Guidance on Directors´ Duties. Section 172 and stakeholder considerations

The GC100, a group made up of the general counsels and secretaries to the board of FTSE 100* companies, has published guidance on the obligations in section 172 of the United Kingdom's 2006 Companies Act. This provision contains the obligations incumbent on members of Boards of Directors, who must act in good faith to work toward the institution's success for the benefit of shareholders. The latest revision of the United Kingdom's Code of Corporate Governance has extended this duty, urging board directors to take all stakeholders and the context in which the institution is operating into consideration.

The document presents some practical action that board members can consider taking to comply with their obligation under section 172. The issues around which such action revolves are:

Strategy, aligning the decisions adopted with the vision and goals set by the company and whether it contributes to the success of the company's social interests and those of stakeholders
Training of directors, both in terms of their obligations and rights, and their skills and abilities
Information received by board members, which must be appropriate, timely and proportionate in order to adopt the right decisions
Existence of policies and procedures, both for the Board and for senior management, that support the company's operations and goals
Company's engagement with stakeholders

The guidance also highlights the importance of fostering a corporate culture that is aligned with the interests of all the institution's stakeholders, such as employees, customers, suppliers, local communities, the environment and other groups that are affected by its activities.

* Stock exchange index of the 100 most important securities on the London Stock Exchange

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Commonsense Principles 2.0

In the September 2016 issue of Progreso, we published the Commonsense Corporate Governance Principles, drafted by senior executives at major North-American corporations and institutional investors, who got together to set out guidelines and recommendations to serve as a blueprint and point of departure in encouraging constructive dialogue about best practices that should be implemented in corporate governance.

Two years later, the document has been updated to bring it into line with the latest recommendations and trends in good governance. We lay out below the changes in Commonsense Principles 2.0 from the earlier text:

Board of Directors

The document highlights the work of independent directors in bringing different perspectives to the governing body, as well as the duty of all directors to dedicate enough time and energy to discharging their functions. To this end, they must limit their commitments and the number of boards on which they serve lest this should reduce their availability to carry out their role.

On the board-member selection process, the document states that shareholders should choose those they consider most appropriate to represent their interests; in any event, no board director should accept a seat on the Board of Directors unless they believe they are going to be able to serve for at least 3 years.

Board agendas

One of the items that must be tabled every year on the agenda are questions about significant shareholders. The document points out that contact with these is important in order to tackle issues such as long-term value creation, any proposals they formulate themselves, and questions about the daily running of the institution.

Independent directors

The principles acknowledge the importance of the leader of the Board of Directors being independent, and recognize that there are two types of leadership structure: an independent chair or a lead independent director. The role of lead independent director should be clearly defined in order to guarantee their effective leadership, with their responsibilities differentiated from those of the executive director or CEO, approved by the Board and reported to shareholders.

The role of investors in corporate governance

Lastly, it flags up the role of investors in corporations' corporate governance. In the case of asset managers with a significant ownership stake, the document states that they should have access to the company's management and, in certain cases, to the Board of Directors.

Furthermore, it establishes that in the event of asset managers following the recommendations of proxy advisors when making decisions, they should disclose that this is the case and check that the information on which the recommendations are grounded is accurate and relevant. There should also be defined processes in place for avoiding or mitigating conflicts of interest.

New Companies Act to improve corporate governance

The 2018 Companies and other Commercial Institutions Bill, passed at the end of October, reforms the earlier 1951 law, bringing it into line with latest international corporate governance standards.

As well as regulating many matters affecting companies (how they are incorporated, mergers, acquisitions, liquidation, etc) the law contains other new elements on good governance, which we analyze below:

Members of the Board of Directors

This contains several clauses about corporate administration and management and, specifically, the obligation that at least one company director should be resident in the country. It also specifies that:

Private institutions with between 1 and 10 shareholders should have at least 2 directors, and those with more than 10 shareholders must have at least 3 directors on their board
Public institutions must have between 7 and 15 directors on their board

To be consistent with corporate governance best practice, the law stipulates that a director who is also the Managing Director or CEO of the company may not chair the board.

It sets out in detail the responsibilities of the board of directors as a collegiate body, and specifically directors' obligations to display independent judgment when taking decisions and to act in good faith, in the best interests of the company and of its stakeholders. Likewise, it regulates the functions, vetting requirements and responsibilities of the individual acting as the board secretary; under all circumstances this person must be resident in the country.

As to board members of public companies, the Bill dictates that they may serve on a maximum of six boards of companies unrelated to one another at any moment, a condition aimed at making sure they have enough time to discharge their duties effectively.

The law pays particular attention to due diligence and directors' loyalty, specifically, to their obligation to manage conflicts of interest that may arise in the performance of their duties.

Directors' pay

The Bill stipulates that directors' pay should be made known and submitted to the General Shareholders' Meeting for its information and approval.

