



# BANCO CENTRAL DO BRASIL

CMN RESOLUTION no. 4,970, OF NOVEMBER 25, 2021

Regulates the authorization proceedings related to the functioning of the institutions it specifies.

The Central Bank of Brazil, pursuant to article 9 of Law 4,595, of December 31, 1964, makes it public that the National Monetary Council, in a session held on November 25, 2021, based on articles 4, item VIII, and 10, item XI, of the aforementioned Law, in Law 4728, of July 14, 1965, in article 20, paragraph 1, of Law 4,864, of November 29, 1965, in article 1 of Decree-Law 70, of November 21, 1966, in Law 6,099, of September 12, 1974, in article 7 of Decree-Law 2,291, of November 21, 1986, in article 1, paragraph 4, of Law 6,855, of November 18, 1980, in article 1 of Provisional Measure 2,192-70, of August 24, 2001, in articles 1, paragraph 1, and 12 of Complementary Law 130, of April 17, 2009, and in article 1, item II, of Law 10,194, of February 14, 2001,

RESOLVED:

## CHAPTER I OBJECT AND SCOPE OF APPLICATION

Art. 1 This Resolution regulates the authorization proceedings related to the operation of the following institutions:

- I - development agencies;
- II - savings and loan associations;
- III - commercial banks;
- IV - foreign exchange banks;
- V - development banks;
- VI - investment banks;
- VII - universal banks;
- VIII - mortgage companies;
- IX - credit unions;
- X - leasing companies;
- XI - foreign exchange broker companies;
- XII - security and stock broker companies;



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XIII - direct credit companies;

XIV - credit, funding and investment companies;

XV - real estate credit companies;

XVI - micro-entrepreneur and small sized enterprise credit companies;

XVII - security and stock dealer companies; and

XVIII - peer-to-peer loan companies.

Sole paragraph. The provisions of this Resolution apply to federal public financial institutions, with the exception of the authorization referred to in item V of article 3.

### CHAPTER II REQUIREMENTS

Art. 2 The requirements for the authorizations referred to in this Resolution are:

I - economic and financial capacity of the owners of controlling interest, individually or jointly, compatible with the capital necessary for the structuring and operation of the institution, as well as the contingencies arising from market dynamics;

II - lawful origin of the funds used in the payment of the capital stock, in the acquisition of control and qualified participation;

III - economic and financial feasibility of the venture;

IV - compatibility of the information technology infrastructure with the complexity and risks of the business;

V - compatibility of the corporate governance structure with the complexity and risks of the business;

VI - unblemished reputation of occupants of positions in bodies prescribed by bylaws or articles of association, owners of controlling interest and holders of qualified participation, in the case of natural persons;

VII - knowledge, by the administration, of the business area, the segment in which the institution intends to operate, the market dynamics, the sources of the operating funds, the management of activities and the risks associated with them;

VIII - technical qualification of administrators, compatible with the functions to be performed during the term of office; and

IX - meeting the minimum capital and equity requirements provided for in the regulations in force.

Paragraph 1 For the purposes of the provisions of this Resolution, the administration comprises the managing partners, the members of the executive board and the members of the board of directors, if any.



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Paragraph 2 For demonstration of the requirement referred to in item III of the heading, the Central Bank of Brazil may require the submission of a business plan.

Paragraph 3 When confirming the requirement referred to in item IV of the heading, the Central Bank of Brazil may accept technical certification issued by a qualified independent company.

### CHAPTER III AUTHORIZATIONS

Art. 3 The following depend on authorization from the Central Bank of Brazil:

I - the operation of the institution, subject to compliance with the requirements set out in article 2;

II - the transfer or change of corporate control, subject to compliance with the requirements set forth in items I, II and VI of article 2 and the conditions provided for in Chapters IV and V, as well as the requirement provided for in item III of article 2, in the cases of modification of strategic or operational nature;

III - the merger, spin-off or amalgamation of an institution listed in article 1, as well as the dismemberment of a credit union, subject to compliance with the requirements set out in items III and IX of article 2;

IV - corporate transformation;

V - the inauguration and holding office of individuals elected or appointed to bodies prescribed by bylaws or by articles of association, subject to compliance with the requirements set forth in items VI and VIII of article 2 and the conditions provided for in Chapter V;

VI - modification in the value of the capital stock, except for credit unions, subject to compliance with the requirement provided for in item II of article 2, in the event of an increase, or with the requirements provided for in items III and IX of article 2, in the case of reduction of the capital stock;

VII – modification of the corporate name;

VIII - modification of corporate purpose to another type of institution that is part of the National Financial System, subject to compliance with the requirements set forth in items III and IX of article 2;

IX - the creation or extinction of an operating portfolio, by a universal bank, being the creation of the portfolio subject to compliance with the requirements set forth in items III and IX of article 2;

X - the practice of leasing operations by a development agency, subject to compliance with the requirements set forth in items III and IX of article 2;

XI - amendment of the bylaws or articles of association;



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XII – change in category, in the case of credit unions, subject to compliance with the requirements set out in items III and IX of article 2; and

XIII - transfer of the headquarters to another municipality.

