



# Fintech

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into fintech innovation and government / regulatory support; regulatory bodies and regulated activities; cross-border regulation; regulation of sales and marketing and of changes of control; financial crime; peer-to-peer and marketplace lending; artificial intelligence, distributed ledger technology and crypto-assets; data protection and cybersecurity; outsourcing and cloud computing; intellectual property, competition, tax and corporate immigration considerations; and recent trends.

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Generated 03 November 2022

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## FINTECH LANDSCAPE AND INITIATIVES

### General innovation climate

What is the general state of fintech innovation in your jurisdiction?

Fintech innovation in Mexico has continued to grow at a steady pace. According to Finovista's Fintech Radar of 2021, the sector has grown 16 per cent in terms of number of fintech companies or products that make up the offer of digital financial solutions within Mexico. Said report also identified 512 active startups in 2021 in comparison to 441 startups in 2020. Startups include neo banks, electronic payment funds or wallets, lenders, insurtech, investing applications, among others.

The aforementioned research shows that 21 per cent of Mexican fintech startups offer loan services, 18 per cent focus on payments and remittances services, and 14 per cent are technology companies for financial institutions, comprising more than 50 per cent of the Mexican fintech ecosystem. The global fintech trend that started as a disruption for the payments spectrum has moved into the loans segment and Mexico is not the exception.

Fintechs are rapidly growing and gaining clients, but from a credit and capital perspective, they are still relatively small with less than 1 per cent of the capital of regulated banks in Mexico. Fintech companies or as the Fintech Law identifies them, financial technology institutions, provide financial services with technological innovation responding to the needs of national and international markets, which makes them likely to remain in the market for a foreseeable future.

*Law stated - 20 July 2022*

### Government and regulatory support

Do government bodies or regulators provide any support specific to financial innovation? If so, what are the key benefits of such support?

The Law to Regulate Financial Technology Institutions regulates regulatory sandboxes for legal and financial entities with the purpose of introducing financial innovation to the market and granting their clients benefits in financial services and products. However, Mexico does not count on specific support or incentives from governmental bodies per se.

Support by non-governmental bodies for financial innovation in Mexico include the Sanbox Challenge, a contest organised by the British Embassy in Mexico, DAI Mexico and Distrito Emprendedor, in which contestants in the categories of regulatory sandbox and financial innovation participate to obtain professional legal and cyber security advice. In addition, the Mexican National Banking and Securities Commission is part of the Global Finance Innovation Network aiming to get an enlightening panorama in terms of best practices and innovation through international meetings and workshops with other members. Financial innovation may also comprise blockchain-based solutions for which the Innovation Laboratory of the Inter-American Development Bank Group created a legal working team in Mexico to strengthen the respective advisory services for new projects focused on this technology.

*Law stated - 20 July 2022*

## FINANCIAL REGULATION

### Regulatory bodies

## Which bodies regulate the provision of fintech products and services?

Regulators of fintech products and services include the Mexican Central Bank, the Ministry of Finance, the National Banking and Securities Commission and the National Commission for the Protection and Defence of Users of Financial Services.

*Law stated - 20 July 2022*

## Regulated activities

### Which activities trigger a licensing requirement in your jurisdiction?

The following activities trigger licensing or authorisation requirements under Mexican law:

- solicitation and receipt of deposits and depository account keeping services, and issuance of debit cards linked to such accounts;
- investment advisory services;
- issuance, management, redeeming and transfer of electronic payment funds;
- crowdfunding;
- money remittance; and
- ordinarily carrying out the purchase, sale or exchange of currencies.

Other activities that do not trigger a licensing requirement but that are subject to the supervision of the National Banking and Securities Commission, the Mexican Central Bank, the National Commission for the Protection and Defence of Users of Financial Services and the Consumer Protection Agency include: providing acquiring and aggregation services; ordinarily granting loans to the public and issuing credit cards; as well as providing services to acquirers, aggregators and other participants of the payments network.

