



Recently enacted General Provisions applicable to Financial Technology Institutions and other secondary provisions applicable thereto

On September 10, 2018, the following general provisions applicable to the Financial Technology Institutions Law (the “Fintech Law”) were published in the Federal Official Gazette (*Diario Oficial de la Federación*):

A. General provisions applicable to Financial Technology Institutions (the “GP”), to become effective 15 days following their publication (except as provided in the Transitory Provisions);

B. General provisions that regulate Article 58 of the Fintech Law with respect to Anti-Money Laundering and Countering the Financing of Terrorism (the “AML/CFT Provisions”)

C. Circular 12/2018 issued by the Mexican Central Bank (Banco de México) regarding the general provisions applicable to the operation of Electronic Payment Fund Institutions.

A. FTI Provisions

a. Purpose

The purpose of the GP is to establish the regulatory framework applicable to the organization of the FTIs, as well as the operation of crowdfunding institutions.

In addition to the definitions contained in Articles 4 and 16 of the Fintech Law, the new GP defines, among other aspects, the different types of crowdfunding as follows:

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- **Equity Crowdfunding** – is the crowdfunding operation under which the applicant obtains resources from the investors in exchange of an equity participation in exchange of capital stock certificates.
- **Co-ownership or royalties Crowdfunding** – is the crowdfunding operation under which an association or participation agreement the investors acquire a pro-rata part or participation in a good that exists or will exist, or in the revenues, profits, royalties or losses obtained from the execution of a project.
- **Debt and commercial loans Crowdfunding** – is the crowdfunding in which the investors contribute to entities or individuals with commercial activities (actividad empresarial), towards the following purposes: (i) receive a loan or credit to finance its activities; (ii) enter into a financial leasing; and (iii) enter into a factoring transaction.
- **Crowdfunding for Personal Loans among individuals** – the applicant is an individual that secures a loan from the investors.
- **Real Estate Development Crowdfunding** – is the crowdfunding in which the investors grant a loan or credit to the applicant in order to finance activities for the development of real estate.

b. Application to obtain the authorization to act as a FTI

In addition to the documentation required pursuant to Article 39 of the Fintech Law, the applications to obtain the authorization to organize and operate as a FTI, must be accompanied the following documents:

1. With regards to the individuals acting as sole manager, member of the Board of Directors or Chief Executive Officer, must include their personal data, professional and academic experience, a copy of an identification, CURP, RFC, as well as the statement under oath that they do not fall under any circumstance that would impede them to perform their duties.
2. Business plan, which includes the operations to perform, commissions, applicable expenses and the

characteristics of its Technological Infrastructure.

3. Financial viability study of the first three years of operations.
4. The proposed corporate name for the FTI, as well as the commercial name or brand that will be used to offer their services to the public.
5. The drafts of the operation manuals, internal control and risk administration, as well as the basis applicable to the organization including structure of its management and surveillance bodies.
6. Copy of the document issued by the National Banking and Securities Commission (“CNBV”) which contains the current certification of the compliance officer to be named by the FTI².
7. If applicable, the application documents for the authorization for the receipt and transfer of cash.

c. Minimum capital stock of the FTI

Pursuant to Articles 7 and 8 of the GP, the minimum capital stock of the FTIs will be the following:

Minimum capital stock of 500,000 UDI's³ (approximately MX\$3'050,000.00 pesos) in the following cases:

- Crowdfunding institutions authorized to perform only type of crowdfunding (debt, equity or co-ownership or royalties).
- Electronic payment fund institutions (e-money) authorized to perform its operations in Mexican currency and its authorization does not include any additional operations.

Minimum capital stock of 700,000 UDI's (approximately MX\$4'270,000.00 pesos) in the following cases:

- Crowdfunding institutions authorized to: (i) perform two or more types of operations; (ii) perform operations with virtual assets or in foreign currency; or (iii) operate, design or market derivative financial instruments with underlying virtual assets.
- Electronic payment fund institutions (e-money) authorized to perform its

operations in Mexican currency, as well as any of the following: (i) operations with virtual assets; (ii) operations in foreign currencies; (iii) act as a compensation chamber within the network of disposal means (redes de medios de disposición) in accordance with the Law for Transparency and Order in Financial Services; or (iv) operate, design or market derivative financial instruments with underlying assets.

The FTIs that obtain the registry of debt securities in the National Securities Registry (“RNV”) of the CNBV, must have a minimum capital of 700,000 UDI's (approximately MX\$4'270,000.00 pesos), regardless its other operational characteristics.

