
LATAM FINTECH REGULATION

SECOND EDITION

Published by

LLOREDA · CAMACHO & CO

With contributions of

Creel Abogados, S.C.

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EDITORIAL

We are pleased to present a second edition of Latam Fintech Regulation. As mentioned in our introductory note for the first edition, new technologies and their applicability and impact on different social institutions are affecting the way in which we relate to different industries. Technology has led the pace for the introduction of new products and new forms of doing business and, the financial sector, which was traditionally seen as conservative, had to keep the rhythm and embrace technology.

It is evident how in recent years the financial industry has seen a fast-growing adoption of financial technologies (Fintech). Fintech came in a disruptive manner, purporting a change in the mindset of traditional financial institutions and introducing new players to the industry. The disruption of Fintech into the financial industry has had a direct impact on the way financial regulators envision the market in the future. Regulators have faced new products that are very different from traditional banking products (e.g. crowdfunding), new ways of providing services through the exclusive use of technology (e.g. roboadvisoring) and new technologies to make the sector more efficient and secure (e.g. blockchain). As a consequence, the steady fast—growing rhythm of Fintech comes with several questions with regard to the regulatory standpoint of products, players and services. This publication provides a Latin American overview and legal analysis of the legislation and regulations related to the Fintech industry in order to foresee where these developments are heading as well as its general impact in

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CREEL

ABOGADOS,

S.C.

Address: Paseo de los Tamarindos 400B, Piso 29, Col. Bosques de la Lomas, C.P. 05120 Ciudad de México

Tel: +525511673000

URL: www.creelabogados.com

1. OVERVIEW

1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

On March 9, 2018 the Mexican Fintech law (the “Fintech Law”) was enacted. In order to harmonize the Mexican legal framework, on that same date, among others, the following laws were amended:

(i) Mexican Securities Market Law was amended to exclude from its scope of regulation, the offering and intermediation of securities and the negotiation with securities carried out through financial technology institutions. Moreover the Mexican Banking and Securities Commission was granted the power to issue general regulations regarding the offering of investment advisory services through automated systems.

Ilse Bolaños Arteaga



Mariagabriela Botello Anduiza



(ii) Mexican banking law was amended for the purpose of regulating more thoroughly the use of technology by banks in the performance of their activities. This law was also amended so that the activities carried out by financial technology Institutions are not considered as obtaining funds (through bank deposits) anymore.

(iii) Financial services organization and transparency law and the law for the protection and defense of financial services users were amended to include within their scope, the supervision and surveillance of financial technology institutions by the National Commission for the Protection and Defense of Financial Services Users.

Later on, on September 11 of 2018 the secondary regulation applicable to Fintech was issued, including: (i) the general regulations applicable to Financial Technology Institutions (the “Regulations”) issued by the Mexican Banking and Securities Commission, (ii) the Regulations 12/2018 aimed to electronic payments institutions (the “Banxico Regulations”) issued by the Mexican Central Bank, and (iii) the general regulations referred to in article 58 of the Fintech Law (the “Money Laundering Regulations”), issued by the Ministry of Tax and Public Credit.

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1.2. IS FINTECH REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TOWARDS FINTECH IN YOUR JURISDICTION?

Yes. Most Fintech activities, such as crowdfunding, virtual wallets and transactions carried out with cryptocurrencies, are regulated in the Fintech Law. Moreover, certain financial laws such as the Mexican Banking Law and the Mexican Securities Market Law regulate the possibility of financial entities to provide certain financial services and execute transactions using financial technology. The Fintech industry in Mexico has a new and very specific regulation, this is, new laws and regulations solely applicable to Financial Technology Institutions were issued instead of adapting the existing laws and regulations applicable to other financial services. Moreover, Fintech activities are regulated similarly to other financial services, such as banking and securities services. The Fintech Law defines the activities and transactions that shall be exclusive to financial technology institutions, which shall be authorized to operate as such; furthermore, it enunciates the activities, transactions and services that financial technology institutions are allowed to carry out.

1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

Yes. The Fintech Law includes a specific chapter to govern innovative models. According to the aforementioned law, innovative models are those used to provide a financial

service using tools and technologies, in a model different from those existing in the market, in order to carry out activities that typically require an authorization, registration or concession from financial authorities.

