



REPORT

Status of Fintech regulation in
Latin America

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1. Introduction

What is Fintech?

Fintech (Financial Technologies) is an incipient and rapidly growing market for startups that develop new procedures, applications or business models in the financial sector via the Internet. Its market model competes with that offered by traditional financial institutions, as it allows the user to reduce all types of costs such as transactions, commissions or time.

What do the bills on Fintech that are advancing in the region regulate?

The draft bills currently under discussion seek to regulate four specific aspects related to financial technologies: **Payment Methods, Crowdfunding, Cryptocurrencies and Sandbox:**

1. Means of payment: it is the facilitating mechanism to send and pay money between individuals or between individuals and services, without the need to resort to a financial institution. The banking fees offered by this type of company are lower than those charged by banks. In short, the regulation of these companies in the region seeks to protect consumer defense in the event that the money registered in these platforms is subject to digital theft.

2. Crowdfunding: startups act as a link between individuals who wish to invest in a project and developers who are looking for financing. In this way, the investor avoids high bank fees and the developer finds financing faster than applying for a loan from a bank.

The regulations under study in the region tend to discourage frauds by developers who do not carry out their projects as well as coordinate the funding that start-ups can operate for the intermediation of loans and services

3. Cryptocurrencies: it seeks to completely obviate banking and state intervention in both local and international money transactions. At least that was the idea behind the virtual asset market in the first place. Currently, hacking and fraud by private individuals using this crypto asset is driving users of this type of currency to demand state regulation so that they can operate safely.

4. Sandbox responds to closed test environments, designed to experiment securely with web development or 'software' projects. This isolated environment allows for the development of a testing ground for new business models that are not yet protected by current regulations, supervised by regulatory institutions. In other words, the sandbox is the field of innovation in the fintech industry, where companies work to generate new types of protocols, applications or mechanisms. Within the fintech regulatory system, this is the field that allows the development of this new industry. As for sandbox in particular, companies work with sensitive data on products that are not yet on the market. The objective of the regulation in this field is to guarantee good practices regarding these data, as well as to establish the requirements that these companies must meet to operate and carry out their business.

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Opinion of international organizations in the development of fintech laws

In regard to the promotion of regulation of this type of technologies, many organizations such as the Inter-American Development Bank (IDB), the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD) and the World Bank (WB) have expressed their views between 2015 and 2017.

●**Inter-American Development Bank:** the IDB emphasized the benefits of the new mechanisms to which the regulations will open the doors, without entailing exaggerated risks due to the limited scope of the test. For the IMF is clear that the implementation of a law must favor the two actors involved: consumers and financiers.

●**International Monetary Fund:** The IMF is clear on the fact that any regulation put in place to regulate the fintech industry must favor both parties: consumers and finance companies. It recommends being careful when restricting the operation of virtual assets such as cryptocurrencies (given their rapid development) and highlights their main security character.

●**Financial Action Task Force:** The FATF The FATF has focused its proposals on the regulation of crypto-currencies. It recommends focusing regulation on the risk posed by this type of assets in terms of money laundering and the financing of terrorism. It also suggests drawing up a register of natural or legal persons that provide money and value transfer services.

●**Organisation for Economic Co-operation**

and Development: The OECD highlights the potential benefits of financial technologies, such as lower transaction costs, mainly for cross-border transactions. It also highlights the potential benefits in terms of a better user experience, a wider range of products and services at lower cost, and expanded access to financial services. However, it warns that financial technologies present challenges for regulators, including ensuring user protection, money laundering and terrorist financing, and market volatility.

Origin of fintech regulations in Latin America

Financial technologies regulations in Latin America are originated both from the Executive and Legislative branches. In some cases, however, the two branches of government are working together to create a new regulation.

In the cases that will be presented in the document, Argentina, Colombia, Ecuador and Venezuela have work done in the Executive Branch. In the case of Panama, Peru, Mexico and Chile, there is a joint effort between the Executive and the Legislative Branches. In other cases, the Executive Branch takes a bill to Congress for consideration by national legislators. Finally, in Brazil and Uruguay, the study is carried out on an ad hoc basis at the parliamentary level.

The following will be observed on a case-by-case basis in the countries of the Latin American region where some form of regulation of the fintech market was studied or is being studied.

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Argentina

Although the Argentine government has shown openness to the development of *fintech*, there are no plans to advance in the regulation of this industry until it is verified how it evolves. However, if progress is made it is likely that the bill will arise from the Executive Power. Some specific aspects that affect the development of the sector have been ruled by the Ministry of Finance, the National Securities Commission (CNV) and the national Central Bank (BCRA).