Paragraph 1 The authorization provided for in item VI of the heading does not apply to the capital increase arising from:

I - conversion of instruments authorized by the Central Bank of Brazil to make up the Complementary Capital or Tier II of the Regulatory Capital (PR) of the institution, provided that such change does not lead to changes in the bylaws or in the institution's control group; or

II - incorporation of capital reserves and realized profits.

Paragraph 2 The Central Bank of Brazil, to assess compliance with the requirements provided for in items I, II and VI of article 2, may require the members of the control group, holders of qualified participation and those elected or appointed to hold office in bodies prescribed by bylaws or articles of association, express authorization for:

I - the Brazilian Federal Revenue Service to provide the Central Bank of Brazil with copies of the declarations of income, assets and rights and debts and encumbrances, relating to the last three fiscal years, for exclusive use in the authorization proceedings referred to in the heading; and

II - the Central Bank of Brazil to access information about the persons mentioned in paragraph 2 contained in any public or private registration and information system, including legal and administrative lawsuits and proceedings and police investigations.

Paragraph 3 The Central Bank of Brazil may condition the modification of corporate purpose, the extinction of the operational portfolio and the change of category, to the settlement of the unauthorized liability transactions to the intended category or for the intended purpose.

Paragraph 4 In the authorization for the operation of a credit union, in the event of a commitment to membership, there must be a statement from the respective central cooperative or confederation.

Art. 4 The Central Bank of Brazil, in the analysis of the proceedings mentioned in this Resolution, considering the circumstances of each concrete case and the context of the facts, may waive, exceptionally and in the event of duly justified public interest, the compliance with the requirements and conditions established for entry as controller of the institutions referred to in article 1, or for holding office in bodies prescribed by bylaws or articles of association.

Art. 5 The following are subject to the absence of objection by the supervisor of the country of origin:

I - the operation, in the Country, of a subsidiary of a financial institution headquartered abroad; and

II - the entry of a financial institution headquartered abroad as a direct or indirect owner of controlling interest of an institution mentioned in article 1.



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Art. 6 The Central Bank of Brazil, before or after issuing the authorizations provided for in article 3, may:

I - request any additional documents and information that it deems necessary, as well as request them from other public administration bodies and authorities abroad; and

II - call for an interview the owners of controlling interest, holders of qualified participation and the administrators of the institutions referred to in article 1 and the founders of credit unions.

Art. 7 The Central Bank of Brazil will disclose, with a view to enabling the general public to express any objections, information regarding applications of interest to the institution, including, at least:

I - the names of persons interested in assuming the status of owners of controlling interest;

II - the names of those elected or appointed to management positions; and

III - the cancellation of authorization to operate.

Paragraph 1 The disclosures referred to in items I and II of the heading shall be restricted to persons whose names have not been previously approved by the Central Bank of Brazil.

Paragraph 2 The information referred to in the following are excepted from mandatory disclosure:

I - item I of the heading, in the case of development agencies and cooperative banks;

II - item II of the heading, in the case of credit unions; and

III - item III of the heading, in the case of development agencies and credit unions.

Paragraph 3 Considering the nature and size of the institution, as well as the complexity and risks involved in the authorization, the Central Bank of Brazil may, if deemed necessary, disclose additional information to that provided for in this article, including those exempted under the terms of paragraphs 1 and 2.

Paragraph 4 The deadlines for the presentation of objections by the public as a result of the disclosure of information referred to in the heading shall be defined by the Central Bank of Brazil.

### CHAPTER IV

#### CORPORATE CONTROL AND QUALIFIED PARTICIPATION

Art. 8 For the purposes of this Resolution, the following definitions apply:

I - owner of controlling interest: a person who, individually or together with other members of a controlling group in which he or she participates, holds shareholder rights



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corresponding to the majority of the voting capital of a corporation or 75% (seventy-five percent) of the capital stock of a limited liability company:

a) in the case of a natural person, directly or indirectly; or

b) in the case of a legal entity, directly or, if indirectly, provided that it appears in the uppermost level of the branches of the institution's control chain and its owners of controlling interest are not subject to identification as provided for in this item;

II - controlling group: group of people linked by vote agreement or under common control that assume the status of owner of controlling interest of the institution, directly or indirectly;

III - holder of qualified participation: natural or legal person that, not being an owner of controlling interest, holds:

a) direct participation equivalent to 15% (fifteen percent) or more of the institution's voting capital;

b) direct participation equivalent to 10% (ten percent) or more of the institution's total capital, when such capital does not consist entirely of voting capital;

c) control of a legal entity holding the interest provided for in indent "a" or indent "b"; or

d) participation in the capital of the institution's controlling legal entity, in the percentage provided for in indent "a" or in the percentage provided for in indent "b".

