes commercial banks, investment banks, multiple-services banks, development banks, leasing companies, savings houses, securities brokers and dealers, foreign exchange brokers, payment services companies, credit co-operatives and other institutions.
- **Institutions authorised to operate by the Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*).** This includes investment advisers, portfolio managers and other institutions.
- **Institutions authorised to operate by the Superintendence of Private Insurance (Susep).** This includes insurance and reinsurance companies, insurance brokers and other institutions.
- **Other service providers.** This includes banking correspondents (meaning service providers engaged by banks to offer loans and other products in the capacity of agent).

2. What are the key regulatory authorities that are responsible for the financial services sector?

The key regulatory authorities that are responsible for the financial services sector in Brazil are the:

- National Monetary Council (CMN).
- Central Bank of Brazil.
- Securities and Exchanges Commission.
- National Council of Private Insurance (CNSP).
- Superintendence of Private Insurance (Susep).

Overview of FinTech sector

3. What areas of the financial services sector has FinTech significantly influenced so far?

As of November 2017, 332 FinTechs are operating in Brazil. These include payment services (27% of FinTechs), followed by (*Radar Fintechlab*):

- Financial management services (18%).
- Lending (17%).
- Investments (9%).
- Insurance (8%).
- Crowdfunding (6%).
- Debt negotiation (5%).
- Cryptocurrency and distributed ledger technology (5%).
- FX (3%).

For further information on the composition of FinTech in Brazil, see <http://fintechlab.com.br/index.php/2017/11/24/novo-radar-fintechlab-mostra-crescimento-de-36-no-numero-de-fintechs-do-brasil/>.

4. How do traditional financial services entities engage with FinTech?

Since most financial services and products can only be provided by licensed entities (that is, entities licensed by the National Monetary Council, the Securities and Exchange Commission or the Superintendence of Private Insurance as the case may be), traditional financial services providers typically engage FinTechs as distribution channels for the services and products they are authorised to provide and which the FinTechs cannot provide.

Basic legislation governing the provision of financial services includes:

- Law No. 4,595, of 31 December 1964.
- Law No. 6,385, of 7 December 1976.
- Law No. 12,865, of 9 October 2013.
- Regulations issued by the CMN, the Central Bank of Brazil, the CVM and Susep.

Traditional financial institutions typically contract FinTechs as their banking correspondents under National Monetary Council (CMN) Resolution No. 3,954 of 24 February 2011. In this structure, the FinTech can negotiate certain financial products and services through their platforms such as loans, credit cards and foreign exchange transactions, but the products and services are provided by the contracting financial institution.

For payment services, traditional service providers can engage FinTechs as sub-acquirers, thereby extending their acquirer services to smaller merchants. In the remittances market, traditional service providers often provide FinTechs with foreign exchange services for the international transfer of funds collected by the FinTech from local clients.

Insurers can contract InsurTechs as their brokers (*see Question 8*).

Regulatory environment

Alternative finance

5. How is the use of FinTech in alternative finance activities regulated?

Currently, the only regulations specifically issued so far in the context of alternative finance activities are:

- A Securities and Exchange Commission (CVM) Instruction regarding crowdfunding through securities issues on electronic platforms (*see Question 7*).

- CMN Resolution No. 4,656 of 26 April 2018, which regulates two kinds of financial institutions specialized in granting loans through electronic platforms: the direct credit company (*Sociedade de Crédito Direto (SCD)*) and the peer-to-peer (P2P) loan company (*Sociedade de Empréstimo entre Pessoas (SEP)*).

Key points of Resolution No. 4,656 are:

- The SCD is allowed to grant loans and financings and to purchase receivables through electronic platforms with its own capital only (that is, they could not take deposits or raise funds other than from shareholders).
- The SEP is allowed to connect lenders and borrowers and to intermediate the negotiation of loans and financings through electronic platforms.
- Only a SEP is allowed to intermediate P2P loans through electronic platforms.
- Loans and financings made through a SEP are limited to BRL15,000.
- The licensing process of an SCD and a SEP is simplified compared to that of a traditional financial institution or payment institution.

