



BANCO CENTRAL DO BRASIL

SPB (*Sistema de Pagamentos Brasileiro*)
The Brazilian Payments System

Law 12,865, of October 9, 2013

Regulates the payment schemes and payment institutions which hereby
become part of the Brazilian Payments System (SPB).

(note: only articles 6 to 15).

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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 nº 12,865, of October 9, 2013.

Conversion of Provisional Measure 615, of 2013

Regulates the payment schemes and payment institutions which hereby become part of the Brazilian Payments System (SPB);
(note: only articles 6 to 15).

The **PRESIDENT of the REPUBLIC** declares that the National Congress decrees and I sanction the following law:

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Art. 6. - For the purposes of the rules applicable to payment schemes and payment institutions which hereby become part of the Brazilian Payments System (SPB), under this law, the following definitions are considered:

- I- payment schemes: set of rules and procedures which regulates the provision of certain payment service to the public accepted by more than one recipient/payee, by means of direct access by end users, payers and recipients/payees;
- II- payment scheme owner: a legal entity responsible for a payment scheme and, when appropriate, by the use of the brand associated with the payment scheme;
- III- payment institution: legal person, adhering to one or more payment schemes, having as main or ancillary activity:
 - a) providing cash-in and cash-out services of the funds held on payment accounts;
 - b) performing or facilitating payment instructions related to definite payment service, including transfers originated from or intended for a payment account;
 - c) managing payment accounts;
 - d) issuing payment instrument;
 - e) acquiring payment instrument;
 - f) remittances;
 - g) converting physical or book-entry currency into e-money, or vice versa, acquiring the acceptance or managing the use of e-money; and
 - h) other activities related to the provision of payment services, designated by the Central Bank of Brazil;
- IV- payment account: book-entry account, held on behalf of an end user of payment services, used for the execution of payment transactions;
- V- payment instrument: device or set of procedures agreed between the end user and his payment service provider, used to initiate a payment transaction; and



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VI- e-money: resources stored in device or electronic system that allow the end user to perform payment transaction.

§ 1. - Financial institutions may join the payment schemes in the form established by the Central Bank of Brazil, according to guidelines established by the National Monetary Council.

§ 2. - Payment institutions are not allowed to conduct activities that are restricted to financial institutions, in spite of the activities listed on the sub-paragraph III above.

§ 3. - The set of rules that discipline the use of payment instrument issued by a corporation, for the acquisition of goods or services offered by it, shall not be characterized as a payment scheme.

§ 4. – Is not under the reach of this law the payment schemes in which the volume, scope and nature of the business, to be defined by the Central Bank of Brazil, according to the parameters established by the National Monetary Council, do not offer risk to normal functioning of retail payment transactions.

§ 5. - The Central Bank of Brazil, in compliance with the guidelines established by the National Monetary Council, may require information to monitor the development of the schemes contemplated in § 4.

Art. 7. - Payment schemes and payment institutions shall observe the following principles according to parameters to be established by the Central Bank of Brazil, in compliance with the guidelines of the National Monetary Council:

- I-** interoperability within the payment scheme and between different payment schemes;
- II-** soundness and efficiency of payment schemes and payment institutions, promotion of competition, and provision for e-money balances transfer, when applicable, to other payment schemes or institutions;
- III-** non-discriminatory access to infrastructures and services required for the functioning of the payment scheme;
- IV-** meet end-users needs, in particular with respect to freedom of choice, safety, protection of their economic interests, non-discriminatory treatment, privacy and personal data protection, transparency and access to clear and complete information about the service;
- V-** reliability, quality and security of payment services; and
- VI-** financial inclusion, in compliance with the standards of quality, security and transparency in all payment schemes.

Sole paragraph. - The rules of this article shall ensure the capacity for innovation and the business models diversity of the payment institutions and payment schemes.

Art. 8. - The Central Bank of Brazil, the National Monetary Council, the Ministry of Communications and the National Telecommunications Agency shall encourage, within the framework of their competence, the financial inclusion, by means of the participation of the telecommunications sector in the provision of payment services and may, based on periodic evaluations, adopt measures to encourage the development of payment schemes using access terminals to telecommunications services owned by the user.

Sole paragraph. - The so-called “Payments and Transfer of Monetary Values System via Mobile Devices - STDM” is a system formed by the payment schemes providing payment



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services based on the use of mobile device and mobile network, as well as by the payment institutions adhering to these payment schemes.