*Law stated - 20 July 2022*

## Consumer lending

### Is consumer lending regulated in your jurisdiction?

Consumer lending is not a regulated activity in Mexico per se. Natural persons and legal entities are generally allowed to lend money without having to obtain or file an authorisation, licence or registry. However, only certain entities listed in the Law of Credit Institutions may obtain funding from the public for the purpose of relending those funds.

Regulated entities may only carry out specific activities according to their applicable legal framework provided that consumer lending is contemplated within its provisions. Electronic payment funds institutions may only lend under certain circumstances and without any returns. Since financial technology institutions are not allowed to lend money from the outset, some authorised electronic payment funds institutions have carried out consumer lending through the incorporation of a separate legal entity.

Nevertheless, the Law for the Transparency and Order of the Financial Services and its regulations contain a set of obligations for entities that habitually carry out consumer lending, generally consisting of disclosure and reporting obligations, as well as consumer protection provisions (eg, registration of joinder agreements with the National Commission for the Protection and Defence of Users of Financial Services or the Consumer Protection Agency, as

applicable, and prohibition of abusive clauses).

*Law stated - 20 July 2022*

### **Secondary market loan trading**

Are there restrictions on trading loans in the secondary market in your jurisdiction?

There are no restrictions on trading loans under Mexican law.

*Law stated - 20 July 2022*

### **Collective investment schemes**

Describe the regulatory regime for collective investment schemes and whether fintech companies providing alternative finance products or services would fall within its scope.

Mexican retail funds are regulated under the Investment Funds Law, and are subject to the supervision of the National Banking and Securities Commission. Mexican retail funds are incorporated as Mexican stock corporations that publicly issue and list their shares. The proceeds are used to purchase a previously determined portfolio of trading securities. Fintech companies, such as crowdfunding institutions, do not fall within the scope of the regulatory regime applicable to Mexican retail funds.

Crowdfunding institutions are regulated under the Law to Regulate Financial Technology Institutions, its general provisions and anti-money laundering provisions.

*Law stated - 20 July 2022*

### **Alternative investment funds**

Are managers of alternative investment funds regulated?

Managers of Mexican retail funds are statutorily regulated and subject to the supervision of the National Banking and Securities Commission.

*Law stated - 20 July 2022*

### **Peer-to-peer and marketplace lending**

Describe any specific regulation of peer-to-peer or marketplace lending in your jurisdiction.

There is no specific regulation that prohibits peer-to-peer or marketplace lending, allowing any natural person or legal entity to lend money.

Marketplace and peer-to-peer lending is specifically regulated in the Law to Regulate Financial Technology Institutions, and may only be carried out through an authorised crowdfunding institution.

*Law stated - 20 July 2022*

### **Crowdfunding**

## Describe any specific regulation of crowdfunding in your jurisdiction.

The Law to Regulate Financial Technology Institutions regulates:

- debt-based crowdfunding, which is defined as collective financing enabling investors to grant loans, credits, or any other financing causing a direct or contingent obligation to the applicants;
- equity-based crowdfunding, which is defined as collective financing enabling investors to purchase shares of companies that apply for investments; and
- royalty or co-ownership crowdfunding, which is defined as collective financing enabling investors and applicants to enter into joint ventures, partnerships, or any other type of agreement pursuant to which investors acquire a pro-rata share of a present or future asset, or of the revenue, royalties or losses obtained as a result of the activities carried out by an applicant. Crowdfunding may only be carried out through a licensed crowdfunding institution.

*Law stated - 20 July 2022*

## Invoice trading

### Describe any specific regulation of invoice trading in your jurisdiction.

There is no specific regulation of invoice trading in Mexico.

*Law stated - 20 July 2022*

## Payment services

### Are payment services regulated in your jurisdiction?

Payment services are regulated under, among other things, the Law for the Transparency and Order of the Financial Services and the Regulations applicable to Means of Payment issued by the National Banking and Securities Commission and the Mexican Central Bank, which regulate :

- acquirers;
- aggregators;
- issuers of credit and debit cards; and
- specialised entities that provide services to any of the foregoing necessary to carry out their activities.