FinTechs that intend to engage in finance activities other than those of an SCD or a SEP are subject to the same rules as traditional financial services entities. According to these rules, entities that intend to engage in financial intermediation (as defined in Article 17 of Federal Law No. 4,595, of 31 December 1964) must obtain a licence from the Central Bank of Brazil and must comply with extensive regulations issued by the National Monetary Council (CMN) and the Central Bank.

As it is difficult for a start-up entity to obtain a banking or other financial institution licence, most FinTechs in a finance context choose to enter into arrangements with traditional financial institutions (*see Question 4*).

The extension of loans by non-financial entities (for example, peer-to-peer lending), to the limited extent permitted by Brazilian law (that is, non-financial entities may only lend money on a non-professional, non-profit basis), is subject to usury law limitations in Decree No. 22,626, of 7 April 1933, and Articles 406 and 591 of the Civil Code.

Payment platforms

6. How is the use of FinTech in payments-related activities regulated?

FinTechs that intend to engage in payments-related activities are subject to the same rules applicable to traditional entities. Payments-related activities are governed by Law No. 12,865 of 9 October 2013, and CMN and Central Bank regulations. Entities that provide the following payment services must obtain a licence from the Central Bank of Brazil to operate and are subject to Law No. 12,865, of 9 October 2013, and to National Monetary Council (CMN) and Central Bank regulation, unless an exemption applies (*Article 4, Circular No. 3,885 of 26 March 2018, from the Central Bank of Brazil*):

- Issue of electronic currency, such as pre-paid cards or e-tokens in Brazilian currency.

- Issue of post-paid payment instruments, such as credit cards.
- Acquirer services.

Payment services providers with a small transaction volume or providing payment services with a limited scope (as defined in regulation) are exempt from licensing, including (*Article 2, Circular No. 3,682 of 4 November 2013, and Article 6, Circular No. 3,885 of 26 March 2018, both from the Central Bank of Brazil*):

- Those whose transaction volume does not exceed BRL 500 million within a period of 12 months or BRL 50 million deposited in prepaid payment accounts (considering for this second threshold the average of the 30 highest aggregate daily balances of prepaid accounts within a period of 12 months).
- Pre-paid or post-paid instruments only accepted in one chain store.
- Pre-paid or post-paid instruments for payment of specific public utilities, such as public transportation and public telecommunication services.
- Payment services related to the granting of labour law benefits, such as prepaid cards distributed by the employer to its employees for payment of meals.

FinTechs engaging in payments-related activities may benefit from such exemptions.

Investment/asset management

7. How is the use of FinTech in the securities market regulated, if at all?

The only relevant regulation issued so far in the securities market is the Securities and Exchange Commission (CVM) Instruction No. 588, of 13 July 2017, which regulates the offering of securities through electronic crowdfunding platforms. Instruction No. 588 created a specific exception to the general rule that a public offer of securities (such as shares or debentures) in the Brazilian market must be registered with the CVM (*Article 19, Federal Law No. 6,385 of 7 December 1976*).

According to Instruction 588, the offer of securities by small enterprises made exclusively through electronic crowdfunding platforms is exempt from registration with the CVM, provided that certain requirements are met, including:

- To qualify as a "small enterprise", the issuer's annual gross revenue must not exceed BRL10 million.
- The maximum offer size is BRL5 million.
- Each investor's investment in securities that are exempt from registration under Instruction No. 588 is limited to BRL10,000 per year (with certain exceptions), among other requirements.

However, the electronic crowdfunding platform must be registered with the CVM.

