I. Banks and Financial Institutions Supervision

1) Applicable laws and regulations. Provide a list of the main laws and regulations that refer to the supervision and control of banks and financial institutions. Give a brief summary of the substance of each of them.

The Brazilian Law 4,595 dated December 31, 1964, as amended, known as the "Banking Reform Law", establishes the main rules for the Brazilian Financing System, which is formed by the (i) National Monetary Council, (ii) Brazilian Central Bank ("Central Bank"), (iii) Banco do Brasil S.A., (iv) National Bank for the Economic and Social Development (BNDES), and (v) all other public and private financial institutions. Among the latter, we can mention the brokerage houses, securities dealership companies, financial lease companies, and other.

As to the brokerage houses and securities dealership companies, the Central Bank supervision involves mainly the incorporation and capital requirements of such companies. Their capital markets activities are supervised by a different entity, which is the Brazilian Securities and Exchange Commission ("Comissão de Valores Mobiliários"). Therefore, we will concentrate on those entities which have as their main activities the supply of credit and financing.

The Central Bank is responsible for the compliance and for ensuring that the financial institutions comply with the applicable laws and regulations. Further, the Central Bank is responsible for enactment of administrative rules, such as resolutions, circulars circular-letters and communiqués, based on the decisions taken by the Brazilian Monetary Council.

The legal framework for the control and supervision of banks and other financial institutions is established by Law 4,595.

Law 4,595 empowers the Central Bank (i) to authorize financial institutions to operate in Brazil, transfer this corporate control, incorporate branches and subsidiaries, in Brazil or abroad, (ii) to supervise transactions that are exclusive to financial institutions (such as obtaining money deposits from the public in general and make loans as a professional activity), (iii) to impose fines and other penalties for infractions, (iv) to control the confidentiality of the banking transactions, (v) to control the foreign exchange market and the inflow and outflow of funds to or from Brazil, among others.
The supervision of financial institutions may be made by the Central Bank (i) directly by Central Bank officials in the premises of the financial institution, which officials may request clarification on transactions and the presentation of documents, and (ii) indirectly, upon the analysis, evaluation and review of information provided by the financial institution from time to time.

The breach of the provisions established in the Law 4,595 and applicable regulations shall subject the financial institution, the members of its board of directors, officers and managers, as applicable, to the following penalties: (i) warning, (ii) fine, (iii) suspension of officers; (iv) inability, temporary or permanent, for the exercise of management positions of financial institution, (v) total or partial cancellation of the authorization to carry out banking activities, and (vi) imprisonment.

The Central Bank, in its supervising capacity, may (should) notify the money laundering, and tax authorities and the federal or state prosecutors, as applicable, to proceed with tax and criminal investigations.

Central Bank’s supervisory functions are greatly facilitated by the mandatory on-line connection of all the banks with the Central Bank, through the Central Bank Data System (the “SISBACEN”)

Below you will find a list of the main laws and regulations that deal with (some of them exclusively and others partially) the supervision and control of banks and financial institutions1:

<table>
<thead>
<tr>
<th>Law</th>
<th>Provisions of law</th>
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<tbody>
<tr>
<td>Law 7,492 dated June 16, 1986</td>
<td>Criminal law which provides penalties for crimes against of national financial system.</td>
</tr>
<tr>
<td>Law 9,613, dated March 3, 1998</td>
<td>Criminal law which provides penalties for crimes of laundering money.</td>
</tr>
<tr>
<td>Law 6,024, dated March 13, 1976</td>
<td>Law which provides for the intervention and extrajudicial winding-up of financial institutions.</td>
</tr>
<tr>
<td>Law 9,447, dated March 14, 1997</td>
<td>Creates the personal joint and several liability of controllers in the intervention and liquidation of financial institutions</td>
</tr>
<tr>
<td>Decree-Law 2,321, dated February 25, 1987</td>
<td>Creates a special management system for institutions in financial distress</td>
</tr>
<tr>
<td>Complementary Law 105, dated January 10, 2001</td>
<td>Complementary law which provides for confidentiality of financial institutions transactions.</td>
</tr>
<tr>
<td>Central Bank Resolution № 1.065 dated December 5, 1985</td>
<td>Consolidates breaches to the legal and regulatory framework and regulates the administrative procedure for the imposition of penalties.</td>
</tr>
<tr>
<td>Law 8,078, dated September 11, 1990 and Central Bank Resolution</td>
<td>Law and Resolutions which provide for rights for consumers.</td>
</tr>
</tbody>
</table>

