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# LATAM FINTECH REGULATION

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## SECOND EDITION

Published by

**LLOREDA · CAMACHO** & CO

With contributions of

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# **LATAM FINTECH REGULATION**

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**SECOND EDITION**

LLOREDA · CAMACHO & CO

# EDITORIAL

We are pleased to present a second edition of Latam Fintech Regulation. As mentioned in our introductory note for the first edition, new technologies and their applicability and impact on different social institutions are affecting the way in which we relate to different industries. Technology has led the pace for the introduction of new products and new forms of doing business and, the financial sector, which was traditionally seen as conservative, had to keep the rhythm and embrace technology.

It is evident how in recent years the financial industry has seen a fast-growing adoption of financial technologies (Fintech). Fintech came in a disruptive manner, purporting a change in the mindset of traditional financial institutions and introducing new players to the industry. The disruption of Fintech into the financial industry has had a direct impact on the way financial regulators envision the market in the future. Regulators have faced new products that are very different from traditional banking products (e.g. crowdfunding), new ways of providing services through the exclusive use of technology (e.g. roboadvisoring) and new technologies to make the sector more efficient and secure (e.g. blockchain). As a consequence, the steady fast—growing rhythm of Fintech comes with several questions with regard to the regulatory standpoint of products, players and services. This publication provides a Latin American overview and legal analysis of the legislation and regulations related to the Fintech industry in order to foresee where these developments are heading as well as its general impact in

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the Latin American financial sector. In the present second edition, besides the six Latin American countries initially covered (Brazil, Ecuador, Chile, Colombia, Peru and Mexico), we have included Argentina, Costa Rica and Panamá. Contributors answer different questions which are divided in eight categories covering different Fintech segments.

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



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CHILE  
**CAREY****Address:** Isidora Goyenechea 2800 43rd**Tel:** +562229282300**URL:** www.carey.cl**1. OVERVIEW****1.1. WHAT ARE THE MOST SIGNIFICANT LEGAL DEVELOPMENTS IN THE FINANCIAL TECHNOLOGY ("FINTECH") INDUSTRY IN YOUR JURISDICTION?**

There have been no significant legal developments in Fintech in Chile. As we explained in our prior collaboration to this report, in 2017 the regulator, Superintendency of Banks and Financial Institutions ("SBIF"), put in place regulations regarding cybersecurity and cloud computing that apply to banks operating in Chile but with no other scope. In addition, in August, 2018, the SBIF enacted certain amendments to its cybersecurity regulations, with the purpose of strengthening the financial industry and raising the security standards in Chile, allowing users to have a safe, permanent and trustworthy access to financial products.

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

No. Other than the regulations mentioned in numeral 1.1,



Diego Peralta



Fernando Noriega

there are no other regulations applicable 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. None so far.

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

Generally speaking, banks operating in Chile cannot acquire other companies, except inasmuch as they can provide services that complement the banking activities. Thus, if a Fintech company can be deemed to be supporting the banking activity, the banks could acquire it.

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**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 Chile. Chilean law forbids rising funds from the public (except for banks) and crowdfunding has been seen as breaching such a restriction. There are, however, certain crowdfunding initiatives that are active in Chile nowadays, since lending own funds is not a restricted activity.

On February 11, 2019, the Commission for the Financial Market ("CMF") issued a White Paper entitled "General guidelines for the crowdfunding and related services regulation", whereby the CMF aimed to publicly announce its view on the matter and to contribute to the regulatory debate. This document has a technical character and is not mandatory.

**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. As mentioned in numeral 2.1 lending own funds is not restricted in Chile.

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

Generally speaking, Chilean consumer protection regulation is applicable to any contract in Chile, entered into between a "consumer" and a "provider", and in this context, it could be applicable to crowdfunding or P2P lending. "Consumer" is defined as any physical person or legal entity that, by means of any onerous agreement, acquires or uses assets or services as final receiver.

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

No. They are not regulated.

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

No. It is not regulated.

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

No. It is not regulated.

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

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There are no regulations in that respect.

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

No. There are not.

## **4. CRYPTOCURRENCIES**

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

It is not restricted holding and transacting cryptocurrencies in Chile. However, they have not been characterized as “currencies” but as mere assets susceptible to be acquired. Other than cryptocurrencies exchange companies, there are no significant developments in Chile that permit the cryptocurrencies holder to acquire assets or to pay for services using the cryptocurrencies.

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

No. It is not allowed to hold, transact or act as an intermediary in the exchange of cryptocurrencies, since it has been understood that these are not currencies under Chilean law.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/**

### **OR TO TRANSACT WITH CRYPTOCURRENCIES?**

No. There are no particular requirements for trading platforms to hold and/or to transact with cryptocurrencies. However, the Chilean Internal Revenue Service (“Servicio de Impuestos Internos”), the Anti-Money Laundry Authority (“Unidad de Análisis Financiero”) and the Financial Stability Board (“Consejo de Estabilidad Financiera”) have issued certain definitions and opinions regarding cryptocurrencies, in the context of their respective powers.

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

No. They are not allowed to hold, transact or trade as intermediaries with cryptocurrencies, since the latter are not deemed to be currency under Chilean law.

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

There have been some ICO's in Chile and they are not illegal.

## **5. DISTRIBUTED LEDGER**

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

No. The use of distributed ledger technologies (“DLT”) is neither usual in Chile nor regulated. Nonetheless, in

## CHILE

September 2017, SBIF joined the global network of members of the enterprise software company, R3, as a regulatory member, which will allow it to stay up-to-date on the latest advances and implementations of DLT in financial services.

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

No.

## **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?**

No.

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

There are no regulatory requirements for insurtech in Chile.

### **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 Chile.

## **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?**

No. Robo-advice technology is not regulated in Chile. A bill of law currently discussed by the Congress allows consumers affected by a robo-advised decision to request for explanations of such decision. However, this might not be approved at all.

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

No. There are no particular requirements from the regulator in order to provide advisory services entirely or partially through robo-advisors.

## **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?**

Other than those mentioned above, none.

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## 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

to be beneficial to the financial system.

Colombia has recently adopted a new regulation allowing debt and equity crowdfunding in Colombia. Likewise, the financial regulator has also adopted new regulation addressing advisory in financial markets, specifically approaching the use of technology and, therefore, robo-advisors. Additionally, the regulator has issued a new decree allowing some of the financial entities in Colombia to acquire or invest in Fintech companies.

### 1.2. IS 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 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 sandbox projects that are filled before the Superintendence of Finance.

The current government is interested in proposing a new Fintech policy covering the different legal aspects that may

## COLOMBIA

affect this industry.

### **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, Decree 2443 of 2018 authorizes credit institutions, financial services entities and capitalization companies the investment in Fintech companies. This Decree authorizes the aforementioned financial institutions to acquire shares in local or foreign companies with an exclusive corporate purpose of developing innovation and technology related to the development of the corporate purpose of the financial entities that are investing.

## **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?**

Recently, the Colombian financial regulator addressed debt-related crowdfunding through the issuance of debt securities. However, traditional lending crowdfunding is not included or addressed under this regulation and 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.

### **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

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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 not 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 requirements or restrictions may apply.

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

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

The Colombian financial regulator has issued specific regulation for debt and equity related crowdfunding pursuant to Decree 1357 of 2018. This decree contemplates the introduction of a new type of authorized entity to operate this type of crowdfunding. Pursuant to the decree, platform administrators require the authorization from the Superintendence of Finance to operate a crowdfunding platform. It also allows trading systems and stock exchanges to operate crowdfunding platforms.