In addition to Instruction No. 588, FinTechs that intend to act in the securities markets are subject to the same rules applicable to traditional entities. These rules require registration with the CVM of any public issue of securities, of the issuer itself and of the intermediary institution, unless an exemption is available (*Article 19, Federal Law No. 6,385 of 7 December 1976*). Regulation also requires a CVM licence for rendering specific services in the securities markets, such as portfolio management, investment advice, securities placement and securities analysis. Entities subject to a CVM licence must comply with extensive regulation issued by the CVM.

InsurTech

8. How is the use of FinTech in the insurance sector regulated?

FinTechs that intend to engage in insurance-related activities (InsurTechs) are subject to the same rules applicable to traditional entities. According to such rules, applicable at national level, insurers and reinsurers must be licensed by, and insurance brokers and their agents must be registered with, the Superintendence of Private Insurance (Susep) and are subject to the National Council of Private Insurance and Susep regulation (*Federal Decree-Law No. 73, 21 November 1966, and Federal Complementary Law No. 126, 15 January 2007*).

Blockchain-based solutions

9. How is the use of blockchain in the financial services sector regulated?

There is no regulation in Brazil specifically addressing the use of blockchain or any other distributed ledger technology. The Central Bank of Brazil has been conducting different tests and studies on how the technology could be applied in the Brazilian market (*Distributed ledger technical research in Central Bank of Brazil - Positioning report*, available at www.bcb.gov.br). Brazilian banks and the Brazilian Banks' Federation (FEBRABAN) are also testing blockchain-based solutions.

In 2014, the Central Bank of Brazil issued a communication clarifying that cryptocurrencies do not fall within the legal concept of "electronic currency", as they are not issued by sovereign governments and are not legal tender in any country (*Communication No. 25,306, 19 February 2014*). Therefore, cryptocurrencies are not subject to the regulation discussed in *Question 6*, neither is the processing of payments in cryptocurrencies. More recently the Central Bank issued another communication confirming that cryptocurrencies are not regulated or supervised by Brazilian financial authorities, pointing out the risks associated with investments in this kind of asset (*Communication No. 31,379, 16 November 2017*).

According to a Securities and Exchange Commission (CVM) communication from early 2018, cryptocurrencies are not "financial assets" for the purposes of CVM regulation. For this reason, Brazilian investment funds are

not permitted to invest in directly cryptocurrencies, and CVM discourages fund managers to invest indirectly in cryptocurrencies, for example through derivatives, due to high risks (*Circular Letter No. 1/2018/CVM/SIN, 12 January 2018*).

For Initial Coin Offers (ICOs), the CVM issued two communications in 2017 expressing their view that assets offered in an ICO may be considered as "securities" under Brazilian laws, depending on the nature of the rights those assets grant their holders (*Communications of 11 October and 16 November 2017*). In such cases, an ICO to the Brazilian public is deemed as a public offer of securities, requiring registration with the CVM or an exemption (see [Question 7](#)). This is determined on a case-by-case basis. Additionally, such registration is not available to non-Brazilian issuers, therefore non-Brazilian issuers cannot make an offer to Brazilian investors through an ICO.

Financial services infrastructure

10. What types of financial services infrastructure-related activities of FinTech entities are regulated?

FinTechs are subject to the same regulation as traditional entities in relation to financial services infrastructure-related activities.

Entities that provide transfer of funds, transfer of financial assets or payment processing, clearing or settlement services in the Brazilian payment system are subject to:

- Federal Law No. 10,214, of 27 March 2001.
- Regulations issued by the National Monetary Council (CMN), the Central Bank of Brazil and the Securities and Exchange Commission (CVM).

These entities must obtain an authorisation to operate from the Central Bank of Brazil or the CVM, depending on the nature of the services rendered. Entities that are considered systemically important must observe a more stringent set of rules. This includes establishing guarantee mechanisms, the segregation of assets to secure the entity's obligations and adequate risk-control procedures. For these purposes, those entities whose nature and volume of business potentially offer risk to the solidity and regular operation of the Brazilian financial system are deemed as systemically important, at the discretion of the Central Bank of Brazil.

