



BANCO CENTRAL DO BRASIL

RESOLUTION CMN 4,656 OF APRIL 26, 2018

Provides for the direct credit company and the peer-to-peer loan company, regulates the peer-to-peer loan and financing operations and establishes requirements and procedures for license approval, transfer of corporate control, restructuring and license revocation of the institutions mentioned therein.

The Central Bank of Brazil, in the form of art. 9 of Law 4,595, of December 31, 1964, announces that the National Monetary Council, at its meeting held on April 26, 2018, based on art. 4, items VI and VIII, of the referred Law,

R E S O L V E D :

CHAPTER I

ON THE OBJECT AND SCOPE OF APPLICATION

Art. 1. This Resolution provides for the direct credit company (SCD) and the peer-to-peer loan company (SEP), regulates the peer-to-peer loan and financing operations and establishes requirements and procedures for license approval, transfer of corporate control, restructuring and license revocation of the institutions mentioned therein.

CHAPTER II

ON DEFINITIONS

Art. 2. For the purpose of this Resolution, the following definitions apply:

I - credit representative instrument: contract or credit note, which represents the debt related to the peer-to-peer loan and financing operation through an electronic platform;

II - electronic platform: electronic system, which connects creditors and debtors through an internet website or application;

III - qualifying holding: direct or indirect participation, owned by natural or legal persons or investment funds, equivalent to 15% (fifteen per cent) or more of stocks representing the capital of the corporation; and

IV - controlling group: person or group of persons bound by voting agreement or under common control or investment fund, holding shareholder rights corresponding to the majority of the voting capital of a corporation.

Sole paragraph. The funds mentioned in the heading, item IV, can only be part of the controlling group together with a person or group of persons.

CHAPTER III

ON THE DIRECT CREDIT SOCIETY

Art. 3. The SCD is the financial institution responsible for carrying out operations of loan, financing and acquisition of credit rights, exclusively through an electronic platform, operating with its own capital.



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Paragraph 1. In addition to the operations mentioned in the heading, the SCD can only provide the following services:

I - credit analysis to third parties;

II - collection to third parties;

III - acting as an insurance representative distributing, through an electronic platform, insurance related to the operations mentioned in the heading, in accordance with the National Council of Private Insurance's (CNSP) regulation; and

IV - electronic money issuer, in accordance with the rules in force.

Paragraph 2. The SCD must include, in its legal name, the term "Sociedade de Crédito Direto", and it is forbidden to include, in its legal or trade name, terms related to other financial institutions, whether in Portuguese or in a foreign language.

Art. 4. The SCD must select potential clients according to consistent, verifiable and transparent criteria, covering aspects relevant to credit risk assessment, such as economic and financial condition, level of indebtedness, capacity to generate earnings or cash flows, payments punctuality and delays, sector of economic activity and credit limit.

Art. 5. The SCD shall not:

I - raise funds from the public, except upon issuance of shares; and

II - participate in the capital of financial institutions.

Art. 6. The SCD can only sell or assign credits related to the operations mentioned in art. 3 to:

I - financial institutions;

II - receivable investment funds (FIDC) whose quotas are offered exclusively to accredited investors, as defined by the Securities and Exchange Commission of Brazil (CVM); and

III - securitization companies that distribute the underlying assets exclusively to accredited investors, as defined by the Securities and Exchange Commission of Brazil (CVM).

CHAPTER IV ON THE PEER-TO-PEER LOAN COMPANY

Section I

On the Object of the Peer-to-peer Loan Company

Art. 7. The SEP is the financial institution responsible for carrying out the peer-to-peer loan and financing operations exclusively through an electronic platform.

Paragraph 1. In addition to the operations mentioned in the heading, the SEP can only provide the following services:

I - credit analysis for clients and third parties;

II - credit collection for clients and third parties;



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III - acting as an insurance representative distributing, through an electronic platform, insurance related to the operations mentioned in the heading, in accordance with the National Council of Private Insurance's (CNSP) regulation; and

IV - electronic money issuer, in accordance with the rules in force.

