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EY LAW Flash

# Mexican Fintech Law: reality and challenge



On March 9, 2018 the Law to Regulate Financial Technology Institutions (*Ley para Regular las Instituciones de Tecnología Financiera* or "Fintech Law") was finally published in the Federal Official Gazette (*Diario Oficial de la Federación*). Most of its provisions will enter into force the next day after its publication, but there are several transitory provisions establishing a detailed calendar for the issuance of the secondary regulation (six to twenty four months), as well as some rules allowing the current participants in the fintech market to adapt to the new statute.

The publication was supplemented with reforms to other major financial laws such as Law of Credit Institutions, Law of Securities Market, Law of Auxiliary Credit Companies and Activities, Law of Transparency of Financial Services, Law to Regulate Financial Information Companies, among many others federal statutes related to financial services.

This entails an important financial reform that will have considerable consequences in the following years.

There are certain provision in the Fintech Law that we consider of general interest:

Purpose: The Fintech Law regulates (i) financial services rendered by financial technology institutions ("ITFs") which are collective financing entities or "crowdfunders" ("IFC") and electronic payment entities ("IFPE"), as well as the (ii) incorporation, activities and services rendered through "Innovative Models", which will be allowed for the provision of financial services using tools and/or technological devices in manner not previously seen in the market at the time in which the license is granted.

Virtual Assets. One of the most prominent aspects of the Fintech Law is the regulation of “virtual assets” commonly known as “cryptocurrencies”, such as bitcoin, ether, among others. ITFs will only be authorized to carry out activities with virtual assets approved by the Mexican Central Bank, prior an authorization granted by such authority. ITFs will have the duty to register/deliver to their customers the virtual assets managed on their behalf or an equivalent amount in legal currency; also to: fulfill custody rules, refrain from carrying out derivative transactions, disclose to their customers the risks associated to virtual assets, keep account records, issue periodical reports to be filed before the financial authorities and establish measures to prevent money laundering activities.

Authorization. An authorization from the National Banking and Securities Commission will be required to be incorporated and operate as an ITF.

Collective Finance Institutions (IFC). IFC are entities whose main purpose is putting in contact on a regular and professional basis through informatics or electronic interfaces, people from the general public in order to perform (among them as investors and applicants) financing activities.

Electronic Payment Entities (IFPE). IFPE are entities whose main purpose is to render services to be performed with the general public on a regular and professional basis comprising the issuance, management, redemption and transmission of electronic funds through informatics applications, interfaces, webpages or any other digital mean of communication.

Innovative Models License. Similar to the “sandbox” model of other jurisdictions, the Fintech Law establishes that corporations (other than ITFs and other regulated entities such as banks, broker dealers, etc.,) will be able to apply for a temporary license in order to perform financial services using tools and/or technological devices in manner not previously seen in the market at the time in which the license is granted. This license will be limited by time, products and geographical reach and the authority in charge to grant it will be the governmental body whose rules and regulations will be affected by the Innovative Model.

The Fintech Law will provide more certainty to the participants in the fintech environment, but at the same time will pose a challenge for them in order to adapt their current structures to the statutory requirements. Also, the regulators must keep a closer eye on the realities of the industry in order to promote a regulation that will generate agile financial services and prevent unnecessary inefficiencies due to regulatory burden.

We expect the secondary regulation to provide an adequate framework in order to encourage the flourishing of the fintech sector and increase the competition in the financial services market, thus benefiting the consumer of financial services in Mexico.

The fintech players will have the challenge to promote their growth, to navigate through the process that has been triggered by the publication of the Fintech Law, as well as to comply with the regulations.

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