International Comparative Legal Guides

Fintech 2021

A practical cross-border insight into fintech law

Fifth Edition

Featuring contributions from:

A&L Goodbody
Advokatfirmaet BAHR AS
Afridi & Angell
Anderson Mōri & Tomotsune
Appleby
Astana International Financial Centre (AIFC)
AZB & Partners
Bär & Karrer
BBA//Fjeldco
Bird & Bird LLP
Bredin Prat
Carey Olsen Jersey LLP
Chandler MHM Limited
Christiana Aristidou LLC
DDPV Studio Legale
De Brauw Blackstone Westbroek
DivinaLaw
DQ Advocates Limited
Ellex
FINREG PARTNERS
Furtună și Asociaţii
Gilbert + Tobin
Gorrissen Federspiel
Hammad & Al-Mehdar
Janson Baugniet
Jonathan Cardenas, Chair, Financial Services Technology Joint Subcommittee
KPMG Law Firm
Lazcano Sámano, S.C.
Lee & Ko
Lloreda Camacho & Co.
LPS L@W
Mannheimer Swartling
Mattos Filho, Veiga Filho, Marrey Jr e Quiroga Advogados
McMillan LLP
PFR Attorneys at Law
QUORUS GmbH
RHTLaw Asia LLP
RIAA Barker Gillette
Shearman & Sterling LLP
Shearn Delamore & Co.
Slaughter and May
Triay Lawyers
Udo Udoma & Belo-Osagie
Uría Menéndez
Uría Menéndez – Proença de Carvalho
VD Law Group
Walalangi & Partners (in association with Nishimura & Asahi)

ICLG.com

Expert Analysis Chapters

Q&A Chapters

Digital Edition Chapter

Mexico

Alfredo Lazcano

Andrea Avedillo

Lazcano Sámano, S.C.

1 The Fintech Landscape

1.1 Please describe the types of fintech businesses that are active in your jurisdiction and the state of the development of the market, including in response to the COVID-19 pandemic. Are there any notable fintech innovation trends of the past year within particular sub-sectors (e.g. payments, asset management, peer-to-peer lending or investment, insurance and blockchain applications)?

As of May 2021, there are 13 fintech companies in Mexico duly authorised by the National Banking and Stock Commission (Spanish acronym: "**CNBV**") which are specialised in the rendering of the following services: (i) crowdfunding: these platforms are digital marketplaces where entities and individuals seek for financial resources that are contributed from the public as loans or share investments; and (ii) electronic payment fund institutions ("**EPFIs**") – these entities provide digital wallet services.

It is important to note that the Law to Regulate Financial Technology Institutions ("**Fintech Law**") was published on 9 March 2018, and even though fintech businesses were a reality in Mexico before 2018, the novel legal framework helped to foster the fintech culture in the country.

The COVID-19 pandemic drastically accelerated innovation and growth of fintech businesses, particularly those created for digital payments, as well as those dedicated to financial savings management.

The crisis caused by COVID-19 opened the door for fintech entities to become allies of different retail financial sectors, especially for banks, insurance companies, non-banking lending and finance institutions (in Spanish: *Sociedades Financieras de Objeto Múltiple*, Spanish acronym: "**SOFOMES**"), and popular financial companies (in Spanish: *Sociedades Financieras Populares*, Spanish acronym: "**SOFIPOS**"), as it represents a great opportunity to accelerate their digital transformation process and allow these financial entities to continue with their operations.

1.2 Are there any types of fintech business that are at present prohibited or restricted in your jurisdiction (for example cryptocurrency-based businesses)?

No; however, fintech entities (either for crowdfunding and/or electronic payment funds) are required to obtain the authorisation of the CNBV to carry out their business in Mexico to avoid the deposit-taking restriction. In addition to such authorisation, as set forth under Article 30 of the Fintech Law, businesses that seek to offer transactions with virtual assets shall apply for authorisation from the Central Bank of Mexico (Spanish acronym: "**Banxico**").

Please note that the Fintech Law provides a special temporary authorisation for novel models (i.e., sandbox models) different to crowdfunding and/or EPFIs; in this regard, said legislation considers as a sandbox the activities that, for rendering of financial services, use technological means with modalities different from those existing in the market at the time in which the temporary authorisation is granted. Such authorisation has a two-year validity.