Paragraph 2. The SEP must include, in its legal name, the term “Sociedade de Empréstimo entre Pessoas”, and it is forbidden to include, in its legal or trade name, terms related to other financial institutions, whether in Portuguese or in a foreign language.

Section II

On Peer-to-peer Loan and Financing Operations through an Electronic Platform

Art. 8. The peer-to-peer loan and financing operations through an electronic platform are financial intermediation operations in which funds collected from creditors are directed to debtors, after negotiation in an electronic platform, in accordance with this Resolution.

Paragraph 1. The creditors mentioned in the heading can be:

I - natural persons;

II - financial institutions;

III - receivable investment funds (FIDC) whose quotas are offered exclusively to accredited investors, as defined by the Securities and Exchange Commission of Brazil (CVM);

IV - securitization companies that distribute the underlying assets exclusively to accredited investors, as defined by the Securities and Exchange Commission of Brazil (CVM); and

V - non-financial legal persons, with the exception of securitization companies that do not fall under the case mentioned in item IV.

Paragraph 2. The debtors mentioned in the heading can be natural or legal persons, resident and domiciled in Brazil.

Art. 9. The operations mentioned in art. 8 can only be carried out by SEP.

Art. 10. The operations mentioned in art. 8 must be carried out without risk retention, directly or indirectly, by SEP and controlled or associated companies.

Sole paragraph. The provision in the heading does not apply to the acquisition, directly or indirectly, by SEP and controlled or associated companies, of subordinated tranches of a FIDC that holds exclusively underlying receivables generated by the SEP, provided that this acquisition represents at most 5% (five percent) of the fund's assets and that it does not qualify as substantial assumption or retention of risks and benefits, in accordance with the rules in force.

Art. 11. The following procedures must be successively observed in carrying out the operations mentioned in art. 8:

I - unequivocal manifestation of will by potential creditors and debtors, within the electronic platform, to proceed with the loan and financing operation;

II - provision of funds from the creditors to the SEP;



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III - issuing or agreeing on terms, with the debtors, of the credit instrument;

IV - issuing or agreeing on terms, with the creditors, of an instrument bound to the instrument mentioned in item III; and

V - transfer of funds from the SEP to the debtors.

Paragraph 1. The instruments mentioned in items III and IV of the heading must:

I - be issued by the SEP or in its favor; or

II - have the SEP as a counterpart.

Paragraph 2. The instruments mentioned in items III and IV must contain clauses that ensure that the provision mentioned in art. 10 is observed.

Paragraph 3. The operations mentioned in art. 8 can only be considered complete after the procedures mentioned in this article have been observed.

Art. 12. The instruments mentioned in art. 11, items III and IV, must contain clauses comprising, at least:

I - the terms of the contracted loan and financing operation, including the expected return rate agreed with the creditors;

II - the rights and obligations of creditors, debtors and SEP;

III - a statement that the SEP is not jointly liable for the operation nor provides any sort of guarantee;

IV - the binding between the funds made available by the creditors to the SEP and the associated credit operation with the debtors;

V - the enforceability of the funds made available by the creditors to the SEP is subordinated to the associated credit operation payment flow;

VI - information on any guarantees provided;

VII - the terms of the transfer of funds to the creditors;

VIII - the condition that the instrument's legal effectiveness is associated with the transfer of funds to the debtors; and

IX - acknowledgement by the creditors of the risks associated with the loan and financing operation.

Sole paragraph. The terms of the transfer of funds mentioned in item VII must be established taking into consideration transparent criteria that ensure equality of rights among creditors.

Art. 13. The funds associated with the operations mentioned in art. 8 must be transferred by the SEP:

I - within five business days to the debtors, after the funds are provided by the creditors; and



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II - within one business day to the creditors, after debtors pay each installment, including in the event of advance payment.

Paragraph 1. The funds mentioned in the heading must be segregated from SEP's own funds.

Paragraph 2. The funds made available must be returned to the creditors in up to one business day after the deadline mentioned in the heading, item I, in the case that the loan and financing operation is not conducted in conformity with art. 11.