Only commercial companies duly incorporated pursuant to Mexican law may operate innovative models. For the purpose of operating an innovative model, a temporary and special authorization must be granted by the financial authority in charge of the surveillance and regulation of the financial services to be provided.

The requirements to operate an innovative model are: (i) the product or services must be tested in a controlled environment and with a limited number of clients; (ii) the innovative model must imply a benefit for the client or user different from the benefits existing in the market; and (iii) the project must be ready to begin operating immediately. Additionally, the competent authorities may establish additional requirements, through general regulations or in the authorizations to operate innovative models that they may grant.

The companies that desire to operate innovative models, shall establish policies and mechanisms to prevent, identify and mitigate the risks associated with them, as well as the mechanisms to repair the damages that they may cause to their clients.

In the authorizations to operate innovative models, specific terms and conditions shall be established in attention to the specific characteristics of the model and, if necessary, certain exceptions to the provisions of Mexican financial laws may be established. This authorization may only be granted for a period of two years; at the end of such term, the authorized company must obtain the applicable permit,

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authorization, registration or concession, otherwise, it may not continue operating. In the event the innovative model ceases to operate at the end of the term established in the authorization, an exit proceeding shall be implemented, same which must include the way in which the transactions executed with the clients shall be terminated.

1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?

Yes. Financial entities are allowed to invest in, directly or indirectly, or acquire, Fintech companies or companies that operate innovative models, prior authorization of the Mexican Banking and Securities Commission and, as the case may be, the financial authority in charge of the surveillance and regulation of the financial entity in question (e.g., the Mexican Central Bank or the Ministry of Tax and Public Credit). It is important to take into account that, there are certain rules, limits and requirements applicable for financial entities investing in Fintech companies, which are established in the laws that regulate the relevant financial entities; such rules, limits and requirements vary depending of the nature of the financial entities.

2. LENDING AND FINANCING

2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN

INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?

Lending crowdfunding is regulated in the Fintech Law. The Fintech Law nor the secondary regulation provide particular requirements applicable to investors, therefore any person or entity, with full capacity, may invest in lending crowdfunding platforms.

Notwithstanding the foregoing, the Regulations provide for certain limits to the investments that a person or entity may carry out in a platform. The Regulations establish that one investor may not make investment commitments in the event the result of the following formula:

$$\frac{\text{New Investment Commitment}}{\sum \text{Effective Investments} \pm \text{Prior Investment Commitments} \pm \text{New Investment Commitment}} \times 100$$

exceeds the following amounts: (i) for entities, 20%; (ii) for individuals who desire to invest in personal loans between persons, 7.5%; (iii) for individuals who desire to invest in company loans or business loans for persons or for real estate development, 15%.

Nevertheless such limits shall not apply to related investors or experienced investors. For such purpose, experienced investors are Mexican and foreign financial entities, federal government entities, and individuals or entities that have made investments in crowdfunding institutions for an aggregate amount over 550,000 investment units, approximately US\$180,000.00. On the other hand, related investors are such persons who are related to the fourth degree to the individual requesting the funding or are married or cohabiting with such individual.

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2.2. IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?

Currently P2P lending is not regulated in Mexico. However, P2P lending schemes may be established through crowdfunding institutions, as company loans or personal loans; however, it should be noted that in this case the projects may not be funded by only one investor.

It is important to mention that if an individual or entity were to request or offer funds regularly or professionally or using massive means of communication, through means different from a Fintech platform, and without the authorization to operate as a bank, such person may be considered to be obtaining funds (via deposits from the public), which is deemed a criminal offense.

2.3. IS CONSUMER PROTECTION REGULATION APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING?

Notwithstanding P2P is not regulated in Mexico, lending crowdfunding is subject to the Financial Services Organization and Transparency Law and to the supervision of the National Commission for the protection and defense of financial services users.

2.4. ARE DONATION AND REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?

No. The Fintech Law does not specifically regulate donation or reward based crowdfunding.

2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?

Crowdfunding in Mexico is regulated as lending crowdfunding for business loans between individuals or entities. In this case, the Investors acquire a portion of a credit right that the person or entity requesting the funding has in its favor, while the person requesting the funding is bound to the investors as joint obligor.

