

RESOLUTION 3,954

Amends and consolidates rules on hiring domestic correspondents.

The Central Bank of Brazil, based on art. 9 of Law 4,595, dated December 31, 1964, makes public that the National Monetary Council, in a session carried out in February 24, 2011, based on art. 3, item V, art. 4, items VI, VIII and XXXI of the mentioned Law and art. 14 of Law 4,728, July 14, 1965,

R E S O L V E D:

CHAPTER I

ON CONTRACTING

Art. 1 The financial institutions and other institutions authorized by the Central Bank of Brazil must abide by the provisions of this resolution as a condition for hiring domestic correspondents, for the purpose of the contracted entity rendering services to clients and customers of the contracting institution.

Sole paragraph. The rendering of services as established in this resolution may only be contracted with a domestic correspondent.

Art. 2 The correspondent entity acts for and under the guidelines of the contracting institution, the latter assuming full responsibility for the services rendered to clients and users and guaranteeing the integrity, reliability, safety and secrecy of the transactions carried out, as well as following the legislation and regulation applicable to these transactions.

Art. 3 Eligibility to act as a correspondent entity is restricted to companies, entrepreneurs and associations as specified in Law 10,406, dated January 10, 2002 (Civil Law Code), to providers of notary and registration services as specified in Law 8,935, dated November 18, 1994, and to state-owned companies.

§ 1 Hiring of financial institutions and other institutions comprised in the National Financial System (SFN) as correspondents is subject to the conditions laid out in article 18.

§ 2 Services specified in article 8, items I, II, IV and VI are precluded for an entity whose main activity is rendering correspondent services.

§ 3 An entity is precluded to be hired as a correspondent of an institution in case such entity is controlled by a manager of the said institution or by a manager of an entity that controls the said institution.

§ 4 The preclusion established in paragraph 3 does not apply to the situation in which the manager also controls the contracting institution.

Art. 4 When hiring or renewing correspondent services, the contracting institution must verify the occurrence of facts that in its judgment may disavow the contracted entity or its managers, thereby establishing preventive and corrective measures to be adopted in the event of such facts effectively happening, including the suspension of attendance and termination of the contract.

Art. 4-A The contracting institution must adopt a remuneration policy compatible with its risk management policy, so as to not incentivize behaviors that would increase its risk exposure beyond levels considered prudent in the short, medium and long term strategies adopted by the institution, taking into account, including, the economic viability of loans and leases whose proposals are forwarded by correspondents.

Sole paragraph. The remuneration policy mentioned in the heading must cover any kind of remuneration, including advance payment through loans, receivables acquisition or constitution of guarantees, as well as expenses reimbursement, commissions, prizes, rewards, bonuses or any similar payment.

Art. 5 A previous authorization from the Central Bank of Brazil is required when hiring correspondent services from an entity not comprised in the SFN whose corporate or commercial identity employs terms characteristic of the identity of institutions comprised in the SFN or similar expressions in national or foreign language.

Art. 6 Hiring correspondent services is precluded if such services typify franchising, as specified in Law 8,955, of December 15, 1994, or if such services result in similar franchising rights and obligations of the parties involved or similar franchising arrangements for public attendance.

Art. 7 The delegation of capacity for rendering correspondent services is admitted, on only one level, provided that such possibility and the conditions for its effectiveness are foreseen in the original contract, including the agreement of the contracting institution.

§ 1 When agreeing to delegate the capacity for rendering correspondent services, the contracting institution must ensure compliance with the provisions laid out in this resolution, including what relates to entities eligible for hiring as stated in article 3.

§ 2 The delegation of correspondent services that relate to foreign exchange operations is precluded.

CHAPTER II

ON THE OBJECT OF THE CONTRACT

Art. 8 The contract involving correspondent services may include the following attendance activities, aiming at providing products and services on behalf of the contracting institution to its clients and users:

I - reception and forwarding of proposals for opening demand deposit accounts, term deposit accounts and savings accounts in the contracting institution;

II - receipts, payments and electronic transfers that are carried through deposit accounts of clients in the contracting institution;

III - receipts and payments of any nature, as well as other activities that derive from fulfilling contacts or agreements entered into by the contracting institution for rendering services to third parties;

IV - active or passive execution of orders of payment through the contracting institution by request of its clients and users;

V - reception and forwarding of proposals concerning loans and leases extended by the contracting institution, as well as other services offered as follow up to the operation;

VI - reception of funds and performance of payments related to drafts accepted by the contracting institution;

VII– (Revoked by Resolution 3,959, of March 31, 2011.)