Section III On Prohibitions

Art. 14. It is forbidden for the SEP to:

I - carry out loan and financing operations with its own funds;

II - hold shares of financial institutions;

III - be jointly liable or provide any sort of guarantee to the loan and financing operations, except in the case mentioned in art. 10, sole paragraph;

IV - remunerate funds associated to the loan and financing operation or use them on its behalf;

V - transfer funds to the debtors before they are made available by the creditors;

VI - transfer funds to the creditors before the payment by the debtors;

VII - keep creditors' and debtors' funds not associated with the loan and financing operations mentioned in art. 8 in account of its ownership; and

VIII - associate the performance of the credit operation with the efforts of third parties or the debtor, as an entrepreneur.

Art. 15. The funds and the credit representative instruments associated with the loan and financing operations shall not be used, directly or indirectly, to guarantee the payment of the SEP's debts or liabilities.

Section IV On Limits

Art. 16. The creditor of the loan and financing operation mentioned in art. 8 shall not contract with the same debtor, in the same SEP, operations whose value exceeds the maximum limit of R\$15,000 (fifteen thousand reais).

Paragraph 1. In addition to the limit mentioned in the heading, the SEP can establish other limits to creditors and debtors, associated with the loan and financing operations.

Paragraph 2. The provision in this article does not apply to creditors considered as accredited investors, in accordance with the Securities and Exchange Commission of Brazil's (CVM) regulation.

Section V On the Disclosure of Information



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Art. 17. The SEP must disclose information to its clients and users on the nature and complexity of the contracted operations and the offered services, in a clear and objective language, in order to allow for an easy understanding about the flow of funds and the risks involved.

Sole paragraph. The information mentioned in the heading must:

I - be provided and kept updated in a visible place on the institution's website, accessible through the homepage, as well as through other access channels to the electronic platform;

II - be stated in contracts, advertising and publicity materials and other documents intended for clients and users; and

III - include a warning emphasizing that the peer-to-peer loan and financing operations are considered a high-risk investment and that the Credit Guarantee Fund (FGC) does not guarantee them.

Art. 18. The SEP must inform to its potential creditors the factors on which the expected return rate depends, disclosing, at least:

I - expected payment flows;

II - return rate agreed with the debtors;

III - taxes;

IV - fees;

V - insurances; and

VI - other disbursements.

Sole paragraph. In addition to the provision in the heading, the SEP must inform the potential creditors that the expected return rate also depends on losses arising from occasional debtor's defaults.

Art. 19. The SEP must disclose monthly the average default rate, by risk rating, of the loan and financing operations mentioned in art. 8, for the last twelve months.

Art. 20. The SEP must perform a risk profile analysis of potential creditors, in order to assess if they fit the risk profile of the operations mentioned in art. 8.

Section VI Additional Provisions

Art. 21. The SEP must use a credit analysis model capable of providing potential creditors with indicators that impartially reflect the risks of potential debtors and of the loan and financing operations.

Art. 22. In order to carry out the loan and financing operations mentioned in art. 8, the SEP must select potential debtors based on consistent, verifiable and transparent criteria, covering relevant aspects to the credit risk assessment, such as economic and financial condition, degree of indebtedness, capacity to generate earnings or cash flow, punctual and late payments, sector of economic activity and credit limit.

Art. 23. The charging of fees associated with the carrying out of loan and financing operations mentioned in art. 8 and to the provision of the services mentioned in art. 7, paragraph 1, are allowed, provided that they are stipulated in the contract established between the SEP and its clients and users.



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Sole paragraph. The SEP must adopt a fee policy consonant with the economic viability of the loan and financing operations, in order to promote the convergence of its self-interests and its clients' interests.

Art. 24. The SEP must monitor the operations mentioned in art. 8 and disclose information to the creditors and debtors associated with these operations.

Sole paragraph. The monitoring mentioned in the heading must be:

I - carried out by registering and controlling, in specific and individualized accounts, the cash flows between creditors and debtors and occasional partial or total default; and

II - continuously undertaken until the final settlement of the operation.

CHAPTER V

ON COMMON PROVISIONS TO THE DIRECT CREDIT COMPANY AND TO THE PEER-TO-PEER LOAN COMPANY

Section I

On the Authorization to Operate

Art. 25. The SCD and the SEP must be established as a corporation.

