

Mexican FinTech Law Secondary Regulation Becomes Effective

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On September 10, 2018, enabling regulations were published on the Federal Official Gazette to regulate the Law Regulating the Financial Technology Institutions (“FinTech Law”).

Purpose

On March 10, 2018, the FinTech Law became effective and established the foundations of a regulatory framework to facilitate the execution of financial transactions and services related to financing and investment through IT platforms or tools, services for the issuance administration, redemption and transfer of electronic payment funds, and the use of virtual assets in these transactions, whether through fintech institutions (“FTIs”), entities authorized to operate through regulatory sandbox models, or authorized Mexican financial entities (“**Financial Entities**”).

Several provisions of the FinTech Law required further development through enabling regulation issued by the Mexican Banking and Securities Commission (“**CNBV**”). The CNBV, the Mexican Central Bank and other financial regulators were required to publish the corresponding enabling regulations within the 6, 12 and 24 month periods following the FinTech Law’s effective date. Accordingly, on September 10, the CNBV, the Mexican Central Bank and the Ministry of Finance and Public Credit (“**SHCP**”), published the following general provisions:

- General Provisions applicable to Fintech Institutions (“**FinTech Rules**”)

The Fintech Rules set forth the additional requirements and documentation necessary to operate as an FTI. These provisions became effective on September 25, with the exception of Chapter IV Second Title of the Fintech Rules that governs accounting and securities valuation criteria, among others, which will become effective on January 1st, 2020.

- Mexican Central Bank Circular 12/2018 addressed to electronic payment funds institutions (“**E-Money Institutions**”) containing the operative rules applicable to E-Money Institutions (“**Circular 12/2018**”).

Under Circular 12/2018, the Mexican Central Bank intends to supervise and control operations carried out by E-Money Institutions, primarily governing aspects related to the issuance and administration of electronic payment funds, opening of accounts, reception, transfer and redemption of funds, foreign currency operations and the obligation to interconnect to the national payment systems when E-Money Institutions have high operability, or exceed certain client or issued funds thresholds. Circular 12/2018 became effective on September 11, 2018.

- General Provisions pursuant to Article 58 of the FinTech Law (“**Anti-Money Laundering Provisions**”)

Under the Anti-Money Laundering Provisions, the SHCP set forth minimum measures and requirements that FTIs must comply with to prevent and detect actions, omissions and operations that could lead to, aid,

promote or cooperate in any way with felonies involving transactions with illegally obtained resources or the financing of terrorism. The regulatory framework centers in prevention and detection of transactions, client and user information storage, clients or transactions that could lead to felonies, training to directors, executives and employees that participate in such transactions, internal or independent evaluations on compliance with such provisions and presentation of periodic information to the CNBV. The Anti-Money Laundering Provisions became effective on September 11, 2018, however, the transitory Articles establish grace periods for persons who, at the time the FinTech Law became effective, were carrying out activities regulated by the FinTech Law. The SCHP shall still publish the reporting forms and guidelines for the correct implementation of the Anti-Money Laundering Provisions.

Authorization process to operate as an FTI

The FinTech Law provides that persons who were already carrying out activities regulated by the FinTech Law had to submit to the CNBV a request for authorization within 12 months from the effective date of the Fintech Rules. As per the above, such persons must apply for authorization no later than September 25, 2019, and may continue performing activities regulated by the FinTech Law as long as they have disclosed through their website or other media since the Fintech Law became effective that their authorization is in process and that their activities are not supervised by the Mexican regulators. Legal entities that intend to carry out such activities for the first time must obtain a prior authorization to operate as an ITF.

The FinTech Law provides the necessary requirements and documentation required by persons who intend to obtain an authorization to operate as an ITF. Likewise, the FinTech Rules provide additional requirements to the authorization application form, including requirements for the FTIs shareholders, board members and executive officers, operations manuals, internal control and risk management, among others.

