

Structured finance and securitisation in Brazil: overview

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Country Q&A | Law stated as at 01-Mar-2019 | Brazil

A Q&A guide to structured finance and securitisation law in Brazil.

This Q&A provides an overview of, among others, the markets and legal regimes, issues relating to the SPV and the securities issued, transferring the receivables, dealing with security and risk, cash flow, ratings, tax issues, variations to the securitisation structure and reform proposals.

To compare answers across multiple jurisdictions, visit the [Structured lending and Securitisation Country Q&A tool](#).

This Q&A is part of the global guide to structured finance and securitisation. For a full list of contents visit www.practicallaw.com/securitisation-guide.

Market and legal regime

1. Please give a brief overview of the securitisation market in your jurisdiction. In particular:
 - How developed is the market and what notable transactions and new structures have emerged recently?
 - What impact have central bank programmes (if any) had on the securitisation market in your jurisdiction?
 - Is securitisation particularly concentrated in certain industry sectors?

The Brazilian securitisation market is well-developed, bearing in mind the size of the Brazilian capital market in general.

However, according to a report issued in December 2018 by the Brazilian Financial and Capital Markets Association, ANBIMA (*Associação Brasileira das Entidades dos Mercados Financeiro e de Capitais*), certificates of real estate receivables (*certificados de recebíveis imobiliários*, or CRIs), certificates of agribusiness receivables (*certificados de recebíveis do agronegócio*, or CRA) and receivables investment funds (FIDC), all securitisation instruments, reached a total amount of R\$20.6 billion in 2018, which represents a decrease of 44% compared to 2017 (http://www.anbima.com.br/pt_br/informar/relatorios/mercado-de-capitais/boletim-de-mercado-de-capitais/captacao-domestica-registra-no-ano-volume-de-r-196-0-bilhoes.htm).

Securitisation in Brazil is concentrated in the real estate and agribusiness sectors. Tax benefits for individuals investing in CRIs and CRAs, and the need for capital to develop such important sectors, are seen as the main reasons for the growth of securitisation in Brazil.

2. Is there a specific legislative regime within which securitisations in your jurisdiction are carried out? In particular:

- What are the main laws governing securitisations?
- What is the name of the regulatory authority charged with overseeing securitisation practices and participants in your jurisdiction?

Brazil has several laws and regulations specifically providing for securitisation transactions.

The securitisation of receivables originated from transactions in the financial, commercial, industrial, real estate, leasing, service and other segments and can be undertaken through FIDCs, regulated by:

- Resolution No. 2,907, dated 29 November 2001, as amended by Resolution No. 4,694, dated 29 October 2018, from the National Monetary Council (CMN).
- Instructions No. 356, dated 17 December 2001 and No. 444, dated 8 December 2006, from the Securities Commission (CVM).

The securitisation of real estate receivables can also be undertaken through a:

- Real estate credit securitisation company (*companhia securitizadora de créditos imobiliários*), which can issue CRIs under Federal Law No. 9,514 dated 20 November 1997 and CVM Instruction No. 414, dated 30 December 2004.
- Real estate investment fund (*fundo de investimento imobiliário*, or FII), regulated by Federal Law No. 8,668, dated 25 June 1993 and CVM Instruction No. 472, dated 31 October 2008.
- Covered bonds (*Letra Imobiliária Garantida*, or LIG), regulated by Federal Law No. 13,097 dated 19 January 2015 and Resolution No. 4,598 dated 29 August 2017, from the CMN, and Circular No. 3,895, dated 4 May 2018, from the Central Bank of Brazil.

The securitisation of financial receivables can also be undertaken through a financial credit securitisation company (*companhia securitizadora de créditos financeiros*), under Resolution No. 2,686, dated 26 January 2000, from the CMN.

The securitisation of agribusiness receivables can also be made through the issue of CRAs (regulated by Federal Law No. 11,076, dated 30 December 2004 and CVM Instruction No. 600, dated 1 August 2018).

