

FINTECHS IN BRAZIL: NEW INVESTMENT OPPORTUNITIES FOR FOREIGNERS AS A REGULATORY FRAMEWORK DEVELOPS

Fintechs are companies that have been disrupting traditional financial services models by using modern technologies, such as blockchain and artificial intelligence. They are increasing in numbers in Brazil and an attempt to create a regulatory environment that fosters innovation, protects consumers and grants necessary surveillance over market players is under way in the country.

At the end of 2018 there were about 450 fintechs operating in Brazil, including RegTechs, InsurTechs, payment services providers and cryptocurrency exchanges. Given the broad scope of fintechs' activities, different governmental agencies are potentially competent to regulate them, such as the Brazilian Securities Exchange Commission (CVM), the Central Bank of Brazil (BCB) or the Superintendence of Private Insurance (SUSEP). Some activities, though, do not fall within competence of any regulator.

This notwithstanding, a specific framework was not developed for most kinds of fintechs, hence most of them are subject to the same rules as traditional entities, which can be too burdensome for new entrants. The only exceptions so far are equity crowdfunding fintechs and credit fintechs.

In the case of equity crowdfunding fintechs, CVM exempts from registration public offers of securities made through registered electronic crowdfunding platforms. However, certain requirements, such as offer size, maximum issuer's annual gross revenue and maximum investment per investor need to be met.

According to the CVM, on April 2019 there were 18 registered electronic crowdfunding platforms, and investments of R\$ 46 Million (ca. US\$ 11.6 million) were raised via such platforms throughout 2018. The numbers are still low if compared to traditional capital markets (R\$ 223.7 Billion in domestic issues throughout 2018) but tend to grow, as regulation is new and the first licensed platforms started to operate about only one year ago.

Regarding credit fintechs, a Resolution from the National Monetary Council of 2018 created two types of institutions: the direct credit company (*Sociedade de Crédito Direto or SCD*) and the peer-to-peer (P2P) loan company (*Sociedade de Empréstimo entre Pessoas or SEP*).

A presidential Decree from October 2018 recognizes that participation of foreign capital in SCDs and SEPs is in the interest of the Brazilian Government. This creates an opportunity for foreign investors interested in incorporating or investing in a SCD or a SEP to do so without having to

apply for a specific authorization from the Brazilian Federal Government. Such authorization is normally required for investments in Brazilian financial and similar institutions and may take years to be obtained. An authorization from the Central Bank obtained through a simplified process is enough for the SCD and the SEP to operate. By April 2019 three SCDs and one SEP obtained authorization to operate.

The SCD is allowed to grant loans and financings and to purchase receivables through electronic platforms with its own capital only (that is, it is not permitted to take deposits or raise funds other than from shareholders), while the SEP is allowed to connect lenders and borrowers and to intermediate the negotiation of loans and financings through electronic platforms. Loans made through a SEP are limited to BRL15,000.00, with certain exceptions.

SCDs and SEPs also are required to meet several regulatory obligations, such as minimum share capital and net worth, specific anti-money laundering procedures, remittance of information to BCB etc. Most of these requirements are not different from those applicable to traditional financial institutions.

Fintechs that wish to engage in the lending business but consider those obligations too burdensome can instead operate as banking correspondents. As such, they can offer through electronic platforms certain financial products and services such as loans, credit cards and foreign exchange transactions, with the products and services being provided by a traditional financial institution. Banking correspondents do not need BCB or any other governmental license to operate.

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