It prohibits the granting of loans or collateral to board directors from company funds unless these are under arm's-length market conditions, and adds that any such collateral guarantees should be subject to rules that enable directors' personal financial interests to be kept separate from the company in which they have a position.

Provisions for public institutions

In addition to the above, the Bill contains specific provisions for public institutions, such as:

The obligation to have an audit committee consisting of at least 3 members, all of them independent.
The requirement to implement corporate governance policies on important matters such as the independent criteria of directors, their responsibilities, managing conflicts of interest, directors' pay policy, succession planning for board members, and any others considered necessary for the smooth and successful running of the company's activity.
The duty to have at least 3 non-executive or independent directors on their board of directors.

Online Register

Finally, in order to make the real ownership of companies more transparent, the Bill provides for the creation of an Online Register to keep a record of domestic and foreign companies and private commercial corporations. This Register must be kept permanently up to date.

Independence and transparency of auditors

The 22/2015 Auditing Act was published on 20 July 2015, as analyzed in earlier issues of Progreso, transposing the changes contained in EU Directive 2014/56 of the European Parliament and the Council* into Spanish law. The Act contained some important changes, "*deriving from the need to restore user confidence in audited financial and economic information, and in particular in public-interest institutions, and to drive up the quality of audits, strengthening their professional independence*", as the preamble expresses it.

This draft Royal Decree approves the supporting legislation for Act 22/2015, as per the regulatory adaptations laid out in its additional provision 8, and regulates auditing activity, increasing the transparency of auditors' work.

New guidelines for auditing reports

One of the most important new features is the suppression of references to the content of the audit report that the text of Act 22/2015 contained. This now covers only the responsibility of the board of directors to draft the financial statements for audit and the internal control system, and to describe the purpose of the audit and the manner in which it is to be conducted, containing a reference to the name, registered address and professional collegiate number of the chief auditor and the audit company.

The account auditing activity

There are new requirements regulating the legal authorization to audit: in the sections for natural persons and auditing companies a distinction is made between those who meet the requisite conditions for auditing public interest institutions and those who do not.

The law places an obligation on auditors to receive thorough continuous training so that their knowledge remains up-to-date. It even sets out the manner and conditions under which this continuous training requirement will be understood as met, indicating the number of hours, the activities, possible training centers, the manner of the accreditation and how to submit the information every year to the Institute of Accounting and Auditing.

It also mentions concrete custodial and confidentiality duties, which are applicable to all those people who have participated in conducting an audit, independently of whether they are part of the internal organization of the auditing companies or not.

Independence of audits and auditors

The draft seeks to reinforce the independent criteria that auditors must have when carrying out their work, and lays out more restrictive conditions around grounds for incompatibility, limitations on fees, duration of contracts and subsequent prohibitions.

This fosters a climate in which auditors behave with professional objectivity and due diligence, and one in which they pay particular attention to avoiding conflicts of interest.

Auditing public-interest institutions

The new auditing guidelines contain new obligations around the disclosure and reporting that is required of institutions that audit public interest entities, understood as those listed on the regulated stock exchange of any member state**.

Specifically, it includes a list of prohibited activities that may not be supplied to these institutions, whether the parent company or its affiliates, together with some regulations on fees that can be received for services other than auditing, the duty of external rotation and a number of obligations incumbent on the audit committees of these public-interest institutions.

Supervisory function

The draft decree also demands greater transparency and independence in the supervisory function and introduces the criterion of risk as the guiding principle in quality control reviews that the supervisory body must conduct.

* Directive 2014/56 of the European Parliament and the Council, 16 April 2014, amending EC Directive 2006/43 of the European Parliament and the Council, 17 May 2006, on the legal auditing of annual accounts and consolidated accounts

** Pursuant to Royal Decree 877/2015, 2 October, amending the definition given in the regulations supporting the consolidated text of the Auditing Act.

EU Cybersecurity Package and EU Certification Framework

In October, the European Cybersecurity Industry Leaders (ECIL)*, a working group of industry representatives created in 2015 to advise the European Commission, published a report analyzing the challenges facing the financial sector in the area of cybersecurity.

Like its precursors, the report makes recommendations to the European Commission (EC) to strengthen cybersecurity in Europe. The document analyzes the need for a common security certificate among member states and highlights the management of incident reporting and the harmonization of policies in the European Economic Area, as crucial elements for achieving the single digital market.

One of its recommendations is that the European Network and Information Security Agency (ENISA) should take on the job of independent auditor; another is that a version 2 of the information security management standards (ISMS 2.0) should be launched, updating the cybersecurity directive currently in force.

* The ECIL working group consists of Thales, Atos, Airbus Group, Deutsche Telekom, Ericsson, Infineon, Cybernetica, F-Secure, BBVA and BMW.

Gender in the financial system

In line with international trends, the report drafted by the Chilean Banking & Financial Institutions Authority shows that Chile is also making progress in reducing the economic gap caused by gender.

