

Welcome





LA PRIVACY & CYBERSECURITY SYMPOSIUM

Fintechs and the Brazilian regulatory scenario

Presented by

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BANKING SERVICES AND THE DIGITAL ENVIRONMENT

Parties Identification

How to identify the agent that operated the computer?

Currently, **only digital signatures and certifications under ICP-Brasil are fully accepted for legal purposes and have a presumption of authenticity**, although other means have not been excluded.

This solution is now **very expensive for the majority of the population**.

Need for more flexible legislation that gives the same level of security and **presumption of veracity for other types of digital signatures**, such as biometric authentication.

Digital Evidence

Brazilian legislation admits digitalized reproductions as evidence (article 225 of the Civil Code, articles 369 and 425 of the Code of Civil Procedure).

Jurisprudence: **Electronic contracts are valid means of proof.**

Extrajudicial enforcement instrument? is not yet settled in the jurisprudence.

It is possible to find decisions that **consider the electronic contract an extrajudicial enforcement instrument only if signed through digital certification (ICP-Brasil)**, including by two witnesses.

Electronic credit Instruments

P2P lending - there is currently a legislative gap regarding the possibility of issuing bank credit notes (*Cédula de Crédito Bancário - CCB*) electronically.

Documentary evidence of the credit instrument and the need to present the physical form of the bank credit note.

Electronic trade bills - exception provided as set forth in Law 9,492/97 (they may be issued electronically and have the same value as physical bills).

Bank credit note issued electronically may face difficulties to be judicially enforced (execution proceeding), even if signed through digital certification means.



BANKING SERVICES AND THE DIGITAL ENVIRONMENT - REGULATION



- CVM does not yet have specific regulations addressing the issue of digital documents.
- However, CVM has been positively positioning itself on issues related to new technologies, such as the **forecasting of distance voting at shareholders' meetings** of publicly-held companies (*Instrução* CVM No 561/15) and the creation of the digital protocol for sending of digital documents to the CVM in 2016.
- In addition, CVM established the **Innovation Technologies Center (Fintech Hub)** through *Portaria* CVM / PTE No. 105/16, with the purpose of monitoring the development and application of new financial technologies in the scope of the securities market.
- On 03/23/2017, the **CVM's Digital Governance Committee** was established through the *Portaria/ CVM / PTE* no. 31, with the purpose of developing and monitoring a digital governance strategy for CVM.
- *Resolução* CMN nº 4.474/16 and *Circular* BACEN nº 3.789/16 sets forth the procedures and technical parameters for the **creation and management of digitalized documents related to operations and transactions carried out by financial institutions** and other institutions authorized to operate by BACEN, as well as for the disposal of physical matrices of digitalized and electronically stored documents.
- In order to ensure the authenticity and integrity of the digitalized document, a legally accepted digital signature standard (*ICP-Brasil*) should be used to allow digital signatures to be checked during the entire period of validity of the document.
- Financial institutions and other institutions authorized by BACEN may discard the source of the document after its digitalization. However, **prior to the disposal, institutions must ascertain whether the elimination of the source document may, directly or indirectly, prevent, harm, hinder or mitigate, in any way, the judicial or extrajudicial protection of the rights and interests** that arise, directly or indirectly, of the source document, including with regard to the presentation of evidence.



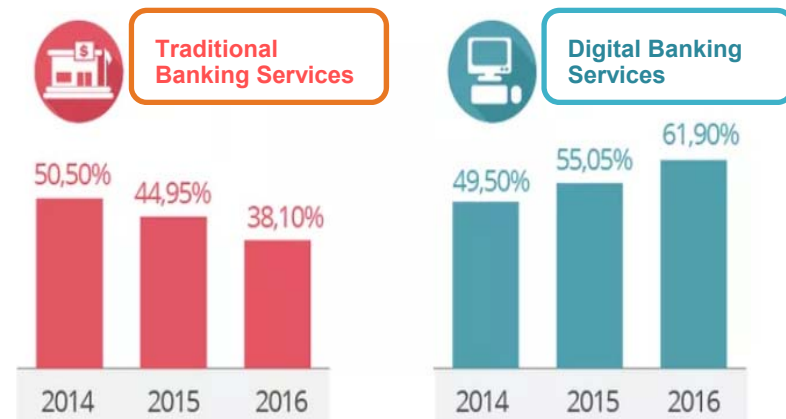
BANKING SERVICES AND THE DIGITAL ENVIRONMENT - PROS

- Raise on digital banking service provision rate
- Fintechs objective
- Efficiency and convenience related to digital banking
- Bank agency operation
- Digital banking service and profit
- Brazilian legislation admission of digitalize documents as legal evidence

Supreme Court (STF) Precedent (Second Chamber, Ordinary Appeal. nº 95689/2008)

The term "**document**" is not restricted "to any writing or paper". The legislator of the new Civil Code, aware of the current advances, has given it greater breadth, as set forth in art. 225 that "(a) photographic reproductions, cinematographic, phonographic records and, **in general, any other mechanical or electronic reproductions of facts or things provide full proof thereof, if the party against whom they are exhibited does not challenge its accuracy**".

Distribution of operations performed by the clients according to the banking service provided



BANKING SERVICES AND THE DIGITAL ENVIRONMENT - CONS

- Brazilian legislation inflexibility
- Bank credit note enforcement proceedings
- ICP – Brasil acceptance, presumption of authenticity - higher costs
- Parties identification



CONTACT



Gobbi specializes in banking and insurance law, and provides legal assistance to national and international institutions. Her practice encompasses regulatory matters, and a range of transactions involving insurance companies and financial institutions, as well as the advisory to these entities in connection with the establishment of activities in Brazil, both through the incorporation of a new company and through the acquisition of interests in existing companies. She acts in financing and debts restructuring transactions, mostly representing creditors. In the regulatory sphere, she deals with matters related to the payments industry and assists financial institutions and insurance companies with the structuring of new products and review of agreements used in their activities. In the insurance area, Gobbi's practice includes the incorporation of insurance companies, health insurance plans, and brokerage companies, mergers and acquisitions (M&A), drafting and reviewing of reinsurance contracts, and providing legal assistance in connection with the approval of new products by the respective regulatory agencies.

Education

Columbia Law School, New York (LL.M., 2010).

Escola de Direito de São Paulo of Fundação Getulio Vargas, Brazil (Postgraduate in Insurance and Reinsurance Law, 2006).

Universidade de São Paulo, Brazil (Bachelor of Laws, 2005).

Recent Acknowledgements

Recognized by The Legal 500, issue 2017, in the category Next Generation Lawyer, recommended in Banking and Finance and Insurance.

Office experience abroad

White & Case LLP, United States (2011).

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THANK YOU

