

Mexican FinTech Law Becomes Effective

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On March 10, 2018, the Law Regulating the Financial Technology Institutions (“FinTech Law”) and certain reforms to other financial laws became effective.

Purpose

The purpose of the FinTech Law is to create a regulatory framework applicable to persons who, through IT platforms or tools, facilitate the execution of financial transactions and services related to access to financing and investment, issuance services, administration, the redemption and transfer of electronic payment funds, and the use of virtual assets in these transactions, whether through fintech institutions (“FTI”), entities authorized to operate through regulatory sandbox models, or any authorized Mexican financial entities (“Financial Entities”).

What are the Fintech Institutions?

FTIs include:

- Crowdfunding entities engaged in connecting on a customary and professional basis, solicitors and investors of debt, equity, co-ownership or royalties funding, through electronic or digital means of communication;
- E-money entities engaged in the issuance, administration, redemption and transfer of electronic payment funds through electronic or digital means of communication.

FTIs will only be allowed to receive funds directly from deposit accounts maintained at Financial Entities, and must deliver the funds to their clients through payments or transfers to accounts maintained at Financial Entities. With prior authorization from the Mexican Banking and Securities Commission (“CNBV”) FTIs will be able to receive cash or transfers from foreign financial institutions or other similar entities.

Who can operate as an FTI?

Mexican corporations (*sociedades anónimas*) that comply with the requirements determined by the FinTech Law and that obtain the discretionary authorization from the CNBV can operate as an FTI, with the prior consent from the Inter-institutional Committee created by the FinTech Law. These must be domiciled in Mexico and comply with the minimum capital requirements to be determined by the enabling regulations.

Transactions performed through FTIs will not be secured by any guaranty from, or be subject to any obligation by governmental agencies.

What happens if you are currently carrying out activities regulated by the FinTech Law?

Persons who are already carrying out activities regulated by the FinTech Law must submit to the CNBV a request for authorization within 12 months from the effective date of the applicable enabling regulations. This shall be issued within the six months following the effective date of the FinTech Law. During the term in which the CNBV reviews their authorization requests, such persons may continue to perform such activities, so long as, from the date the Fintech Law becomes effective, they disclose through their website or other media that their authorizations are in process and that their activities are not supervised by the Mexican authorities.

Cryptocurrency Transactions

The FinTech Law governs, for the first time, transactions performed through virtual assets, typically known as "cryptocurrencies". Legal currency in Mexico, foreign exchange or other assets denominated in Mexican currency or foreign exchange shall not be deemed cryptocurrencies. FTIs may only operate with virtual assets authorized by the Mexican Central Bank (*Banco de México*), under the terms and conditions it eventually determines under enabling regulations. Banking institutions may carry out transactions with the virtual assets determined by the Mexican Central Bank through enabling regulation, with the prior authorization of the Mexican Central Bank.

Regulatory Sandbox

The FinTech Law includes an option to obtain a special temporary authorization to offer financial services using technological tools or media through other than existing mechanisms (typically known as regulatory sandbox), subject to certain terms and conditions. The concept of the regulatory sandbox has promoted the development of technological platforms in other jurisdictions.

Application Programming Interfaces (APIs)

The FinTech Law requires Financial Entities and FTIs, among others, to establish application programming interfaces ("APIs") to allow connectivity and access to interfaces developed or managed by other Financial Entities and FTIs (with the prior consent of users). Their purpose is to share users' open financial, aggregate and transactional data, which would not constitute a violation of financial secrecy obligations. Financial Entities and FTIs interested in gaining access to such information will need the prior authorization of their corresponding supervisory commissions, which will also authorize the fees to be charged by Financial Entities and FTIs for the exchange of such information through APIs, for the purpose of preventing such fees from becoming entry barriers.

The standards for the exchange of data and information through APIs shall be subject to enabling regulations to be issued by the corresponding supervisory commissions.

Automated Investment Advice (Robo Advisors)

As part of the financial technology reform, the Mexican Securities Market Law was amended to allow automated investment and asset management advice. Enabling regulations will determine the special rules applicable to advice given through these mechanisms.

Financial Innovation Group

The Financial Innovation Group (*Grupo de Innovación Financiera*) was created as a consultation and advice forum to share ideas and discuss innovations in the financial arena between the private and public sectors, to achieve better planning, development and regulation. This group comprises representatives from both sectors, ensuring the participation of the FTIs and Financial Entities communities.

What are the consequences of the FinTech Law for Financial Entities?

Financial Entities will need a special authorization from their relevant regulators to participate in the capital stock of FTIs and will differentiate the personnel and marketing channels they use for their own activities.

Financial Entities may agree with FTIs that have capital stock in which they participate to provide them with technological infrastructure and ancillary services to support the FTI's operations, with the prior authorization from the CNBV (complying with the conditions and criteria established by the enabling regulation).

Also, subject to enabling regulations, Financial Entities will establish APIs allowing connectivity and access to other APIs developed or managed by entities that obtain the corresponding authorization from the respective supervisory commissions.

When will the enabling regulations be published?

Several provisions of the FinTech Law require further development through enabling regulation. The CNBV, the Mexican Central Bank and other financial authorities are required to publish the corresponding enabling regulations within the six, 12 and 24 month periods following the FinTech Law's effective date.

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