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# LATAM FINTECH REGULATION

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**3<sup>RD</sup> EDITION**

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With contributions of:

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# LATAM FINTECH REGULATION

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A VIEW OF LATIN-AMERICAN FINTECH REGULATION

**3<sup>RD</sup> EDITION**

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# EDITORIAL

We are pleased to present the third edition of “Fintech Regulation in Latin America”. This new edition shows a greater growth in the adoption processes of new financial technologies (Fintech) and the creation of more controlled spaces to test innovative financial initiatives in Latin America. Indeed, given the restrictive measures ordered by the States to address the economic and health emergency caused by COVID-19, the need to advance in the regulation and flexibility of Fintech processes was brought to the fore.

This disruptive entry of the Fintech industry as part of the Fourth Industrial Revolution has had a direct impact on the way financial sector regulators view the market in the future. More and more Latin American countries have Fintech regulatory projects, as well as technical committees and controlled spaces for future technology-based financial services, in order to increase the efficiency of financial services, facilitate financial inclusion, promote development and competitiveness of the sector, among others.

This publication aims to present a general description and analysis of the legislation and regulation related to the Fintech industry in Latin America in order to learn about the

progress and current outlook, as well as its general impact on the financial sector in Latin America. In this third edition, in addition to the nine Latin American countries that were part of the second edition (Brazil, Ecuador, Chile, Colombia, Peru, Mexico, Argentina, Costa Rica and Panama), we have the participation of Uruguay, Paraguay, Guatemala and El Salvador. . Authors from different jurisdictions answered different questions that are divided into nine categories, covering different Fintech segments.

Each chapter of this publication corresponds to a specific country and has been written by well-known financial sector lawyers and industry experts, to whom we are especially grateful for their participation and contributions.

**Santiago Gutiérrez**

**Partner**



**Lloreda Camacho & Co.**

**[sgutierrez@lloedacamacho.com](mailto:sgutierrez@lloedacamacho.com)**

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**A VIEW OF  
LATIN-AMERICAN  
FINTECH  
REGULATION**

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# ARGENTINA O'FARRELL

**Address:** French 3155, Piso 1°, Buenos Aires.

**Phone:** (54-11) 4346-1000

**URL:** [www.estudio-ofarrell.com.ar](http://www.estudio-ofarrell.com.ar)

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

The stance of the legislator and the supervisory authorities in Argentina, especially the Argentine Central Bank (the "BCRA" for its Spanish acronym) and the Argentine Securities and Exchange Commission (the "CNV" for its Spanish acronym), has been to wait and observe how the local fintech market develops.

Thus, in April 2017, the legislator, through the Support for Entrepreneurial Capital Law No. 27,349 (the "Argentine Entrepreneurial Law"), implemented the concept of equity crowdfunding for reaching out to the general public or "crowd" seeking collaboration to finance a given project ("Crowdfunding Projects"), that was further regulated and complemented by CNV General Resolution No. 717-E/2017 in December 2017 (the "Resolution 717").

Sebastian Luegmayer



María Catalina Iglesias Paiz



In addition, the BCRA launched a Round Table on Fintech Innovation (*Mesa de innovación*) to discuss developments and new technologies to be incorporated into financial sector regulation (e.g. admission of the use of cloud services and granting of licenses to digital banks). Moreover, the CNV issued the General Resolution No. 926/2022, which promotes the creation of a collaborative, open and informal space between the public and private sectors, with the purpose of promoting innovation and exchange between the CNV, its regulated entities and innovative entities that intend to operate under its regulatory scope, for this reason, the "Financial Innovation and Inclusion Hub" was created for all entities with innovative financial service projects and/or financial products that are or may be regulated by the CNV, are located in Argentina and intend to develop, exclusively or not, their activity in the country.

The main participants of the Fintech market are grouped in the Argentine Fintech Chamber, which plays an active role in the liaison between the regulators of the Fintech market in Argentina, the BCRA and CNV, as well as with the Financial Information Unit ("UIF" for its Spanish acronym).

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### 1.2. IS FINTECH REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TOWARDS FINTECH IN YOUR JURISDICTION?

As of the date hereof, there is no comprehensive, overarching fintech regulation in Argentina. Only certain specific aspects of the industry are regulated, such as equity crowdfunding, ICOs and payment services providers, but only to a limited extent.

Nevertheless, many fintech companies have registered and operate as settlement and clearing agents (*agentes de liquidación y compensación*) before the CNV. Moreover, since the adoption of Resolution No. 717, companies were created as crowdfunding platforms or turned into crowdfunding platforms (for more information about crowdfunding platforms please see answer 3 below).

### 1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

As of the date of this questionnaire, no regulatory sandboxes have been implemented in Argentina for the Fintech industry, with the exception of the creation of the “Innovation and Financial Inclusion Hub” by the CNV through the General Resolution No. 926/2022 with the goal of generating a public-private collaboration space, driven and directed by the CNV,

in order to promote innovation and exchange between the CNV, its regulators and innovative entities.

The purpose of this space is to identify and analyze the elements and criteria to be considered for the development and implementation of regulatory strategies and financial supervision of innovative technologies, in order to protect investors and to promote the development of a federal, transparent, inclusive and sustainable capital market in Argentina.

Said mechanism has been in force since April 18th, 2022, but no regulations/regulatory strategies for Fintechs have yet been issued by the CNV.

### 1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?

As of the date hereof, there are no specific restrictions for financial entities to invest in or acquire fintech companies.

Many of the traditional financial entities located in Argentina which own fintech companies or digital banks abroad are working on the implementation of such fintech companies and digital banks in Argentina or are looking to acquire Argentine fintechs to expand their business.

## 2. LENDING AND FINANCING

### 2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN

## INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?

The concept of crowdfunding was implemented in Argentina through the Argentine Entrepreneurial Law and regulated by Resolution 717.

Pursuant to Section 24 of the Argentine Entrepreneurial Law, investors can participate in a crowdfunding project by investing in: (i) shares of a corporation (*sociedad anónima* or “S.A.” for its Spanish acronym) or a simplified corporation (*sociedad anónima simplificada* or “S.A.S.” for its Spanish acronym); (ii) loans convertible into shares of a S.A. or a S.A.S.; and (iii) certificates of participation in a trust.

According to Section 28 d) of the Argentine Entrepreneurial Law, loans that cannot be converted into shares of SA and SAS are excluded from financing of Crowdfunding Projects.

Recently, the CNV issued the General Resolution No. 922/2022 (the “Resolution 922”), opening a procedure for the participative elaboration of rules, among the amendments proposed in Resolution 922 are the following: (i) the broadening of the scope of the crowdfunding projects to be financed, in addition to those intended for the promotion of entrepreneurial capital; (ii) increase and/or update of the minimum equity amount of the crowdfunding platforms, maximum issuance amount and investment limits in the crowdfunding system, proposing the use of the Acquisitive Value Units (“UVA”), updated by the Reference Stabilization Coefficient (“CER”), implemented by the BCRA through the Communications A 5845 and A 6069; (iii) an increase in the percentages in which qualified and non-qualified investors

may participate in each financing project; (iv) the possibility of acting as a crowdfunding platform for those entities registered as Settlement and Clearing Agents, Trading Agents and Regional Representative Entities; (v) elimination of the possibility of withdrawal, after the investment commitment has been made, with limitations; (vi) possibility for the crowdfunding platform to participate in projects published on its own site and on other platforms in order to stimulate investments; (vii) obligation of the crowdfunding platforms to publish their participations in the different projects; and (viii) prohibition for the crowdfunding platform and/or its responsible person to be trustee of crowdfunding projects that use a trust as investment vehicle, as well as the possibility of using as vehicle payment service providers regulated and authorized by the BCRA.

As the date hereof, the CNV has completed the process of participative development of the rules of Resolution 922, through the issuance of General Resolution No 942/2022 (the “Resolution 942”).

## 2.2. IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?

As of the date hereof, there is no specific regulation and restrictions of P2P lending in Argentina.

However, P2P consumers and investors must comply with applicable laws and regulations related to the prevention of anti-money laundering and the financing of terrorism, such as those issued by the UIF, the CNV or the BCRA.

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Moreover, when making a P2P purchase or sale, it is inevitable that the money will pass through a virtual wallet or local bank account. Digital wallets, like all traditional bank accounts, are required to provide information to the Federal Revenues Service (“AFIP”) and the UIF, since the money passes through bank accounts for loans.

### **2.3. IS CONSUMER PROTECTION REGULATION APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING?**

According to section 1 of the No.24,240 (“Argentine Consumer Protection Law”), as amended, if the lending crowdfunding or P2P lending are provided to the end consumer such financial services are covered by the consumer protection regulation set forth by the Argentine Consumer Protection Law.

### **2.4. ARE DONATION AND REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

No. There are no regulatory provisions regarding donation and reward-based crowdfunding in Argentina. However, according to Section 28 b) and c) of the Argentine Entrepreneurial Law, donations and reward-based crowdfunding are excluded from financing Crowdfunding Projects.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?**

No. There are no regulatory provisions regarding

crowdfunding in Argentina. However, it should be noted that Section 1421 of the Argentine Civil and Commercial Code includes factoring agreements as a regulated contract. As regards the requirements to be complied with by companies engaged in the activity of collective financing, Resolution No. 717 of the CNV provides the obligation to obtain authorization and registration by the CNV, as well as comply with the information regime that said platforms must comply with.

## **3. INVESTMENT AND CAPITAL MARKETS**

### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

Through the Argentine Entrepreneurial Law and Resolution No. 717, the concept and regulation of equity crowdfunding was introduced in Argentina.

The Resolution No. 717 establishes the requirements that crowdequity platforms must meet in order to obtain authorization and registration by the CNV, as well as the information regime that these platforms must comply with.

### **3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

Resolution No. 717 also establishes that crowdequity platforms may not perform any other activity regulated by the CNV or register themselves as CNV regulated agents and/or other subjects under CNV supervision except for acquiring capital through an initial public offering or debt issuance.

Crowdequity platforms, however, are allowed to carry out



ancillary and complementary activities that are not regulated by the CNV as long as there is no conflict of interest and as long as the principles of the Argentine Entrepreneurial Law are met (transparency, objectivity, diligence and good faith).

Resolution No. 717 also sets out performance criteria which have to be met by crowdequity platforms and establishes that crowdequity platforms must permanently have a minimum net worth of ARS 250,000 (equal to approximately US\$ 6,330 at the current US\$/ARS exchange rate).

The CNV, through Resolution 922, proposes to increase the minimum net worth that crowdfunding platforms must have, setting it at 65,300 Units of Acquisitive Value updated by the Reference Stabilization Coefficient (Law No. 25,827). In the event that the entity is registered as a crowdfunding platform and under another category of agent or entity subject to the supervision and regulation of the CNV, it must comply with an increased minimum net worth requirement. This shall be equivalent to the sum of the higher minimum net worth requirement plus 50% of the minimum net worth as a crowdfunding platform.

### **3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR SECURITIES IN CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?**

The only restrictions that investors face are regarding the amounts they may allocate to Crowdfunding Projects. Per calendar year, investors may invest no more than 20% of their gross annual income in the last fiscal year in

crowdfunding instruments. Furthermore, no investor may have a participation greater than 10% in a Crowdfunding Project, or in an amount of 150,000 UVAs (approximately US\$156,000 at the official US\$/ARS exchange rate), whichever is less. In case the investor is a qualified investor, pursuant to the CNV Rules, only the 25% investment limit will apply of each collective financing project or crowdfunding project.

Regarding the existence of a secondary market, section 29 of the Argentine Entrepreneurial Law provides that the crowdequity instruments may be sold by the investor on the same platform it has acquired such instruments. In addition, section 53 of Resolution No. 717 sets forth that only spot transactions are allowed.

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

As of the date hereof, cryptocurrencies are not specifically regulated in Argentina. However, recently, the BCRA and the CNV issued jointly statements to alert the general public about the risks inherent in the purchase and sale of digital assets, which include cryptocurrencies.

In this regard, the first BCRA and CNV alert was published on May 20, 2021, which included a reference to the fact that *"cryptoassets may be defined as a digital representation of value or rights that are transferred and stored electronically using Distributed Ledger Technology (DLT) or other similar technology. While these technologies could help promote greater financial efficiency and innovation, cryptoassets are not legal tender."*

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By means of Communication “A” 7506, the BCRA prohibited financial entities from carrying out transactions with digital assets, including cryptoassets, since they are not regulated by a national authority and authorized by the BCRA.

That is to say that the BCRA, instead of specifically regulating cryptoassets, found a diagonal to prohibit financial entities from offering digital assets, which include cryptoassets, by issuing a communication within non-ordered and specific items on the complementary services of the financial activity and permitted activities.

For example, according to subsection 4) of Article 2 of the Income Tax Law No. 27,430, as amended, cryptocurrencies are subject to the payment of taxes.

Furthermore, by means of Resolution No. 300/2014, the UIF, authority in charge of the prevention of money laundering and terrorism financing, included transactions with cryptocurrencies to their list of transactions that have to be reported by persons subject to this reporting obligation.

### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

The feasibility of conducting an initial offering of cryptocurrencies (Initial Coin Offerings, ICO) is limited in Argentina, since in December 2017 the CNV has held that ICOs of certain virtual currencies or tokens, due to their structure or particular characteristics, should be considered as marketable securities and be subject to the public offering regime established by the CNV. Consequently, it is highly

probable that an issuer should require authorization from the CNV to conduct an ICO in Argentina. This is complementary with the BCRA's prohibition to financial entities to carry out operations in cryptocurrencies.

In Argentina the holding of cryptocurrencies is allowed. As a consequence the AFIP, through its Opinion No. 2/2022 considered that *“Cryptocurrencies can be characterized as a new class of financial asset, non-traditional and based on blockchain technology which is, in short, about an electronic notation that incorporates the right to a certain amount of money, which can be typified as securities, (...) they are an asset covered by the Personal Property Tax Law in accordance with the provisions of the aforementioned Article 19, paragraph j) and Article 22, paragraph h) of the Personal Property Tax Law.”* In other words, the holding is allowed and the controlling agency considers that it is covered by the Personal Property Tax.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

As of the date hereof, there are no particular requirements for cryptocurrency trading platforms in Argentina.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

Pursuant to BCRA Communication “A” 7506, financial institutions may not carry out or facilitate to their customers

transactions with digital assets -including crypto-assets and those whose yields are determined by the variations they register- that are not authorized by a competent national regulatory authority or by the BCRA.

#### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

As of the date hereof, ICOs are not specifically regulated in Argentina. However, in December 2017, the CNV held that certain tokens issued by way of ICO may be considered as securities depending on their structure and particular characteristics and, thus, fall under the public offer regime regulated by CNV.

As consequence of that, in order to perform and ICO in Argentina it is highly probable that issuer must request authorization by CNV .

### **5. DISTRIBUTED LEDGER**

#### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies is booming in Argentina through companies that are beginning to develop digital assets registered in a distributed ledger to support the infrastructure for a commercial relationship between parties, enabling the registration and transfer of assets, so that they can meet payment or delivery obligations and, eventually, for the transfer of guarantees.

Furthermore, there is also an ongoing project with a

widespread public and private participation to develop a Federal Blockchain with the purpose of improving the rendering of public services.

As of the date hereof, the use of distributed ledger technologies is not regulated in Argentina.

#### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

As mentioned in answer 5.1. above, distributed ledger technologies are not yet very common in Argentina and financial institutions do not yet make use of such technologies. However, the BCRA included blockchain technologies in the 2018 edition of its Financial Innovation Program, a public-private initiative aimed at developments in the fintech industry.

### **6. INSURTECH**

#### **6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Apart from the fact that there are no specific insurtech regulations in Argentina, insurance companies in Argentina are using fintech to provide their services or products.

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The first appearance of insurtech was in relation to websites providing comparisons of different insurance providers and policies.

Subsequently, the possibility for customers to take out insurances online and almost instantaneously was introduced.

In 2018, the first insurance company that operates entirely via smart phone app was launched. Currently, insurance companies, especially in the case of car insurances, are starting to implement the internet of things in their insurance models.

The Superintendence of Insurance, through its Resolutions No. 733/2019 and No. 483/2022, created the Insurance Innovation Board which aims to promote innovation in the insurance activity based on the interaction of the different actors linked to the innovative use of technology applied to insurance. To date, there have been no resolutions or regulations on the creation of this mechanism.

### **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Taking into consideration that, as of the date hereof, there are no specific insurtech regulations in Argentina, the traditional insurance regulations set forth by the Argentine Insurance

Supervisory Authority apply to the new distribution models and to insurtech intermediation.

### **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

Please see answer 6.2. above.

## **7. ROBO-ADVICE**

### **7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

As of the date hereof, financial or capital markets' institutions are not using robo-advice in providing their services and there is no specific regulation regarding robo-advice in Argentina. Different financial institutions have started to use robo-advisors technologies, an example was the case of OpenBank Argentina which has been operational since 2021 and obtained the corresponding banking license, as well as the case of Quiena Inversiones which received from the CNV the Global Investment Advisory Agent (AAGI) permit, which means that it can now offer local clients advice on both local and foreign assets.

### **7.2. ARE THERE ANY PARTICULAR**

## **REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

As of the date hereof, there are no particular requirements set forth by the legislator or any supervisory or regulatory authority regarding the provision of advisory services entirely or partially through robo-advisors.

Therefore, the rules and regulations of the CNV are applicable.

## **8. NEOBANKS**

### **8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

The incorporation of financial entities is governed by Law No. 21,526 (the “Financial Entities Law”). Among the types of financial entities that may request authorization to operate from the BCRA are commercial banks; investment banks; mortgage banks; finance companies; savings and loan companies for housing and other real estate; and credit unions.

The BCRA regulations regarding the creation, merger and transformation of entities (“CREFI”) do not establish neobanks as a category of financial entity that may require authorization to operate from the BCRA.

However, a company may apply to the BCRA for authorization to operate as a financial entity, establishing that the operation of its business is digital. To this effect, the BCRA authorized in 2022 the first 100% digital financial entity, which does not have branches.

## **8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

The BCRA regulations regarding the creation, merger and transformation of entities (“CREFI”) do not establish particular requirements for the operation of a financial entity that operates entirely through a digital platform that allows customers and users to operate electronically and digitally and without going to a physical or branch office.

## **9. OTHER MATTERS**

### **9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

No.



## SEBASTIAN LUEGMAYER

**Address:** French 3155, 1st Floor, Buenos Aires

**Phone:** (54-11) 4346-1045

**Email:** luegmayers@eof.com.ar

Sebastian Luegmayer is a Partner of O'Farrell and heads the Banking and Capital Market practice. He advises corporations and financial entities in a wide range of capital markets transactions, loans, financial trusts, derivatives and complex financial transactions.

He is a current member of ISDA Fintech legal Group and of the Argentine Fintech Chamber and has participated as speaker of the webinar State of the Crypto Market and Lessons from the US and Europe co-organized by Hogan Lovells and O'Farrell in September 21, 2022.



## MARÍA CATALINA IGLESIAS PAIZ

**Address:** French 3155, 1st Floor, Buenos Aires

**Phone:** (54-11) 4346-1099

**Email:** iglesiaspaizc@eof.com.ar

María Catalina Iglesias Paiz is an associate of the Corporate Banking and Capital Market department at O'Farrell since 2021. Her areas of practice include corporate law in general including the incorporation of companies, subsequent registrations, and registration of foreign companies; advice on complex transactions such as mergers, acquisitions and corporate reorganizations and advice on the various consultations of corporate law in general.

María Catalina Iglesias Paiz received her law degree from Universidad Torcuato Di Tella in 2020 and has worked as a lawyer in the area of corporate law in several leading law firms in the country.

## **I ABOUT THE FIRM.**

**Country:** Argentina.

**Address:** French 3155, Piso 1°, Buenos Aires.

**Phone:** (54-11) 4346-1000

**URL:** [www.estudio-ofarrell.com.ar](http://www.estudio-ofarrell.com.ar)

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# CESCON, BARRIEU, FLESCH & BARRETO

**Address:** Av. Brigadeiro Faria Lima, 949 - 10º andar, São Paulo

**Phone:** 55 11 3089-6500

**URL:** [www.cesconbarrieu.com.br](http://www.cesconbarrieu.com.br)

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

Since 2013, with the enactment of Law No. 12,865/2013 ("Payments Act"), Fintech has been in the center of the regulatory agenda in Brazil. Fintech is currently part of the Central Bank of Brazil ("Central Bank")'s 'BC# Agenda', which is comprised of microeconomic measures divided into five spheres: (i) financial inclusion, (ii) competition, (iii) transparency, (iv) financial education, and (v) sustainability. Based on these measures, the Central Bank expects to reduce the costs of financial services rendered to end users

Maurício Teixeira dos Santos



Alexandre Vargas



as well as the credit facility cost for the economy as a whole. Pix and Open Finance have been the most relevant regulatory innovations implemented by the Central Bank under the 'BC# Agenda':

(i) **Pix.** In February 2020, the Central Bank announced the new instant payment network ("**Pix**"). According to latest available Central Bank data, Pix (a) has over 126 million registered users (which corresponds to just over half of Brazil's population), of which 50.6 million started using the banking system due to Pix; and (b) is currently the most popular payment method in Brazil (surpassing credit cards, debit cards and wire transfers). A world-wide benchmark, Pix's success is due to the mandatory participation of banks, financial institutions and regulated payment institutions (which explains its capillarity and wide acceptance), exemption of fees for individuals (as opposed to other payment methods) and to its 24/7 availability (including weekends and holidays), which is carried out through a real-time gross settlement (RTGS) system dedicated to Pix transactions and operated by the Central Bank (Sistema de Pagamentos Instantâneos – SPI).



(ii) **Open Finance.** In May 2020, the Central Bank disclosed a new set of rules regulating the Open Financial System (“**Open Finance**”), which has only recently been fully implemented. Brazil’s Open Finance system is also a world-wide benchmark, given its over-arching scope (financial services and investments) and the mandatory participation of banks (although Fintech companies are not mandatory participants, a relevant portion of regulated Fintech companies has joined Open Finance). The aim of Open Finance is to promote the offering of more proper, customized financial products and services for a more accessible cost to the end user.

This active approach from the Central Bank since the enactment of the Payments Act has led to the development of relevant local Fintech companies (including Nubank, PagSeguro, Stone, Neon, among others) with both national and international activity, as well as the attraction of global players to the Brazilian Fintech scene. Brazil currently is the leader in Latin America in the number of Fintech developments, ahead of Mexico and Colombia.

## 1.2. IS FINTECH REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TOWARDS FINTECH IN YOUR JURISDICTION?

The Fintech ecosystem in Brazil is mainly composed of the payments and credit industries. The regulatory approach is generally very favorable, with the Central Bank committed to fostering innovation and competition in the Brazilian financial services industry. Below we provide the most relevant regulations and regulatory approaches to these two sectors, as well as other relevant regulatory initiatives.

**Payments.** The Brazilian Payments System (Sistema de

Pagamentos Brasileiro) has undergone deep changes since 2013 following the enactment of the Payments Act. In the view of the Brazilian government and of the market as a whole, the Payments Act is an important step forward to promote financial inclusion, innovation, competition and the decentralization of the payments industry in Brazil. Under the Payments Act, payment institutions are a prominent form of fintech activity (as detailed in “8. Neobanks” below).

**Credit.** CMN Resolution No. 4656/2018 was enacted to foster financial inclusion in Brazil by stimulating competition among financial players and to lead to the reduction of interest rates in the credit industry. The regulations created two new types of financial institutions which are subject to a lighter regulatory burden: the Direct Credit Company (Sociedade de Crédito Direto – “**SCD**”) and the Peer-to-Peer (“**P2P**”) Lending Company (Sociedade de Empréstimo entre Pessoas – “**SEP**”). Alongside payment institutions, ‘credit fintechs’ are a prominent form of fintech activity (as detailed in “8. Neobanks” below).

**Cryptocurrency.** Although currently not regulated in Brazil (except, as mentioned, where they constitute a public offering of securities), the Brazilian Congress is currently discussing a Bill of Law that expressly recognizes the provision of services related to cryptocurrencies and virtual assets and sets forth requirements for such activities. If enacted per its current text, the Bill of Law will require entities holding custody of cryptocurrencies and/or offering trading environments for cryptocurrencies to obtain an authorization from the competent authority. This is relevant in terms of regulatory oversight and AML/KYC controls.

**Regulatory Sandbox.** In 2020, the Central Bank and the Brazilian Securities and Exchange Commission (Comissão de

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Valores Mobiliários – “CVM”) issued the applicable regulations enabling participants to test innovative projects within the scope of the regulatory sandbox, subject to each regulator’s oversight (see Section 1.3 for further detail).

### 1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

The regulatory sandbox model adopted by the Central Bank and the CVM consists of opening cohorts (one-year term, subject to extension to a total two-year term) under which projects are analyzed and selected by each regulator.

**Central Bank’s regulatory sandbox.** In the first cycle, announced in November 2021, seven projects were selected by the Central Bank, based on the project’s feasibility to address one or more of the established priorities (including solutions for the foreign exchange market, solutions for Open Banking and Pix and solutions to promote competition and/or financial inclusion in the Brazilian Financial System). Among the selected projects, there are (i) key fintechs, such as Mercado Pago and lupi, which presented payments driven solutions regarding, respectively, top-up services in kind and transfer of funds using settlement / temporary accounts; (ii) established banks, as JPMorgan and Itaú Unibanco, which are testing technological solutions for the execution of multi-currency payment instructions and offer of credit to customers via Pix; and (iii) the first blockchain-based digital asset trading platform in Brazil (Bolsa OTC).

**CVM’s regulatory sandbox.** In the first cycle, announced in June 2021, four projects were selected by the CVM. Differently from the Central Bank’s regulatory sandbox, the CVM’s first cycle did not expressly establish priorities and received projects addressing multiple solutions. Four projects were selected, mainly focusing on fixed income trading solutions (project by Vórtx) and secondary trading in crowdequity platforms (projects by BEE4, StartMeUp and Basement). As mentioned in “6. Insurtech” below, the SUSEP (private insurance regulator) has implemented a successful regulatory sandbox initiative directed at insurtechs within the private insurance space.

### 1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?

Financial institutions (including banks) may acquire interest or invest in other entities, as long as (i) prior authorization from the Central Bank is granted; and (ii) there are synergies with its activities and business model. The financial institution must submit the authorization request to the Central Bank containing the required documentation under the applicable regulations (which may vary whether the transaction constitutes the purchase or investment in a non-regulated Fintech company or in a regulated Fintech company). The need for the Central Bank’s authorization has a prudential rationale, aiming to mitigate the systemic risk stemming from the strategic role performed by financial institutions in the Brazilian Financial System.

### 1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.

Financial consumers benefit from the following specific rules and regulations applicable to entities rendering financial services:

(i) **Customer Service and Suitability.** CMN Resolution No. 4949/2021 and Central Bank Resolution No. 155/2021 establish the rules, principles and procedures that regulated entities must adopt in the relationship with their customers. Such regulations require entities to implement an institutional policy consolidating guidelines, strategic objectives and the organizational values relating to customer service, as well as the products and services offered are suitable to the clients' profiles (i.e. their interests and objectives). Suitability standards also apply to the offering of investments, per CVM Resolution No. 30/2021.