In the event of changes to the operations to be performed by the FTIs, the necessary corporate amendments must be made and must comply with minimum capital stock requirements in accordance to the new activities.

d. Application to subscribe capital stock of a FTI

The parties interested in subscribing the capital stock of a corporation that intends to obtain the authorization to organize and operate as a FTI, have the obligation to file before the CNBV the applicable documentation, depending on the desired percentage of capital stock to be subscribed and the type of entity, all in accordance with the rules established in the GP.

e. Limits for the receipt and transfer of cash

In accordance with the GP, an electronic fund payment institution must obtain the authorization from the CNBV to receive or transfer funds in cash in Mexican currency, stating the means and mechanisms to be utilized therefor. In addition to this authorization, FTIs must maintain the account levels established by the Mexican Central Bank (Banco de México).

This authorization will be restricted in the following terms:

- Receipt of cash up to 10,000 UDI's (approximately MX\$61,000.00 pesos) per

month per customer.

- Transfer of cash up to 1,500 UDI's (approximately MX\$9,150.00 pesos) daily per customer.

Regarding the crowdfunding institutions, they must request an authorization from the CNBV to receive cash in Mexican currency, through deposits made to bank accounts opened in financial entities, where the beneficiary is the institution itself, so their customers pay their loans or credits, up to a monthly amount equivalent in national currency to:

- 3,000 UDI's (approximately MX\$18,300.00 pesos) when the customers' contracts are classified as low risk in terms of the AML/CFT Provisions.
- 10,000 UDI's (approximately MX\$61,000.00 pesos) when the customers' contracts are not classified as low risk.

The ITFs must request authorization from the CNBV to receive and transfer cash in a foreign currency, either from or to foreign bank accounts, indicating the means and mechanisms to be used, in accordance with the following:

- In the case of accounts or agreements classified as low risk (in terms of the AML/CFT Provisions), they will be up to a monthly amount equivalent in Mexican currency to 1,700 UDI's (approximately MX\$10,000.00 pesos) per customer.
- No limit in case of accounts or contracts not classified as low risk.

f. Crowdfunding Institutions

i. General Overview

In terms of the Fintech Law, 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) 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.

As mentioned above, Crowdfunding Institutions may carry-out its activities through one of the following financial operations: (i) debt crowdfunding; (ii) equity crowdfunding; and (iii) co-ownership or royalties crowdfunding, in addition to other additional activities related to the performance of its corporate purpose.

ii. Risks Electronic Certification

In order to carry-out the activities outlined in the previous section, the crowdfunding institutions must inform their investors the risks associated to the granting of finance to the applicants and obtain from them an electronic certification stating the knowledge of said risks.

This electronic certification must be prepared following the instructions contained in Exhibit 8 of the GP and must be obtained once through the computer applications, interfaces, websites or any other means of electronic or digital communication that the ITFs use to operate with their customers, prior to the execution of the contract that allows them to carry-out their operations.

Through these electronic means, the crowdfunding institutions must, among other things, establish the criteria they will use to choose the applicants, and the general description of the methodology utilized to analyze and determine the level of risk of the possible applicants.

For the above, the GP also establish the minimum parameters that should be considered in the methodology to analyze and determine the level of risk of the potential applicants, in terms of the different types of crowdfunding operations.

The information that, in turn, the crowdfunding institutions disclose to the investors must be clear, avoid value judgments, include graphs or diagrams that facilitate their understanding, and include a section of frequently asked questions.

iii. Resources Limit

In terms of the GP, the crowdfunding funding requests published by the FTIs

may not exceed per transaction, the following amounts:

- For debt and personal loans among individuals crowdfunding, the equivalent to 50,000 UDI's (approximately MX\$305,000.00 pesos); and
- For debt and commercial loans, debt and real estate development, equity and co-ownership or royalties crowdfunding, the equivalent to 1'670,000 UDI's (approximately MX\$10'190,000.00 pesos).

The Crowdfunding Institutions may request the CNBV's authorization to execute these transactions for an amount equivalent in Mexican currency higher than 1'670,000 UDI's (approximately MX\$10'190,000.00 pesos) and up to 6'700,000 UDI's (approximately MX\$40'870,000.00 pesos). The maximum amount for funding requests from the same applicant shall not exceed the equivalent in Mexican currency to 7'370,000 UDI's (approximately MX\$44'957,000.00 pesos).

Likewise, the crowdfunding institutions must establish, through their informatics applications, interfaces, websites or any other means of electronic or digital communication that they use, controls to prevent the same investor from making investment commitments that exceed the percentages provided for in the GP.

iv. Agency Agreements

On the other hand, the GP foresee the possibility that crowdfunding institutions enter into agency agreements for the execution of their transactions, to facilitate the exercise of the rights of their customers derived therefrom.