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

Currently, pursuant to Decree 1357 of 2018, crowdfunding platforms administrators have specific requirements, such as a special obligation to incorporate the crowdequity platform administrator under 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**

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### **CROWDEQUITY PROJECTS? IS THERE A SECONDARY MARKET?**

The new Decree for crowdfunding 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 heritage of the investor, whichever is greater);
- (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\$ 814,479) unless it is a professional investor under Colombian law.

Pursuant to the current regulation, there is not 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:

- (i) 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.

- (ii) 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

## COLOMBIA

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 a software company that has developed a distribute 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 is not 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

## COLOMBIA

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, the Colombian Fintech Association has carried out the International Insurtech Seminar in different occasions 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**



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### **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.

It is possible to determine that, regardless of the fact that new regulations are being issued or recently addressed and regardless 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.

Special thanks to Juan Sebastian Peredo and Mariana Paez.

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## 1. OVERVIEW

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

Currently, there are no laws or regulations in Ecuador focused on the Fintech industry. Although some newly issued regulations have affected the participants in the industry in some way, such regulations have not aimed to regulate the Fintech industry instead, they have been focused towards the financial system in general.

However, on January 3rd, 2019, a draft law called the "Organic Law of Entrepreneurship and Innovation" was presented in the National Assembly of Ecuador. Chapter VII of this project contains the definition and regulatory framework of crowdfunding platforms, including both equity and loan-based crowdfunding. Moreover, it is clarified that donation-based crowdfunding platforms are not regulated by that framework.

Jesús M. Beltrán



Juan Francisco Simone



Although it is a draft law that must go through the respective approval process, without a doubt it constitutes an advance. It is the first legislative initiative that looks towards the regulation of products of the Fintech industry. It is expected that in the third quarter of this year this law will be enforced.

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

Under our jurisdiction there is no law or any other regulation that specifically regulates Fintech. The players in the financial industry must observe the applicable regulations to any company that develops financial activities. Likewise, the development of Fintech activities must be carried out under an entity accepted under the Ecuadorian jurisdiction.

There are two financial sectors under which Fintech companies can operate, each with different regulatory frameworks: (i) the private financial sector and (ii) the popular and solidary financial sector. The private financial sector can be identified as the traditional financial sector, as it consists of banks, financial services companies and

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auxiliary service entities of the financial system. The second sector is integrated by savings and credit unions, savings and credit mutuals, communal banks, savings banks and central saving banks.

The determination of which authorization should be obtained before the control entities will depend on the services to be rendered. In the same way, the regulations are different in each sector and for each figure.

### **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.**

In Ecuador, regulatory sandbox for the Fintech industry has not been enforced.

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

Since there is no specific regulation, the majority of Ecuadorian companies operate under the figure of auxiliary service entities of the private financial system or of the popular and solidary financial system. These companies are responsible for providing services that are usually part of the operations of a financial institution, but for different reasons the services are delegated to other companies.

Ecuadorian legislation allows financial institutions—either banks, financial services entities or other auxiliary services entities— to invest in these types of companies. However,

such financial institutions investment or participation in an auxiliary services entity will impose a series of additional obligations.

In this case, all entities must combine and/or consolidate their balance sheets in order to present them to the controlling body under the figure of a financial group or popular and solidarity group, depending on the case. Furthermore, there are other obligations such as (i) the inability of the auxiliary services entity to invest in the capital of another legal entity, whether it belongs, or not, to the national financial system; (ii) comply with the obligation of the entities that constitute the group to maintain the same external auditor; and (iii) to be subject to consolidated supervision due to their being part of the entire group, among others.

## **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 specifically regulated in Ecuador. However, as explained in question 1.1, the “Organic Law of Entrepreneurship and Innovation” the proposal law is currently being considered at the Ecuadorian National Assembly, which will define and regulate the activities of the platforms through which loan-based or equity- based crowdfunding transactions are performed.

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### **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 is not specifically regulated in Ecuador. As explained in the previous response, the “Organic Law of Entrepreneurship and Innovation” proposal law that is currently being reviewed by the Ecuadorian National Assembly will define and regulate the activities of the platforms through which peer-to-peer lending transactions are performed.

It must be noted that credits between private parties are legal and are regulated by the provisions of the Civil Code or the Commercial Code, depending on how the operation is implemented.

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

Due to the market for peer-to-peer lending and lending crowdfunding are not specifically regulated, the financial consumer protection regulation, which generally applies to consumers of financial products from controlled entities, does not apply.

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

There is no specific regulation for such products. However,

transactions are made based on the general rules of donation and purchase of goods, respectively, contained in the Ecuadorian Civil Code.

In the “Organic Law for Entrepreneurship and Innovation” proposal law that is currently being reviewed, it is pointed out that donation-based crowdfunding will not be considered as a collective financing platform; therefore it will continue to be deregulated.

### **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 regulated in Ecuador.

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

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

Equity crowdfunding is not expressly regulated in Ecuadorian law. In the “Organic Law for Entrepreneurship and Innovation” proposal law that is currently being reviewed, equity crowdfunding is defined and its regulatory framework is established, so this product may be regulated in the medium term.

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

Because crowdequity is not regulated in Ecuador, there are no requirements applicable to the platforms that enable it.

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

Because crowdequity is not regulated in Ecuador, there are no requirements applicable to investors or to securities issued within a transaction of such nature. There is also no secondary market for these issuances.

## **4. CRYPTOCURRENCIES**

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

Cryptocurrencies are not regulated in Ecuador. In accordance with the provisions of the Monetary and Financial Organic Code, the authorized currency in Ecuador is the United States of America dollar.

Likewise, the aforementioned Code as well as the Ecuadorian Criminal Organic Code prohibits the total or partial issuance of currency and money, as well as its circulation by any means, support or form of representation, in addition to the circulation and reception of currency and money not authorized by the Monetary and Financial Policy and Regulation Board.

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

According to the Monetary and Financial Organic Code, it is not possible to carry out transactions with cryptocurrencies

in Ecuador. Specifically, the issuance and circulation of currencies other than the dollars without the authorization by the Monetary and Financial Policy and Regulation Board is prohibited.

However, there is no prohibition to own such cryptocurrencies, if for example; they were acquired in another jurisdiction.

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

Because Ecuadorian legislation prohibits the circulation of unauthorized currencies by any means, a trading platform that operates in Ecuador could not carry out transactions with cryptocurrencies. However, there is no prohibition for trading platforms owning such currencies.

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

Due to the circulation of unauthorized currencies is prohibited by any means, a financial entity that operates in Ecuador could not carry out transactions with cryptocurrencies. Likewise, it could not own or keep cryptocurrencies because it is not legally authorized to do so.

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

The Ecuadorian legislation does not contain an express regulation to control ICO's.

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United States of America dollars is used as currency, as this is provided by law. This is the only currency or equivalent (through legally accepted means of payment) considered as a means of payment in the Republic of Ecuador.

In this regard, and although there are no specific regulations allowing or prohibiting the issuance of an ICO, there is no way to carry out an ICO or equivalent in Ecuador.

### 5. DISTRIBUTED LEDGER

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

In Ecuador, “blockchain” technologies are not used on a daily basis. Up to date, there are no cases in which its use is public and notorious, nor is there 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?

In Ecuador, the use of “blockchain” technologies by financial institutions is not common. There is no known technological development that allows financial institutions and users to interact through its registration or supply mechanisms of data through a peer-to-peer network.

### 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?

Book II of the Monetary and Financial Organic Code (General Insurance Law) establishes which entities are part of the private insurance system.

Regarding the distribution of insurance, the law states that insurers can do so directly through insurance agents who are part of the companies; or, through advisory insurance agencies whose purpose is to manage and obtain insurance contracts.

In this regard, any person or company that intends to create a new model of insurance distribution must observe the requirements of the above-mentioned figures.