(ii) **SAC – Customer Service Channel.** Federal Decree No. 11,034/2022 establishes the first layer of customer service, which is mandatory for regulated entities (serviço de atendimento ao consumidor – “SAC”). The Decree imposes a series of procedures, standards and guidelines referring to (i) the provision of customer service; (ii) the quality of the treatment and monitoring of demands; and (iii) the effectiveness of the service.

(iii) **Ombudsman.** Central Bank Resolution No. 28/2020

established the ombudsman channel for regulated entities, a special component applicable to strategic customer service and/or customer demands not resolved by the SAC (i.e. second layer).

(iv) **E-Commerce Customer Service.** Federal Decree No. 7962/2013 establishes specific guidelines applicable to the offering of products and services in connection with e-commerce (including financial services), applicable to regulated and non-regulated entities, including the duty to keep customers clearly and extensively informed and to provide adequate means to guarantee facilitated customer service.

If a financial consumer is characterized within the typical definition of ‘consumer’ (consumidor) provided by Brazilian Law, it also benefits from the rules of the Consumer Code (Código de Defesa do Consumidor – “CDC”). Under the CDC, a ‘consumer’ is the individual or company purchasing goods or services as the end user, while a ‘supplier’ is any entity involved in the supply chain of the goods or services purchased by the ‘consumer’. Under the CDC, the ‘supplier’ is subject to strict liability towards the ‘consumer’.

## 2. LENDING AND FINANCING

### 2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?

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Brazilian regulations do not distinguish lending crowdfunding from P2P lending. For more details regarding P2P lending, please refer to Section 2.2. below.

### **2.2. IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?**

CMN Resolution No. 4656/2018 regulates both SEPs (P2P lending companies) and SCDs (direct credit companies). SEPs are financial institutions exclusively authorized to act as intermediaries for P2P loans or financing between lenders and borrowers on a purely online setting.

The regulations set forth some specific requirements for incorporating an SEP and for a consumer or investor to participate in P2P lending, as follows:

(i) Limits. Limit to the exposure of lenders (consumers/ investors) to BRL 15,000 per debtor within the same SEP, except where such investor holds at least BRL 1 million in total investments in the capital markets and is thus considered to be a “qualified investor” under CVM regulation.

(ii) Share capital. P2P companies must have a minimum BRL 1 million share capital.

(iii) Fees. As long as provided for in contracts concluded with its clients and users, the SEP is entitled to charge fees for the intermediation of P2P transactions, provided, however, that the fee policy does not generate exposure to financial risks beyond those considered to be prudent.

(iv) Policies. SEPs shall adhere to Anti-Money Laundering (AML) and Know Your Client (KYC) policies.

### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

The SEP (P2P lending company), as a financial institution, is subject to the consumer protection regulations referenced under Section 1.5 above. As mentioned, the general consumer protection law is applicable to financial consumers if they are characterized as a ‘consumer’ under the CDC (i.e. end user of the product or service).

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

Under CVM Resolution No. 88/2022, which regulates crowdequity (please refer to Section 3.1. below), donation and reward-based crowdfunding are expressly excluded from CVM oversight. Under such regulation, compensation received by means of rewards, goods or services does not constitute a securities’ public offering.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE**

## THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?

In principle, typical factoring is not a regulated activity in Brazil. Considering that the activity of factoring is typically limited to the acquisition of credit bonds prior to maturity, at a discounted price and without recourse rights, factoring companies are generally understood not to perform activities restricted to financial institutions (such as lending and intermediation of monies) and would not be subject to the Central Bank's supervision. Depending on the business model, however, conclusions may differ (subject to a case-by-case analysis).

Crowdfactoring would in principle be excluded from the crowdequity's scope of regulation, namely CVM Resolution No. 88/2022 (see Section 3 below).

## 3. INVESTMENT AND CAPITAL MARKETS

### 3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?

Under CVM Resolution No. 88/2022, companies with a maximum annual revenue of BRL 40 million may raise funds from investors by means of a public offering of securities, not subject to registration, as long as the securities are distributed exclusively by means of an electronic investment platform (namely crowdequity platforms).

Such platforms are subject to the CVM's oversight as the intermediary institutions of crowdsales and therefore are under the duty of acting as gatekeepers and shall screen potential issuers prior to the launching of a crowdsale, as well as warn potential investors regarding risks associated

with their investments.

### 3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?

Besides being registered with the CVM and duly incorporated in Brazil as a legal entity (no specific corporate form is required, e.g. corporation or LLC), crowdequity platforms must also meet a minimum share capital of BRL 200,000 and implement procedures compatible with the adequate performance of its role as a gatekeeper, including the drafting of a code of conduct and implementing information technology systems.

Under the new regulations, platforms that achieve a volume of public offerings superior to BRL 30 million must permanently engage a compliance professional responsible for supervising internal rules, procedures and controls.

In addition, CVM Resolution No. 88/2022 determines that crowdequity platforms must prepare audited financial statements by an auditor registered with the CVM if (i) the public offering target value exceeds BRL 10 million; or (ii) the platform has a consolidated annual gross revenue superior to BRL 10 million.

Per latest data (April 2021), 36 crowdequity platforms were registered with the CVM.

### 3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?

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As a general rule, the investment in crowdequity platforms is limited to BRL 20,000 per investor on an annual basis, except if such investor (i) is considered to be a “qualified investor” under CVM regulations (please refer to Section 2.2. above) or (ii) holds total investments/has annual revenue exceeding BRL 200,000, in which case its total investment can be limited to 10% of the largest amount among total investments or annual revenue.

Crowdequity projects are limited to a maximum term of 180 days for conclusion and to a maximum amount of BRL 15 million per project. Additionally, issuers are restricted from launching a new crowdsale for a 120-day period following the conclusion of the original crowdsale.

In December 2021, the CVM has granted a crowdequity platform (StartMeUp) a temporary authorization to develop, within the regulatory sandbox, a secondary market for investments under CVM Resolution No. 88/2022. Such project aims at providing liquidity to investments in innovative businesses and fostering small businesses.

## 4. CRYPTOCURRENCIES

### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

As mentioned above, the Brazilian Congress is currently discussing a Bill of Law that creates the legal framework for regulation of services related to cryptocurrencies. Currently, the regulatory approach regarding the matter is as follows:

**Central Bank.** In 2017, the Central Bank published a formal notice (Notice No. 31,379/17), alerting that cryptocurrencies are not issued by any monetary authority and, accordingly,

(i) do not have any guarantee of conversion to sovereign currencies; (ii) are not backed or secured by any real asset of any kind; and (iii) its value depends exclusively on the trust conferred by the individuals to its issuer. In addition to sponsoring the Bill of Law to regulate cryptocurrencies, the Central Bank is currently working on launching a Central Bank Digital Currency (CBDC), which is expected to have its first pilot in operation by 2023.

**CVM.** Unless an ICO is deemed as a public offering of securities (see Section 4.5 below), the CVM does not currently have jurisdiction over cryptocurrencies in Brazil.

**Tax Authority.** The Brazilian Tax Authority (Receita Federal do Brasil – “RFB”) issued Normative Instruction 1888/2019, which regulates the obligation to report transactions involving digital assets. This obligation falls upon (i) the cryptocurrency exchange (i.e. trading platform) domiciled in Brazil for tax purposes; or (ii) the individual or legal entity domiciled in Brazil.

### 4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?

Under current regulations, no licensing, authorization or registration is required to operate with digital assets. In this sense, there is no legal restriction to issue, handle, or carry out transactions with cryptocurrencies in Brazil. If enacted, the Bill of Law under discussion in the Brazilian Congress is expected to provide improved legal certainty to this industry.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

Trading platforms are not regulated under Brazilian Law (although they are expected to be regulated under the Bill of Law). However, the CVM and the Central Bank have warned the market that in case trading platforms come to perform activities restricted to regulated entities (such as brokers), whenever cryptocurrencies are deemed securities (see Section 4.5 below), measures may be implemented to restrict such activity.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

As mentioned above, there are currently no restrictions under Brazilian Law for individuals or legal entities to carry out transactions with cryptocurrencies.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

ICOs are not regulated in Brazil. However, the CVM has publicly stated that it is (i) aware of the growing trend of ICOs; (ii) monitoring this type of transaction; and (iii) based on concrete cases, seeking to understand their related benefits and risks and to issue guidance on the matter. The CVM has recently published Advisory Opinion No. 40/2022 (Parecer de Orientação nº 40/2022) consolidating its understanding on

the matter.

In summary, the CVM's understanding is as follows:

(i) **Securities rules and regulations.** Whenever the digital assets distributed within the ICO may meet the legal qualification of securities (i.e. if such assets grant to its owner (a) equity, (b) pre-fixed remuneration over the invested capital, or (c) voting rights in questions related to the management of the company), the transaction is subject to specific rules and regulations, including CVM Resolution No. 161/2022, which regulates public offerings of securities in the primary and secondary markets.

(ii) **Payment, utility and asset-backed tokens.** The CVM has classified tokens into three different categories; while payment tokens (used to replicate currency functions) and utility tokens (used to purchase or access products or services) are not deemed securities, asset-backed tokens (which represent one or more tangible or intangible assets) may be deemed securities depending on their features, subject to a case-by-case analysis.

(iii) **Risks inherent to such investments and relevant recommendations.** Among the risks inherent to such investments, are risks stemming from fraud, operational and liquidity mechanisms and technological structures associated with the management of the virtual assets. The CVM recommends investors to carefully assess the features of such transactions prior to committing funds to investments.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL**

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**CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Under the legal framework in force, the special regime of financial consumer rules would not apply. The provision of services by cryptocurrency exchanges (i.e. trading platforms) to end users in Brazil would be subject to the general consumer protection rules (per the CDC) if a 'consumer' / 'supplier' relationship is characterized (see Section 1.5 above).

**5. DISTRIBUTED LEDGER****5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies is increasing in all sectors and, generally speaking, is well perceived by the market. As of October 2022, the use of distributed ledger technologies is not regulated by any specific law.

**5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

Some of the largest banks in Brazil are reportedly using or testing such technology. Press articles reported that while Itaú has incorporated the technology into the derivatives

margin control process, enabling the record of operations on a secure network, and Santander used blockchain technology to optimize international transfers. The Central Bank itself not only has a team dedicated to studying blockchain technology, but has also authorized, in the first cycle of the regulatory sandbox, the first blockchain-based digital asset trading platform in Brazil (Bolsa OTC).

**6. INSURTECH****6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Private insurance is subject to a separate regulatory setting vis-à-vis typical Fintech services. Private insurance services are regulated by the Private Insurance Authority (Superintendência de Seguros Privados – "SUSEP"), subject to directives issued by the National Private Insurance Council (Conselho Nacional de Seguros Privados – "CNSP").

According to the latest report performed by Digital Insurance Latam, Brazil is the country with the largest insurtech ecosystem in Latin America, with over 129 insurtechs (representing 32% of the total amount of insurtechs in Latin America).

The Brazilian insurtech ecosystem has been fostered by the establishment of a regulatory sandbox by SUSEP, as duly authorized by the CNSP, in 2020. Two insurtechs, Iza and Pier, have already been granted a permanent license to operate after testing their innovative services / products within the regulatory sandbox.



## **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

The current regulatory model adopted by SUSEP is based on two main pillars: systemic health and social adequateness of the insurance activities. On the one hand, systemic health is the guarantee that, if materialized, one or more risks covered by the insurance policy will not lead to the ruin of the entire insurance system. On the other hand, social adequateness of the insurance activities consists of the protection of all players in the market, especially consumers. In line with such principles, the regulatory approach adopted by SUSEP is that of exercising strict control over the proposal of new distribution models and to seek the standardization of insurance contracts.

This is evidently a challenge for the insurtech industry, which is based primarily on technology and innovation. Since the insurance market is heavily regulated by SUSEP, insurtechs performing activities currently regulated by traditional insurance regulation are under the obligation of either obtaining SUSEP's prior authorization to operate or establishing partnerships with typical insurance companies to offer their services, although insurtechs that provide pure technology services may fall outside the scope of regulation. Apart from authorization, SUSEP may also require regulated entities to hold specific certification related to their segment of activity in the insurance market.

## **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

As of October 2022, there is no particular insurtech regulation. Nonetheless, SUSEP has been proven active on fostering discussions within the insurtech market. For instance, in July 2017, the Special Commission of Innovation and Insurtech was created with the purpose of studying the impacts of Fintech in insurance companies and, if necessary, suggest how to regulate it; and, since 2020, the regulatory sandbox has been gathering a significant amount of approved projects regarding innovative products and services offered by insurtechs.

## **7. ROBO-ADVICE**

### **7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

Use of robo-advice technology by Brazilian financial and capital markets' institutions has been increasing over the years. For instance, in 2020, Vérios Investimentos, an AI-based platform that managed clients' investments and assets, was acquired by Nu Invest (formerly Easynvest), Nubank's investment arm. Nubank claims to use Vérios artificial intelligence to integrate the asset management of funds.

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CVM enacted CVM Resolution No. 19/2022, which replaced the former regulations, expressly bringing the use of robo-advice technology in securities investment advisory services under its direct oversight. Among such rules, the CVM expressly clarified that the use of automated systems or algorithms in connection with the rendering of securities investment advisory services (i) is subject to the same rules applicable to the services provided by individuals/humans; and (ii) does not reduce the consultant liability inherent to the guidance, recommendation and advice provided to clients.

### **7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

CVM Resolution No. 19/2022 sets forth that companies providing securities investment advisory services shall keep the source code of the automated system available for the CVM's inspection.

## **8. NEOBANKS**

### **8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

Yes. Neobanks are typically set up as payment institutions (e-money issuer – emissor de moeda eletrônica) or as a 'credit fintech' (SCD) and combine both payments and credit services. As they grow, Neobanks may adopt more sophisticated regulatory structures. Currently, Neobanks (e.g. Nubank, PagSeguro, Neon Pagamentos) are growing

their businesses and bridging the gap between the financial services offered by them to the scope of financial services offered by traditional banks.

**Payments.** Under the Payments Act, payment institutions (instituições de pagamento), which are the legal entities that enable final users to carry out payment transactions, are generally subject to an authorization to operate and to the Central Bank's continuous oversight. Payment institutions are subject to a minimum capital requirement of BRL 2 million in order to operate as an e-money issuer. Payment institutions are also authorized to carry out other activities (issuer of post-paid payment instruments (mainly credit cards), acquirer and payment initiation service provider – PISP). For each payment activity carried out in addition to acting as an e-money issuer, payment institutions must post an additional BRL 2 million in minimum capital (except for payment initiation services, subject to a BRL 1 million additional minimum capital). In order to accept deposits from end users, Neobanks using a payment institution structure are typically set up as an e-money issuer (emissor de moeda eletrônica), potentially also covering other payment activities. According to recent data, as of October 2022 there were 62 payment institutions with licenses to operate granted by the Central Bank.

**Credit.** 'Credit fintechs' (SCDs and SEPs) shall obtain the Central Bank's prior authorization to operate as financial institutions. They shall be incorporated as corporations (sociedade anônima) and maintain a minimum capital and net equity of BRL 1 million at all times. The minimum capital and net equity requirement may be increased depending on a case-by-case analysis to be made by the Central Bank upon receiving the authorization request. The Central Bank understands that 'credit fintechs' offer limited risk to the

stability and orderly functioning of the Brazilian Financial System, considering the limited amounts that are allowed to be transacted by such institutions (vis-à-vis fully-fledged financial institutions/banks) and their simplified risk profile. As such, 'credit fintechs' benefit from proportional prudential requirements, which become more stringent as such entities grow. Since 'credit fintechs' are authorized to carry out payment services (pre-paid and post-paid services), setting up a separate payment institution is typically not required, unless payment services not covered under the scope of 'credit fintechs' (acquiring or payment initiation) are part of the entity's business model. For each payment activity carried out by the 'credit fintech' (namely, acting as an e-money issuer and/or as a post-paid payment instrument issuer), BRL 2 million in share capital will be added to the minimum capital requirement of the 'credit fintech' (totaling between BRL 3 million – BRL 5 million in minimum capital requirement). According to recent data, as of October 2022 there were 98 'credit fintechs' (SCDs and SEPs) with licenses to operate granted by the Central Bank.

## **8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

In addition to the regulatory requirements listed in Section 8.1, Neobanks are generally subject to a similar set of regulations (including risk management and prudential regulations) applicable to traditional banks. The regulations were recently amended by the Central Bank, as a response to 'regulatory asymmetry' claims voiced by the incumbents, to bridge the gap between Neobanks and traditional banks.

This is expected to increase regulatory compliance costs, but at the same time Neobanks will be granted more freedom to improve their offering of financial services, including the prerogative of requesting the Central Bank for a license to operate, as a payment institution, in the foreign exchange ("FX") market.

With respect to FX, a new legal framework was enacted (Law No. 14,286/2021) providing more flexibility to the Central Bank in the regulation of the Brazilian FX market and the FX regulations will be amended by the Central Bank on December 31, 2022 (date in which the new legal framework enters into force) with the goal of (i) modernizing the Brazilian FX regulations; (ii) providing FX market players with more flexibility in the classification of FX transactions, especially with respect to small and medium-ticket transactions; and (iii) providing FX market players with greater freedom to create new products and services. This is expected to foster competition in the FX market (currently a highly concentrated market) and gradually reduce the average banking spread, especially with respect to retail FX transactions, which creates a relevant opportunity for Fintech companies.

## **9. OTHER MATTERS**

### **9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

**Future Outlook.** The recent initiatives implemented by the Central Bank are part of a broader process of digital

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transformation in the Brazilian financial ecosystem towards a tokenized economy. In the upcoming years, the Central Bank expects to implement a new interoperable system that will integrate current regulatory initiatives (mainly Pix and Open Finance) with tokenized deposits, data monetization and other potential services. This integration will serve as the basis for the establishment of a Central Bank Digital Currency (CBDC), which, as mentioned, is expected to have its first pilot operation by 2023.

**Consumers and Merchants.** Funds held in payment accounts and transacted through payment institutions and sub-acquirers (which are payment processors and settlement agents within payment networks, but not technically payment institutions) by Brazilian consumers and merchants are legally segregated from the assets of such entities, which means that they are not directly liable for the entity's debts and may not be seized or attached by creditors in Brazil, even if the entity undergoes bankruptcy or judicial reorganization proceedings. The legal protection granted by such segregation was successfully tested in 2019, thus protecting consumers' deposits, during a crisis involving a relevant Fintech company in Brazil which held its accounts with a failing bank.

**Personal Asset Liability – Administrators/Officers and Controlling Shareholders.** The Central Bank may, under a stress scenario, such as insolvency or threat of insolvency, place payment and financial institutions subject to its regulatory oversight into 'special regimes', i.e. out-of-court intervention, out-of-court settlement or temporary special administration regime – RAET. From the enactment of any of

the 'special regimes', the assets of controlling shareholders and statutory officers (current and former, for a period of up to five years prior to the Central Bank decreeing any 'special regime') become unavailable and are liable for damages caused to customers and third parties, even if there is no fault or intent, and may, upon further investigation, be seized and held jointly and severally liable for such losses.



## MAURÍCIO TEIXEIRA DOS SANTOS

**Address:** Praia de Botafogo 228 - 15º andar, Rio de Janeiro

**Phone:** +55 21 2196 9212

**Email:** mauricio.santos@cesconbarrieu.com.br

Maurício is one of Cescon Barrieu's Founding Partners and head of Financial Services Department of the firm.

Maurício has more than 25 years of experience advising banks as well as other national and international financial institutions, companies and local and foreign investment funds, in addition to multilateral entities and other types of investors, regarding multiple sectors of the economy.

He holds a degree in Law (LL.B.) from Universidade de São Paulo (São Francisco), a Master of Law (LLM.) from the University of Tübingen, Germany, and a Master in Business Administration for Executives (EMBA) from INSEAD.



## ALEXANDRE VARGAS

**Address:** Praia de Botafogo 228 - 15º andar, Rio de Janeiro

**Phone:** +55 21 2196 9235

**Email:** alexandre.vargas@cesconbarrieu.com.br

Alexandre is a senior associate at the Financial Services Department of the firm.

Alexandre has considerable experience representing fintechs, payment institutions, banks, as well as others national and international financial institutions in transactions which demanded advice in regulatory affairs and attainment of licenses with the Brazilian Central Bank, along with transactions regarding foreign exchange, in multiple sectors of the economy.

He holds a degree in law (LL.B.) from Pontifícia Universidade Católica do Rio de Janeiro.

## **ABOUT THE FIRM.**

**Country:** Brasil.

**Address:** Av. Brigadeiro Faria Lima, 949 - 10º andar, São Paulo

**Phone:** 55 11 3089-6500

**URL:** [www.cesconbarrieu.com.br](http://www.cesconbarrieu.com.br)



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Among our banking, finance and PSP clients are the world's largest financial institutions, payment service providers, multi-lateral agencies, export credit agencies, public and private corporations, private equity firms, hedge-funds, asset managers, and trading platforms, which regularly rely on us for legal assistance with corporate finance, structured finance and financial institutions regulations.

# CHILE CAREY

**Address:** Av. Isidora Goyenechea 2800, piso 43, Las Condes

**Phone:** +56 2 2928 2200

**URL:** www.carey.cl

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

During the last year, a bill regulating the provision of financial services through technological tools ("**Fintech Law**") was discussed and approved in Congress. The principles of this bill are financial inclusion and innovation, the promotion of competition, the protection of financial clients, the adequate protection of personal data, the preservation of financial integrity and stability, among others.

The Fintech Law will regulate the provision of collective financing or crowdfunding services, alternative transaction systems, intermediation of financial instruments, order routing, credit and investment advisory services, and custody of financial instruments. In order to provide any of the aforementioned services, providers must be previously registered in a Registry of Financial Services Providers ("**Registry**"), which will be administered by the Financial Market Commission ("**CMF**"). In addition, the Fintech Law will establish an open finance system that will allow the exchange of information between the different financial

Diego Peralta



Fernando Noriega



Arturo Fasani Grez



services providers.

On October 12, 2022, the proposed Fintech Law was approved and sent to the President for enactment. Once published, the CMF will have a period of 18 months to issue a General Rule ("**NCG**") regulating the Registry and other matters entrusted to it by the law. The Fintech Law will enter into force on a deferred basis for those matters that must be regulated by means of an NCG from the CMF, once such NCG has been issued.

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

Fintech technologies will be widely regulated in Chile once

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the Fintech Law and the NCG enters into force. Said law will require that those who provide financial services through technology must first register in the Registry, which will be administered by the CMF. In addition, the open finance system created by the Fintech Law will allow Fintech developments to have direct, secure, remote, and automated access to the financial information of those clients who have expressly consented in it.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

No. Although the Ministry of Economy and the Ministry of Science and Technology have prepared discussion proposals to implement regulatory sandboxes, none of them have been implemented so far. Neither are there any proposals with a degree of development that would lead to presume their prompt implementation.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?**

In general terms, banks operating in Chile cannot acquire other companies, except with the authorization of the CMF and to the extent that they provide services that complement the banking business. Therefore, if a Fintech company can be considered to complement the banking business, banks may acquire it.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

Yes. With the publication of Law No. 20.555, which amends the Protection of Consumers' Rights Law, the National Consumer Service was given powers in financial matters, incorporating a series of consumer rights in the field of financial matters. In addition, the Fintech Law will introduce in the legislation the concept of "financial client", referring to those consumers who are users of Fintech financial technologies.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?**

Collective financing or crowdfunding will be regulated by the Fintech Law, once it enters into force, and in order to carry out such activity, prior authorization from the CMF must be obtained. The Fintech Law defines crowdfunding platforms as a "physical or virtual place through which those who have investment projects or financing needs disseminate, communicate, offer or promote those projects or needs, or



the characteristics thereof, and contact or obtain contact information of those who have available resources or the intention to participate in those projects or needs or satisfy them; in order to facilitate the materialization of the financing operation”.

Apart from this new regulation, in Chile it is prohibited to raise money from the public (except for those institutions that are authorized to operate as banking entities or as issuers of debit cards or with provision of funds).

## **2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

No, borrowing of own funds is not restricted in Chile, except for the maximum interest that may be charged.

## **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

A “Consumer” is defined as any natural or legal person who, by virtue of any onerous legal act, acquires, uses, or enjoys as

final recipient, goods or services.

Therefore, in general terms, the regulation on consumer protection is applicable to any contract in Chile, entered into between a “consumer” and a “supplier” and in this context, it could be applicable to crowdfunding or person-to-person lending activities.

The Fintech Law, on the other hand, reaffirms the competences of the National Consumer Service regarding the protection of consumers’ rights, extending them to the matters regulated by said law.

## **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

No, donation or reward-based crowdfunding is not regulated in Chile.

## **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

Collective financing or crowdfunding will be regulated by the Fintech Law, once the Fintech Law and the NCG enters into force, and in order to carry out such activity, prior authorization from the CMF must be obtained. However, the Fintech Law does not contemplate a specific regulation for crowdfactoring, so the same conditions as for collective financing would apply.

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### 3. INVESTMENT AND CAPITAL MARKETS

#### 3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?

Collective financing or crowdfunding will be regulated by the Fintech Law, once the Fintech Law and the NCG enters into force, and in order to carry out such activity, prior authorization from the CMF must be obtained. However, the Fintech Law does not contemplate a specific regulation for Equity Crowdfunding, so the same conditions as for collective financing would apply.

#### 3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?

Those platforms that provide crowdfunding services must previously register in the Registry, which will be administered by the CMF, in addition to complying with the applicable reporting obligations. These obligations include (i) informing the characteristics and conditions of the investment projects or financing needs, and (ii) informing of any possible conflicts of interest that the crowdfunding platform may have.

#### 3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR SECURITIES IN CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?

No, in Chile there are no particular requirements for investors or securities in crowdequity projects. There is no secondary market for these issues to date either.

### 4. CRYPTOCURRENCIES

#### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

In Chile there is no restriction on holding and trading cryptocurrencies. However, they have not been characterized as “currencies”, but rather as mere goods that can be acquired. Except for cryptocurrency exchange companies, there are no other relevant developments in Chile that allow the holder of cryptocurrencies to acquire goods or pay for services using cryptocurrencies.

The new Fintech Law defines virtual financial assets or cryptoassets as a “digital representation of units of value, goods or services, with the exception of money, whether in national currency or foreign currency, which can be transferred, stored or exchanged digitally”.

In tax matters, the Internal Revenue Service has defined them as “a digital or virtual asset, supported in a unique digital registry called blockchain, deregulated, disintermediated and not controlled by a central issuer, whose price is determined by supply and demand”. The scope of this definition is to make the corresponding income tax applicable to the purchase and sale of bitcoins.

#### 4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?

In Chile there is no restriction to hold and trade cryptocurrencies.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

The new Fintech Law establishes that those platforms that carry out intermediation of financial instruments, the latter being virtual financial assets or cryptoassets, as defined in the Fintech Law, must be previously registered in the Registry, which will be administered by the CMF. In addition, the Internal Revenue Service, the Financial Analysis Unit and the Financial Stability Board have issued certain definitions and opinions regarding cryptocurrencies, in the context of their respective capacities.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

Yes, those financial entities registered in the Registry, which will be administered by the CMF, will be authorized to hold, trade, or exchange virtual financial assets, and provide such services to financial clients.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

In Chile there are no restrictions for an Initial Coin Offering. However, the offering of cryptocurrencies could be subject to the regulation of public offering of securities. In that sense, further analysis will be necessary once the CMF publishes the NCG.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Yes, consumer protection rules are applicable to trading platforms, and the Fintech Law strengthens the powers of the National Consumer Service to protect the rights of financial consumers.