The regulatory authorities for securitisations in Brazil are the CVM and the Central Bank of Brazil.

Reasons for doing a securitisation

3. What are the main reasons for doing a securitisation in your jurisdiction? How are the reasons for doing a securitisation in your jurisdiction affected by:

- Accounting practices in your jurisdiction, such as application of the International Financial Reporting Standards (IFRS)?
- National or supra-national rules concerning capital adequacy?
- Risk retention requirements?
- Implementation of the Basel III framework in your jurisdiction?

Usual reasons for securitisation include to:

- Accelerate the receipt of future credits.
- Raise funds at a cost usually lower than banking finance.
- Enhance the debt profile of the originator of the underlying credits.
- Access the capital market by transforming a group of illiquid assets into a group of credit instruments and/or securities comparatively more liquid.
- Transfer risks related to underlying credits.

International accounting practices affect local securitisations to the extent that Brazilian companies that issue publicly traded securities (the originator of the receivables or the securitisation vehicle) must prepare their consolidated financial statements according to International Accounting Standards Board (IASB) standards (Article 177(5), Law No. 6,404 dated 15 December 1976, and CVM Instruction No. 457 dated 13 July 2007). Local subsidiaries of foreign companies may also be obliged to follow international standards to which their shareholders are subject.

The Central Bank of Brazil has adopted most of the Basel III rules, which may be an incentive for financial institutions to sell credits to securitisation vehicles as part of their capital adequacy policy.

Brazilian laws do not impose risk retention requirements (for mandatory retention of risk by the originator).

The special purpose vehicle (SPV)

Establishing the SPV

4. How is an SPV established in your jurisdiction? Please explain:

- What form does the SPV usually take and how is it set up?
- What is the legal status of the SPV?
- How the SPV is usually owned?
- Are there any particular regulatory requirements that apply to the SPVs?

An SPV is usually an investment fund or a securitisation company.

FIDCs and FIIs are investment funds that take the legal form of joint-ownership (condominium), without legal personality. Such investment funds can be formed as vehicles for securitisation purposes. The investors of a FIDC and/or a FII own the interests (cotas) issued by such funds.

Securitisation companies are public companies usually owned by capital market and banking players. Investors that acquire the credit instruments and/or securities issued by the securitisation companies (for instance, CRIs and CRAs) are not usually shareholders of such companies.

Investment funds (such as FIDCs and FIIs) and securitisation companies must follow the relevant CVM requirements to be registered with the CVM.

5. Is the SPV usually established in your jurisdiction or offshore? If established offshore, in what jurisdiction(s) are SPVs usually established and why? Are there any particular circumstances when it is advantageous to establish the SPV in your jurisdiction?

FIDCs, FIIs and securitisation companies must be established in Brazil. An offshore SPV can be established for securitisation purposes but this is unusual, and an offshore SPV cannot raise funds in Brazil through a public issue of securities unless both:

- The SPV and the offer are registered with the CVM.
- A locally licensed intermediary is engaged.

Ensuring the SPV is insolvency remote

6. What steps can be taken to make the SPV as insolvency remote as possible in your jurisdiction?

In particular:

- Has the ability to achieve insolvency remoteness been eroded to any extent in recent years?
- Will the courts in your jurisdiction give effect to limited recourse and non-petition clauses?

Considering the nature of Brazilian SPVs, an insolvency situation is very rare. FIDCs and FIIS are not subject to the Bankruptcy Law (Law No. 11,101, 9 February 2005). Usually, when a FIDC or FII does not perform, the relevant assets are delivered to the investors and the investment fund is liquidated.

Securitisation companies can go bankrupt, but in the case of securitisation companies in the real estate and agribusiness sectors the investors (buyers of the securities issued) are not affected by the bankruptcy. Brazilian law segregates the underlying receivables that have backed the issue of the securitisation instruments (CRA and CRI) from the securitisation company assets in general.

Further, in the case of bankruptcy of the originator, to protect bona fide holders of securities issued by the SPV, the assignment of credits to the SPV cannot be revoked or declared unenforceable (Article 136(1) Bankruptcy Law) (see Question 17).