The report's main findings are as follows:

The number of women with banking credit has risen, as well as those with cash accounts.
Compared to men, women use more financial products for housing saving. Men, on the other hand, are more likely to use products with a commercial component
Women have lower rates of default and late payment than men
Different rates of interest are applied to men and women, conditioned by factors such as ability to pay, income level, and greater or lesser ease of access to the labor market.

Nancy Barry

Trustee of the BBVA Microfinance Foundation

Trustee of the BBVA Microfinance Foundation since 2008. Former President of Women's World Banking. Founder and CEO of Enterprise Solutions to Poverty. Bachelor of Economics from Stanford University. MBA from Harvard University.

1. From 1990 to 2006, you were President of Women's World Banking. What were your greatest accomplishments and what challenges did you face?

WWB was born at the first UN Conference on Women in 1975 in Mexico City. The founders and early leaders of WWB included Michaela Walsh, a US investment banker and visionary, Ela Bhatt, the leader of the self-employed women's movement in India, Beatriz Harretche, the top woman in the IDB in the 1980s and 1990s, and Esther Ocloo, who began as a street vendor making and selling jam in Ghana and ended up an agribusiness CEO. These leaders said that low-income women do not need charity; they need access to credit to build their small businesses.

In 1995, in preparation for the UN Conference on Women in Beijing, there were three working groups on women and finance, women and poverty, and women and enterprise. The reports of these working groups shaped the agenda for the Women's Conference. Speaking to that conference, Hillary Clinton, then US first lady, declared women's rights to be human rights, no more and no less. WWB created the Coalition on Women and Credit, and was central in the government and NGO deliberations.

These same working-group reports shaped the performance standards adopted by the Donor's Group for Small Enterprise in 1996, and by CGAP when formed in 1997. Beginning in 1996, women leaders —Ela Bhatt of WWB and SEWA, Maria Otero of Accion and I— as members of the organizing committee of the Microcredit Summit, mobilized leading practitioners to push back against the Grameen replication approach.

I am especially proud of the stage from 1997 to 2004, when WWB and its network members worked with governments of 20 countries, including Colombia, India, Kenya and the Philippines, to introduce financial-sector policies and regulations that encouraged a range of institutions to meet high standards in the provision of credit, savings and other financial services to low-income entrepreneurs.

2. In your opinion, what are the principal challenges that the sector faces?

There are far too many… But I guess I would highlight the following:

First and foremost, cost reduction. Leading MFIs have been able to increase the number of loans managed per loan officer, have reduced the cost of brick-and-mortar distribution systems, and have managed portfolio risk. But costs still need to be brought down further.

Another essential issue that must be addressed is the need for incremental and radical innovation in product offerings, channels and data base management.

And if I have to identify a third challenge, then it is clearly payment systems. These are like the wiring for multi-product offerings using mobile technology, which is likely to be the prevailing financial-service touchpoint within five to ten years. MFIs are not well set up to do the whole range of payment transactions. A simple payment system operating on a mobile platform provides a blackbone for modern financial services.

And finally, we should bear in mind how difficult it is proving to substitute the first generation of visionary MFI leaders. Many of the world's leading MFIs have been pioneered for 20-plus years by visionary leaders. The challenge now is to make a transition to the next generation of leaders, without losing the combination of efficiency and client connection which has made many MFIs successful.

3. In which countries of Latin America has microfinance worked best? Where has it done worst? And above all, why?

Success of microfinance in Latin America has been driven by international organizations, and policies were often built to accommodate the growth.

A total of 334 financial institutions in the region reported performance to the MIX in 2015 and/or 2016. Of these, 43 institutions, i.e., 12% of the total, had over 100,000 borrowers in 2015/16. These 43 MFIs served over 75% of the borrowers reached in the region. The nine institutions with over 500,000 borrowers had a 50% share of microloans, and the three MFIs with over a million borrowers had a 25% market share of borrowers reached in Latin America.

Outreach to borrowers and the location of large institutions are highly concentrated in a few countries: Peru, Mexico, Brazil and Colombia represent nearly 70% of the loan outreach in the region. The nine MFIs with over 500,000 clients in these four countries have a market share of 70% in these markets. In the category of MFIs with under 100,000 borrowers, 295 have an average of under 20,000

clients.

Peru has the deepest penetration of microlending relative to the size of the adult population, with 17% of the total population borrowing microloans in 2015/16. Paraguay follows, where the success of the financial corporations has brought the percentage up to 13%. And Ecuador comes in at ninth place, due to the successful entry of two large financial institutions. Mexico, Colombia and the Dominican Republic each have 6% of the total population with microloans. Despite the large number of microloans, Brazil has only 1% penetration, while Argentina has next to no microloans. Chile has microloan penetration levels of only 2% of the population.

4. Which countries of Latin America are models to follow in the road to more financial inclusion?

The major countries of Latin America differ on key measures of financial inclusion. For example, if we look at the percentage banked in the different countries, we see that Brazil, the Dominican Republic and Chile have higher percentage of people over 15 years of age with bank accounts relative to the regional average of 51.5% in 2014.

