



FINTECH LAW

HOW TO INCORPORATE A FINTECH TECHNOLOGY INSTITUTION IN 4 STEPS?

The 30% of the Mexican banking market¹ could belong to Fintech² companies within the following ten years; but what is the reason of this tendency? The current success of the Fintech sector is based on its innovative business models, versatility and its potential to be the problem solver for markets that have been unattended by the traditional financial system. Fintech initiatives have arrived to increased competition in the financial sector with the use of the advantages offered by the artificial intelligence, data analysis and technology, to create more personalized and accesible services that respond to specific needs of the people without requiring the physical presence of any of the parties, which has also had a positive impact on reducing costs and time.

Mexico is the country with the most Fintech startups in Latin America³. This statement implies a challenge for the authorities that are responsible of the

financial sector regulation, since the Fintech sector is looking for the development of specialized regulation that does not stop innovation, but at the same time gives legal certainty and trust.

As a consequence of this accelerated growth, Mexico has made an effort to be at the legislative vanguard and has issued: the Law to Regulate Financial Technology Institutions (the "Fintech Law"), the General Provisions applicable to Financial Technology Institutions (the "Provisions"), the General Provisions referred to in Article 58 of the Law to Regulate Financial Technology Institutions, and the Circular 12/2018 issued by the Mexican Central Bank ("Banxico").

Companies looking to be part of this technological watershed will need to know the general procedure for transforming a corporation into a financial technology institution ("FTI").

¹ Finnovista, "Fintech Radar México", second edition, August 30, 2016.

² Fintech is the intersection between the financial systems and technology.

³ Finnovista, "Fintech Radar México", 2016.

A. What is a Financial Technology Institution?

The Fintech Law regulates two types of FTI that could be authorized by the National Banking and Securities Commission (“CNBV”):

(i) the crowdfunding platforms (“Crowdfunding”), and (ii) the electronic money institutions (“Wallets”).

Financial Technology Institutions	
Crowdfunding	They allow people from the general public to connect with each other, and grant funding on a regular and professional basis, in terms of any of the operations set forth in article 16 of the Fintech Law, through the electronic and digital media platform put in place as Crowdfunding.
Wallets	They provide services to the general public on a regular and professional basis, consisting on the issuance, administration, redemption and transmission of electronic money, pursuant to article 22 of the Fintech Law, and through an electronic or digital media platform put in place as Wallets.

B. Which corporations can become a FTI?

The corporations incorporated under Mexican law which include in their by-laws among other matters, the following:

1. as a part of their corporate name the words “*Institución de financiamiento colectivo*” or “*Institución de fondos de pago electrónico*”, as applicable;

2. as their corporate purpose the performance, on a regular and professional basis, of any of the activities established in the Fintech Law;

3. that in performing their corporate purpose they will be obligated to comply with the Mexican regulation applicable to them;

4. establish their corporate domicile in Mexico;

5. a minimum capital stock between 500,000 and 700,000 UDI's, depending on the FTI to be incorporated, and

6. organize its corporate structure and general administration in accordance with the applicable law.

C. What is the procedure to incorporate an FTI?

Step 1. Application for authorization before the CNBV.

The application to request authorization to incorporate a FTI must be filed within the following 12 months of the date in which the general provisions applicable to the FTIs are binding and in effect. On the meantime applicants must publish in its website that they are in the process of obtaining the authorization to operate as FTI. The authorization may not be granted if this obligation is not fulfilled.

The application to be filed must include, among other things, the following: (i) the powers of attorney of the individuals submitting the application; (ii) the draft or amendment to the by-laws; (iii) the business plan for the operation of the FTI; (iv) the account policies to separate customers' bank accounts; (v) the applicable procedures for customer's identification; (vi) the applicable policies for the resolution of conflicts of interest; (vii) the policies to prevent fraud, laundering and funding of terrorism, and (viii) agreements or contracts entered into with another FTI or technological service providers which are required for the performance of key business procedures, database management and technological infrastructure for the fulfilment of its activities, among others.