2 Funding For Fintech

2.1 Broadly, what types of funding are available for new and growing businesses in your jurisdiction (covering both equity and debt)?

Crowdfunding institutions, seed capital, venture capital, government funding, accelerators, incubators and commercial banks are the most common types of funding available in Mexico.

As financial institutions, the shareholders of the fintech institutions must comply with financial and reputational requirements; in this regard, the Fintech Law and further regulations provide a legal framework regarding the acquisition of shares and/or the control of fintech institutions, such legal framework establishes different disclosure requirements for the potential shareholders – the disclosure requirements are provided considering the potential shareholding tenure in the corporate capital of fintech institutions.

Furthermore, the Fintech Law provides that the CNBV authorisation will also be applicable for financing in which the shares of the fintech were granted as a security or guarantee.

2.2 Are there any special incentive schemes for investment in tech/fintech businesses, or in small/medium-sized businesses more generally, in your jurisdiction, e.g. tax incentive schemes for enterprise investment or venture capital investment?

Unfortunately, no. This is one of the most recurring requests from investors in Mexico.

2.3 In brief, what conditions need to be satisfied for a business to IPO in your jurisdiction?

In general, these are the conditions to IPO in a Mexican Stock Exchange (Spanish acronym: "**BMV**"): (i) implement an effective Corporate Governance Model to regulate the relationship between shareholders, counsellors and administrative personnel; (ii) work with an Underwriter Firm; (iii) work with a Rating Company; (iv) submit the application form, as well as all the corporate and financial documents, before the BMV to get authorisation to IPO; and (v) sales and promotions of securities.

In connection with the fintech entities, please bear in mind that even though there are no express provisions prohibiting the securitisation of fintech entities, the acquisition of shares of the corporate capital of fintech entities are subject to the authorisations of the CNBV and in compliance with the requirements set forth in the general provisions issued by the CNBV for such purpose.

2.4 Have there been any notable exits (sale of business or IPO) by the founders of fintech businesses in your jurisdiction?

Not to our knowledge.

3 Fintech Regulation

3.1 Please briefly describe the regulatory framework(s) for fintech businesses operating in your jurisdiction, and the type of fintech activities that are regulated.

The regulatory framework governing fintech businesses in Mexico is integrated mainly by the Fintech Law, the General Dispositions Applicable to Financial Technology Institutions ("**Fintech General Dispositions**"), the General Provisions Applicable to Credit Institutions and Financial Technology Institutions Governing Virtual Assets Transactions, the General Provisions Applicable to Novel Models referred to in the Fintech Law, the General Provisions Related to Standardised Computer Applications Programming Interfaces referred to in the Fintech Law, the Provisions Applicable to EPFIs referred to in Article 48, second paragraph, Article 54, first paragraph and Article 56, first and second paragraphs of the Fintech Law, as well as any provision issued by the CNBV and/or Banxico.

The Fintech Law focuses on regulating two main fintech businesses: crowdfunding institutions; and EPFIs (or wallets); however, sandboxes and virtual assets are also contemplated within the legislation.

According to the provisions of the Fintech Law, the crowdfunding institutions are entitled to carry out the activities intended to put people from the general public in contact with each other so that they may grant financing among themselves through any of the following operations: (i) debt crowdfunding, through this activity, the institutions develop a marketplace whereby investors could grant loans, credits, mutual loans or any other financing causing a direct or contingent liability to the applicants or borrowers; (ii) equity crowdfunding, this marketplace enables investors to purchase or acquire securities representing the corporate capital of legal entities acting as applicants or issuers; and (iii) co-ownership or royalty crowdfunding, for the purpose of investors and applicants entering into joint ventures or any other type of agreement whereby the investor acquires an aliquot share or participation in a present or future asset or in the income, profits, royalties or losses to be obtained from the performance of one or more activities or projects of an applicant or developer.