1 Most of these rules have suffered modifications along the years.
2.878, dated July 26, 2001 and Central Bank Resolution 2,892, dated September 27, 2001 Resolution 2,724, dated June 01, 2000 Resolution which provides for the mandatory supply, to the Central Bank of the position of debts and liabilities of the financial institutions’ clients.

2) Entities/Authorities in charge of the control and supervision. Purposes, powers and functions of each of them- their organization and structure (i.e. public or private, independency or body of the Government to which they belong, size, etc).

The Brazilian Monetary Council is the highest authority in the Brazilian Financial System. Above it, only stands the Ministry of Finance. The council is formed by the following individuals: (i) the Ministry of Finance, which is the president of the council, (ii) president of the Banco do Brasil S.A., (iii) president of the National Bank for the Economic and Social Development (BNDES), and (iv) six individuals appointed by the President of the Republic and duly approved by the national congress (among such individuals there are some representatives of the private sector). Although the Brazilian Monetary Council is the highest authority, such council only issues rules. The Central Bank is its executive arm, as seen above.

The Central Bank was created by Law 4,595 as a governmental agency, with its own legal entity and assets, formed by fixed assets, cash and securities. Although the nomination of the president of the Central Bank is approved by the Congress, and the Central Bank president has the status of a government Minister, its appointment is made by the Ministry of Finance and the Central Bank is subject to the directives of such Ministry.

The Central Bank enjoys certain autonomy, but it is not an independent Central Bank.

The anti money laundering authority (the Financial Activity Control Council – COAF) is also an important authority that works in connection with the Central Bank.

As seen above, also the prosecutors’ offices, the tax authorities are authorities often involved in the enforcement of the banking regulations.

3) Describe briefly the activities under supervision and give a list the different types of licenses available.

Capital adequacy, credit and foreign exchange are the main activities under supervision. As to the first one, Brazil abides by the Basel principles, which are incorporated in detailed regulations issued by the Central Bank of Brazil. Information on the several types of risk and on the structure of the institutions’ net-worth are regularly sent to the Central Bank. Central Bank and Brazilian banks are also getting ready for the adoption of the Basel II principles. As to credit, the main focus is in ensuring the liquidity of the institution, avoiding concentration of risk, avoiding concentration of risk into entities related to the financial institution and into entities owned by the federal, state and municipal governments, ensuring the correct structure of collateral and the
sharing of credit information among all the Brazilian Financial System entities. As to the foreign exchange, the Central Bank focus on the tax and documentary regularity of the foreign exchange transactions and on the foreign exchange positions carried by the banks. It also controls all the inflow and outflow of foreign funds (all transactions are informed on-line to the Central Bank) and the amount of foreign funding hired by the financial institution.

Other controlled activities worth mentioning are the over-the-counter derivative transactions performed by the financial institutions, the delegation of bank activities to non-banking entities (correspondent services) and bank consumer rights.

Each type of financial institution has a proper authorization to be granted by the Central Bank. In other words, an authorization granted by the Central Bank to an Exchange and Brokerage Company to operate as broker does not enable it to grant loans to its clients, except in very special circumstances.


There is also the Multiple Bank, which acts in several of the activities of each specific entity, but limited to: commercial; investment; development; real estate credit; credit, financing and investment; and financial leases.

4) Describe briefly non regulated financial and banking activities.

The factoring, collecting and some fiduciary services may be performed by financial institutions, although they are not exclusive to them. Notwithstanding, one cannot say the Central Bank simply disregards such activities in its supervisory duty. Since they are performed by financial institution, they are included in Central Banks audits.