Non-petition clauses (that restrict a counterparty's ability to take enforcement action against the SPV) would be against the Federal Constitution and not given effect by Brazilian courts. Clauses under which a counterparty agrees to subordinate its credits or part of them (for example, the part of its credits not secured by the SPV's assets) to other counterparties' credits would be valid and should be given effect by Brazilian courts.

Ensuring the SPV is treated separately from the originator

7. Is there a risk that the courts can treat the assets of the SPV as those of the originator if the originator becomes subject to insolvency proceedings (substantive consolidation)? If so, can this be avoided or minimised?

If the originator and securitisation company make a joint filing for in-court restructuring, the court can accept that a single rescue plan consolidating debts and assets be presented and voted on by creditors. Creditors can challenge the presentation of a single plan, but courts usually let creditors vote on the plan.

Liquidation risk only exists if transactions between the originator and SPV are deemed fraudulent conveyances or preferences on bankruptcy (see Question 17).

There is also the general risk that the corporate veil of those entities (originator and SPV) is lifted due to abuse of legal personality, whether or not in an insolvency context. The veil may be lifted if the assets of both parties are commingled or if either party has done business or performed acts in a way that deviates from its original business purpose.

The securities

Issuing the securities

8. What factors will determine whether to issue the SPV's securities publicly or privately?

Shares issued by Brazilian funds (such as FIDCs and FIIs) must be issued publicly even if the investors are already identified. Other securitisation instruments (such as CRAs and CRIs) can be issued privately, but are usually offered publicly. Since the concept of a public offer in Brazil is very broad, any issue of securities intended to be placed in the market must be public.

9. If the securities are publicly issued:

- Are the securities usually listed on a regulated exchange in your jurisdiction or in another jurisdiction?
- If in your jurisdiction, please identify the main documents required to make an application to list debt securities on the main regulated exchange in your jurisdiction. Are there any share capital requirements?
- If a particular exchange (domestic or foreign) is usually chosen for listing the securities, please briefly summarise the main reasons for this.

Publicly issued securities must be listed on a regulated market entity in Brazil. Shares issued by FIDCs and FIIs, CRIs and CRAs are usually listed on the B3 S.A. - Brasil, Bolsa, Balcão (regulated exchange).

The main documents required to make an application to list FIDC and FII shares are the investment funds bye-laws (regulamento) and the offering memorandum (if applicable).

The main documents for listing CRIs and CRAs are the securitisation indenture (*termo de securitização*) and the offering memorandum (if applicable).

There are no share capital requirements.

Constituting the securities

10. If the trust concept is not recognised in your jurisdiction, what document constitutes the securities issued by the SPV and how are the rights in them held?

The shares issued by a FIDC and a FII constitute the securities issued by such investment funds. CRIs and CRAs constitute the relevant securities themselves.

The shares issued by a FIDC and a FII, as well as CRIs and CRAs, are issued as book entry securities, and kept by authorised services providers in deposit accounts in the name of the respective holders.

The bye-laws (*regulamentos*) of a FIDC and a FII and the securitisation indenture (*termo de securitização*) of a CRI and a CRA describe the rights attributed to the respective securities.

Transferring the receivables

Classes of receivables

11. What classes of receivables are usually securitised in your jurisdiction? Are there any new asset classes to have emerged recently or that are expected to emerge in the foreseeable future?

According to the exhibit attached to the report issued by ANBIMA ([see Question 1](#)), in 2018 FIDC shares (which can securitise different classes of receivables) were the class most securitised, followed by real estate receivables and agribusiness receivables.

Securitisation of agribusiness receivables is expected to grow further due to the importance of agribusiness to the Brazilian economy.

Transferring the receivables from the originator to the SPV

12. How are receivables usually transferred from the originator to the SPV? Is perfection of the transfer subject to giving notice of sale to the obligor or subject to any other steps?

Receivables are usually transferred through an assignment of credit rights agreement, which is normally notified to the obligor and registered with a public notary.