## **5. DISTRIBUTED LEDGER**

### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The Fintech Law contemplates among its provisions some amendments to other regulatory bodies, extending its regulation to distributed ledger technologies. Thus, once the Fintech Law and the NCG enters into force, the regulation of payment methods and payment orders will also apply to distributed ledger technologies.

### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

No, to this date there is no significant development in

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distributed ledger technologies that would allow us to presume its prompt implementation.

### 6. INSURTECH

#### 6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?

In Chile there is no regulation in this regard, however, there are insurance companies that provide their services through Fintech technologies. Insurance and reinsurance companies that provide investment advisory services through technological platforms will be exempted from the registration obligation established by the Fintech Law, subject to the legal and regulatory framework that governs them according to their line of business.

#### 6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?

In Chile there is no regulation in this regard.

#### 6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E.

#### DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?

No, in Chile there is no regulation in this regard.

### 7. ROBO-ADVICE

#### 7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

The administration of third-party funds, and the offering of services through the use of algorithms or computer processes without human intervention, will be under the supervision of the CMF once the Fintech Law and the NCG enters into force. Under such regulations, financial or capital market institutions providing such services must assure to the CMF that their algorithms or systems have been designed in such a way that the results are always consistent, related to the client's needs, and cannot be altered by human intervention.

#### 7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

Those who provide financial services or investment advice through technology must previously register in the Registry, which will be administered by the CMF.

## NEOBANKS

### 8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

Yes, the establishment of Neobanks is subject to compliance with the General Banking Law, without distinction with respect to traditional banking institutions.

### 8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?

No, the General Banking Law does not distinguish among the regulatory requirements to operate as a Neobank. However, some of the conditions required by law may be waived by the CMF, in view of the low risk that the new entity may represent for the country's financial system.

## 9. OTHER MATTERS

### 9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

Yes, the Fintech Law will enter into force 30 days after its publication in the Official Gazette, with the exception of the provisions on technology-based financial services and the

open finance system. Regarding such matters, it will enter into force once the CMF issues the respective NCG that regulates them.

The current providers of financial services through technology will have a term of 12 months, counted from the publication of the respective NCG, to submit their applications for registration and authorization before the CMF, after which they will not be able to enter into new operations or continue providing said services without said registration and authorization.



## DIEGO PERALTA VALENZUELA

**Address:** Isidora Goyenechea 2800, 43rd floor, Las Condes, Santiago

**Phone:** +56 9 2928 2216

**Email:** dperalta@carey.cl

Diego Peralta is a partner at Carey and co-head of the firm's Banking and Finance Group. His practice focuses on the creation and structuring of financial products and business financing, both from the lender and the borrower's perspective, on the purchases and sales of companies, on the issuance and placement of debt and equity securities in Chile or elsewhere, as well as on financial regulatory matters.

Mr. Peralta has been recognised as a leading lawyer by several prestigious international publications, such as Chambers and Partners, LACCA, Best Lawyers, The Legal 500 and IFLR.



## FERNANDO NORIEGA POTOENJAK

**Address:** Isidora Goyenechea 2800, 43rd floor, Las Condes, Santiago

**Phone:** +56 9 2928 2216

**Email:** fnoriega@carey.cl

Fernando Noriega is a partner at Carey and is a member of the firm's Banking and Finance and Capital Markets Groups. His practice is focused on banking law, lending transactions, project financing, as well as issuance of debt instruments, capital markets and foreign investment.

He has been recognised in Banking and Finance by prestigious international publications such as Chambers Latin America, The Legal 500 and Leading Lawyers.

During 2015–2016, he worked as a foreign associate at White & Case in New York.



## **ARTURO FASANI GREZ**

**Address:** Isidora Goyenechea 2800, 43rd floor, Las Condes, Santiago

**Phone:** +56 9 2928 2216

**Email:** [afasani@carey.cl](mailto:afasani@carey.cl)

Arturo Fasani has been an associate at Carey since 2021 and is a member of the Banking and Finance Group. His practice is focused mainly on commercial, corporate, banking, and financial law and advising local and foreign banks and financial institutions on local and foreign project financing.

He graduated from Pontificia Universidad Católica de Chile.

## **ABOUT THE FIRM.**

**Country:** Chile.

**Address:** Av. Isidora Goyenechea 2800, piso 43, Las Condes

**Phone:** +56 2 2928 2200

**URL:** [www.carey.cl](http://www.carey.cl)



Carey is Chile's largest law firm, a full-service firm with more than 250 legal professionals.

Its various corporate, banking, litigation and regulatory groups include highly specialized attorneys and practice areas covering all areas of law.

Its clients include some of the world's largest multinationals, international organizations, and some of the most important local companies, banks, and institutions.

Carey lawyers have graduated from the best law schools in Chile and most of its mid- and senior-level associates have graduate degrees from some of the world's most prominent universities. Several are also currently university professors.

Carey is an effective bridge between legal systems. Most of the partners and senior associates have worked in North America, Asia, and Europe, as foreign or regular associates with leading international law firms, or as in-house counsel for major corporations or international institutions.



## COLOMBIA

**LLOREDA  
CAMACHO  
& CO****Address:** Calle 72 No. 5-83**Phone:** ++57 (1) 3264270**URL:** [www.lloredacamacho.com](http://www.lloredacamacho.com)**1. OVERVIEW****1.1. WHAT ARE THE MOST  
SIGNIFICANT LEGAL DEVELOPMENTS  
IN THE FINANCIAL TECHNOLOGY  
("FINTECH") INDUSTRY IN  
YOUR JURISDICTION?**

Colombia has seen an active development of regulation and legislation aimed at including new players, models and infrastructure to the financial system. This active approach from the Colombian financial regulator has led to the analysis of innovative models that have been brought by fintech companies, both locally and internationally. Colombia currently is the third country in Latin America in the number of fintech developments, only behind Brazil and Mexico. Therefore, the Colombian financial regulator approach towards fintech has not only focused on the feasibility of allowing or implementing certain models in Colombia, but also fostering the implementation of those that are seemed

Santiago Gutiérrez



Carlos Carvajal



to be beneficial to the financial system.

Colombia has recently adopted new regulation regarding advisory in financial markets, specifically approaching the use of technology and, therefore, robo-advisors. Likewise, the financial regulator is in the final stage of adopting the very expected crowdfunding regulation which will allow securities' crowdfunding in Colombia.

**1.2. ARE FINTECH REGULATED IN  
YOUR JURISDICTION? WHAT IS THE  
REGULATORY APPROACH TOWARDS  
FINTECH IN YOUR JURISDICTION?**

There is no specific legislation or regulation addressing fintech as a whole industry (as it is the case for other countries). However, the Colombian financial regulator is addressing fintech matters separately and working on regulation that either allows or gives framework for their implementation. We expect that the financial regulator (Ministerio de Hacienda) and the Superintendence of Finance will continue to work on fintech matters.

The Superintendence of Finance has created a working group specifically dedicated to fintech matters. This group has been

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working closely with the players that integrate this ecosystem and with the financial regulator, in order to ensure a smooth implementation of the regulation that has been and will be issued to address fintech matters. This working group is in charge of all matters related with the projects for the sandbox that are presented to the Superintendence of Finance.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

Colombia has recently adopted a sandbox model for the fintech industry. This sandbox is administered by the Superintendence of Finance. The Superintendence of Finance is already receiving projects for the sandbox, which can be brought by fintech companies, financial entities or both.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?**

Colombian regulation is very strict with regard to the investment by financial entities (i.e. entities authorized to operate by the Colombian Superintendence of Finance) in other companies, including fintech companies. The restrictions vary across the different types of financial entities; however, for banks (the predominant type of financial entity) there is a clear restriction that impedes them from investing in fintech companies.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?**

Lending crowdfunding is not currently regulated in Colombia and, thus, entails several limitations for platforms intending to implement a lending crowdfunding model in Colombia. The most relevant limitation to lending crowdfunding is the possibility that crowdfunding platforms are considered forms of illegal and unauthorized fundraising (*captación masiva y habitual de dineros del público*). This activity, which is expressly authorized to financial entities, may not be performed by entities outside of the financial regulation scope (only under certain exceptions and limitations). Therefore, traditional lending crowdfunding has faced several restrictions which, in turn, hindered the development of this model in Colombia. The Colombian financial regulator is addressing this matter with an expected crowdfunding regulation. Even though the draft regulation does not include traditional lending crowdfunding, it does include debt-related crowdfunding through the issuance of debt-securities.

## **2.2. IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?**

No, so far P2P is not regulated in Colombia and there are no particular requirements for a consumer or an investor to participate in P2P lending. However there are many regulatory limitations for P2P platforms, which have to be analyzed on a case-by-case basis. Specifically, the model may be interpreted as unauthorized fundraising (*captación masiva y habitual de dineros del público*).

## **2.3. IS CONSUMER PROTECTION REGULATION APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING?**

Financial consumer protection would not be applicable to lending crowdfunding or P2P lending. Financial consumer protection is envisioned to cover the relationships between financial entities (i.e. authorized and under the surveillance of the Superintendence of Finance) and consumers. Nevertheless, consumer protection regulation should be applicable to other services or products not currently covered by financial consumer regulation and, therefore, could be applicable to lending crowdfunding or P2P lending.

## **2.4. ARE DONATION AND REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

No, neither donation nor reward-based crowdfunding are

regulated in Colombia and platforms are permitted to operate them.

## **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?**

No, crowdfactoring is not regulated in Colombia. Depending on the crowdfactoring model, different requisites or restrictions may apply.

# **3. INVESTMENT AND CAPITAL MARKETS**

## **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

No, currently there is no regulation related with crowdequity. The Colombian financial regulator has been working towards issuing specific regulation for crowdequity. The last draft of the regulation, shared by the regulator a few months ago, contemplates the introduction of a new type of authorized entity to operate this type of crowdfunding. Platforms would have to receive authorization from the Superintendence of Finance to operate a crowdequity platform.

## **3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

Currently there are no specific requirements applicable to crowdequity platforms. Nonetheless, since the Colombian financial regulator is working on the issuance of a specific regulation for this fintech segment, crowdequity platforms would have specific requirements, such as a special obligation to incorporate the crowdequity platform administrator under

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a new type of authorized entity as well as to report certain information regarding the crowdequity projects, among other obligations inherent to financial entities.

### 3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR SECURITIES IN CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?

Currently there are no specific requirements applicable to crowdequity investors or securities in crowdequity projects. However, the new regulatory project for crowdequity sets forth certain particular requirements applicable to investors, as well as to the financed project, as follows:

(i) **For the investor**, there is a maximum amount by which they can invest ( 20% of the annual income or total assets of the investor). Nevertheless, this percentage is susceptible to changes since the projected regulation has not been officially issued;

(ii) **Additionally**, a maximum amount for the financed project is set forth, which is limited to ten thousand legal monthly minimum wages in Colombia (approximately USD\$ 2,715,000);

(iii) **Moreover**, crowdequity projects may only receive a maximum of three thousand legal monthly minimum wages from one investor (approximately the equivalent to USD\$ 815,000) unless it is a professional investor under Colombian law.

Pursuant to the project, there would not be an authorized secondary market for this type of securities.

## 4. CRYPTOCURRENCIES

### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

There are no specific regulations regarding the use or issuance of cryptocurrencies in Colombia. However, the Superintendence of Finance and the Colombian Central Bank have issued formal instructions setting forth their position regarding cryptocurrencies, as briefly explained below:

**Colombian Central Bank:** The Colombian Central Bank has issued different official statements setting forth that cryptocurrencies are not recognized as a currency given that they do not have the support or involvement of a central bank. Additionally, they have argued that these instruments are not a high liquidity asset.

**Superintendence of Finance:** The Superintendence of Finance has provided official statements setting forth their position and clarifications regarding these instruments and the risks associated to it for consumers and investors. Furthermore, on June 22 of 2017 the Superintendence of Finance published the circular letter 052 of 2017 summarizing the position of the Central Bank regarding cryptocurrencies as well as setting forth that supervised financial entities are not authorized to hold, invest, intermediate or operate with this type of instruments, nor allow the use of their platforms to carry out operations with cryptocurrencies.

This circular letter has also clarified that this type of instruments are not considered a security under Colombian securities regulation.

#### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

There is no legal restriction for a regular consumer or investor to hold and/or transact with cryptocurrencies in Colombia.

However, the Superintendence of Finance has repeatedly advised financial consumers and investors to avoid transacting with cryptocurrencies given that it is an instrument that is not supported or guaranteed by any governmental institution, protecting the savings from the public. The Superintendence of Finance has also been very thorough instructing the supervised financial entities by declaring that they are not authorized to hold, invest, intermediate or operate with this type of instruments, nor allow the use of their platforms to carry out operations with cryptocurrencies.

#### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

Trading platforms are not regulated, authorized or under the supervision of the Superintendence of Finance. However, it is important to mention that pursuant to Colombian regulation, a trading platform is not permitted to perform activities exclusively authorized to financial entities.

#### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

No, the Superintendence of Finance has instructed financial entities to refrain from transacting, trading or serving as intermediaries with cryptocurrencies.

#### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

An ICO is neither specifically regulated nor are other transactions with cryptocurrencies recognized as a securities issuance under the Colombian securities regulation. However, this financing mechanism would be restricted, as it can be interpreted as unauthorized fundraising (captación masiva y habitual), which is an activity exclusively to certain financial entities. Unauthorized fundraising is considered a criminal offense under the Colombian Penal Code.

### **5. DISTRIBUTED LEDGER**

#### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies – or at least the intent to use such technology – is increasing in Colombia. In fact, in 2017, the Colombian Central Bank reached out software company, R3 that has developed a distributed ledger platform specifically for financial products and financial applications. This approach is still on-going and under examination from the Central Bank, however, is a good indicator of the perception that the industry has regarding this technology.

As of this date, the use of distributed ledger technologies not

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is specifically regulated in Colombia.

### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

Not only some of the largest banks in Colombia are reportedly testing such technology and developing fintech investigation centers to develop new applications of this technology, but also the Colombian Central Bank itself has approached software developers specialized in this technology and are currently studying distributed ledger technologies applied to the infrastructure of inter-bank transaction schemes. Non-financial companies are also testing the technology with the purpose of reducing the risk of frauds in other sectors as well as improving their corporate governance.

## **6. INSURTECH**

### **6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Colombian insurance companies are exploring the use of fintech technologies and its applicability to its services and products, focusing on compliance matters with data protection as well as improvement in risk management and the creation of other products based on particular needs in order to create a better consumer experience for its clients.

In fact, on 2017, the Colombian Fintech Association carried out the International Insurtech Seminar in order to support and develop this industry in Colombia.

### **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Currently there are no distribution models or applicable regulatory requirements for insurtech intermediation in our jurisdiction since the market is not completely developed.

### **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

As of this date, there is no particular insurtech regulation. However, the Superintendence of Finance has mentioned that it is expecting for this technology to develop significantly in the next years.

## **7. ROBO-ADVICE**

### **7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

Use of robo-advice technology by the Colombian financial and capital markets' industry has been increasing over the years as many financial entities and fintech companies are developing different robo-advisor platforms.

The Colombian regulator has addressed this matter by issuing the new Decree 661 of 2018 in which it intends to regulate the robo-advice technologies. This Decree sets forth that the recommendations provided under this technology could be given by robo-advisors, as long as the obligations that derive from the advisory activity are met. To that extent, investors may use this type of technologies in order to acquire advice and to carry out and manage their investments and investment portfolios.

## **7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

The Decree 661 of 2018 regulating this matter has set forth a particular requirement regarding the provision of advisory through this technology. Whenever this technology is offered, clients and investors may have the possibility to request that the professional recommendation provided through robo-advice is complemented by a non-digital certified advisor.

## **8. OTHER MATTERS**

### **8.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS WHICH SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

It is possible to determine that, regardless of the lack of legislation and of the recent development of new regulatory approaches for some fintech sectors, the Colombian regulators and supervisors are putting a significant effort to understand this industry.

Also, it is important to note that to this moment different financial entities are trying to create new synergies with fintech companies in order to develop new products.

Evidence of the aforementioned statements is, for example, the recent implementation of a regulatory sandbox. This approach can be perceived as a positive indicator of where Colombian regulation will be heading in the future.



## SANTIAGO GUTIÉRREZ BORDA

**Address:** Calle 72 No. 5-83

**Phone:** +57 (1) 3264270

**Email:** sgutierrez@lloredacamacho.com

Santiago has been a partner of the firm since 1997 and is the Director of the Corporate and Finance Practice, Real Estate, and co-leads the Mergers and Acquisitions (M&A) practice.

He is a Lawyer from the Pontificia Universidad Javeriana, with a specialization in Financial Administration from the Escuela Superior de Marketing y Administración (ESMA), in Barcelona, Spain.



## CARLOS CARVAJAL MORENO

**Address:** Calle 72 No. 5-83

**Phone:** +57 (1) 3264270

**Email:** ccarvajal@lloredacamacho.com

Carlos has been part of our team since 2010, he is currently a Partner and leads the teams of the State Contracting, Infrastructure, Real Estate, and Financial Law practices.

He is a Lawyer from the Universidad Pontificia Javeriana and an Economist from the Universidad Nacional de Colombia, with a master's degree in economic sciences from the Universidad Nacional de Colombia.



## **ABOUT THE FIRM.**

**Country:** Colombia.

**Address:** Calle 72 No. 5-83

**Phone:** ++57 (1) 3264270

**URL:** [www.lloredacamacho.com](http://www.lloredacamacho.com)

# LLOREDA · CAMACHO & CO

Our practice is characterized by advising local and foreign financial institutions on matters related to financial operations, regulations applicable to the development of their businesses, development of new products, incorporation, and acquisition of financial institutions, and the opening of representative offices in Colombia by foreign institutions. Our knowledge of the industry allows us to be a leading player in the development of the Fintech industry in the country. We have also represented international credit institutions that act as lenders and as administrative agents in syndicated credit operations.

Additionally, we have particular experience in assisting clients in processes of acquisition and takeover of listed companies, through Public Acquisition Offers or privatization processes of state-owned companies. Likewise, we have actively participated in the working groups created by the Colombian Stock Exchange to promote the participation of new actors in our stock market.

# COSTA RICA

# ALTA BATALLA

**Address:** San José, Mata Redonda, Avenida Las Américas, calle 68, edificio Sabana Business Center, piso 12.

**Phone:** (506) 4036-2000

**URL:** [www.batalla.com](http://www.batalla.com) and [www.altalegal.com](http://www.altalegal.com)

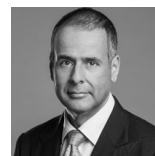
## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

The Fintech industry has been growing rapidly in recent years, although its legal and regulatory framework has not. The most significant development has been an official statement from the Costa Rican central bank regarding cryptocurrencies, which is further described below. In addition, recently, on October 24, 2022, the Partido Liberal Progresista submitted before the Legislative Assembly a regulatory bill for crypto assets called “Crypto Assets Market Law”, but it still must go through several stages before it can become law. There has been no other significant statements of policy or initiatives for regulating the fintech industry.



Marco Ureña



Rodrigo Zelaya

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

Other than the central bank's statement regarding cryptocurrencies and the mentioned regulatory bill related to crypto assets, Costa Rican regulatory authorities have not formulated a position nor a regulatory strategy with respect to fintech.

### 1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

No regulatory sandboxes have been implemented in the country. There is no indication that such approach may be adopted by local regulators either.

#### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?**

Regulated financial entities may not invest directly in fintech companies. However, a fintech company may be an affiliate (under common control) of a regulated entity as part of a regulated financial group. The inclusion of new company to a financial group requires an authorization from the supervisory council of the financial system (Consejo Nacional de Supervisión del Sistema Financiero).

#### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

There is no such distinction in our legal system. At a practical level, the concept of financial consumer is used, but there are no regulations in this regard.

## **2. LENDING AND FINANCING**

#### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?**

Lending crowdfunding is not regulated in Costa Rica. To the extent the activity does not constitute financial intermediation (i.e. an intermediary taking funds from the public and lending them on their own name and for its own account) lending crowdfunding would not fall within the scope of financial services regulations. There is no regulation, and we have no knowledge of proposed bills or regulations on lending crowdfunding or threshold requirements for consumers or investors engaging in lending crowdfunding.

#### **2.2. IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?**

There is no existing regulation regarding P2P lending although there is no legal authority that would disallow it, either, to the extent the activity does not constitute financial intermediation. This would be the case, for example, if the borrower applies to proceeds to finance other parties. We are not aware of legislative or regulatory initiatives to establish specific requirements for consumers or investors wishing to engage in P2P lending.

#### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL**

## COSTA RICA

**REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

We are not aware of any precedent on this issue. In our opinion, however, that matter, existing consumer protection laws would apply on either case. In our view, an individual engaging as lender through a crowdfunding platform may have standing as a consumer and be granted protection with respect to the platform. In the case of P2P lending, the borrower may be recognized as a consumer.

**2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

There is no regulation regarding donation crowdfunding. For reward-based crowdfunding, the reward should not be of a financial nature nor correspond to a participation in the proceeds of a venture or it may be otherwise deemed as an “investment agreement” and a security and local securities laws would apply.

**2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?**

Crowdfunding is not expressly regulated in Costa Rica. Despite that, there is a factoring law, which is the Factoring Contract Framework Law number 9691 of June 3, 2019. To the extent the activity does involve financial intermediation, it would not fall within the scope of financial services regulation.

**3. INVESTMENT AND CAPITAL MARKETS****3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

Equity crowdfunding may be deemed a public offer of securities and therefore, subject to local securities laws. Although there are exceptions to these regulations, there is a presumption that an offer to sell securities made through mass media (including the internet) is a public offer. The regulations do establish the possibility of making a consultation to the securities market regulator (Superintendencia General del Mercado de Valores) and obtaining a particular exclusion on the basis of the characteristics of a proposed offering (for instance, the amount of investment that is requested from each investor). This exclusion would serve the same purpose as a “no-action letter”.

**3.2. WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

There is no guidance on specific requirements for the operation of a crowdequity platform in Costa Rica.

**3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

Equity crowdfunding is not regulated in our jurisdiction so there are no requirements or secondary market.

## 4. CRYPTOCURRENCIES

### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

The cryptocurrencies do not have a specific regulation in Costa Rica. However, in October 2017, the Costa Rican central bank (“BCCR”) issued a statement warning about the risks of using cryptocurrencies and stating, among other things, that they cannot be considered as currency or foreign currency under the exchange rate regime since they are not issued by a foreign central bank. The BCCR added that, for this reason, they are not covered by the existing currency exchange infrastructure nor by the existing regime of free convertibility of the currencies. The BCCR also indicated that cryptocurrencies may not be considered as legal tender currencies and, therefore, do not have the support of the Costa Rican State. The BCCR emphasized that it does not regulate or supervise the cryptocurrencies as means of payment and stressed that may not be trades the national electronic payments system (“SINPE”) used in our country. The BCCR finally warned that any person who acquires these digital assets, either as an investment or to be given or received as a form of payment, will do so at their own risk. In addition, recently, on October 24, 2022, the Partido Liberal Progresista submitted to the Legislative Assembly a bill for the regulation of crypto assets called “Crypto Assets Market Law”, but it still has to go through several legislative stages before it can become law.

### 4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?

As indicated above, there is no legal prohibition to hold or transfer cryptocurrencies, however, parties would do so at their own risk and without access to the currency exchange infrastructure.

### 4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?

There are no such particular requirements.

### 4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?

Considering the central bank’s position on cryptocurrencies, it is highly unlikely that a regulated financial entity will hold, transact or trade cryptocurrencies as intermediaries even though there is no express prohibition.

### 4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?

Although there is no statement of policy or official position on the point, it is highly unlikely that an ICO would be accepted in the country.

## COSTA RICA

**4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

We consider that consumer protection regulations do apply to trading platforms. General consumer protection rules would apply since there is no special regime for financial consumers.

**5. DISTRIBUTED LEDGER****5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies is not usual in our jurisdiction and there is no regulation.

**5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

We are not aware of any financial institutions in our jurisdiction that use or develop applications that use distributed ledger technologies.

**6. INSURTECH****6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

To a lesser extent than other jurisdictions, Ecuadorian insurance companies do offer products and services through fintech. For example, there are platforms that allow comparison of prices of the same policy between different insurance companies.

**6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

There is no current policy position nor regulations in Costa Rica regarding technology-based distributions models nor for insurtech intermediation.

**6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

The Insurtech does not have a specific regulation in Costa

Rica.

## 7. ROBO-ADVICE

### 7.1. ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

We are not aware of any financial or capital market that use or that advertise themselves as using robo-advice technology in the delivery of their services.

### 7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

The securities market regulator has not issued any guidance nor has made a policy statement regarding the use of robo-advisors by for the delivery of financial advisory services.

## 8. NEOBANKS

### 8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

There is no regulation in this regard in Costa Rica, apart from the general regulation for the establishment and operation of commercial banks.

### 8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?

There is no regulation in this regard in Costa Rica, apart from the general regulation for the establishment and operation of commercial banks.

## 9. OTHER MATTERS

### 9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

Costa Rica is one of the most innovative countries in Latin America according to the World Economic Forum. We have a long history of technology companies serving the financial services industry in Latin America and beyond. Many of these companies have moved into the fintech space and there are several new ventures developing fintech solutions. Unfortunately, in spite of this prolific environment, our financial regulators have yet to weigh in on these developments and create a safe space for development and entrepreneurship, without the risk of running afoul of existing laws and regulations. All participants, but especially entrepreneurs and investors, should engage in a meticulous regulatory-risk analysis and confront each element of their fintech business model to the existing regulations that are more suited for the analog world.



## MARCO UREÑA

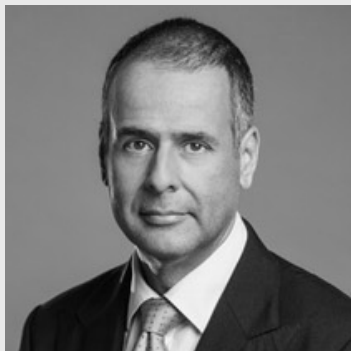
**Address:** San José, Mata Redonda, Avenida Las Américas, calle 68, edificio Sabana Business Center, piso 12.

**Phone:** 506 (4036-2000)

**Email:** murena@altalegal.com

Marco holds a degree in law from the University of Costa Rica, a specialist in telecommunications regulation at the Universidad para la Cooperación Internacional and Master in business, regulatory and competition law at the Freie Universität Berlin, Germany.

Marco has also been highlighted by Chambers & Partners Magazine in the areas of public law, competition law and TMT. Marco joined Alta Batalla in 2010 and is a partner since 2019.



## RODRIGO ZELAYA

**Address:** San José, Mata Redonda, calle 68, edificio Sabana Business Center, piso 12.

**Phone:** (506) 4036-2000

**Email:** rzelaya@altalegal.com

Rodrigo's corporate practice has a wide scope, from complex transactions and joint ventures to business planning and restructuring and corporate governance, and has taken part in transactions in all Central America as well as in other Latin American countries. He has advised buyers and sellers in domestic and cross-border M&A transactions.