5) Describe briefly non-permitted financial and banking activities and/or government monopolies.

The issuance of currency is exclusively performed by the Central Bank.

The investment of free cash by the government owned entities must be done in government owned banks.

II. Banking Activities

6) Different types of banking licenses. Activities permitted under each of them. Activities prohibited.
The Brazilian financial system provides for many different types of financial institution. Each type of license is granted according to the activity to be performed by the financial institution. Therefore, financial institutions can only perform regulated activities under the relevant authorization.

Please find below the main financial institution and a brief description of activities to be performed by each of them:

(i) Commercial banks may grant credit facilities in general;
(ii) Investment Banks may hold temporary participation in other companies, grant financing with its own funds or with third parties funds and perform underwriting services;
(iii) Development Banks may grant medium and long term financings in projects for the economic and social development;
(iv) Real Estate Credit Companies may grant financings for real estate purposes;
(v) Credit Cooperative Entities may grant financings to its associates;
(vi) Financial Leasing Companies may provide financial leases of Brazilian or foreign assets and for aircrafts among others;
(vii) Brokerage Houses may operate in stock market, underwriting, and/or issuing securities and trading in securities;
(viii) Foreign Exchange Brokerage Companies may operate in the foreign exchange market;
(ix) Securities Dealership Companies may perform activities related to securities, through the intermediation, acquisition, sale, management, custody and others;
(x) Mortgage Companies may grant financings for construction and activities related to real estate properties;
(xi) Cooperative Banks are incorporated under the corporate control of credit cooperative entity or entities and may grant loan to their associates;
(xii) Credit, Financing and Investment Companies may grant financings for acquisition of assets and services and for working capital purposes;
(xiii) Micro Credit Companies can grant financings for micro companies or individuals to develop their professional skills.

As general rule, the financial institutions cannot grant loans or advance funds to (i) their officers / directors / members of board of directors, (ii) second grade relatives of the individuals mention in the preceding item, (iii) companies in which the financial institution has an equity interest of more than 10%, (iv) entities in which any individual mentioned in item "i" that has an equity interest of more than 10%. We stress that the financial institution still has to observe the laws, among others, that prevent crimes against the financial monetary system, tax authorities and activities that may involve laundering of money.

7) Procedures to be followed and requirements to be met to obtain each of the different licenses. Formalities to be fulfilled, documentation to be submitted, guaranties requested, time estimation, etc.

There is one procedure to be taken before for the Central Bank authorization to operate in Brazil for all types of financial institution.
Below is the summary of the formalities to be fulfilled, documents to be submitted in order to obtain such authorization by the Central Bank:

- The corporate incorporation document of the financial institution, must indicate the individual responsible for the conduction of the process together with the Central Bank, as well as identify the group organizing new institution.

- Another requirement of the financial institutions is to publish a purpose declaration, divulged by the controller group and by individuals or entities that do not participate in the controlling group;

- The following documents must be submitted to Central Bank: (i) economic and financial analysis containing a study of the market, forecasts of profitability, and financial projections; (ii) business plan containing, among others, the organizational structure, internal control structure, strategic objectives, main products, technologies used in the products placement, maximum period to the beginning of activities, identification and description of the criteria utilized to the chosen the officers (iii) definition of the standard of corporative governance and detailing of the professional incentive structure and remuneration policy.

- The financial institution further must appoint the composition of the controlling group; evidence of the adequate economic-financial capacity compatible to the size, nature and objective of the new institution; express agreement of all the members of the controller group and minority shareholders expressly authorizing (i) the Federal Revenue Service to supply the Central Bank with a copy of income declaration's, declaration of assets and rights and of debts and lien on securities, in relation to the last three years of activity; (ii) the Central Bank to access information on them in any public or private database. It should also evidence the inexistence of restrictions that, at the discretion of the Central Bank, may affect the controllers reputation.

According to informal understandings held with the Central Bank, an authorization may be granted in 2 / 3 months, depending on the delivery of documents and clarification of inquiries.