Notice to the obligor is not required for perfection of the transfer, but it is required for an assignment to be effective against the obligor. The obligor's consent is not required unless otherwise provided in the receivables contract or if the contract prohibits assignment of the receivables.

Validity and enforceability against third parties require registration of the assignment agreement with the registry of titles and deeds of the city of domicile of both parties (assignor and assignee).

The assignment of certain financial credits by financial institutions and other institutions authorised to operate by the Central Bank must be registered in a registration and clearing system accredited by the Central Bank (currently this is the *C3 - Câmara de Cessões de Crédito*).

13. Are there any types of receivables that it is not possible or not practical to securitise in your jurisdiction (for example, future receivables)?

Virtually any types of receivables can be securitised in Brazil. For instance, FIDCs are quite flexible as they allow the securitisation of receivables from transactions in the financial, commercial, industrial, real estate, leasing, service and other sectors.

In addition, the CVM has issued regulations providing for a specific type of FIDC called a non-standardised FIDC. This is allowed to securitise receivables not within the standard FIDC scope, as well as receivables with higher risks, such as those coming into existence after the date of acquisition by the investment fund (for example, the expected flow of receivables of a utility provider).

14. How is any security attached to the receivables transferred to the SPV? What are the perfection requirements?

The assignment of a receivable includes the related security, except if provided otherwise in the relevant agreement (*Article 287, Civil Code*). As a rule, if there is no prohibition on the sale of the receivables, there is no prohibition in transferring the related security. However, it is necessary to notify the guarantor so that he/she/it is aware of the sale of the receivables and is now liable to the assignee. It may also be necessary to take specific measures to document and register the assignment of the security, depending on the nature of the security. For example, if the collateral is a mortgage over real estate, the assignment must be registered at the relevant real estate registry.

Prohibitions or restrictions on transfer

15. Are there any prohibitions or restrictions on transferring the receivables, for example, in relation to consumer data?

There are no general prohibitions or restrictions on transferring receivables. There may be contractual restrictions requiring the obligor's consent for the transfer to occur.

There are no general legislative prohibitions or restrictions on transferring receivables.

Avoiding the transfer being re-characterised

16. Is there a risk that a transfer of title to the receivables will be re-characterised as a secured loan? If so:

- Can this risk be avoided or minimised?
- Are true sale legal opinions typically delivered in your jurisdiction or does it depend on the asset type and/or provenance of the securitised asset?

A non-recourse transfer of title to the receivables is a true sale and there is no risk of re-characterisation as a secured loan. Conversely, a transfer of title to the receivable with recourse against the assignor in case of default of the receivables debtor may be re-characterised as a loan for tax or other legal purposes.

A legal opinion is typically delivered in connection with securitisation transactions, which usually includes a true sale opinion.

Ensuring the transfer cannot be unwound if the originator becomes insolvent

17. Can the originator (or a liquidator or other insolvency officer of the originator) unwind the transaction at a later date? If yes, on what grounds can this be done and what is the timescale for doing so? Can this risk be avoided or minimised?

If there has been no bankruptcy filing, certain creditors can sue to void the assignment of receivables on the grounds of civil fraud (*actio pauliana*) within four years of the transaction, subject to evidence that the aim of the contracting parties was to defraud creditors and that the originator was insolvent as of the transaction (or has become insolvent as a result of it).

If there has been a bankruptcy filing, the insolvency official, any creditor or the public prosecutor's office can sue to void the assignment of receivables (revocation suit) within three years of adjudication of liquidation, subject to evidence that the aim of the contracting parties was to defraud creditors and that the bankrupt estate has suffered loss or damage.

In specific situations related to acts and transactions in a certain suspect period, the insolvency official, any creditor or the public prosecutor's office can at any time petition the bankruptcy court, or sue, to make transactions not entered into at arm's length, or acts (for example, payment or collateralisation of assets) not performed in strict accordance with the relevant contract, ineffective in relation to the estate. The suspect period is usually 90 days before the bankruptcy filing. It can be two years for transactions for no consideration (such as gifts) and in these cases it is irrelevant whether there was a fraudulent intent or damage to the estate.