Same as crowdequity platforms, crowdfactoring platforms must comply with the following requirements: (i) be a commercial company duly incorporated pursuant to Mexican Law; (ii) be duly authorized for such purpose by the Mexican Banking and Securities Commission; (iii) establish as its corporate purpose the provision of professional and regular crowdfactoring services; (iv) have the minimum capital stock required by the Mexican Banking and Securities Commission, currently between 500,000 investment units (approximately US\$165,000.00) and 700,000 investment units (approximately US\$230,000); (v) have the necessary policies in connection with risk assessment and control, conflict of interest, prevention of fraud and money laundering, among others; and (vi) have a business plan and manuals related to internal control, administration of risks, among others.

The Regulations provide that financial technology institutions must implement methodologies to analyze and determine the level of risks of the possible investments. In

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the event the platforms provide crowdfactoring services, such methodologies must include the mechanisms to: (i) carry out the risk assessment of the debtors of the credit rights, whether through credit bureaus or based on public information; (ii) in the event the credit rights are documented in an invoice, to verify that such invoices may be identified electronically in the Tax Administration Service; and (iii) verify that the credit rights have not been transmitted or granted as guaranty previously.

3. INVESTMENT AND CAPITAL MARKETS

3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?

Yes. The Fintech Law provides that crowdfunding companies may carry out equity crowdfunding, in order for investors to purchase or otherwise acquire certificates representing the capital stock of entities.

3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?

Crowdequity platforms have to fulfill the following requirements: (i) be a commercial company duly incorporated under Mexican law; (ii) be duly authorized, for such purpose by the Mexican Banking and Securities Commission; (iii) provide in its corporate purpose the professional or regular provision of crowdequity services; (iv) have the minimum capital stock established for such purpose by the Mexican Banking and Securities Commission, which currently is of 500,000 Investment Units (approximately US\$165,000) and 700,000 investment units (approximately US\$230,000); (v)

have policies regarding risk assessment and control, conflict of interest, fraud and money laundering prevention, among others; (vi) have a business plan and operation manuals regarding internal control and administration of risks, among others; and (vii) establish schemes for the crowdequity platform and the investors to share the risks associated to the projects offered in the platform.

3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR SECURITIES IN CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?

Under Mexican law, there are no particular requirements applicable to investors or securities in crowdequity projects. The Fintech Law and secondary regulations do not establish specific requirements applicable to the investors that may participate in crowdequity projects, therefore it may be understood that any individual or entity with sufficient capacity may invest in crowdequity projects.

There are no specific requirements for the securities to be offered in crowdequity platforms; however, the platforms in which these securities are offered shall verify the legal existence, financial viability and business history or technical knowledge of the managers of the company or project, as the case may be.

Also, crowdequity platforms may establish specific requirements in their policies.

Currently there is no secondary market for crowdequity projects. Pursuant to the provisions set forth in the Fintech Law, the securities offered through crowdequity platforms may not be registered in the National Registry of Securities

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and therefore, may not be subject of a public offering and they may only be acquired and sold through crowdequity platforms.

4. CRYPTOCURRENCIES

4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

Yes. The Fintech Law defines cryptocurrencies as the virtual representation of certain value registered electronically and used among the public as a means of payment for all kinds of transactions, and the transfer of which may only be carried out electronically. The Fintech Law also provides that Fintech institutions may only operate with cryptocurrencies approved by the Mexican Central Bank. As of this date, the Mexican Central Bank has not determined the cryptocurrencies with which financial technology institutions may carry out transactions.

4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANACT WITH CRYPTOCURRENCIES?

Yes. In Mexico it is allowed to hold and/or transact with cryptocurrencies, however in order to do so regularly or professionally an authorization from the Mexican Central Bank is required.

4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANACT WITH CRYPTOCURRENCIES?

Trading platforms holding and transacting with cryptocurrencies must comply with the following requirements: (i) observe the terms and conditions established for such purpose by the Mexican Central Bank; (ii) be able to deliver to their clients, at any time, the cryptocurrencies or their equivalent in Mexican currency which they hold; and (iii) disclose to their clients that: (a) cryptocurrencies are not legal currency and, therefore, are not backed by the Federal Government or the Mexican Central Bank, (b) as the case may be, the transactions carried out may not be reverted, (c) the volatile value of cryptocurrencies, and (d) the technological risks associated with cryptocurrencies.