#### 6.3. IS INSURTECH REGULATED IN YOUR JURISDICTION?

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**IS THERE PARTICULAR INSURTECH REGULATION (I.E. DIFFERENT FROM TRADITIONAL INSURANCE REGULATION)?**

In Ecuador there are no laws or secondary regulations that regulate insurtech companies. Any undertaking in the insurtech market should observe the traditional regulations for the private insurance system.

**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?**

It is not known that there are companies in both the stock market and the financial market that provide robo-advisor technology, nor are there specific regulations for this type of product. Moreover, there are no specific regulations for this type of product.

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

In the absence of specific regulation for robo-advisor in Ecuador, people who are authorized to provide financial advice in both the stock market and the traditional financial market could use these mechanisms to provide their services.

**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?**

During the last two decades, financial activities in Ecuador have been under strict and inflexible regulations. This situation has largely impeded the entry of new actors into the financial system and innovation. For this reason, the ecuadorian Fintech market has developed at a very different rate than its neighboring countries.

Nevertheless, in recent months there have been some regulatory and legislative initiatives that reflect the intention of the country to make regulatory regime more flexible and encourage the entry of new players into the national financial system. Undoubtedly, the most important initiative is the Organic Law of Entrepreneurship and Innovation recently presented in the National Assembly of Ecuador for its approval. In this proposal law, products of the Fintech market are regulated for the first time, such as equity-based or loan-based crowdfunding. If approved, the aforementioned law will be a transcendental factor for the evolution of the Ecuadorian Fintech market.

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## 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 Mexican Fintech law (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) Mexican 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 Mexican Banking and Securities Commission was granted the power to issue general regulations regarding the offering of investment advisory services through automated systems.

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(ii) Mexican banking law was amended for the purpose of regulating more thoroughly the use of technology by banks in the performance of their activities. This law was also amended so that the activities carried out by financial technology Institutions are not considered as obtaining funds (through bank deposits) anymore.

(iii) Financial services organization and transparency law and the law for the protection and defense of financial services users 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.

Later on, on September 11 of 2018 the secondary regulation applicable to Fintech was issued, including: (i) the general regulations applicable to Financial Technology Institutions (the "Regulations") issued by the Mexican Banking and Securities Commission, (ii) the Regulations 12/2018 aimed to electronic payments institutions (the "Banxico Regulations") issued by the Mexican Central Bank, and (iii) the general regulations referred to in article 58 of the Fintech Law (the "Money Laundering Regulations"), issued by the Ministry of Tax and Public Credit.

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### **1.2. IS FINTECH REGULATED IN YOUR JURISDICTION? WHAT IS THE REGULATORY APPROACH TOWARDS FINTECH 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 Mexican Banking Law and the Mexican Securities Market Law regulate the possibility of financial entities to provide certain financial services and execute transactions using financial technology. The Fintech industry in Mexico has a new and very specific regulation, this is, new laws and regulations solely applicable to Financial Technology Institutions were issued instead of adapting the existing laws and regulations applicable to other financial services. Moreover, Fintech activities are regulated similarly to other financial services, such as banking and securities services. The Fintech Law defines the activities and transactions that shall be exclusive to financial technology institutions, which shall be authorized to operate as such; furthermore, it enunciates 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 specific chapter to govern innovative models. According to the aforementioned 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, in order to carry out activities that typically require an authorization, registration or concession from financial authorities.

Only commercial companies duly incorporated pursuant to Mexican law may operate innovative models. For the purpose of operating an innovative model, a temporary and special authorization must be granted by the financial authority in charge of the surveillance and regulation of the financial services to be provided.

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. Additionally, the competent authorities may establish additional requirements, through general regulations or in the authorizations to operate innovative models that they may grant.

The companies that desire to operate innovative models, shall establish policies and mechanisms to prevent, identify and mitigate the risks associated with them, as well as the mechanisms to repair the damages that they may 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 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 two years; at the end of such term, the authorized company must obtain the applicable permit,

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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, same which must include the way in which the transactions executed with the clients shall be terminated.

### 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, Fintech companies or companies that operate innovative models, prior authorization of the Mexican Banking and Securities Commission and, as the case may be, the financial authority in charge of the surveillance and regulation of the financial entity in question (e.g., the Mexican Central Bank or the Ministry of Tax and Public Credit). It is important to take into account that, there are certain rules, limits and requirements applicable for financial entities investing in Fintech companies, which are established in the laws that regulate the relevant financial entities; such rules, limits and requirements vary depending of the nature of the financial entities.

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

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

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

exceeds the following amounts: (i) for entities, 20%; (ii) for individuals who desire to invest in personal loans between persons, 7.5%; (iii) for individuals who desire to invest in company loans or business loans for persons or for real estate development, 15%.

Nevertheless such limits shall not apply to related investors or experienced investors. For such purpose, experienced investors are Mexican and foreign financial entities, federal government entities, and individuals or entities that have made investments in crowdfunding institutions for an aggregate amount over 550,000 investment units, approximately US\$180,000.00. On the other hand, related investors are such persons who are related to the fourth degree to the individual requesting the funding or are married or cohabiting with such individual.

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### **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?**

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

It is important to mention 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 Fintech platform, and without the authorization to operate as a bank, such person may be considered to be obtaining funds (via deposits from the public), which is deemed a criminal offense.

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

Notwithstanding P2P is not regulated in Mexico, lending crowdfunding is subject to the Financial Services Organization and Transparency Law and to the supervision of the National Commission for the protection and defense of financial services users.

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

No. The Fintech Law does not specifically regulate donation or reward based crowdfunding.

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

Crowdfunding in Mexico is regulated as lending crowdfunding for business loans between 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 pursuant to Mexican Law; (ii) be duly authorized for such purpose by the Mexican Banking and Securities Commission; (iii) establish as its corporate purpose the provision of professional and regular crowdfactoring services; (iv) have the minimum capital stock required by the Mexican Banking and Securities Commission, currently between 500,000 investment units (approximately US\$165,000.00) and 700,000 investment units (approximately US\$230,000); (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 manuals related to internal control, administration of risks, among others.

The Regulations provide that financial technology institutions must implement methodologies to analyze and determine the level of risks of the possible investments. In

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the event the platforms provide crowdfactoring services, such methodologies must include the 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 the event the credit rights are documented in an invoice, to verify that such invoices may be identified electronically in the Tax Administration Service; and (iii) verify that the credit rights have not been transmitted or granted as guaranty previously.

### 3. INVESTMENT AND CAPITAL MARKETS

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

Yes. The Fintech Law provides that crowdfunding companies may carry out equity crowdfunding, in order for investors to purchase or otherwise acquire certificates representing the capital stock of entities.

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

Crowdequity platforms have to fulfill the following requirements: (i) be a commercial company duly incorporated under Mexican law; (ii) be duly authorized, for such purpose by the Mexican Banking and Securities Commission; (iii) provide in its corporate purpose the professional or regular provision of crowdequity services; (iv) have the minimum capital stock established for such purpose by the Mexican Banking and Securities Commission, which currently is of 500,000 Investment Units (approximately US\$165,000) and 700,000 investment units (approximately US\$230,000); (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 regarding internal control and administration of risks, among others; and (vii) establish schemes for the crowdequity platform and the investors to share the risks associated to the projects offered in the platform.

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

Under Mexican law, there are no particular requirements applicable to investors or securities in crowdequity projects. The Fintech Law and secondary regulations do not establish specific requirements applicable to the investors that may participate in crowdequity projects, therefore it may be understood that any individual or entity with sufficient capacity may invest in crowdequity projects.

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, the securities offered through crowdequity platforms may not be registered in the National Registry of Securities

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and therefore, may not be subject of a public offering and they 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 certain value registered electronically and used among the public as a means of payment for all kinds of transactions, and the transfer of which may only be carried out electronically. The Fintech Law also provides that Fintech institutions may only operate with cryptocurrencies approved by the Mexican Central Bank. As of this date, the Mexican Central Bank has not determined the cryptocurrencies with which financial technology institutions may carry out transactions.

