

FINTECH SECTOR IN COLOMBIA

SUPERINTENDENCIA FINANCIERA PROCOLOMBIA

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de Colombia

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INDEX /

{•} — **How to set up a Fintech in Colombia. What corporate and special requirements should I meet?** **P. 3**

{•} — **Fintech regulatory framework** **P. 5**

2.1. LSEDPES Law **P. 6**

2.2. Crowdfunding **P. 6**

2.3. Investments of credit establishments, financial services companies and capitalization companies, in the capital of innovation and financial technology. **P. 7**

2.4. Low value payments **P. 7**

2.5. Regulatory Sandbox **P. 10**

2.6. Compilation **P. 14**

{•} — **Who supervises the Fintech sector? What are the minimum compliance obligations once it is in operation?** **P. 15**

INDEX

CHAPTER
1



HOW TO SET UP A FINTECH IN COLOMBIA. WHAT CORPORATE AND SPECIAL REQUIREMENTS SHOULD I MEET?

1. How to set up a FINTECH in Colombia. What corporate and special requirements should I meet?

Although Colombian regulations do not provide an explicit definition for a Fintech Company, in general terms, this refers to those companies whose corporate purpose is to develop or apply technology-based innovations in the provision of financial, stock exchange or insurance services, which result in new business models, applications, processes or products.

Regarding the legal regime applicable to the constitution of one of such companies, the following must be considered. In the case of a Fintech company that intends to carry out financial, stock exchange, or insurance activities and any other related to the management, use or investment of resources collected from the public, it must obtain prior authorization from the Financial Superintendence of Colombia (Superintendencia Financiera de Colombia-SFC), a technical body that exercises the inspection, surveillance and control over the persons who carry out such activities, according to the provisions of the Organic Statute of the Financial System (Estatuto Orgánico del Sistema Financiero-EOSF), Decree 2555 of 2010 and other concordant regulations.

The special legal regime in force for the incorporation of an entity supervised by the SFC is established, among others, in articles 53 and 80 of the EOSF, as well as in Part I, Title I, Chapter I of the Basic Legal Circular (Circular Básica Jurídica – External Circular 029 of 2014) and other corresponding regulations. Regarding the social form that the financial institutions supervised by the SFC must adopt, the article 53 prescribes in its numeral 1 that they (...) “shall be constituted in the form of anonymous joint-stock companies or cooperative associations”.

Likewise, it should also be noted that for the incorporation of an entity supervised by the SFC, the accreditation of a minimum capital is required. That information can be consulted on the website www.superfinanciera.gov.co through the following route: [Constitución entidades vigiladas](#) (Incorporation of entites)

The documents required to submit the application for the incorporation of a supervised entity before the SFC are contained in checklist 147 - Authorization for the Constitution of Supervised Entities - M-LC-AUT-001, which can be consulted through the following route on the same web page mentioned above: [Documentos de acreditación](#) (documents to file)

However, in the case of a Fintech company that carries out a different activity from those entities supervised by the SFC, its incorporation must be governed by the general and special rules applicable to the legal nature of the activity.

**FINTECH REGULATORY
FRAMEWORK**



2. Fintech regulatory framework

» 2.1 SEDPES Act

Colombia has been advancing on Fintech regulation, in this sense, Law 1735 of 2014 "Financial Inclusion Law" (Ley de Inclusión Financiera)¹, regulated by Decree 1491 of 2015, created the Limited Companies Specialized in Payments and Electronic Deposits (Sociedades Anónimas Especializadas en Pagos - SEDPES) and was the first provision that created entities authorized to collect money and carry out operations such as drafts, payments and transfers.

The special regime of the financial system (Estatuto Orgánico del Sistema Financiero EOSF)² applies to these entities, which means that they are controlled and supervised by the Superintendencia Financiera (SFC) and require special authorization to participate in the market. In any case, these companies cannot grant credits or any type of financing.