3.2 Is there any regulation in your jurisdiction specifically directed at cryptocurrencies or cryptoassets?

As stated in the answer to question 3.1 above, the Fintech Law provides some guidelines for the operations with virtual assets (e.g., cryptocurrencies), notwithstanding the above, such law vests the core regulation of the virtual assets to Banxico; in this regard, Banxico is authorised to issue general regulations which, among others, provide the following: (i) the characteristics of virtual assets; (ii) the terms, conditions and restrictions of the transactions that the financial institutions may carry out with virtual assets; (iii) the information related to virtual assets transactions that the financial institutions shall submit to Banxico; and (iv) the information related to virtual assets transactions that financial institutions must file before Banxico to obtain the authorisation to operate with virtual assets.

On 8 March 2019, Banxico published in the Official Gazette of the Federation (Spanish acronym: "**DOF**") Circular 4/2019, which contained the General Provisions Applicable to Credit Institutions and Financial Technology Institutions Governing Virtual Assets Transactions.

3.3 Are financial regulators and policy-makers in your jurisdiction receptive to fintech innovation and technology-driven new entrants to regulated financial services markets, and if so how is this manifested? Are there any regulatory 'sandbox' options for fintechs in your jurisdiction?

We believe they are. The creation and publication of a legislation entirely committed to regulating fintech businesses, which was the first one in Latin America, is a great sign of the willingness to innovate in the fintech sector.

Yes, the Fintech Law regulates fintech innovation technologies in Mexico as novel models. This temporary authorisation – also known internationally as a regulatory sandbox – can be seen as a space for experimentation, which allows companies to offer financial services to a limited number of clients, using innovative tools or technological means, to test them before offering them to the general public on a massive scale.

3.4 What, if any, regulatory hurdles must fintech businesses (or financial services businesses offering fintech products and services) which are established outside your jurisdiction overcome in order to access new customers in your jurisdiction?

Please note that, according to Articles 2 and 103 of the Credit Institutions Law, soliciting, offering or promoting the obtainment of funds or resources from an undetermined person or by electronic means, as well as the obtainment of funds or resources habitually or professionally, is considered deposit-taking and therefore prohibited within the Mexican borders for individuals and entities (with the exception of the several financial entities authorised in Mexico to act as such).

4 Other Regulatory Regimes / Non-Financial Regulation

4.1 Does your jurisdiction regulate the collection/use/transmission of personal data, and if yes, what is the legal basis for such regulation and how does this apply to fintech businesses operating in your jurisdiction?

Yes, the Federal Law for Protection of Personal Data Held by Private Entities ("**Personal Data Law**") aims to prevent private entities from unauthorised trading of information obtained by their customers.

Article 7 of the Personal Data Law establishes the legal presumption that all information is provided with an alleged "*reasonable expectative of privacy*". Moreover, Article 15 binds any private entity holding personal data, whether a fintech or not, to inform the owners thereof of the information that is being requested and its exact purpose and destination through a privacy notice ("**Privacy Notice**") that shall be available to the owners of the personal data through printed, digital, visual, sound formats or any other technologies.

4.2 Do your data privacy laws apply to organisations established outside of your jurisdiction? Do your data privacy laws restrict international transfers of data?

Article 4 of the Regulations to the Personal Data Law set forth its international applicability whenever personal data is treated: (i) in an establishment located in Mexican territory; (ii) by a person in charge of the treatment of the personal data regardless of his location, on behalf of a person established in Mexican territory; (iii) by a person not established in Mexican territory but Mexican legislation is applicable, derived from the execution of a contract or in terms of International Law; and (iv) by a person not established in Mexican territory but uses means located in Mexico, unless such means are used only for transit purposes.

Article 36 of the Personal Data Law allows the transfer of personal data to third parties, whether nationals or foreigners, as long as such third parties are aware of the Privacy Notice given to the owners of the personal data, as well as the treatment intended of the personal data described in the Privacy Notice.

4.3 Please briefly describe the sanctions that apply for failing to comply with your data privacy laws.

Article 64 of the Personal Data Law establishes a catalogue of fines applicable to incompliant entities. Fines may range from approximately £323.00 to £1,032,712.00. These amounts can be doubled or tripled in case of recidivism or in case the infraction is committed regarding sensible personal data.