As part of our market-leading private equity practice, he advises private funds, institutional investors and angel investors on early – stage financings, investments, buyouts, fund formations and portfolio company transactions and other aspects of their operation in Central America.



## **ABOUT THE FIRM.**

**Country:** Costa Rica.

**Address:** San José, Mata Redonda, Avenida Las Américas, calle 68, edificio Sabana Business Center, piso 12.

**Phone:** (506) 4036-2000

**URL:** [www.batalla.com](http://www.batalla.com) and [www.altalegal.com](http://www.altalegal.com)



Alta Batalla is one of the best law firms in the country, recognized by international rankings and publications such as Chambers & Partners, Latin Lawyer, Corporate Counsel, American Lawyer, Legal 500, International Financial Law Review (IFLR 1000) and International Comparative Legal Guides, which continually recognize the quality, efficiency and timely response of our team.

Alta Balla has more than 30 lawyers divided into various practice areas including: public and administrative law, corporate law, dispute resolution, international trade, environmental law, labor law, TMT and tax. We are our clients' preferred advisors when it comes to their most significant opportunities, their most complex issues and their most sensitive challenges in Costa Rica and the Central American region.

We are part of ALTA, a Central American law firm with offices in Guatemala, El Salvador, Honduras and Costa Rica.

## ECUADOR

# ROBALINO

**Address:** 12 de octubre N26-48 y Lincoln, Ed. Mirage,  
15th floor.

**Phone:** +593999739554

**URL:** [www.robalinolaw.com](http://www.robalinolaw.com)



Carol Riofrio

### 1. GENERAL ASPECTS

#### 1.1. ¿WHICH ARE THE MOST IMPORTANT LEGAL DEVELOPMENTS CONCERNING FINTECH'S IN YOUR JURISDICTION?

On December 22, 2022, the Organic Law for the Development, Regulation and Control of Technological Financial Services, hereinafter “Fintech Law”, approved by the National Assembly, was published in the Second Supplement to Official Gazette 215.

The Fintech Law makes viable activities related to the development and rendering of services related to:

- Technology-centered payment means.
- Technological financial services.
- Specialized electronic deposit and payment companies.
- Technological services in the securities market.
- Insurance technological services.

For the exercise of the regulated activities in the Fintech, the regulations establish certain requirements for the companies, among them are: to be duly

incorporated or domiciled as a Fintech company in Ecuador, be duly authorized by the Superintendency of Banks, the Superintendency of Popular and Solidarity Economy or the Central Bank of Ecuador, maintain a corporate purpose that will be specific and exclusive for the performance of Fintech activities, not contain different activities, among others.

#### 1.2. ARE FINTECH'S REGULATED IN YOUR JURISDICTION? HOW HAS YOUR JURISDICTION APPROACHED THE REGULATION OF FINTECH'S?

Currently the specific regulation for Fintechs is the Fintech Law.

The objective of the Law is to promote innovation and the development, adoption and use of new technologies in financial products and services to improve financial inclusion, national productivity and contribute to the reduction of socioeconomic inequality gaps in a context of full competition and to provide protection to users and consumers of services.

The text of the law establishes conditions for companies that provide technological financial services to qualify based on the financial and technological risks that each company maintains.

Fintech companies will be regulated by the Monetary Policy and Regulation Board and the Financial Policy and Regulation Board, as appropriate; and supervised and controlled by the Central Bank of Ecuador, the Superintendency of Companies, Securities and Insurance, the Superintendency of Banks or the Superintendency of Popular and Solidarity Economy, within the scope of their competencies and according to the regulations issued for such purpose.

The Fintech Law has granted the Financial Policy and Regulation Board and the Monetary Policy and Regulation Board one hundred and eighty (180) days from the publication of the Law in the Official Gazette, to develop the secondary regulations that allow the application of the provisions of the Law. Therefore, we are currently waiting for the secondary regulation to determine the processes and requirements to be complied with by the companies.

In this sense, and since there are still no secondary regulations to the Fintech Law, currently Fintech companies related to the private financial system must comply with the current regulations, and qualify before the Superintendency of Banks as an auxiliary company of the Financial System. In the case of the Popular and Solidarity Financial System, they must also qualify as auxiliary service companies and comply with the provisions of the regulations.

### **1.3. ¿HAVE REGULATORY SANDBOXES BEEN APPLY IN THE FINTECH SECTOR? IF THAT IS THE CASE,**

## **PLEASE EXPLAIN THE DETAILS AND METHODOLOGY OF THE SANDBOX.**

The Fintech Law establishes the regulation of sandboxes in the Fintech sector, stating that fintech companies and financial entities whose activities involve a novel model must comply with the program implemented by the competent control entity on regulatory sandbox operations.

The methodology and parameters must be issued by the Financial Policy and Regulation Board and the Monetary Policy and Regulation Board.

### **1.4. IN YOUR JURISDICTION, CAN FINANCIAL ENTITIES INVEST OR ACQUIRE FINTECH'S?**

No, according to the Fintech Law, private financial entities may not participate in the capital of these companies.

This is a great step towards democratizing financial services in Ecuador, so we will have to wait for the final text of the Law to know the scope of the participation of private Financial Institutions or of the Popular and Solidarity Economy within FINTECHs.

## **2. CREDITS AND FINANCING**

### **2.1. IN YOUR JURISDICTION, IS CROWDFUNDING LENDING REGULATED? ARE THERE REGULATORY PROJECTS THAT WILL STABLISH SPECIFIC REQUIREMENTS FOR CONSUMERS OR INVESTORS OF CROWDFUNDING LENDING PLATFORMS?**

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The Organic Law of Entrepreneurship and Innovation (Ley Orgánica de Emprendimiento e Innovación) regulates the figure of crowdfunding, its registration and corporate control will be under the Superintendence of Companies, Securities, and Insurance. The registration of crowdfunding platforms of equity investment or loan category will be public and will be under the control and charge of the National Securities Council belonging to the Superintendence of Companies, Securities, and Insurance. The registration procedure of the platforms of collaborative funds of investment in shares or loan category shall be subject to the regulations issued by the National Securities Council for such purpose.

### **2.2 IS PERR TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION, AND ARE THERE ANY RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

As mentioned in the previous question, the Organic Law of Entrepreneurship and Innovation regulates crowdfunding platforms, including collaborative lending funds, which prohibits crowdfunding platforms from granting loans, credits, or any other type of financing to investors or promoters.

Currently, the Fintech Law, establishes that technological ancillary services entities may engage in crowdfunding or digital crowdfunding. Crowdfunding is based on equity, loans, donations or pre-sale of goods or services.

### **2.3. ARE CONSUMER PROTECTION RULES APPLICABLE TO LENDING OR CROWDFUNDING OR P2P LENDING?**

There are no specific regulations in force for the consumer in this type of services, however, we have the Organic Law of Consumer Defense (Ley Orgánica de Defensa al Consumidor) that governs the relationship of any service in which one of the participating parties is a consumer of the service provided by the other. In line with what is mentioned in the Organic Law of Entrepreneurship and Innovation, it is established that in the case of equity crowdfunding, the contributor acquires shares losing its quality of user or consumer, as well as in the donation crowdfunding the norm expressly states that the contributor is not an investor, consumer, or user.

### **2.4. IS CROWDFUNDING BASED ON DONATIONS OR REWARDS REGULATED IN YOUR JURISDICTION?**

It is regulated in art. 34 of the Organic Law on Entrepreneurship and Innovation, which states: "Classification of crowdfunding platforms.- Crowdfunding platforms are classified in the following categories... Donation: Category in which a contribution is made to projects, typically associated, among others, to the fields of culture, sports, environment, public services or to the achievement of objectives of a social or humanitarian nature, where the contributor is not an investor, consumer or user."

### **2.5. IS CROWDFUNDING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

The Organic Law of Entrepreneurship and Innovation regulates crowdfunding. It has established its definition, the obligation of registration of these platforms in the Superintendence of Companies, Securities and Insurance, determines its classification of the platforms, the requirements to provide the service, lists which services can be provided, regulates the commissions, lists the obligations of the platforms, prohibitions, describes the classification of the projects, determines the characteristics of the fundraising, establishes the time limits of the fundraising and regulates the transfer of funds to the project or the reverse to the investors.

### 3. INVESTMENT AND STOCK MARKET

#### 3.1. IS EQUITY CROWDFUNDING REGULATED UNDER YOUR JURISDICTION?

Equity crowdfunding is regulated in the Organic Law of Entrepreneurship and Innovation in art. 34 under the figure of equity investment crowdfunding, which prescribes:

“Classification of crowdfunding platforms. - Collaborative fund platforms are classified into the following categories:

Equity investment: Category in which capital is contributed to an incorporated company, and, in exchange for its contribution, the profits generated by it are received or, failing that, the losses derived from the investment are assumed. These shares are always transferable”.

#### 3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDFUNDING PLATFORMS?

The requirements are contemplated in the Organic Law of Entrepreneurship and Innovation and are:

“1. To be a legal entity constituted under the control and surveillance of the Superintendence of Companies, Securities, and Insurance of Ecuador, through regulated and accredited platforms in the country.

2. To contemplate within its corporate purpose, acting as an intermediary through internet platforms, of persons called promoters, who require capital for a certain project, with or without profit; with other persons, called investors, interested in contributing their resources for the achievement of such projects, under certain conditions and through different categories.

3. To have a URL address of the collaborative funds platform web page, and the institutional e-mail address for electronic notifications; and,

4. Have terms and conditions of use of the crowdfunding platform and data privacy policy, which must be stated on the web page.”

#### 3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE SECURITIES OF CROWDFUNDING PROJECTS? IS THERE A SECONDARY MARKET FOR THESE ISSUES?

There are no particular requirements applicable to investors, art. 41 of the Organic Law of Entrepreneurship and Innovation prescribes that “[...] The maximum amount to be raised for each project in a crowdfunding platform shall be the amount of one thousand (1,000) basic unified salaries (SBU)”. There is no secondary market for crowdfunding issues.

## ECUADOR

### 4. CRYPTOCURRENCY

#### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

They are not regulated. The only legal tender in our legislation is the U.S. dollar. According to the Código Orgánico Integral Penal, the total or partial issuance of currency and money, not authorized by the Monetary Policy and Regulation Board, is prohibited.

#### 4.2. DOES YOUR JURISDICTION ALLOW TRADING OR HOLDING CRYPTOCURRENCIES?

It is not allowed to trade in currencies other than U.S. dollars, and as mentioned in the previous answer, the issuance of different currencies is prohibited, however, you can have cryptocurrencies, if they are acquired in another jurisdiction, they are not legally considered as means of payment in Ecuador.

#### 4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO TRADE OR HOLD CRYPTOCURRENCIES?

At present, since there is a ban on the circulation or issuance of unauthorized currency, it is not possible for a platform to trade cryptocurrencies.

#### 4.4. CAN FINANCIAL ENTITIES HOLD, TRADE OR EXCHANGE CRYPTOCURRENCIES AS INTERMEDIARIES?

No, by virtue of the prohibition of circulation of unauthorized currencies, no financial institution may hold, trade or exchange cryptocurrencies. Additionally, within the activities permitted by the Organic Monetary and Financial Code, it is not contemplated that a financial institution may hold cryptocurrencies.

#### 4.5. IT IS FEASIBLE TO CARRY OUT AN INITIAL COIN OFFERING (INITIAL COIN OFFERINGS OR ICO'S).

No, Ecuadorian regulations do not recognize cryptocurrencies, so an Initial Coin Offer, similar to an Initial Public Offering in the stock market, is not viable in any currency other than the U.S. dollar.

### 5. DISTRIBUTED LEDGER TECHNOLOGIES

#### 5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES (BLOCKCHAIN) USUAL IN YOUR JURISDICTION? ¿IS THERE ANY REGULATION IN THIS REGARD?

It is not usual, there is only one reference to Blockchain at the level of law and that is the Fourth General Provision of the Companies Law which prescribes:

"The shares of a joint stock company or of a simplified joint stock company may be represented by tokenized certificates. The other types of companies may not represent their shares, participations, or social quotas in tokenized certificates. For the purposes of this General Provision, a tokenized certificate shall be understood as the representation of shares in an electronic format that meets the following conditions:

a) That the information is organized in a blockchain or in any other data distribution network or virtual, secure and verifiable information recording and archiving technology; [...].

[...] Blockchain or blockchain shall be understood as the virtual information recording and archiving technology that organizes data in blocks chronologically chained by an encrypted algorithmic function and confirmed by a consensus mechanism. This technology will be distributed, encrypted and verifiable in real time. Once the information is aggregated, the blockchain records will be immutable.

## **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES TO FACILITATE OR IMPROVE THEIR SERVICES?**

It is not usual, in the Ecuadorian market, the only news of a bank that has adopted blockchain technology is the case of Banco Guayaquil, which used blockchain technology in its loyalty plans.

Banco Guayaquil, in 2020, created a digital currency, which was based on customers' unredeemed miles. This currency could be exchanged between customers or used to redeem services (such as flights).

## **6. INSURTECH TECHNOLOGIES**

### **6.1. CAN INSURANCE COMPANIES IN YOUR JURISDICTION OFFER SERVICES OR PRODUCTS THROUGH FINTECH TECHNOLOGIES? IF SO, HOW ARE THESE FINTECH**

### **TECHNOLOGIES INTEGRATED INTO SERVICES AND PRODUCTS?**

Currently, Ecuadorian regulations recognize insurance companies as the ones in charge of managing and obtaining insurance contracts, and they can make use of electronic platforms for the conclusion of the contract with the end user, as well as for the comparison of policies between different insurers.

### **6.2. WHAT ARE THE APPROACHES FROM YOUR JURISDICTION REGARDING DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INTERMEDIATION THROUGH INSURTECH TECHNOLOGIES?**

The use of Insurtech technologies is not currently contemplated as a distribution model. Currently, insurance policies can be signed electronically; however, smart contracts or other Insurtech elements have not yet been implemented. It is worth mentioning that the Organic Monetary and Financial Code establishes the entities that are part of the private insurance system, and the way to distribute their services, which may be directly through insurance agents that are part of the same companies or through companies whose purpose is to manage and obtain insurance contracts. Any person or company that intends to create a new insurance distribution model must comply with the provisions of the regulation.

### **6.3. ARE INSURTECH TECHNOLOGIES REGULATED**

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**UNDER YOUR JURISDICTION, AND IS THERE ANY PARTICULAR REGULATION FOR THIS SEGMENT (DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

Not at present. The Organic Law Reforming Several Laws for the Development, Regulation and Control of Technological Financial Services (Fintech Law), which is in the process of approval, seeks to regulate Insurtech companies.

**7. ROBO-ADVICE TECHNOLOGY****7.1. ARE FINANCIAL OR CAPITAL MARKET INSTITUTIONS OFFERING THEIR SERVICES THROUGH THE USE OF ROBO-ADVISOR TECHNOLOGIES? ¿ARE ROBO-ADVISOR TECHNOLOGIES REGULATED IN YOUR JURISDICTION?**

Currently there is no known case of a Financial Institution or Capital Market that is using this technology. There are no regulations in this regard either.

**7.2. ARE THERE ANY PARTICULAR REGULATORY REQUIREMENTS TO OFFER ADVISORY SERVICES COMPLETELY OR PARTIALLY THROUGH ROBO-ADVISOR TECHNOLOGY?**

Such technology is not considered within the Ecuadorian legislation, the Organic Law Reforming Several Laws for the Development, Regulation and Control of Technological Financial Services (Fintech Law), in the process of approval,

would seem to recognize them by mentioning “automated advisors”; however, so far there is no regulation in force on this issue.

**8. OTHER MATTERS****8.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT FOR PURPOSES OF PARTICIPATING AS CONSUMERS, INVESTORS, OR MANAGERS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

The Financial System has been under the application of extremely strict regulations and norms, the Fintech Law seeks to democratize the provision of financial services, insurance, and in the Securities Market with the more direct participation of FINTECHs, This will open the way to many opportunities for FINTECH investors and administrators, as well as the opportunity for consumers to have greater financial inclusion in the market, without the need to depend on the institutions of the Financial System or the Popular and Solidarity Economy, which will also allow access to more agile, direct and economic services. It is now necessary to be attentive to the secondary regulations issued by the agencies in charge, to determine the requirements and processes that these companies will have to comply with.





## CAROL RIOFRIO

**Address:** 12 de octubre N26-48 y Lincoln, Ed. Mirage, 15th floor.

**Phone:** + 593999739554

**Email:** [criofrio@robalinolaw.com](mailto:criofrio@robalinolaw.com)

Carol is head of the Firm's banking and finance practice, her practice areas are Banking, Corporate Governance, Anti-Money Laundering, Trust, Corporate and Foreign Trade. She worked in two of the largest private financial institutions in the country as legal advisor in Corporate Banking, Business, Foreign Trade and Personal Banking. She was Legal Manager in one of the banks specialized in Miro Credit, which was part of an international Holding, dedicated to the support of Micro-entrepreneurs in several countries. He was part of the group that in the Empresa Pública Metropolitana de Agua Potable EPMAPS of Quito structured the first credit without sovereign guarantee that made possible the construction of the first section of the Chalpi Grande Project.

## **ABOUT THE FIRM.**

**Country:** Ecuador.

**Address:** 12 de octubre N26-48 y Lincoln, Ed. Mirage, 15th floor.

**Phone:** +593999739554

**URL:** [www.robalinolaw.com](http://www.robalinolaw.com)



Our practice began more than 11 years ago. In this time, we have evolved into what we are today: one of Ecuador's largest and most renowned firms, obtaining results based on our tireless commitment to defend and act in the interests of our clients. We are a specialized team consisting of lawyers and consultants. We constantly seek to innovate and be on the forefront of new legal and consulting trends.

# GUATEMALA ALTA – QIL+4 ABOGADOS

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial Las Margaritas torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** +502 2277 1111

**URL:** [www.altalegal.com](http://www.altalegal.com) - [www.qil4.com](http://www.qil4.com)

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

At the time of publishing, there is no regulation regarding financial technology in Guatemala, either as legislative advances (bills of law by the Guatemalan Congress) nor by the banking regulator (the Bank Superintendency – Superintendencia de Bancos) or the regulator in payment systems (the Central Bank, through the Monetary Board (Junta Monetaria)).

Currently, in Guatemala there are several financial services through mobile apps that have adapted to the existing banking services.

Carlos García



Otto Ardón



The current regulation (not on fintech, but focused in the existing financial and banking services through apps) is contained in the Reglamento Para la Prestación de Servicios Financieros Moviles – regulation on the mobile financial services (JM-120-2011) issued in 2011. This regulation allows for banks and related companies to provide services through digital means, with the possibility to hire a third party to handle the services.

Banks in Guatemala have a big influence in the regulatory structure and the tendencies are usually friendly and favorable to the regulated banks.

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

There are no regulations for the fintechs nor it has existed, at the time of publishing, an important regulatory approach. The Superintendencia de Bancos (“SIB” – the Bank

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Superintendency, Guatemalan Banks Regulator) has taken a non-intrusive approach towards fintech, despite the big strides that the sector has taken in the last few years. There have not been any regulations nor significant declarations by the Central Bank or the Junta Monetaria (the Monetary Board or “board of directors” of the Central Bank).

There have been some public opinions regarding the fintech sector and the regulators have established specific units. The SIB has created the “SIB Innovation Hub” and the Central Bank created the “Payment System Unit”.

Both from a user and a service provider standpoint, there has been an increase in the fintech sector. However, the perception of the increase in the operations has not been enough for the regulators to take action.

The approach by the fintech sector has been to comply and to adapt to the existing regulations on financial intermediation, securities regulation, prevention of money laundering and financing of terrorism.

A relevant factor is the Guatemalan migrant workers living in the United States and the strong influx of remittances (remesas) that are sent from the United States of America to Guatemala. The use of digital payment and transfer tools, both foreign and local systems offered by banks and non-regulated companies for remittances transfers and the incursion of these systems in the country for such exchanges, has motivated the participation and investment of the private sector, and the development of this segment of the digital market.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE**

### **EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

There has not been a controlled pilot project sandbox system that has been tested in Guatemala.

The SIB, under prior administrations, created the “SIB Innovation Hub” through which any person with interest in innovation in the fintech area can contact the SIB to check the current and applicable regulations. However, the administration recently changed for a period of 5 years. It is not clear if the Innovation Hub will continue under the new administration. Private fintech associations have had initiatives, however, none have been officially adopted by Guatemalan banking regulators.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

Yes, they can do such investments or acquisitions.

However, financial entities in Guatemala have a very limited course of action. The Bank and Financial Groups Law does not contemplate the possibility for a Bank or a related company to invest in a fintech company nor that one is included within a Financial Group (i.e. a conglomerate that encompasses all the entities that are controlled or related to a bank in order to provide different services).

An alternative that local banks have implemented is that the companies that are a part of the Financial Group are the ones that provide the fintech service or such subsidiary or related company buys the know-how, structure or software, without the bank necessarily acquiring or investing directly in the fintech company.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

There are no special classification or distinction between customers or consumers in the Guatemalan legislation. Banks are subject to the audit and supervision of the SIB and not directly the Dirección de Atención y Asistencia al Consumidor -DIACO- (the government agency in charge of consumer protection). The SIB has a unit in charge of the complaints of customers. This does not create a special classification of consumers or customers, as the system only channels information regarding claims that could constitute a violation to general regulations and not protection of consumers. However, the consumer (client) can (and in fact do) file complaints at DIACO against banks.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?**

There are no regulations regarding lending crowdfunding. Only the banks authorized by the SIB can act as financial

intermediaries, however, there is no restriction to lending between peers. Guatemalan securities regulations are very restrictive regarding public offers and there are significant risks related to the implementation of these systems.

As stated, financial intermediation can only be lawfully carried out by authorized banks and financial institutions. The raising of funds to later place them by any person or entity different to an authorized financial institution is a crime. This has limited the implementation of lending crowdfunding structures in Guatemala.

At the time of publishing, there are no significant efforts, both by Congress or bank regulators, to enact regulations regarding lending crowdfunding.

Until now, the crowdfunding being done locally is limited to friends and family, which is targeted to a small group of potential investors on a private level without doing a public and undiscriminated offering.

### **2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

There are no regulations regarding P2P lending, nor there are efforts to enact regulations. The lending between peers is allowed, provided that these are completed with each person's own capital and no raising of funds by third parties has been completed. The P2P lending would be considered as a civil agreement, in any case.

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There are several fintech projects in Guatemala for P2P lending. There are special considerations that are taken into account for these to not incur in financial intermediation in the structuring the company. By using a digital platform to carry out P2P lending, special attention has to be paid to the operations for the company for its normal business to not be considered as a crime.

### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Yes, the general consumer protection regulations are applicable.

The legal definition of “service provider” under Guatemalan law is ample and it applies to any natural person or entity that provides services, in an organized and professional manner. This can make the service provider subject to the supervision of the DIACO. As there is no special regulation regarding P2P lending and its customers, the general regulations of consumer protection apply.

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

At the time of publishing, there are no regulations regarding donations or reward-based crowdfunding.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

At the time of publishing, there is no regulation in Guatemala regarding crowdfactoring. There are existing regulations regarding factoring operations and no restrictions for these to be completed by several people, provided that these are completed by people using their own equity and they do not raise funds from third parties, incur in financial intermediation or securities intermediation.

Currently, there are no relevant crowdfactoring operations in Guatemala. Factoring operations would require the designation of a single lender for the assignment of the debt and to act judicially or extra-judicially, so there are special considerations to be taken into account to avoid financial intermediation.

## **3. INVESTMENT AND CAPITAL MARKETS**

### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

There are no regulations regarding equity crowdfunding in Guatemalan legislation. Regulations regarding securities are restrictive regarding public offers and, with some exceptions, any offer that is directed to more than 35 people is considered as a public offer and needs to be registered before a public registry. Lack of registration and raising of

funds through an offer that is not registered is considered a crime with considerable sanctions.

The regulations regarding a public offer in Guatemala expressly include mass communication media so the implementation of an equity crowdfunding structure could incur in the securities intermediation prohibitions. Local authorities have extensive criteria on the prohibitions regarding the offering of securities or equity investments without complying with public offer regulations, so any equity crowdfunding made publicly and indiscriminately has to be construed as a public offer.

### **3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

There are no regulations regarding crowdequity platforms. However, requirements and limitations do exist pursuant to the Securities and Goods Market law previously referred.

### **3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

There are no regulations for crowdequity projects. In any case, these would be subject to the public offer and securities regulations as per the Securities and Goods Market Law. There is no secondary market, under Guatemalan legislation, for these offerings.

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

Guatemala has no legislation or regulation regarding cryptocurrencies nor there are, at the time of publication, any efforts in the Guatemalan Congress for the regulation of these. In any case, a cryptocurrency is considered as a movable asset.

Although it is not official, the banking regulators have taken a position regarding cryptocurrencies as movable objects and therefore as a form of payment. There are also other positions, although not official, that cryptocurrencies are considered as ordinary currencies. The Guatemalan constitution states that the Central Bank has the monopoly to issue currency and any other issuance of currency can be considered as a crime, so any local cryptocurrency can be risky.

The Central Bank does monitor the movement of cryptocurrency in Guatemala as means of payment and, at the time of publication, no regulation has been enacted. Any crypto trading company in Guatemala mostly operate as ordinary companies without special licences or authorizations.

### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

As there is no regulation, and there is no prohibition to

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holding and/or transacting with cryptocurrencies, any person is free to hold and transact with cryptocurrencies.

However, there are tax implications that are relevant to trading cryptos, as these are considered as movable objects and not as currencies, these would be considered as object swaps and not as a purchase. If the transaction is considered as to have occurred in Guatemala, tax implications would increase the costs.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

At the time of publication, there are no regulations or any significant efforts for regulations to be enacted.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

As there is no regulation, and as these are not considered as currencies by the SIB and Central Bank, banks and regulated financial institutions cannot hold, transact or trade as intermediaries with cryptocurrencies as an ordinary and allowed transaction by local laws.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

There is no regulation regarding an Initial Coin Offering. Any fund-raising from the public is subject to securities regulation and registration before the Securities and Stock Exchange

Registry. Failure to comply with these regulations can carry criminal responsibility.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Notwithstanding that, at the time of publication, there is no specific regulation regarding the trading platforms, if any service provider is incorporated and operating in Guatemala, they are overseen by DIACO.

## **5. DISTRIBUTED LEDGER**

### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

At the time of publication, despite the growth and development of fintech companies in Guatemala, there is no generalized use of distributed ledger. There is no regulation nor any effort to enact regulations.

### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

To our knowledge, at the time of publication, financial



institutions are not developing nor using distributed ledger technologies.

## 6. INSURTECH

### 6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?

There is no prohibition for insurance companies to offer services or products through fintech or insurtech systems. However, like banks and financial entities, insurance companies have a limited course of action and are heavily regulated and under the oversight of the SIB. There are companies that, acting as independent agents, facilitate the acquisition of insurance policies through insurtech platforms. In Guatemala, the placement, intermediation and commercialization of insurance policies is a regulated activity that requires prior authorization and under the oversight of the SIB. Some existing entities in the insurance market have adapted their systems to incorporate insurtech in the offering and commercialization of their products.