Paragraph 1 The last branch level of the institution's control chain, in the case of direct or indirect participation, is the financial institution or similar institution headquartered abroad responsible for the global consolidation of the financial group.

Paragraph 2 The definitions of owner of controlling interest and holder of qualified participation apply to the beneficial owners of voting rights.

Paragraph 3 In cases where the control of the company is not identified according to the criteria mentioned in items I and II of the heading, the Central Bank of Brazil may use other elements to identify the owners of controlling interest, including:

I - the majority of votes in the resolutions of the meeting or assembly and the power to elect the majority of administrators; or

II - effectiveness in conducting social business.

Paragraph 4 The Central Bank of Brazil may require the execution of a stockholders or quotaholders agreement, contemplating the express definition of corporate control, direct or indirect.

Paragraph 5 For the purposes of the provisions of this article, the possible attribution of plurality vote to one or more classes of common stocks shall be considered.



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Art. 9. Direct corporate participation that implies control of the institutions referred to in article 1 may only be exercised by:

I - natural persons;

II - institutions authorized to operate by the Central Bank of Brazil;

III - financial or similar institutions headquartered abroad; or

IV - legal entities headquartered in the country whose exclusive corporate purpose is the equity interest in institutions authorized to operate by the Central Bank of Brazil.

Paragraph 1 Participation in the control of institutions referred to in article 1 of non-profit persons who, on the effective date of this Resolution, already participate in the control of institutions authorized to operate by the Central Bank of Brazil.

Paragraph 2 The provisions of the heading of this article do not apply to:

I - development agencies;

II - institutions created before November 28, 2002, for as long as the control structure existing on that date lasts.

Art. 10. The corporate control of direct credit companies and peer-to-peer loan companies, in addition to the hypotheses provided for in article 9, may be exercised by an investment fund:

I - in isolation, only in the indirect modality, through a legal entity headquartered in Brazil, whose exclusive corporate purpose is the equity interest in financial institutions and other institutions authorized to operate by the Central Bank of Brazil; or

II - together with a person or group of people.

Paragraph 1 In the case provided for in the heading, the Central Bank of Brazil may require additional paid-in capital and equity.

Paragraph 2 Investment funds set up abroad may only exercise control as provided for in item I of the heading if there is a supervisory authority responsible for their supervision.

Art. 11. The provisions of this Chapter do not apply to credit unions and savings and loan associations.

### CHAPTER V

#### INAUGURATION AND HOLDING OFFICE IN BODIES PRESCRIBED BY BYLAWS OR BY ARTICLES OF ASSOCIATION AND ASSUMPTION OF THE CONDITION OF MEMBER OF THE CONTROLLING GROUP OR HOLDER OF QUALIFIED PARTICIPATION

Art. 12. The evidence of compliance with the requirement of unblemished reputation, mentioned in item VI of article 2, shall take into account the existence of:

I - criminal process or police investigation;



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II - judicial or administrative proceedings related to the National Financial System or the Brazilian Payments System;

III - proceedings relating to insolvency, liquidation, intervention, bankruptcy or judicial recovery;

IV - default of liabilities; and

V - other situations, occurrences or similar circumstances.

Sole paragraph. In analyzing the situations and occurrences provided for in the heading, the relevance, severity, recurrence and circumstances of each case will be considered.

Art. 13. Evidence of compliance with the requirement for technical qualification of administrators, mentioned in item VIII of article 2, involves the skills and qualifications necessary for the exercise of functions, compatible with the nature, size, complexity and risks incurred by the institution.

Sole paragraph. Evidence of technical qualification mentioned in the heading is waived in cases of administrators serving a term in the institution itself or in another institution that is part of the prudential conglomerate in which it participates, provided that it is previously authorized by the Central Bank of Brazil, unless otherwise determined by that authority.