Additionally, these companies may be incorporated by a natural or legal person in accordance with EOSF regulations and the provisions of Law 1978 of 2019 regarding providers of communication networks and services to third parties. The SEDPES will be forced to make contributions to the SFC in accordance with article 337 of the EOSF.

» 2.2 Crowdfunding

In 2017 and attending to one of the most developed areas worldwide, the URF initiated a normative project to establish crowdfunding in Colombia, as a mechanism highlighted for its potential to expand the sources of financing for small and medium sized companies.

Under this approach, the National Government issued Decree 1357 of 2018, partially modified by Decree 1235 of 2020, by which collaborative financing is regulated as a new activity of the stock market, following a simplified standard, so that these issues do not constitute a public offering of securities, nor will they require registration in the National Registry of Securities and Issuers (Registro Nacional de Valores y Emisores – RNVE).

Through the regulated framework, the productive projects may be financed for up to fifty-eight thousand (58,000)³ minimum monthly legal salaries, and the investors may allocate up to 20% of their annual income or equity to this type of financing in the case of non-qualified investors.

¹ http://www.secretariassenado.gov.co/senado/basedoc/ley_1735_2014.html

² http://www.secretariassenado.gov.co/senado/basedoc/estatuto_organico_sistema_financiero.html

³ 1 minimum legal monthly wage is equivalent to COP = \$1.000.000 pesos, USD = \$263 approx

» 2.3 Investments by Credit Establishments, financial services companies and capitalization companies, in the capital of innovation and financial technology companies.

On the other hand, in 2018, the interest of the traditional financial sector and the Fintech industry was gathered to make alliances to generate benefits for their current and potential clients. As a result, in December 2018 Decree 2443⁴ was enacted, authorizing credit establishments to invest capital in innovation companies.

Also in 2018, in the framework of the creation of advisory as a securities market activity, through decree 661⁵, the use of technological tools in relationships with the client was authorized to carry out the activity, to open spaces for innovation in the contact between securities intermediaries and investors, as well as to generate efficiencies in the execution of advisory services.

» 2.4 Low value payments

Subsequently, the URF proposed to update the regulation of the low value payment system after 13 years of being issued. The above with the objective of generating higher security and agility in transactions and facilitate financial inclusion, since it allows replacing typical scorings with payment histories and promoting the formalization of monetary operations in the Colombian economy.

This revision intends to adjust the activities of the payment system to the new context, promote the access of new players, expand cost transparency and define interoperability standards. The construction of this comprehensive reform was undertaken closely associated with the industry and with the support of the Bank of the Republic (Banco de la República) and SFC, understanding this initiative as an opportunity to lay the foundations for a new financial infrastructure that will serve as a highway for new digital economy.

Thus, on December 18, 2020, Decree 1692⁶ was approved, which regulated low value payment systems. This system brings together transactions and payments between physical or legal persons, businesses, state entities, autonomous equity and other agents of the economy. It is essential for the proper functioning of the financial sector and to increase the efficiency and formality of the economy and it also contributes to the digital transformation of the country and the society.

Low value payment system administrator (EASPBV), are those that develop the activity of clearing and settlement in one or more payment systems. These entities are supervised by the SFC.

⁴ <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%202443%20DEL%2027%20DE%20DICIEMBRE%20DE%202018.pdf>

⁵ <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%20661%20DEL%2017%20DE%20ABRIL%20DE%202018.pdf>

⁶ <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%201692%20DEL%2018%20DE%20DICIEMBRE%20DE%202020.pdf>

Compensation is understood as the process carried out by the EASPBV to determine, at the end of an established period, the balance that corresponds to each of its participants as a result of the payment orders or fund transfers processed in the low-value payment system and extinguish their obligations among themselves, as established by current regulations. The compensation can be bilateral, that is, between two persons who are reciprocally debtors and creditors, or multilateral, that is, between more than two individuals who have the qualities mentioned.

Liquidation is understood as the process carried out by the EASPBV with which an operation or set of operations ends, through charges and credits in deposit accounts in the Bank of the Republic, in checking or savings accounts in a credit establishment, that are held by the participants in a payment system.