The provision of internet connection and applications is regulated by Federal Law No. 12,965, of 23 April 2014 (the Civil Rights Framework for the Internet). The Civil Rights Framework for the Internet, among other things:

- Sets out the network neutrality principle.
- Provides for data protection, data security, and internet users' rights and guarantees.
- Regulates internet providers' liabilities.

It was implemented in 2016 by Presidential Decree No. 8,771/2016. For further information on FinTech's responsibilities under the Civil Rights Framework for the Internet, see [Question 11](#).

Regulatory compliance

11. What are the key regulatory compliance issues faced by FinTech entities?

Since no special licensing or operation regime has been created for FinTechs in Brazil (except for online loans and crowdfunding (see Questions 5 and 7)), they are subject to the same compliance rules as traditional financial services entities.

In addition to the laws and regulation previously discussed, as financial service providers FinTechs are subject to the following rules, among others:

- Anti-money laundering and counter-terrorism financing rules, under which financial services and certain other services providers must keep proper client identification and transaction records, communicate suspect transactions to the Financial Activities Control Council (COAF) and adopt internal policies and controls to prevent money laundering and terrorism financing (Federal Law No. 9,613, 3 March 1998, and related regulation issued by the Central Bank of Brazil, the Securities and Exchange Commission (CVM), the Superintendence of Private Insurance (Susep) or the COAF, depending on the services or products provided).
- Consumer protection law, to the extent the FinTech provides services or products to end users (*Federal Law No. 8,078, 11 September 1990*).
- Banking secrecy law, to the extent the FinTech qualifies as a "financial institution" as defined in the relevant legislation (*Federal Complementary Law No. 105, 10 January 2001*).
- As online service providers, FinTech entities must comply with privacy, data protection and cybersecurity provisions set out in the Civil Rights Framework for the Internet. They must protect the privacy, honour and image of users. They must also inform users in a clear manner of the applicable security and confidentiality measures and procedures, and meet the regulatory standards.

12. Do FinTech entities encounter any additional regulatory barriers in entering into partnerships or other arrangements with traditional financial services providers? How common are these arrangements in your jurisdiction?

There are no such additional barriers for FinTechs. Arrangements between FinTechs and traditional finance services providers are common in Brazil, because most financial services and products can only be provided or offered by licensed entities. Licensing requires compliance with extensive regulation, so FinTechs may prefer to operate with traditional entities that are already licensed (see Questions 4 to 8).

13. Do foreign FinTech entities intending to provide services in your jurisdiction encounter regulatory barriers that are different from domestic FinTech entities?

Foreign FinTechs that intend to operate as financial institutions in Brazil must obtain authorisation from the President of Brazil, in addition to the Central Bank licence (*see Question 5*). This also applies to any direct or indirect foreign capital contribution to Brazilian FinTechs that qualify as financial institutions.

This is a requirement in the Federal Constitution regarding foreign participation in the Brazilian financial system, and there is no exemption for FinTechs. Granting of this authorisation is discretionary, and takes into consideration the interests of the Brazilian Government.

Foreign FinTechs that do not qualify as financial institutions in Brazil receive the same regulatory treatment as domestic FinTechs that do not qualify as a financial institution

14. What steps can be taken in your jurisdiction to protect FinTech innovations and inventions?

FinTech innovations and inventions cannot usually be patented in Brazil. Under Brazilian law, only inventions that have an industrial use can be patented (*Article 8 of Law No. 9,279, 14 May 1996*). Financial schemes, plans, principles or methods are expressly excluded from the concept of patentable invention (*Articles 8 and 10, insert III, Federal Law No. 9,279, 14 May 1996*).

However, a FinTech's name, product names and corporate logo can be registered as trade marks with the National Institute for Industrial Property (INPI), provided that they are not legally prohibited. Well-known marks are protected in Brazil even if they are not registered locally (*Articles 122 and 126, Law No. 9,279/96*).

