

# CREDIT FINTECHS



The “Regulatory Landscape” series was produced by the professionals of the Financial Services team at Cescon Barrieu Advogados, providing a direct and practical summary of the main current issues in the regulation of the financial sector. The materials in the series are for information purposes only and are not intended to provide legal advice on the subjects covered and should not be construed as such. In addition, we do not undertake to keep the materials updated. Cescon Barrieu’s Financial Services team is available for clarification and guidance on the points highlighted in the materials.

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## CREDIT FINTECHS

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Direct Credit Companies (“*Sociedades de Crédito Direto – SCDs*”) and Peer-to-Peer Lending Companies (“*Sociedades de Empréstimo entre Pessoas – SEPs*”) (together, the “Credit Fintechs”) are financial institutions regulated by the Central Bank of Brazil (“Central Bank”) that operate in the granting of credit or its intermediation.

### SCD

The purpose of SCD is to grant loans, financing and to acquire credit rights **(i)** exclusively in an electronic environment and **(ii)** using its own capital or funds obtained with BNDES (Brazilian Development Bank) for the granting of credits, which are in compliance with the corporate purpose of the SCD.

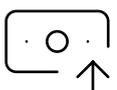
SCD may engage in the following activities:



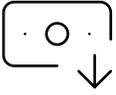
**LENDING OWN RESOURCES.** Using its own capital to grant loans or financing to any third party, whether a natural or legal person. There are no restrictions on the amount per transaction.



**TRANSACTIONS WITH FUNDS FROM BNDES.** Besides transactions with own capital, the SCD may operate with funds from BNDES (including onlending).



**PURCHASING CREDIT RIGHTS.** Use own capital to acquire credit rights from third parties (as assignee of such credits).



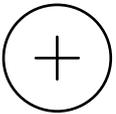
**ASSIGNING CREDIT RIGHTS.** Assigning credits arising from loans and financing granted by SCD or credit rights acquired by SCD to other financial institutions, securitization companies or investment funds whose quotas are intended exclusively for qualified investors.<sup>1</sup>



**ISSUANCE OF BANK CREDIT NOTE CERTIFICATES.** SCDs may issue Bank Credit Note Certificates (“CCCBs”), which are instruments representing Bank Credit Notes (“CCBs”). CCCBs may represent a single note, a grouping of notes of CCBs related to the originated credit operations and can be tailored to investors according to their profile.



**PROVISION OF PAYMENT SERVICES.** SCD can operate as three out of the four payment service modalities provided by Central Bank regulations, without the need for authorization<sup>2</sup>: **(i)** issuer of electronic money; **(ii)** issuer of post-paid payment instrument; and **(iii)** payment initiator service provider.



**ADDITIONAL SERVICES.** In addition to the services indicated above, SCD may provide the following services: **(i)** credit analysis for third parties; **(ii)** collection services for third parties; **(iii)** acting, through an electronic platform, as an insurance representative in the distribution of insurance related to the transactions, under the terms of the regulations of the National Council of Private Insurance (CNSP).



**RESTRICTIONS.** SCD cannot:

- raise funds from the public, except through the issuance of shares; and
- participate in the share capital of other financial institutions.

<sup>1</sup> According to CVM regulations, qualified investors are natural or legal persons with financial investments worth more than R\$1 million, among others provided for in current regulations.

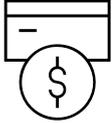
<sup>2</sup> As long as they notify the Central Bank 90 days in advance of their intention to start providing services in the form exempt from authorization.



## SEP

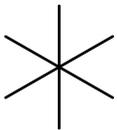
SEP's purpose is to carry out loan and financing transactions between people exclusively through an electronic platform.

SEP must comply with the following guidelines applicable to the intermediation of transactions:



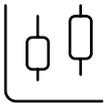
**ELIGIBLE LENDERS.** The following persons/entities:

- individuals;
- financial institutions;
- investment funds which stocks are to be exclusively granted to qualified investors;
- securitization companies that distribute securitized assets exclusively to qualified investors;
- other non-financial legal entities.



**ELIGIBLE BORROWERS.** Individuals or any legal entities with residence/headquarters in Brazil, which shall be selected according to criteria pertaining to assess credit risk, such as:

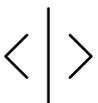
- economic and financial situation;
- degree of indebtedness;
- ability to generate cash flow or income;
- punctuality and delays in payments, among others.