4.4 Does your jurisdiction have cyber security laws or regulations that may apply to fintech businesses operating in your jurisdiction?

Yes, the Fintech General Dispositions contain a detailed Chapter regarding cyber security; however, it is mostly focused on crowdfunding institutions and wallets.

4.5 Please describe any AML and other financial crime requirements that may apply to fintech businesses in your jurisdiction.

Pursuant to the Federal Law to Prevent and Identify Transactions Supported with Illicit-Origin Resources ("**AML Law**"), all activities performed by financial entities, including fintech and the use of virtual assets, are considered vulnerable and subject to different obligations, such as: (i) setting measures and procedures to prevent and identify money laundering activities; (ii) reporting to the Ministry of Finance (Spanish acronym: "**SHCP**") on acts, operations and services carried out by their customers which could be considered as money laundering activities; (iii) filing evidence to the SHCP regarding the said measures, procedures, acts, operations and services; and (iv) preserving such evidence for at least 10 years, including information and documents related to the identification of their current and past customers and users.

4.6 Are there any other regulatory regimes that may apply to fintech businesses operating in your jurisdiction?

Other than the regimes already mentioned, it is important to consider the applicability of the overall fiscal legislation, and particularly the Income Tax Law and the Value Added Tax Law.

5 Accessing Talent

5.1 In broad terms, what is the legal framework around the hiring and dismissal of staff in your jurisdiction? Are there any particularly onerous requirements or restrictions that are frequently encountered by businesses?

Hiring and dismissal of staff are governed by the Federal Labour Law ("**Labour Law**"). Article 25 establishes the requirements individual labour contracts must comply with, such as: (i) personal data of both the employer and the employee; (ii) type of labour relationship; (iii) services to be provided by the employee; (iv) the place where the services shall be provided; (v) business hours; (vi) total wage and form of payment; (vii) time and place of payment; (viii) description of the orientation or trainee programme provided by the employer; (ix) days off, holidays, etc.; and (x) designation of beneficiary in case the employee dies.

Regarding the termination of the labour relationship, the Labour Law establishes several causes and sets forth the difference between attributable causes to the employee and attributable causes to the employer, in which case the employee shall be entitled to a full severance package.

The most onerous obligations for the employers are dues related to social security, which is why some employers choose outsourcing options.

In addition to the above, according to the Fintech Law and the Fintech General Dispositions, the CNBV is entitled to determine which fintech entities are required to have a board of managers and a general director (for this purpose, the CNBV is required to consider the operations or clients that the fintech has, its business model, its assets and net capital). The board of managers must be composed of a maximum of nine proprietary managers, of which at least 20% must be independent. One substitute manager may be appointed for each proprietary manager. Likewise, the substitute directors of the independent directors must also be independent.

Furthermore, regarding the fulfilment of AML provisions, fintech entities are required to appoint a compliance officer, who will oversee compliance with the general provisions issued by the SHCP.

5.2 What, if any, mandatory employment benefits must be provided to staff?

The following benefits are the minimum established in the Labour Law that an employer must grant to their employees: (i) 15 days of salary as Christmas bonus; (ii) a minimum of six days' vacation in the first year of labour plus two days every year; (iii) vacation bonus of 25% of salary corresponding to the days the employee takes off; (iv) Sunday bonus for those working on Sundays; (v) at least a weekly day off; (vi) maternity leave for 12 weeks; (vii) maternity leave for six weeks in case of adoption; (viii) paternity leave for five business days; (ix) lactation break for six months; (x) seniority premium; and (xi) profit-sharing.

5.3 What, if any, hurdles must businesses overcome to bring employees from outside your jurisdiction into your jurisdiction? Is there a special route for obtaining permission for individuals who wish to work for fintech businesses?

First, employers have to obtain an employer certificate issued by the National Migration Institute (Spanish acronym: "**INM**"). Once the certificate has been issued, the employer shall extend a job offer to the foreign candidate, which must be submitted before the INM. If the job offer is approved by the INM, the foreign candidate will have to process a work visa.

To date, there is no special route for individuals who wish to work for fintech entities.