These same three countries have the highest percentage of bank accounts held by people in the bottom 40% income percentile, while Brazil and the Dominican Republic lead on the percentage of rural people with bank accounts.

Brazil, the Dominican Republic and Colombia have the highest percentage of the population taking out loans in the previous year. The Dominican Republic and Brazil both report figures that are over 50% of the regional average, which is 33%.

Mexico and the Dominican Republic had far higher percentages of rural people with loans relative to the regional average of 28.4%: 49.3% in Mexico and 48.1% in the Dominican Republic.

In the Dominican Republic, the percentage of poor people who saved with a financial institution was 26.5%, double the regional average.

The level of penetration of mobile accounts is very low in Latin America, at 2.3%. Chile has the highest penetration (3.8%) and Peru reports the lowest.

The Dominican Republic has the strongest performance on financial inclusion. Brazil performs well on the percentage of people with accounts and on savings, while Mexico performs well on indicators relating to lending. Peru seems to show the lowest performance on financial inclusion, particularly with respect to accounts and saving by poor households.

Latin America has similar levels of financial inclusion to South Asia on several dimensions, but it falls far short of developing countries in East Asia. However, it has deeper financial inclusion than Sub-Saharan Africa on most dimensions. Progress in the last five years on financial inclusion has been sound in all regions on most dimensions. Nonetheless penetration of financial institutions is much deeper on savings than on borrowing.

5. What are the key strengths and weaknesses of microfinance as a tool to empower women and facilitate their socio-economic development? What could be done to enhance such empowerment?

Research and experience indicate that many low-income women want access to small loans, which

can help their small businesses grow organically.

We can also see from the figures that these women often want a strong connection with their MFI or bank, a sense of belonging. In a buyer's market, this connection needs to be provided in a cost-effective way to provide credit at lower interest rates.

Women are not a homogeneous group. Segmentation is important in order to design products tailored to people's needs. It is usually based on age, education, the nature and size of the business and the needs of family members at different stages of life.

Women are increasingly willing to use mobile solutions to get ready access to products. Traditionally, access to loans and savings has been provided by visits from loan officers or branches, both of which can be costly. MFIs need to take advantage of the fact that women, particularly younger ones, would be glad to use smartphones for their banking requirements. Research shows that women and men alike will want access to payments, credit, savings products, account balance and other services over their mobile phones —while retaining a sense of connection to their banker.

Women juggle their economic and family activities with different priorities over their lifetime. However, we can spot a constant: women entrepreneurs tend to prioritize the needs of their families when making businesses decisions more than most men. So linking credit, savings and insurance offerings to education, health and housing of the family at key periods in the life cycle of the women and her family is the way to help women make the most of their potential.

Research shows us that women value effective and cost-effective connection and access to information. However, traditional training programs do not score especially high among women, since they have tended to be generic and taught by NGO staff who do not know the practical details of their businesses. Technology could facilitate the physical and virtual networking among women, so that they can share knowledge and tips and build business relationships. Some financial institutions and fintechs have been successful in using mobile messages to build demand for savings and insurance products, and others are beginning to boost their capacity to provide value-adding business literacy to microfinance clients.

6. What features of the BBVAMF Group's MFIs differentiate them from others in the world?

BBVAMF and the leading MFIs in the Group focus on how to build products and services which help low-income entrepreneurs build up their income and assets. This focus is vital today, since many actors consider that inclusive finance is simply access to financial services, without considering the impact for clients.

BBVAMF is the only group that systematically measures the impact of its activities on clients. The Foundation's methodology for *measuring what we care about*, has set the global standard on how to track increases in income and assets for clients over time.

In rural areas, BBVAMF has been a leader in the development of rural microfinance services for low income entrepreneurs and small farmers, so this segment is now a significant portion of the portfolio. The Group has built up innovative, very low-cost channels, building products that take into account the mixed sources of farming households' income. It has demonstrated the viability of a model focusing on finance for rural areas in Latin America, where farming is often still a predominantly family business.

7. Last year, BBVAMF celebrated its tenth anniversary. How do you see the future of the BBVAMF Group?

I see BBVAMF Group as a model and beacon for the industry. It will go on demonstrating that products and services responding to the needs of low-income entrepreneurs can be provided efficiently, profitably and at scale. This passion and focus is more important now than ever, and financial inclusion is vital to combat the dangers facing the microfinance industry. The BBVAMFGroup needs to continue to tell its entrepreneurs' success stories so that the general public, investors and other MFIs can learn what the model can achieve.

The BBVAMF Group must go on innovating in products and touchpoints for rural and urban finance that can bring down, which will mean lower interest rates for its borrowers. This will continue to require a combined effort from the member MFI to provide the know-how and impetus to move beyond labor-intensive models to systems combining technology and face-to-face relational touchpoints.