### 6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?

At the time of publication, there is no specific regulation for

the intermediation of insurance through insurtech or that is any different to the regular insurance regulations. There is no effort to enact specific regulations that would be relevant to insurtech.

Guatemala recognizes the figure of insurance mass marketer, which is done through vehicles with massive impact. This figure allows for commercial entities with any establishments open to the public for these to sell insurance with standard policies and simple terms. This figure could be relevant for the implementation of insurtech systems for the selling of insurance policies.

### 6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?

There are no regulations regarding insurtech that is different to the regulation of traditional insurance. Insurance and reinsurance companies, like in the case of banks, are subject to the oversight of the SIB.

## 7. ROBO-ADVICE

### 7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

Robo advisor technologies are not generally used in Guatemala, nor they are used by financial institutions. There are no specific regulations and there are no efforts to enact

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regulations at the time of publication.

### **7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

There are no specific regulations regarding advisory services through robo-advisor technologies, nor there are any efforts to enact regulations.

## **8. NEOBANKS**

### **8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

At the time of publication, there is no specific regulations regarding the establishment or the incorporation of Neobanks. In any case, these would be subject to the regulations for the incorporation as a bank and to the approval of the SIB as a prior requirement for its incorporation as an ordinary bank.

### **8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

There are no regulations regarding neobanks.

## **9. OTHER MATTERS**

### **9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT**

### **IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

- Since fintech includes an industry, market and activities that are not regulated, there are many opportunities but also risks and unknown scenarios.
- Certain legal alternatives and structures, as well as regulation, have been used and homologated for fintech matters. However, this could prove not the best option or most efficient way to do it from a commercial, economic and financial standpoint.
- There is a lot of energy and interest in fintech in Guatemala, with a tremendous growth potential. However, the lack of proper regulation has limited the necessary legal certainty to encourage development and more projects and start-ups.
- There is a risk that the regulation that eventually is enacted in relation to fintech matters, is not what the industry needs or does not promote more activities within such industry, just as it has happened in other countries.
- From a tax standpoint, there is no specific regulation on various topics and activities within the fintech industry and activities. The tax authority's unfamiliarity and absence of regulation could result in additional risks.
- The banking regulator has been cautious and permissive in relation to fintech matters without intervening or limiting activities so far. However, this can change.



## CARLOS GARCÍA

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial las Margaritas, Torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** (502) 2277 1111

**Email:** cgarcia@altalegal.com



## OTTO ARDÓN

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial las Margaritas, Torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** (502) 2277 1111

**Email:** oardon@altalegal.com



## SANTIAGO GRANADOS

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial las Margaritas, Torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** (502) 2277 1111

**Email:** sgranados@altalegal.com



## ALEJANDRO COFIÑO

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial las Margaritas, Torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** (502) 2277 1111

**Email:** acofino@altalegal.com

## **I ABOUT THE FIRM.**

**Country:** Guatemala.

**Address:** Diagonal 6 10-01 zona 10, Centro Gerencial Las Margaritas torre II, nivel 3, oficina 302A. Guatemala, Guatemala.

**Phone:** +502 2277 1111

**URL:** [www.altalegal.com](http://www.altalegal.com) - [www.qil4.com](http://www.qil4.com)



# HONDURAS

# ALTA MELARA & ASOCIADOS

**Address:** Penthouse Edificio Torre Mayab, Col. Lomas del Mayab, Ave. República de Costa Rica.

**Phone:** (+504) 2232-1181

**URL:** [www.altalegal.com](http://www.altalegal.com)



Andrea C. Idiáquez

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

The Fintech industry has been growing in recent years, although its legal and regulatory framework has not. In Honduras, the first steps are taken to establish a regulatory framework for FINTECH; the most significant development has been the issuance of new regulations for electronic payment services, and for payment services and transfers with electronic money.

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE

### REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

We are currently in the introduction stage to the digital transformation of the financial system in Honduras, which is why most of the FINTECH activity in Honduras is regulated by the regulatory framework that was mainly issued for traditional financial companies. Many of the FINTECH activities are not covered by this existing framework because they are not legally defined. The FINTECH activities that do have specific regulations are those of electronic payment services and transfer services and payments with electronic money (e-wallets).

### 1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

No regulatory sandboxes have been implemented in the

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country. There is also no indication that local regulators take this approach. However, the Central Bank of Honduras and the National Commission of Banks and Insurance created in October 2019, an instance called “Mesa de Innovación Financiera (MIF)”, as a space for the promotion and improvement of proposals that contribute to the development of the FINTECH and banking sector jointly. In this MIF, 29 companies and organizations linked to the FINTECH sector are incorporated.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

Supervised financial institutions may invest in Fintech companies, provided that the investments comply with the risk management framework of the financial institution, and the regulations applicable to their investments. Likewise, a Fintech company may be an affiliate or subsidiary (under common control) of a supervised financial institution.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

Whether there is a distinction between general consumers and consumers of financial services. In Honduras, there is a special regulation called “Rules for the strengthening of transparency, financial culture, and attention to financial

users in supervised institutions”. This regulation is applicable to the relations of the supervised financial institutions of the financial system, with their clients or users.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?**

The crowdfunding sector is still quite new in the country, the only crowdfunding presence in the country is related to reward or donation crowdfunding. Although there is currently no regulation on lending crowdfunding in Honduras, this practice could be interpreted, according to the Honduran Securities Market Law, as an “offering of securities.” We are not aware of any bills or proposed regulations on lending crowdfunding or any particular requirements for consumers or investors participating in lending crowdfunding.

### **2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

There is no regulation regarding P2P loans, however, the

granting of credit from entities that are not part of the financial system, or natural persons is regulated by the Non-Bank Lenders regulations, which requires that natural or legal persons who are dedicated to granting non-banking credits must register in a special registry maintained by the Honduran Tax Authority.

### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

We are not aware of any precedent on this issue. However, in our opinion, current consumer protection laws would apply in both cases. From our point of view, debtors can be recognized as a consumer.

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

It is not regulated.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

It is not regulated.

## **3. INVESTMENT AND CAPITAL MARKETS**

### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

Although there are currently no special regulations applicable to equity crowdfunding, this activity can be considered a public offering of securities and, therefore, would be subject to the Honduran Securities Market Law.

### **3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

There is no guide on the specific requirements for operating a crowdequity platform in Honduras.

### **3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

Equity crowdfunding is not regulated in our jurisdiction, so there are no requirements or secondary market.

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

Currently, in Honduras, there is no regulation that enables cryptocurrencies or crypto actives, and the creation or promulgation of public policies with respect to allowing the circulation of cryptocurrencies or crypto actives in the

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country is not yet visualized.

### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

In accordance with the regulations in force in the country, the BCH is the only issuer of legal tender coins and bills in the national territory. In this sense, the BCH does not supervise or guarantee the use of crypto assets as means of payment in the national territory; There is also no protection for deposits made with crypto-asset resources, nor a validation so that Banking Institutions in Honduras can invest in said crypto-assets. Therefore, any transaction that natural or legal persons carry out with these crypto assets will be under the responsibility and risk of those who carry it out.

Considering the high level of risk related to investing in this type of asset, on March 23, 2022, BCH issued and published a Statement through its website, addressing the latest news on the possible adoption of Bitcoin as a legal tender in the country. In said Communication, the BCH indicated the following:

- That Bitcoin (cryptocurrency, crypto active or cryptocurrency) as a financial asset that exists virtually, is currently not regulated in Honduras, and in most countries, it is not considered a “legal currency.”
- Reiterates that the BCH is the only entity that can issue bills and coins of legal tender in Honduras and that the monetary unit of Honduras is the Lempira.
- That the BCH does not supervise or guarantee operations carried out with cryptocurrencies as means of payment in the national territory, so any transaction carried

out with cryptocurrencies is under the responsibility and risk of those who carry it out.

- That the BCH continues with the study and conceptual, technical and legal analysis to determine the feasibility of issuing a central bank digital currency (Central Bank Digital Currency -CBDC-) that has the characteristic of being recognized as legal tender in the country and therefore is regulated and has the support of the BCH.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

There are no such particular requirements.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

Considering BCH's position on cryptocurrencies, it is highly unlikely that a regulated financial institution would hold, trade or trade cryptocurrencies as an intermediary.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

Although BCH has yet to make a particular statement on ICOs, it is highly unlikely that an ICO will be accepted in the country.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO**



## **TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

We believe that the general consumer protection rules are applicable to trading platforms.

## **5. DISTRIBUTED LEDGER**

### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies is unusual in our jurisdiction and there is no regulation in this regard.

### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

We are not aware of any financial institution in our jurisdiction that uses or develops applications that use distributed ledger technologies.

## **6. INSURTECH**

### **6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW**

## **IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

There is no limitation for insurance companies duly authorized to operate in our jurisdiction to offer services or products through Fintech technologies. However, insurance institutions must obtain the prior no objection from their regulatory body (National Commission of Banks and Insurance). We are not aware of how Fintech technologies are being integrated into insurance services or products.

### **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Currently, there are no regulations or a public policy position in Honduras regarding technology-based distribution models or Insurtech intermediation.

### **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

Insurtech technologies do not have a specific regulations in Honduras.

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**7. ROBO-ADVICE****7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

We are not aware of any financial or capital markets in Honduras that use or advertise themselves as using robo-advice technology in the provision of their services.

**7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

There are no such regulatory requirements.

**8. NEOBANKS****8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

There is no regulation in this regard in Honduras, apart from the general regulation of opening banks.

**8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

There is no regulation in this regard in Honduras, apart from the general regulation of opening banks.

**9. OTHER MATTERS****9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

The regulatory framework in Honduras does not contemplate a special law applicable to the FINTECH industry. Currently, FINTECH activity in Honduras is regulated by the regulatory framework that was mainly issued for traditional financial companies. Many of the FINTECH activities are not covered by this existing framework because they are not legally defined. This has the consequence that FINTECH companies are forced to operate without the benefit of a regulatory framework and its consequent supervision. Our financial regulators have yet to assess current developments and create a safe space for development and entrepreneurship, without the risk of running afoul of existing laws and regulations. All participants, but especially entrepreneurs and investors, need to perform a thorough regulatory risk analysis and check each element of their tech business model against existing regulations that are best suited for the analog world.



## ANDREA IDIÁQUEZ

**Address:** Alta Melara & Asociados, Penthouse Edificio Torre Mayab, Ave. República de Costa Rica, Tegucigalpa, M.D.C.

**Phone:** (+504) 2232-1181

**Email:** [aidiaquez@altalegal.com](mailto:aidiaquez@altalegal.com)

is a senior associate of ALTA in Honduras and has experience in practice in corporate, business, and competition law (including corporate M&A), telecommunications, technology and information law, real estate, regulatory matters, and compliance. She has acted as a legal adviser to many well-known local and regional companies. .

## **ABOUT THE FIRM.**

**Country:** Honduras.

**Address:** Penthouse Edificio Torre Mayab, Col. Lomas del Mayab, Ave. República de Costa Rica.

**Phone:** (+504) 2232-1181

**URL:** [www.altalegal.com](http://www.altalegal.com)



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We are part of ALTA, a Central American law firm with offices in Guatemala, El Salvador, Honduras, and Costa Rica.

# MÉXICO

# CREEL

# ABOGADOS,

# S.C.

**Address:** Paseo de los Tamarindos 400B, 29th Floor, Bosques de la Lomas, 05120, Mexico City.

**Phone:** +52 (55)1167-3000

**URL:** <http://www.creelabogados.com/>

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

On March 9, 2018, the Law for the Regulation of Financial Technology Institutions (the "Fintech Law") was enacted. In order to harmonize the Mexican legal framework, on that same date, among others, the following laws were amended:

(i) The Securities Market Law was amended to exclude from its scope of regulation, the offering and intermediation of securities and the negotiation with securities carried out through Financial Technology Institutions. Moreover, the National Banking and Securities Commission ("CNBV") was granted the authority to issue general regulations regarding the offering of investment advisory services through

automated systems.

(ii) The Law on Credit Institutions was amended for the purpose of regulating more thoroughly the use of technology by banks in the performance of their activities, as well as to provide that the activities carried out by Financial Technology Institutions are not considered as obtaining funds (through clients' deposits).

(iii) The Law for the Transparency and Organization of Financial Services and the Law for the Protection and Defense of Financial Services Users (the "CONDUSEF Law") were amended to include within their scope the supervision and surveillance of Financial Technology Institutions by the National Commission for the Protection and Defense of Financial Services Users ("CONDUSEF").

Subsequently, on September 11, 2018 the secondary regulations applicable to the fintech industry were issued, which include: (i) the General Provisions applicable to Financial Technology Institutions (the "Regulations")

Sandra López Ch



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issued by the CNBV; (ii) the Circular 12/2018 for Electronic Payments Institutions (the “Circular”) issued by Banco de México (Mexico’s Central Bank); (iii) the General Regulations referred to in Article 58 of the Law for the Regulation of Financial Technology Institutions (the “Money Laundering Regulations”), issued by the Ministry of Finance and Public Credit (“SHCP”); (iv) the Regulations applicable to the Financial Technology Institutions referred to in Articles 48, second paragraph, 54, first paragraph, and 56, first and second paragraphs of the Fintech Law, issued by the SHCP and the CNBV, in order to regulate the stability and proper functioning of the internal controls of Financial Technology Institutions; and (v) the General Regulations regarding the programming interfaces of standardized computer applications referred to in the Fintech Law, issued by the CNBV, in order to establish the procedure for the authorization and registration of the fees to be charged for the use of the programming interfaces of standardized applications.

### **1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?**

Yes. Most fintech activities, such as crowdfunding, virtual wallets and transactions carried out with cryptocurrencies, are regulated in the Fintech Law. Moreover, certain financial laws such as the Law on Credit Institutions and the Securities Market Law regulate the provision of certain financial services and the execution of transactions by financial entities using financial technology.

In Mexico, the fintech industry has specific regulations applicable to Financial Technology Institutions. Likewise, fintech activities are regulated similarly to other financial services, such as banking services and securities intermediation. The Fintech Law defines the activities and transactions that shall be reserved to Financial Technology Institutions, which shall obtain the corresponding authorization to operate; and further, it lists the activities, transactions and services that Financial Technology Institutions are allowed to carry out.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

Yes. The Fintech Law includes a chapter that governs innovative models with the purpose of allowing disruptive solutions or products for the provision of financial services to be tested in a controlled and less costly environment.

According to said law, innovative models are those used to provide a financial service using tools and technologies, in a model different from those existing in the market, to carry out activities that generally require an authorization, registration or concession from financial authorities.

Only commercial companies duly incorporated pursuant to Mexican law may operate innovative models. For purposes of operating an innovative model, a temporary and special authorization shall be obtained, which shall be granted by the financial authority in charge of the supervision and surveillance of the regulated activity intended to be carried

out.

The requirements to operate an innovative model are: (i) the product or services must be tested in a controlled environment and with a limited number of clients; (ii) the innovative model must imply a benefit for the client or user different from the benefits existing in the market; and (iii) the project must be ready to begin operating immediately. The competent authorities may establish additional requirements, through general regulations or in the authorizations they grant.

The companies that intend to operate innovative models, shall establish policies and mechanisms to prevent, identify and mitigate the risks associated with their operation, as well as the manner in which they will repair the damages that they cause to their clients.

In the authorizations to operate innovative models, specific terms and conditions shall be established in attention to the specific characteristics of the innovative model and, if necessary, certain exceptions to the provisions of Mexican financial laws may be established. This authorization may only be granted for a period of 2 years; at the end of such term, the authorized company must obtain the applicable permit, authorization, registration or concession; otherwise, it may not continue operating. In the event the innovative model ceases to operate at the end of the term established in the authorization, an exit proceeding shall be implemented, in which the manner to terminate transactions executed with clients shall be included.

#### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

Yes. Financial entities are allowed to invest in, directly or indirectly, or acquire, Financial Technology Institutions or companies that operate innovative models, prior authorization of the CNBV and, as the case may be, of the financial authority in charge of the supervision and surveillance of the financial entity (e.g., Banco de Mexico or the SHCP). It is important to consider that there are certain rules, limits and requirements applicable to financial entities investing in Financial Technology Institutions, which are established in the laws that regulate the relevant financial entities and may vary depending on the nature of the financial entities.

#### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

Yes. In Mexico a distinction is made between consumers and financial consumers or “financial users”. The Federal Law on Consumer Protection, through the Federal Bureau of Consumer Protection (“PROFECO”), protects and promotes the rights of consumers against any form of abusive commercial practice, expressly excepting from its application financial services regulated by financial laws rendered by institutions and organizations which supervision and surveillance is made by the CNBV, the National Commission of Insurance and Bonding and the SHCP, among others financial supervision agencies.

In accordance with the CONDUSEF Law, financial users are

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considered to be those who contract, use or otherwise have any right against any financial institution as a result of any transaction or service rendered.

### 2. LOANS AND FINANCING

#### 2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?

Lending crowdfunding is regulated in the Fintech Law. The Fintech Law nor the secondary regulations provide particular requirements applicable to investors; therefore, any person or entity, with full legal capacity, may invest in lending crowdfunding platforms.

However, the Regulations provide for certain limits to the investments that a person may carry out in a platform. The Regulations establish that one single investor may not make investment commitments in the event the result of applying the following formula:

##### (New Investment Commitment)

$$\frac{\sum \text{Effective Investments} \pm \sum \text{Prior Investment Commitments} \pm \sum \text{New Investment Commitment}}{\times 100}$$

exceeds the following amounts: (i) for entities, 20%; (ii) for individuals who wish to invest in debt deriving from personal loans among persons, 7.5%; (iii) for individuals who wish

to invest in debt deriving from company or business loans among persons or for real estate development, 15%.

Notwithstanding, such limits shall not apply to “related investors” or “experienced investors”. For such purpose, experienced investors are Mexican and foreign financial entities, agencies of the Federal Public Administration and persons that have made investments in crowdfunding institutions for an aggregate amount in excess of or equivalent to 550,000 Investment Units (“UDIS”; approximately US\$207,625.00). On the other hand, “related investors” are such persons who are related up to the fourth kinship degree to the individual requesting the funding or are their spouse or concubine.

#### 2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?

Currently, P2P lending is not regulated in Mexico. However, P2P lending schemes may be established through Crowdfunding Institutions, as company or business loans or personal loans; however, it should be noted that differently to P2P lending, in this case the projects may not be funded by only one investor.

It is important to note that if an individual or entity were to request or offer funds regularly or professionally or using massive means of communication, through means different from a Financial Technology Institutions or without



the authorization to operate as a bank, such person may be considered to be obtaining funds (via deposits) from the public, which under Mexican law, is deemed a criminal offense.

### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Notwithstanding P2P is not regulated in Mexico, lending crowdfunding is subject to the Law for the Transparency and Organization of Financial Services and to the supervision of the CONDUSEF, and therefore, the consumer protection rules that apply are those of the special regime of financial users.

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

No. The Fintech Law and the Regulations do not regulate donation or reward-based crowdfunding.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

Crowdfunding in Mexico is regulated as Lending

Crowdfunding for Business Loans among Persons (individuals or entities). In this case, the investors acquire a portion of a credit right that the person or entity requesting the funding has in its favor, while the person requesting the funding is bound to the investors as joint obligor.

Same as crowdequity platforms, crowdfactoring platforms must comply with the following requirements: (i) be a commercial company duly incorporated under Mexican law; (ii) be duly authorized for such purpose by the CNBV; (iii) provide in its corporate purpose the rendering of professional and regular crowdfactoring services; (iv) have the minimum capital stock required by the CNBV, currently between 500,000 UDIs (approximately US\$188,750.00) and 700,000 UDIs (approximately US\$264,250.00); (v) have the necessary policies in connection with risk assessment and control, conflict of interest, prevention of fraud and money laundering, among others; and (vi) have a business plan and operation manuals related to internal control and risks management, among others.

The Regulations provide that Financial Technology Institutions must have methodologies to analyze and determine the level of risks of their potential requesting persons. In the event the platforms offer provide crowdlending for business loan among persons for purposes of carrying out a financial factoring transaction, such methodologies must include mechanisms to: (i) carry out the risk assessment of the debtors of the credit rights, whether through credit bureaus or based on public information; (ii) in case the credit rights are documented in an invoice, verify that such invoices may be identified electronically in the Tax Administration Service of the SHCP; and (iii) verify that the credit rights have not been previously transmitted or granted as security.

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### 3. INVESTMENT AND CAPITAL MARKETS

#### 3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?

Yes. The Fintech Law establishes that crowdfunding institutions may carry out equity crowdfunding, in order for investors to purchase or otherwise acquire securities representing the capital stock of entities acting as applicants.

#### 3.2 WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?

Crowdequity platforms have to comply with the following requirements: (i) be a commercial company duly incorporated under Mexican law; (ii) be duly authorized, for such purpose by the CNBV; (iii) provide in its corporate purpose the rendering of professional or regular crowdequity services; (iv) have the minimum capital stock established for such purpose by the CNBV, which currently is of 500,000 UDIs (approximately US\$188,750.00) and 700,000 UDIs (approximately US\$264,250.00); (v) have policies regarding risk assessment and control, conflict of interest, fraud and money laundering prevention, among others; (vi) have a business plan and operation manuals related to internal control and risks management, among others; and (vii) establish schemes for the crowdequity platform and investors to share the risks associated to the projects offered in the platform.

#### 3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS

#### THERE A SECONDARY MARKET FOR THESE EMISSIONS?

No. In Mexico there are no particular requirements applicable to investors or securities in crowdequity projects.

The Fintech Law and secondary regulations do not establish requirements applicable to investors that participate in crowdequity projects, therefore, it may be understood that any individual or entity with sufficient legal capacity may invest in crowdequity projects.

Likewise, there are no specific requirements for the securities to be offered in crowdequity platforms; however, the platforms in which these securities are offered shall verify the legal existence, financial viability and business history or technical knowledge of the managers of the company or project, as the case may be.

Also, crowdequity platforms may establish specific requirements in their policies.

Currently, there is no secondary market for crowdequity projects. Pursuant to the provisions set forth in the Fintech Law, securities offered through crowdequity platforms may not be registered in the National Registry of Securities at the CNBV, and therefore, not be subject of a public offering and may only be acquired and sold through crowdequity platforms.

### 4. CRYPTOCURRENCIES

#### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

Yes. The Fintech Law defines cryptocurrencies as the virtual representation of value registered electronically and used among the public as a means of payment for all kinds of legal

transactions, and the transfer of which may only be carried out by electronic means. The Fintech Law also provides that Financial Technology Institutions may only operate with cryptocurrencies approved by the Banco de Mexico.

## **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSMIT WITH CRYPTOCURRENCIES?**

Yes. In Mexico it is allowed to hold and/or transmit with cryptocurrencies; however, in order to do so regularly or professionally an authorization granted by Banco de Mexico is required.

## **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSMIT WITH CRYPTOCURRENCIES?**

Trading platforms holding and transacting with cryptocurrencies must comply with the following requirements: (i) observe the terms and conditions established for such purpose by Banco de Mexico; (ii) be able to deliver to their clients, at any time, the cryptocurrencies they hold or their equivalent in Mexican currency; and (iii) disclose to their clients that: (a) cryptocurrencies are not legal currency and therefore, are not backed by the Federal Government or Banco de Mexico, (b) as the case may be, that the transactions carried out may not be reverted, (c) the volatile value of cryptocurrencies, and (d) the technological, cybernetic and fraud-related risks associated with cryptocurrencies.

Furthermore, the Circular provides several technical requirements which electronic payment platforms that carry out transactions with cryptocurrencies must comply with.

## **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSMIT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

Financial entities are allowed to hold, transmit or trade as intermediaries with cryptocurrencies, as long as they have been authorized by Banco de Mexico. Credit institutions (banks) may only carry out transactions with cryptocurrencies which correspond to those internal activities so to implement the transactions and services made with their clients or on their own account. Such financial entities that operate with cryptocurrencies through the Interbank Electronic Payments System shall comply with additional technical requirements, relating to the technological infrastructure they use.

## **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

ICOs are not regulated in Mexico. Therefore, it is not advisable to carry out an ICO in Mexico until the regulation is in place. In this regard, it is important to note that transacting with cryptocurrencies without the proper authorization is sanctioned with a fine of up to 150,000 Mexican Pesos and Measure and Update Units (approximately US\$721,650.00) and from 7 to 15 years of prison.

## **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL**

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**CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

In Mexico, the CONDUSEF provides protection to financial consumers or users with respect to all financial entities that are regulated and supervised by financial authorities, such as the CNBV, the SHCP and Banco de Mexico. Therefore, such protection will not apply to non-financial entities or foreign financial entities (e.g., trading platforms that operate in the international foreign exchange market (Forex)), and the consumer shall be subject to the jurisdiction of the country where the transaction was carried out. Notwithstanding, the CONDUSEF issues certain alerts so that users may adopt precautionary measures and avoid being exposed to abusive practices of such trading platforms.

**5. DISTRIBUTED LEDGER****5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

Even though the use of distributed ledger technologies is common in Mexico, such technology is not yet regulated in our country.

**5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER****TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

We are not aware that to this date, financial institutions are using distributed ledger technologies.

**6. INSURTECH****6.1 ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Insurance companies are allowed to carry out transactions and provide services, including the execution of agreements and the provision of information to its customers using technological means.

**6.2 HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Currently, insurtech is not regulated in Mexico.

**6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

No. Insurtech is not regulated in Mexico.

## 7. ROBO-ADVICE

### 7.1 ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

The Securities Market Law grants the CNBV authority to regulate the provision of investment advisory services through automated means. It is our understanding that broker-dealers, investment funds and investment advisors are using robo-advice technology; however, the CNBV has not issued the secondary regulation applicable to such technology.

### 7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

To this date, financial entities that provide investment advisory services use robo-advice technologies. However, the CNBV has not issued the secondary regulation applicable to the provision of investment advisory services through automated means.

## 8. NEOBANKS

### 8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

No. In Mexico no regulation exists for Neobanks. However, Financial Technology Institutions that operate with authorization from the CNBV to provide services regulated by the Fintech Law consisting in electronic payments, crowdlending, management of cryptocurrencies and financial advisory, carry out certain activities of Neobanks.

### 8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?

No specific regulatory requirements exist in Mexico to operate as a Neobank.

## 9. OTHER MATTERS

### 9.1 ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

Consumers, investors and administrators considering participating in fintech companies in Mexico, must take into account the ample offer existing today in our country, which generates a competitive market with a variety of

## MEXICO

fintech products and services, regulated by a thorough legal framework still in development, with the supervision and surveillance of financial authorities, as well as the protection of institutional agencies for the users of fintech products and services.



## SANDRA LÓPEZ CH

**Address:** Paseo de los Tamarindos 400B, Piso 29, Col. Bosques de la Lomas, C.P. 05120 Ciudad de México.

**Phone:** +52 (55) 1167-3010, ext. 117

**Email:** [sandra.lopez@creelabogados.com](mailto:sandra.lopez@creelabogados.com)

Sandra specializes in Corporate and Financial Law. Her corporate practice includes cross-border M&A, joint ventures and corporate restructurings. She provides advice on regulatory compliance matters on foreign investment, data protection, anti-money laundering regulations and anti-corruption. Sandra's practice also involves Financial Law, actively participating in a wide variety of local and cross-border financings, as well as providing advice on regulatory matters for financial institutions. She holds a Law Degree (JD) from Universidad Iberoamericana (2017) and a Diploma and LL.M. Degree on Private Law from Universidad Anáhuac (2017-2019).



