EXPLORING OPPORTUNITIES IN THE **OPEN FINANCE** LANDSCAPE

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In an increasingly digitized and interconnected world, changes in the financial sector are inevitable. We are witnessing technological advancements that are reshaping how individuals handle their finances. It is within this context that Open Finance emerges as a natural progression of the Open Banking concept, which has garnered global recognition over the past decade. This new ecosystem offers an exceptional window of opportunity for the expansion of emerging players, particularly fintechs – financial sector firms leveraging technology to forge innovative business models. It is paramount for these companies to invest in education and training to meet the technological, regulatory, and data security prerequisites set by the market.

In the Brazilian context, the advent of Open Finance represents a significant milestone in the National Financial System by allowing standardized sharing of data, transactions, and services among financial institutions and related entities. The project underwent a name change in 2022 to emphasize its broader scope, encompassing not only information about more traditional financial products and services (such as checking accounts and credit operations) but also crucial data related to individuals' financial lives, including investments, foreign exchange, insurance, and pensions. It's worth noting that despite the change in nomenclature, all security requirements remain intact, and consumers retain control over their data, deciding whether to share their information or not.

Open Finance is being jointly implemented by the Central Bank of Brazil ("BCB") and the National Monetary Council ("CMN") through Joint Resolution No. 01 of May 4, 2020, which establishes the initial guidelines for Open Finance development in the country.

The **initial milestone** in Open Finance implementation occurred on February 1, 2021, in the phase known as Open Data, with the sharing of basic information from participating institutions, such as service channels (e.g., bank branches) and essential products and services like demand deposit accounts (commonly known as checking accounts) and credit operations (loans). This initial step represented a significant move towards a more transparent and consumer-friendly financial system.

In the **second phase**, which began in August 2021, there was a significant expansion of Open Finance, with the sharing of data about customers themselves, including sensitive information like personal data, bank balance/statements, and credit information, among others. This phase generated considerable discussions and uncertainties in the market. However, it is essential to highlight that data sharing only occurs with the explicit consent of customers from participating institutions. Between March and December 2022, the BCB recorded more than 18.7 million active consents, showing a 95% increase compared to the first half of 2022, indicating growing customer acceptance of the system.

On October 29, 2022, the **third phase** further expanded the scope of Open Finance, including the sharing of financial services, such as payments and the submission of credit proposals. In this stage, consumers could access this information without needing to access the channels of financial institutions they already have relationships with. The third phase began with the sharing of payment transaction initiation services via Pix, and in February 2023, it allowed unique Pix scheduling through the Open Finance ecosystem.

[Although the term may seem complex, a payment initiator assumes the responsibility of initiating the transaction on behalf of the paying customer, even without having the latter's account. The result of this process is the direct transfer of funds to the recipient's account.]

Finally, on September 29, 2023 the **fourth and last phase** of Open Finance implementation, titled Open Investment, came into operation. In this phase, customers of participating institutions can share data related to foreign exchange, insurance, pensions, and investment products and services with other institutions within this ecosystem. This initiative aims to increase transparency and interoperability in the financial sector, providing customers with more choices and control over the management of their resources and investments.

With Open Investment, customers can share information about the investment products they hold in different participating financial institutions, allowing these institutions to access this data to offer personalized services and better investment recommendations. This can include information about stocks, bonds, funds, savings accounts, and other investment-related products. This data openness can bring several benefits to customers, such as a more comprehensive view of their investment portfolio, the ability to obtain more accurate financial insights, and the convenience of managing all their investments in one place, even if they are held in different institutions.

In addition to all these advancements and benefits for customers, it is important to highlight that Open Finance has a positive impact on both traditional banks and fintechs (especially credit-focused fintechs). The increased data openness and interconnectivity provided by Open Finance tend to create a favorable environment for innovation and collaboration, allowing all participants to contribute to the evolution of the financial sector, catering to diverse customer demands and preferences. Therefore, Open Finance promotes an inclusive ecosystem where both fintechs and traditional banks have the opportunity to excel and offer financial solutions that meet varied customer needs, contributing to a more dynamic, competitive, and customer-centric financial market.

[Fintechs are innovative companies in the financial sector that use technology extensively to create new business models. They operate online and offer digital services related to various financial areas in Brazil, such as credit, payments, financial management, loans, investments, financing, insurance, debt negotiation, foreign exchange, and more. In Brazil, there are two types of authorized credit fintechs to operate: Direct

Credit Society (SCD), which allows for credit operations through an electronic platform with their own resources, and Peer-to-Peer Lending Society (SEP), known in the market as peer-to-peer lending.]

As Open Finance advances, it's true that credit fintechs and other financial institutions face complex operational and legal challenges that require specialized legal and financial assistance. However, these challenges also represent opportunities for innovation and improvement, covering critical areas such as data protection, consumer rights, and compliance with BCB and CMN regulations:

- **General Data Protection Law (LGPD)**

Participating institutions, including fintechs, must ensure the privacy and security of customer information in line with LGPD guidelines. In an environment where data protection is paramount, robust regulatory compliance and effective cybersecurity measures are essential investments. Complying with data protection practices not only avoids legal risks and substantial fines but also builds customer trust. In the beginning, there were several questions regarding the ability of new operators in the financial market, such as credit fintechs, to overcome the operational challenge posed by Open Finance since they did not have the same financial, technological, and legal infrastructure as large financial institutions, necessary, for example, to operationalize consent and its revocation. However, it's inspiring to observe that today Open Finance already includes the participation of 13 credit fintechs in the ecosystem, all meeting the requirements established by the BCB and CMN. This evolution is an example of the adaptability and growth potential of fintechs in the financial landscape, further strengthening the diversity and competitiveness of the sector.

- **Compliance with Regulatory Obligations**

Strict compliance with the regulations and norms established by the BCB not only ensures the continuity of operations but also builds trust among customers and investors. Therefore, it is essential for fintechs to fully understand regulatory obligations, strictly adhere to them, and be ready to adjust their operational practices as regulations evolve.

- **Consumer Rights**

In the Open Finance landscape, credit fintechs have the opportunity to elevate customer service standards. Accessibility to a variety of financial options makes it even more important for these companies to be prepared to meet customer demands fairly and transparently. Fulfilling contractual obligations, establishing clear credit policies, and transparent platform terms and conditions in compliance with the Consumer Protection Code not only prevent complaints and litigation but also build a strong reputation and gain customer trust, which can drive long-term growth and success.

The Open Finance Ecosystem currently hosts over 800 participating institutions, representing more than 150 conglomerates, with 13 being mandatory and organized within 11 associations. This scenario is driving the ongoing revolution in the Brazilian financial landscape, with credit-focused fintechs playing a pivotal role in steering this transformation through Open Finance. Currently, there are more than 40 million active consents for data sharing within the Open Finance framework.

The legal experts at Tauil & Chequer, affiliated with Mayer Brown, with their deep expertise in financial and regulatory law, are continuously updated and well-prepared to provide strategic guidance to financial institutions and credit-focused fintechs operating within the Open Finance environment. We understand the intricacies of the regulations and legal obligations involved and are committed to assisting our clients in navigating this new financial paradigm safely and successfully.

For more information on the topics described above, contact our team.

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