In recent months there have been progress in issues such as the regulation of collective financing. The functioning of *Crowdfunding* platforms established by the Entrepreneurism Law (Nº [27.349](#)) was ruled by CNV General Resolution Nº [717/2017](#). Although, until now, CNV has not authorized any platform, the fintech "Se.Socio" informed in May that it had completed the qualification process and that it was awaiting the official resolution.

Also in December 2017, Law [27.430](#) was passed, which taxed income derived from the operation with digital currencies with the Income Tax. In April this year, the BCRA authorized via Communication "C" [7850](#) the operations of the country's first digital bank, Banco Wanap S.A. Between February and May, progress was also made in the regulation of digital and electronic signatures, biometrics and transfer traceability.

Brasil

On July 8th, 2015, a [bill](#) was introduced in Congress to regulate negotiations with cryptocurrencies (such as bitcoins) and airline mileage programs, under the supervision of the Central Bank and the Ministry of Finance's Financial Activities Control Board (Coaf). On May 23rd, 2017, the Chamber of Deputies established a Special Committee to prepare a report to be introduced to the Chamber. Thus, it opened a series of public consultations with entities and experts in the sector, and they are expected to continue for several months. In this regard, the Central Bank and the Federal Reserve voted against regulating virtual currencies.

The main topics that will be discussed are the minimization of the risks that virtual currencies pose to the financial stability of the economy, the reduction of their use in the financing of illegal activities and the consumer's protection against possible abuses. However, the Coaf rejects the regulation, and Dep. Alexandre Valle (Partido de la República, an ally of the ruling party) acknowledged the difficulty of regulating a cryptocurrency, but defends the supervision of monetary transactions.

Regarding the airline mileages programs, the author of the bill, Dep. Aureo (Solidaridad), stated that the debate would also cover the points accumulation programs offered by airlines and credit cards. "This issue has to be discussed and regulated here in the Committee, so that consumers are not surprised. If this is a currency, if it is a benefit to the consumer, it cannot expire".

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Chile

The increase in the use of financial technologies in Chile has motivated the public sector to initiate an evaluation of its impacts and a possible implementation of regulatory frameworks. Among the proposals analyzed, the creation of a specific regulation that establishes appropriate requirements to participate in the *crowdfunding* platforms according to its risks, stands out. They also evaluate promoting "open banking" to facilitate the exchange of information between traditional entities (banks) and fintech companies. Finally, it was proposed to promote a temporary legal license for Fintech companies within a "*regulatory sandbox*" that allows the development of innovations.

These proposals are promoted by entities of the public sector such as the Central Bank of Chile who presented the report "[Criptoactives and Financial Stability](#)" before the Chamber of Deputies Finance Committee. In this report, it opens the door to the regulation of these assets. Based on its proposals, the Financial Stability Board works with a view to producing regulatory proposals in the medium term. Another public sector institution working on this field is the National Productivity Commission, an autonomous entity created by the state and in charge of advising it, which presented the report "[Disruptive Technologies in Chile](#)". This report proposes regulatory frameworks to minimize risks and maximize the benefits of these technologies.

The development of financial technologies is progressing steadily in the country, something that has boosted the interest of the public sector to advance in its regulation in order to

limit its risks and take advantage of its benefits. However, they are still in a stage of analysis and comparative studies of international legislations, as shown by both studies, as a preliminary step to propose, in the medium term, a normative framework. Beyond this, until now, no progress has been made in specific regulations or laws.

Colombia

On August 2nd, the Ministry of Finance published a [decree](#) to regulate crowdfunding activities in Colombia. The decree defines *crowdfunding* as the activity through which contributors are put in contact with recipients requesting funding. The operating agencies must be registered in the National Registry of Stock Market Agents (RNAMEV), authorized and supervised by the Superintendence of Finance of Colombia, and carry out their activity via electronic infrastructures, such as a website or virtual platform.

Crowdfunding will be implemented through the issuance of both debt and equity securities. This issuance will not constitute a public offering of securities or require registration in the National Securities and Issuers Registry (RNVE). On the contrary, they may only be issued by crowdfunding-operating agencies.

The decree also stipulates that there will be two types of contributors: Firstly, qualified contributors, who must meet at least one of the following requirements:

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assets equal to or greater than 10,000 minimum wages (approximately US\$ 2,700,000); being the holder of a portfolio of investment securities, other than crowdfunding securities, equal to or greater than 5.000 minimum wages (approximately US\$ 1,350,000); having the certification of a market professional as an operator issued by a self-regulatory body of the stock market; having the status of an agency supervised by the Superintendence of Finance of Colombia; and/or being a foreign or multilateral financial agency. Secondly, unqualified contributors, who are the ones who do not meet any of these requirements.