Art. 14. The following are conditions for holding office in bodies prescribed by bylaws or articles of association and to assume the status of owner of controlling interest or holder of qualified participation in the institutions referred to in article 1, in addition to others required by the legislation and regulations in force:

I - being resident in the country, for management positions;

II - not being prevented by special law, nor convicted of a bankruptcy crime, tax evasion, malfeasance, active or passive corruption, concussion, embezzlement, crime against the popular economy, public faith, property or the National Financial System, or sentenced to a penalty that bars, even temporarily, access to public office;

III - not being declared disqualified or impeded from holding office in bodies prescribed by bylaws or articles of association in institutions authorized to operate by the Central Bank of Brazil or in complementary pension entities, insurance companies, capitalization companies, publicly-held companies or entities subject to the supervision of the Securities Commission; and

IV - not being declared bankrupt or insolvent.

Art. 15. The bylaws or articles of association of the institutions referred to in article 1 shall contain a clause explaining that the term of office of:

I - persons occupying positions in their bodies prescribed by bylaws or articles of association, with the exception of non-permanent bodies, will extend to the inauguration in office of the new elected or appointed members; and





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II - elected administrators shall not exceed four years, the reelection being allowed in the case of institutions established as a limited liability company.

Art. 16. If the person elected or appointed to a position in bodies prescribed by bylaws or articles of association is not authorized by the Central Bank of Brazil, the institution shall, within thirty days from the date on which the decision of rejection becomes final, carry out the election or appointment of the replacement of the rejected person.

Sole paragraph. The determination provided for in the heading is waived if the minimum number of members for the respective positions provided for in the bylaws or articles of association is met.

Art. 17. The temporary removal of a member of a body prescribed by bylaws or articles of association, determined by the enforcement action instituted pursuant to the legislation in force, does not exclude the removal from the scope of the prohibitions applicable to occupants in office.

Art. 18. The Central Bank of Brazil may determine the removal of members of bodies prescribed by bylaws or articles of association with a mandate in force in case of circumstances that characterize non-compliance with the requirement referred to in item VI of article 2 and with the conditions provided for in article 14 of this Resolution.

### CHAPTER VI

#### FILING, REJECTION AND REVIEW OF AUTHORIZATIONS

Art. 19. With respect to the applications for authorization referred to in this Resolution, the Central Bank of Brazil may:

I – file the application, without consideration of the merits of the request, when:

a) it verifies that the object or elements that serve as the basis for the request have been changed in the course of the process;

b) it identifies non-compliance with the deadlines provided for in the regulations in force;

c) it identifies that the requirements to complement the documentation of proceedings were not met, within the established period;

d) the owners of controlling interest, holders of qualifying holdings, founders, in the case of credit unions, or administrators fail to respond to the call of the Central Bank of Brazil for an interview; or

e) it identifies that the documentation of proceedings does not comply with the format required by current regulations.

II - reject, in case it identifies:



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a) circumstances that may affect the reputation of those occupying positions in bodies prescribed by bylaws or articles of association, owners of controlling interest or holders of qualified participation;

b) falsehood or omission in the statements and documents presented in the documentation of proceedings or discrepancy between them and the facts or data found in the analysis; or

c) non-compliance with any of the requirements or conditions established in this Resolution, or failure of the interested parties to prove compliance with these requirements or conditions.

Sole paragraph. In the cases referred to in item II of the heading, the Central Bank of Brazil, prior to the decision, may grant a period to interested parties for manifestation.

Art. 20. The Central Bank of Brazil may review the authorization decision, considering the relevance of the facts, based on the circumstances of each case and the public interest, if it finds:

I - falsehood or omission in the statements and documents presented in the documentation of proceedings or discrepancy between them and the facts or data found; or

II - circumstances prior to the decision capable of affecting the assessment related to compliance with the requirements and conditions for approvals and authorizations.

Paragraph 1 In the event of transfer of control, corporate reorganization, assumption of the status of owner of controlling interest or holder of qualified participation and in the event of one of the situations provided for in the heading, the Central Bank of Brazil may determine that the transaction be regularized, including through its undoing or sale of the participation.

Paragraph 2 In the cases described in the heading, the Central Bank of Brazil must notify the institution to comment on the irregularity found.

Paragraph 3 The competent registry body will be notified of the measure adopted by the Central Bank of Brazil.

### CHAPTER VII

#### CANCELLATION OF AUTHORIZATION

Art. 21. The cancellation of an authorization will occur in the following cases:

I - at the request of the institution; and

II - *ex officio*, by the Central Bank of Brazil.

Paragraph 1 In the event of extinction of the institution resulting from merger, total spin-off or amalgamation, the procedures relating to the cancellation of authorization to



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operate are waived, provided that the resulting or successor company is an institution authorized to operate by the Central Bank of Brazil.

