

Decree Enacting the Financial Technology Institutions Law (“Fintech Law”)

Background

On March 9, 2018, the Mexican Executive branch published in the Federal Official Gazette (Diario Oficial de la Federación) – to become effective on the following day (except as provided in the Transitory Provisions¹), the Decree enacting the Financial Technology Institutions Law (the “Fintech Law”) resulting in the amendment and restatement of several provisions of the Credit Institutions Law (Ley de Instituciones de Crédito), the Securities Market Law (Ley del Mercado de Valores), the General Law of

Credit Organizations and Related Activities, the Law for Transparency and Orderly in the rendering of Financial Services, the Credit Information Companies Law (Ley para Regular las Sociedades de Información Crediticia), the Law of Protection and Defense of the Financial Services Users, the Law to Regulate Financial Groups (Ley para Regular las Agrupaciones Financieras), the National Banking and Securities Commission Law (Ley de la Comisión Nacional Bancaria y de Valores) and the Federal Anti-Money Laundering Law (Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita).

The Fintech Law is a public order statute with general application in the entire Mexican territory, whose main purpose of regulating the financial services provided by the Financial Technology Institutions (“FTIs”), as well as to improve the operation and functioning of financial services being rendered through technological means. The Fintech Law is intended to: (i) promote financial inclusion; (ii) provide legal security to technological financial services users; (iii) trigger greater competition in the financial services market; (iv) increase the number of participants in the financial sector; (v) prevent money laundering activities through electronic means; and (vi) regulate the

¹ This is the case with section XVI of Article 17 of the Anti-Money Laundering Law, that establishes the amounts and the grounds for filing notices for vulnerable activities related to the management of digital assets (for further reference please see Section IV, Digital Assets below), before the Financial Intelligence Unit of the Ministry of Finance and Public Credit, which shall enter into force eighteen months after the publication of the Decree.

transactions with digital assets in Mexico.

The most relevant aspects of the Fintech Law are the following:

Financial Technology Institutions

The Fintech Law provides that in order to organize, operate and act as an FTI, an authorization must be secured from the National Banking and Securities Commission ("CNBV"), following the favorable opinion from the Interinstitutional Committee comprised by six members (in equal number from the Ministry of Finance and Public Credit; the Bank of Mexico; and the CNBV).

In accordance with Article 36 of the Fintech Law, the interested parties must be stock corporations (sociedades anónimas) incorporated or intending to be incorporated as such in accordance with Mexican law, and that bylaws provide the following:

01. Consider in its corporate purpose the realization, in a regular or professional basis, of any of the activities provided for in the Fintech Law;
02. Expressly provide that, in carrying out their corporate purpose, they must comply with the provisions of the Law and all and any applicable general provisions;
03. Establish their domicile in Mexican territory; and
04. Set a minimum capital requirement for carrying out their activities in accordance with the provisions to be issued by the CNBV for this purpose.

The FTIs, in addition to complying with their obligations under the Fintech Law and its provisions, shall take measures to prevent false or misleading information from being spread among users and shall publish information enabling users to identify the risks of transactions they enter into, with or through an FTI platform.

The Fintech Law provides for two types of FTIs: (a) crowdfunding institutions; and (b) electronic payment fund institutions (e-money). The FTIs that obtain the authorization referred to in the preceding paragraphs from the CNBV, must include in

their corporate name the words indicating the type of FTI they have adopted.

The Institutions who receive authorization must evidence before the CNBV, at least thirty working days prior to the commencement of operations, that the company is duly incorporated, that they have the minimum required, subscribed and paid-in capital stock, that their directors and executives meet the requirements of the Fintech Law and that they have the technological infrastructure to carry out their activities.

The FTIs should only receive funds from their users or customers that come directly from money deposit accounts opened by a financial institution authorized to receive such deposits in accordance with the applicable regulations in Mexico.

FTIs may also use equipment, electronic, optical or any other technology, automated data processing systems and telecommunications networks, whether private or public, to provide their services and may permit the use of advanced electronic signatures or any other form of authentication to give their customers access to their technological infrastructure, pay for their products and services or to carry out operations.

