

# The global march of open banking: the financial technology institutions law in Mexico

Mexico has joined the increasing global trend towards open banking. An ambitious new law aimed at developing innovative financial services and increasing the level of competition and financial inclusion places Mexico at the forefront of the global FinTech industry.

The Financial Technology Institutions Law (the **FinTech Law**) was published in the Mexican Federal Official Gazette on 9 March 2018. It covers a lot more than just open banking though. Here is a quick guide to the key elements of the FinTech Law.

## New regulated providers

The FinTech Law introduces two new types of financial technology institutions (FTI) and an innovative model:

- **Crowdfunding Institutions.** Crowdfunding Institutions connect people so that investors can fund investment seekers through mobile applications, interfaces, websites or any other means of electronic or digital communications.
- **Electronic Payment Institutions.** Electronic Payment Institutions offer issuance, management, accountability and transfer of electronic payments services. The funds recorded in an electronic transaction accounting ledger and kept by an Electronic Payment Institution will be considered as electronic payment funds.
- **Innovative Model.** The FinTech Law allows certain FTIs to operate on a temporary basis under an Innovative Model – meaning institutions that provide financial services through technological tools or means with different characteristics to those already available in the market. This type of FTI is eligible for a temporary authorization.

## New services: virtual assets

The Law defines ‘virtual assets’ as account units electronically recorded and used between the public as a payment method for all types of legal transactions and whose transfer can be implemented only through electronic means. This is primarily intended to regulate cryptocurrencies such as Bitcoin, although the broad definition raises concerns that other types of asset could be caught inadvertently.

Banco de México (**Banxico**) will determine, through subordinate legislation, the types of virtual assets that FTIs will be able to use.

## Open Banking

In reality, the open access requirements of the FinTech Law are about a lot more than Open Banking; it might be more accurate to call it Open Financial Services, since the law requires all financial institutions (not just banks) to create an application program interface (**API**)s that will allow authorized third parties access to customer data (with the customer’s consent). It is hoped that this will lead to the creation of technological tools that improve the experience of financial services users in a more competitive environment.

In relation to Open Banking specifically, account providers will be required to develop and publish APIs giving access both to product data and to customer transactional data. This will support the provision of services such as account aggregation, product comparison, more accurate credit scoring, and services that monitor spending patterns in order to provide ‘nudges’ to customers about how to make better use of their money.

At present, the FinTech Law does not mandate open access for payment initiation services, as the second Payment Services Directive does in Europe. Given that these services have already started to appear in Mexico, however (facilitated by screen-scraping), it will be interesting to see whether the Mexican government brings them into the fold in a future iteration of the law.

## Next steps

The Fintech Law requires the Mexican financial authorities to issue secondary regulations within the deadlines set out below.



Time from the date of publication of the FinTech Law				
	2 months	6 months	12 months	24 months
Ministry of Finance and Public Credit (SHCP)		General provisions to establish procedures and methods to prevent and detect acts, omissions and operations that finance terrorism.	General provisions to establish additional criteria and conditions to grant the temporary authorization for the operation of Innovative Models.	
National Banking and Securities Commission (CNBV)		General provisions to establish the rules related to FTI accounting and business continuity plan.	General provisions related to information accessibility on FTI operations, the use of equipment and technological means, the hiring of services with third parties, and the operation of Innovative Models and self-correction programs by FTIs.	General provisions related to capital requirements and establishing certain bases for data and information exchange.
National Commission for the Protection and Defense of Financial Services Users (CONDUSEF)			General provisions related to the FTI information regarding activities that must be reported to the financial authorities.	
			General provisions to establish additional criteria and conditions to grant the temporary authorization for the operation of Innovative Models	General provisions to establish additional criteria and conditions to grant the temporary authorization for the operation of Innovative Models, as well as self-correction programs by FTIs.
National Commission of the Retirement Savings System (CONSAR) and the National Insurance Commission (CNSF)				General provisions to establish the basis for the exchange of the data and information that may be shared.
Banxico		General provisions relating to the operations carried out by Electronic Payment Institutions, as well as activities linked to payment systems, and limits for the resources that may be maintained on behalf of their clients or which a customer may use	General provisions regarding the virtual assets with which FTIs may operate, as well as the operations that may be carried out with said assets, the information related to their activities that shall be reported to the financial authorities, the additional criteria and conditions for the granting of the temporary authorization for the operation of Innovative Models, as well as regulation for the self-correction programs.	General provisions to establish the rules for the exchange of the data and information that may be shared.
CNBV and Banxico jointly	General provisions regarding the data security of Electronic Payment Institutions as well as the third-party services that they will be able to hire, and the equipment and technological means that they may use to carry out their operations.		Collaboration agreement that will establish the form and terms for supervising FTI compliance, as well as the enforcement procedures that may be adopted by the corresponding authorities in exercise of their duties.	



The Fintech Law also provides for the formation of a Committee of Financial Technology Institutions, which will be composed of six members, with two representatives from each of the following authorities: the SHCP, the CNBV, and Banxico; each one of them designated by the respective heads of those financial authorities.

Such inter-institutional Committee and the CNBV will be responsible, amongst other things, for discretionally granting the necessary authorizations in accordance with the Fintech Law so that FTIs operate correctly within Mexico.

### Grandfathering

Anyone currently carrying out the activities newly regulated by the FinTech Law will have up to 12 months from its publication date in the Federal Official Gazette to request authorization from the CNBV.

In the meantime, they may continue to carry out such activities until the CNBV approves or denies their request, but until they receive the relevant authorization they must publish on their website that the authorization to carry out such activity is in process and therefore is not an activity supervised by the authorities.

Failure to comply with this obligation will result in automatic denial of authorization.

### Final Thoughts

The next couple of years look set to be pivotal both for financial services and for the wider Mexican economy. It will be interesting to see how the Mexican FinTech industry evolves under the direction of the FinTech Law, and whether it will achieve at least some of what it promises in terms of addressing financial exclusion and gender inequality, as well as paving the way for the wider economic benefits to be realized.

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