VIII - reception and forwarding of proposals of credit cards issued by the contracting institution; and

IX - performance of foreign exchange operations on behalf of the contracting institution, subject to the provisions established in article 9.

Sole paragraph. Correspondent services may include complementary services of information collection and documentation, as well as data processing and control.

Art. 9 Foreign exchange operations performed by correspondent entities are restricted to the following services:

I - purchase and selling of foreign currencies in cash, check or traveler's check, as well as foreign currency loads on pre-paid card;

II - active or passive execution of orders of payment related to unilateral transfer of funds to or from a foreign country;

III - reception and forwarding of proposals for foreign exchange operations.

§ 1 (Revoked by Resolution 4,114, of July 26, 2012.)

§ 2 The contract for provision of services mentioned in items I and II of the heading must contain the following conditions:

I - a limit, per foreign exchange operation, of US\$3,000.00 (three thousand US dollars) or the equivalent amount in other currencies;

II - a mandatory receipt to the customer for every transaction carried out, indicating the parties and the foreign currency involved, the rate of exchange and the amounts denominated in national and foreign currency; and

III - compliance with provisions of the Regulation of the Foreign Exchange and Foreign Capital Market (Regulamento do Mercado de Câmbio e Capitais Estrangeiros – RMCCI).

CHAPTER III

ON THE GENERAL CONDITIONS OF THE CONTRACT

Art. 10 The contract involving correspondent services must prescribe:

I - a requirement that the correspondent entity establishes a formal relationship with the staff involved in attendance to clients and users, either in the form of employment or a contractual bond of another type;

II - the preclusion to the use, by the correspondent entity, of premises whose architectural configuration, brand name and indicative signs are similar to those employed by the contracting institution in its branches and points of service;

III - the public disclosure, by the correspondent entity, of its condition as a purveyor of services to the contracting institution, identified by the brand in the market, along with a description of products and services provided and telephone numbers of attendance services and customer relationship management unit of the contracting institution, by means of a visible placard in the sites of public attendance to clients and users, and by other means of public information;

IV - a maximum period of two work days for financial clearing between contracting institution and correspondent entity;

V - the exclusive use, by the correspondent entity, of patterns, operational norms and tables defined by the contracting institution, including the proposition or application of fees, interest rates, foreign exchange rates, calculation of the Total Effective Cost (Custo Efetivo Total – CET) and any other amount earned or owed by the client, inherent to the products and services supplied by the contracting institution;

VI - the preclusion of issuance by the correspondent entity, to its own benefit, of bills and bonds related to the operations carried out, and to collection of funds on its own interest, under any form, of amounts related to products and services supplied by the contracting institution;

VII - the preclusion of any advances to a client of funds to be released by the contracting institution;

VIII - the preclusion to the extension of guarantees by the correspondent entity, including the joint liability, in the operations covered by the contract;

IX - the attendance, by the correspondent entity, to requests from clients and users involving clarifications, supply of documents, liberations, complaints and other demands related to products and services provided, which must be immediately forwarded to the contracting institution when not solved by the correspondent entity;

X - the permission for access by the Central Bank of Brazil to the contracts covered by this resolution, to the documents and information related to products and services provided, as well as to the premises of the correspondent entity and to its incorporation documents, registers and licenses required by legislation;

XI - the possibility of adoption of the measures established in article 4 by initiative of the contracting institution or under request from the central Bank of Brazil;

XII - the observance of the quality control plan for attendance, as designed by the contracting institution according to the provisions of article 14, paragraph I, and of the administrative measures established therein;

XII - the declaration that the correspondent entity has full knowledge that the performance on its own initiative of operations restricted to financial institutions or other operations restrained by current legislation induces to penalties established in Law 4,595, of December 31, 1964, and Law 7,492, of June 16, 1986.

Sole paragraph. The preclusion established in item VIII does not apply to financing and leases related to goods and services provided by the correspondent entity on the exercise of a commercial activity comprised in its own business purpose.