In case of the originator's bankruptcy, Brazilian bankruptcy law protects bona fide bondholders of the SPV in case of credits securitised through the issue of bonds, by safeguarding the validity and effectiveness of the transfer/assignment with respect to those bondholders.

Establishing the applicable law

18. Are choice of law clauses in contracts usually recognised and enforced in your jurisdiction? If yes, is a particular law usually chosen to govern the transaction documents? Are there any circumstances when local law will override a choice of law?

According to Brazilian conflict of law rules (*Article 9, Decree-Law No. 4,657, 4 September 1942*), an obligation is governed by the laws of the place in which it was created. This means in the case of contractual obligations the place of signature of the contract (or the place of signature by the last party, if parties are in different jurisdictions). A

different rule applies to contracts formally made by an offer to be accepted through a separate copy of the same instrument by the other party, in which case the law of the place of residence of the offeror prevails.

The law that applies under these rules cannot be changed by the parties. For example, a choice of English law to govern an agreement is not valid in Brazil unless the agreement is signed in England by both parties or by the last party, or if the offeror resides in England.

In any case, foreign laws are not enforceable in Brazil if they violate Brazilian national sovereignty, public policy or morality.

Security and risk

Creating security

19. Please briefly list the main types of security that can be taken over the various assets of the SPV in your jurisdiction, and the requirements to perfect such security.

Security over real estate property can be taken by mortgage (*hipoteca*) or fiduciary transfer (*alienação fiduciária em garantia*). Security over credits or other movable assets can be taken by a pledge (*penhor*) or fiduciary transfer.

Mortgages, fiduciary transfers over real estate property and merchant pledges (*penhor mercantil*) must be filed with the real estate public registry as a condition for perfection. Pledges other than merchant pledges and fiduciary transfers over credits must be filed with the registry of titles and deeds as a condition for perfection. Security of any type over certain financial assets must be filed with the depository or custodian of such assets as a condition for perfection.

20. How is the security granted by the SPV held for the investors? If the trust concept is recognised, are there any particular requirements for setting up a trust (for example, the security trustee providing some form of consideration)? Are foreign trusts recognised in your jurisdiction?

The security must be granted to and held by the investors themselves. While the investors can be represented by a third party (such as an agent) in the documents that create the security and in the security foreclosure process, the investors (not the agent) must be the actual holders of the security. The concept of trust does not exist under Brazilian law, but foreign trusts should be recognised in Brazil.

Credit enhancement

21. What methods of credit enhancement are commonly used in your jurisdiction? Are there any variations or specific issues that apply to the credit enhancement techniques set out in the Guide to a standard securitisation (Guide)?

An alternative credit enhancement method commonly used in Brazil is the assignment by a seller to the SPV of a greater number of credits than the final value to be securitised, so that the excess works as extra collateral (over-collateralisation). Another alternative is the creation of senior and junior classes of securities, where the junior class is subordinated to the senior class with respect to payment rights.

Insurance and letter of credits are not usual in Brazil due to high costs.

Risk management and liquidity support

22. What methods of liquidity support or cash reservation are commonly used in your jurisdiction? Are there any variations or specific issues that apply to the provision of liquidity support as set out in the Guide?

Securitisation structures in Brazil often establish cash reserve funds to deal with liquidity risks.

In the case of FIIs and FIDCs, liquidity risks in relation to the investors are dealt with by CVM rules and the bye-laws of the investment funds. CVM rules establish that FIIs must be set up as a closed condominium due to the illiquid nature of their assets. This means that FII shares are not redeemable during the existence of the investment fund.

FIDCs are not obliged to be set up as a closed condominium, but they are often incorporated as such when the illiquidity of their assets recommends it. When a FIDC is incorporated as an open condominium, the redemption of shares is usually not instantaneous and the investor must wait for a pre-established redemption period. The issue of senior and junior shares by a FIDC is also a method to provide liquidity, as junior shares work as a liquidity cushion to the senior shares.