Paragraph 2 The Central Bank of Brazil may condition the cancellation referred to in item I of the heading to the liquidation or transfer of operations that are private or permitted to the institution by reason of the respective authorization.

Paragraph 3 The dissolution of the company or the change of its corporate purpose, which results in its mischaracterization as a company that is part of the financial system, implies the cancellation of the respective authorization for operation, pursuant to item I of the heading.

Art. 22. The institution must disclose to its clients, through its website and on its premises, that it intends to apply for the cancellation of authorization to operate, at least thirty days in advance of the date of said request.

Art. 23. The Central Bank of Brazil may effect the cancellation referred to in item II of the heading of article 21 of this Resolution when one or more of the following situations are found at any time:

I - lack of usual practice of the activity object of authorization;

II - failure to locate the institution at the address informed to the Central Bank of Brazil;

III - interruption, for more than four months, without justification, in sending the statements, maps and information required by the regulations in force to the Central Bank of Brazil; or

IV - non-compliance with the business plan during its coverage period, not justified in a satisfactory manner, at the discretion of the Central Bank of Brazil.

Paragraph 1 The Central Bank of Brazil, prior to the cancellation provided for in this article, shall:

I - disclose to the public its intention to cancel the respective authorization, with a view to the possible presentation of objections within a period of thirty days;

II - notify the institution to manifest in relation to its intention to cancel; and

III - consider the risks of cancellation for the stability of the National Financial System, for popular savings and for the institution's operational creditors.

Paragraph 2 Once the cancellation referred to in this article has been effected, the Central Bank of Brazil will notify the competent registry body.

Paragraph 3 In the case of an institution subject to the extrajudicial liquidation regime, the cancellation provided for in this article will occur at the end of the regime, except in the event of transfer of corporate control of the institution.



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Art. 24. The following operations must be communicated to the Central Bank of Brazil:

I – assumption of the status of holder of qualified participation; and

II - change in capital resulting from the conversion of instruments authorized by the Central Bank to compose the Complementary Capital or Level II of the Regulatory Capital (PR) of the institution, as dealt with in item I of paragraph 1 of article 3.

Paragraph 1 In the event of the situation described in item I of the heading, the Central Bank of Brazil may, within sixty days of communication, demand proof of compliance with the requirements provided for in items II and VI of article 2 and the conditions referred to in article 14.

Paragraph 2 After examining the aspects of the operation referred to in item I of the heading and verifying non-compliance with the applicable requirements, the Central Bank of Brazil may determine its cancellation or the sale of the qualified participation.

### CHAPTER IX GENERAL PROVISIONS

Art. 25. The institutions referred to in article 1 that are established as a limited liability company, when permitted by the legislation and regulations in force, shall provide in their bylaws or articles of association that the company shall be governed by the law of corporations, pursuant to article 1,053, sole paragraph, of Law 10,406, of January 10, 2002 (Civil Code), including with regard to the retention of profits and the constitution, reversal and use of reserves.

Art. 26. The Central Bank of Brazil may carry out a pre-operational inspection of the institution in order to assess the compatibility between the implemented organizational structure and the requirements provided for in article 2, items III to V.

Sole paragraph. When incompatibility between the existing organizational structure and the requirements provided for in article 2, items III to V, is verified, the Central Bank of Brazil will determine a period for correction, after which, in case of non-compliance, it will reject the request.

Art. 27. The Central Bank of Brazil may issue the regulation and adopt the measures necessary to implement the provisions of this Resolution.

Sole paragraph. In exercising the competence provided for in the heading, the Central Bank of Brazil will consider the purpose of the authorization, the nature and size of the institution, as well as the complexity and risk of the business.

Article 28. The provisions of this Resolution apply to authorization requests filed with the Central Bank of Brazil as of the entry into force of this regulatory act.



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## CHAPTER X FINAL PROVISIONS

Art. 29. The following are revoked:

I - Resolution 3,166, of January 29, 2004;

II - Resolution 4,122, of August 2, 2012;

III - Resolution 4,279, of October 31, 2013;

IV - Resolution 4,308, of January 30, 2014;

V - the following provisions of Resolution 4,434, of August 5, 2015:

a) articles 2 to 12;

b) article 14;

c) articles 47 to 51; and

d) article 65;

VI - the following provisions of Resolution 4,656, of April 26, 2018:

a) articles 27 to 41-A; and

b) article 43; and

VII - the following provisions of Resolution 4,721, of May 30, 2019:

a) articles 8 and 9; and

b) articles 12 to 21.

Art. 30. This Resolution enters into force on September 1, 2022.

Roberto de Oliveira Campos Neto  
President of the Central Bank of Brazil