



Publication of the General Provisions Applicable to Institutions of Financial Technology

Introduction

On March 8 and 11, 2019, the following regulatory provisions were published in the "Official Federal Gazette" regarding the "Law to Regulate Financial Technology Institutions" ("Fintech Law"):

On March 8th, Circulars 4/2019, 5/2019 and 6/2019 were issued by the Mexican Central Bank ("Banxico"), same which came into effect on the day following their publication and which include, respectively:

- i. "General provisions applicable to credit and technology institutions governing virtual asset transactions"
- ii. "General provisions concerning innovative models"
- iii. "General provisions applicable to crowdfunding institutions regarding foreign currency transactions and the information reports for the Mexican Central Bank"

General Provisions Issued by Banxico General Provisions Applicable to Credit and Technology Institutions Governing Virtual Asset Transactions (the "Virtual Assets Provisions")

Object

To the extent that according to Banxico, virtual assets are volatile, the same have an excessive price, which most of the times respond to a seemingly unintelligible juncture of factors, owing to the fact they have a limited scalability and because they entail significant risks for their

Legal Services

Legal Alert 04/2019 | March 19th, 2019

holders, in addition to their possible use in connection with money laundering and terrorism financing, the Virtual Assets Provisions restrict transactions with them to the internal field of credit or technology institutions (the "Virtual Assets Institutions"), subject to the prior authorization from Banxico, and exclude the general public from the possibility of engaging in their conduction or from the risks thereof.

In short, Virtual Assets Provisions lay down the requirements and conditions that a Virtual Assets Institution must comply with in order to secure the authorization to perform virtual asset transactions, same which, however, are limited to the "internal transactions" of Virtual Assets Institutions in connection with the services offered to their customers; additionally, Virtual Assets Provisions preclude Virtual Assets Institutions from both allocating the risk of such transactions, either directly or indirectly, to customers and from performing exchange, transmission or custody services in respect of such assets.

For the purposes of the foregoing, "internal transactions" shall mean activities carried out by Virtual Assets Institutions to conduct their passive, active and service transactions they execute with their customers or perform on their own, including the activities carried out by Virtual Assets Institutions to support the international transfers of funds.

Virtual Assets

On the other hand, virtual assets in respect of which Virtual Assets Institutions may engage in, in accordance with the Virtual Assets Provisions, must meet the ensuing conditions:

- A. They must be units of information, identifiable unequivocally, even fractionally, registered electronically, that do not represent the ownership or rights of an underlying asset or good, or else, that that they represent such ownership or rights for a value lower than these.
- B. They must have clear issuance controls.

- C. They must have protocols which prevent that information units duplicates or their fractions become available for their simultaneous transmission.

Notwithstanding the foregoing, Virtual Assets Institutions may perform "internal transactions" using the technologies corresponding to other virtual assets with features different from those referred to above, while abiding by the applicable provisions.

Authorization Requests

The Virtual Assets Institution that seeks to perform virtual asset transactions must file an authorization with Banxico (digitally) in accordance with the Virtual Assets Provisions. Such request must be accompanied, among other items, by:

- A. The description of the operation model with virtual assets that the Virtual Assets Institution will follow, which must set forth the provisions they anticipate to establish to prevent the transmission of the risk, either directly or indirectly, of such virtual asset transactions to the customers, as well as the way in which it will oversee compliance therewith.
- B. A comparative chart that identifies the requirements of the applicable regulation and the measures that the Virtual Assets Institution will adopt to comply with said regulation, as well as the reference to the document which evidences or supports compliance thereunder.
- C. The benefits of conducting the corresponding transactions.
- D. The operations manual drafted by the Institución de Activos Virtuales; which should include, inter alia:
 - The description of the virtual asset with the reasons why it considers that such asset meets the aforementioned requirements.

- The characteristics of virtual asset protocols.
- The characteristics of the virtual asset market.
- The measures that the Virtual Assets Institution will adopt to prevent that its customers incur in any risk arising from the performance of transactions in respect of virtual assets.