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

Yes. In Mexico it is allowed to hold and/or transact with cryptocurrencies, however in order to do so regularly or professionally an authorization from the Mexican Central Bank is required.

#### 4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/OR TO TRANSACT 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 the Mexican Central Bank; (ii) be able to deliver to their clients, at any time, the cryptocurrencies or their equivalent in Mexican currency which they hold; and (iii) disclose to their clients that: (a) cryptocurrencies are not legal currency and, therefore, are not backed by the Federal Government or the Mexican Central Bank, (b) as the case may be, the transactions carried out may not be reverted, (c) the volatile value of cryptocurrencies, and (d) the technological risks associated with cryptocurrencies.

Furthermore, the Mexican Central Bank Regulations provide several technical requirements with which electronic payment platforms that carry out transactions with cryptocurrencies must comply with.

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

Financial entities are allowed to hold, transact or trade as intermediaries with cryptocurrencies, as long as they have been duly authorized by the Mexican Central Bank. Such financial entities that operate with cryptocurrencies through the interbanking payments systems shall comply with additional technical requirements regarding the technological infrastructure they use.

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

ICO is not expressly regulated. Therefore, it is not advisable to carry out an ICO in Mexico until it is regulated. In this regard, it is important to mention that transacting with cryptocurrencies without the proper authorization is punishable with a fine of up to 150,000 measure and update units (approximately US\$660,000) and up to 7 years of prison.

## **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 usual in Mexico, only in the context of cryptocurrencies. Currently such technologies are not yet regulated in Mexico, however it may be considered that such technology complies with the requirements established by the official rule NOM-151-SCFI-2016 that established the requirements that must be observed for the preservation and digitization of documents.

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

Distributed ledger technologies are not regulated by the Fintech Law. We are not aware that to this date, financial institutions are using distributed ledger technologies in order to improve and facilitate their consumer 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?**

Insurance and bonding companies are allowed to carry out transactions and provide services, such as 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. Insurance and bonding institutions are allowed to provide their services using technological means.

### **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, however there are certain references in the insurance and bonds law, to the

provision of insurance services through electronic means.

## **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?**

Currently, the Mexican securities market law, grants the Mexican Banking and Securities Commission authority to regulate the provision of investment advisory services through automated means. It is our understanding that stock brokers, investment funds and investment advisors are using robo-advice technology. However, the Mexican Banking and Securities Commission has not issued the applicable secondary regulation.

### **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, the Mexican Banking and Securities Commission has not issued the secondary regulation applicable to the provision of investment advisory services through automated means.

## **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?**

Pursuant to the first paragraph of the eighth transitory provision of the Fintech Law and, until September 25, 2019, persons carrying out activities regulated by the Fintech Law upon its entry into force must file for an authorization application from the National Banking and Securities Commission, in a term that shall not exceed twelve months following the entry into force of the Regulations. Such persons may continue carrying out their activities until the National Banking and Securities Commission resolves their application; however, they must disclose through their website that their authorization is under review; therefore, their activities are not surveyed by Mexican authorities.







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PERU

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## 1. OVERVIEW

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

The Peruvian economy has witnessed the impact generated by the proliferation of Fintech industry. According to a study carried out by Finnovista -Fintech Radar- the Peruvian Fintech ecosystem is in third place with respect to the number of Fintech ventures in the Andean region, after Colombia and Chile, while in Latin America Peru is among the 5 countries in the region with the largest presence of foreign startups. As indicated in the Fintech Radar, online loans ("Lending")

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is the dominant segment in Peru, grouping 24% of startups. Secondly, there is the payments and remittances segment, which groups 21% of startups. The third segment with the highest number of Fintech is the trading and markets segment ("Trading & Markets"), with 11%. The rest of the Peruvian startups are grouped into the segments of collective financing ("Crowdfunding") and business finance management ("Enterprise Financial Management"), both with 9%, followed by the business technology segments for financial institutions ("Enterprise Technologies for Financial Institutions"), savings ("Savings") and alternative credit rating ("Alternative Scoring"), each of these segments grouping 6%. In response to the evolution of this industry, in September 2017, the Fintech Association was created in Peru, which up to now brings together 40 pioneer Fintechs in the Peruvian market of various segments with the aim of stimulating an entrepreneurial ecosystem towards a financial technology future in Peru. Additionally, we must bear in mind that one of the positive effects of the development of the Fintech industry in Peru is the generation of an environment that not only allows the inclusion in the financial system, but motivates the

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participation in an inclusive ecosystem. An investigation carried out by the Inter-American Development Bank affirms that 42% of Peruvians Fintechs have a woman as a founder or as part of the founding team.

So far, the electronic money act, (Ley de Dinero Electrónico), law N° 29985 and its regulation approved by Supreme Decree N° 090-2013-EF, stand as an important step for the Peruvian legal framework regarding the use of new technology in the financial industry. Under the aforementioned legal framework and the additional regulations issued by the Peruvian Superintendence of Banking, Insurance and Pension Funds (SBS), in 2015 the SBS authorized the first electronic money company and until the first quarter of 2019 there are 4 electronic money companies duly authorized.

It must be taken into account that the Peruvian regulatory framework on the use of electronic money, due to its date of enactment, can be considered as a pioneer standard in Latin America, given that, after its enactment, in other countries of the region electronic money transactions were regulated in their respective jurisdictions, as the case of Colombia with Law N° 1735 published on October 21, 2014, of Paraguay with Resolution BCP N° 6 of March 13 of 2014, and Uruguay with Law N° 19210 published on May 9, 2014.

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

Fintech Industry is not regulated in Peru. To the best of our knowledge, Peruvian Central Bank, as well the Banking and the Securities Market Regulators are working on regulations regarding Fintech related services (e.g., lending

crowdfunding, equity crowdfunding, etc).

Specifically, the Congress of the Republic is working on the regulation of Fintech, examples of which are: (i) Draft Law N° 3403/2018-CR “Law that declares the regulation of financial technology (Fintech)”, presented on September 18, 2018, through which powers would be granted to the SBS to develop a law that regulates companies that use technology to provide financial services; and, (ii) Draft Law N° 3083/2017-CR, which proposes the law that regulates the legal regime of participatory financing platforms (“PFP”).

Along the same lines, the regulators of the securities market and the Peruvian financial system (SMV and SBS, respectively) have issued active pronouncements regarding the particularities of this new industry, differentiating its scope from the new legal products that both projects would bring.

### **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.**

Peruvian jurisdiction has not implemented any regulatory sandbox for the Fintech industry.

Notwithstanding the foregoing, Universidad Pacífico, in April 2017, launched the program called FINCONECTA, through which the financial system companies and the Fintech that form part of the program could be connected to “Forward” (a platform developed by Above & Beyond) allowing them to link to an interconnected system and, through a single connection, have access and possibilities to integrate to

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many others, in order to have multiple interconnections within the platform.

Financial institutions that participated in FINCONNECTA could choose between several Fintech solutions after a single connection and develop tests with them in the “Forward” technological sandbox. The sandbox allowed several tests of the solutions before fully integrating, so it was not necessary to make any type of investment to determine if an integration could be successful or not.

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

There is no restriction on Peruvian financial entities for investing in, or acquiring, Fintech companies.

The year 2018 closed with a milestone of success due to the transaction that took place between Banco de Crédito del Perú (Peruvian Bank market leader, Credicorp group in LATAM), as buyer, and Culqi (Payment Gateway Company), as seller, of a control package on Culqi, in order to acquire the latter's shares. This transaction was a reflection of the fulfillment of the main goals of a Fintech, being a generator of new businesses for already recognized financial entities and opening the market, giving consumers and / or agents of the micro and medium company an opportunity to transact at costs similar to those of its business model and with the possibility of working with the international Card Industry.