## MARÍA FERNANDA MELGAR G

**Address:** Paseo de los Tamarindos 400B, Piso 29, Col. Bosques de la Lomas, C.P. 05120 Ciudad de México.

**Phone:** +52 (55) 1167-3010, ext.131

**Email:** [fernanda.melgar@creelabogados.com](mailto:fernanda.melgar@creelabogados.com)

Fernanda specializes in Corporate and Financial Law. She centers her practice on corporate and commercial matters, the daily maintenance of private and public companies, as well as on the coordination of legal due diligences in the context of M&A projects. Likewise, Fernanda participates in financings and the structuring of security packages. She regularly provides advice on Financial Law regulatory matters, with particular emphasis on Fintech regulations. Fernanda obtained a Law Degree (JD) from Universidad Iberoamericana (2020).

## **ABOUT THE FIRM.**

**Country:** Mexico.

**Address:** Paseo de los Tamarindos 400B, 29th Floor, Bosques de la Lomas, 05120, Mexico City.

**Phone:** +52 (55)1167-3000

**URL:** <http://www.creelabogados.com/>



Creel Abogados is a corporate and transactional law firm. Founded in 1972 by Luis J. Creel Luján and his son Luis J. Creel C., the firm has consolidated a strong specialized business law practice advising multinational corporations, financial institutions, private equity funds and Mexican companies on a broad range of matters and projects, such as mergers and acquisitions, private equity, capital markets, financing and investment, corporate restructuring and joint ventures. The firm provides close personal services to its clients, through the partners' direct involvement (always maintaining a reduced partner-associate ratio) and coordination of dedicated teams. Their lawyers are deeply experienced in domestic and international transactions and combine a high level of expertise in the relevant Mexican issues.



## PANAMA

# GALINDO, ARIAS & LÓPEZ

**Address:** Federico Boyd Ave. No.18 and 51st Street | Scotia Plaza, 11th Floor

**Phone:** (+507) 303-0303

**URL:** [www.gala.com.pa](http://www.gala.com.pa)

### 1. OVERVIEW

#### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

A bill aiming to create a regulatory framework for fintech in Panama was introduced to the Panamanian National Assembly in 2018 under the name Bill No. 629 of 2018 (the “Fintech Bill”), however, such bill was not enacted into law and remains without being further discussed.

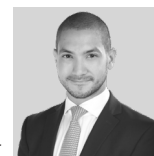
In its place, in 2021, the National Assembly approved Bill No. 697 of 2021, under the title *“Crypto Law: That makes the Republic of Panama compatible with the digital economy, blockchain, crypto assets and the internet”* (the “Crypto Bill”).

The Crypto Bill is an ambitious proposal intended to (i) promote the digitization of the government services, making

Jose Luis Sosa



Andrés Sanjur



its procedures compatible with blockchain and distributed ledger, (ii) give certainty to innovation in the digital economy and the use of crypto assets in Panama and (iii) establish banking interoperability principles so that traditional financial systems are compatible with new ones, in order to promote greater financial inclusion and competition between financial service providers, ultimately benefiting end users.

Nevertheless, the Crypto Bill has not prospered, since, recently, the President of the Republic of Panama issued a partial veto, sending the Crypto Bill back to the National Assembly. Despite being “partial”, the veto covers a significant portion of the Crypto Bill, thus creating uncertainty as to its future.

On the other hand, in October 2022, the National Assembly approved Bill 863 that “Authorizes the use of Innovative Digital Payment Systems for the State and Establishes a Digital Wallet for Citizens”, with the purpose of regulating and facilitating State payments to vendors and disbursements of funds under social assistance programs, including scholarships (the “Payment System Bill”). This bill is currently in the process of being sent to the Executive body for approval.

Per the status of these bills, as of the date of this writing,

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Panama does not have laws or regulations specifically applicable to the fintech industry. Therefore, from a regulatory standpoint, fintech businesses must currently be analyzed through the lens of general provisions of Panamanian law.

### **1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?**

As discussed in our answer to the preceding question, it is not. The Fintech Bill, as proposed, was a fairly encompassing, ambitious body of proposed legislation that aimed to regulate various aspects of fintech as they exist in 2018/2019, and yet it continues without being further discussed.

Furthermore, the public remains on the lookout for the decisions that will be taken with respect to the Crypto Bill and the Payment System Bill.

The currently available regulatory approach is, therefore, to apply existing regulations to fintech businesses, as other alternatives are not available at the moment.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

Although we have been privy to discussions and publications regarding sandboxes for fintech and other related initiatives, from a regulatory standpoint, Panama has not yet

implemented sandboxes for the fintech industry.

The Fintech Bill did provide for the creation of a sandbox or sandboxes under the name “*Marco Regulatorio Especial de Apoyo a la Innovación*”. However, as indicated above, such bill has not yet been enacted and if it is enacted in the future, it may suffer additional amendments.

In any event, as evidenced by the existence of, and interest in, the Fintech Bill itself, there has been growing interest in fintech in Panama and certain organizations such as the Center for Innovation of Fundación Ciudad del Saber (City of Knowledge – Fintech World Challenge 2019) and others are supporting start-ups in fintech and other industries.

We expect to continue witnessing exciting developments on Fintech in Panama in the future.

### **1.4 ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE, FINTECH COMPANIES?**

In general terms, there are no restrictions in this regard.

Save for financial institutions that are required to mitigate risks that may arise from the administration and operation of affiliate companies; and except general restrictions on investments and capital requirements, financial entities are allowed to invest in fintech companies.

### **1.5 IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL**

## REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.

The Panamanian legal framework does not expressly provides for a distinction between the concepts of “consumer” and “financial consumer”, however, Executive Decree 52 of April 30, 2008: “That Adopts the Unified Text of Decree Law No. 9 of April 26 February 1998, modified by Decree Law 2 of February 22, 2008”, as modified to date (the “Banking Law”), does provide for the concept of “banking consumer”, for the purposes of, among other things, granting certain special rights and obligations to bank customers, including the right to file claims before the Superintendency of Banks through a special procedure, as well as sets out rules to determine and define the nullity of banking contracts and provisions thereof.

Additionally, Bill 122 that *“Creates the Financial Services Consumer and establishes the System for the Defense and Protection of Financial Services Consumers of the Republic of Panama”*, has been submitted to the National Assembly for discussion.

Said bill creates the definition of “Financial Services Consumer”, and it was drafted with the objective of protecting consumers from certain practices of financial entities that are allegedly abusive.

## 2. LENDING AND FINANCING

### 2.1 IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN

### INVESTOR TO PARTICIPATE IN LENDING CROWDFUNDING?

Crowdfunding is not currently expressly regulated in Panama. Therefore, without prejudice to our comments below regarding crowdequity and P2P lending, there are no additional particular regulatory requirements at this time for an investor to participate in lending crowdfunding.

### 2.2 IS PEER TO PEER LENDING (P2P) REGULATED IN YOUR JURISDICTION? ARE THERE, OR WILL THERE BE, ANY PARTICULAR REQUIREMENTS FOR A CONSUMER OR AN INVESTOR TO PARTICIPATE IN P2P LENDING?

Peer to peer lending, as such (i.e., in the context of fintech), is not expressly regulated in Panama. However, it is important to consider that there are limitations applicable to the regular offering of loans and credit facilities to the general public, since such activity is limited to companies that have a license issued by the Ministry of Commerce and Industry (financial companies) or the Superintendency of Banks of Panama (banking institutions).

Moreover, the Panamanian Commercial and Civil Codes do contain provisions that apply to the terms and conditions of loans in general, however, there aren't any restrictions or regulations per se on the ability of individuals to make loans to another individual or company, in the context of fintech in Panama.

Therefore, for instance, there may be restrictions on the maximum interest rate paid on principal, because Panama has enacted provisions that apply to loans in general in this regard (as well as other relevant provisions pertaining to the

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underlying terms of a transaction), however, there aren't any regulatory limits on, for example, the amount of a non-regulated individual's P2P exposure or the amount of debt that may be taken on by a particular borrower, as may be the case in other jurisdictions.

Another important aspect of the lack of regulation of P2P, and of fintech in general, is that enforcement of loans upon default, depending on how the documentation is structured, could present significant challenges.

### **2.3 IS CONSUMER PROTECTION REGULATION APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING?**

Although Panama has not yet enacted lending crowdfunding or P2P lending specific regulations, the general consumer protection rules are applicable.

In that respect, Law 45 of 2007 (the "Law 45"), in general terms, imposes certain obligations on economic agents that offer goods or services to consumers in the country.

For instance, Law 45 imposes upon service providers information and disclosure obligations aimed at ensuring that consumers are properly informed as to the goods and services that they acquire.

In addition, Law 45 provides that certain provisions in adhesion contracts (i.e., contracts that were not subject to bilateral negotiations) may be null and void if they constitute a waiver by a consumer of the provisions of Law 45.

Law 45 and the rules and regulations thereunder contain other provisions that may be relevant and that should be analyzed on a case-by-case basis.

### **2.4 ARE DONATION AND REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

No, they are not yet regulated in Panama.

### **2.5 IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS IN ORDER TO PROVIDE THIS TYPE OF SERVICE?**

Crowdfunding is not yet expressly regulated in Panama, although as is the case with other categories of fintech businesses, general provisions of Panamanian law do apply to crowdfunding and specifically to factoring.

Specifically, in addition to general provisions of the Panamanian Civil and Commercial Codes that apply to factoring (which is generally structured through commercial contracts and therefore subject to Panamanian commercial law), the Superintendency of Banks of Panama issued Regulation No. 006-2016 (which builds upon the provisions of Panama's AML law, Law 23 of 2015).

Regulation No. 006-2016 specifically categorizes companies in the business of factoring as supervised entities, under the purview of the Superintendency of Banks of Panama for purposes of AML compliance. Further Regulation No. 006-2016 imposes upon such regulated entities certain due diligence obligations to mitigate the risk of money laundering through their platforms.

### **3. INVESTMENT AND CAPITAL MARKETS**

#### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

Crowdequity as such is not expressly regulated in Panama. However, Panama has enacted a regulatory framework for securities regulation, and through such framework it has created the National Securities Exchange Commission (now called the Capital Market Superintendency), which is charged with overseeing the Panamanian securities market. Although such framework has yet to address crowdequity funding directly, the Capital Market Superintendency has offered some limited guidance in this regard.

As is the case in other jurisdictions, the existing framework provides that public securities offerings that are not subject to a particular exemption or safe harbour, must register with the Capital Market Superintendency.

Through Opinion No. 01-2018, the Capital Market Superintendency adopted the position that crowdequity funding (in other words, the offering of an interest, stake or shareholding in a particular venture) constitutes a public offering of securities and is therefore subject to the general provisions of Law Decree No. 1 of 1999 (the “Securities Law”), including article 128 thereof.

As a result, in the opinion of the Capital Market Superintendency, crowdequity offerings must be registered with such commission (or qualify for one of the available exemptions).

#### **3.2 WHAT TYPES OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

As indicated above, Panama has not yet enacted specific regulations on this issue. Therefore, at present, there no specific requirements for crowdequity platforms, without prejudice to the Securities Law considerations discussed above.

In that regard, to the extent that crowdequity is in fact deemed an offering of securities, companies interested in offering such securities to the general public must obtain a license as a certified broker, brokerage house or investment advisor, as applicable, with the Capital Market Superintendency.

#### **3.3. ARE THERE ANY PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR SECURITIES IN CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?**

Per our response to question 3.1 above, securities in crowdequity projects may be subject to the provisions of the Panamanian securities regulation framework.

We have not seen a secondary or, for that matter, a significant crowdequity primary market in crowdequity as of the date of this publication. However, the conditions are ripe for the development of such a market in the future.

### **4. CRYPTOCURRENCIES**

#### **4.1 ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

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As indicated in Section 1.1 herein, cryptocurrencies are not expressly regulated in Panama.

The Crypto Bill proposed innovative regulation of crypto assets, defining them as the *“Fungible or non-fungible digital entry in a distributed ledger, which may or may not be a blockchain, whose ownership can be proven using cryptography and whose transfer can be done through digital signatures using cryptography”* and proposed a series of rules and regulations based on this concept.

However, as previously mentioned, such legislative initiative has been suspended with the executive's veto and remains under discussion in the National Assembly.

Furthermore, on April 25, 2018, the Capital Market Superintendency issued a public notice, warning the general public, inter alia, that cryptocurrencies are not currently subject to a regulatory framework in Panama and therefore are not subject to the purview or supervision of any Panamanian regulatory entities.

### **4.2 IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

Investors may transact in cryptocurrencies as such currencies are not yet regulated in Panama and, therefore there are no prohibitions in force as to their purchase or sale.

Regulation No. 4 of 2013 issued by the Capital Market Superintendency, provides, inter alia, that brokerage houses or investment advisors must obtain a specific permit to offer to and advice clients on forex transactions.

However, in addition to its public notice dated April 25, 2018, the Capital Market Superintendency issued a non-binding

opinion on November 15th, 2018 (Opinion No. 07-2018), whereby it adopted the view that (i) cryptocurrencies are not deemed securities under Panamanian law and are therefore not subject to its purview and (ii) cryptocurrencies have not been recognized in Panama as “currency” and therefore, a brokerage house, license is not required under the current regulatory framework to trade cryptocurrencies.

In any event, although there are certain important movements and organizations that are promoting the use of cryptocurrencies in Panama, amongst other goals, the use of cryptocurrencies in Panama is currently not as widespread as perhaps in other jurisdictions. Nevertheless, Panama's history as a center for trade, its geographic location, lack of a central bank (the Panamanian Balboa is pegged to the US Dollar on a 1:1 basis) and its liberal economy make it an ideal location for the flourishing of cryptocurrencies and fintech in general, without prejudice to the fact that there will be hurdles (regulatory and otherwise) in the path towards such goal.

### **4.3 ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

As per the above, this activity is not currently regulated in Panama. Therefore, there are no particular requirements at this time.

In addition, we note that although not expressly regulated, there are currently at least two crypto ATMs in Panama.

### **4.4 ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT**

## OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?

Similarly, because Panamanian law has yet to address this issue, there are no restrictions on holding or trading cryptocurrencies as intermediaries.

### 4.5 WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?

At the moment, ICOs are not regulated in Panama. Given the view adopted by the Capital Market Superintendency through non-binding Opinion No. 07-2018, further, ICOs would not appear to be subject to the framework of Panama's Securities Law.

### 4.6 ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?

Except for the general investor protection rules set forth in the Securities Law and its regulations, no specific consumer protection rules applicable to trading platforms have been enacted in Panama.

Therefore, the general consumer protection provisions set forth in Law 45 of 2007 are applicable to this type of activity.

## 5. DISTRIBUTED LEDGER

### 5.1 IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?

Precisely, one of the objectives of the Crypto Bill consists of *"Expanding the digitization of the State by promoting the use of distributed ledger technology and blockchain in the digitization of the identity of natural and legal persons in or from the Republic of Panama and as means to make the public service transparent"*.

Given the presidential veto to the Crypto Bill, the use of distributed ledger technology is not currently expressly regulated in Panama nor are we currently aware of any particular initiatives that have been implemented nor have been used in our jurisdiction.

However, we are aware of the existence of applications associated with this kind technology in Panama (for example, kyc - compliance, cryptocurrencies, logistics, etc.).

### 5.2 ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?

We are aware of certain fintech products and services currently offered in Panama. Also, we are aware that certain banking entities are opening bank accounts wherein funds from the sale of crypto assets are received.

However, we are not currently privy to or aware of any

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financial institutions in Panama that are specifically using distributed ledger technologies.

### 6. INSURTECH

#### **6.1 ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

We have not yet seen in Panama advances such as bespoke risk solutions using data analytics, sensors or other wearables, cyber breach risk management and insurance, smart insurance contracts or P2P insurance.

However, there has been some innovation in the insurance sector, as, for instance, several insurance companies in Panama have launched apps with features ranging from the ability to review insurance policy information on demand, to providing a chat platform that allows users to request vehicle assistance.

Given the wide-array of possible applications of technology in the insurance sector and considering that certain companies are taking steps towards digitizing certain processes and services, new initiatives can be expected in the near future within the insurance industry.

Notwithstanding the foregoing, the landscape in this regard, from a regulatory perspective, remains unclear.

#### **6.2 HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE**

#### **REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Although certain insurance companies are implementing new technologies to enhance their services, by and large Panamanian insurance companies are still dependent upon traditional distribution models and, accordingly, regulations have not been enacted so as to expressly include new models of distribution within the regulator's purview.

In addition, even though no specific regulatory requirements for insurtech intermediation have been adopted to date, as the insurance business in Panama is heavily regulated, companies that undertake such activities shall abide by the provisions set forth in Law 12 of 2012, which regulates insurance and reinsurances activities in Panama and outlines the minimum requirements that must be complied with by insurance companies, including capital requirements and other provisions, which could potentially present a significant hurdle for entrepreneurs seeking to innovate in certain aspects of the insurance sector.

#### **6.3 IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

No, insurtech is not currently regulated in Panama. Therefore, any new initiative must be analyzed through the lens of the existing regulations.



## 7. ROBO-ADVICE

### 7.1 ARE FINANCIAL OR CAPITAL MARKETS' INSTITUTIONS PROVIDING THEIR SERVICES USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

Notwithstanding the fact that this certainly is an interesting area with considerable upside in the future, we are not currently aware of financial or capital market institutions providing services out of Panama using robo-advice technology. Robo-advice is not expressly regulated in Panama at this time.

### 7.2 ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

No. However, depending on the specific industry, a particular license to issue such advice may be required and/or the person responsible for such advice may be personally liable (i.e. an accountant or lawyer).

## 8. NEOBANKS

### 8.1 IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

In Panama, no specific rules have been enacted to regulate Neobanks, thus, the Banking Law and its complementary

regulations are applicable to this type of activity, including Regulations No. 006-2011 of December 6, 2011 (which set forth guidelines on electronic banking and risk management), and Regulations No. 006-2016 of September 27, 2016 (which set forth guidelines on the management of risks that may arise with respect to new products and new technologies), as modified to date.

Further, it should be noted that, despite the fact that there is currently no Neobank in Panama, certain banks have implemented initiatives with characteristics similar to those of one, such as, for example, digital applications promoted by local banks, with the purpose of providing fully digital banking services, thus fostering financial inclusion.

### 8.2 ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?

To date, no regulatory requirements that are specifically applicable to Neobanks have been enacted, therefore, the Banking Law and its regulations thereunder are applicable to this type of activity.

## 9. OTHER MATTERS

### 9.1 ARE THERE ANY OTHER MATERIAL CONSIDERATIONS WHICH SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

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Fintech is growing and, in our opinion, will continue to develop in Panama. This will present investors, startups, and consumers with interesting opportunities going forward.

Like any investment, such opportunities will carry risk, including business risk and regulatory risk. The latter is accentuated by the fact that, as of the date of this writing, fintech remains unregulated in Panama and, therefore, there is a lack of clarity as to which activities are permitted under the law.

Moreover, unlike previous years, it has been recently perceived the need to adapt the Panamanian regulatory framework to emerging businesses and technologies, including payment method systems, hence, we are optimistic that in the short-medium term the first rules regulating activities of the Fintech industry will be enacted.

In light of the foregoing, the challenge for innovators is to work with their counsel to navigate the existing legal framework to mitigate such regulatory risk for themselves and their customers, while at the same time lobbying for adequate regulation of this increasingly important industry which is sure to incrementally contribute to the country's economy.

In addition, stakeholders must continue promoting dialogue to achieve adequate regulation of this industry, which is increasingly becoming more relevant and will surely contribute significantly to the country's economy.



## JOSE LUIS SOSA

**Address:** Scotia Plaza, 11th Floor, Federico Boyd Ave. and 51st Street

**Phone:** +507 303-0303

**Email:** jsosa@gala.com.pa

Jose Luis Sosa joined Galindo, Arias & López in 2008, focusing on commercial and corporate law, project finance, and real estate, with emphasis on domestic and international business transactions, mergers and acquisitions and real estate transactions.



## ANDRÉS SANJUR

**Address:** Scotia Plaza, 11th Floor, Federico Boyd Ave. and 51st Street

**Phone:** +507 303-0303

**Email:** asanjur@gala.com.pa

Andrés Sanjur joined Galindo, Arias & Lopez as an associate attorney in 2016. Mr. Sanjur focuses his practice in the areas of commercial law, banking, insurance, securities, and project finance, with emphasis on mergers and acquisitions and financial regulation.

## **ABOUT THE FIRM.**

**Country:** Panama.

**Address:** Federico Boyd Ave. No.18 and 51st Street | Scotia Plaza, 11th Floor

**Phone:** (+507) 303-0303

**URL:** [www.gala.com.pa](http://www.gala.com.pa)



Galindo, Arias & Lopez, one of the most renowned full-service law firms in Panama, prides itself on a 50-year tradition of excellence and innovation. Committed to provide legal services of the highest quality and ethical standards, the firm maintains an ever-growing, worldwide client base with business interests in Panama and the region. GALA stands out among its competitors, thanks to its expertise in complex local and cross-border transactions, throughout Panama's key business sectors: aviation, energy, telecommunications, banking, infrastructure, real estate, transportation and logistics, tourism, and commerce.

# PARAGUAY FCA LAW FIRM

**Address:** Avda. Perú 708

**Phone:** +59521205052

**URL:** www.fca.com.py

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

In Paraguay, the most important legal developments in the financial industry refer mainly to: (i) Resolution No. 06/2014 issued by the Central Bank of Paraguay, which establishes the Regulation for Electronic Payment Means Entities (EMPES); (ii) Law No. 4868/13 "Electronic Commerce Law.", and (iii) Resolution No. 1/2022 issued by the Central Bank of Paraguay, which establishes the General Regulation of Payment Systems of Paraguay (SIPAP ).

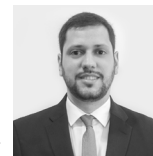
However, as we will develop it, projects are being studied to regulate crypto assets, as well as other areas of fintech in order to adjust national regulations to new international standards.

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR

Marianne Saavedra Escobar



Jean Saavedra Escobar



### JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

For the most part, fintech technologies are not regulated in Paraguay, except for the previously mentioned law and resolutions.

### 1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.

Yes, the Paraguayan Chamber of Fintech, a non-profit entity, established in November 2017, has a sandbox space, has accompanied the preparation of the bill that regulates the activity of mining virtual assets and dedicates its activities as advisory body on bills that affect the Fintech universe.

### 1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED

## PARAGUAY

### TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?

Yes, there are no legal restrictions for Paraguayan financial entities to invest or acquire Fintech companies. In fact, the latest developments in Fintech, especially in 100% digital accounts and payment methods, were made thanks to the investment of private banks.

### 1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.

The Consumer and User Defense Law makes no distinction between consumer and financial consumer. Now, the Central Bank of Paraguay, through Resolution No. 2 dated May 20, 2021, defines the Financial Consumer as “all users or clients of entities that use financial products and services.” Likewise, financial consumers may go to the Office of the Financial Consumer dependent on the Superintendence of Banks of the Central Bank of Paraguay to assert their rights as a consumer. Consumers (non-financial) must file their claims with the Secretary for the Defense of Consumers and Users (SEDECO).

## 2. LENDING AND FINANCING

### 2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS

### FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?

In Paraguay there is no regulation regarding lending crowdfunding. The National Securities Commission has mentioned on various occasions that it will eventually present a regulation project.

In this sense, we must mention that as it is an unregulated activity, and therefore not prohibited, lending crowdfunding is a legal activity in Paraguay.

### 2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?

There is no regulation regarding peer-to-peer lending, for entities not regulated by the Central Bank of Paraguay. Regulated entities (Banks, Financial Institutions and Insurance), do have regulations on general and specific limits.

### 2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL

## **REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Yes, the consumer protection regulations would be applicable to lending crowdfunding and P2P lending. The general rules of consumer protection would apply, not those of the financial consumer.

## **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

Crowdfunding based on donations or rewards is not regulated.

## **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

Crowd factoring is not regulated in Paraguay

## **3. INVESTMENT AND CAPITAL MARKETS**

### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

In Paraguay, the Capital Market Law is in force, which regulates public offerings in general and the Capital Market. However, neither the law nor the resolution of the National Securities Commission regulates equity crowdfunding.

### **3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

There is no regulation in this regard in Paraguay.

### **3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

There is no regulation in this regard in Paraguay.

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

There is no specific regulation regarding the use of cryptocurrencies in Paraguay. However, we must mention that the Secretariat for the Prevention of Money or Asset Laundering (SEPRELAD) issued Resolution No. 08/2022 by means of which it determines legal entities as Obligated Subjects in matters of prevention of money or asset laundering, or physical that carry out mining activities or its equivalent, exchange, transfer, storage and/or administration of virtual assets, or participate and provide financial services related to this.

Likewise, we must mention that in the month of August 2022 the National Congress sanctioned a Bill "That regulates the mining, commercialization, intermediation, exchange, transfer, custody and administration of crypto assets", however on August 31, 2022 the President of the Republic totally vetoed said project, so to date it is not a regulated activity.

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### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

Yes, there is no limitation to own or trade cryptocurrencies in Paraguay. We must mention that the Central Bank of Paraguay, in the month of December 2021, informed the general public that cryptocurrencies do not have legal tender in Paraguay, nor cancellation force.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

To date, there is no requirement for trading platforms to trade or hold cryptocurrencies.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

There is no legal limitation for financial entities to possess, trade or exchange cryptocurrencies, since it is not an activity prohibited by the Banking Law.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

There is no regulation in this regard in Paraguay

### **4.6. ARE CONSUMER PROTECTION**

### **REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Yes, the relationship between the user and the trading platforms falls within the definition of a consumer relationship, for which the Consumer and User Defense Law is applicable. The general rules on consumer protection are applied and not those of the financial consumer, since for the application of the latter the supplier or lender must be a subject supervised by the Central Bank of Paraguay, not being the trading platforms supervised entities. .

## **5. DISTRIBUTED LEDGER**

### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

There is no regulation regarding the distributed ledger in Paraguay.

### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

We do not have specific information if financial institutions are developing distributed ledger technologies.



## 6. INSURTECH

### 6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?

There are certain services or processes that insurance companies can offer through fintech technologies. In general, insurance companies sign insurance contracts through digital signatures, likewise, both the issuance of policies and renewals are issued digitally.

We must mention that not all insurers have incorporated these technologies and the issuance of digital policies within their services.

### 6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?

There is no specific regulation in this regard in Paraguay.

### 6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?

Insurtech technologies are not regulated, the traditional insurance regulation is applied by default.

## 7. ROBO-ADVICE

### 7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?

Yes, there are financial institutions that offer their services through the use of robo-advisor technologies, although the use of this technology is very limited. There is no regulation of robo-advisor technology in Paraguay.

### 7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?

There is no regulatory requirement to offer full or partial advisory services through robo-advisor technologies. However, we must mention that there are regulations of the Central Bank of Paraguay that require face-to-face attention to certain services.

## 8. NEOBANKS

### 8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

There is no legal provision that regulates the constitution

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of Neobanks in Paraguay, likewise in the regulations that regulate the constitution of traditional Banks we see no impediment to the constitution of Neobanks. Now, if there are resolutions of the Central Bank of Paraguay that would make the constitution of Neobanks materially unfeasible, such as, for example, consumer service hours, the publication of information in bank branches, as well as the existence of a Face-to-face attention to consumer complaints.