*Law stated - 20 July 2022*

## Open banking

### Are there any laws or regulations introduced to promote competition that require financial institutions to make customer or product data available to third parties?

The Law to Regulate Financial Technology Institutions includes obligations for financial entities, including commercial banks and electronic payment funds institutions to share information of their customers via application programming interfaces (APIs). The sharing of information must comply with the requirements set forth by the National Banking and Securities Commission, the Mexican Central Bank and the corresponding regulators of the relevant entities.

Information to be shared by financial entities via APIs is classified under the Law to Regulate Financial Technology Institutions as:

- financial open data, including, among others, non-confidential financial information related to the services offered by the entities;
- aggregated data, consisting of statistical information related to transactions made by or through authorised entities; only persons with the authentication mechanisms established by the supervisory commissions (ie, the National Banking and Securities Commission, the National Commission for the Pensions System, the National Bonding and Insurance Commission, and the National Commission for the Protection and Defence of the Users of Financial Services) or the Mexican Central Bank may access such data; and
- transactional data, defined as information related to the use of financial products and services by a customer, including deposit accounts and credits; express consent is required to share transactional data.

The National Banking and Securities Commission has issued regulations applicable to open data. However, regulations applicable to aggregated and transactional data are yet to be issued.

*Law stated - 20 July 2022*

### **Robo-advice**

Describe any specific regulation of robo-advisers or other companies that provide retail customers with automated access to investment products in your jurisdiction.

There is no specific regulation of robo-investment advisers in Mexico.

*Law stated - 20 July 2022*

### **Insurance products**

Do fintech companies that sell or market insurance products in your jurisdiction need to be regulated?

Yes, pursuant to the Insurance and Bonding Institutions Law and the Sole Insurance and Bonding Circular, the sale and distribution of insurance products in Mexico that are carried out by entities that are not authorised in Mexico as an insurance institution must be made through:

- a regulated insurance broker; or
- a specialised services provider engaged by insurance institutions for such purposes.

*Law stated - 20 July 2022*

### **Credit references**

Are there any restrictions on providing credit references or credit information services in your jurisdiction?

The provision of services consisting of the compilation, management and delivery of information related to the credit history of individuals or companies is regulated, and may only be carried out with the prior authorisation of the Ministry

of Finance, with the favourable opinion of the National Banking and Securities Commission, and the Mexican Central Bank.

*Law stated - 20 July 2022*

## **CROSS-BORDER REGULATION**

### **Passporting**

Can regulated activities be passported into your jurisdiction?

Regulated activities may not be passported into Mexico.

*Law stated - 20 July 2022*

### **Requirement for a local presence**

Can fintech companies obtain a licence to provide financial services in your jurisdiction without establishing a local presence?

No. Electronic payment funds institutions and crowdfunding institutions must be incorporated as Mexican stock corporations.

*Law stated - 20 July 2022*

## **SALES AND MARKETING**

### **Restrictions**

What restrictions apply to the sales and marketing of financial services and products in your jurisdiction?

Several financial regulations establish that the use, in any language, of words, phrases or any references that may express similar ideas or concepts related to regulated financial services are of exclusive use of the entities registered, licensed or authorised by the corresponding financial authorities to provide such services.

Specifically, regarding financial technology institutions, the National Banking and Securities Commission has recently enforced such provisions and imposed fines on entities that used words and concepts in their websites and marketing materials that caused the public to infer that they were carrying out crowdfunding and electronic payment activities without an authorisation or that they were using a separate financial technology institution's authorisation to carry out regulated financial services.

*Law stated - 20 July 2022*

## **CHANGE OF CONTROL**

### **Notification and consent**

Describe any rules relating to notification or consent requirements if a regulated business changes control.

The acquisition of any number of shares representative of the capital stock of electronic payment funds institutions or crowdfunding institutions (ITFs) requires authorisation from the National Banking and Securities Commission. If an

acquisition is executed without the authorisation of the National Banking and Securities Commission:

- it may not be registered in the corporate books of the ITFs;
- the relevant shares shall grant no corporate or economic rights to their holder; and
- the parties of the transaction may be subject to fines by the National Banking and Securities Commission for an amount of up to 150 per cent of the value of the relevant shares.

