



BANCO CENTRAL DO BRASIL

SPB (Sistema de Pagamentos Brasileiro)
The Brazilian Payments System

Law 10214, of March 27, 2001

Defines the terms for the operation of the clearinghouses within the scope of the Brazilian payments system, among other provisions.

Translated by:

Deban - Department of Banking Operations and Payments System

Address: Setor Bancário Sul, quadra 3, bloco B
70070-900 Brasília, DF

E-mail: gabin.deban@bcb.gov.br

Phone: +55 61 3414-1340

Website of Banco Central do Brasil: www.bcb.gov.br

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Foreword

This document aims to provide information about the Brazilian payments system. Hence it should not be deemed as an official translation. This document is not enforceable and *Banco Central do Brasil* does not warrant that it reflects the complete and current legal framework.



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Law 10214 of March 27, 2001

Defines the terms for the operation of the clearinghouses and the clearing service providers, within the scope of the Brazilian payments system, among other provisions.

I hereby make known that the President of the Republic issued the Provisional Measure 2115-16, of 2001, which was approved by the National Congress, and I, Jader Barbalho, President of the Federal Senate, for the purposes of the provisions set out on the Sole Paragraph of Article 62 of the Federal Constitution, enacted the following Law:

Article 1. This Law regulates the activities of clearinghouses and the clearing service providers, within the scope of the Brazilian payments system.

Article 2. The Brazilian payments system hereof, comprises the entities, systems and procedures related to the transfer of funds and other financial assets, or to the processing, clearing and settlement of payments in any form.

Sole Paragraph - In addition to the clearing services for checks and other instruments, the following systems are part of the Brazilian payments system, pursuant to the authorization granted to the respective clearinghouses, or to the clearing service providers, by *Banco Central do Brasil* (Central Bank of Brazil) or by *Comissão de Valores Mobiliários* (Brazilian Securities and Exchange Commission), within their respective mandate:

I. - clearing and settlement of electronic debit and credit orders;

II. - transfer of funds and other financial assets;

III. - clearing and settlement of securities operations;

IV. - clearing and settlement of commodities and futures exchanges operations; and

V. - other systems, including those comprising financial derivatives operations, for which clearinghouses or clearing service providers have been authorized under this article.

Article 3. - Multilateral clearing of obligations is permitted at the same clearinghouse or clearing service provider.

Sole Paragraph - For the purposes hereof, multilateral clearing of obligations is defined as the procedure for the calculation of the sum of each participant's bilateral debit and credit position against the others.

Article 4. In the clearing systems where the operations' volume and nature, at *Banco Central do Brasil* discretion, may put at risk the soundness and smooth operation of the financial system, the clearinghouses and clearing service providers shall, with no prejudice to any obligations arising out of any law, regulations or contract, in relation to each participant, take position as central counterparty, for the settlement of the respective obligations carried out through such clearinghouse or clearing service provider,.



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Paragraph 1 - The clearinghouses and clearing service providers will not be liable for the noncompliance with the issuer's obligations to redeem the principal and other amounts related to the securities subject to clearing and settlement.

Paragraph 2 - The systems, referred to in the Article hereof, should hold mechanisms and safeguards so as to allow the clearinghouses and clearing service providers to ensure the certainty of settlement of the operations cleared and settled thereby.

Paragraph 3 - The mechanisms and safeguards referred to in the previous Paragraph include, among other aspects, appropriate security devices and rules on control of risks, on contingencies, on the sharing of losses among the participants and on the direct execution of positions in custody, contracts and guarantees provided by the participants.

Article 5. Without prejudice to the provisions of Paragraph 3 of the previous Article, the clearinghouses and clearing service providers responsible for one or more systemically important systems must, pursuant to all regulations issued by *Banco Central do Brasil*, keep a separate special equity account formed by the assets and rights solely intended to ensure the performance of the obligations entered at each of the systems in operation.

Paragraph 1 - The assets and rights that compose the special equity account, as referred to in the Article hereof, as well as their yields and earnings, must be kept separately from the general equity account or other special equity accounts of the same clearinghouse or clearing service provider, and shall not be used to perform or guarantee any obligation assumed by the clearinghouse or clearing service provider in a system other than that to which they relate.

Paragraph 2 - The acts for the formation of special equity accounts and their respective allocation shall be approved or registered pursuant to the applicable law and regulations.

Article 6. The assets and rights within the special equity account, as well as those offered as collateral by the participants, cannot be pledged, and shall not be the subject matter of attachment, seizure, search and impounding or any other act of judicial restraint, except for the performance of the obligations assumed by the clearinghouse or by the clearing service provider, acting as central counterparty, pursuant to the provisions of Article 4.

Article 7. The insolvency, corporate reorganization, administration, bankruptcy or liquidation of any participant shall not affect the due performance of its obligations undertaken under the clearinghouse or the clearing service provider, which shall be finalized and settled by the clearinghouse or clearing service provider pursuant to its specific regulations.

Sole Paragraph - The proceeds from the execution of the collateral provided by the participant subject to any of the events set out in the Article hereof, as well as any bonds, securities and any other assets object of clearing or settlement, shall be utilized to settle the obligations assumed with the clearinghouse or clearing service provider.

Article 8. In the events mentioned in the previous Article, or in the event of the default of any participant, the settlement of obligations, pursuant to the regulations and procedures of the clearinghouses and clearing service provider, shall be executed as follows:



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I – through the delivery of the traded assets or transfer of the funds, in the event of financial transactions; and

II – through the delivery of the proceeds from the collateral sale, and the enforcement of the mechanisms and safeguards referred to in the Paragraphs 2 and 3 of Article 4 hereof, when the traded assets or the funds to be delivered are insufficient or inexistent.

Sole Paragraph – If, after the measures mentioned on the Sub-Paragraph I and II are taken, there is a positive balance, such balance will be returned to the participant and will become a part of its holdings. If there is a negative balance, such balance will constitute a credit held by the clearinghouse or clearing service provider against the participant.

Article 9. Any violation of the legal and regulatory provisions that regulate the payments system shall subject the clearinghouses and clearing service providers, their directors and members of their auditing, advisory, or similar committees to the penalties set forth:

I. - in Article 44 of Law 4595, of December 31, 1964, enforced by *Banco Central do Brasil*;

II. - in Article 11 of Law 6385, of December 7, 1976, enforced by the *Comissão de Valores Mobiliários* .

Sole Paragraph - The measures taken by the *Banco Central do Brasil* and by the *Comissão de Valores Mobiliários*, pursuant the Article hereof, may be appealed to the *Conselho de Recursos do Sistema Financeiro Nacional* (National Financial System Appellate Council) within fifteen (15) days, with no suspensive effects.

Article 10. The *Conselho Monetário Nacional* (National Monetary Council), the *Banco Central do Brasil* and the *Comissão de Valores Mobiliários*, pursuant to their respective mandate, will enact the rules and guidelines required for the compliance with this Law.

Article 11. Any acts under the Provisional Measure 2115-15 of January 26, 2001 are hereby deemed legitimate.

Article 12. This Law shall come into effect on the date of its publication.

The National Congress, on March 27, 2001, 180th year of Independence and 113th year of the Republic.

Senator Jader Barbalho
President of the National Congress