

CLIENT UPDATE

MINISTRY OF FINANCE PREPARES DRAFT FINTECH ACT

The Ministry of Finance completed an initial proposal to adopt a FinTech Act and amend various Mexican financial laws with changes incident to same.

Once the Ministry completes its review of comments being produced on the FinTech Act and prepares a final draft, the same will be submitted by the Mexican President to Congress.

The proposed Fintech Act's objectives include the creation of FinTech firms that will engage in financial activities including deposits and payments, lending activities and virtual asset management. The new institutions will be subject to capital and liquidity requirements, as well as a mandate to comply with prudential and consumer-protection laws and regulations.

The Financial Technology Institutions ("ITF"s), will require the authorization of the National Banking and Securities Commission ("CNBV"). Their activities will be limited to those permissible under the FinTech Act and applicable regulations, or those that the CNBV determines to be permissible. As mentioned before, core activities will include the taking of deposits and payments, lending activities and virtual asset management. Any activity not incidental to the above, should be discussed with the CNBV, after which the CNBV in consultation with other regulators, as required, will determine whether such activities are permissible for an ITF.

ITF's may take deposits from pre-screened persons for purposes of making electronic payments. Such deposits cannot accrue interest.

Institutions engaged in lending may fund loans by (i) issuing debt instruments, (ii) raising capital and (iii) receiving royalty payments.

ITF's chartered to manage virtual assets may (i) contact purchasers and sellers who wish to conduct a virtual asset sale, (ii) purchase or sell virtual assets whether for customers' or for their own account, and (iii) transfer payments with virtual assets.

A virtual asset is a representation of currency in some environment or situation. In the context of ITF's, currency can be defined as either a medium of exchange or a property that has value that can be translated into Mexican pesos. Monetary virtual assets are often called virtual currency.

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Private digital currencies combine new payments systems with new currencies that are not issued by a central bank. The most well-known privately issued digital currency is Bitcoin, but other examples include LiteCoin, Ethereum and Ripple. Banco de México (Mexico's Central Bank) has assessed private digital currencies and concluded that while they are interesting, they do not currently pose a material risk to monetary or financial stability in Mexico. Banco de México continues to monitor developments in this area.

Activities deemed “supplementary” or “connected” to the core activities of ITF's may be authorized by the Ministry of Finance with the previous favorable opinion of the CNBV and Banco de México, as applicable.

Procedures for an ITF applicant will require a detailed submission including the filing of an authorization application, business plan, biographical report on all identified insiders, risk management, description of information technology and compliance management systems and details of financial management in formation. The CNBV may impose special conditions such as a resolution plan in the instance of a conditional authorization, higher capital requirements and other measures to be reflected in operating agreements.

Principles in evaluating a proposal will include (i) maintain a sound financial system, (ii) foster fair access to financial services, (iii) promote efficiency and better service through the adoption of innovative technology. Financial inclusion will be a focus in the application process. The provision of low cost services to underserved communities will be sought.

A proposed new activity not incidental to the above or involving the use of new technology, should be discussed with the CNBV in advance of the filing of an application. The CNBV is empowered to grant a conditional authorization for a two-year period that can be extended for an additional year before a decision is made to either grant a definitive authorization or let the conditional one expire. In the latter case, the applicant should follow the resolution plan requested by the CNBV at the time of filing the petition for a conditional authorization.

Providers of ITF services will face regulatory, supervisory, and enforcement requirements from a number of quarters including Banco de México, the CNBV and the National Consumer Financial Services Protection Commission.

Those firms currently engaged in the activities proposed to be authorized for ITF's, will have a six-month period after the coming into effect of the FinTech Act, to file a petition for authorization to act as ITF from the CNBV. In the meantime they will remain authorized to act as such, conspicuously stating in their websites that they are in the process of obtaining the required authorization from the CNBV.

A number of existing statutory provisions related to the FinTech Act are proposed to be amended. Among such provisions, the Financial Groups Act is proposed to be amended to provide that ITFs will be classified as “financial entities”, subject to Mexican or foreign ownership in accordance with the provisions of such act and applicable regulations. Consequently, an ITF may be owned by the holding company of a “financial group”.

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The FinTech Act makes it clear that predatory products and unfair or deceptive acts or practices are to be forbidden. Violations will subject those responsible to civil and criminal liabilities.

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We will keep you posted on future developments.

Please do not hesitate to contact us with any questions.

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