*Law stated - 20 July 2022*

## FINANCIAL CRIME

### Anti-bribery and anti-money laundering procedures

Are fintech companies required by law or regulation to have procedures to combat bribery or money laundering?

Yes. Electronic payment funds institutions and crowdfunding institutions qualify as financial institutions under the Anti-Money Laundering Law and are subject to stricter requirements than non-financial institutions. Among other obligations, such institutions must :

- register before the Financial Intelligence Unit;
- appoint a compliance officer;
- have in place an anti-money laundering sanctions policy; and
- file periodical reports.

However, the habitual and professional offering of virtual assets trading by parties other than financial institutions, such as digital currency exchanges, is considered a vulnerable activity and is subject to the Mexican Anti-Money Laundering Law, which obligates them to register before the Ministry of Finance in order to send reports of the operations exceeding certain thresholds.

*Law stated - 20 July 2022*

## Guidance

Is there regulatory or industry anti-financial crime guidance for fintech companies?

Yes. The Ministry of Finance published general anti-money laundering provisions for financial technology institutions. The provisions are available in the Mexican Official Gazette at: [https://dof.gob.mx/nota\\_detalle.php?codigo=5537449&fecha=10/09/2018&print=true](https://dof.gob.mx/nota_detalle.php?codigo=5537449&fecha=10/09/2018&print=true) .

In addition, the National Banking and Securities Commission issued guidance for financial institutions, including electronic payment funds institutions and crowdfunding institutions which sets forth minimum criteria that said institutions must consider to better comply with anti-money laundering laws and regulations. The guide is available on the National Banking and Securities Commission's website at [https://www.gob.mx/cms/uploads/attachment/file/491487/Guia\\_para\\_la\\_Metodologia\\_de\\_Evaluacion\\_2019.pdf](https://www.gob.mx/cms/uploads/attachment/file/491487/Guia_para_la_Metodologia_de_Evaluacion_2019.pdf) .

*Law stated - 20 July 2022*

## PEER-TO-PEER AND MARKETPLACE LENDING

### Execution and enforceability of loan agreements

What are the requirements for executing loan agreements or security agreements? Is there a risk that loan agreements or security agreements entered into on a peer-to-peer or marketplace lending platform will not be enforceable?

Loan agreements must be executed in writing and signed by all parties thereto. Pursuant to Mexican law, electronic signatures are valid and produce the same legal effects as original wet-ink signatures, to the extent that the system producing the electronic signature is adequate to ensure that:

- the signed electronic document cannot be altered after execution;
- each signature may be attributable to each signing party; and
- the information is accessible in the future.

The risk that the validity of electronic signatures may be challenged before a Mexican court is still high.

Formalities for the perfection of security agreements differ depending on the nature of the security, and include:

- formalising the agreements before a Mexican notary; and
- registration in a public registry.

Failure to comply with such formalities may render the relevant agreements unenforceable.

*Law stated - 20 July 2022*

### Assignment of loans

What steps are required to perfect an assignment of loans originated on a peer-to-peer or marketplace lending platform? What are the implications for the purchaser if the assignment is not perfected? Is it possible to assign these loans without informing the borrower?

Assignment of a loan executed between two individuals must be done in writing with the appearance of the assignee, the assignor and two witnesses. As a general rule, the assignment may be performed without notifying the borrower, on the understanding that the borrower may continue making the corresponding payments to the original creditor.

Assignment of a loan executed between an individual and a commercial entity, or between two commercial entities, must be done in writing and will only become effective (1) towards the borrower, upon written notice with the appearance of two witnesses; and (2) with regard to third parties, upon recording of the agreement with the Sole Registry of Movable Guarantees.

*Law stated - 20 July 2022*

### Securitisation risk retention requirements

Are securitisation transactions subject to risk retention requirements?