Furthermore, the Mexican Central Bank Regulations provide several technical requirements with which electronic payment platforms that carry out transactions with cryptocurrencies must comply with.

4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?

Financial entities are allowed to hold, transact or trade as intermediaries with cryptocurrencies, as long as they have been duly authorized by the Mexican Central Bank. Such financial entities that operate with cryptocurrencies through the interbanking payments systems shall comply with additional technical requirements regarding the technological infrastructure they use.

4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?

ICO is not expressly regulated. Therefore, it is not advisable to carry out an ICO in Mexico until it is regulated. In this regard, it is important to mention that transacting with cryptocurrencies without the proper authorization is punishable with a fine of up to 150,000 measure and update units (approximately US\$660,000) and up to 7 years of prison.

5. DISTRIBUTED LEDGER

5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?

The use of distributed ledger technologies is usual in Mexico, only in the context of cryptocurrencies. Currently such technologies are not yet regulated in Mexico, however it may be considered that such technology complies with the requirements established by the official rule NOM-151-SCFI-2016 that established the requirements that must be observed for the preservation and digitization of documents.

5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?

Distributed ledger technologies are not regulated by the Fintech Law. We are not aware that to this date, financial institutions are using distributed ledger technologies in order to improve and facilitate their consumer services.

6. INSURTECH

6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?

Insurance and bonding companies are allowed to carry out transactions and provide services, such as the execution of agreements and the provision of information to its customers, using technological means.

6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?

Currently, insurtech is not regulated in Mexico. Insurance and bonding institutions are allowed to provide their services using technological means.

6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?

No. Insurtech is not regulated in Mexico, however there are certain references in the insurance and bonds law, to the

provision of insurance services through electronic means.

7. ROBO-ADVICE

7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

Currently, the Mexican securities market law, grants the Mexican Banking and Securities Commission authority to regulate the provision of investment advisory services through automated means. It is our understanding that stock brokers, investment funds and investment advisors are using robo-advice technology. However, the Mexican Banking and Securities Commission has not issued the applicable secondary regulation.

7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

To this date, the Mexican Banking and Securities Commission has not issued the secondary regulation applicable to the provision of investment advisory services through automated means.

8. OTHER MATTERS

8.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS WHICH SHOULD BE TAKEN INTO

ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

Pursuant to the first paragraph of the eighth transitory provision of the Fintech Law and, until September 25, 2019, persons carrying out activities regulated by the Fintech Law upon its entry into force must file for an authorization application from the National Banking and Securities Commission, in a term that shall not exceed twelve months following the entry into force of the Regulations. Such persons may continue carrying out their activities until the National Banking and Securities Commission resolves their application; however, they must disclose through their website that their authorization is under review; therefore, their activities are not surveyed by Mexican authorities.





ILSE BOLAÑOS ARTEAGA

Address: Paseo de los Tamarindos 400B, Piso 29, Col. Bosques de la Lomas, C.P. 05120 Ciudad de México.

Tel: +525511313024

Email: ilse.bolanos@creelabogados.com

Ilse Bolaños specializes in Corporate Law and Finance matters. Her corporate practice includes cross-border M&A, joint ventures and corporate restructurings. Ilse also advises Mexican and international clients in matters involving foreign investment, drafting and negotiating all types of commercial contracts, as well as on data protection, anti-corruption and anti-money laundering regulations. Ilse's practice also involves providing advice on regulatory matters for financial institutions, both for compliance purposes and in the context of capital markets projects. She holds a Law Degree (JD) (summa cum laude) from Universidad Panamericana (2011) and a LL.M. Degree from London School of Economics (2016)



MARIAGABRIELA BOTELLO ANDUIZA

Address: Paseo de los Tamarindos 400B, Piso 29, Col. Bosques de la Lomas, C.P. 05120 Ciudad de México.

Tel: +525511673000

Email: Mariagabriela.botello@creelabogados.com

Mariagabriela Botello specializes in Finance matters, with particular emphasis in Fintech regulations. Mariagabriela has participated in numerous local and cross-border financings, and regularly provides advice on regulatory matters for financial institutions. She attended Law school at Universidad Panamericana and is pending to obtain her Law Degree (JD).