Cash flow in the structure

Distribution of funds

23. Please explain any variations to the cash flow index accompanying Diagram 9 of the Guide that apply in your jurisdiction. In particular, will the courts in your jurisdiction give effect to "flip clauses" (that is, clauses that allow for termination payments to swap counterparties who are in default under the swap agreement, to be paid further down the cash flow waterfall than would otherwise have been the case)?

There are no material variations to the cashflow index accompanying Diagram 9 of the Guide that apply in Brazil, except that securitisation transactions in Brazil usually do not have the participation of swap counterparties, liquidity support providers and agents.

Flip clauses (under which a swap counterparty agrees to be paid after other creditors that would otherwise be lower ranked in an insolvency scenario, to prevent a defaulting swap counterparty from benefiting from its own default at the expense of the securities holders) are not prohibited under Brazilian law. Brazilian courts should give effect to such clauses but the authors are not aware of flip clause discussions in Brazilian courts.

Profit extraction

24. What methods of profit extraction are commonly used in your jurisdiction? Are there any variations or specific issues that apply to the profit extraction techniques set out in the Guide?

The originator holding equity securities and/or the most subordinated series of securities is the most common method of profit extraction in Brazil.

The role of the rating agencies

25. What is the sovereign rating of your jurisdiction? What factors impact on this and are there any specific factors in your jurisdiction that affect the rating of the securities issued by the SPV (for example, legal certainty or political issues)? How are such risks usually managed?

Brazil's credit rating is set out at www.tesouro.gov.br/pt_PT/sovereign-rating.

Brazilian sovereign rating is impacted basically by the country's economic and political environment. Political issues, judicial enforcement issues and legal uncertainty with respect to collateral rules affect the rating of securities issued by SPVs in Brazil.

Tax issues

26. What tax issues arise in securitisations in your jurisdiction? In particular:

- What transfer taxes may apply to the transfer of the receivables? Please give the applicable tax rates and explain how transfer taxes are usually dealt with.
- Is withholding tax payable in certain circumstances? Please give the applicable tax rates and explain how withholding taxes are usually dealt with.
- Are there any other tax issues that apply to securitisations in your jurisdiction?
- Does your jurisdiction's government have an inter-governmental agreement in place with the US in relation to FATCA compliance, and will this benefit locally-domiciled SPVs?

The transfer of receivables might be subject to the tax on financial transactions (*imposto sobre operações de crédito, câmbio e seguro, ou relativas a títulos ou valores mobiliários, IOF*) on credit transactions (IOF/Credit) or on transactions involving bonds and securities (IOF/Securities).

Non-recourse transfers of receivables (true sales, meaning that the assignor should by no means be liable in case of default of the receivables' debtor) are not subject to the IOF/Credit.

IOF/Credit applies to a transfer of receivables deemed as a loan, as a transfer with recourse against the assignor in case of default of the receivables debtor. IOF/Credit can be charged at up to 1.5% per day on the amount of the credit transaction. The actual applicable rate is currently 0.0041% per day if the borrower is a legal entity (or 0.0082% per day if the borrower is an individual), plus an additional 0.38% rate, limited to a total of 1.88% (legal entity) or 3.38% (individual) on the value of credit transactions with a defined principal amount. The taxpayer of IOF/Credit is the borrower, but the lender (legal entity) is liable for charging and collecting the tax.

IOF/Securities may apply at different rates if the transferred receivable is considered a bond or security by Brazilian tax legislation. The maximum applicable rate is currently 1.5% per day on the amount of the transaction, but several transactions are currently subject to a 0% IOF rate. The taxpayer of IOF/Securities is the acquirer of bonds/securities, but institutions authorised to act as intermediaries in such operations are liable for charging and collecting the tax.

The Federal Executive Branch is allowed to increase IOF rates at any time up to their maximum legal limits, without requiring Congressional approval. Any such increases are immediately applicable, but not retroactive.