Projects may be financed up to 10,000 minimum wages (approximately US\$ 2,700,000) by qualified contributors, and up to 3,000 minimum wages (approximately US\$ 810,000) by unqualified contributors. The latter will also have an investment limit of 20% of their annual income or assets (whichever is higher).

Ecuador

The *fintech*'s development in Ecuador is low, so the need to legislate them has not been an issue to the public sector. That is why we can only highlight the [statement](#) from the Central Bank, and public statements by officials of the Superintendency of Banks, and the Monetary and Financial Board that clarified that cryptocurrencies are not legal means of payment in the country. No other *fintech* has aroused the regulatory interest of the State.

In Ecuador, the two most developed financial technologies are: *crowdfunding* and cryptocurrencies. Both were developed under the impulse of the private sector. In the case of cryptocurrencies the group "Criptoasesores" stands out, which has been

promoting them since late 2017. His spokesman, Danny Ledesma, has stated that the group is trying to capture the public sector interest to advance on regulations of these assets in order to use them for the benefit of the national economy, something they have not yet achieved. The same happens with the *crowdfunding* platforms that have been advancing since mid-2017.

It is clear that in Ecuador, until now, the *financial technologies* has not been a regulatory or legislative concern. Instead the State has chosen to regulate "ad hoc", using existing laws such as [Article 94 of the Organic and Financial Code](#), some financial technologies that had disruptive effects, such as cryptocurrencies, through resolutions or declarations of their financial system regulatory entities.

México

In February 2018, Congress passed the [law that regulates Financial Technology Institutions](#). Through this law, *fintech* and *crowdfunding* companies are allowed to operate legally in Mexican territory with prior authorization from the National Banking and Securities Commission (CNBV). In addition, it allows the use of cryptocurrencies, or "virtual assets" under the approval of the Bank of Mexico (Banxico).

The law will become fully effective as of 2020. Until then, the CNBV and Banxico have the obligation to issue the secondary regulation of the law. After that, the regulation of the different Financial Technology Institutions in Mexico will be able to enter into force. The CNBV will introduce the draft decrees of the first round of secondary regulations of the Fintech law in September.

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Panamá

The Executive branch introduced in the National Assembly April 9th, 2018, a bill that [modernizes the Panamanian financial system](#). The regulation is under discussion in the Economy Committee of the National Assembly. The Executive hopes that Assembly will pass the bill in November.

The bill defines the Specialized Financial Institutions (known as "EFE's") and Collective Financing Centres (CEFICOs), and authorizes them to offer services such as the issuance of e-money or the execution of projects on collective financing platforms, among others. The Ministry of Economy and Finance will temporarily regulate the institutions. Afterwards, this attribution will be transferred to the Superintendence of Banks.

The regulation establishes a special regime for companies and projects called Fintech, together with the creation of a regulatory framework for the implementation of controlled experiments under public supervision.

Perú

The Superintendence of Banking and Insurance (SBS) has been working since 2017 on a draft "Alternative Financing Law" that regulates financial technologies (fintech) to accelerate and encourage their development. It is expected that the preliminary draft will be ready soon, so that the entity will proceed

to introduce the bill in Congress, so it is debated and passed. Subsequently, the Executive will issue the additional regulation if necessary.

The regulatory strategy of the SBS would include several specific [proposals](#), which include the Alternative Financing Bill, modifications to the Exchange and Loan Houses Law (Anti-laundering), and improvements to the Payment Systems Law. The Alternative Financing Law would regulate the Participatory Financing (*crowdfunding*), Financial (small amounts of money coming from a large number of people to finance a project, business or other need, in exchange for certain profitability) and Non-Financial Platforms: donations and rewards. Likewise, public officials are considering to regulate the Non-Participatory Financing Platforms, which cover both the loans between a single bidder and a single applicant, as well as the loans granted with the own funds of the company that manages the platform. On the other hand, possible applications of technologies to reduce tax compliance and tax compliance costs are being studied.

The SBS is still working on the preparation of the preliminary draft, with the collaboration of the Stock Market Society (SMV). These agencies will continue to consult with government entities such as the Ministry of Economy and Finance (MEF), the Central Reserve Bank of Peru (BCRP) and the National Superintendency of Customs and Tax Administration (SUNAT).

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In terms of recruitment and digital identity, the SBS also works in coordination with the National Registry of Identification and Civil Status (RENIEC) and with assistance from the World Bank. Companies from the sector will also be consulted before moving forward with the regulatory process.

As for Congress, at the end of June of this year the legislator Miguel Castro Grandez (Fuerza Popular, opposition, majority) introduced a bill that regulates the legal regime of *crowdfunding* platforms, in order to finance entrepreneurship and innovation. This initiative defines and regulates different variants of crowdfunding, but does not encompass other activities or services.