Software is protected under Law No. 9,609 of 19 February 1998 (Software Act). Intellectual property rights in the software do not require registration and are protected by copyright]. However, it is possible for a FinTech to register the source code and the object code of the software with the INPI to facilitate proof of its ownership.

A FinTech can also register its local internet domain names (with the extension ".br"). FinTech can register its domain name through the website <https://registro.br/>, maintained by the Brazilian Network Information Centre (*Núcleo de Informação e Coordenação do Ponto BR (NIC.br)*).

Government initiatives

15. To what extent have governments and/or regulators in your jurisdiction sought to create a more favourable regulatory environment for FinTech entities?

In general, FinTechs are subject to the same legal and regulatory framework as traditional entities.

However, micro and small enterprises enjoy a more favourable legal regime in relation to payment of taxes, labour and social security obligations and access to credit and markets (see [Question 16](#)). For these purposes, micro and small enterprises are defined as those whose annual gross revenue does not exceed BRL4.8 million (*Federal Complementary Law No. 123, 14 December 2006*). FinTechs can enjoy this favourable regime, provided that they meet the definition of micro or small enterprises and the other legal requirements. However, certain entities are not eligible for this regime, such as entities that have another legal entity as a shareholder, joint stock companies, banks, securities brokers and dealers and certain other financial services providers.

FinTechs that have entered into arrangements with traditional financial services providers may not be eligible for the special regime if as a result of these arrangements the FinTech's annual gross revenue exceeds the aforementioned threshold or other limitations imposed by Federal Complementary Law No. 123 are exceeded. (That is, the sole fact that the FinTech entered with arrangements with traditional financial services providers does not cause the FinTech to be non-eligible to the special tax regime, but as a result of the arrangement the FinTech can become too big to be eligible.)

16. Are there any special regimes in place to facilitate access to capital for FinTech entities?

Equity fundraising through electronic crowdfunding platforms is regulated by a specific Securities and Exchange Commission (CVM) regulation that exempts the fundraising from CVM registration (see [Question 7](#)).

In addition, a FinTech that qualifies as a micro or small enterprise has access to (see [Question 15](#)):

- Special lines of credit provided by private and state-owned commercial banks, the Federal Savings Bank and the National Economic and Social Development Bank (BNDES).
- Capital contributions by angel investors, which can be individuals, legal entities or investment funds. These contributions are made under the terms of the investment agreement, limited to 50% of the company's profits. The angel investor is not considered as an equity holder and is not liable for any of the company debts, even

in case of judicial reorganisation or disregard of the legal entity (*Articles 58 to 61-D, Complementary Law No. 123/06*).

17. Is the government taking measures to encourage foreign FinTech entities to establish a domestic presence?

The Brazilian government has not expressed any intention to encourage foreign FinTechs to establish a domestic presence, as far as the authors are aware.

Cross-border provision of services

18. Are there any special rules that affect the cross-border provision of financial products or services by both domestic and foreign FinTech entities?

Domestic FinTech entities

There are no special Brazilian rules to prevent domestic FinTechs from providing services outside Brazil. FinTechs that qualify as financial institutions are prohibited, as with any other traditional financial institution, from lending or otherwise placing abroad funds collected in Brazil (*Circular No. 24 of 25 February 1966 from the Central Bank of Brazil*). Additionally, FinTechs exporting services are exempt from services tax and certain social security contributions in relation to non-Brazilian revenues.

Foreign FinTech entities

Foreign entities can only operate in Brazil after obtaining authorisation from the Brazilian Federal Government and registration with the local board of trade and tax authorities (*Articles 1,134 to 1,141, Civil Code*), or on incorporating an independent subsidiary in Brazil. Foreign financial institutions must also obtain special authorisation from the President of Brazil (*see Question 13*).

Foreign FinTechs can provide services from abroad to clients based in Brazil, except for a public offer of securities.