Art. 26. The SCD and the SEP must observe, at all times, the minimum limit of R\$1,000,000 (one million reais) in relation to the paid-up corporate capital and to the net worth.

Art. 27. Investment funds may be part of the controlling group of the SCD or of the SEP in conformity with art. 2, item IV, and sole paragraph.

Sole paragraph. The Central Bank of Brazil may require additional paid-up corporate capital and net worth, in the case that the application for authorization includes the provision in the heading.

Art. 28. The operation of the SCD or of the SEP is conditioned on previous authorization of the Central Bank of Brazil, in accordance with the provisions in this Resolution and in the regulation currently in force.

Art. 29. The following are requirements for the examination of the licensing application of the SCD and the SEP:

I - writing and filing the articles of incorporation, in accordance with the legislation in force;

II - payment and deposit of the corporate capital at the Central Bank of Brazil, in accordance with Law 4,595 of December 31, 1964; and

III - election or appointment of members of bodies, in accordance with the regulation in force.

Art. 30. The Central Bank of Brazil may require the execution of a shareholders' agreement, covering a clear and explicit definition of the direct or indirect controlling group of the applicant institution.

Art. 31. The procedures for the licensing process of the SCD and SEP must be commenced with the presentation, to the Central Bank of Brazil, of:

I - substantiated justification;



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II - identification of the persons that make up the economic group of the institution and that could exercise direct or indirect influence on its business;

III - identification of members of the controlling group of the institution and of holders of qualified capital participation in the institution, with their respective shareholdings;

IV - information regarding the type of fund, conditions of shares trading, number of shareholders, list of the six largest shareholders, total market value and portfolio composition, operation areas, past results, time horizon and divestment policy, in the case of the provisions mentioned in art. 27;

V - identification of origin and respective financial transactions of the resources to be used in the project by the members of the controlling group and the holders of qualified participation;

VI - statements and documents that attest the compatibility between the economic and financial standing of the project and its size, nature and objective, to be satisfied, at the discretion of the Central Bank of Brazil, by the controlling group or, individually, by each member of the controlling group;

VII - express authorization by all members of the controlling group and by all holders of qualified capital participation:

a) to the Brazilian Internal Revenue Service, to supply the Central Bank of Brazil with information related to the last three fiscal years, for exclusive use in the respective proceedings for licensing; and

b) to the Central Bank of Brazil, to access the information in any public or private database and information system, including proceedings and procedures, either judicial or administrative, of any kind; and

VIII - statements and documents, signed by the members of the controlling group and the holders of qualified participation, that attest the absence of restrictions that may, according to the Central Bank of Brazil's judgment, affect the reputation of the project, observing, where applicable, the requirements mentioned in arts. 2 and 3 of the regulation annex II to the Resolution 4,122 of August 2, of 2012.

Paragraph 1. The substantiated justification mentioned in the heading, item I, must include, at least:

I - type of institution (SCD or SEP);

II - corporate capital;

III - list of the services provided, including interest in issuing electronic money;

IV - target market;

V - location of headquarter and planned facilities;

VI - market opportunities that justify the project;

VII - competitive advantages of the institution;

VIII - manifestation of interest in opening a settlement account from the beginning of its operations; and

IX - systems and technological resources.



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Paragraph 2. It is forbidden for the administrator and manager of the investment fund that is part of the controlling group or holds qualified participation in the SCD or SEP to hold offices in the institution's management bodies.

Paragraph 3. In the case of funds whose administrator or manager is a legal person, the prohibition mentioned in paragraph 2 applies to the members of these entities' management bodies.

Section II

On the Revocation of the License

Art. 32. The dissolution of the SCD or SEP or the changing of its corporate goal, which results in the company losing the characteristics of an institution that integrates the financial system, implies the revocation of the respective license.

Art. 33. The following are indispensable requirements for the revocation, upon request, of the license of the institutions mentioned in this Resolution:

I - deliberation in general assembly;

II - documentation of the respective proceedings with the Central Bank of Brazil under the terms and conditions set by it.