## **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?**

No, lending crowdfunding is not regulated in Peru, however, the draft law mentioned in numeral 1.2 must be taken into account.

The objective of the referred draft Law is to regulate the activity carried out by the financial participatory financing platforms; that is, financing through loans or investments. It also grants the SMV the power to regulate and supervise the activity of participatory financing platforms.

### **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, peer to peer lending (P2P) is not regulated in Peru.

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

Consumer protection regulation is only applicable to lending crowdfunding or P2P lending if there is a supplier-consumer relationship (e.g., it could be the base of the relationship between the crowdfunding platform manager and the borrower, or the relationship between the crowdfunding

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platform manager and the investor) and such relationship has effects in Peru.

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

No, donation and reward-based crowdfunding are not regulated in Peru. The aforementioned draft laws detailed in the numeral 1.2 exclude crowdfunding based on donations or rewards; these transactions can be treated according to the provisions of the civil code and tax regulations, as appropriate to each specific case (for example: purchase sale of future good, anticipated or even a joint venture).

### **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 Peru.

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

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

So far, equity crowdfunding is not regulated in Peru; however, the draft law mentioned in number 1.2 proposes that the regulator in charge be the SMV, which in turn would regulate the requirements, the obligations that must be met by the equity crowdfunding platforms, their administrators and the characteristics of the services they can provide.

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

Although equity crowdfunding is not yet regulated in Peru, the draft law establishes, among others, the following possible requirements:

- (i) Registration of the platform: information on the jurisdiction of the servers, the administrator and the list of shareholders with significant participation.
- (ii) Operating authorization: support of corporate information, insurance policy that will depend on the amounts involved, shareholders or organizers may not be prevented before administrative authorities, members of government public entities, among others.
- (iii) Undertaking activities of companies which are supervised by the SBS or SMV are prohibited.
- (iv) Information reports and treatment of sensitive information.
- (v) Treatment of accredited and non-accredited investors.
- (vi) Adminitions and sanctions.

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

The draft law mentioned in numeral 1.2 makes a distinction between the qualification of accredited and non-accredited investors, establishing a limited percentage of participation for non-accredited investors.

The aforementioned draft law does not incorporate the creation of a secondary market for these types of securities;

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however, it does specify that the applicable norm would be the General Corporation law N° 26887 and not the Securities Market Law, Legislative Decree N° 861.

### 4. CRYPTOCURRENCIES

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

No, cryptocurrencies are not regulated in Peru. The Peruvian Central Reserve Bank ("BCR") has alerted users that cryptocurrencies are unregulated financial assets and that they do not have the status of legal currency, nor are they backed by central banks.

Despite the pronouncement of the BCR, at the end of 2018 the first Peruvian cryptocurrency was issued.

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

To hold and/or transact with cryptocurrencies is not prohibited under Peruvian Law.

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

Cryptocurrencies trading platforms are not regulated in Peru.

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

Peruvian financial entities are neither allowed to hold, transact nor trade as intermediaries with cryptocurrencies.

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

No, ICO's are not authorized in Peru. Please refer to our answer to question 4.1. 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 neither usual nor 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?

From media comments, financial institutions in Peru with a foreign parent company are those that are investing in research for the possible application of distributed logging technologies (distributed ledger).

### 6. INSURTECH

#### 6.1. ARE INSURANCE COMPANIES IN YOUR JURISDICTION PROVIDING

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**SERVICES OR PRODUCTS USING FINTECH? IF SO, HOW IS FINTECH INTEGRATED INTO THE SERVICES OR PRODUCTS?**

Insurtech technology is not regulated in Peru.

Nevertheless, it must be taken into consideration that the marketing of insurance products regulation approved by Resolution SBS N° 1121-2017, by the SBS, regulates commercialization through the use of remote systems, such as use of telephone, internet or other analogous systems that allow insurance companies to access the contracting parties and/or potential insurers in a non-contact manner, to promote, offer and/or market their products. This includes digital marketing through social networks and price comparison system. This regulation provides certain conditions, as well as security requirements for this type of marketing.

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

Insurtech technology is not regulated in Peru. Please bear in mind our answer 6.1.

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

Insurtech technology is not regulated in Peru; hence, there is no particular insurtech regulation.

**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?**

To the best of our knowledge, Peruvian financial and capital markets' institutions are not providing their services using robot-advisor technology. Robo-advisor technology is not regulated in Peru.

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

Robo-advice (*gestor automatizado*) is not regulated in Peru.

**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**

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**ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

Article 2 of Law N° 30050 establishes that any advertising or solicitation –performed in Peruvian territory- to buy, sell or subscribe “financial assets”, through media such as newspapers, magazines, radio, television, mail, meetings, social networks, Internet servers located in national territory or other media or technology platforms, can only be performed by individuals or entities duly authorized and supervised by the Peruvian Banking or Securities Market Regulators. As there is no definition of “financial asset” in the Peruvian regulation, it is possible that the Banking Regulator or the Securities Market Regulator will apply the aforementioned rule to restrict any technology-based business model that includes any kind of investment from the general public, if such business model is neither regulated nor supervised by any of said regulators.

Number 28 of subsection 3.1 of Article 3 of Law N° 29038, Law that incorporates the Financial Intelligence Unit of Peru (UIF-Peru) to the SBS, establishes that natural persons or legal entities that engage in collective or participatory financing and operate through virtual platforms, qualify as mandatory subjects to report, before the UIF-Peru, such information related to money laundering and financing of terrorism crimes. In this regard, it is necessary to take into consideration the regulatory framework on prevention of money laundering and financing of terrorism (“PLAFT”) issued by the SBS and the SMV, in order to prevent the commission of these crimes or other related illicit acts.

The legal framework regarding PLAFT is the following: (i) Law creating the Financial Intelligence Unit - Peru, Law N° 27693;

(ii) Law that incorporates the Financial Intelligence Unit of Peru (“UIF - Peru”) to the Superintendence of Banking, Insurance and Private Administrators of Pension Funds, Law N° 29038; (iii) Regulation of Law N° 27693, approved by Supreme Decree N° 020-2017-JUS; (iv) Regulations for the prevention of money laundering and financing of terrorism applicable to the reporting entities under the supervision of the UIF-Peru, in matters of prevention of money laundering and financing of terrorism, approved through SBS Resolution N° 789 -2018; (v) Regulation of infractions and sanctions in the area of prevention of money laundering and financing of terrorism, approved by SBS resolution N° 8930-2012; and, (vi) Regulations for the Prevention of Money Laundering and financing of terrorism, approved by CONASEV Resolution N° 033-2011.

Regarding the Fintech business, it is pertinent to consider the personal data protection law, law N° 29733, and its regulation, approved by Supreme Decree N° 003-2013-JUS; since digital platforms collect data from natural persons.

Furthermore, Legislative Decree N° 1372-2018, which regulates the obligation of legal entities to inform their final beneficiaries, must also be considered; as well as the rules on administrative responsibility of legal persons, Law N° 30424, and its regulation approved by Supreme Decree N° 002-2019-JUS, having the purpose of preventing and punishing the commission of money laundering, corruption and related crimes, that could cause damages and affect the normal development of Fintech operations.