Please note that, according to the temporary provisions attached to the Brazilian Federal Constitution, in cases where the incorporation or the acquisition of a financial institution in Brazil by a foreign group represents an increase of the overall foreign participation in the Brazilian financial market, the authorization of the President of the Republic which may be delegated to the Finance Minister is also required.

8) Legal structure admitted/requested for each of the different licenses.

a) Different types of legal structures that may be used, i.e. corporations, limited liability partnerships, branches, subsidiaries, etc.

The financial institutions must be incorporated as a corporation, except for (i) broker and exchange companies and (ii) securities dealership companies, that may be incorporated as a limited liability companies.
The financial institutions may incorporate branches and/or subsidiaries, in Brazil or abroad.

In the case of a foreign institution decides to perform a direct set up of a branch in Brazil, the approval is also subject to the procedure above, and, because of its format, to the approval of the President of the Republic, through a presidential decree. Such approval does not result from the same grounds as explained in the last part of item (7) above, but due to the format of a branch.

Financial institutions may also hire other financial institutions and non-financial institutions, such as retail chains and drugstore chains, to perform certain financial services. Such hiring is reported to, controlled by, and, in some cases, subject to the approval of, the Central Bank.

b) Capital requirements and own fund rules.

Each financial institution must comply with a minimum amount of capital stock. The commercial bank requires the highest amount of the minimum capital stock (R$ 17,500,000.00, approximately USD 7,990,867.58) and the foreign exchange brokerage company requires the lower minimum capital stock (R$ 350,000.00, approximately USD 159,817.51). In the incorporation of a financial institution or the increase of capital stock of such entities, 50% of the subscribed amount must be paid in up to 5 days after receipt of the Central Bank approval and the remaining portion may be paid in up to 1 year.

c) Transfer of control and ownership regime. Is it regulated?

The Central Bank rules establish that the transfer of control, direct or indirect, must be previously approved by the Central Bank. The transfer of control is subject basically to the same procedure described in item (7) above, but more simplified, with the waiver of certain information/documentation.

d) Personal requirements and restrictions that may apply in each case for officers, directors, shareholders, etc.

The Central Bank establishes that any individual appointed in management positions, such as director or officer, of a financial institution, should fulfill the following requirements: (i) to have a trustworthy reputation; (ii) to be resident in Brazil (in the case of officers and audit committee); (iii) not to be prevented by special laws, nor having been convicted of a bankruptcy crime, tax evasion, prevarication, corruption, graft, embezzlement, crime against public economy or National Financial System, or being convicted under a judicial decision concerning any crime which impedes, whether temporarily or permanently, the access to public offices; (iv) not having been declared disqualified or suspended from assuming managerial positions in a financial institution or any entity subject to the approval of the Central Bank or to the public authorities; (v) not being liable (and also any company in which the individual is partner or manager) for
any protest of bills, judicial collection, default of any similar obligation; (vi) not being declared bankrupt or insolvent, nor having participated in the management or partnership of a bankrupt or insolvent company; and (vii) to be technically capable to the perform his/her liabilities.

e) Special requirements/restrictions for foreigners either individuals or legal entities (including short description of WTO/GATS commitments and exemptions).

A foreign financial institution can operate in Brazil as a branch upon an authorization procedure similar to the one described in item (7) above, but is also subject to the issuance of a Presidential Decree (please see comment in item (8.a).

Also, in the case of the increase of the overall participation of foreign entities in the Brazilian Financial System, a presidential authorization is necessary (delegation can be made to the Ministry of Finance). This was explained in the last part of item (7) above.

The Central Bank may authorize a foreign financial institution to be represented in Brazil upon a representative office, which may be an individual or a company, provided that the individual or the companies domiciled in Brazil.

The Brazilian representative office is only authorized to transfer information from the parent company or any of its branches. The Brazilian representative office is not authorized to engage in any banking activity in Brazil. However, it can intermediate and assist in international transactions.

9) Is there a Deposits Insurance? Is it mandatory or based on self-regulation? Provide a brief explanation of how it operates.