- E. A comprehensive risk framework which lists, at least, those associated with virtual asset transactions, which should provide for, among other aspects, a recovery plan for the affected activity and services and a payment procedure should the performance of authorized transactions become impossible.

If Virtual Assets Institutions wish to amend any of the aforementioned items of the operations manual, the Virtual Assets Institution must submit the modification to Banxico, along with the update of its integral risk framework, or a detailed explanation as to why that framework amendment is unnecessary.

Banxico must resolve the amendment authorization request within 30 business banking days following that in which the Virtual Assets Institution filed its application.

Up until the moment in which Banxico hands down its decision, the Virtual Assets Institution must continue its operations in accordance with the operations manual in force and effect.

In those events in which the Virtual Assets Institution declares and proves in the submitted request that the amendment project of the operations manual is essential for the Virtual Assets Institution to continue with its internal transactions, the period during which Banxico should issue its decision will be 60 banking business days, during which the Virtual Assets Institution will be able to perform its internal transactions pursuant to the operations manual amendment project.

Once the aforementioned periods have

elapsed without Banxico having decided on the authorization request, said request shall be deemed denied.

Banxico may request additional changes or documents; if it does not authorize the manual amendment, the Virtual Assets Institution will no longer be able to carry out virtual asset transactions.

Revocation of the authorization

Banxico may declare the revocation of the authorization when a Virtual Assets Institution:

- A. Does not update the operations manual and the integral risk framework.
- B. Does not inform Banxico when additional risks are generated for the Virtual Asset Institution or for market participants as a result of virtual asset transactions.
- C. Does not implement the measures to prevent their customers from incurring in any risk, direct or indirect, derived from the virtual asset transactions.
- D. Does not comply with the risk control and containment policies and procedures defined in the comprehensive risk framework.
- E. Does not disclose risk management information pursuant to the comprehensive risk framework.
- F. Performs virtual asset transactions which breach the authorization.

Hiring of third parties

The Virtual Assets Institution may engage or hire third parties, including other Virtual Assets Institutions, national or foreign, for the provision of services related to virtual asset transactions, with the prior authorization of Banxico; it is noteworthy that an application must be submitted along with the draft of the legal instrument that is intended to be executed for these purposes, in which the third party must undertake, among other aspects, to allow

Banxico to make visits to verify compliance with the law, the applicable requirements, to provide the information requested in the indicated periods, to allow the Virtual Assets Institution that hired it and an independent external auditor of the Virtual Assets Institution to have access to its facilities, documents, equipment and information in general, and that perform audits with respect to the services hired in relation to the provisions of Virtual Assets Provisions, etc., as well as additional requirements in the event that the third parties which will be hired are residents abroad.

The Virtual Assets Institution shall be held liable for the services provided by third parties in connection with virtual assets "internal transaction" services, even when performed in accordance with terms different from those agreed upon.

Moreover, the Virtual Assets Institution shall be responsible for the activities of said third parties in breach the Virtual Assets Provisions.

Evaluation through independent third parties

The Virtual Assets Institution must retain an independent third party (that is, one which meets the independence requirements in accordance with the Virtual Assets Provisions, as well as in accordance with the "General Provisions Applicable to the Entities and Issuers Supervised by the Commission National Banking and Securities that hire external audit services of basic financial statements") for a biannual compliance assessment.

The compliance evaluation report must be delivered by the independent third party to the management body of the Virtual Assets Institution and presented to the audit committee of the latter (when applicable).

Further, the Virtual Assets Institution must file with Banxico through the Management of Operation and Business Continuity of the Payment Systems the aforementioned report, within 5 business days following the presentation of the report to the management body.

General Provisions Regarding Innovative Models

Object

The "General Provisions Regarding Innovative Models" (the "Innovative Models General Provisions I") lay down the criteria and conditions that entities different from financial entities, financial institutions and other entities under the supervision of the National Banking and Securities Commission ("CNBV"), National Pension Savings System Commission ("CONSAR"), Insurance and Surety National Commission ("CNSF") or the National Commission for the Protection of Financial Services Consumers ("CONDUSEF") or by Banxico to carry out, through an "Innovative models" routing, compensation or settlement of payment transactions services or transfers of funds, or any combination of such services.