The crowdfunding institutions that enter into this type of agreements must: (i) abstain from granting privileges to one customer over another; (ii) maintain their customers informed of all the actions performed in the executions of their activities; and (iii) disclose the consideration paid for the execution of the agency agreement.

Said agency agreements must clearly state the deadlines and conditions under which the delivery will be carried-out, or the

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completion of the necessary steps for the delivery of the resources contributed by the investors to the applicants.

Regarding agency agreements whose purpose is to represent investors in general shareholders' meetings or any other type of decision making body of the applicants, the crowdfunding institutions must inform the investors of the matters contained in the agenda that will be discussed in the corresponding meetings.

Finally, the crowdfunding institutions must inform the activities performed under any executed agency agreement.

v. Business Continuity Plan

With the purpose of allowing the continuity in the rendering of services and the performance of the crowdfunding institution processes in the event of possible operational contingencies, the GP establish the obligation to implement a business continuity plan ("BCP"), which must contain the following minimum requirements: (i) description of the essential services for business continuity; (ii) the minimum resources necessary to maintain and reestablish services and processes; (iii) the estimation of the quantitative and qualitative impacts that the operational contingencies may have; and (iv) the estimated recovery time.

The administration body of the crowdfunding institutions shall: (i) approve the BCP; and (ii) appoint an individual to be responsible for risk management. The person responsible for risk management must, among other things, prepare, review and update the BCP and test its operation and efficiency to assess its scope and effectiveness.

B. AML/CFT Provisions

a. Purpose

Similarly, along with the GP, the AML/CFT Provisions were published establishing the measures and minimum procedures that the FTIs should observe to prevent and identify the actions, omissions or operations that may favor, assist or cooperate in any form in terrorism activities or transactions

involving resources from an illegal source.

Furthermore, in compliance with the provisions of Article 58 of the Fintech Law, the AML/CFT Provisions will be applicable to the FTIs as well as to all those legal entities incorporated under the commercial law, different to the FTIs, to the financial entities and other entities supervised by any surveillance commission or by the Mexican Central Bank (Banco de México), the ones that authorize innovative models must comply with them in order to avoid being used as a vehicle for the commitment of operations involving resources from illegal origins and the financing of terrorism, as well as to prevent the misuse of the financial system, through the new products and services that technological innovations offer to the public.

b. General Overview

Along with the enactment of the AML/CFT Provisions, the guidelines for the procedure and criteria that the FTI must comply with were published, including the scenarios, form, terms and deadlines regarding:

- (i) the proper knowledge of their customers, through the development and implementation of policies for identification of customers and, if applicable, the users with whom they operate as a key element to mitigate the risk to which they are exposed in terms of anti-money laundering and countering the financing of terrorism;
- (ii) the information and documentation to be retrieved for the execution of the operations and services to be submitted and that fully prove the identity of their customer (Know Your Customer - KYC);
- (iii) the way in which they should secure and guarantee the safekeeping of the information and documentation related to the identification of their customers, as well as the actions, operations and reported services, through the use of digital means, ensuring its legitimacy, preservation and authenticity in accordance with applicable regulation;
- (iv) the terms to provide training to its directors, officers, employees and agents in anti-money laundering and

countering the financing of terrorism matters;

- (v) the use of automated systems that contribute to the compliance of measures and procedures in these matters;
- (vi) the establishment of a communication and control committee within the FTI;
- (vii) the appointment of a Compliance Officer with duties and obligations in anti-money laundering and countering the financing of terrorism matters; and
- (viii) the guidelines for the annual review by the internal audit body or an independent third party on the effectiveness and compliance of the AML/CFT Provisions.

Additionally, the AML/CFT Provisions provide the manner and terms under which the FTIs must file Compliance Manual with the CNBV which contains the measures and procedures to prevent and identify actions, omissions and operations involving resources from illegal origins and the financing of terrorism.

For purposes of the foregoing, the FTI must establish a methodology for the assessment of the risks to which they are exposed derived from the products, services, practices or technologies used for their operation.

Likewise, the AML/CFT Provisions point out the manner, terms and modality under which the FTIs must submit before the Mexican Tax Ministry (SHCP) through the CNBV the reports relating to: (i) the actions, operations and services provided to its customers and operations between them; and (ii) every action, operation or services carried-out by their board members, officers, directors, employees, legal representative and agents that may fall under the assumption of operations involving resources from illegal origins and the financing of terrorism or that may violate or infringe the proper enforcement of the AML/CFT Provisions.