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BRAZIL

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## 1. OVERVIEW

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

In recent years, several new rules have been proposed and/or introduced by the financial and capital markets authorities in Brazil to foster the innovation and creation of new players within payment, peer to peer lending and personal finance management segments. Currently amounting to over 400 "Fintechs" nationwide (according to a survey performed in

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2018 by FintechLab), the Fintech industry has received over BRL1,5 billion (approx. USD405 million) in investments in 2018. Since 2013, year which the legislation for payment arrangements was enacted, a growth in "Fintechs" has been observed in Brazil. The Brazilian Central Bank has been attempting to reduce the influence of several players in the payment services chain (e.g., by restricting exclusivity contracts with credit card networks) and thus encourage the growth of smaller acquirers and Fintech startups and stimulate the competition in this segment. The Brazilian Central Bank also enacted in 2018 a regulation for peer-to-peer lending (P2P) companies and direct credit companies (please refer to section 2.2. below). Following the same trend, the Brazilian Securities and Exchange Commission (Comissão de Valores Mobiliários - CVM) introduced new regulation for equity-based crowdfunding (please refer to section 3.1. below), aiming to provide cheaper and easier access to the Brazilian capital markets for startups and small companies. Finally, cryptocurrencies and distributed ledger technologies have been in the center of debates for the past few years, although decisive guidance on the matter is yet to be provided by the Brazilian Central Bank and the CVM

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(please refer to section 4.1. below).

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

Although Fintech is not regulated as an industry in Brazil, the regulatory burden of the financial and capital markets tends to fall upon rising Fintechs. The highest regulatory authority in the Brazilian financial system is the Brazilian National Monetary Council (Conselho Monetário Nacional (“CMN”). Financial services fall under the regulatory scope of the Brazilian Central Bank and CMN, including banking activities, payment services, lending and credit card network schemes, among others. Activities in the Brazilian capital markets, such as securities intermediation, public offerings of securities, securities research, consulting and portfolio management are regulated by the CVM. Private insurance services are regulated by the Superintendence of Private Insurance (Superintendência de Seguros Privados - “SUSEP”). “Fintechs” providing services regulated by such entities may be subject to authorization to operate. In such case, requesting authorization or, alternatively, entering into partnerships or joint ventures with regulated entities (such as financial institutions or brokers) should be considered, while “Fintechs” that provide pure technology services (or back office activities) are not commonly regulated. Fintech is part of the Brazilian Central Bank’s “BC+ Agenda”, which aims at fostering innovation to increase competitiveness in the credit segment, thus reducing costs for final users and promoting financial inclusion, one of the principal pillars of the Brazilian Central Bank’s monetary policy.

### **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 no regulatory sandbox has been introduced specifically for the Fintech industry, there are a few examples of sandboxes that have helped foster the Fintech scene in Brazil. Regarding the payment services segment, the regulation provides minimum thresholds for a payment arrangement to be considered relevant (annual volume in transactions and number of transactions) and, therefore, subject to the Central Bank’s prior authorization. Likewise, payment institutions are only required to request prior authorization to operate if certain minimum thresholds are met (annual volume in transactions and amounts deposited in payment accounts). Among other reasons, minimum thresholds for relevant payment arrangements and payment institutions were created to foster the Fintech/innovations scenario in Brazil, given that an early authorization process with the Brazilian Central Bank and the regulatory burden resulting thereof could inhibit new “Fintechs”. The regulation exempts from the Brazilian Central Bank’s supervision the payment arrangements offered within governmental programs resulting of labor relationship, such as food stamps. The CVM has also created a regulatory sandbox for startups and small companies eligible for equity-based crowdfunding. Regulation is considerably less stringent in comparison to publicly-held companies, however limitations

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apply in regards to the size of issuers and to the maximum amount that can be raised through public offerings under such platforms, as well as restrictions to the periodicity of crowdsales (please refer to section 3.3. below).

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

Restrictions may apply. For instance, financial institutions in Brazil must submit the acquisition of interest in any other entity to the prior approval of the Brazilian Central Bank. Such restriction has a prudential rationale, aiming to mitigate the systemic risk stemming from the strategic role performed by financial institutions in the Brazilian financial system.

## **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?**

Brazilian regulation does not distinguish lending crowdfunding from peer to peer lending ("P2P"). For more details regarding P2P, 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?**

On April 26, 2018, the National Monetary Council enacted the regulation allowing certain types of transactions by credit Fintechs through electronic lending platforms without the need of bank intermediation, including the P2P.

Under the new regulation, the credit Fintech may qualify as (i) a Peer-to-Peer Lending Company ("SEP"), if its purpose is to enable the granting of loan transactions among peers, or (ii) a direct credit company, if its corporate object is, among others, to perform loan transactions in which its own capital is the sole origin of funds.

The regulation set forth some particular requirements for incorporating a 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 BRL15,000 per debtor within the same SEP, except where such investor holds at least BRL 1 million (around USD 300,000) in total investments in the capital markets and is thus considered to be a "qualified investor" under CVM regulation;
- (ii) Corporate capital: P2P companies must have a minimum BRL 1 million corporate 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; and
- (iv) Policies: P2P companies shall adhere to Anti-Money Laundering ("AML") and Know Your Client ("KYC") policies.

### **2.3. IS CONSUMER PROTECTION**

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### REGULATION APPLICABLE TO LENDING CROWDFUNDING OR P2P LENDING?

Consumer protection laws in Brazil cover the relationship between consumers (i.e., investors) and companies offering financial services, whereas consumers may seek for local court protection in case of consumer rights violation. Particular requirements of consumer protection laws in Brazil that may apply to Fintech companies include:

- (i) Protection against services deemed to be hazardous and against misleading/abusive advertisement, with clear and precise information regarding the product or service, as well as its supplier;
- (ii) Accessible customer support, with protection by administrative bodies created to settle consumer disputes or impose sanctions for consumer law violations;
- (iii) Clear and extensive orientation on the consumer's right to retract from the purchase of products or services, whenever such purchase is not concluded physically in a store, within seven days from the purchase date, as well as possible nullification of abusive contractual provisions; and indemnification for patrimonial and moral damages.

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

Under CVM Instruction N° 588, which regulates equity-based crowdfunding (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, factoring companies do not perform activities restricted to financial institutions (such as lending and intermediation of monies) and therefore would not be subject to the Brazilian Central Bank's supervision. Moreover, crowdfactoring would in principle be excluded from the equity-based crowdfunding's scope of regulation, namely CVM Instruction N° 588.

## 3. INVESTMENT AND CAPITAL MARKETS

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

In July 2017, CVM enacted a new regulation for equity-based crowdfunding (CVM Instruction N° 588). The purpose of such regulation is to ease access of small business and startups, with maximum annual turn of BRL10 million (approx. USD3 million), to the capital markets. Under current regulation, the regulatory burden is entirely placed upon investment-based crowdfunding platforms, which are subject to CVM's oversight as the intermediary institutions of crowdsales. Such platforms 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

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associated with their investments.

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

Crowdequity platforms must be registered with the CVM. Although no specific corporate form (e.g., corporation or LLC) is required, platforms must meet a minimum share capital of BRL100,000 (approx. USD30,000) and implement procedures compatible with the adequate performance of its role as a gatekeeper, including the drafting of a code of conduct. As of February 2019, 15 crowdfunding platforms are registered under CVM Instruction N° 588.

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

The investment in equity-based crowdfunding platforms is limited, as a general rule, to BRL10,000 (approx. USD3,000) per investor on an annual basis, except in cases such investor (i) is considered to be a “qualified investor” under CVM regulation (please refer to section 2.2. above) or (ii) holds total investments/has annual revenue exceeding BRL100,000 (approx. USD30,000), 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 BRL5 million (approx. USD1.5 million) per project. Additionally, issuers are restricted from launching a new crowdsale for a 120-day period following

the conclusion of the original crowdsale. Secondary markets for securities issued in crowdsales are the equity-based crowdfunding platforms themselves. Since CVM Instruction N° 588 is a recently-enacted regulation and considering that the equity-based crowdfunding market is still incipient in Brazil, liquidity in such secondary markets is very limited.