We highlight the following points of this Decree:

- » Since the low value payment systems administration entities, until the National Government does not provide otherwise, are technical and administrative services companies and the activities carried out by the low value payment systems administration entities are of major importance for the proper functioning of the payment systems in the economy, the adequate functioning of the financial sector and the digital transformation of the country and society, these activities must cease to be considered as related to the financial entities. Consequently, the activities developed by low value payment systems administration entities are eliminated from the list of activities proper to technical and administrative services companies.

- » This decree seeks to promote the acquiring activity, allowing this activity to be offered by new players not supervised by the SFC that complement the traditional schemes with disruptive business models. The solvency and capital requirements are intended to guarantee compliance with their obligations to the participants and users of the payment systems. On the other hand, in case these new players cannot comply with the requirements imposed in this decree, they may act as payment service providers of an acquirer. A participant is defined as anyone who has been authorized by the EASPBV to process payment orders or transfer of funds in its system. Participants may be entities supervised and not supervised by the SFC.

- » **Acquisition:** Activity consisting of the execution and fulfillment of the responsibilities listed below:
- Link merchants to the low-value payment system.
 - Provide merchants with access technologies that allow the use of payment instruments.
 - Process and handle payment orders or fund transfers initiated through access technologies.
 - Pay the merchant or the aggregator, in the terms agreed with them, the resources of the sales made through the access technologies supplied to them, as well as manage the adjustments that may arise derived from a dispute process, returns, claims or chargebacks and notify the user of the confirmation or rejection of the payment or transfer order.
- » The decree establishes obligations of transparency and publicity of rates, forcing the administrator of the low-value payment system to explicitly disclose on its website the criteria used to determine interchange rates. This allows market players to compare prices and choose the offer that is most convenient for them.
- » The Decree defines a payment system as an organized set of policies, rules, agreements, payment instruments, entities and technological components, such as equipment, software and communication systems, which allow the transfer of funds between system participants, through the receipt, processing, transmission, clearing and settlement of payment orders or fund transfers. In any case, a payment system will only be considered as such when three (3) or more institutions supervised by the SFC, multi-active cooperatives with a Savings and Credit Section or savings and credit cooperatives supervised by the Superintendencia of the Solidarity Economy (Superintendencia de la Economía Solidaria), registered in the Guarantee Fund for Cooperative Entities (Fondo de Garantías de Entidades Cooperativas- Fogacoop) acting as participants.
- » Low-value payment systems are those payment systems that process payment or fund transfer orders other than those processed in the high-value payment system, in accordance with what is defined by the Bank of the Republic. In low-value payment systems, an EASPBV is required to process payment orders or fund transfers between the issuing entity and the acquirer or receiving entity.

The managing entities of low-value payment systems must comply with the following:

- a) Adopt an adequate corporate governance structure for the proper administration and operation of the system, including the adoption of necessary and sufficient policies and procedures for the correct management of conflicts of interest that arise in the development of their activity;**
- b) Adopt and put into practice rules and high operational, technical and disciplinary standards that allow the development of their operations in conditions of safety, transparency and efficiency;**
- c) Adopt and implement adequate administration and management systems for the risks inherent in their activity;**
- d) Adopt and apply adequate procedures that allow them to prevent being used to carry out criminal activities, and**
- e) Adopt adequate financial and commercial information disclosure systems for participants.**

Registration in the Unsupervised Acquirers Registry (Registro de Adquirentes no Vigilados) will not replace compliance with the requirements stipulated by the administrators of low-value payment systems for the access of acquirers as participants in their payment system. However, the managing entity of low-value payment systems may not require non-monitored acquirers to comply with capital requirements, solvency or mechanisms for the separation of funds from payment orders or funds transfers, other than those provided for in Article 2.17.3.1.2 of the Decree.