CHAPTER IV

ON FORWARDING LOAN AND LEASING PROPOSALS

Art. 11 Should the services rendered by the correspondent entity encompass loans and leases as mentioned in article 8, item V, the respective governing contract must establish, concerning such activities:

I - the mandatory presentation to the clients, in financing and leases offered by the own correspondent entity, of plans offered by the contracting institution and by any other financial institution of which the entity may act as a correspondent;

II - the use of an identification tag by the staff responsible for attendance in the aforementioned operations, so as to expose clearly to the client or user the name of the correspondent entity, the name of the person in attendance and his or her register in the National Register of Natural Persons (Cadastro de Pessoas Físicas – CPF);

III - the remittance, along with the documents forwarded to the contracting institution for approval of the intended operation, of information concerning the identification of the staff member, specifying his or her name, the register number in the CPF and also:

a) in case of operations related to goods and services provided by the own correspondent entity, the identification of the person responsible for the attendance and certified according to provisions established in article 12, paragraph 1;

b) in case of any other operations, the identification of the certified person that attended the client; and

IV - the liberation of funds from the contracting institution to the beneficiary, in case of personal credit, or the supplying firm, in case of financing or lease, may be performed by the correspondent entity on behalf of the contracting institution, provided that, on a daily basis, the total amount of payments made is equal to the amount of funds received from the contracting institution for this purpose.

V - remuneration scheme, in the following manner:

a) when contracting the operation: upfront payment concerning the efforts dedicated to attracting the client in the origination of the loan or lease; and

b) over the duration of the operation: payment pro rata temporis concerning other services rendered after the origination of the loan or lease.

§ 1 With respect to the payment laid out in item V, sub item a), the value paid must be:

I - a maximum of 6% (six percent) of the loan or lease forwarded, renegotiated or renewed; or

II - a maximum of 3% (three percent) of the transferred value of the operation.

§ 2 The contract must prescribe that, in case of early settlement with the debtors' own resources or with resources transferred by other institutions, payment of the remuneration mentioned in item V sub item a) will be cut off.

Art. 12 The contract must also require that the correspondent entity's staff responsible for attendance in loans and leases be certified by a body of recognized technical capacity.

§ 1 In case of correspondent entities that simultaneously provide loans and leases for goods and services, one certified person per point of sale is allowed and will bear responsibility for public attendance before the contracting institution.

§ 2 The certification addressed in this article must be based in a capacitating process that comprises, at least, the technical aspects of the operations conducted, the regulation applicable, the provisions of the Code of Defence of the Customer (Código de Defesa do Consumidor – CDC), ethics and ombudsman duties.

§ 3 The correspondent entity must keep a permanently updated register of staff members, including data on their certification process, with full access by the contracting institution.

Art. 12-A. The contracting institution must implement economic viability monitoring and control of loans or leases whose proposals are forwarded by correspondents, creating management reports comprising all the revenues and expenditures such as client attracting costs, interest rates and remuneration of any nature paid or due to the correspondent, as well as operation maturity, probability of early settlement and assignment of claims.

§ 1 For the economic viability assessment, the present value of the revenues of loans or leases, as well their renegotiation or renewal, taking into account the possibility of its early settlement or default, must be above the present value of the sum of the correspondent remuneration and other expenditures involved.

§ 2 The management reports mentioned in the heading must be available to the Central Bank of Brazil for 5 years after the operation is completed.

CHAPTER V

ON CONTROLLING THE ACTIVITIES OF THE CORRESPONDENT

Art. 13. The contracting institution must provide the correspondent entity and its staff with the adequate technical documentation, as well as a permanent communication channel aiming at a timely clarification on products and services, and must respond to demands posed by clients and users to the correspondent entity according to the provisions established in article 10, item IX.

Art. 14 The contracting entity must adapt its internal control system and its internal auditing in order to monitor the attendance to the public conducted by the correspondent entity and to ensure compatibility with the number of points of service and with the size and complexity of operations realized.

§ 1 The contracting institution must establish, with respect to the correspondent entity performance, a quality control plan considering, among other aspects, demands and complaints from clients and users.

§ 2 The plan mentioned in paragraph 1 must comprise administrative measures to be adopted by the contracting institution upon detection of irregularities or noncompliance with established standards, including the possibility of suspension of attendance to the public and early termination of the contract in the cases deemed serious by the contracting institution.

§ 3 The Central Bank of Brazil is hereby authorized to establish procedures to integrated to the controls mentioned in this article, as well as, alternatively or cumulatively:

I – determine the adoption of additional controls and procedures, establishing a schedule for implementation, in case an inadequacy of control from the contracting institution on the correspondent entity is verified;

II – recommend the suspension of attendance to the public or the termination of the contract, according to the provisions of paragraph 2 of this article; and/or

III – condition the hiring of new correspondent entities to previous authorization from the Central Bank of Brazil, subject to verification of compliance with provisions established in items I and II above.