There are no risk retention requirements under Mexican law.

*Law stated - 20 July 2022*

### **Securitisation confidentiality and data protection requirements**

Is a special purpose company used to purchase and securitise peer-to-peer or marketplace loans subject to a duty of confidentiality or data protection laws regarding information relating to the borrowers?

If as a result of the purchase and securitisation of the loans, the special purpose company will decide on the use, treatment and transfer of the personal data of the obligors, or if it will treat such data on behalf of a data controller. It would be subject to data protection obligations regarding the personal data of the obligors.

*Law stated - 20 July 2022*

## **ARTIFICIAL INTELLIGENCE, DISTRIBUTED LEDGER TECHNOLOGY AND CRYPTOASSETS**

### **Artificial intelligence**

Are there rules or regulations governing the use of artificial intelligence, including in relation to robo-advice?

As part of the enactment of the Law to Regulate Financial Technology Institutions, Mexican legislators introduced minor amendments to the Securities Market Law, and granted authorities to the National Banking and Securities Commission to issue regulations applicable to robo-investment advice. Unfortunately, National Banking and Securities has not issued said regulations to this date.

*Law stated - 20 July 2022*

### **Distributed ledger technology**

Are there rules or regulations governing the use of distributed ledger technology or blockchains?

There are no specific rules or regulations governing the use of DLT or blockchains.

*Law stated - 20 July 2022*

### **Cryptoassets**

Are there rules or regulations governing the promotion or use of cryptoassets, including digital currencies, stablecoins, utility tokens and non-fungible tokens (NFTs)?

Yes. The Law to Regulate Financial Technology Institutions regulates activities consisting of the issuance, management, redemption and transfer of digital currency or e-money, as well as the offering of digital wallets to the public. Such activities may only be carried out by authorised electronic payment fund institutions.

Additionally, the Law to Regulate Financial Technology Institutions provides that electronic payment funds institutions may operate with crypto-assets. However, the Mexican Central Bank adopted a very cautious position by issuing Rule 4/2019, which restricts such operations to internal transactions whereby any risks stemming from the use of crypto-assets are assumed by the institution. Such operations may only be carried out with crypto-assets that are approved

for such institution after a very thorough authorisation process.

The Mexican Anti-Money Laundering Law also establishes certain obligations to the parties, other than financial institutions, that habitually and professionally offer virtual assets trading.

Stablecoins are not considered virtual assets under Mexican regulation, given that it expressly excludes assets denominated in legal tender or foreign currencies.

*Law stated - 20 July 2022*

### **Token issuance**

Are there rules or regulations governing the issuance of tokens, including security token offerings (STOs), initial coin offerings (ICOs) and other token generation events?

There are no specific regulations governing initial coin offerings or security token offerings. However, under the definition given by the Securities Market Law, tokens may be considered a security and in consequence, be subject to its regulation. To this date, there has been no official position from the financial authorities in this respect.

*Law stated - 20 July 2022*

## **DATA PROTECTION AND CYBERSECURITY**

### **Data protection**

What rules and regulations govern the processing and transfer (domestic and cross-border) of data relating to fintech products and services?

Electronic payment funds institutions and crowdfunding institutions are subject to the Federal Law on Protection of Personal Data Held by Private Parties of 2010 and its secondary regulation, consisting of the Regulation to the Data Protection Law of 2011 and the Privacy Notice Guidelines of 2013, which set forth the principles, requirements and obligations for any individual or entity to treat, use and transfer personal data of any individual.

*Law stated - 20 July 2022*

### **Cybersecurity**

What cybersecurity regulations or standards apply to fintech businesses?

Pursuant to the secondary regulations of the Law to Regulate Financial Technology Institutions, electronic payment funds institutions and crowdfunding institutions must implement and document, policies and mechanisms that guarantee the security and confidentiality of the information they handle, based on international best practices and highest standards related to cybersecurity, which must be published in the National Banking and Securities Commission's and the Mexican Central Bank's websites.