Minimum Capital Stock to operate as an FTI.

The FinTech Rules provide that FTIs that intend to apply for authorization to operate as such must maintain a minimum capital stock, the amount of which depends on the type of transactions to be performed by such entities. Such minimum capital stock shall be calculated in UDI value and must be fully paid and subscribed no later than the last business day of the respective year.

Crowdfunding Institutions. Crowdfunding Institutions authorized to carry out only one type of transaction, must maintain a minimum capital stock of the equivalent in Mexican Pesos of 500,000 UDIs. When authorized to carry out two or more types of transactions, virtual asset transactions or foreign currency transactions that facilitate the sale or acquisition of rights or exchanged securities documenting such transactions, or to operate, design or trade derivative financial instruments with underlying virtual assets, these entities must maintain a minimum capital stock of the equivalent in Mexican Pesos of 700,000 UDIs.

E-Money Institutions. E-Money Institutions authorized to carry out Mexican currency transactions, which authorization does not contemplate to carry out any of the transactions described below, must maintain a minimum capital stock of the equivalent in Mexican Pesos of 500,000 UDIs. E-Money Institutions additionally authorized to carry out virtual asset transactions, foreign currency transactions, act as clearinghouse in payment systems networks, or to operate, design or trade derivative financial instruments with underlying virtual assets, must maintain a minimum capital stock of the equivalent in Mexican Pesos of 700,000 UDIs.

Requirements to acquire a shareholding interest in an FTI's Capital Stock

Any person that intends to acquire a shareholding interest in an FTI's capital stock must submit to the CNBV the following information:

Direct or Indirect acquisition of a shareholding interest of 10% or more. Any person or entity intending to acquire a shareholding interest of 10% or more in an FTI's capital stock, either directly or indirectly, must provide the number, series, class and par value of the shares, as well as the total amount and interest that such shares represent in the FTI. Additionally, such person or entity must file the forms contained in appendix 3 and 4 of the FinTech Rules along with documentation provided therein, including a statement on the source of the funds applicable to individuals. The same shall apply for indirect investments, but also requiring the filing of the information described above up to the ultimate beneficial owners.

Direct or indirect acquisition of a shareholding interest of less than 10%. Any person or entity intending to acquire a shareholding interest of less than 10% of an FTI's capital stock, either directly or indirectly, shall only provide the number, series, class, and par value of the shares to be acquired, including the amount and interest that such shares represent in the FTI, the person's or entity's name or corporate name, nationality, address, unique population registry code, tax identification number, or the equivalent tax identification number including the respective issuance country, and occupation or main activities.

As an exception, if a person or entity intends to acquire less than 10% but more than 5%, and the amount of such acquisition is for an amount in Mexican Pesos equal to more than 1,500,000 UDIs, such person or entity shall file the information required to the subscribers of 10% or more of the shareholding interest.

Direct acquisitions of a shareholding interest in an FTI by Private Equity Funds. Private Equity Funds that directly acquire a shareholding interest of more than 10% but less than 50% of the capital stock of an FTI, and such acquisition is equal or less than an amount in Mexican Pesos equivalent to 833,000 UDIs, shall only submit the information required in annex 3 of the FinTech Rules and the information required in annex 4 and 5 of such Rules regarding individuals who, through the Private Equity Fund, maintain a 20% indirect interest in the FTI's capital stock.

Limitation for the Receipt of Cash.

E-money Institutions. E-money Institutions shall request an authorization from the CNBV to receive and deliver cash in Mexican currency, specifying the mechanisms to be used for such purposes. Such authorization shall be subject to the following limits: (i) the reception and delivery of cash in Mexican currency up to an amount in Mexican Pesos equivalent to 10,000 UDIs per client, and (ii) the delivery of cash in Mexican currency up to an amount in Mexican Pesos equivalent to 1,500 UDIs per client on a daily basis.