CHAPTER VI

ON THE DISCLOSURE OF INFORMATION

Art. 15 The contracting institution must maintain a webpage that grants access for all interested parties to a updated list of its correspondent entities, containing the following information:

I – company name, brand name, address of headquarters and number of register in the National Register of Legal Persons (Cadastro Nacional da Pessoa Jurídica – CNPJ) of each correspondent entity;

II – addresses of the points of service and their names and numbers of register in the CNPJ; and

III – services rendered, according to provisions of article 8, specified by point of service.

Sole paragraph. The contracting institution must make available, including by telephone, information on the fact of an entity being or not its correspondent and on the products and services such entity is allowed to offer.

Art. 16 The contracting institution must discriminate information on demands and complaints received in its own attendance and ombudsman units from those demands and complaints presented by clients and users attended by a correspondent entity.

CHAPTER VII

GENERAL PROVISIONS

Art. 17 The contracting institution is precluded to collect fees, commissions, amounts related to repayment from services rendered by third parties or any form of remuneration from clients attended by its correspondent entity when offering products and services under the contracting institution responsibility, except for fees comprised in the table of fees adopted by the contracting institution according to Resolution 3,518, of December 6, 2007, and Resolution 3,919, of November 25, 2010.

Art. 17-A. The rendering of services by correspondents in the premises of the contracting financial institution is precluded.

Sole paragraph. The prohibition established in the heading applies as of March 1, 2013.

Art. 18 The following conditions apply to contracts for rendering correspondent services in case the parties are financial institutions or institutions authorized by the Central Bank of Brazil:

I – the requirements established in articles 11 and 12 are forborne, in case the correspondent institution offers services of the same nature to its own clients;

II – the prohibition established in article 10, item VIII, does not apply; and

III – the webpage list of correspondent entities, as required in article 15, must comprise, at least, the following information:

a) company name, brand name, address of headquarters and the number of register of the correspondent institution in the CNPJ; and

b) services rendered, according to provisions of article 8, as specified in the contract.

Art. 18-A. The certification process formally contracted with training and certifying entities until February 24, 2014, may be considered for purposes of compliance with the provisions established in article 12 of this resolution, provided that the contract foresees that the certification will be completed by March 2, 2015.

Art. 19. The contracting institution must perform the following information procedures to the Central Bank of Brazil, according to provisions established by the said body:

I – appoint a director responsible for hiring domestic correspondents and for the attendance services rendered by them;

II – inform on the contracts of correspondent services entered into, as well as their changes and termination, specifying the services comprised;

III – update the information on contracts of correspondent services remitted until the date this resolution becomes effective; and

IV – report on the attendance performed by correspondent entities.

Art. 20 Article 38 of Resolution 3,568, of May 29, 2008, is amended as follows:

“Art. 38.
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II – operational limits of tourism agencies, as well as firms hired according to specific regulation, including the criteria for their compliance.” (NT)

Art. 21 The Central is hereby authorized to lay out norms and necessary measures to enforce the provisions of this resolution.

Art. 22 This resolution becomes effective on the date of its publication, producing effects:

I – three years after its publication, concerning the provisions established in article 11, item III, and article 12;

II – one year after its publication:

a) concerning article 3, heading and paragraphs 2 and 3, and articles 7 and 8, for the adjustment of contracts entered into until the date of publication of this resolution; and

b) concerning article 10, items I, IX and XII, article 11, item II, and articles 13, 14, 15 and 16; and

III – on the date of its publication, concerning the remainder of provisions.

Art. 23 The following regulation is hereby revoked:

I – Resolution 3,110, of July 31, 2003; Resolution 3,156, of December 17, 2003; and Resolution 3,654, of December 17, 2008;

II – items I, II and III and paragraphs 2, 3 and 4 of article 4 of Resolution 3,568, of May 29, 2008;

III – item III of paragraph 1 and paragraph 2 of article 1 of Resolution 3,158, of December 6, 2007, as amended by Resolution 3,693, of March 26, 2009; and

IV – item III of paragraph 1 of article 1 of Resolution 3,919, of November 25, 2010, from March 1, 2011, onwards.

Brasília, February 24, 2011

Alexandre Antonio Tombini
Governor