*Law stated - 20 July 2022*

## **OUTSOURCING AND CLOUD COMPUTING**

### **Outsourcing**

**Are there legal requirements or regulatory guidance with respect to the outsourcing by a financial services company of a material aspect of its business?**

Pursuant to the secondary regulations of the Law to Regulate Financial Technology Institutions applicable to electronic payment funds institutions, such institutions must request the prior authorisation of the National Banking and Securities Commission and the Mexican Central Bank if they intend to contract services that, if interrupted, partially or permanently, makes it impossible for the electronic payment funds institutions to issue, manage, redeem or transfer electronic payment funds. Any agreements entered into with such services providers must comply with the requirements set forth in those regulations.

*Law stated - 20 July 2022*

**Cloud computing**

**Are there legal requirements or regulatory guidance with respect to the use of cloud computing in the financial services industry?**

Large electronic payment fund institutions that have contracted cloud services with foreign providers and, during a period of 12 months, have (1) executed over 3.5 million transfers; or (2) sent or received transfers for a total amount greater than approximately 36 billion pesos; or (3) at any time maintained more than one million accounts that, during a period of 12 consecutive months (a) have had at any time a positive balance of; or (b) with respect to which at least one transfer has been made in amount of; or (c) have had a total balance greater than approximately 2.4 billion pesos, must provide for a mechanism in their business continuity plan in the event of an interruption of the cloud services ensuring the continuity of its activities. Such mechanism must allow the electronic payment funds institution to maintain its computing and processing capacity and must kick in within two hours of the interruption.

In order to comply with the above, such electronic payment funds institutions may choose any of the following mechanisms:

- Contracting with a secondary provider, that is not part of the same business group as the cloud services provider, and that is incorporated and subject to a jurisdiction other than the one in which such services provider is incorporated.
- A mechanism that allows the electronic payment funds institution to have its own infrastructure (provided by an entity other than the primary cloud computing services provider), in a territory other than that in which the interruption could take place, whereby the electronic payment funds institution may continue carrying out its activities. Provided that such mechanism does not imply a simultaneous operation with the cloud computing used during day-to-day operations.
- Any other mechanism that, at the request of an electronic payment funds institution, is authorised by the Mexican Central Bank and the National Banking and Securities Commission, on the understanding that the electronic payment funds institution must demonstrate that such mechanism ensures the continuity of its business in the event of an interruption of the cloud computing services.

*Law stated - 20 July 2022*

**INTELLECTUAL PROPERTY RIGHTS**

## **IP protection for software**

Which intellectual property rights are available to protect software, and how do you obtain those rights?

The rights derived from a copyright recognition entitle enjoyment of exclusive prerogatives and privileges of a personal and economic nature. The former constitutes the moral right and the latter, the economic right.

Computer programs, such as software, are protected by the Federal Copyright Law. The protection granted by the Law is granted to works from the moment they have been fixed in a material support, regardless of their merit, destination or mode of expression, and the recognition of copyright and related rights does not require registration or document of any kind, nor shall it be subordinated to the fulfilment of any formality. However, the registration of such computer program in the Public Registry of Copyrights may be requested by the owner for further legal certainty.

Patent protection is not possible for a software itself, but to the invention as a whole. Business methods are not susceptible to patent protection.

*Law stated - 20 July 2022*

## **IP developed by employees and contractors**

Who owns new intellectual property developed by an employee during the course of employment? Do the same rules apply to new intellectual property developed by contractors or consultants?

Regarding any work subject to protection under the Federal Copyright Law, the economic rights, when created by one or more employees in the performance of their duties or following the instructions of the employer, belong to the employer. In terms of contractors and consultants, the person who commissions them to produce a work or who produces it with the paid collaboration of others, shall have the ownership of the economic rights over it.

Regarding any industrial property right subject to protection under the Federal Law for the Protection of Industrial Property, the owner of the industrial property shall be the one that appears as such in its registration with the Mexican Institute of Industrial Property.

*Law stated - 20 July 2022*

## **Joint ownership**

Are there any restrictions on a joint owner of intellectual property's right to use, license, charge or assign its right in intellectual property?