» 2.5 Regulatory Sandbox

Law 1955 of May 25, 2019, National Development Plan 2018 – 2022 (Plan Nacional de Desarrollo), provided the following for innovative technological development companies that intend to carry out activities of the institutions supervised by the SFC:

“(...) Article 166 (...) Those who intend to implement innovative technological developments to carry out activities of the entities supervised by the Financial Superintendence, may constitute one of these entities and obtain a certificate to operate temporarily, in accordance with the conditions, requirements and prudential requirements, including the determination or application of minimum capital, in accordance with the regulations issued by the National Government for such purpose. That temporary operation certificate shall not exceed two (2) years and may be revoked at any time by the Financial Superintendence. The Financial Superintendence will authorize the constitution of these entities and will grant the respective operating certificate, in accordance with the procedure

established for this purpose. In development of this provision, the National Government may determine the minimum amounts of capital that must be accredited to request the constitution of entities subject to the control and surveillance of the Financial Superintendence of Colombia, which may be differentiated based on the operations authorized by the Financial Superintendence of Colombia, under the terms of numeral 2 of article 53 of the Organic Statute of the Financial System(...)” (EOSF).

Thus, the entities that intend to provide financial services typical of the entities supervised by the SFC, through innovative technological developments, will be subject to a series of requisites and requirements of a prudential nature for their constitution, including a minimum amount of capital. Likewise, for their operation, they must previously obtain a temporary operation certificate issued by the SFC.

Reflecting the foregoing, the National Government issued Decree 1234 of 2020⁷ which regulated the controlled test area for financial innovation activities, a space in which innovative technological developments may be temporarily implemented for the provision of such operations of the entities supervised by the SFC.

» Article 2.35.7.2.1 of the decree establishes that “the interested parties and the participating supervised entities that meet the following requirements may access the controlled test space:

1. That the proposed innovative technological development falls within one of the purposes set forth in article 2.35.7.1.3 of the decree.
2. That the proposed innovative technological development is sufficiently advanced so that it can be tested immediately after the temporary operation certificate is issued.
3. That the financial services will be provided in Colombian territory.

Paragraph 1. Through instructions of general character and in accordance with the objectives mentioned in article 2.35.7.1.2. of this decree, the Financial Superintendence of Colombia will establish the objective causes of restriction to access the controlled test space.

Paragraph 2. The Financial Superintendence of Colombia, through general instructions, will establish the parameters that allow defining the state of progress of the innovative technological development that intends to be tested in the controlled test space”.

Interested parties that intends to implement innovative technological developments to carry out activities or operations of the entities supervised by the SFC through the controlled test space, must become one of such entities through the special procedure provided in Decree 1234 of 2020.

⁷ <https://dapre.presidencia.gov.co/normativa/normativa/DECRETO%201234%20DEL%2014%20DE%20SEPTIEMBRE%20DE%202020.pdf>

» According to article 2.35.7.2.2 of the aforementioned regulation, the request for incorporation to operate temporarily “must be submitted to the Financial Superintendence of Colombia by the interested parties and must include at least the following:

1. The project of the bylaws and the request of constitution for temporary operation.
2. Specific characteristics of the innovative technological development, specifying how they relate to the purposes mentioned in article 2.35.7.1.3. of this decree.
3. Business model, definition of the proposed financial product or service, business feasibility, goals and financial break-even point.
4. Tools or technological resources that may be used.
5. Identification of the prudential requirements, including the minimum, operational and risk management capital that need to be softened, the proposal of the differentiated prudential conditions, requisites and requirements applicable to the tests, together with a justifying analysis of the need and proportionality of that flexibility in accordance with the business model.
6. Policies and procedures that the entity will apply for the management, administration and disclosure of situations that generate conflicts of interest.
7. The proposal of risk analysis and management policies for financial products and services that use innovative technological developments that are intended to be tested.
8. Identification of the activities that are intended to be carried out in the controlled test space and the objectives that are intended to be met.
9. The legal provisions that regulate the financial activity that obstruct the development of products or services, if applicable.
10. Metrics and indicators for the evaluation of the proposed objectives, in the terms of numeral 8 of this article.
11. The target market and maximum number of financial consumers to whom the product or service in question would be offered, specifying the respective geographic location.
12. The maximum amount of resources that it proposes to capture from each financial consumer, as well as the maximum total amount that it may receive during the validity of its temporary operation certificate, if applicable.
13. Proposed test term and schedule.

