

CLIENT UPDATE

MINISTRY OF FINANCE RELEASES DRAFT RULES FOR FINTECH AML, THAT SIGNAL COMMITMENT TO FINANCIAL INNOVATION

- On Monday, August 6, 2018, the CNBV and the Ministry of Finance released draft rules (i) for money laundering and terrorism financing safeguards, and (ii) that signal a commitment to financial innovation.
- As with other financial institutions, newly-chartered FinTech firms will be expected to comply with prudential and consumer laws and regulations.

SCOPE

The draft rules establish requirements applicable to FinTech firms (Financial Technology Institutions, as defined under the FinTech Act, “TFI”s or “FinTech Firms”), other Financial Institutions (“Financial Institutions”, as defined under Mexican law), financial innovation firms and other Mexican corporations, which transact business with the FinTech firms.

Risk Based Approach. FinTech firms will have significant latitude to design and execute a cybersecurity program based on risk assessments of their own circumstances, including greater flexibility with respect to the use of encryption, the supervision of third-party service providers, the reporting of cyber incidents to the CNBV, and the schedule for compliance with the rules.

Customer and customer-assisted information. FinTech firms will design and execute their customer background checks, provided the same meet basic requirements of the rules. In some instances, FinTech firms shall stipulate that customers will assist them in obtaining and maintaining information regarding third parties, including among other third-party beneficiaries of payment orders.

FinTech firms which form part of a Financial Group (“Financial Group”, as defined under Mexican law), may adopt the KYC rules of the financial group to which they belong.

Beneficiaries. The rules require the collection of beneficial ownership information from persons who form corporations, limited liability companies and other structures, addressing what has been identified as a deficiency in the process by which beneficial owners are

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designated in other areas of Mexican law. The rules contain key provisions on the collection of beneficial ownership information at the time of a beneficiary's designation, as well as subsequent to that.

Compliance Manual. FinTech firms are required to design a compliance manual that shall govern the fundamental mechanisms for their operations. Key topics to be included among other, mostly addressing rules under the FinTech Act, are establishment of (i) the customer level of risk assessment rules, (ii) the high risk customer dealing rules, (iii) the other risks assessment rules, (iv) the reporting rules, (v) the code of ethics rule, and (vi) the books and records rule.

The CNBV retains authority to review the compliance manual and request changes to be made by the FinTech firm.

Risk Assessment Model. The risk assessment model is required to include customer and transaction related profiles, periodic reviews, alerts and reporting systems.

Control and Communications Committee. A control and communications committee must be established by the FinTech firm. Such committee is entrusted, among other tasks, with supervising the application, observance and follow-up with the compliance manual. FinTech firms with less than 25 employees are dispensed with such requirement; such tasks can be performed by the compliance officer in lieu of the same.

Compliance Officer. The compliance officer (i) must be independent from other departments, and (ii) may not participate in any internal audit function. The compliance officer is required to focus on misrepresentations and obstruction by FinTech managers during performance of routine AML tasks and to report on the same.

FinTech firms which form part of a Financial Group may utilize the services of the compliance officer of the financial group to which they belong.

Reporting Requirements. Transaction threshold reports and reports on suspicious transactions have as a main purpose (i) improving the work of the financial intelligence unit of the Ministry of Finance, with better access to information through centralized bank account registers, (ii) tackling money laundering and terrorist financing risks linked to anonymous use of virtual currencies and of pre-paid instruments, and (iii) ensuring adequate safeguards for financial flows from high-risk third countries.

The rules require the filing of reports in respect to “blocked persons”, “relevant transactions” “transactions with cash and foreign currencies”, “international transfers” on or above US\$1,000 (or its equivalent in Mexican Pesos), “unusual transactions”, an “unusual particular transaction”, “transactions with virtual assets” on or above US\$2,350 (or its equivalent in Mexican Pesos) and “internal transactions of concern”, on a quarterly, monthly, three-day and 24 hour basis, as applicable.

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Information Exchange. The rules require FinTech firms to exchange information related to transactions in which they participate, with other Financial Institutions and foreign financial institutions, provided the parties enter into an agreement for exchange of information and confidentiality.

FinTech firms which form part of a Financial Group may exchange information with other companies of the financial group to which they belong, provided a similar agreement is executed between the same.

Offices. FinTech firms may open offices in Mexico and abroad, as permitted under foreign law.

Surveillance and Enforcement powers. The CNBV has surveillance and enforcement powers in respect to FinTech firms. Such powers are to be exercised in coordination with other relevant regulators, particularly in the case of financial innovation firms.

COMPANIES IN OPERATION

Companies in operation shall have 180 days to adjust their systems to the requirements of the rules. They shall also have 360 days to complete the customers' background check and apply for an authorization to amend their charter and become a FinTech firm.

Upon passing of such deadlines without meeting such requirements, existing companies shall immediately cease to provide FinTech services and all financial institutions and nonbank payment service providers shall cease to provide any account opening, payment, trading, settlement and other services for any illegal company in operation and relevant parties involved.

A company in operation should carefully consider the associated obligations when evaluating whether to pursue a FinTech application: once authorized, the FinTech company would be subject to the CNBV supervisory and enforcement authority – as though it were a new bank. While the rules propose that these requirements will be tailored, the company will be obligated to meet appropriate capital, liquidity and financial commitment obligations. And where an authorized FinTech company fails to meet such obligations, the CNBV will have the full range of enforcement tools.

The proposed rules open a new regulatory regime that companies in operation should consider in their business and strategic planning. For those companies that decide an authorization may be beneficial, the first step is to engage in preapplication discussions with the CNBV to explore the viability of an authorization and to understand the nature of obligations that may be imposed on the company.

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Please do not hesitate to contact us with any questions.

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August 17, 2018