Joint authorship or ownership is contemplated both for intellectual property in general, as well as for industrial property rights.

Regarding any work subject to protection under the Federal Copyright Law, the rights granted by the Law shall correspond to all owners in equal parts, requiring the majority for decision-making, which shall be binding for all. Regarding any trademark subject to protection under the Federal Law for the Protection of Industrial Property, it is required to submit the rules agreed and signed by the applicants with the application, which shall include the use, licence and transfer of trademark rights or, as the case may be, for the licence of the trademark, among others.

*Law stated - 20 July 2022*

## Trade secrets

How are trade secrets protected? Are trade secrets kept confidential during court proceedings?

Trade secrets are protected through the Federal Law for the Protection of Industrial Property. Trade secrets are understood as any information of industrial or commercial application kept confidential by the person exercising its legal control, which means the obtaining or maintaining of a competitive or economic advantage over third parties in the conduct of economic activities. The information of a trade secret may be contained in documents, electronic or magnetic media, optical discs, microfilms, films or in any other medium known or to be known.

Trade secrets must be kept confidential during court proceedings. In any judicial or administrative proceeding related to a trade secret or where any of the interested parties is required to disclose a trade secret, the authority hearing the case shall adopt the necessary measures to prevent its unauthorised disclosure to third parties not involved in the dispute and to guarantee its confidentiality.

*Law stated - 20 July 2022*

## Branding

What intellectual property rights are available to protect branding and how do you obtain those rights? How can fintech businesses ensure they do not infringe existing brands?

Branding is protected through the registration of a trademark, an advertisement or trade name and is regulated by the Federal Law for the Protection of Industrial Property. To obtain registration, it is necessary to file an application therefor with the Mexican Institute of Industrial Property. Once such registration is issued, the holder will have all exploitation rights over such registration.

The data of all trademark registrations are public and are published in the Industrial Property Gazette and on the Mexican Institute of Industrial Property (IMPI) website. The only way to avoid an infringement of another trademark registration is to do the corresponding research in the public data prior to the use of the trademark.

*Law stated - 20 July 2022*

## Remedies for infringement of IP

What remedies are available to individuals or companies whose intellectual property rights have been infringed?

Federal courts will have jurisdiction over disputes arising from the application of the Federal Copyright Law, but when such disputes only affect private interests, the courts of the states and of Mexico City may hear them, at the choice of the plaintiff. In any case, individuals shall have, among others, the right to claim damages before the respective court.

In relation to infringements of rights protected by the Federal Law for the Protection of Industrial Property, a process of administrative declaration of nullity, expiration, cancellation or infringement must be carried out before the Mexican Institute of Industrial Property, and the payment of damages, among other measures, may be requested before the same administrative authority.

*Law stated - 20 July 2022*

## COMPETITION

### Sector-specific issues

Are there any specific competition issues that exist with respect to fintech companies in your jurisdiction?

On 22 June 2022, the Mexican Federal Economic Competition Commission announced the commencement of a study on free economic competition in the digital financial services market and related markets. The sole purpose of the study is to analyse the structure, operation and legal provisions of the referred market in order to issue recommendations. Electronic payment fund and crowdfunding services are taken into consideration in the study as digital financial services. The results of the study do not prejudice on anticompetitive behaviour.

Also, on 16 December 2020, the investigating authority of the Mexican Federal Economic Competition Commission issued a preliminary opinion stating that there are no conditions of effective competition in the card payment system in Mexico. Some of the main issues identified regarding the market are:

- the existence of a single card payment network that applies rules that make it impossible for other payment networks with lower fees, better services and greater transaction security to coexist; and
- eight banks are co-owners of the clearing houses in charge of processing transactions in the payment network, which allows them access to information that other banks do not have and to implement commercial schemes that may give them an advantage over their competitors.

*Law stated - 20 July 2022*

## TAX

### Incentives

Are there any tax incentives available for fintech companies and investors to encourage innovation and investment in the fintech sector in your jurisdiction?