The main aspects of each of the FTIs types are described below:

a. Crowdfunding Institutions

Crowdfunding Institutions are those aimed to bring parties together, so that they may grant financing to each other (i.e. investors may grant financing to one or more applicants through a platform) and their activities are carried out on a regular and professional basis through computer applications, interfaces, webpages or any other means of electronic or digital communication. Crowdfunding FTIs may only carry out their activities through one of the following financial operations:

- Collective debt financing: refers to the operation by which investors grant loans, credits, mutual funds or any other form of financing for a direct or contingent liability

(credit) to applicants;

- Collective equity financing: refers to the sale of an ownership interest to raise funds for business purposes through a crowdfunding platform; and
- Collective financing of co-ownership or royalties: occurs when investors and applicants enter into partnerships between them, by which investors acquire a pro rata share, profits, and/or royalties, among others, of the applicant's business activities.

These FTIs may carry out, in addition to the activities needed for the performance of their corporate purpose, the activities provided in Article 19 of the Fintech Law, including the following:

- Obtain loans and credits from any individual or entity, national or foreign, for the fulfillment of its corporate purpose;
- Acquire or lease the movable assets and immovable property necessary for the performance of its purpose and dispose of them when appropriate.
- Receive and publish applications for crowdfunding transactions from applicants and their projects through the interfaces, websites or electronic or digital communication means that they use to carry out their activities.
- Establish the trusts that are necessary for the fulfillment of its corporate purpose;
- Establish deposits with financial institutions authorized to do so; and
- Make permanent investments in other companies, as long as they provide auxiliary, complementary or real estate services to them.

Also, pursuant to the Fintech Law, the following may not be considered as applicants for funding: (i) the FTI itself; (ii) the FTI's "related persons", and (iii) persons exercising control of the FTI.

Finally, it is important to note that FTIs should inform investors of the risks associated with providing financing to applicants, and also, they must obtain from investors a record by which investors are

made aware of such risks. Also, they are required to invest the investors' funds in the projects selected, through investment mechanisms that allow the segregation of funds for each type of financial transaction (debt, equity or co-ownership).

b. Electronic Payment Funds Institutions (e-money)

On the other hand, the Fintech Law regulates through Electronic Payment Funds Institutions, the activities of issuing, administering, redemption and transmission of electronic payment funds, which are carried out through computer applications, interfaces, webpages and other platforms.

The characteristics of the operations carried out by electronic payment fund institutions, as well as the activities related to payment systems, shall be subject to the general provisions issued by the Bank of México (Banco de México) for this purpose, which to date are still pending publication.

Digital Assets

From the date of publication of the Fintech Law, financial transactions may be carried out and referenced to a digital asset, such as cryptocurrency (among others Bitcoin, Bitcoin Cash, Ethereum, Litecoin or XRP Ripple) or any other assets that may be referred to and traded from the use of the blockchain technology.

Article 30 of the Fintech Law defines a digital asset as "the representation of value recorded electronically and used by the public as a means of payment for all types of legal acts and whose transfer can only be carried out by electronic means, without the virtual asset being understood as a legal tender currency in the national territory, a foreign exchange or any other asset denominated in legal tender or foreign currency".

From the abovementioned definition, for an asset to be considered a digital asset in accordance with the Fintech Law, the following conditions must be met:

- They must represent a value;
- They must be registered electronically;

- They must be used by the public as a means of payment; and
- Their transfer shall be possible only by electronic means.

In addition, and in accordance with the Fintech Law, FTIs may only trade with the digital assets that are defined by the Bank of Mexico by means of general provisions and must be able deliver over to the respective client, upon request, the amount of virtual assets that it holds, or the corresponding amount in national currency.

In addition, FTIs should inform their clients of the risks involved in conducting transactions with such assets, including: (i) the indication that such assets are not backed or endorsed by either the Federal Government or the Bank of Mexico; (ii) the impossibility of reversing closed transactions; (iii) the volatility of the digital asset; and (iv) the technological, cybersecurity and fraud risks inherent to digital assets transactions.