Sole paragraph. The provision in the heading does not apply to the extinction of a company resulting from a merger, split or incorporation, provided that the resulting or succeeding institution is licensed by the Central Bank of Brazil.

Art. 34. The Central Bank of Brazil may require, previously to the evaluation of the requested revocation of the license of the SEP, the completion of the following procedures:

I - transfer of the operations carried out through an electronic platform to another SEP; and

II - publication of statement of purpose under the terms and conditions set by the Central Bank of Brazil.

Art. 35. The Central Bank of Brazil may revoke the license of the SCD or of the SEP, when confirmed, at any time, one or more of the following situations:

I - lack of usual practice of the operations mentioned in arts. 3 and 7;

II - lack of operating activity;

III - institution not located at the address informed to the Central Bank of Brazil; and

IV - interruption, for more than four months, without justification, of the delivery to the Central Bank of Brazil of financial statements required by the regulation in force.

Paragraph 1. The Central Bank of Brazil, prior to the revocation mentioned in the heading, must:

I - communicate to the public its intention to revoke the license of the company, in order to allow the presentation of objections within thirty days; and

II - initiate administrative proceedings, notifying the institution at the address informed to the Central Bank of Brazil.



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Paragraph 2. In the case mentioned in the heading, item III, or not being found the interested party, the notification mentioned in Paragraph 1, item II, will be carried out by means of a public notice.

Section III

On the Authorization to Transfer Corporate Control and to Restructure

Art. 36. The following actions depend on the authorization of the Central Bank of Brazil:

I - The transfer of corporate control and any change, direct or indirect, in the controlling group, which may imply an alteration in the effective management of the institution's business, caused by:

a) shareholders' agreement;

b) inheritance and acts related to freedom of disposition by will, such as donation, advance on inheritance and establishment of usufruct; and

c) act, individually or jointly, by any person, natural or legal, or group of persons representing common interest;

II - merger, split or incorporation; and

III - change of corporate goal.

Sole paragraph. The provision mentioned in the heading, item I, does not apply to transfers of corporate control to legal entities in which no new legal person joins the institution's group of direct or indirect owners of controlling interest.

Art. 37. The requests mentioned in art. 36 must observe the following conditions:

I - in the cases mentioned in art. 36, item I, the documents must be presented and the conditions mentioned in art. 31, items II to VIII, must be met; and

II - in the cases mentioned in art. 36, items II and III, the operation must be reasoned.

Sole Paragraph - The Central Bank of Brazil, in the analysis of the proceedings mentioned in the heading, may require the presentation of additional documents and the observance of other requirements mentioned in art. 31.

Section IV

On the Notification for a Change in Qualifying Holding

Art. 38. The Central Bank of Brazil must be notified, in accordance with the regulation in force and within fifteen days of the act or decision, of the following operations:

I - entry of a shareholder with qualified capital participation or with corresponding rights to qualified capital participation;

II - the assumption of the condition of shareholder owning a qualified capital participation;

III - increase of the qualified capital participation equal to or greater than 15% (fifteen per cent) of the institution's capital, in an aggregate form or not.



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Paragraph 1. In the case mentioned in the heading, the Central Bank of Brazil may require the observance of the provision mentioned in art. 31, items V to VIII, in order to identify the origin of resources and to evaluate the interested party's reputation.

Paragraph 2. The Central Bank of Brazil will have sixty days from the date of receiving the notification mentioned in the heading to adopt the provisions mentioned in paragraph 1.

Paragraph 3. After examination of the aspects of the operation mentioned in paragraph 1 and if found any irregularity, the Central Bank of Brazil may determine the regularization of the operation through its undoing or divestiture of the qualified capital participation.

Section V Additional Provisions

Art. 39. The Central Bank of Brazil, during the examination of applications mentioned in this Resolution, may:

I - request any additional documents and information deemed necessary for the matters referred to in this Resolution, even to foreign authorities; and

II - call owners of controlling interest and administrators for technical interviews, as well as to provide clarification and additional information.