I see the BBVAMF Group as a model of how to combine the best of local and global in building excellence in governance and in the management of innovation, efficiency and risk. Experience of other groups demonstrates that this is a delicate balance. BBVAMF goes out of its way to respect local leadership know-how while helping them to achieve excellence and economies of scale. BBVAMF will continue to optimize this local-global model, with the concept of mutual accountability, harnessing talents and expertise in Spain and in other Group MFIs to achieve outstanding results.

And in the future, BBVAMF will continue its leadership in systematically measuring results for clients of Group MFIs. BBVAMF's data on clients' income, assets and family education will become increasingly deep and comprehensive over time, and will be invaluable for research purposes, and to extract analytics that can improve client segmentation and enhance the industry's products and services.

Digital transformation for proximity and inclusion

Miguel Ángel Charria Liévano, Executive President of Bancamía, member institution in the BBVA Microfinance Foundation Group

In recent years we have seen how digital transformation has been rising up the list of priorities until it is now top of the agenda for institutions in the global financial sector. The significant amount of money invested and the progress made are now there for all to see in the new players on the financing markets, as increasingly complex products come into our hands via our mobile phones, and interoperability, cashless transactions, etc, become commonplace.

In this environment, microfinance institutions are going to be at the forefront of change, accompanying part of the population excluded from traditional banking facilities. Our calling leads us to employ methods that not only help draw such people into the financial system, but also let us to stay by their side as they develop their businesses and interests. Microfinance has found an ally in technology, which enables us to reach increasing
numbers of low-income individuals, giving them the chance
to open a savings account, get a loan, access investment products and be protected by micro-insurance.

Three years ago, in Bancamía, with backing from the BBVA Microfinance Foundation, we set out on a digital transformation journey. Our goal was to bring the best financial technology within reach of low-income entrepreneurial Colombians in various parts of the country, particularly rural areas, who had no access to formal mechanisms for obtaining finance.

Making contact with more micro-entrepreneurs in both the countryside and the city, increasing their financial inclusion, improving their customer experience, speeding up our processes and simplifying our officers' transactional tasks… We could set ourselves these goals when we started to put technology at the heart of our activity. That is why we began by modernizing our banking core, so we could lay strong foundations on which all our microfinance management could be based.

After that, we developed the idea of taking our institution to where clients carry out their productive activities. Under our mobility program, we gave each and every one of our officers a tablet and an app with a range of features, including the possibility for them to onboard customers wherever they might be, assess their loan applications and open a savings account for them. Now, micro-entrepreneurs no longer have to spend time and money traveling to us; and we have reduced the use of paper while substantially shortening our lead times. We are very close to having a 100% online credit process, with our incorporation of the digital IOU, the roll-out of digital case files, and the development of digital signatures using biometrics.

Following the precepts of mobility and proximity to the customer, and using proprietary technology, we have achieved a 500% increase in the number of banking agents we have in rural and remote areas, reaching a total of 250 throughout the country. We have also created a new model, a combination of personal service and online processes, that we call Express Offices, which are now established in parts of the country where there were no banks, but where Bancamía now has a presence.

In January we will be launching our fully digital virtual office. Our customers can conduct their transactions directly over our website, doing things that up to now could only be handled in-branch: learning about and transacting business with all Bancamía's products, making interbank transfers, paying their utility bills by direct debit, etc. We are also progressing fast in upscaling our mobile banking app, which takes our institution out to our customers' mobile phones. 140,000 micro-entrepreneurs are already using our tools, a third of whom are living in the Colombian countryside. Our great success with these remote channels lies in the accompaniment that our entire sales force has given to customers, with an online training process to help them adopt these new technologies.

Relationship banking is and will continue to be at the heart of our activity as we journey together with all our customers and provide them with on-the-spot advice when and where they need it. We have discovered a great opportunity in digital transformation. It has enabled us to incorporate new technologies into the traditional microfinance model, making it more efficient, but without losing the chance to get to know our customers, to make them more financially literate and to accompany them closely as they build their development plan.

Personal Data protection

Bill 665 on “Personal Data protection” was passed in its third reading on 24 October 2018 in the National Assembly. The law guarantees respect for and protection of personal data in databases located within or outside the country.

The Bill, which is in addition to the special legislation on the creation and regulation of personal databases, covers the following:

Scope of application and exceptions

The Bill will apply to all databases in Panama, or whose Chief Data Officer is domiciled in Panama, that store data, whether about Panamanian nationals or foreign citizens. For these purposes, the regulation defines the Data Officer as the person, whether natural or legal, under public or private law, for profit or not, who takes decisions about data processing and who decides on data-related matters.

The law exempts the following cases from its scope of application, as well as data processes that are explicitly regulated by special laws:

Data processing carried out by a natural person for exclusively personal or domestic purposes.
Data processing carried out by the competent authorities for the purposes of preventing, investigating, detecting or prosecuting criminal breaches or to execute criminal sanctions.
Data processing carried out to analyze financial intelligence and pertaining to national security.
Data processing relating to international organizations.
Data processing emanating from information obtained by means of prior anonymization, such that the outcomes cannot be linked to the title owner of the personal data.

