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FINTECH- ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

I. BACKROUND

Technology-based innovations have radically changed the financial industry due to the emergence of new services and products, which has allowed the **creation of opportunities for growth and efficiency,** and at the same time, it improves the **access and delivery of financial services and products** to people, businesses and communities (customers/occasional customers) excluded or unattended from the current financial system, promoting **financial inclusion.**

It is important to **prevent the misuse of the financial system** through the new **services and products that technology-based innovations** offer to the public such as **new tools and vehicles** for the commission of money laundering and terrorist financing (ML/TF). In consequence, it is necessary that the Financial Technology-based Institutions (FTI) are regulated in AML/CFT due to, among others, the following:

- They can **receive cash** to carry out their **transactions without any thresholds** that restrict them.
- There is **lack of legal certainty** regarding the activities carried out by the FTI, since there is a risk thay they carry out **anonymous transactions**.
- Currently, **there is no AML/CFT regulation** for the transactions that the FTI carry out with their customers, so there are no controls in relation to the identification of the latter and the origin of their resources.

In this regard, **the Financial Action Task Force (FATF)**[1] is working to understand the risks and vulnerabilities of new payment services and financial products, as well as the **impact of international standards on AML/CFT** on technology-based innovations in financial services and products, with the **aim** to:

- ensure that the **AML/CFT measures** and **regulation** are kept **up-to-date** as new technologies emerge;
- mitigate the **risks associated** in ML/FT.
- understand the **impact financial innovations** and technologies have **on the financial system** and understand the impact that ML/FT **vulnerabilities and threats** that may arise, have on the **integrity of the financial system.** The latter in order to **mitigate** them, and
- create a **clear, fair and consistent** AML/CFT regulation.

Application of FAFT standards to FTI

- **Recommendation 1 .-** Assessing Risks and Applying a Risk-Based Approach: FTI must identify, understand and asses their ML/TF risks. FTI should apply a RBA to ensure that measures to prevent or mitigate ML/TF risks are commensurate with the risks identified.
- **Recommendation 10 .-** Customer Due Diligence (CDD): CDD measures when: **(i)** establishing business relations or carrying out occasional transactions using reliable, independent source documents, data or information; **(ii)** enhanced CDD consistent with the risk and take reasonable measures to verify customer identity; and **(iii)** transaction monitoring as the main risk mitigator.
- **Recommendation 11 .-** Record Keeping: maintenance of transaction records that include: information to identify the parties; the nature and date of the transaction, and the amount transferred.
- **Recommendation 20.-** Reporting of suspicious transactions: countries must require FTI to be alert to the type of suspicious activities they are in a position to detect, depending on the type of transaction they perform.
- **Recommendation 15.-** New Technologies: identify and assess ML/TF risks relating to the development of new products and new business practices and the use of new or developing technologies for both new and preexisting products.
- **Recommendation 16.-** Wire Transfers: when FTI conduct wire transfers they are required to include originator and beneficiary information.

[1] Mexico is member of the FATF since 2000. The FATF is an inter-governmental body which sets standards in AML/CFT.

II. Mexican Regulation

Mexico as **member of the FATF** recognizes the importance of financial innovation in the **domestic and international financial system**, as well as the challenges that may arise in AML/CFT (among others). In this regard, the **Financial Technology Law (FinTech Law) draft** establishes that the **Ministry of Finance (SHCP), with the National Banking and Securities Comission (CNBV) opinion**, will issue the **AML/CFT General Rules (GR)** that the FTI must observe to comply, among other, with the following:

- Have an adequate **KYC** policy.
- Submit to the SHCP, through the CNBV, **CTRs and STRs**, including those modalities that the SHCP establishes in the GR.
- Have **internal structures** that function as compliance areas of the GR.
- Establish how the **information** obtained in the **KYC** process should be **safeguarded and guaranteed**.
- Provide AML/CFT **training** within the FTI.
- **Keep** the **KYC** information and reports of their customers, for at least **10 years.**
- Immediately **suspend** any transaction and services related to customers that are on **lists of blocked persons.**
- Have an **AML/CFT manual** which clearly describes the measures and procedures to comply with the GR.

III. International Co-operation

Due to the fact that the FTI offer cross-border services, it is important the coordination between authorities for which it is necessary to:

- Have a common language that accurately reflects the transactions and services offered by each FTI, which must evolve as technology changes.
- Promote a good understanding between the parties involved in the FTI transactions, as well as how they can be used for ML/FT purposes.
- Promote discussions regarding the implementation of the AML/CFT regulation with a risk-based approach.

Likewise, FTIs services involve different parties that are located in various jurisdictions that may not have an adequate AML/CFT regulations and controls, for which it is important to promote international co-operation to have good information, financial intelligence and evidence, which allow criminal action against criminals and their assets, through:

- Information exchange[2].
- Creation of bilateral groups to find and establish the AML/CFT typologies, challenges and risks of the FTI.
- Memoranda of understanding, among others.

[2] The Financial Intelligence Units must cooperate and exchange information related to STRs with their counterparts, especially when dealing with cross-border transactions.