14. The way in which it intends to inform and obtain the consent of its financial consumers regarding the fact that the financial products and services offered are part of a controlled test space, as well as the risks to which they are exposed.

15. Proposal for a transition, clearance or adjustment plan.

16. The proposal of the measures that will be adopted to achieve the protection of its financial consumers, according to the level of risk of the temporary test.

17. Other information that the Financial Superintendence of Colombia determines.”

Sequentially, in its article 2.35.7.2.4, Decree 1234 of 2020 establishes that "through instructions issued by the Financial Superintendence of Colombia, the procedure will be established to evaluate the requests for incorporation for temporary operation presented by the interested parties and the request for the issuance of the temporary operation certificate in the case of participating supervised entities. In particular, the Financial Superintendence of Colombia must evaluate the adequacy and need for differentiated prudential conditions, terms and requirements required to carry out the temporary tests, as well as the minimum capitals proposed and the way to prove these, which must be proportional to the complexity and risks inherent in the development of authorized activities”.

Once the SFC has approved the constitution for temporary operation, a temporary operation certificate will be issued to the interested party for a maximum period of two (2) years counted from its issuance. The issuance of that certificate will authorize the participants to carry out the proposed activity subject to the conditions, requirements and reasonable requirements that it contains.

Lastly, the Decree adds that when the temporary test ends, the participants may close down the operation or request authorization from the SFC to establish themselves as a financial, stock market or insurance entity, corresponding to the developments of the tested activity, in the terms of the regulations in force for this type of entity.

» External Circular 016 of August 26, 2021⁸

On August 26, 2021, External Circular 016 was issued by the SFC, which developed the regulation of some aspects of the operation of the test-controlled space for financial innovation activities, so that it enters operation.

That circular created Chapter VIII of Title I of Part I of the Basic Legal Circular related to the provisions applicable in the controlled test space for financial innovation activities and is in force since its publication.

⁸ <https://www.superfinanciera.gov.co/inicio/normativa/normativa-general/circulares-externas-cartas-circulares-y-resoluciones-desde-el-ano-/circulares-externas/circulares-externas--10106589>

Regarding this regulation, you can consult the “Frequently Asked Questions (FAQ)” section in the following link to access said space:

Frequent questions

The special legal regime in force for the incorporation of an entity supervised by the SFC, is established in the E.O.S.F. (articles 53 and 80, among others), as well as in Part I, Title I, Chapter I of the Basic Legal Circular (External Circular 029 of 2014), Decree 2555 of 2010, and other concordant regulations.

» 2.6 Compilation

It is suggested to consult the regulatory compilation on financial and technological innovation in the financial sector, which can be found on the website www.superfinanciera.gov.co through the following route: **Preguntas frecuentes** (frequent questions, question 16)⁹

⁹ <https://www.superfinanciera.gov.co/jsp/FAQ/user/viewPreguntas/id/80760/f/0/c/0>



WHO SUPERVISES THE FINTECH SECTOR? WHAT ARE THE MINIMUM COMPLIANCE OBLIGATIONS ONCE IT IS IN OPERATION?

3. Who supervises the Fintech sector? What are the minimum compliance obligations once it is in operation?

The Financial Superintendence exercises supervision, vigilance and control over all persons who carry out financial, stock market or insurance activities, and any other related to the management, use or investment of resources raised from the public.

Under this understanding, if a Fintech company considers including within its corporate purpose the exercise of any activity of the entities supervised by the SFC, it will be this body that executes said supervision and surveillance, prior authorization of incorporation and operation.

On the other hand, the minimum obligations that a person supervised by the SFC must comply with will depend on the authorization given by said entity.

We hope this document will be useful to you. Any additional questions can be directed to the SFC website www.superfinanciera.gov.co

Foreign Direct Investment
www.investincolombia.com.co
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