General principles

Principle of fair dealing: personal data must be collated without the use of deception or falsehood.
Principle of purpose: the data must be collated for specific purposes and may not be used for purposes incompatible with those for which they were requested.
Principle of proportionality: the data requested must be appropriate, relevant and limited to the minimum necessary for the purposes for which they are requested.
Principle of veracity and accuracy: the data must be accurate and up to date, such that they give a true picture of their owner’s current situation.
Principle of data security: technical and organizational measures must be put in place to ensure data security, particularly in the case of sensitive data.
Principle of transparency: the information provided to the data owner must be straightforward and clear.
Principle of confidentiality: officers in charge of processing personal data must keep that data confidential.
Principle of lawfulness: data must be collected with the prior consent of the title owner, or with legal grounds.
Principle of portability: the title owner is entitled to obtain from the data processing officer a copy of their personal data, which must be properly structured and in a standard format that is in general use.

Rights of the title owners of personal data

Following international personal data protection legislation, the new Panamanian law recognizes the rights of title owners to access, rectify, cancel, oppose and remove their data. Furthermore, the Bill specifies that the title owner has the right not to be subject to a decision based solely on the automated processing of their personal data and forbids the limitation of the right to block their data.

Requirements for personal data processing

Personal data may only be processed when some of the following conditions are met:

The data owner’s consent has been obtained.
The data processing is necessary in order to execute a contractual obligation, provided that the data owner is a party in that obligation.
The processing must be necessary to comply with the data processing officer’s legal obligation.
The personal data processing is authorized by virtue of a special law.

Data transfer

The law allows personal data to be transferred provided that certain conditions are met, such as: having the consent of the data owner; that the receiving country provides a level of protection equivalent to, or better, than Panama; that the processing officer transferring the data and the destination officer adopt binding self-regulating mechanisms, and that the transfer is carried out within the framework of contractual clauses containing mechanisms to protect personal data, among others.

Sanctions

The National Transparency & Information Access Authority (Antai) will set the amounts of the financial sanctions that will apply in the case of breaches, depending on their severity, at between USD 1,000 and USD 10,000.

Infractions, classified as minor, severe or very severe, will be sanctioned as follows:

Minor: Summons to the Antai to explain the records.
Severe: Proportionate fines.
Very severe: Shutdown of the database records, without prejudice to the corresponding fine; temporary or permanent suspension of and disbarment from the activity of storing and/or processing personal data, without prejudice to the corresponding fine.

Other considerations

The Bill recognizes the National Transparency & Information Access Authority as the regulatory body that, supported by the National Governmental Innovation Authority, will oversee checking and supervising matters relating to Information and Communication Technologies (ICT) covered by this law.

Finally, the regulation stipulates that it will come into force two years after it is published, providing a transition period so that the institutions can adapt to the requirements of the regulatory body.

Study on the impact on competition of new technologies in the financial sector

This study analyzes the impact on competition of new technologies in the financial sector (Fintech) from the perspective of the competition and of efficient economic regulation defending consumers. It tackles the key problems arising from a series of financial-sector applications such as payment systems and services, blockchain, asset management and crowdfunding.

The National Commission on Markets & Competition makes the following recommendations:

Regulation should avoid putting a stop to Fintech innovations, unless there are reasons of need and proportionality.
It should re-assess the need and proportionality of the various regulatory requirements for entering the market and practicing financial activities, in the spirit of seeing whether Fintech can correct market failings.
Regulation should focus on activities -rather than institutions- and avoid restrictions on activity as far as is possible. The Fintech ecosystem should have the greatest scope for action possible in order to make the most of efficiencies. Market shortcomings are connected to a particular activity and generally not to a way of organizing such activity.
To make the most of the Regtech phenomenon, allowing new technologies to be used for regulatory compliance, to reduce the burden of regulation and supervision.
Adopting regulatory sandboxes so that the most innovative models can develop within a test environment, and their market impact can be assessed.
Support open banking & insurance initiatives to ensure that the principles of technology neutrality are applied as well as those of non-discrimination, where access to certain inputs can take place under reasonable terms.

Women’s autonomy and economic empowerment

This report has been published in the context of the partnership between UN Women’s Regional Office for the Americas and the Caribbean and the Ibero-American General Secretariat (SEGIB).

The document tackles three key issues facing the promotion of women’s autonomy and economic empowerment, highlighting in each of the three, specific discriminatory situations present in the legislative frameworks prevailing across LAC countries:

Access to goods and equity. The report points to the discrimination deriving from laws regulating equity and goods during marriage, separations and divorce; inequalities in laws over inheritance and land ownership, as well as distinctions that exist in access to credit and financing.
Access to paid work. Labor legislation contains numerous discriminatory precepts that are detrimental to women’s access to employment, inequalities in wages, social security and pensions, as well as the precarious situations of domestic workers’ social protection.