A public offer of securities in Brazil requires registration of the issuer, the intermediary entity and the offer with the Securities and Exchange Commission (CVM), or an exemption (*see Question 7*). This includes offers made from abroad to the Brazilian public, including through the internet (*CVM Opinions Nos. 32 and 33, 30 September 2005*). Foreign securities such as shares of investment funds or derivative products traded on foreign stock exchanges cannot be registered in Brazil, so they cannot be offered from abroad to the Brazilian public.

The future of FinTech

19. Are there any ongoing regulatory measures or initiatives that may affect FinTech in your jurisdiction?

The Central Bank of Brazil has been conducting different tests and studies on how blockchain and other distributed ledger technologies could be applied in the Brazilian market.

The Central Bank of Brazil has further advised that they are monitoring the evolution of cryptocurrencies and may take appropriate measures if and when necessary (*Communication No. 31.379/17*).

Additionally, the CVM has announced that they are considering the issue of a more conclusive rule on investments in cryptocurrencies (*Circular Letter No. 1/2018/CVM/SIN, 12 January 2018*).

The Chamber of Deputies is currently discussing a bill of law (No. 2,303 of 2015) to include cryptocurrencies into the concept of "electronic currencies", subjecting them to Central Bank regulation and control (*see Question 9*). The same bill of law also includes transactions with cryptocurrencies among the transactions that require special attention for anti-money laundering regulation.

It is still uncertain whether the above initiatives will become effective and in what terms.

The regulatory authorities

Central Bank of Brazil (*Banco Central do Brasil*)

W www.bcb.gov.br

Main activities. The Central Bank of Brazil regulates financial and payment services, authorises entities to provide financial and payment services, oversees such entities and their managers, and enforces financial and payment services regulation.

Brazilian Securities and Exchange Commission (*Comissão de Valores Mobiliários*) (CVM)

W www.cvm.gov.br

Main activities. The CVM regulates public issues of securities and the provision of services in the securities markets, authorises entities to issue securities and provide services in the securities market, oversees such entities and their managers and enforces securities regulation.

Superintendence of Private Insurance (*Superintendência de Seguros Privados*) (SUSEP)

W www.susep.gov.br

Main activities. SUSEP regulates insurance, reinsurance and related services, authorises entities to provide services in the insurance and reinsurance markets, oversees such entities and their managers, and enforces insurance and reinsurance regulation.

Online resources

Central Bank of Brazil

W www.bcb.gov.br/en/#!/n/NORMS

Description. Official webpage of the Central Bank of Brazil, with non-binding English translations of some relevant norms.

W www.bcb.gov.br/pre/normativos/busca/buscaNormativo.asp

Description. Official webpage of the Central Bank of Brazil, to search regulation issued by the CMN and the Central Bank.

Securities and Exchange Commission (CVM)

W www.cvm.gov.br/legislacao/index.html

Description. Official webpage of the CVM, to search CVM regulation.

Superintendence of Private Insurance (SUSEP)

W www2.susep.gov.br/bibliotecaweb/biblioteca.aspx

Description. Official webpage of Susep to search National Council of Private Insurance (CNSP) and Susep regulation.

Contributor profiles

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Areas of practice. Banking; financial transactions; capital markets; insurance and reinsurance

Non-professional qualifications. LL.M., Heidelberg University

Recent transactions

- Advising Brazilian FinTechs and financial institutions on agreements for the offer of financial services.
- Advising Brazilian financial institutions and payment services providers on regulatory matters.
- Advising lenders on the refinancing of project finance for the construction and operation of an oil drilling vessel chartered to Petrobras.
- Assisting lenders and security providers in creating security over Brazilian assets to secure international loans and bond issues.

Languages. Portuguese, English, German, Italian, Spanish

Professional associations/memberships. Brazilian Bar Association (OAB)

Publications

- *Structured finance and securitisation in Brazil: overview (Thomson Reuters Practical Law 2017) (co-authored).*
- *FinTechs and their regulation in Brazil (Legal bulletin from Levy & Salomão Advogados, 2016).*

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