

# BANKING & FINANCE

ANNUAL REVIEW 2017



**FINANCIER**  
WORLDWIDE corporatefinanceintelligence



# BRAZIL

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**Q** COULD YOU PROVIDE A BRIEF OVERVIEW OF RECENT BANKING AND FINANCE ACTIVITY IN BRAZIL? ARE BANKS IN GENERAL DEMONSTRATING A STRONG APPETITE TO LEND TO CORPORATES?

**RODARTE:** Brazil's economic turmoil intensified in the fourth quarter of 2014 and has persisted until the final quarter of 2017. The country's recovery will be gradual and will depend on a number of political factors. As a result, low economic growth is expected in 2018. This situation is affecting banks' willingness to lend to corporations, especially small and medium-sized enterprises, which tend to present a higher default risk. Accordingly, there has been a decline in the ratio of corporate loans. As per an October press release from the Central Bank of Brazil, the corporate credit portfolio has fallen 8.7 percent over the last 12 months. Public resource expenditures have also fallen since 2015. Nevertheless, funds from public banks, and specifically from the Brazilian Development Bank (BNDES), are still key sources of capital for Brazilian companies. The stock market is also playing an important role in providing financing to corporations, mostly through stocks and fixed-income securities sales.

**Q** WHAT TYPES OF FINANCING SEEM TO BE POPULAR? ARE NON-TRADITIONAL DEBT SOURCES PLAYING A NOTABLE ROLE IN SERVICING CORPORATE DEMAND FOR DEBT IN BRAZIL?

**RODARTE:** Trade related loans have been a popular source of financing. Banks typically issue securities backed by such loans, such as export credit bills. Another source of funding frequently adopted by exporters is the advance of foreign currency related to export agreements. The issuance of debentures that are then underwritten by financial institutions or vehicles funded by such institutions is an alternative source of financing chosen by some stock companies. Debentures private placement and limited efforts offerings are exempt from registration with the Brazilian Securities Commission (CVM), simplifying those transactions and turning them into an interesting source of funding. According to a report issued in January 2017 by the Brazilian Financial and Capital Markets Association (ANBIMA), following the issuance of debentures, the two instruments most used in the capital market in 2016 were certificates of real estate receivables (CRIs) and certificates of agribusiness receivables (CRAs).



Those securities support the finance of real estate and agribusiness industries through the capital market.

**Q HOW WOULD YOU DESCRIBE INTEREST RATES, COVENANTS AND OTHER TERMS APPLIED TO DEBT OFFERINGS IN THE CURRENT MARKET?**

**RODARTE:** Although Brazilian interest rates have declined recently, they are still high compared to US and European rates. The basic interest rate dropped from 14.15 percent to 7.5 percent between August 2016 and November 2017. The high interest rates accompanied by the elevated spread existing in Brazil have resulted in increased debt costs for borrowers. Covenants related to compliance with anti-bribery and corruption laws have become stricter after recent corruption scandals in Brazil. Financial, insolvency and liquidation covenants should also be closely monitored to evaluate the impacts of the recession on borrowers. As BNDES is still an important business financier in Brazil, general conditions imposed by that bank apply to many debt offerings. These conditions include, for example, insurance over security granted and restrictions on changes made to a financed project without the prior authorisation of BNDES.

**Q ARE LENDERS TAKING ALL PRECAUTIONS TO ENSURE THEY GAIN SECURITY OVER ASSETS? WHAT CONCESSIONS MAY DEBTORS NEED TO ACCEPT IN ORDER TO OBTAIN A FINANCING PACKAGE?**

**RODARTE:** As per the regulation of the Central Bank of Brazil, financial institutions are prevented from granting credit without proper guarantees or security. However, costs associated with the registration of security over assets may be high in Brazil and the filing procedures are also quite bureaucratic. Even so, compliance with such procedures is important to assure the credit will have priority in the event that an insolvency proceeding is commenced against the debtor. Usually, the recording of the security agreements is a post-closing obligation of the debtor, which must pay the registration costs and provide the lender with evidence of such registration within a certain period of time.

**“Despite the fact that the Brazilian banking industry is highly concentrated, new competitors for banks are coming from non-traditional places, such as FinTechs.”**

**Q** COULD YOU OUTLINE THE MAJOR REGULATORY CHANGES IN BRAZIL OVER THE PAST 12-18 MONTHS THAT WILL AFFECT THE BANKING INDUSTRY GOING FORWARD?

**RODARTE:** Law No. 13,506/17 modernised administrative proceedings under the authority of the Central Bank of Brazil and the CVM. The law raised the penalties applicable to regulated entities and allowed the Central Bank to enter into leniency agreements with persons and corporations in order to support investigations. The law also modified rules on loans to related parties, sale of distressed properties, foreign exchange transactions and the insolvency of financial institutions. Among other important changes, the National Monetary Council (CMN) regulated the issuance of covered bonds for the Brazilian real estate market to be offered by certain financial institutions, the Central Bank updated the foreign direct investment records system and the Central Bank opened a public consultation on rules to credit FinTech companies that grant or act as an intermediary in financial loans.

**Q** IN YOUR OPINION, WHAT ARE THE KEY ISSUES AND CHALLENGES FACING SENIOR BANKING & FINANCE EXECUTIVES IN THE YEAR AHEAD?

**RODARTE:** Due to the uncertainty regarding the outlook for the Brazilian economy, some banks had their activities reduced and others have entered into corporate reorganisations to sell all or part of their activities to banks which already had an established market presence. These trends may continue in the year ahead. The presidential election in 2018 will impact the banking and financial sector for the next few years. Another key issue relates to new players in the financial market. Despite the fact that the Brazilian banking industry is highly concentrated, new competitors for banks are coming from non-traditional places, such as FinTechs. The rapidly growing competition from companies based on high tech models will continue to pose new challenges to banking and financial executives. Finally, the new cap for fines provided under Law No. 13,506/17 and the new investigation tools made available to supervisory authorities, such as leniency agreements, may trigger the expansion of regulated entities' compliance teams.



**Q WHAT DEVELOPMENTS  
IN BANKING & FINANCE  
DO YOU EXPECT TO SEE IN  
BRAZIL OVER THE NEXT 12-  
18 MONTHS?**

**RODARTE:** Although BNDES is still one of the most important financiers in Brazil, the bank has decreased the amount of disbursements made available to corporates this year. Thus, private investment is bound to play a key role in compensating the shortfall of state investments and help overcome the economic downturn. Regardless, some banks have cut costs in Brazil and others may be less inclined to grant loans, as many companies have faced financial problems and debt restructurings have been frequent. This scenario requires some companies to raise funds in the capital markets, mainly through stocks, issuance of debentures and other securities sales. Regarding regulatory issues, additional capital controls and requirements associated with Basel III and its implementation will continue to take effect in Brazil. CMN and the Central Bank have enacted specific norms in response to these standards, which are expected to be fully implemented by 2019.

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Fabio Rodarte's practice is focused upon the structuring and negotiation of both national and international lending and financial transactions. He participates in foreign financing transactions involving capital markets and negotiates export finance contracts. Further to his work in international lending and finance, he is involved in banking and foreign exchange regulation and foreign investment matters. He also represents clients in administrative proceedings before the Central Bank of Brazil and the Appeals Council of the National Financial System. His experience encompasses M&A transactions and organisation of business entities in Brazil.