If the originator (assignor) realises a gain on the transfer, the gain may be subject to regular corporate taxation on income/profits and revenues. Such taxes are levied and paid directly by the originator (they are generally not subject to withholding tax). The applicable rates and tax burden vary according to the originator's tax regime. In case the originator realises a loss on the transfer, the loss may be deductible from the calculation basis of corporate income taxes, depending on their tax regime and other applicable legal requirements.

Companies that explore securitisation activities in Brazil (securitisation of real estate, financial, and agribusiness credits) are not eligible for the presumed profit regime, whereby corporate income taxes are calculated over a presumed basis that corresponds to a certain percentage of the company's gross revenues.

If the SPV is a securitisation company (rather than an investment fund such as a FIDC), any profits it earns will be subject to corporate income taxes according to the real profit regime, at a total combined rate of up to 34%. Gross revenues are subject to social contributions (PIS and Cofins) at a total combined rate of 9.25%, or at a rate of 4.65% for most financial revenues. FIDCs are not subject to such corporate taxation.

Brazil has an inter-governmental agreement with the US in relation to FATCA, but it does not provide for any benefits to Brazilian-domiciled SPVs.

Recent developments affecting securitisations

27. Please give brief details of any legal developments in your jurisdiction (arising from case law, statute or otherwise) that have had, or are likely to have, a significant impact on securitisation practices, structures or participants.

The Letra Imobiliária Garantida (LIG), a covered bond for the Brazilian real estate market created in 2015, was recently regulated by the Central Bank through Circular 3,895, dated 4 May 2018. The issue of LIGs by commercial banks, investment banks and certain other financial institutions is regulated by the National Monetary Council (CMN) through Resolution 4,598, dated 29 August 2017.

Real estate investment funds are allowed to invest in LIGs as of 2015 (*Article 45, item X, CVM Instruction No. 472, 31 October 2008, inserted by CVM Instruction No. 571, 25 November 2015*).

The public offering of CRAs was recently regulated by the CVM through CVM Instruction No. 600, dated 1 August 2018. This new regulation is likely to boost the securitisation of agribusiness receivables.

Other securitisation structures

28. What other structures, including synthetic securitisations, are sometimes used in your jurisdiction?

Other securitisation structures, including synthetic securitisations, are not common in Brazil.

Reform

29. Please summarise any reform proposals and state whether they are likely to come into force and, if so, when. For example, what structuring trends do you foresee and will they be driven mainly by regulatory changes, risk management, new credit rating methodology, economic necessity, tax or other factors?

Apart from the new CVM rule regarding the public offering of CRAs and the new regulation of LIGs, there are no relevant reform proposals regarding securitisation transactions.

The authors anticipate no impact on Brazilian securitisation due to the UK's exit from the EU.

30. Has the nature and extent of global, regional and domestic reforms had a positive or negative affect on revitalising securitisation in your jurisdiction?

Securitisation in Brazil is mainly driven by the local market rather than by global or regional reforms.

Online resources

Central Bank of Brazil

W www.bcb.gov.br

Description. Website of the Central Bank of Brazil, where official up-to-date information and rules regarding the regulation of financial institutions can be obtained. There is an English version of this website although most of its content is only available in Portuguese, including the rules enacted by the Brazilian National Monetary Council and the Central Bank of Brazil.

Brazilian Federal Government website

W <http://www4.planalto.gov.br/legislacao/>

Description. Website of the Brazilian Federal Government where official up-to-date information and federal legislation can be obtained. There is an English version of this website although most of its content is only available in Portuguese.

Brazilian Securities Commission

W www.cvm.gov.br

Description. Website of the Brazilian Securities Commission (CVM) where official up-to-date information and rules regarding the regulation of capital markets in Brazil can be obtained. There is an English version of this website although most of its content is only available in Portuguese including the rules enacted by CVM. The main rules regarding the regulation of capital markets enacted by CVM are available in English in out-of-date free translation versions.

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