Rights linked to unpaid work. The document has a chapter on the flimsy protection women have during pregnancy and on the still very limited achievements made in recognizing men's shared responsibility and the universal right to care without gender discrimination.

Furthermore, to illustrate the legal inequalities that exist across the region, the analysis contains copious tables comparing the situation between countries, giving concrete examples of situations that restrict women's economic autonomy and sometimes societal welfare as a whole.

Greater consumer production when using electronic payment services

Bill 48/2018 on payment services was submitted to Singapore's Parliament in November.

Under this law, the Monetary Authority of Singapore (MAS)* has extended and enhanced its regulatory framework, providing consumers with greater protection and generating more trust in the use of electronic payments.

Current legal framework

MAS currently regulates several types of payment services under the Payment Systems Act and the Money Exchange and Remittance Business Acts, which were passed in 2006 and 1979, respectively. Once the new law is passed, these earlier ones will be revoked and crypto payment services providers, currently beyond the scope of regulation, will have to obtain an operating license.

Furthermore, the new legal framework covers a wider range of payment services, regulating account issues, e-money issues, domestic and cross-border transfers, commercial purchases, purchase and sale of digital payment tokens and foreign exchange.

Regulatory frameworks and licenses

The law will ensure appropriate anti-money laundering and financing of terrorism controls and will create a more favorable environment for payment service innovation, thus reducing the risks along the entire value chain of payments. To that end, the Bill provides two regulatory frameworks:

Categories: to ensure financial stability, MAS will list and subject to surveillance those payment systems that are of systemic importance
Licenses: the system that will apply to retail payment service providers. There will be three different types of licenses, depending on the scope of activities carried out by payment service providers: a Money-changing license, which foreign exchange businesses must have; a Standard payment institution license and a Major payment institution license; the last two differentiate between the sum and type of transaction being undertaken.

The law affects banks, financial companies and credit card issuers** -whether these are bank cards or not- and grants a transition period before its provisions have to be met. Thus, digital token payment providers will have 6 months to adapt to the new system after the PSB comes into effect, while

payment service providers in currencies other than cryptocurrencies will have 12 months to transition to the new regulations.

* Central Bank of Singapore

** Companies can be incorporated either abroad or in Singapore, provided they have a permanent place of business in the country, or at least a registered office

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Microinsurance Bill

On 15 October the Puerto Rican Senate passed the Microinsurance Bill. The legislation amends the Insurance Code, Law 77, 16th June 1957, to make it easier for low-income groups to access private insurance, providing a financial protection product against specified risks.

The main points introduced into the existing Insurance Code are as follows:

Definition

The Bill defines microinsurance as a *low-cost, low-cover insurance policy, where the amount of the indemnity is based on a pre-defined amount, set out in the terms of the policy.* The key difference between microinsurance and traditional insurance lies in its simplicity: it is a product that is easy for clients to access and understand, with quick and efficient models for resolving claims.

Premiums

Management of premiums is expected to be more efficient and less costly, enabling the client to make frequent or partial payments depending on the insured party's economic conditions (low-income groups).

Default entails the automatic suspension of cover from the date the obligation falls due, such that insurers will not be liable for losses occurring during the period in which the policy is suspended. The consumer can reactivate the policy in the two days following the notification of the automatic suspension.

Parametric insurance policies

This is recognized as a sub-category of insurance that does not pay out pure loss, in other words, the insurer is obliged to pay a predetermined amount solely because a triggering event as defined in the policy can be demonstrated to have occurred; the insured party will not have to demonstrate a specific loss or the value of that loss. This type of insurance is used to cover financial losses sustained from catastrophic events.

Other points

The regulation forbids automatic policy renewal or having more than one microinsurance policy of the same category covering the same risk; it provides exhaustive regulations for how to obtain the authorization or license to broker microinsurance as well as the categories of microinsurance

distributor, producer, representative, authorized parties and general agents.

This new regulation constitutes an additional tool to make it easier to access funds against specific risks affecting low-income sectors. If it comes into law, Puerto Rico will be the first jurisdiction in the United States to incorporate microinsurance into its local market.

Reform of the agricultural sector’s legislative framework

Bill 628, establishing the general legislative framework for the agricultural sector, was passed on 22 October by the National Assembly on its third reading. This law marks a significant step forward for Panama’s farmers, insofar as it strengthens the national agribusiness policy, acknowledging the strategic importance of the agricultural sector in the country’s development.

The Bill, promoting agricultural production and fostering sustainable rural development, regulates the following areas:

Principles underpinning the country’s national agribusiness policy

The regulation defines the country’s agribusiness policy as the set of measures and strategies put in place by the State to guide the public and private sectors towards sustainable agricultural production. To this end, it assumes the following principles: social and gender equality and inclusion; the State’s social responsibility; civic participation and solidarity; competitiveness; social, environmental and economic sustainability, among others.