Such reports must refer at least to operations considered as relevant, unusual and disturbing and those related to international transfers and cash

transactions made in a foreign currency, as defined in the AML/CFT Provisions.

Lastly, in accordance with the transitory provisions of the AML/CFT Provisions, they are still pending to publish the following guidelines:

- The Guidelines that are referred to in Article 11, section VI of the AML/CFT Provisions, which will be issued within 90 calendar days following the effective date of the AML/CFT Provisions.
- The guidelines or best practices that are referred to in Article 65, section II of the AML/CFT Provisions, which will be issued within 240 calendar days following the effective date of the AML/CFT Provisions.
- The guidelines and/or best practices that are referred to in Article 9 of the AML/CFT Provisions, which will be issued within 90 calendar days following the effective date of the AML/CFT Provisions.

C. Circular 12/2018 issued by the Mexican Central Bank (Banco de México)

Finally, as part of the first package of secondary regulations of the Fintech Law, the Mexican Central Bank (Banco de México) published the general provisions applicable to the operations of the electronic payment funds institutions (e-money), which its purpose is to:

- a) Establish the main characteristics for the operation to be carried-out by the electronic payment funds institutions referred to in the Fintech Law;
- b) Establish the terms and conditions regarding the issuance of electronic payment funds referred to foreign currency and, in general, the execution of operations with foreign currency, as well as the rendering of the transfer of cash in foreign currency service referred to in the Fintech Law;
- c) Determine the limit for credits or loans amount for over the limit situations that the electronic payment funds institutions grant in terms of the Fintech Law;
- d) Establish the terms and conditions for the offering of non-monetary benefits

by the electronic payment funds institutions;

- e) Establish limits to the resources that the electronic payment funds institutions may maintain on behalf of their customers, as well as the limits to the resources that a Customer may dispose of through such institutions, and
- f) Determine the information related to the activities and operations of the electronic payment funds institutions that must be reported to the Mexican Central Bank (Banco de México), as well as the corresponding periodicity.

Furthermore, Circular 12/2018 states that the electronic payment funds institutions may only issue electronic payment funds referred to those particular virtual assets that, if applicable, the Mexican Central Bank (Banco de México) determines when it deems it appropriate, in accordance with the general provisions to be issued by Mexican Central Bank (Banco de México) in terms of Article 26, second paragraph, of the Fintech Law.

In this regard, in order for the electronic payment funds institutions to be able to execute those operations that result from the aforementioned virtual assets, including the issuance of electronic payment funds referred to said virtual assets, must have the prior authorization from the Mexican Central Bank (Banco de México) and comply with those requirements to be established in the general provisions issued by the Mexican Central Bank (in addition to the provisions of the Fintech Law), which are still pending publication.

Notwithstanding the foregoing, the electronic payment funds institutions must request the authorization from the Mexican Central Bank (Banco de México) in order to use those technologies associated to any of the virtual assets indicated in the previous paragraph or a different type, for the execution of the required processes for the performance of operations of fund transfers in Mexican currency or in a foreign currency.

On the other hand, Circular 12/2018 provides the main characteristics for the

issuance of cards that can be considered as means of disposition of the electronic payment funds registered in the applicable electronic payment funds account, such as the formats for direct debit, cancellation and other charges for services to said electronic funds cards.

1. This is the case as regards the provisions contained in Chapter IV, Second Section, which establish the accounting criteria, securities valuation and other financial instruments, as well as virtual assets, financial information and its disclosure, which shall become effective on **May 1st, 2020**.
2. Certification obtained in terms of the "General Provisions applicable to the certification of independent external auditors, compliance officers and any other professionals regarding anti-money laundering and countering the financing of terrorism", published in the Federal Official Gazette on October 2nd, 2014, along with its applicable amendments.
3. Investment units

Contact:

Legal Corporate Services

Ramón Bravo H.

Tel. +52 55 5080 6478
rambravo@deloittemx.com

Héctor Cuevas González

Tel. +52 55 580 7214
hcuevas@deloittemx.com

Beatriz Rueda Castro

Tel. +52 55 5900 2641
brueda@deloittemx.com

José Ángel Romero

Tel. +52 55 5900 2919
joseromero@deloittemx.com

Miguel Figueroa Morgado

Tel. +52 55 5900 2860
migfigueroa@deloittemx.com

Alfredo Chavero Ortega

Tel. +52 55 5900 1776
achavero@deloittemx.com

www.deloitte.com/mx
www.deloitte.com/mx/legales



tax@hand App

Download our tax@hand app.
Available on: www.taxathand.com

For IOS, Android and Blackberry



Aguascalientes

Universidad 1001, piso 12-1
Bosques del Prado
20127 Aguascalientes, Ags.
Tel: +52 (449) 910 8600
Fax: +52 (449) 910 8601