Authorization request

All those intending on operating an "innovative model" —which, under Fintech Law, is any model which uses tools or technological means for performing financial services with modalities different from those existing in the market— concerning professional routing, offsetting and payment or settlement services, or any combination thereof, must file an authorization request (digitally) with Banxico. This request must include:

- A. The public instrument which contains the powers of attorney vested upon the applicant's attorney-in-fact or legal representative, formalized with public attester.
- B. The applicant's bylaws of, which should include its management address (within national territory), a covenant conditioning the validity of any amendment thereof to Banxico's prior authorization and a corporate purpose enabling the entity to perform professional routing, offsetting and payment or settlement services, or any combination thereof.
- C. A list of the individuals in managerial positions (or of the proposed candidates).

Legal Services

Legal Alert 04/2019 | March 19th, 2019

- D. Documentation and information of the persons who, directly or indirectly, intend to maintain any participation in the equity of the applicant, greater than or equal to 10% of the capital stock.
 - E. Regulation compliance matrix and evidence that supports compliance therewith.
 - F. A list of each and every one of the applicable provisions that hinder the development of the products or services which would be offered through the “innovative model”, along with the corresponding arguments.
 - G. Mechanism according to which the applicant shall inform and secure the customers’ consent with respect to the execution of transactions with companies authorized to operate with “innovative models”, as well regarding the risks thereof.
 - H. Description of the “innovative model”, which must specify, in addition to the requirements under Fintech Law, inter alia:
 - Targeted sector, as well as a detailed description of the potential benefits for customers.
 - The time during which the authorization is requested.
 - A detailed description of the services and procedures (including those which demand an internal control).
 - Obligations with customers, as well as a description of the actions which shall be adopted to prevent that customers incur in any loss.
 - Operation limits (including a customers’ number limit).
 - Characteristics, existing or planned, of its technological and telecommunications infrastructure.
 - Applicant’s financial viability study.
 - The way in which they will link their processing systems with those of their customers and with other clearing houses or infrastructures.
- The technical and security characteristics of the aforementioned links.
 - A cybersecurity security model.
- I. A comprehensive risk framework which lists, at least, those associated with “innovative models” transactions, which should provide for, among other aspects, a recovery plan for the affected activity and services and a payment procedure and an exit procedure strategy.

Authorization

Banxico will evaluate if such request meets the requirements under the Innovative Models General Provisions I and may require additional information to the applicant to analyze the request; further, Banxico may request the documents submitted by the applicant to be amended, in which case it will grant an additional 60 business days period for the applicant to perform such modifications.

Notwithstanding the foregoing, Banxico may extend such term for up to 60 additional business days upon request from the applicant. If the modification period or its extension has ended and the applicant has not made the aforementioned amendments, the request shall be rejected.

Once Banxico has determined that the request contains the requirements set forth in the Innovative Models General Provisions I, it will have a period of 20 business days to decide the request.

Once the aforementioned period has elapsed without Banxico having decided on the authorization request, said request shall be deemed denied.

General Provisions Applicable to the Crowdfunding Institutions Regarding Foreign Currency Transactions and the Information Reports for the Mexican Central Bank

The “General provisions applicable to the crowdfunding institutions regarding

foreign currency transactions and the information reports to the Mexican Central Bank” (“Crowdfunding Institutions Foreign Currency General Provisions”) set forth an authorization procedure for Banxico with respect to crowdfunding institutions (the “crowdfunding institutions”) to carry out operations in foreign currency in accordance with the provisions of the Fintech Law, as well as concerning the information that crowdfunding institutions must disclose to Banxico.

Authorization request

In order to secure such an authorization, the crowdfunding institution must submit a (digital) request with Banxico, which must contain the following:

- A. A description of the transactions in foreign currency that it will perform.
- B. A description of the scope and relevance of these transactions.
- C. The profile and identification measures of the target customers.
- D. The fees that will be charged.
- E. Mechanisms to verify compliance with the Crowdfunding institution Foreign Currency General Provisions.

