

## CLIENT UPDATE

# FINTECH ACT BECOMES LAW, FOCUS SHIFTS TO REGULATORS

On March 1, 2018, the Mexican Congress passed legislation approving the FinTech Act and amending various Mexican financial laws with changes incident to the same, which legislation was signed into law by the President on March 9, 2018 and was published in the Official Daily of the Federation on such date. The new legislation came into effect on the day following the date of its official publication. Please refer to our memoranda dated August 21 and November 6, 2017 ([here](#)) for a review of the FinTech Act.

**FinTech Regulatory Landscape.** Financial Technology Institutions (“ITF”s) will face regulatory, supervisory, and enforcement requirements from a number of quarters including the Ministry of Finance, Banco de México, the National Banking and Securities Commission (“CNBV”), the National Consumer Financial Services Protection Commission (“CONDUSEF”) and the National Retirement Savings Systems Commission (“CONSAR”).

The point institutions at this time are the Ministry of Finance, the CNBV and Banco de México. The three institutions are likely to simultaneously release an initial set of proposed regulations within few weeks, which will constitute a “best first effort” to be circulated for comments to the relevant associations of business organizations. The FinTech Act requires that the initial set of regulations be issued within six months from the Act coming into effect.

Once the initial set of regulations is finalized and issued, the same regulators, plus CONDUSEF and CONSAR, as appropriate, will start preparation of a second set of proposed regulations, with the aim of issuing the same within a time-line of 12 to 24 months after the FinTech Act came into effect.

**Ministry of Finance.** In sum, the Ministry of Finance is charged principally with preparation of AML regulations.

**CNBV.** The CNBV is entrusted with preparation of regulations that will establish procedures for both, an ITF authorization applicant, and potential customers of the ITF; criteria to select; a resolution plan in the instance of a conditional authorization that may be granted for up to three years by the CNBV; capital requirements; account balance and disbursement requirements and limits; risk management; financial technology requirements and measures to deal with risk of cyber-threats. At a second stage, the CNBV is called to prepare regulations in respect to the contracting of services by the ITF with third parties; adoption of self-correcting measures; determination of net capital; inter-play systems with financial entities and service providers.

# BERDEJA ABOGADOS, S.C.

It is hoped that the proposed CNBV regulations will pave the way for collaboration between ITFs and banks. This is likely to be a consumer-driven phenomenon, as both FinTech startups and banks realize that neither segment is likely to displace the other—and that customer demand is best served by working together. Reports prepared in other jurisdictions show that a growing number of consumers plan to increase their usage of nontraditional financial services providers, while a less than entirely predominant segment plan to continue using traditional institutions only. In line with this trend, other surveys have found that most commercial banks in the U.S. plan to increase FinTech investments, and that a significant percentage of bank executives are currently looking to strengthen FinTech funding.

In the consumer lending market, a common model for FinTech-Bank partnerships involves an online marketplace lender working in tandem with a traditional bank. The bank originates and funds loans that the online lender then purchases, either to hold in its own portfolio or to sell to downstream investors. The collaboration FinTech-Bank partnership can be more easily regulated in Mexico, where both activities are subject to federal legislation, than in other countries where overlapping federal and state jurisdictions pose situations that can be difficult to deal with.

**Banco de México.** Banco de México shall issue regulations for electronic payment systems; including amount limits. At a second stage it will prepare regulations dealing with type and amount of digital assets –basically cryptocurrencies (private digital currencies) - that can be handled by an ITF; inter-play systems; applicable reporting requirements.

Cryptocurrencies combine new payments systems with new currencies that are not issued by a central bank. The most well-known cryptocurrency is Bitcoin, but other examples include Ethereum, Ripple and LiteCoin. Banco de México has assessed cryptocurrencies and concluded that they do not pose a material risk to monetary or financial stability in Mexico. Banco de México is empowered to regulate transactions with the same by financial entities and related institutions. It continues to monitor developments in this area.

**CONDUSEF.** CONDUSEF is entrusted with preparation of regulations that will establish surveillance systems in respect to new activities not incidental to the basic functions authorized under the FinTech Act for an ITF and being undertaken pursuant to a conditional authorization that may be granted for up to three years by the CNBV; reporting requirements to oversee compliance with prohibitions applicable to predatory products and unfair or deceptive acts or practices.

**CONSAR.** CONSAR shall issue regulations applicable to self-correcting measures; inter-play systems, as both relate to transactions with pension funds.

The above-mentioned regulators are thus likely to continue releasing draft regulations at a deliberate pace in 2018 as the implementation of the FinTech Act continues.

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# BERDEJA ABOGADOS, S.C.

We will keep you posted on future developments.

Please do not hesitate to contact us with any questions.

Berdeja Abogados, S.C.

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