Under Circular 12/2018, E-money Institutions shall comply with the following:

- For transactions involving Mexican currency, the electronic payment funds accounts shall be classified in three risk levels:
 - For electronic payment funds accounts classified as level 1 maintained by an E-money Institution for a single client, the total sum of the credits in such accounts, during a single calendar month, shall not exceed 750 UDIs, and the balance shall not exceed 1,000 UDIs,
 - For electronic payment funds accounts classified as level 2 maintained by an E-money Institution for a single client, the total sum of the credits in such accounts, during a single calendar month, shall not exceed 3,000 UDIs, and
 - For electronic payment funds accounts classified as level 3 maintained by an E-money Institution for a single client, the total sum of the credits in such accounts, during a single calendar month, shall not be subject to any limit.
- For transactions involving foreign currency, in addition to the abovementioned restrictions, E-money institutions intending to carry out foreign currency transactions shall maintain an account in the corresponding foreign currency in a Mexican banking institution, and maintain a mechanism that allows them to clearly segregate the foreign currency funds and comply with the following limits:
 - Accounts maintained by individuals. The total sum of credits within a single calendar month into one or more accounts of a single client in an E-money Institution, plus any credits originated from a foreign E-money Institution with which the relevant E-money Institution has any business, shall not exceed USD 10,000 or its equivalent with respect to other foreign currencies. Additionally, the aggregate balances maintained by a single client in one or more accounts in a single E-money Institution, plus the balances originated from a foreign E-money Institution with which the relevant E-money Institution has any business, shall not exceed USD 10,000.
 - Accounts maintained by legal entities. There shall be no limit for the total amount of credits.

Crowdfunding institutions. In order for their clients to be able to pay their loans or credits in cash, Crowdfunding Institutions shall request an authorization from the CNBV to receive cash funds in Mexican currency from their clients by means of deposits in accounts opened in financial entities authorized for such

purposes, on behalf of the relevant Crowdfunding Institution, up to a monthly amount equivalent in Mexican Pesos to 3,000 UDIs for low-risk clients, and up to a monthly amount of 10,000 UDIs for other clients.

Limits to transfers of funds to or from foreign financial institutions

FTIs shall request an authorization from the CNBV to send or receive funds denominated in Mexican or foreign currency, to or from deposit accounts maintained in foreign financial institutions or other foreign entities authorized to provide similar activities as those of the FTIs, subject to the following limits per client: (i) up to 1,700 UDIs for low-risk contracts or accounts, and (ii) no limit for other contracts or accounts.

These transfers may not be received from, or be sent to, foreign financial entities which countries have been identified by the Financial Action Task Force as (i) high-risk countries or jurisdictions; or (ii) countries with strategic deficiencies in the prevention and detection of activities derived from illegal sources or the financing of terrorism.

Agency, investment management and limits to Crowdfunding Institutions

Under the FinTech Rules, Crowdfunding Institutions may execute agency or investment management agreements with their clients to carry out activities related to their operations, which shall contain clauses requiring them to refrain from preferring the interest of one party over another, or to act with a conflict of interest, including the obligation to report their clients the activities performed in the execution of such agency or investment management duties, and an obligation to clearly disclose the fees to be charged for the execution of such agency or investment management duties.

Additionally, Crowdfunding Institutions may publish on their websites borrowing requests by a potential borrower, as long as such request does not exceed the following thresholds: (i) with respect to peer-to-peer lending transactions, an amount equal to 50,000 UDIs, and (ii) with respect to debt crowdfunding for business loans among individuals, real estate loans, equity crowdfunding and reward-based crowdfunding, an amount equal to 1,670,000 UDIs. Notwithstanding the above, Crowdfunding Institutions that maintain an adequate evaluation, selection and classification methodology of requests and projects as determined by CNBV, may seek from the CNBV an authorization to carry out the activities mentioned in numeral (ii) above up to an amount of 6,700,000 UDIs.

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