Cancún

Avenida Bonampak SM 6, M 1, lote 1,
piso 10, 77500 Cancún, Q. Roo
Tel: +52 (998) 872 9230
Fax: +52 (998) 892 3677

Chihuahua

Av. Valle Escondido 5500
Fracc. Des. El Saucito E-2, piso 1,
31125 Chihuahua, Chih.
Tel: +52 (614) 180 1100
Fax: +52 (614) 180 1110

Ciudad Juárez

Baudelio Pelayo No. 8450
Parque Industrial Antonio J. Bermúdez
32400 Ciudad Juárez, Chih.
Tel: +52 (656) 688 6500
Fax: +52 (656) 688 6536

Culiacán

Insurgentes 847 Sur, Local 103
Colonia Centro Sinaloa
80128 Culiacán, Sin.
Tel: +52 (33) 1454 2000

Guadalajara

Avenida Américas 1685, piso 10
Colonia Providencia
44630 Guadalajara, Jal.
Tel: +52 (33) 3669 0404
Fax: +52 (33) 3669 0469

Guadalajara

Avenida Américas 1612, piso 4
Colonia country Club
44620 Guadalajara, Jal.
Tel: +52 (33) 3669 0404
Fax: +52 (33) 3669 0469

Hermosillo

Blvd. Eusebio Francisco Kino No. 315
Piso 8, Suite 804, Colonia Lomas del Pitic
83010 Hermosillo, Son.
Tel: +52 (662) 109 1400
Fax: +52 (662) 109 1414

León

Paseo de los Insurgentes 303, piso 1
Colonia Los Paraísos
37320 León, Gto.
Tel: +52 (477) 214 1400
Fax: +52 (477) 214 1405 y 1407

Mazatlán

Avenida Camarón Sábalo 133
Fracc. Lomas de Mazatlán
82110 Mazatlán, Sin.
Tel: +52 (669) 989 2100
Fax: +52 (669) 989 2120

Mérida

Calle 56 B 485 Prol. Montejo Piso 2
Colonia Itzimna
97100 Mérida, Yuc.
Tel: +52 (999) 913 4032
Fax: +52 (999) 913 4052

Mexicali

Calzada Francisco López Montejano 1342
Piso 7 Torre Sur
Fracc. Esteban Cantú
21320 Mexicali, B.C.
Tel: +52 (686) 905 5200
Fax: +52 (686) 905 5231 y 5232

Ciudad de México

Paseo de la Reforma 505, piso 28
Colonia Cuauhtémoc
06500 México, D.F.
Tel: +52 (55) 5080 6000

Monclova

Blvd. Ejército Nacional 505
Colonia Los Pinos
25720 Monclova, Coah.
Tel: +52 (866) 190 9550
Fax: +52 (866) 190 9553

Monterrey

Av. Juárez 1102, piso 40
Centro
64000 Monterrey, N.L.
Tel: +52 (81) 8133 7300

Monterrey - La Rioja

Carr. Nacional 85, 5000, local S-6
Colonia La Rioja
64988, Monterrey, N.L.
Tel: +52 (81) 8155 5757
Fax: +52 (81) 8155 5758

Puebla

Edificio Deloitte, Vía Atlixcayotl 5506, piso 5
Zona Angelópolis
72190 Puebla, Pue.
Tel: +52 (222) 303 1000
Fax: +52 (222) 303 1001

Querétaro

Avenida Tecnológico 100-901
Colonia San Ángel
76030 Querétaro, Qro.
Tel: +52 (442) 238 2900
Fax: +52 (442) 238 2975 y 2968

Reynosa

Carr. Monterrey-Reynosa 210-B, PA
Fracc. Portal San Miguel
88730 Reynosa, Tamps.
Tel: + 52 (899) 921 2460
Fax: +52 (899) 921 2462

San Luis Potosí

Av. Salvador Nava Martínez 3125, 3-A
Fracc. Colinas del Parque
78294 San Luis Potosí, S.L.P.
Tel: +52 (444) 102 5300
Fax: +52 (444) 102 5301

Tijuana

Misión de San Javier 10643, Piso 8
Zona Urbana Río Tijuana.
Tijuana B.C., 22010
Tel: +52 (664) 622 7878
Fax: +52 (664) 681 7813

Torreón

Independencia 1819-B Oriente
Colonia San Isidro
27100 Torreón, Coah.
Tel: +52 (871) 747 4400
Fax: +52 (871) 747 4409

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