

The Improved Framework for Investment in Mexican Fintech Companies

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The Fintech Industry in Mexico

There is a significant market in Mexico for alternative sources of credit and financial services. According to the [2017 National Financial Inclusion Report](#) published by the Mexican Banking and Securities Commission (CNBV), in 2015 32 percent of the adult population in Mexico (approximately 24.1 million adults) did not use services from traditional financial institutions. In addition, as of August 9, 2018, there has been [a 40 percent increase](#) of fintech startups in Mexico with respect to the previous 12-month period. Fintech startups are divided in the following six major segments:

- Payments and Remittances, comprising 23% of the total number of startups;
- Lending, comprising 22% of the total number of startups;
- Entity Financial Management, comprising 13% of the total number of startups;
- Personal Financial Management, comprising 11% of the total number of startups;
- Crowdfunding, comprising 9% of the total number of startups; and
- Technologies for Financial Institutions, comprising 7% of the total number of startups.

A Legal Framework for Fintechs

Prior to the enactment of the Fintech Law, the various fintech segments were governed by a legal framework that was scattered across several statutes and related regulations. The newly enacted Fintech Law consolidates the applicable legal framework, and amends some of the existing applicable laws and regulations. In general terms, the Fintech Law regulates crowdfunding, payment platforms, certain financing business models and transactions with virtual currency.

Under the Fintech Law, the CNBV must authorize the operation in Mexico of crowdfunding platforms, whether for debt crowdfunding, equity crowdfunding or other forms of collective financing. CNBV will also authorize the operation in Mexico of payment platforms. In turn, the Mexican Central Bank will authorize the use of virtual currencies by crowdfunding platforms and payment platforms. The authorizations are to be granted to legal entities organized in Mexico as corporations that meet certain minimum capital, corporate governance and infrastructure requirements set forth in regulations issued by CNBV.

The requirements include the following:

- A business plan;
- Financial viability study with a three-year horizon;
- Policies and procedures for segregation of accounts;
- Policies and procedures for the disclosure of risks, commissions and charges;
- Policies and procedures regarding information security, confidentiality policies and protections for fraud and cyber-attacks;
- Operating procedures, internal controls and risk management; and
- Disclosures regarding ownership structure and conflicts of interest.

The Fintech Law also sets forth disclosure and information requirements for crowdfunding platforms, and prohibits platforms from guaranteeing any returns, results or success. The Fintech Law provides guidelines to develop assessment and grading methodologies for applicants, and requires crowdfunding platforms to use at least one credit scoring company to gather information about applicants.

Investing in Fintechs in Mexico

The Fintech Law provides that a fintech company must be organized as a corporation, whether as Sociedad Anónima (SA) or Sociedad Anónima Promotora de Inversión (SAPI). Thus, fintech companies can raise capital by issuing equity in an SA or SAPI. The existing legal corporate framework applicable to SAs and SAPIs offers investors protections such as drag along and tag along rights, shareholders' agreements, affirmative and veto rights, a reduced threshold for the appointment of directors, and certain other statutory rights for minority shareholders.

The SA is created under the General Corporations Law of Mexico. The SA shareholders may agree on rights of first refusal, tag and drag along rights, as well as put and call options. They may also enter into agreements regarding voting rights in shareholders' meetings. By statute, shareholders representing 25 percent of the capital stock of an SA may appoint at least one member of the board of directors and repeal the resolutions adopted in a general shareholders' meeting by presenting a claim in front of a court of competent jurisdiction. In terms of management, the SA may be managed by a sole manager or by a board of directors.

The SAPI is created under the Mexican Securities Law and offers many of the same features and protections of an SA. However, a SAPI provides additional flexibility with respect to its corporate governance. For instance, pursuant to the bylaws certain SAPI shareholders may be excluded from voting on certain matters or may be excluded from voting rights altogether. Moreover, the SAPI bylaws may require the affirmative vote of a class of shareholders for specific matters. The SAPI bylaws may also limit or increase distributions or other economic rights among shareholders. The SAPI shall be managed by a board of directors only and minority shareholders representing 10 percent of the capital stock of the SAPI may appoint or revoke members of the board of directors. By statute, shareholders representing 20 percent of the capital stock of the SAPI may repeal resolutions adopted in a general shareholders' meeting by presenting a claim in front of a court of competent jurisdiction. Finally, SAPIs may buy back their own shares, which is prohibited to the SAs.

Conclusion

With the approval of the Fintech Law and the improvements to the Mexican corporate regimen that have been enacted during the past decade, the fintech industry provides an improved legal framework that offers flexibility and a higher level of protection to foreign investors. Even though all the required regulations under the Fintech Law have not been formulated and enacted, the statutory provisions of the Fintech Law and the existing amendments to the Mexican corporate laws provide a much improved legal framework for investors interested in investing in the Mexican fintech sector.

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