The Fintech Law also gives the Bank of Mexico the authority to define the characteristics of the digital assets, as well as the conditions and restrictions of transactions and other acts that may be carried out with such assets in Mexico. Any person intending to carry out activities attributed to the FTIs must seek authorization from the CNBV, which will grant such authorization when, in its opinion, the legal and regulatory requirements are met, subject to the prior agreement of the Interinstitutional Committee.

On the other hand, the Fintech Law also gives credit institutions (Banks) the opportunity, subject to prior authorization, to carry out trade transactions with digital assets determined by the Bank of Mexico.

Innovative Models

The Fintech Law also provides for the regulation of "Innovative Models". In this regard, it establishes that legal persons, other than FTIs and other entities supervised by the Supervisory Commission of the Bank of Mexico, must obtain

authorization to carry out activities that require innovative models to take place.

The authorizations referred to in the previous paragraph shall be temporary (i.e., for a maximum period of two years) and shall be subject to review by the Supervisory Commissions², which shall be competent to supervise the activities of companies authorized to operate with Innovative Models during that period of time.

For the granting of the temporary authorization, the law contemplates a series of requirements that must be met - among which is that the proposal is an Innovative Model, the product to be offered or the service to be provided to the public must require proof in a controlled environment, the project must be at a stage in which the commencement of operations may be immediate, among others.

The law also provides that regulated entities such as financial institutions, FTIs or other persons subject to their supervision, may temporarily carry out operations or activities comprised within their corporate purpose, through Innovative Models. This authorization must be granted subject to the favorable opinion of the Governing Board of the respective Supervisory Commissions.

Financial Innovation Group

The Fintech Law also establishes a committee for consultation, advice and coordination that aims to create an open space where ideas and knowledge can be shared between public and private individuals. The purpose of this group is to promote innovations in financial technology and plan its development.

The committee is to be integrated by 12 members, one from the Ministry of Finance and Public Credit, each Supervisory Commission and the Bank of Mexico, the remaining members will be representatives of the private sector. This group will meet at least once a year and should hold its first meeting no later than six months following

² Pursuant to article 4, section V of the Fintech Law, the CNBV, the National Retirement Savings System Commission (CONSAR), the National Insurance and Bonding Commission (CNSF) and the National Commission for the Protection and Defense of Users of Financial Services (CONDUSEF), are considered as Supervisory Commissions regarding their respective areas of competence.

the publication of the Fintech Law.

Relevant Amendments to Other Provisions

As previously mentioned, the Decree by which the Fintech Law was enacted, in addition to signifying a revolution for the financial and technological sector in Mexico, amends several other financial provisions to provide the industry with greater certainty and include FTIs and digital assets into the various regulations of the banking, financial and stock market sectors.

The main reforms include the following:

- A. Anti-Money Laundering Law: Article 17 of such Law is amended to include as a "Vulnerable Activity" the usual and professional offer or exchange of virtual assets by subjects other than Financial Institutions, which are carried out through electronic, digital or similar platforms, which manage or operate, facilitating or carrying out the purchase or sale transactions of such assets owned by their clients or provide means of custody, to store or transfer virtual assets other than those recognized by the Bank of Mexico in terms of the Fintech Law.

Sale and purchase transactions involving digital assets exceeding an amount equal to or greater than the equivalent of six hundred and forty-five UMA Measure Units, must be notified to the Financial Intelligence Unit of the Ministry of Finance and Public Credit.

- B. Securities Market Law: A new article 227 bis 1 has been included within Investment Advisors Chapter, by means of which the CNBV may include special rules for automated advisory and investment management services (also known as roboadvisors) in the general provisions applicable to investment advisers.
- C. Law for the Transparency and Ordering of Financial Services: Article 49 bis 2 was amended in order to

regulate and establish the limits of the sanctions that may be imposed by the Bank of Mexico or the CNBV for any breach of the provisions of the Fintech Law, ranging from 1,000 to 150,000 UMA Measure Units.

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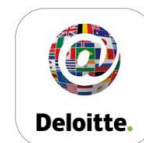
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