Banxico will have a period of 30 business days to resolve the request. Once the aforementioned period has elapsed without Banxico having decided on the authorization request, said request shall be deemed denied.

Reports

Finally, the crowdfunding institutions must provide Banxico with the transactional information of the operations they conduct in the terms in the manner and terms Banxico deems appropriate.

General Provisions Issued by the SHCP
On March 11, the Ministry of Treasury and Public Credit (the “SHCP”), published the: (i) “General Provisions Applicable to Innovative Models under the Law to Regulate Financial Technology Institutions” (the “Innovative Models General Provisions

II”).

Innovative Models General Provisions II

It is noteworthy that the construction of the Innovative Models General Provisions II and the resolution of the unforeseen items thereof was commissioned to the very same Ministry.

Purpose

The Innovative Models General Provisions II set forth:

- 01. Additional conditions to those contained in the Fintech Law for certain entities (the “Innovative Model Entities”) to be authorized to operate an “innovative model”, as such term is defined under the Fintech Law (the “authorization”).
- 02. Some specific aspects of the public “Companies Authorized to Operate Innovative Models Registry” (the “Registry”), which shall designate a record folio to each Innovative Model Entity, which shall include all entries relating to both the registration and notations (with the content set forth in the Innovative Models General Provisions II) in chronological order, including, when applicable, the record cancelation (which may occur by reason of the authorization being revoked, its expiration, or because a definitive authorization was awarded pursuant to the applicable laws).
- 03. The additional information to that provided for in the Fintech Law, which must include the periodic and final reports, which are prepared and delivered to the financial authorities by the authorized entities.

Authorization request

In connection with the additional requirements, the Innovative Model Entity must prove:

- A. It has the human, material and monetary resources necessary to initiate and maintain the operation of the “innovative model” during the authorization’s validity.

- B. That as regards the operation of the “innovative model”, it has adopted measures to reduce the risks to which customers will be exposed regarding the management of their resources, assets, goods and information.
- C. That it has sufficient resources, insurance policies, guarantees or other mechanisms to compensate their customers for any loss and damages incurred in by them during the period of validity of the authorization.

The Ministry may request the opinion of the CNBV, CONSAR, CNSF or CONDUSEF to grant the authorization.

Additionally, the Innovative Model Entity must present, with its authorization request, the following:

- A. Original or certified copy of the document which contains the powers of the attorney-in-fact or legal representative of the applicant, along with his official ID.
- B. A draft of the bylaws (or their amendments) which specifically set forth that the activities that will be carried out will be conducted pursuant to the authorization, as well as (if applicable) their incorporation and current bylaws in the public instruments or certified copies thereof —with their registration with the Public Registry of Commerce (the “Registry of Commerce”).
- C. The address in which the Innovative Model Entity will have its principal place of business.]
- D. Official document issued by Tax Administration Service with the Federal Taxpayers Registry (the “taxpayers registry”) of the interested parties and of the Innovative Model Entity.
- E. Brands, logos or commercial names that will be used when offering their

services to the public.

- F. List of the individuals who will have an equity interest or participation with respect to the Innovative Model Entity, with an indication of their direct or indirect interest (if they are legal entities or trustees, copies of the public instruments or documents reflecting their incorporation or bylaws —with the Registry of Commerce data— and, when appropriate, any amendments thereof along with the settlors’ and or beneficiaries’ information), their taxpayers registry and their official ID.
- G. Assurance letters under the Innovative Models General Provisions II form.
- H. Organizational structure of the Innovative Model Entity; additionally, the taxpayers registry, the CURP or personal ID code, copy of an official id., the curriculum vitae and assurance letter (pursuant to the Innovative Models General Provisions II form) of all persons who will partake in the structure.
- I. Contact data, interfaces, computer applications or any other means of communication through which their customers can communicate and, as the case may be, the webpage with basic information.
- J. In relation to the description of the “innovative model”.
 - The reasons why the proposed solution is considered an “innovative”.
 - The business model.
 - Description of the technological infrastructure that will be used in its operation, as well as the facilities where you it will be placed.
 - Evidence that the “innovative model” is operation-ready.
 - The period for which the authorization is requested, as well as the implementation

Legal Services

Legal Alert 04/2019 | March 19th, 2019

stages concerning the “innovative model”.