Art. 9. - The Central Bank of Brazil, according to guidelines established by the National Monetary Council, shall:

- I-** discipline payment schemes;
- II-** discipline the constitution, operation and supervision of payment institutions, as well as the service continuity;
- III-** limit the object clause of payment institutions;
- IV-** authorize payment schemes that operate in the country;
- V-** authorize the constitution, operation, transfer of control, merger, split and acquisition of payment institution, including when it involves the participation of non-resident, either natural or legal person;
- VI-** establish conditions for any positions in statutory bodies of payment institution;
- VII-** oversee the payment schemes and apply appropriate sanctions;
- VIII-** supervise payment institutions and apply appropriate sanctions;
- IX-** to adopt preventive measures, with the goal of ensuring soundness, efficiency and proper functioning of payment schemes and payment institutions, including:
 - a)** establish minimum operating limits;
 - b)** lay down rules of operation, risk management, internal controls and governance, including corporate and control mechanisms to ensure the decision-making autonomy of direction and control bodies; and
 - c)** limit or suspend the sale of goods, the provision of payment services and some kinds of operation;
- X-** adopt measures to promote competition, financial inclusion and transparency in the provision of payment services;
- XI-** cancel, ex officio or upon request, the authorizations set forth in items IV, V and VI above;
- XII-** coordinate and control the payment schemes and the activities of payment institutions;
- XIII-** discipline fees, commissions and any other form of remuneration relating to payment services, including among members of the same payment scheme; and
- XIV-** discipline the ways of safeguarding the resources registered on a payment account.

§ 1. - The Central Bank of Brazil, in compliance with the guidelines established by the National Monetary Council, shall define situations for authorization exemption, as set forth in sub-paragraphs IV, V and VI above.

§ 2. - The Central Bank of Brazil, in compliance with the guidelines established by the National Monetary Council, shall define interoperability criteria for a payment scheme or among separate payment schemes.

§ 3. – When performing the activities set forth in sub-paragraphs VII and VIII above, the Central Bank of Brazil may require that payment schemes and payment institutions display



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documents and bookkeeping, including access in real time to the information stored in electronic systems, and any refusal will be deemed as an obstruction to supervision, subject to penalties set forth in art. 11.

§ 4. - The Central Bank of Brazil shall subject any draft regulation, in the exercise of its competencies set forth in this article, to public consultation.

§ 5. – The competencies granted to the National Monetary Council and the Central Bank of Brazil in this article shall not affect the legal duties of the Brazilian Competition Defense System, nor those of other bodies or entities responsible for sectoral regulation and supervision.

§ 6. - The Central Bank of Brazil, in compliance with the guidelines established by the National Monetary Council, will define the hypotheses that may cause the cancellation mentioned in sub-paragraph XI above and the necessary procedures.

Art. 10. - The Central Bank of Brazil, in compliance with the guidelines established by the National Monetary Council, may establish the conditions for the outsourcing of core business activities of payment schemes participants, as well as for the performance of third parties as agents of payment institutions.

§ 1. – The payment scheme owner and the payment institutions are administratively responsible for the actions of third parties hired.

§ 2. – This article shall not apply when an entity does not participate in any activity of the payment scheme and acts exclusively providing infrastructure, such as telecommunications services.

Art. 11. - Breaches of this Law and of the guidelines and standards established by the National Monetary Council and by the Central Bank of Brazil will subject the payment institutions and the payment scheme owners, as well as their managers and members of its contractual or statutory bodies, to the penalties set forth in the legislation applicable to financial institutions.

Sole paragraph. - The provisions above do not exempt payment schemes owners and payment institutions from applicable penalties, by the members of the National Consumer Protection System or the Brazilian Competition Defense System, for violation of consumer protection standards or competition law.

Art. 12. - The resources held in payment accounts:

- I- constitute separate assets, and they shall not be merged with normal payment institution's assets;
- II- cannot be pledged, and shall not be subject to any judicial restraint, such as attachment, search and seizure, due to debts undertaken by the payment institution;
- III- are not part of the payment institution assets, for the purposes of bankruptcy; and
- IV- cannot be pledged as collateral for debts assumed by the payment institution.

Art. 13. - Payment institutions are subject to Special Administration Regime, intervention and temporary extrajudicial liquidation, in accordance with the conditions set forth in the legislation applicable to financial institutions.

Art. 14. - The Central Bank of Brazil is authorized to take deposits on behalf of non-financial entities, members of the Brazilian Payments System.



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Art. 15. - The Central Bank of Brazil is authorized to establish the rules and instructions necessary to fulfil this law.

§ 1. - Within 180 (one hundred and eighty) days, the Central Bank of Brazil, upon the guidelines established by the National Monetary Council, will define the minimum requirements for the provision of the services contemplated in this law.

§ 2. - The Central Bank of Brazil is authorized to establish to the payment schemes, payment schemes owners and payment institutions already operational, a deadline for compliance with provisions of this law and with the rules and guidelines established by itself and by the National Monetary Council.

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Brasília, October 9, 2013.

DILMA ROUSSEFF