There are currently no tax incentives available for fintech companies in Mexico.

*Law stated - 20 July 2022*

### Increased tax burden

Are there any new or proposed tax laws or guidance that could significantly increase tax or administrative costs for fintech companies in your jurisdiction?

Towards the end of 2019, a new tax on digital platforms was approved, which came into effect in June 2020. The tax implies the retention of value added tax to foreign residents without a permanent establishment in Mexico for the provision of digital services that are used within the Mexican territory, as well as certain income tax provisions applicable to those who operate through such platforms.

Cryptocurrencies are considered assets and may generate earnings for the users of crypto exchange platforms. As a result, Mexican contributors that gain profits from selling cryptocurrencies must pay taxes even if the earnings are not in legal tender and remain in the platform.

*Law stated - 20 July 2022*

## IMMIGRATION

### Sector-specific schemes

What immigration schemes are available for fintech businesses to recruit skilled staff from abroad? Are there any special regimes specific to the technology or financial sectors?

There are currently no regulations that may facilitate fintech businesses to recruit talent abroad, or that provide a special treatment for the technology or financial sectors.

*Law stated - 20 July 2022*

## UPDATE AND TRENDS

### Current developments

Are there any other current developments or emerging trends to note?




Entities that are operating under the grandfathering of the transitory provisions of the Law to Regulate Financial Technology Institutions have explored the possibility of offering fintech-as-a-service platforms in Mexico. The National Banking and Securities Commission has publicly stated that fintech licences, as well as the transitory authorisations under the Law to Regulate Financial Technology Institutions are non-transferrable, in that regard, several fines have been imposed by the National Banking Commission to entities operating under the fintech-as a service scheme.

In 2018, the Law to Regulate Financial Technology Institutions introduced electronic payment funds institutions, crowdfunding institutions and regulatory sandboxes for legal persons and financial entities. During the first semester of 2022, fintech authorisations have accelerated. To date, around 33 financial technology institutions have been authorised (19 payment funds institutions and 14 crowdfunding institutions), and we expect to see more than 60 authorisations by the end of the year. Many applicants have also requested an authorisation to operate under the regulatory sandboxes provisions, but to date, none of them have succeeded. Emerging trends include crypto assets, crypto exchanges, buy-now-pay-later schemes, and wealth investment. In April 2022, the first bitcoin ATM was installed in Mexico City and to date, more than 10 Bitcoin ATMs are located around the country.

*Law stated - 20 July 2022*

## Jurisdictions

	<b>Belgium</b>	Simmons & Simmons
	<b>Brazil</b>	Machado Meyer Advogados
	<b>Canada</b>	Stikeman Elliott LLP
	<b>China</b>	Simmons & Simmons
	<b>Denmark</b>	Plesner Advokatpartnerselskab
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>France</b>	Kramer Levin Naftalis & Frankel LLP
	<b>Germany</b>	Simmons & Simmons
	<b>Hong Kong</b>	Simmons & Simmons
	<b>Indonesia</b>	SSEK Legal Consultants
	<b>Ireland</b>	Matheson
	<b>Italy</b>	Legance
	<b>Japan</b>	Anderson Mōri & Tomotsune
	<b>Luxembourg</b>	Simmons & Simmons
	<b>Malta</b>	Ganado Advocates
	<b>Mexico</b>	Nader Hayaux & Goebel
	<b>Netherlands</b>	Simmons & Simmons
	<b>Nigeria</b>	Perchstone & Graeys
	<b>Singapore</b>	Simmons & Simmons
	<b>South Korea</b>	Bae, Kim & Lee LLC
	<b>Spain</b>	Simmons & Simmons
	<b>Sweden</b>	Vinge
	<b>Switzerland</b>	Homburger
	<b>Taiwan</b>	Lee and Li Attorneys at Law
	<b>Turkey</b>	SRP Legal

 <b>United Kingdom</b>	Simmons & Simmons
 <b>USA</b>	Seward & Kissel LLP
 <b>Vietnam</b>	YKVN