- K. The list of the legal provisions which hamper or diminish the development or delivery of the products or services offered through the “innovative model”, including a justification as to the reasons because of which said provisions are deemed unfit.
- L. The kind of financial entity the regime of which shall be adopted by the Innovative Model Entity at the expiration of the authorization’s period, specifying the manner, method and deadlines to receive a definitive authorization or registration.
- M. As regards the exit procedure, it shall include, at least, a description of the manner and media through which the customers will be receive notices that the Innovative Model Entity did not receive the definitive authorization, or else, that the temporary authorization period expired, as well as the procedures and deadlines to reconstitute money, assets or goods from the customers or to a third party, along with the corresponding losses and damages.
- N. A representation in the sense that in the operation of the “innovative model” will require the use of a programming interface for standardized applications.
- O. The information and documentation that proves, as the case may be, the extension, improvement or update of “innovative mode’s” scope of the Innovative Model Entity, in order to secure the authorization in this regard.

name of the Innovative Model Entity, the only requirement would be a notice to the Ministry.

Finally, the Innovative Models General Provisions II require that, in addition to the provisions of the Fintech Law, the final and periodic reports elaborated for the financial authorities by Innovative Model Entities be delivered on the first 15 calendar days of January, April, July and October, each year, with the following information: (i) the number of transactions, as well as the individual and total amount, for each kind of transaction, at the close of the immediately preceding quarter; (ii) a list of the operational contingencies and information security incidents that took place up until the end of the preceding quarter, including the date and time in which it begun and its duration; the affected procedures, systems and channels; the number of customers affected and, when applicable, the amount of the losses and damages produced to the; a description of the event and its causes; the indication of the actions that were implemented to solve them and the result obtained, as well as those adopted to avoid them in the future; (iii) the number of claims or clarifications, if any, that their customers have raised or filed at during the previous quarter, as well information as to the causes of the most recurrent ones; the report on the progress of the actions taken to obtain the final authorization or registration at the end of the temporary authorization and (iv) the data and information which the Ministry indicates in the official letter of authorization, in accordance with the nature of the “innovative model”.

As regards any change or amendment concerning the address, trademarks, logos or commercial names, the partners’ or shareholders’ instructions, the organizational structure, the contact data, the web page, as well as the corporate

Contacts:

Legal Services

Ramón Bravo

Tel. +52 55 5080 6000

rambravo@deloittemx.com

Héctor Cuevas González

Tel. +52 55 5080 6000

hcuevas@deloittemx.com

Martín Cortina Camargo

Tel. +52 55 5080 6000

mcortina@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 López Mateos Norte 2405
piso 29
Colonia Italia Providencia
44648, Guadalajara, Jalisco.
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.
22010, Tijuana B.C.
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

Deloitte.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee and its network of member firms, each of which is a unique and independent legal entity. Please consult our website at www.deloitte.com/mx/conozcanos for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte renders professional services in the areas of audit, taxes and legal services, consulting and advisory, to public and private clients from different industries. With a global network of member firms in over 150 countries, Deloitte offers world-class capacities and high quality service to its clients, providing the experience necessary to deal with the most complex business challenges. The more than 264,000 employees of Deloitte are committed to achieving significant impacts in their communities.

As utilized in this document, "Deloitte" means Galaz, Yamazaki, Ruiz Urquiza, S.C., which has the exclusive legal right to become involved in, and limits its business to, the provision of services of audit, tax consulting, advisory and other professional services in Mexico, under the name "Deloitte".

This publication contains only general information and neither Deloitte Touche Tohmatsu Limited, its member firms, nor any of their respective affiliates (collectively the "Deloitte Network"), render advice or services through this publication. Before taking any decision or measure which may affect your finances or business, you should consult a qualified professional adviser. No entity of the Deloitte Network will assume responsibility for losses suffered by any person or entity that consults this publication.