### **8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

There is no regulatory requirement related to neobanks.



## MARIANNE SAAVEDRA ESCOBAR

**Address:** Avda. Peru 708

**Phone:** +59521205052

**Email:** marianne.saavedra@fca.com.py

Marianne has been part of FCA Law Firm since 2016, she is an associate of the Firm and focuses her activities on digital commerce practices and new technologies. She is also in charge of the labor area of the firm.

She is a lawyer from the Catholic University “Nuestra Señora de la Asunción”, Paraguay, graduated with highest distinction. Likewise, she is public notary for the same university, and she is studying the Master of Business Law (MADE) and in the process of obtaining her doctorate, all from the same university.

Marianne has extensive experience in the new technologies and electronic commerce sector, she has worked with various clients for the incorporation of technologies in financial institutions and startups.



## JEAN SAAVEDRA ESCOBAR

**Address:** Avda. Peru 708

**Phone:** +59521205052

**Email:** marianne.saavedra@fca.com.py

Jean Sebastian has been part of the FCA Law Firm since 2016, he is an associate of the Firm and focuses his activities on the practices of Banking Law, Securities Market. He is also in charge of the tax area of the firm.

He is a lawyer from the Catholic University “Nuestra Señora de la Asunción”, Paraguay. He also has an LLM in International Business Law from the Paris II Panthéon Assas University. Likewise, he has postgraduate specializations by the International Bureau of Fiscal Documentation (IBFD) and the Austral University. Jean Sebastian has extensive experience advising financial institutions, financial associations, as well as clients operating in the stock market.

## **ABOUT THE FIRM.**

**Country:** Paraguay.

**Address:** Avda. Perú 708

**Phone:** +59521205052

**URL:** [www.fca.com.py](http://www.fca.com.py)



The Fiorio, Cardozo & Alvarado (FCA) firm was founded in 1981. Since then, our firm has participated in some of the most outstanding operations in Paraguay.

At FCA we offer complete legal services. We have a permanent team of twenty lawyers, specialized in all matters related to business law.

We provide legal advice to local and international companies, both recurring and transactional.

Our hallmark is the high level of integrity and professionalism that we offer our clients. We offer solutions according to the situations that arise with the evolution of technology and markets.

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# REBAZA, ALCÁZAR & DE LAS CASAS

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**URL:** [www.rebaza-alcazar.com](http://www.rebaza-alcazar.com)

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

Peru’s fintech ecosystem went from 47 fintech startups in 2017, to 132 in 2021, tripling in just 4 years; having “Online Lending” as dominant segment (25%), followed by “Payments and Remittances” (23%) and “Wealth Management” (17%) (Fintech Radar 2021). Currently, as of 2022, the Peruvian market has 185 fintech companies.

In this regard, greater growth is observed from 2020 onwards, due to the adjustments to the remote scheme in the midst

of the Public Health Emergency Declarations, which led to the promotion and approval of regulations regarding: (i) the provision of 100% digital financial and insurance services, allowing companies regulated by the Superintendency of Banking, Insurance and Private Pension Fund Administrators (SBS) to operate without physical offices, as well as the establishment of credit companies (Legislative Decree 1531); (ii) the legal regime for crowdfunding platforms, adjusting the draft law proposed in 2017 and referred to in previous editions of this Guide (Res. SMV 045-2021); (iii) the management of information security and cybersecurity for regulated companies (Res. SBS 504-2021); (iv) the promotion of micro, small and mid-size companies, entrepreneurship, and startups’ financing (Urgence Decree 013-2020); (v) the strengthening of negotiable invoices’ trade (Supreme Decree 239-2021-EF), among others.

Likewise, a series of measures were published that made the legal provisions regarding electronic money (EM) (pioneer rules in Latin America) more flexible, allowing not having a fixed issuance limit for general-EM-account transactions (Urgence Decree 013-2020), increasing the limit for simplified EM transactions (Res. SBS 1262-2020), and temporarily exonerate the Value Added Tax from EM issuance (Legislative Decree 1519).

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

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Fintech technologies have begun to be regulated by several Peruvian regulatory bodies, such as the Peruvian Central Reserve Bank (BCRP), the SBS (to which the Financial Intelligence Unit (UIF-Peru) is attached), and the Superintendency of the Securities Market (SMV), addressing matters regarding the technological progress in the Peruvian financial market, such as the digital payments system, financial and investment operations executed through virtual platforms, the use of electronic money, etc. It should be noted that, as of today, there is no special law concerning the fintech industry as such that regulates it in a unified and comprehensive way, as is the case in other Latin American jurisdictions.

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

On January 23rd, 2020, with the approval of provisions for the promotion of micro, small and mid-size companies, entrepreneurship, and startups' financing (Urgence Decree 013-2020), companies under the supervision of the SBS or SMV were granted the possibility to temporarily carry out operations or activities through innovative models, with exceptions to the applicable regulation under test environments controlled by said regulatory entities.

Accordingly, on August 20th, 2021 the regulation for such activities within the financial system was published (Res. SBS 02429-2021), allowing companies under supervision and regulation of the SBS to execute these innovative activities

through of "pilot trials", taking into consideration whether they: (i) would require a temporary loosening of regulatory requirements, or (ii) would develop operations or activities not foreseen by the current regulatory framework.

As this SBS sandbox only applies to companies supervised by said regulatory entity, it limits other fintech companies in the market (not authorized by the SBS to incorporate themselves as financial system's companies) from accessing this innovative financial activities' testing process.

As of today, there are still no regulations regarding the development of activities through innovative models within the framework of the securities market, under the SMV's purview, which is why this sandbox is not operational.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

Peruvian financial entities can invest or acquire companies in the fintech sector, so there are no restrictions.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

In accordance with the Consumer Protection and Defense Code (Law 29571), a "consumer" is generically defined as an individual or company that acquires, uses, or enjoys, as a final recipient, or a product or service for its own benefit, or

its family or social group, in a field other than a business or professional activity.

Peruvian jurisdiction has several provisions regarding the protection of users of financial services and/or products, offered by companies in the financial system, regulated and supervised by the SBS; as set out in the Complementary Law to the Consumer Protection Law regarding Financial Services (Law 28587), the Financial System's Market Conduct Management Regulation (Res. SBS 3274-2017), the Customer Service Circular (Circular G-184-2015), among others. According to the aforementioned rules, a "user" will be understood as anyone who acquires, enjoys, uses – or potentially could use– products or services offered by a multiple operation company subject to specific regulation of the SBS (bank, financial institution, cooperative authorized to receive deposits from the public, credit companies), Banco de la Nación and/or Banco Agropecuario.

The purpose of those above exposed is to provide transparency to the information regarding financial products or services, specially concerning applicable interest rates; the answer of complaints within defined deadlines; the application of fees and expenses, among others.

Consumers of credit services provided by companies not supervised by the SBS are subject to the obligations set forth in the Consumer Protection and Defense Code (Law 29571) and in Law 28587, above mentioned.

## 2. LENDING AND FINANCING

### 2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS

### FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?

In Peruvian jurisdiction, lending crowdfunding is regulated by the Financial Participative Funding Activity and its Manager Companies Regulation (Res. SMV 045-2021), in which it is called "lending modality of financial participative funding".

According to this regulation, those who intend to engage in crowdfunding projects need to comply with certain requirements. Those who participate as investors must: (i) be individuals over 18 years of age, or a company or collective entity; and (ii) seek financial returns on their investment. On the other hand, funding receptors (or beneficiaries) must: (i) be individuals domiciled in Peru, or companies duly incorporated in Peru; and (ii) request financing in their own name (they cannot have the purpose of financing third parties, nor, in particular, the granting of credits or loans).

Additionally, funding receptors should consider that their projects must be developed entirely in Peru, and that they will have a 90-day term for resource-gathering, subject to an additional 90-day extension if the manager company deems it so after an evaluation.

To this date, the mentioned regulation sets caps to investments: (i) by type of project –personal or business–; (ii) by type of funding receptor –individual or company–; and (iii) by type of investor –retail or institutional–. Also, it forbids manager companies from granting credits to receptors and/or investors of projects offered through the platform under their management.

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**2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

Peer-to-peer lending (P2P) is not regulated in Peruvian jurisdiction.

**2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Peruvian consumer protection regulations are only applicable to lending crowdfunding or P2P lending if: (i) a provider-client relationship is formed due to these activities (e.g., the relationship between the crowdfunding platform's manager company and the lender, or between said manager company and the investor); and (ii) such relationship has effects within the Peruvian territory.

The generic obligations established on the Consumer Protection and Defense Code (Law 29571) are applicable, as long as the client complies with the requirements to be considered a "consumer", as this is detailed in the answer to question 1.5.

**2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

Donation or reward-based crowdfunding is not regulated in Peruvian jurisdiction.

Financial Participative Funding Activity and its Manager Companies Regulation (Res. SMV 045-2021) explicitly excludes from its scope funding operations performed in such ways. Said operations can be performed under the provisions of the Peruvian Civil Code and tax regulations, accordingly (e.g., the trade of a future good, an anticipated trade, or even the trade of a joint venture).

**2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

Crowdfunding is not regulated in Peruvian jurisdiction.

Financial Participative Financing Activity and its Manager Companies Regulation (Res. SMV 045-2021) explicitly excludes from its scope funding operations performed in such way.

**3. INVESTMENT AND CAPITAL MARKETS****3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

In Peruvian jurisdiction, equity crowdfunding is regulated by the Financial Participative Funding Activity and its Manager Companies Regulation (Res. SMV 045-2021), in which it is



called “securities modality of financial participative funding”.

### **3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

Crowdequity platforms must comply with generic and specific requirements established by the Financial Participative Funding Activity and its Manager Companies Regulation (Res. SMV 045-2021).

On a general note, all crowdfunding platforms must: (i) be run by a manager company duly authorized by the SMV for such activity and signed on the special registry of this regulatory entity; and (ii) permanently disseminate certain minimum information pursuant to the crowdfunding modality it performs, the available funding receptors and projects, the dispute resolution mechanisms it manages, template-agreements for investments, among others established by the SMV.

Specifically, crowdequity financing platforms must limit themselves to publishing “business projects”; that is, projects directed by individuals with businesses or companies that seek to finance operations, undertakings or business ideas, informing the minimum criteria indicated in the aforementioned regulation.

### **3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

Crowdequity projects, funding receptors and investors are

subject to the terms and conditions mentioned in the answer to question 2.1, applicable to lending crowdfunding.

Securities from crowdequity projects must represent capital or debt, under the Securities Market Law (Legislative Decree 861).

In accordance with the Financial Participative Funding Activity and its Manager Companies Regulation (Res. SMV 045-2021), under no circumstance secondary negotiation shall be carried out through the crowdfunding platforms.

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

Cryptocurrencies are not regulated in Peru through specific legislation and, therefore, to date, they are governed by the rules of the Peruvian Civil Code, having the generic quality of intangible personal property.

In this regard, efforts are being made by local authorities such as the SBS and the UIF-Peru, to develop a diagnosis about the use and presence of cryptocurrencies in our country; specially since, to date, there is still no applicable legislation for operations carried out with them. In 2020, the SBS published a situational diagnosis, with comparative legislation referred to the money laundering and terrorism financing risk exposition in Peru, in which the institution states that the regulation of virtual assets must focus on their use and not on them per se (activity-based approach). On this matter, the SBS suggested to the Peruvian Ministry of Justice and Human Rights the inclusion of virtual asset service providers in the list of subjects compelled to report to the UIF-Peru.

Additionally, Draft Bill N° 1042-2021-CR, which proposes

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establishing the guidelines for the operation and functioning of crypto-asset exchange service companies through technological platforms, is currently on the agenda of the Peruvian Congress.

It is worth bearing in mind that the BCRP has warned users that cryptocurrencies are unregulated financial assets, and do not have the status of legal tender, nor are they backed by central banks. Thus, at the beginning of 2022, the president of the BCRP declared that it is not the institution's intention to regulate cryptocurrencies soon, as it is to regulate digital currencies, which are backed by legal tender.

### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

Holding and/or trading cryptocurrencies is not forbidden by Peruvian laws.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

Cryptocurrency trading platforms are not regulated in Peru. Notwithstanding this, and considering the business strategy of each particular case, companies that operate cryptocurrencies trading platforms may run the risk of engaging in financial intermediation activities, which are forbidden and sanctioned for those who do not have the required authorization issued by the SBS, if such companies receive money from third parties, and such is placed on

the market, on a regular basis, in the means of credits, investments or fund allocation.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

No, Peruvian financial entities are not authorized to hold, trade or broker cryptocurrency transactions.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

Public Offerings of cryptocurrencies are not authorized in Peru.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Please, refer to the answer to question 2.3.

## **5. DISTRIBUTED LEDGER**

### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

The use of distributed ledger technologies is not regulated in Peru.

## **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

According to local media reports, foreign-owned financial institutions in Peru are currently investing in research for a potential application of distributed ledger technologies.

At the end of 2020, the Peruvian governments' Public Purchases Center registered a total of 154,400 purchase orders using blockchain technology, a type of distributed ledger technology, with the aim of bringing transparency to public procurement transactions.

## **6. INSURTECH**

### **6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Insurtech technology is not regulated in Peru.

Notwithstanding this, Insurance Products Commercialization Regulation (Res. SBS 1121-2017) rules the marketing of said products performed through remote systems, which includes the use of telephone, internet or other similar systems that allow insurance companies to reach their contractors and/or potential insured individuals without meeting them face-to-face, as to promote, offer and/or market their products. Said regulation also considers digital marketing through

social media networks and price comparison systems and establishes certain conditions and security requirements for this type of commercialization.

### **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Insurtech industry is not regulated in Peru. Please, refer to the answer to question 6.1.

### **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

Insurtech technologies are not regulated in Peru, as there is no particular regulation for this segment.

## **7. ROBO-ADVICE**

### **7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

Financial and/or securities market institutions in Peru do not yet offer their services using robo-advice technology.

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**7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

Robo-advisor technology is not regulated in Peru.

**8. NEOBANKS****8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

The incorporation of Neobanks is allowed in Peruvian jurisdiction. Nevertheless, it should be noted that they are not regulated as financial system entities licensed to operate as such by the SBS.

Thus, this sort of digital services company, without an authorization from the SBS, cannot receive money from the public on a regular basis or offer services associated to a financial entity. In view of this, a recurring market practice to allow Neobanks to offer their services is the establishment of an alliance or outsourcing agreement between a company that offers digital financial services to its users and a regulated financial system entity, duly authorized by the SBS. The described model allows the formation of Neobanks that receive the public's resources and offer services of financial intermediation without an authorization from the SBS but backed up by an authorized financial entity.

The best-known Peruvian Neobanks set up under this model are Rappibank, based on the alliance between Rappi and Interbank; and Kontigo, to which approximately 20 financial

entities have joined, among these, BBVA, Banco de Comercio and many financial cooperatives throughout the country.

**8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

There are no specific regulatory requirements for Neobanks, which operate as “alliances” between not regulated companies and regulated financial entities, as indicated in answer 8.1. abovementioned. Nonetheless, certain limitations must be considered.

Thus, in accordance with the General Law of the Financial System and the Insurance System and the Organic Law of the SBS (Law 26702), companies that are not part of the financial system (i.e., those that are not authorized by the SBS to operate as such), cannot name themselves “banks”, or adopt names that suggests such companies are regulated financial entities; nor can they offer services exclusively reserved for companies authorized by the SBS.

**9. OTHER MATTERS****9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

Crowdfunding platform manager companies incorporated

in Peru, and duly authorized by the SMV for this purpose, are entities compelled to report to the Financial Intelligence Unit (UIF-Peru), which is why it is necessary to consider the regulatory framework regarding anti-money laundering and terrorism funding prevention (AML), so as to avoid committing these crimes and other related illicit activities.

The legal AML framework is primarily made up of the following: the Law that creates the UIF-Peru (Law 27693), its Regulation (Supreme Decree 020-2017-JUS), and the Law that incorporates the UIF-Peru to the SBS (Law 29038). Notwithstanding the above, and in a complementary way, entities compelled to report to the UIF-Peru, are subject to the provisions issued by its supervising entity (such as the SBS, SMV, National Superintendency of Tax Administration, among others) regarding AML matters.

As crowdfunding platform manager companies are under the regulation of the SMV, the specific dispositions issued by this regulator, on AML matters, shall apply to them (e.g., the Regulation for the Prevention of Money Laundering and Financing of Terrorism, CONASEV Resolution 033-2011-EF-94.01.1).

Likewise, as part of the development of fintech companies' activities, it is relevant to consider the Personal Data Protection Law (Law 29733), as well as its Regulation (Supreme Decree 003-2013-JUS), since, as a part of their services, those companies collect personal data from their clients. Under the mentioned rules, fintech companies are compelled to ensure an adequate treatment of such personal information, as well as to offer the minimum-security components to preserve the information's content.

Finally, it is worth highlighting the regulation concerning the payment and cards market in the country, which should be

taken into consideration when establishing a portfolio of fintech products or services that may include contactless payment methods.

Thus, this regulation is in charge of both the BCRP and the SBS. The applicable regulations include: (i) the Law on Payments Systems and Securities Settlement (Law 29440), which establishes the BCRP as the governing body of payment systems; (ii) the Credit and Debit Cards Regulations (Res. SBS 6523-2013), which determines the contractual conditions and the security measures that must be complied with in the issuance and offer of these payment instruments; and (iii) the Regulation on the Interoperability of Payment Services offered by Payment Providers, Agreements and Systems (Circular 0024-2022-BCRP), which, in order to improve the efficiency of digital payments market, allows electronic wallets operating in the country to be interconnected.

## RAFAEL ALCÁZAR

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**Email:** rafael.alcazar@rebaza-alcazar.com

## ALEXANDRA ORBEZO

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**Email:** alexandra.orbezo@rebaza-alcazar.com

## MARIA ISABEL PASTOR

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**Email:** Misabel.Pastor@rebaza-alcazar.com

## JULIO PAREJA

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**Email:** julio.pareja@rebaza-alcazar.com

## CAMILA HERNANDEZ

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**Email:** camila.hernandez@rebaza-alcazar.com

## **I ABOUT THE FIRM.**

**Country:** Peru.

**Address:** Av. Víctor Andrés Belaúnde 147. Vía Principal 133, Pisos 2 y 3. Edificio Real Dos San Isidro - Lima 27

**Phone:** (+511) 4425100

**URL:** [www.rebaza-alcazar.com](http://www.rebaza-alcazar.com)

## **REBAZA, ALCÁZAR & DE LAS CASAS**

With clients that go from emerging companies, such as fintech companies, start-ups and insurtechs, to high yield funds, financial institutions –traditional and digital– among others; our Fintech team has a track record in dealing with complex matters related to finance and technology. Among them, we highlight the advisory in different subjects, such as loans, payment methods and billing technology, financial information services, transaction, commerce and stock/securities compensation, retail and consumer banking, money transfer and payments, blockchain, electronic money, factoring and leasing solutions, banking infrastructure, wealth management, investors' safety and protection, institutional investment tools, etc.

As comprehensive legal services firm, we have a great understanding of how a highly regulated market functions, such as the financial sector. Finally, our constant interaction with authorities and main players in the market gives us the opportunity to be at the forefront of it, allowing us to offer reliable, creative, and timely solutions to our clients.

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# ALTA, VALDÉS, SUÁREZ Y VELASCO.

**Address:** Final Paseo General Escalón, no. 5682, Colonia Escalón, San Salvador, El Salvador.

**Phone:** +503 2527 2400

**URL:** <https://www.vsvlegal.com>

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?

The creation of the Office of Financial Innovation represents a first step towards the inclusion of financial technologies in the country. This office is responsible for advising and promoting fintech-related ventures, as well as fostering the development of the necessary regulations to create the right financial ecosystem for these technologies.

This is a state policy focused on exploring new markets, creating opportunities for those interested in exploiting new

Alisson Vanessa Arevalo



José Andrés Garay Linqui



financial technologies to approach the Innovation Office. This approach is expected to bring about a revolution in the financial market, while at the same time promising vigilance by the authorities to ensure that the financial system evolves accordingly.

In addition, several regulations have been developed to achieve the Digital Agenda El Salvador 2020- 2030, which seeks to increase the use of ICTs. Among the most notable legal developments are: Law to Facilitate Financial Inclusion, Bitcoin Law and other related regulations, and the Electronic Signature Law.

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

The only fintech technologies that are regulated in the country are those related to the bitcoin cryptocurrency, since it is legal tender, and electronic money providers. The regulations for each of the aforementioned areas are as



follows:

- o Bitcoin Law
- o Bitcoin Law Regulations
- o Bitcoin Technical Standards
- o Guidelines for the Authorization of the Operation of the Bitcoin and Dollar Services Technology Platform
- o Law for Facilitating Financial Inclusion

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

No, there is currently no regulation for the operation of a regulatory sandbox. However, as developments in the digital ecosystem emerge, there is a possibility that one could be established.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

As fintech regulation is still in constant development, there are no specific regulations for the investment or acquisition of companies in these areas, with the exception of e-money services, for which the Law to Facilitate Financial Inclusion empowers banks to provide these services. Furthermore, under Salvadoran banking legislation, banks are empowered to invest in capital companies that offer financial services complementary to those provided by banks.

On the other hand, and under the supervision of the

Superintendency of the Financial System, the holding companies of financial conglomerates may invest in companies that are in operation or in the constitution of companies.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

Salvadoran legislation does not make any distinction between consumers and financial consumers, as there are no special regulations for the protection of the rights of financial market consumers; however, the Consumer Protection Law does regulate financial service providers carefully to guarantee the welfare of financial market consumers.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?**

In El Salvador, there are no regulations or legislative proposals to regulate this type of fintech, so no specific guidelines have been established for consumers and investors in these projects. However, as fundraising from the public is an

## EL SALVADOR

essential mechanism of crowdfunding, projects seeking to develop this business model will require prior authorization from the Superintendency of the Financial System in order to be able to operate.

In addition, the conditions under which investors or creditors make loans through the crowdfunding lending platform must not contravene the Law Against Usury.

### **2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

There is currently no regulation governing peer to peer lending and there are no legislative proposals for its regulation. Therefore, the regulations applicable to this type of lending would be the general commercial legislation and the Law Against Usury. In addition, since peer-to-peer lending is a fund-raising mechanism, any project seeking to adopt this business model in El Salvador will require prior authorization from the Superintendency of the Financial System in order to operate.

### **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL**

### **REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

Since there is no financial consumer protection regime in the law, consumers are referred to the general rules of the Consumer Protection Law with its respective regulations; however, Salvadoran consumer protection legislation does regulate financial service providers to ensure the protection of consumers in this market. Consequently, in case of any conflict or abusive practice in a lending crowdfunding or P2P lending, the Consumer Ombudsman's Office can be contacted and the corresponding sanctioning procedure can be initiated based on the Law Against Usury and other applicable regulations.

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

This type of crowdfunding is not specifically regulated in the country; however, companies that intend to develop a crowdfunding platform must have the proper authorization from the Superintendency of the Financial System (Superintendency of the Financial System) to operate. Otherwise, they may incur in the crime of illegal collection of funds from the public (Article 184 of the Banking Law).

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE?**

There is no special regulation aimed at regulating crowdfactoring. On the other hand, factoring contracts in

the country are unnoted contracts and the only specific regulation is the one issued by the Central Reserve Bank of El Salvador called “Minimum Guidelines for the Active Operation of Factoring by Banks, Cooperative Banks and Savings and Credit Societies”. In addition, as the collection of funds from the public is an essential mechanism, projects seeking to adopt this business model must obtain prior approval from the Superintendency of the Financial System in order to be able to operate.

### 3. INVESTMENT AND CAPITAL MARKETS

#### 3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?

There is no specific regulation governing equity crowdfunding, but rather the Securities Market Law must be applied, and where it is not regulated or applicable, the Commercial Code. Currently, equity crowdfunding platforms have not been implemented in the Salvadoran market, but as financial technologies develop, it is possible that they will be regulated by the relevant authorities.

#### 3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?

In our regulatory framework, there is a limitation to its operability until a special regulation for equity crowdfunding is developed. According to article 3 of the Securities Market Law any security that is the object of a public offering, as well as its issuers, must be registered in the Public Stock Market Registry of the Superintendency of the Financial System.

#### 3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?

As explained in the preceding questions, there is no regulation that establishes particular requirements applicable to investors or to the securities of crowdequity projects, nor has a special market been created for these issues. The types of market established by the Securities Market Law are: i) Primary: One in which issuers and buyers participate directly or through brokerage firms in the purchase and sale of securities offered to the public for the first time, and ii) Secondary: One in which securities are traded for the second or more times.

### 4. CRYPTOCURRENCIES

#### 4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?

There is no general regulation governing cryptocurrencies as a whole, but the Bitcoin cryptocurrency in particular is regulated by the Bitcoin Law adopted in 2021. This is a consequence of the fact that this currency has been declared legal tender in the country on a par with the dollar.

#### 4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?

It is permitted to trade or hold cryptocurrencies, even if they

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are different from bitcoin, but they do not enjoy the benefits and privileges of bitcoin. In addition, the government encourages the use of cryptocurrencies (but with greater emphasis on bitcoin) and has regulated Bitcoin service providers, including digital wallets, ATMs, exchange houses, among others. The state has even developed its own mobile application for investing, transferring and exchanging bitcoin to dollars. In addition, the government set up a trust to support bitcoin transactions and their transformation into dollars through the state platform.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

The regulation on this topic focuses on the Bitcoin cryptocurrency. According to the Regulation of the Bitcoin Law, Bitcoin service providers will have to register in the Bitcoin Service Providers Registry of the Central Reserve Bank. This registry must include exchanges and payment processors or wallets. In order to register, the form issued for this purpose, the articles of incorporation and the identity documents or passport (in the case of foreigners) of the partners must be submitted. In addition, other requirements for this type of providers are regulated, such as: maintaining an anti-money laundering program, developing policies to prevent the deterioration of customer assets, keeping a register of complaints, maintaining a cybersecurity program, among other requirements.

### **4.4. ARE FINANCIAL ENTITIES**

### **ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

As a consequence of Bitcoin being legal tender, it can circulate with the same ease and the same liberatory power as the dollar, so it is possible for financial institutions to trade or exchange this currency. On the other hand, the regulations of the Bitcoin Law stipulate that banks may provide financial services to Bitcoin service providers or open accounts for Bitcoin users, but they must have control and risk management policies for these customers.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

Initial Coin Offerings are not regulated in Bitcoin legislation. However, for the sake of the Salvadoran financial market, any project focused on making a public offering, since it is understood as a fundraising activity, must be previously approved by the Superintendence of the Financial System.

### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

As explained in previous questions, there is no special regulation for the protection of financial consumers, so general consumer protection regulations apply to such consumers of trading platforms.

## 5. DISTRIBUTED LEDGER

### 5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?

With the entry into force of the Bitcoin Law, distributed ledger technologies have started to gain popularity in El Salvador, both for cryptocurrencies and different products that can take advantage of both DLT and Blockchain technologies. However, there is no specific regulation issued by state entities regarding the use of these technologies.