Likewise, the Provisions require to submit additional information with the application, such as: (i) proof of having sufficient financial resources for the first three years of operation; (ii) the intended corporate name and trademark to be used;

(iii) drafts of the manuals for operation, internal control and management risk, and (iv) the plan for the organization and internal control of the FTI.

Step 2. Approval of the Interinstitutional Committee.

To obtain the authorization of the CNBV the prior approval from the Interinstitutional Committee will be required. The Interinstitutional Committee is integrated by 6 proprietary members, as follows: 2 representatives of the Ministry of Finance and Public Credit ("SHCP"); 2 representatives of Banxico, and 2 representatives of the CNBV. The favorable vote of at least one representative of each of those financial authorities is needed to obtain the authorization.

Step 3. Resolution of the CNBV.

The CNBV has a period of 180 calendar days to resolve about the authorization which start the following business day of the filing of the application. Such period may be extended by request to the authority, but in no case it will excess half of the period originally contemplated.

The authorization granted by the authority must specify the type of FTI that is authorized and the operations that it may perform. A new authorization will have to be requested in the event that the FTI subsequently intends to perform other operations

The authorization of the CNBV will be published in the Federal Official Gazette. Since the Fintech Law does not contemplate the “*afirmativa ficta*”, if the period granted to the authority to issue the resolution expires, the applicant shall understand that the authorization was not granted.

Step 4. Starting of operations.

In order to start operations, applicants must demonstrate to the authority the compliance with the following matters at least 30 business days of the expected date to start operations: (i) the duly incorporation of

the FTI and its registration before the Public Registry of Commerce; (ii) that the minimum capital stock is subscribed and paid; (iii) that the directors and executives comply with the legal requirements set forth in the Fintech Law, and those issued by the CNBV; (iv) that the technological infrastructure to operate the FTI has been put in place; (v) the necessary internal controls to perform its activities and provide the intended services, and (vi) the policies, procedures, manuals, and all the documentation required by the Fintech Law and its regulation. The authorization to start operations may not be granted if the applicants do not fulfill the requirements above mentioned.

D. Is there an alternative to FTI?

The Fintech Law contemplates a temporary authorization as an alternative to the incorporation of a FTI. The Regulatory Sandbox is defined by the Fintech Law as a model to provide financial services using different modalities of technology from those existing in the market at the time the authorization is granted. The authorization may be requested by any company incorporated under Mexican

law, but different from a FTI, financial entity or any other entities supervised by Banxico or any other regulatory authority in Mexico. As an exception, financial entities which are subject to the supervision of Mexican regulatory authorities may be able to request authorization to perform operations or activities through Regulatory Sandboxes under certain restrictions.

E. For how long can a temporary authorization be granted?

The authorization granted shall not exceed the term of two years, and in any case the company will have the obligation to obtain the permanent authorization or permit before the term of the authorization expires to continue providing the services. The temporary

authorization may be extended up to one year, if the Regulatory Sandbox proves, at the expiration of its temporary authorization, that it is already in the process of obtaining the permanent authorization.

F. What are the requirements to obtain the Regulatory Sandbox?

In order to obtain the authorization to operate as a Regulatory Sandbox, the CNBV will require, among other things, the following: (i) that the proposal is indeed an innovative model; (ii) that the new model represents a benefit for the customers in comparison to the services already existing in the market; (iii) that the applicant is able to operate the project immediately, and (iv) the project must be tested with a limited number of costumers.

Regulatory Sandboxes must also fulfill the following conditions: (i) their corporate purpose must allow them to render the services related to the reserved activities on a regular and professional basis; (ii) description of the operation and activities to be performed by the Regulatory Sandbox and explanation; (iii) the benefits that the potential customers will receive; (iv) the target market, and (v) the form in which damages would be compensated, among others.

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