Uruguay

The National Congress is working on a bill that regulates *crowdfunding*. The House of Representatives' Innovation, Science and Technology Special Committee is in charge of debating this bill, which stimulates entrepreneurship in Uruguay and recognizes crowdfunding as a financing measure ([2635/2017](#)). It establishes the possibility of lending up to 10,000 dollars per person at the same time that it consecrates a series of requirements to participate in these platforms. According to the representative Rodrigo Goñi (Partido Nacional-Opposition) there is an agreement between the legislative forces to pass it before the day of entrepreneurship in Uruguay, on the third Thursday of November.

The Central Bank of Uruguay has also assured, in the middle of last year, that it is studying international regulations to establish a

specific regulation for these assets in the short term, with the objective of limiting their risks and maximizing their benefits for the Uruguayan economy. At that time they had declared that they would push regulations from mid-2018, however this has not happened yet. Likewise, other financial technologies such as *cryptocurrencies* are driven by the private sector, waiting to capture the interest of the public sector for its regulation. In this sense, the Uruguayan Chamber of Fintech is working on the development of normative proposals for the use of these cryptoactives.

In short, Uruguay is in a process of *fintech* regulation, where up to now, the work of the private sector and the legislative branch stands out. The latter has stuck to a single type of financial technology: *crowdfunding*. We still have to wait to see if the Central Bank will finally present a regulation or if the executive branch moves forward with new measures in this regard, but everything indicates that this will happen as a result of the increasing use of these assets.

Venezuela

Although there are no Fintech regulations in Venezuela, the National Constituent Assembly (ANC) passed a [decree](#) on cryptoactives April 2018, which was introduced by the President of Venezuela Nicolás Maduro after the creation of the digital currency Petro. The regulation enables the Executive branch to regulate the issuance and distribution of cryptocurrencies. There are no new regulations on cryptocurrencies planned in the coming months.

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The regulation establishes that the Superintendence of Cryptocurrency and Related Venezuelan Activities (SUPCAVEN) is in charge of controlling the acquisition and use of Petro by natural and legal persons. On the other hand, the Treasury of Assets issues and collects Petros, as indicated by the Venezuelan president.

The Venezuelan private sector is concerned

about the viability of the cryptocurrency to tackle the economic crisis that has been afflicting Venezuela for months, and considers it as "a debt issuance bond". However, the Venezuelan government ignores these concerns because, according to official sources, more than 130 countries have bought Petros for US\$ 5 billion. The sale of 44 million Petros is expected to continue in the coming months.

3. Conclusions

The pioneer country in the region

●Mexico enacted a Fintech Law March 2018 and is in the process of drafting secondary provisions, which should come into force September 2018. In this case, the task of legislating is complemented by the legislation enacted by Congress with the regulations of the Executive.

How is the region making progress in terms of means of payment, crowdfunding, cryptocurrencies and sanbox regulations?

●**Crowdfunding:** Four countries in the region study regulations on collective financing: Chile, Panama, Peru and Uruguay, while in Argentina, Colombia and Mexico there are already regulations on this topic.

●**Means of payment:** Regarding financial technology institutions that are used as means of payment or so-called virtual banks, Mexico and Argentina partially regulate these services. Initiatives on this topic are under study in Chile, Panama and Peru.

●**Cryptocurrencies:** There are several and different cryptocurrency regulations across the region. While in Venezuela Maduro's administration created its own cryptocurrency, in Mexico the operation of these virtual assets are allowed under the authorization of the Bank of Mexico. In more extreme cases, such as in Ecuador, its use is

prohibited.

In the fintech industry, the regulation on cryptocurrencies is more than just a regulation on a new industry. In this case, the cryptocurrencies are defined as a means of exchanging money, whose conception competes with the sovereignty and monopoly of the nation state when issuing its banknotes. Countries such as Brazil and Chile embarked on an analysis of the issue of prohibiting or authorizing the use of cryptomedas in their national territory.

●**Sandbox:** is the most neglected sector of the new regulations. While it is regulated only in Mexico, there are bills under study in Chile and Colombia. There is a comprehensive initiative under discussion in Chile, which is close to the overarching scope of the recently passed Mexican initiative, which regulates Financial Technology Institutions.

How does the Mexican regulation influence in the region?

The contagious effect of the Mexican legislation on the rest of the countries of the region in general and on the member states of the Pacific Alliance in particular -where the regulation of this sector finds more support than in other Latin American countries- is also to be taken into account. The progress of this regulation has the potential to be replicated in the bordering countries of each Pacific Alliance member country, and even reach other Latin American associations such as the Southern Common Market (MERCOSUR), in the future.

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