6 Technology

6.1 Please briefly describe how innovations and inventions are protected in your jurisdiction.

Innovations and inventions are protected by the Federal Law for the Protection of Industrial Property ("**IP Law**") and through the Mexican Institute of Industrial Property ("**IP Institute**"). Individuals or businesses can request before the IP Institute a patent to protect their inventions. Whoever applies for a patent will be presumed as the inventor.

6.2 Please briefly describe how ownership of IP operates in your jurisdiction.

A patent approved by the IP Institute grants the inventor an exclusivity right over its invention to exploit it, whilst preventing others from making, using, selling, offering for sale or importing the patented invention without the inventor's consent.

According to Article 23 of the IP Law, patents are granted for a term of 20 years.

6.3 In order to protect or enforce IP rights in your jurisdiction, do you need to own local/national rights or are you able to enforce other rights (for example, do any treaties or multi-jurisdictional rights apply)?

Yes, it is necessary to register a patent before the IP Institute to enforce IP rights. However, Mexico is part of the Patent Cooperation Treaty, thus international patents of the International Patent System are recognised in Mexico.

6.4 How do you exploit/monetise IP in your jurisdiction and are there any particular rules or restrictions regarding such exploitation/monetisation?

Through sub-licensing, selling, spin-offs, working with start-ups, franchising and transfers.

Alfredo Lazcano, Chair at Lazcano Sámano, S.C., an expert Mexican law firm in the fintech industry.
Alfredo was born in Mexico City, holds a Law Degree from the Universidad Iberoamericana (UIA), and since 2007 has been accruing professional expertise in diverse heavily-regulated, technology-related business sectors, including a wide spectrum of digital payment solutions and financial technologies.
His duties at Lazcano Sámano, S.C. are to pursue the best professional practices, to implement an ethical business strategy, to act as facilitator between the law firm's teams with regard to legal and regulatory matters, and to ensure proper communication with clients.
He is a Board Director and, among others, provides services as a Fintech Lawyer.

Lazcano Sámano, S.C.
Av. Juan Salvador Agraz 97, Local E
Santa Fe Cuajimalpa, Cuajimalpa de Morelos
05348, Mexico City
Mexico

Tel: +52 55 5358 7774
Email: als@lazcanosamano.com
URL: lazcanosamano.com

Andrea Avedillo, Head of Legal at Lazcano Sámano, S.C., an expert Mexican law firm in the fintech industry.
Andrea was born in Mexico City, studied Law at the Instituto Tecnológico Autónomo de México (ITAM), and since 2011 has been accruing professional expertise in diverse heavily-regulated technology-related business sectors, including digital payment solutions and financial technologies.
Her duties at Lazcano Sámano, S.C. are to manage and execute the timely provision of legal and regulatory services in favour of clients, to boost and conduct the law firm's academic activity and the authoring of articles, and to lead the law firm's team into the analysis of innovative legal issues.
She is a Board Director and provides services as a Corporate & Regulatory Compliance Consultant.

Lazcano Sámano, S.C.
Av. Juan Salvador Agraz 97, Local E
Santa Fe Cuajimalpa, Cuajimalpa de Morelos
05348, Mexico City
Mexico

Tel: +52 55 5477 2136
Email: aab@lazcanosamano.com
URL: lazcanosamano.com

For over a decade, Lazcano Sámano has positioned itself in Mexico, Latin America and globally as one of the law firms with the most experience and greatest reputation in cutting-edge technology sectors, such as fintech.
Fintech is a highly specialised field; thus, our practice requires a multi-disciplinary approach and a wide range of professional skills. Lazcano Sámano advises and represents various leading technology companies in the fintech industry.
Most of our clients are public companies and hold various regulatory licences in the strictest jurisdictions worldwide. We have been proudly serving our clients, adhering to a long-term vision and ensuring ethical performance.
The Lazcano Sámano team has extensive experience in the fintech field, in addition to serving as speakers and columnists on different platforms and publications, both industrial and academic. Our work speaks for itself; we invite you to know a little more about us at: **lazcanosamano.com**.

LAZCANO SÁMANO, S.C.
Gaming, Fintech & Media

The International Comparative Legal Guides are published by: glg global legal group