Art. 40. The Central Bank of Brazil, during the examination of the application, may reject requests related to the matters referred to in this Resolution, if it ascertains:

I - circumstances that, according to the Central Bank of Brazil's judgment, may affect the reputation of members of the controlling group and of holders of qualified participation, observing the requirements mentioned in the regulation in force;

II - falsehood in statements or documents presented in the initiation of the proceedings;

III - discrepancy between the statements and documents presented in the initiation of the proceedings and facts or data ascertained during the analysis;

IV - evidence that leads to the conclusion that the project is not viable economically or technically; and

V - refusal to supply the information requested about the investment fund that is part of the controlling group or evidence of concealment of the true condition of the shareholders and other interested parties, in the case mentioned in art. 27.

Sole Paragraph. In the cases mentioned in this Article, the Central Bank of Brazil will determine a deadline for the interested parties to submit justifications.

Art. 41. The Central Bank of Brazil may close requests related to the subjects of this Resolution when additional requests of document presentation, provision of information, attendance at technical interviews or other requests related to the proceedings are not met within the indicated deadline.

CHAPTER VI FINAL PROVISIONS



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Art. 42. Resolution 3,921 of November 25, 2010, is amended as follows:

"Art. 1. The financial institutions and other institutions licensed by the Central Bank of Brazil, with the exception of credit unions, credit societies to the micro and small enterprises, peer-to-peer loan companies and direct credit companies, must implement and maintain the remuneration policy of administrators in accordance with the provisions of this Resolution.

....." (NT)

Art. 43. The Regulation Annex II to Resolution 4,122, of 2012, is amended as follows:

"Art. 12. The Central Bank of Brazil may determine the withdrawal of members of statutory and contractual bodies with a valid mandate if it is ascertained, at any time, circumstances either pre-existing or subsequent to the election or appointment that characterize noncompliance of the provisions mentioned in arts. 2 and 3 of this Regulation Annex II." (NT)

Art. 44. Resolution 4,538 of November 24, of 2016, is amended as follows:

"Art. 1.

Sole paragraph.

.....

II - to financial institutions and other institutions licensed by the Central Bank of Brazil under extrajudicial liquidation;

III - to purchasing pool companies and to payment institutions, which must follow the rules enacted by the Central Bank of Brazil, in accordance with its legal competence;

IV - to the direct credit companies; and

V - to the peer-to-peer loan companies." (NT)

Art. 45. Resolution 4,571 of May 26, of 2017, is amended as follows:

"Art. 3.

.....

X - peer-to-peer loan and financing operations through an electronic platform; and

XI - other operations or credit-like agreements, recognized as such by the Central Bank of Brazil.

....." (NT)

"Art. 4.

.....

XVIII - other types of institutions under the rules enacted by the Central Bank of Brazil, authorized to carry out or to acquire credit operations mentioned in this Resolution, in accordance with the regulation enacted by the Central Bank of Brazil;



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XIX - other types of institutions authorized to carry out or to acquire credit operations mentioned in this Resolution and subject to the regulation of a body other than the Central Bank of Brazil, provided that the provisions mentioned in paragraphs 2 and 3 are being followed;

XX - direct credit company; and

XXI - peer-to-peer loan company.

.....” (NT)

“Art. 15.

.....

II - differentiated schedules for the beginning of compliance with the provision mentioned in arts. 4, items XX and XXI, 5, 6, 7, 9 and 10, paragraphs 1 to 4, of this Resolution.” (NT)

Art. 46. Resolution 4,588 of June 29, of 2017, is amended as follows:

“Art. 4. Internal auditing activities are allowed in credit unions, brokerage firms, exchange brokers, broker dealers, credit societies to the micro and small enterprises, credit, financing and investment societies, leasing companies, savings and loan associations, mortgage companies, direct credit companies and peer-to-peer loan companies:

.....” (NT)

Art. 47. The Central Bank of Brazil is authorized to issue rules and adopt the necessary measures for the execution of the provisions of this Resolution.

Art. 48. The art. 8, paragraph 3, of Resolution 4,122, of 2012, is revoked.

Art. 49. This Resolution comes into force on its issuance date.

Ilan Goldfajn
Governor of the Central Bank of Brazil