Yes, there is a mandatory deposit insurance to be granted by financial institution in order to avoid the bankruptcy of the insolvency of the financial institution. Such system pays a certain amount concerning all the deposits owned by a client, limited to a overall amount of R$ 20,000.00 (approximately USD 9,132.42) for client. Such payment occurs in the case of an intervention or liquidation.

The fund can also be used to purchase credits for financial institutions. Contributions to the fund are made by Brazilian financial institutions which are mandatory to its members.

10) Interest rate. Is it regulated? Should the answer be affirmative, explain briefly its regulatory framework.

The Brazilian Monetary Council, pursuant to Law 4,595, can, when necessary, limit the interest rate. This has occurred in several occasions during the inflation crisis, specially during the 80’s. However, since more than 10 years till now, the control of interests has occurred through classic monetary policy, such as he increase or reduction of the Brazilian Treasury Bonds.

11) Sanctions (civil, administrative, or criminal) for violations of the legal and regulatory dispositions.
The Brazilian Law nº 4.595 and the Resolution nº 1,065 establish that the violation of legal and/or regulatory provisions shall subject the financial institution, members of the Board of Directors and officers the following penalties: (i) warning; (ii) pecuniary fine; (iii) suspension of the exercise of their managing positions; (iv) inability, temporary or definitive, for the exercise of management positions in financial institutions; and (v) cancellation of the authorization granted by Central Bank.

Any individual or company that performs banking activities without the prior Central Bank authorization is subject to a fine and imprisonment. In case of a company, such penalty shall apply to the officers/directors of the company.

Financial institutions are not allowed to grant loans or advances to related parties, including their officers/directors and members of board of directors, controlled companies and companies under common control. The violation of such rules is, in certain cases, a crime and is subject to fine and imprisonment.

There are other felonies, such as the issuance of securities without the proper authorization, the supply of wrongful information to the Central Bank, the market and tax authorities, deviation of the purpose of incentive funds, wrongful accounting and others, also subject to fine and imprisonment.

Foreign exchange transactions also deserved a relevant treatment by the Banking laws and regulations. Penalties are very strong, and fines may represent the double or the triple of the amount of the transaction wrongly performed. Also, certain types of foreign exchange felonies are considered crimes subject to imprisonment.

There are other faults that are only subject to administrative penalties and are not considered crimes, such as exceeding certain operational limits, failing in reporting duties, failing in complying with formalities, etc.

III. Bank Secrecy Laws

12) Is clients’ information protected? Are there any restrictions for its use?

Yes, the clients’ information is protected pursuant to the Brazilian Law nº 4.595 dated December 31, 1964 and Complementary Law nº. 105 dated January 10, 2001. The protected banking information can only be divulged to third parties with the approval of the court, except in certain cases, provided for in law.

13) Should answer to number 12) be affirmative, please describe the legal framework, i.e. scope, limitation, exceptions.
The Brazilian Law nº 4.595 and the Complementary Law nº.105 establish that the unauthorized disclosure of banking information concerning a client is a crime, subject to imprisonment.

However, there are several exceptions, including the following: (i) financial institutions may exchange among themselves the personal data of their clients and information regarding banking liabilities, according to specific regulations issued by Central Bank, (ii) information provided to Federal Revenue Service regarding the payment of certain taxes; (iii) information provided to competent authorities, of criminal and administrative felonies occurred in connection with any transactions; (iv) disclosure to third parties pursuant to the express authorization of the client; and (v) disclosure to investigation committees created by the National Congress.

Finally, the Central Bank of Brazil Resolution nº 2.724 regulates the rendering of information to the Risk of Credit Central, which sets forth that the financial institutions must send their clients’ banking liabilities, including guarantees granted by them to a central database administered by the Central Bank, in order to enable the consultation by all the financial institutions of the consolidated banking exposure of such client. Usually, clients issue generic authorizations (each and every time they sign any banking agreement) that enable such disclosure.

14) Sanctions (civil, administrative, or criminal) for violations.

The financial institution that discloses its clients’ protected information, outside of the exceptions mentioned above, shall commit a crime, which shall subject the involved officers to a fine and a imprisonment, according to Article 10 of Brazilian Complementary Law nº. 105.

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