### 5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?

Currently, DLTs have not been widely implemented in the financial technologies available in the country, beyond Bitcoin-related services.

## 6. INSURTECH

### 6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?

Yes, it is possible, even in recent years, insurance companies

have started to implement web platforms or mobile applications to consult insurance policies, make online payments, provide a digital ID card, among others. Some of the larger companies that have implemented these technologies are ASSA and SISA. Additionally, there is a company called SOSTENGO whose services are provided completely digitally through its mobile application, so the entire process is carried out online.

### 6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?

In El Salvador, there is no regulation, project or policy regarding insurance distribution models through Insurtech technologies.

### 6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?

There is currently no special regulation for Insurtech technologies, so the general regulations for any type of insurance company will apply.

## 7. ROBO-ADVICE

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### **7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

Robo-advisor technology or automated advisors are not currently regulated in Salvadoran legislation, nor have they been widely applied in the Salvadoran financial market.

### **7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

There is currently no regulation of robo advisor technology. It is hoped that soon they will begin to be integrated into the Salvadoran market, and that the Office of Financial Innovation, the Central Reserve Bank and the Superintendency of the Financial System will be able to create a specific regulatory framework.

## **8. NEOBANKS**

### **8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?**

There is no express prohibition on the establishment of a Neobank, except that it must comply with the general regulations in force for it to operate as a financial institution. It is worth noting that an initiative is underway in the country to set up the first Neobank in the Central American region.

The leader of the initiative is the El Salvador-based fintech N1co, which has already raised a seed capital of USD 18 million.

### **8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?**

As there are no special regulations governing Neobanks, there are no particular requirements beyond compliance with current legislation on the functioning of financial activity.

## **9. OTHER MATTERS**

### **9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

Currently, in El Salvador there is a great interest in encouraging innovation and the implementation of information technologies, as reflected in the government's Digital Agenda 2020-2030. This digital agenda has among its objectives the creation of an ecosystem for the management of personal data and the secure exchange of information, as well as the modernization of the state.

On the other hand, the creation of the Office of Financial Innovation, at the initiative of the Central Reserve Bank and the Superintendency of the Financial System, allows fintech entrepreneurs to have a means of support and advice for the implementation of their ideas, as well as their

legal implications. In addition, the Innovation Office is also responsible for proposing and encouraging the creation of greater regulation around fintech.



## ALISSON VANESSA AREVALO RAMÍREZ

**Address:** Final Paseo General Escalón, No. 5682, Colonia Escalón, San Salvador, El Salvador.

**Phone:** 25272422

**Email:** aarevalo@altalegal.com

Alisson Arévalo has been a Paralegal at Alta-Valdes, Suarez y Velasco since May of 2022. Currently, she is scholarship student in her senior year of the Law Degree at the Escuela Superior de Economía y Negocios (ESEN), with experience in corporate, labour, civil and commercial law. She is also part of the Global Scholarship Program of the international law firm DLA Piper and has attended the Development Training organized by the firm held in the first week of November this year in South Africa.



## JOSÉ ANDRÉS GARAY LINQUI

**Address:** Final Paseo General Escalón, No. 5682, Colonia Escalón, San Salvador, El Salvador.

**Phone:** 25272417

**Email:** alinqui@altalegal.com

Andrés Linqui is an associate of Alta - Valdes, Suarez y Velasco since 2021. He obtained his law degree from the Escuela Superior de Economía y Negocios (ESEN), and has, within his professional practice, experience in corporate law, banking law, corporate governance, share purchase and sale and others, both in national and international transactions.



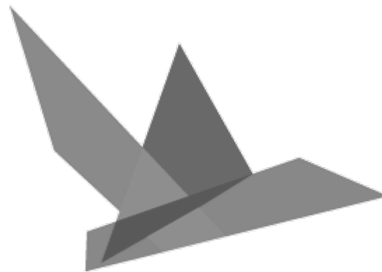
## **ABOUT THE FIRM.**

**Country:** El Salvador.

**Address:** Final Paseo General Escalón, no. 5682, Colonia Escalón, San Salvador, El Salvador.

**Phone:** +503 2527 2400

**URL:** <https://www.vsvlegal.com>



**ALTA**  
VALDÉS, SUÁREZ & VELASCO

Alta-Valdés, Suárez & Velasco is the El Salvador office of the regional firm ALTA, which was formed from the union of the following 4 firms: in Guatemala (QIL+4 ABOGADOS), in El Salvador (Valdés, Suárez & Velasco), in Honduras (Melara & Asociados) and in Costa Rica (Batalla). ALTA's focus is to be the best ally for its clients and to conduct business in Central America.

The firm specializes in different areas of law, including (i) Mergers and Acquisitions; (ii) Financial; (iii) Contractual; (v) Corporate; (vi) Real Estate; (vii) Tax, among others.

# URUGUAY OLIVERA ABOGADOS

**Address:** Misiones 1424, Piso 2°, Montevideo

**Phone:** +598 2916 5859

**URL:** <https://olivera.com.uy/>

## 1. OVERVIEW

### 1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY (“FINTECH”) INDUSTRY IN YOUR JURISDICTION?

The legal developments that Uruguay has had with regards to financial technology, have mainly followed the global tendencies. The main regulations and prospective regulations in this field are:

a) Financial monetary mediation through web apps or other electronic means Regulation (Peer to Peer Lending). Dated November 23rd, 2018, the Financial Services Superintendence (“SSF” for its initials in Spanish) of the Central Bank of Uruguay (“BCU” for its initials in Spanish) adopted Circular N° 2.307, by which it regulated, among others, peer to peer lending platforms (web apps or other electronic means designed to mediate between offerors and borrowers of money lending).

b) Collective Financing Regulation (Crowdfunding). The Entrepreneurship Encouragement Law, N° 19.820 dated September 27th, 2019, introduced in its Title II, the regulation of the collective financing system (“crowdfunding”). In this context, on December 28th, 2020, BCU’s SSF adopted Circular N° 2.377. By which the issuance of securities through collective financing platforms was regulated.

c) Virtual Assets Regulation. Recently, on September 5th, 2022, the Executive Power referred to the Legislative Power a prospective law regarding the regulation of virtual assets. This prospective law is currently being discussed at the Chamber of Representatives (Parliament).

### 1.2. ARE FINTECH TECHNOLOGIES REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TO FINTECH DEVELOPMENTS IN YOUR JURISDICTION?

Currently there is no exhaustive and comprehensive regulation of all the possible Fintech business models. On the

Federico Rocca Temesio



Juan Mailhos Gallo



contrary, there are only isolated and segmented regulations regarding different specific subjects, related to Question 1.1.

However, the BCU –as regulatory and controlling entity of the national financial system– has issued specific opinions regarding the regulatory strategy relating to virtual assets (with its logical impact on Fintechs). Specifically, the BCU held that, for the development of a regulatory response in our country, it is convenient to analyze the current legislation and the need to pass legislation and regulation only in the cases where the operation with virtual assets is understood to be under the controlling powers of BCU (and not a generic regulation of these kind of assets).

### **1.3. HAS YOUR JURISDICTION IMPLEMENTED ONE OR VARIOUS SANDBOXES FOR THE FINTECH INDUSTRY? IF SO, PLEASE EXPLAIN THE DETAILS AND SCOPE OF THE SANDBOX.**

By resolution of the BCU's Board of Directors, N° D-286-2020, dated November 18th, 2020, considering the creation of new services and business models carried out by traditional financial institutions, technological companies, and new companies, by means of technological innovation, it was decided to: (i) Create an Innovation Observatory; (ii) Create the Innovation Office, and (iii) Create an Innovation Node.

In particular, regarding the Innovation Node, its objective is to periodically exchange views between entities in or related to the financial sector, and the state sector; facilitate the realization of innovation projects and the creation

of basic infrastructure for its development; facilitate the comprehension of the impact of innovation with regards to regulation and supervision, and also relating to the regulatory framework in which financial innovation is carried out. The Innovation Node is comprised by those who take part in the Innovation Observatory, and also representatives of the financial and software industry, state offices, and other interested entities which may have an interest in subjects of Fintech innovation. This Innovation Node -created by the regulator itself- does nothing more than to operate as a sandbox for the Fintech industry.

### **1.4. ARE FINANCIAL ENTITIES IN YOUR JURISDICTION ALLOWED TO INVEST IN, OR ACQUIRE FINTECH COMPANIES?**

As general rule, there are no impediments for financial entities to invest in, or acquire Fintech companies, with the only distinction being that the financial intermediation institutions are subjected to certain operative restrictions.

The Financial Intermediation Law, N° 15.322 of September 17th, 1982, established certain operative restrictions to the financial intermediation institutions (e.g. banks, financial intermediation cooperatives, external financial institutions) including the prohibition to invest in stock or other securities issued by private companies.

Notwithstanding this fact, the Compilation of Rules of Regulation and Control of the Financial System issued by the BCU (in its article 252) states that non-state financial intermediation institutions – with previous BCU authorization

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– may acquire stock or participation in the capital of (a) financial institutions located abroad Uruguay; (b) external financial intermediation institutions; (c) companies that manage pension funds; (d) Investment Banks; (e) companies that manage investment funds; (f) other companies that are acquired with the purpose of accessing necessary services to carry out the operations that the institution is authorized to regularly perform.

Ultimately, as long as the operation is encompassed in one of the exceptions previously mentioned, financial intermediation institutions may invest or acquire Fintech companies, with previous authorization from the BCU in the previously stated conditions.

### **1.5. IS THE DISTINCTION MADE BETWEEN CONSUMER AND FINANCIAL CONSUMER IN YOUR JURISDICTION? IF SO, PLEASE EXPLAIN IF THERE ARE SPECIAL REGULATIONS FOR THE PROTECTION OF FINANCIAL CONSUMER RIGHTS.**

There is no legal distinction in Uruguay between consumer and financial consumer.

However, the BCU has passed specific regulations (both for the financial system and the stock market) with regards to the protection to the user of financial services, regulating (i) good practices that regulated institutions must adhere to when carrying out their business with their clients; (ii) the adoption of a Good Practices Code; (iii) the adoption of a claims support procedure; (iv) contracts' regulations (v)

prohibition to include abusive clauses; etc.

Finally, on August 9th, 2022, BCU's SSF put into consideration of the entities subject to its regulation, and the general population, a project of "Good Practices Guide of Protection to the Consumer of Financial Services". Notwithstanding the notion of "financial consumer" not being expressly contemplated by our legal framework, this Guide uses such an expression. This is not a binding document.

## **2. LENDING AND FINANCING**

### **2.1. IS LENDING CROWDFUNDING REGULATED IN YOUR JURISDICTION? ARE THERE LAWS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH LENDING CROWDFUNDING?**

Lending crowdfunding was not specifically regulated under Uruguayan law. Thus, we must look at the general legal framework. There are also no prospective law or regulation being discussed at the moment, that aims to expand on this topic.

The Financial Intermediation Law, N° 15.322 of September 17th, 1982, states that "financial intermediation" (banking activity) is reserved exclusively for financial intermediation institutions, which require to function, previous authorization from the Executive Power and approval by the BCU, bearing in mind reasons of legality, opportunity and convenience. Given that lending crowdfunding is essentially taking financial resources from the public ("crowd"), to be later

borrowed to third parties with need of liquidity (“lending”), we understand that this type of crowdfunding would not be allowed in Uruguay unless it was carried out by a financial intermediation institution.

## **2.2. IS PEER-TO-PEER LENDING OR P2P REGULATED IN YOUR JURISDICTION? ARE THERE RULES OR PROJECTS TO REGULATE PARTICULAR REQUIREMENTS FOR CONSUMERS OR INVESTORS WHO WANT TO PARTICIPATE IN PROJECTS THROUGH P2P LENDING?**

On November 23rd, 2018, BCU's SSF passed Circular N° 2.307 by which it was regulated, among other, the P2P lending platforms (web apps, or other electronic means designed to mediate between offerors and borrowers of money loans).

As it is stated in the aforementioned regulation, in the business of mediation between offerors and borrowers of money loans, the companies that manage P2P lending platforms shall limit their activity to approach the parties involves, without undertaking any obligation or risk. All borrowers of money loans must be residents.

It is important to note that there are limits to the loans concluded through companies that manage P2P lending platforms. In general terms there are:

- o Limits to the total indebtedness in each P2P platform:
- o Natural person: 100,000 Indexed Units (approx. USD 14,000).

- o Legal person: 1,000,000 Indexed Units (approx. USD 140,000).

- o Natural or legal person with mortgage lien: 70% of the appraised value of the real estate asset.

- o Limits of lending through each P2P platform by lender:
- o Total lending amount, excluding credit secured with mortgage lien: 100,000 Indexed Units (approx. USD 14,000).
- o Total lending amount, when credit is secured with mortgage lien: 70% of the appraised value of the real estate asset.
- o When the lender owns more than 4,000,000 Indexed Units (approx. USD 560,000) in financial assets, the total lending amount for said lender - excluding credit secured with mortgage lien - shall be of 1,000,000 Indexed Units (approx. USD 140,000).

## **2.3. ARE THE CONSUMER PROTECTION REGULATIONS, IF THEY EXIST, APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING? ARE GENERAL CONSUMER PROTECTION RULES APPLIED OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

As it was previously stated in Question 1.5, there is no legal distinction in Uruguay between a consumer and a financial consumer. However, and notwithstanding the application of the general framework of protection to consumers, companies that manage P2P lending platforms must also comply with Book IV of the Compilation of Rules of Regulation and Control of the Financial System, which establishes the

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protection of the user of financial services.

### **2.4. IS DONATION OR REWARD-BASED CROWDFUNDING REGULATED IN YOUR JURISDICTION?**

There is no regulation for this type of donation or reward-based crowdfunding in Uruguay. However, we understand that the general legal framework for donations established in article 1613 and the following, of the Civil Code will regulate these operations, as applicable.

### **2.5. IS CROWDFACTORING REGULATED IN YOUR JURISDICTION? IF SO, WHAT ARE THE REQUIREMENTS TO BE ABLE TO OFFER THIS TYPE OF SERVICE**

Crowdfunding is not specifically regulated in Uruguay.

## **3. INVESTMENT AND CAPITAL MARKETS**

### **3.1. IS EQUITY CROWDFUNDING (CROWDEQUITY) REGULATED IN YOUR JURISDICTION?**

Yes, equity crowdfunding is regulated in the Entrepreneurship Encouragement Law, N° 19.820 dated September 27th, 2019, under its Title II, introduced regulation regarding collective financing (crowdfunding). In this context, on December 28th, 2020, BCU's SSF passed Circular N° 2.377, by which the issuance of securities through collective financing platforms was regulated.

The main change introduced by the aforementioned regulation, was the creation of the “collective financing platforms” as stock markets (both shares and/or securities), which are open to the participation of investors, but reserved for low value issuances.

The Circular regulates the process and requisites for an issuer to be listed in the crowdfunding platforms and also list the securities to be issued. As the securities issued through crowdfunding platforms, will be a public issuance of securities, both the issuer and the security need to be listed in the platform and the BCU.

### **3.2. WHAT KIND OF REQUIREMENTS ARE APPLICABLE TO CROWDEQUITY PLATFORMS?**

Circular N° 2.377 already referred to in the previous questions, introduced a new “license” in the stock market sector: “collective financing platforms”, which must have as its exclusive statutory activity, putting in contact, professionally and regularly, through web portals or other analogous means, to a plurality of natural or legal persons that offer financing (investors) with companies that request financing through the issuance of securities (issuers).

Before commencing their activities, collective financing platforms must present to the BCU's SSF, the information required by the applicable regulation and must constitute collateral security in favor of the BCU to guarantee the eventual obligations it might undertake with said entity, or with other third parties, in its activity. BCU's SSF will consider reasons of legality, opportunity and convenience, to grant

the authorization (license to operate).

These companies will be subjected to a strict regulatory framework regarding to: (i) legal nature (corporate type); (ii) certain prohibited operations; (iii) independent bank accounts; (iv) ordinances, manuals, and instructions; (v) transfer of shares; (vi) outsourcing; (vii) corporate governance; (viii) AML/CFT prevention; (ix) financial services user protection; (x) information reporting framework for the BCU, among others.

To this date, there are no companies that manage these platforms, registered under BCU's SSF. Thus, there have been no issuance of securities through these platforms, up to this date.

### **3.3. ARE THERE PARTICULAR REQUIREMENTS APPLICABLE TO INVESTORS OR TO THE VALUES OF CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET FOR THESE EMISSIONS?**

Previously mentioned Circular N° 2.377 introduced limits that issuance of securities through collective financing platforms must observe. Notably:

- o Issuing limits: The total amount in circulation by issuer, in all collective financing platforms, must not surpass the amount of 10,000,000 Indexed Units (approx. USD 1,400,000).

- o Investment limits applicable to small investors (\*):
- o Unless expressly stated exceptions, a small investor's investment must not surpass an equivalent to 40,000

Indexed Units (approx. USD 6,000) by issuance, nor surpass an equivalent to 120,000 Indexed Units (approx. USD 18,000) in securities issued in a single collective financing platform.

- o They will not be able to invest in securities representing capital, debt or mixed titles, that incorporate implicit derivatives.

(\*) Those investors with financial assets are inferior to an equivalent of 1,000,000 Indexed Units (approx. USD 140,000), are considered small investors.

Also, the BCU's regulation with regards to the stock market, expressly established that collective financing platforms must provide a specific field for the secondary negotiation of securities listed in the platform. To this date there is no (actual) secondary market for these securities (as, to this date, there have not been any registered public securities issuance through this type of platform).

## **4. CRYPTOCURRENCIES**

### **4.1. ARE CRYPTOCURRENCIES REGULATED IN YOUR JURISDICTION?**

To this date, there is no specific regulation that deals with cryptocurrencies. However, it must be noted that:

- a) On September 5th, 2022, the Executive Power sent to Parliament a prospective law, with regards to the regulation of virtual assets, within which cryptocurrencies may be encompassed.

- b) On August 12th, 2021, the Tax Authority ("Dirección General Impositiva") issued an opinion regarding to Tax Consultation N° 6419. In said opinion, the Tax Authority concluded that: (i) cryptocurrencies are not money; (ii) cryptocurrencies are

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not electronic money; and (iii) cryptocurrencies must be considered as intangible movable assets.

c) On October 1st, 2021, the BCU issued a communication regarding virtual assets (classification under which the notion of cryptocurrencies might fall) establishing, among other: (i) that they do not constitute legal currencies; and (ii) that the issuance and commerce of these instruments is not an activity encompassed under the authority of the BCU, and as such, is not subject to specific regulation.

d) On December 2021, the BCU issued a document titled “Conceptual Framework for the Regulatory Treatment of Virtual Assets in Uruguay” in a non-binding manner, where several definitions of virtual assets are included, including their taxonomy, figures, functions, and proposed regulation in the matter.

### **4.2. IS IT ALLOWED IN YOUR JURISDICTION TO HOLD AND/OR TRANSACT WITH CRYPTOCURRENCIES?**

To this date, there are no legal limitations or impediments that can object to the holding or transaction of cryptocurrencies.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT WITH CRYPTOCURRENCIES?**

To this date, there are no particular requirements for trading platforms to hold or transact cryptocurrencies. In fact, in

Uruguay there are several trading platforms that freely carry out their activity.

However, it must be noted that the previously referred to Virtual Asset prospective law, intends to modify the BCU’s charter, including within its faculties, the regulation and control of “providers of services on virtual assets”, among which are those considered as financial by central banking regulation”. In this sense, in the event of the approval of this prospective law in the previously expressed terms, we understand that the BCU will have authority to regulate trading platforms, establishing particular requirements for its operation and activity.

### **4.4. ARE FINANCIAL ENTITIES ALLOWED TO HOLD, TRANSACT OR TRADE AS INTERMEDIARIES WITH CRYPTOCURRENCIES?**

As cryptocurrencies might be considered to be a “security” in nature, there are no legal impediments for financial entities to hold, transact or trade cryptocurrencies as intermediaries.

It must also be noted in this answer, that the clarification done in the previous Question 4.3 must be considered in the event that the prospective Virtual Asset law is passed.

### **4.5. WOULD YOUR JURISDICTION ACCEPT AN INITIAL COIN OFFERING (ICO)?**

Even though the BCU, in its role of regulator of the financial and payments system, has not issued a specific opinion in



the matter, we understand that it would be acceptable to carry out an Initial Coin Offering, having to analyze – in a case by case basis – if the requirements under the current framework for public securities issuance applies.

#### **4.6. ARE CONSUMER PROTECTION REGULATIONS APPLICABLE TO TRADING PLATFORMS? ARE GENERAL CONSUMER PROTECTION RULES APPLIED? OR DOES THE SPECIAL REGIME OF FINANCIAL CONSUMER RULES APPLY IF IT EXISTS?**

To this date, and considering that there is no current specific regulation regarding this, the general framework regarding consumer protection (mainly the Consumer Relationship Law, N° 17.250, passed in August 11th, 2000, and its regulatory Decree, N° 244/000, dated August 23rd, 2000).

### **5. DISTRIBUTED LEDGER**

#### **5.1. IS THE USE OF DISTRIBUTED LEDGER TECHNOLOGIES USUAL IN YOUR JURISDICTION? IS IT REGULATED?**

To this date, the use of distributed ledger technologies is not common in our jurisdiction. There is also no current regulation regarding this topic.

#### **5.2. ARE FINANCIAL INSTITUTIONS IN YOUR JURISDICTION USING OR DEVELOPING DISTRIBUTED**

### **LEDGER TECHNOLOGIES IN ORDER TO IMPROVE AND FACILITATE THEIR CONSUMER SERVICES?**

Currently, some financial institutions are carrying out internal testing and approval process with the regulator to implement some aspects of distributed ledger technologies to ease or improve their services to financial consumers.

### **6. INSURTECH**

#### **6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

To this date there is no applicable regulation that impedes insurance and reinsurance companies from providing services or products using Fintech, only having to comply with the legal framework set forth in Law N° 19.678 and in the regulation issued by the BCU in the Compilation of Insurance and Reinsurance Regulations.

When offering insurance through Fintech, please note that it is relevant to consider the following aspects of the applicable law: (i) the insurance contract is perfected by the sole consent of the parties, even before the issuing of the insurance policy, or the payment (consensual contract); (ii) when the proposal is issued by the insurer through an offer to the general public, the contract is perfected with the acceptance of the offer by the taker, or insured, in the way established by the offeror; and (iii) proof of the insurance contract is required to

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come in writing (which may be complemented with any other legally admitted means of proof).

### **6.2. HOW DOES YOUR JURISDICTION ADDRESS NEW DISTRIBUTION MODELS? WHAT ARE THE APPLICABLE REGULATORY REQUIREMENTS FOR INSURTECH INTERMEDIATION IN YOUR JURISDICTION?**

Insurance brokerage (distribution) is not specifically regulated in our country (beyond the general regulation with regards to the activity of brokerage, set forth in the Code of Commerce, and the definition of broker in Law N° 14.000). In the Compilation of Insurance and Reinsurance Regulations issued by the BCU there are also no rules regarding this activity. To this date there are no specific regulatory requirements applicable to the insurance intermediation (brokerage), whether traditionally or through insurtech technologies.

### **6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION? IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

No, to this date there are no particular insurtech regulations in our jurisdiction.

## **7. ROBO-ADVICE**

### **7.1. ARE FINANCIAL OR CAPITAL MARKETS INSTITUTIONS PROVIDING THEIR SERVICE USING ROBO-ADVICE TECHNOLOGY? IS ROBO-ADVICE REGULATED IN YOUR JURISDICTION?**

We have no knowledge of any financial or stock market institution currently offering their service using robo-advice technology. There are no specific regulations in our country with regards to robo-advice tools.

### **7.2. ARE THERE ANY PARTICULAR REQUIREMENTS FROM THE REGULATOR IN ORDER TO PROVIDE ADVISORY SERVICES ENTIRELY OR PARTIALLY THROUGH ROBO-ADVISORS?**

To this date there are no particular regulatory requirements to provide advisory services through robo-advisors. However, it should be noted that the general framework regarding to investment advisory may apply, along with the need to have a special license for it.

As long as, through robo-advisor technologies- there is a regular and professional advisory to third parties related to the investment, purchase, or sale of public offered securities, it may be required to comply with a previous registration as an Investment Advisor under the Stock Market Registry of the BCU's SSF.

## 8. NEOBANKS

### 8.1. IS THE ESTABLISHMENT OF NEOBANKS AUTHORIZED IN YOUR JURISDICTION?

To this date, the establishment of Neobanks (by which it is to be understood as banks that offer their services in a full digital basis, online) is not specifically regulated.

### 8.2. ARE THERE PARTICULAR REGULATORY REQUIREMENTS TO OPERATE AS A NEOBANK IN YOUR JURISDICTION?

At this moment there are no particular regulatory requirements, or a specific license, to operate as a Neobank in Uruguay. Having to rely -by default- in what is applicable of the general framework with regards to financial intermediation institutions (banks) set forth in the Financial Intermediation Law, N° 15.322 of September 17th, 1982 (i.e. previous authorization from the Executive Power and approval by the BCU, etc.).

## 9. OTHER MATTERS

### 9.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS THAT SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?

There are no further material considerations that should

be considered to participate as consumers of Fintech companies. However, it is of special interest to note that, both for investors and administrators of Fintech companies, Uruguay has a preferential tax treatment for companies that produce or provide services related to the development of software, for which – and on a case by case basis – the applicability of these benefits may be analyzed for Fintech companies.



## FEDERICO ROCCA TEMESIO

**Address:** Misiones 1424, 2nd floor, Montevideo, Uruguay

**Phone:** +59829165859

**Email:** frocca@olivera.com.uy

Federico is the Firm's Banking and Finance Partner. As a specialist in banking and securities law, he regularly assists local and foreign financial institutions, and intervenes in the structuring of financing and issuance of securities operations. He is permanent counsel to Uruguay's Electronic Stock Exchange (BEVSA for its initials in Spanish) and has had a key role in leading operations in the financial markets in the last years. He attained his JD at the Universidad Católica del Uruguay and is an Assistant Professor of Banking and Commercial Law in said university.



## JUAN MAILHOS GALLO

**Address:** Misiones 1424, 2nd floor, Montevideo, Uruguay

**Phone:** +59829165859

**Email:** mailhos@olivera.com.uy

Juan is part of the Firm's Banking and Finance Department, giving counsel to local and international clients with regards to commercial and business law in general. Likewise, his practice includes legal counsel to clients regarding banking, financial, and securities operation, mergers & acquisitions. He obtained his JD and Notary Public Degree at the Universidad de Montevideo.

## **ABOUT THE FIRM.**

**Country:** Uruguay.

**Address:** Misiones 1424, Piso 2°, Montevideo

**Phone:** +598 2916 5859

**URL:** <https://olivera.com.uy/>



At OLIVERA Abogados we give counsel to numerous banking and financial entities in Uruguay and abroad. Our Firm is particularly acknowledged for its work in leading financial topics, having helped clients in innovative projects related to the Fintech field.

We are counsel to Uruguay's Electronic Stock Exchange (BEVSA for its initials in Spanish), we have designed its institutional and regulatory framework. We have also participated in the main issuances of securities in the country for the last 30 years, assisting issuers, trustees, agents, risk assessment companies, and institutional investors.



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# **LATAM FINTECH REGULATION**

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