## **4. CRYPTOCURRENCIES**

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

There is no specific law regulating cryptocurrencies in Brazil. Nonetheless, both the Brazilian Central Bank and the CVM have issued formal releases expressing their concerns related to this matter, as this is explained below:

- (i) Brazilian Central Bank: The Brazilian Central Bank does not regulate or supervise transactions performed with cryptocurrencies and, for the time being, understands that such virtual currencies do not bring relevant risks to the National Financial System, especially considering that the cryptocurrency market amounted to only 0.5% of the stock market's total trading volume (numbers of 2018). However, given that the matter has been raising growing interest from economic agents, such authority has published a formal notice on November 2017 (Notice N° 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.
- (ii) CVM: CVM's formal notices published on October and November, both of 2017, and March, 2018, aim at providing clarification regarding the initial coin offers and the nature

## BRAZIL

of the digital assets issued in the context of the so-called initial coin offerings (“ICO’s”). According to such notices, a token may be considered a security depending upon the economic context of the relevant issuance and the rights conferred to its investors. Under such scenario, its issuance and negotiation shall be subject to all the relevant rules and regulations, as further explained below.

In addition to the foregoing, a bill of law addressing matters of legality, nature and potential obligations inherent to cryptocurrencies and transactions performed by its owners and traders is currently under discussion in Brazil.

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

There is no legal restriction for one to hold and/or transact with cryptocurrencies in Brazil.

Notwithstanding the aforementioned, it is worth mentioning that (i) given that CVM has ruled that cryptocurrencies shall not be considered financial assets, local investment funds are forbidden to directly invest in it, (ii) cryptocurrencies may not be used for the purposes of international transfers, as Brazilian law provides that such transactions may only be executed through institutions authorized by the Brazilian Central Bank and subject to all the exchanges rules, and (iii) public authorities may investigate any person who is reportedly using cryptocurrencies for illegal purposes.

### **4.3. ARE THERE ANY PARTICULAR REQUIREMENTS FOR TRADING PLATFORMS TO HOLD AND/**

### **OR TO TRANACT WITH CRYPTOCURRENCIES?**

Trading platforms are not regulated, authorized or under supervision of the Brazilian Central Bank or CVM. However, such authorities have warned the market that in case trading platforms come to perform activities restricted to regulated entities (such as brokers), measures may be implemented to restrict such activity.

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

The only public statement from Brazilian authorities regarding the allowance to hold, transact or trade by financial entities is related to investment funds, as explained above.

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

ICO’s are not regulated in Brazil. However, by means of official releases published on 2017 and 2018, CVM stated that it is (i) aware of the growing trend of ICO’s, (ii) monitoring this type of transaction, and (iii) seeking to understand the related benefits and risks.

In general, such official releases (which included FAQ regarding the matter) provides the following:

(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

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management of the company), the transaction is subject to specific rules and regulations, including CVM Instruction N° 400, which regulates public offers of securities in the primary and secondary markets;

(ii) Utility tokens: ICO transactions issuing the so-called utility tokens (tokens that grant the investor the right to access a platform, project or service, through a license of use or credits to be used in connection with a certain product or service and, accordingly, are not qualified as securities) fall out of the scope of analysis of the CVM;

(iii) Risks inherent to such investments and relevant recommendations. All the risks inherent to such investments and general recommendations to avoid fraud.

### 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 all sectors and, generally speaking, is well perceived by the market. As of February 2019, 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?

Not only some of the largest banks in Brazil are reportedly

using or testing such technology, but also the Brazilian Central Bank itself has a team dedicated on studying blockchain technology applied to the infrastructure of inter-bank payment schemes. Non-financial companies are also testing the technology with the purpose of reducing the risk of frauds in the production of food and supply chain.

### 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?

From established companies to startups, Brazilian insurance companies are increasingly using Fintech into its services or products.

Use of Fintech, subject to compliance with data protection laws, may allow insurance companies to improve its risk management, create new products based on particular needs and create a better consumer experience for its clients.

For instance, there are examples of “insurtechs” that employ technology to help autonomous insurance brokers selling vehicle protection insurance policies in their integration with clients, where brokers are registered in an electronic platform (through mobile phone applications). The mobile phone application also collects information from clients, such as their driving habits and thus gathers more reliable information regarding their risk profile than those usually collected by typical insurance companies (bases heavily on the client’s own statements). The use of such technology vastly increases the efficiency in the search, pricing hiring of



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new insurance policies, thus benefiting all players involved (brokers and clients).

### **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 on 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 March 2018, there is no particular insurtech regulation. Nonetheless, in July, 2019, the Superintendence of Private Insurance (authority responsible for the supervision and control of the insurance, open private pension funds and capitalization markets in Brazil) has created a special commission of innovation and insurtech, with the purpose of studying the impacts of Fintech in insurance companies and, if necessary, suggest how to regulate it.

## **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.

Aware of this fact, CVM has addressed the matter in instruction CVM 592/17, published on November, 2017, through which it set forth general rules and duties for companies providing services of “guiding, recommending and advising, in a professional, independent and individual manner, on investments in the securities market, whose

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adoption and implementation are exclusively at the client's criteria" ("Securities Investment Advisory Services").

Among such rules, CVM expressly clarified that the use of automatized systems or algorithms in connection with the rendering of Securities Investment Advisory Services (i) are subject to the same rules applicable to the services provided by 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?**

Instruction CVM 592 of 2017 sets forth that companies providing Securities Investment Advisory Services shall keep the source-code of the automatized system available for CVM's inspection.

## **8. OTHER MATTERS**

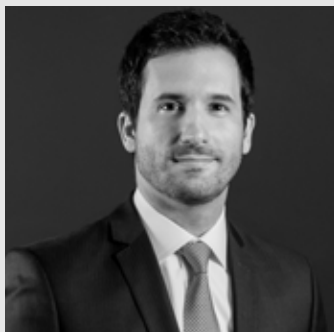
### **8.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS WHICH SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

Fintech issues are new by nature and, as it happens in most parts of the world, the uncertainty as to the effects of the transformation provided by some services make Brazilian

authorities cautious in connection with this matter.

Hence, in spite of the actual lack of a formal legislation for some of the matters covered by the Fintech concept, and in accordance with the authorities' position on the subject, it is possible that Brazilian Central Bank and/or the CVM promptly creates legal restrictions should they perceive any risk of potential harm to the Brazilian financial system or a systemic risk to its users.

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# ARGENTINA ESTUDIO O'FARRELL

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## 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.

In the past years, a strong and growing Fintech scene emerged in Argentina. There are many highly innovative start ups in practically all Fintech areas.

Thus, in April 2017, the legislator, through the Support for Entrepreneurial Capital Law N° 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

Sebastian Luegmayer



Alejo Muñoz de Toro



("Crowdfunding Projects"), that was further regulated and complemented by CNV General Resolution N° 717-E/2017 in December 2017 (the "Resolution 717").

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).

### 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 and ICO's to a limited extent.

Nevertheless, many Fintech companies are under the supervision of the CNV because they operate as settlement and clearing agents (*agentes de liquidación y compensación*) registered with the CNV. Moreover, since the adoption of Resolution N° 717, companies were created as crowdfunding

## ARGENTINA

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 hereof, no Fintech sandboxes have been implemented in Argentina.

### **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?**

On April 12, 2017, 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.

### **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 Argentine Financial Information Unit (the “UIF” for its Spanish acronym), the CNV or the BCRA.

### **2.3. IS CONSUMER PROTECTION REGULATION APPLICABLE TO**

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### LENDING CROWDFUNDING OR P2P LENDING?

According to section 1 of the Argentine Consumer Protection Law N° 24,240, 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 crowdfactoring in Argentina.