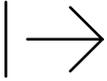
**LIMITS.** The lender of a loan or financing transaction may only maintain with the same borrower, in the same SEP, transactions whose sum of the debit balances is up to R\$15,000 (except in the case of qualified investors).



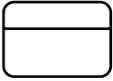
**FINANCING.** In financing transactions, the SEP may present potential borrowers with potential lenders interested in financing the acquisition of the good or service, for subsequent issuance by the borrower of the instrument representing the credit, which must be assigned to the lender or delivered to him from the issuance of a binding instrument. In these cases, the supplier of the good or service may act as the financing lender.



**SEGREGATION PROCEDURES.** Resources relating to transactions must be segregated from a SEP's own resources.



**RESOURCE TRANSFERS.** The SEP must transfer the funds to the lenders within one business day from each payment made by the borrowers. The deadline for making resources available to borrowers or suppliers of goods or services is five working days after they are made available by lenders.



**CREDIT AGREEMENT AND RELATED INSTRUMENT.** The credit agreement to be executed between SEP and the borrowers and the related instrument (which may include a CCCB), to be executed between SEP and the lenders, shall provide, among other information:

- SEP's non-assumption of credit risk for the transaction, not being allowed to, for instance, assume any liability for it or provide guarantees;
- the linking of the resources made available by the lenders to the corresponding credit transaction with the borrower;
- the enforceability of the funds made available by the lenders being subordinated to the payment flow of the corresponding credit transaction; and
- that the lenders warrant to have knowledge of the risks involved of the loan and financing transaction.



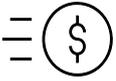
**FEES.** As long as provided for under the agreements signed with its clients, the SEP may charge any fees concerning the intermediation of P2P lending transactions.



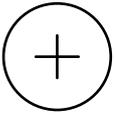
**RESTRICTIONS.** SEP cannot:

- carry out loan and financing transactions with its own resources;
- assume any credit risk in the transaction, which prevents it from using its own resources, co-obliging or providing guarantees, advancing funds to lenders or borrowers before the respective lender makes them available, among other activities;<sup>3</sup>
- hold stocks in the equity of financial institutions;
- use the funds for the transactions to its own benefit;
- keep lenders' and borrowers' funds in an account they own that is not linked to the transactions; and
- bind the fulfillment of the credit transaction to the effort from third parties or the borrower acting as an entrepreneur.

<sup>3</sup> Nevertheless, SEP and its subsidiaries or affiliates are permitted to directly or indirectly acquire subordinated quotas of credit rights investment funds that invest exclusively in credit rights derived from transactions carried out by SEP itself, provided that this acquisition: **(i)** represents a maximum of 5% of the fund's assets; and **(ii)** does not constitute the assumption or substantial retention of risks and benefits, under the terms of the regulations in force.



**PROVISION OF PAYMENT SERVICES.** SEP can operate in two of the four payment service modalities provided for in Central Bank regulations, without the need for authorization<sup>4</sup>: **(i)** issuer of electronic money; and **(ii)** payment initiator service provider.



**ADDITIONAL SERVICES.** In addition to the services listed above, SEP can provide the following services: **(i)** credit analysis for third parties; **(ii)** collection services from third parties; **(iii)** acting, through an electronic platform, as an insurance representative in the distribution of insurance related to transactions, under the terms of CNSP regulations.

#### AUTHORIZATION TO OPERATE

Credit Fintechs must obtain authorization from the Central Bank to operate, and must be incorporated as a corporation, comply with minimum capital requirements, have controllers and directors with an unblemished reputation, and demonstrate economic and financial capacity, among others.

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<sup>4</sup> Provided that it notifies the Central Bank 90 days in advance of its intention to start providing services in the form exempt from authorization.



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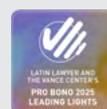
We work in an integrated way across all areas of law, always mindful of how each legal decision affects the broader business landscape. We simplify complexity and anticipate risks by combining technology, data, and intelligence.

We are committed to excellence, innovation, and delivering real value to our clients. More than technical expertise, we believe our true difference lies in the intelligent connection of experience, close client relationships, and strategic vision.

With a global presence, we continue to strengthen trusted relationships and design legal strategies that drive sustainable growth. This is how Cescon Barrieu has established itself as the Legal Intelligence Center.



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