## 3. INVESTMENT AND CAPITAL MARKETS

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

Through the Argentine Entrepreneurial Law and Resolution

N° 717, the concept and regulation of equity crowdfunding was introduced in Argentina.

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

Resolution N° 717 sets forth requirements that crowdequity platforms must fulfill in order to be granted authorization and registration from the CNV, as well reporting requirements that must be complied with during their existence.

Resolution N° 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 N° 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).

### 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

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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 5% in a Crowdfunding Project, or a participation with a value of more than ARS 20,000 (equal to approximately US\$ 500 at the current US\$/ARS exchange rate), whichever amount is lower. In case the investor is a qualified investor pursuant to the CNV Rules, only the 5% investment limit will apply.

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 N° 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.

Notwithstanding, Argentine laws and regulations indirectly recognize digital currencies as a good, with no right to be used as legal tender. In that sense, in June 2014, the BCRA issued a press release warning the public about the risky nature of cryptocurrencies and stressing that cryptocurrencies are not a legal tender and do not enjoy any government backing.

For example, according to section 2 subparagraph 4) of Argentine Income Tax Law N° 27,430, as amended, digital currencies are taxable.

Furthermore, by means of Resolution N° 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?

Yes, cryptocurrencies can be held and transferred in Argentina.

#### 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?

Yes, Argentine financial entities are allowed to hold, transact or trade as intermediaries with cryptocurrencies

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

As of the date hereof, ICO's are not specifically regulated in Argentina. However, in December 2017, the CNV held that certain tokens issued by way of ICO may be considered

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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 not yet very common in Argentina. The distributed ledger sector is, however, growing and there are already around 30 blockchain start-up companies based in Argentina. 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.

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.

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



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### **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.

#### **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.

### **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?**

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## SEBASTIAN LUEGMAYER

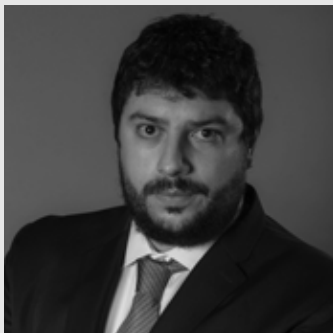
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Sebastian Luegmayer is a Partner of Estudio O'Farrell and heads the Banking and Capital Market practice. He advises corporations and financial entities in a wide range of capital markets transactions, loans, financial trusts, derivatives and complex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

Sebastian Luegmayer was heavily involved in several bond issuances made by YPF S.A. In December 2013, Estudio O'Farrell advised YPF S.A. in US\$ 500 million bond, which was placed on the international capital markets. In April 2014, Estudio O'Farrell assisted YPF S.A. in the second largest corporate bond placed for an Argentine company, amounting to US\$ 1 Billion. Estudio O'Farrell advised YPF S.A. in the largest-ever international corporate bond, worth US\$ 1.5 billion. Also, Estudio O'Farrell rendered legal advice to YPF S.A. in a bond exchange for an amount of US\$ 85 million. In addition, Estudio O'Farrell rendered legal advice to YPF S.A. in the first bond offering placed in the Swiss capital markets by an Argentine issuer.



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# PANAMÁ

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## 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 last year under the name Bill N° 629 of 2018 (the “Fintech Bill”), however, such bill has not yet been enacted into law.

As a result, as of the date of this writing, Panama does not have Fintech specific laws or regulations. Therefore, from a regulatory standpoint, Fintech businesses must currently be analyzed though the lens of general provisions of Panamanian law, including provisions that were originally

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Andrés Sanjur



conceived with very different business models in mind, often even before Fintech came into existence.

The net result of the current regulatory status quo is that new proposed businesses often encounter legal vacuums, as existing laws do not neatly fit in with or apply to Fintech businesses.

Although this presents investors with some challenges, such challenges may be overcome by fostering transparency and cooperation with the relevant regulators (e.g. through the implementation of regulatory sandboxes); and by seeking proper legal guidance.

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

The currently available regulatory approach is, therefore, to

## PANAMÁ

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 does 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.

## **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.

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

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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 underlying terms of a transaction), however, there aren't any regulatory limits on, for example, the amount of an 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.

Similarly, Panamanian law does not currently impose scrutiny or diligence obligations on P2P lenders beyond general AML provisions, nor has enacted provisions aimed at protecting less sophisticated borrowers.

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?**

Yes, it is. Although Panama has not yet enacted lending crowdfunding or P2P lending specific regulations, Law 45 of 2007 ("Law 45") generally imposes certain obligations on economic agents that offer goods or services to consumers. 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 that develop it 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 Superintendence of Banking of Panama issued Regulation N° 006-2016 (which builds upon the provisions of Panama's AML law, Law 23 of 2015).

Regulation N° 006-2016 specifically categorizes companies in the business of factoring as supervised entities, under the purview of the Superintendence of Banking of Panama for purposes of AML compliance. Further Regulation N°

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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 (Superintendencia de Mercado de Valores), which is charged with overseeing the Panamanian securities market.

Although such framework has yet to address crowdequity funding directly, the National Securities Exchange Commission 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 harbor, must register with the National Securities Exchange Commission.

Through Opinion N° 07-2018, the National Securities Exchange Commission 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 N° 1 of 1999 (the “Securities Law”), including article 128 thereof.

As a result, in the opinion of the National Securities Exchange Commission, 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 National Securities Exchange Commission.

#### 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 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.

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## 4. CRYPTOCURRENCIES

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

Cryptocurrencies are not currently regulated in Panama.

In fact, on April 25, 2018 the National Securities Exchange Commission 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 N° 4 of 2013 issued by the National Securities Exchange Commission, 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 National Securities Exchange Commission issued a non-binding opinion on November 15th, 2018 (Opinion N° 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.

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

At the moment, ICO's are not regulated in Panama. Given the view adopted by the National Securities Exchange Commission through non-binding Opinion N° 07-2018, further, ICO's would not appear to be subject to the framework of Panama's Securities Law.

As a result, ICO's are currently unregulated and therefore may legally be conducted in Panama.

In fact, as of the date of this article, we are aware of several ICO initiatives in Panama, with more likely activity in this field in the near future.

## **5. DISTRIBUTED LEDGER**

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

The use of distributed ledger technology is not currently regulated in Panama. We have seen various applications of this technology being discussed (i.e. compliance, cryptocurrencies, logistics, etc.), but we are not currently aware of any particular initiatives that have been implemented nor have being used in our jurisdiction.

### **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. However, we are not currently privy to or aware of any 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**



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### **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. OTHER MATTERS**

### **8.1. ARE THERE ANY OTHER MATERIAL CONSIDERATIONS WHICH SHOULD BE TAKEN INTO ACCOUNT IN ORDER TO PARTICIPATE AS CONSUMERS, INVESTORS OR**

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### **ADMINISTRATORS OF FINTECH COMPANIES IN YOUR JURISDICTION?**

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.

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.





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## COSTA RICA

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### 1. OVERVIEW

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

The most significant development has been an official statement from the Costa Rican central bank regarding cryptocurrencies, which is further described below. There has been no other significant statements of policy or initiatives for regulating the Fintech industry.

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

Other than the central bank's statement regarding cryptocurrencies, Costa Rican regulatory authorities have not formulated a position nor a regulatory strategy with respect to Fintech.

Marco Ureña



Rodrigo Zelaya



#### 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).

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

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. ARE DONATION AND 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 and there is no particular regulations on the factoring business. To the extent the activity does not involve financial intermediation, it would not fall within the scope of financial

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services regulations.

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

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.

#### 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.

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**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.

**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?**

There is no limitation that insurance companies in our jurisdiction can offer services or products through Fintech technologies. 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?**

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

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**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. 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?**

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.


 The logo for 'batalla' is displayed in a bold, lowercase, sans-serif font.

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