Types of agricultural producers

The law distinguishes between three types of agricultural producers, defining them as:

Family-business farmers: those whose living is based on productive agricultural activities in which all members of the family are involved to ensure their food security as well as generating income
Commercial farmers: producers active in the domestic and foreign markets who use technology, hire permanent employees, and who have access to capital and financing
Agribusiness producers: producers who participate in part or all of the value chain, with strong links to the domestic and foreign markets, employing permanent workforce, with access to capital and financing and who transform their own produce

Guiding principles of the country’s agribusiness policy

The law, while stating that the human right to food and food security is a national priority and guaranteeing agricultural producers the right to work their own land, recognizes the following general principles of the country’s agribusiness policy:

Putting in place direct actions to better use and improve natural resources
Improvement of the means of production and welfare in rural areas

Strengthening agricultural institutions
Driving the adoption of new technologies
Access to financing
Participation of rural and indigenous women in decision-making

Other points

The Bill establishes the instruments to be used by the State for agricultural and food management. There are measures to ensure that the defined policy is rolled out, such as: agricultural research, agricultural financing and insurance, access to technology, and agricultural education.

Moreover, all the institutions in the agricultural sector must update those regulations that have an impact on the sector every 8 years, in order to adapt to the new needs triggered by technology, economic and commercial changes that may take place.

Personal data protection and digital rights

The ic Law on Personal Data Protection and Guarantees over Digital Rights was published in the Spanish Parliament's Official Gazette on 6 December and is almost identical to the draft bill discussed in Progreso 12. However, it has added a full section on digitaOrganl rights, beginning with the acknowledgment that rights and freedoms are entirely applicable to the world wide web, as is the right to online security.

The main areas covered in the new section are as follows:

Right to digital education and protection of minors online

The law reinforces the obligations incumbent on the educational system to ensure that students and teaching staff receive training about the safe and appropriate use of the internet, which must form part of the syllabus*.

Safeguarding the protection of minors, the law urges parents and legal guardians of minors to make sure that youngsters use digital devices and information society services in a sensible and responsible manner. Furthermore, to protect their online data, it recognizes that minors' interests should prevail and their basic rights in any publication or dissemination of their personal data through information society services by educational centers and by any other natural or legal person carrying out activities involving minors.

Digital rights

One of the most significant features of the law is the right to be forgotten in internet searches. This recognizes a person's right to have internet search engines erase all links containing information about that person from the list of results obtained after a search using their name, when the information is inappropriate, imprecise, irrelevant, excessive or out of date. It also regulates the specific scenario of the right to be forgotten on social media and equivalent services, recognizing a person's right for information about them to be erased when the title owner so requests.

The right of data portability, already recognized in the draft text, is reinforced in the new section, recognizing that users of social network services and equivalent services are entitled to receive and transfer the contents they may have made available to the providers of these services.

A new feature is the regulation of the right to an online will. For these purposes, the right of access, rectification and cancelation of the contents handled by information society service providers about people who have died is recognized. This right may be exercised by those who had a relationship with the people who have died, whether this is a family link or a *de facto* one, and by their heirs, except when the dead party has explicitly forbidden this, or where a contradictory law exists.

Digital rights in the workplace

The law provides for a series of online rights that can be applied to the workplace and extended by collective bargaining:

The right to disconnect: the free time of workers and state-sector employees as well as their private and family space must be respected outside their legal working hours.
The right to privacy from the use of video surveillance and audio recording equipment in the workplace: allowing company owners to process images obtained from camera systems that monitor their workers, only when this is stipulated in the labor legislation and workers have been expressly informed beforehand of this measure. The law forbids the installation of audio or video surveillance systems in places used for resting or relaxation, such as dressing rooms, bathrooms, dining-rooms and similar.
The right to privacy from geo-location systems in the workplace: as with the previous right, this allows company owners to process data obtained from geo-location systems for monitoring purposes, only when this measure has been expressly communicated beforehand.

Other new features

The legislation contains several other new features. Thus, in the case of credit information systems or debtors' lists, it cuts from 6 to 5 years the maximum period for which debts can be listed and stipulates that only defaults of EUR 50 or over can be included in the list, unlike the previous regulation, which did not specify a minimum sum.

It also requires the processing officer to block data when these must be rectified or erased. Blocking consists of identifying and segregating the data, using technical and organizational means to prevent them from being processed, or even viewed.

* The Government should submit a Bill to guarantee these specific rights within a year from the law coming into force and educational institutions will have the same time to include this training in their syllabuses.

Amendment to the regulations governing the management of

market behavior

In October the Banking, Insurance & Pension Fund Authority (SBS) published amendments to the Regulations governing how the financial system's market behavior is managed, to the internal auditing regulations, to the credit and debit card regulations, to the Accounting Manual for companies in the financial system, and to Circular G-184-2015 on Customer Services. The changes add provisions and detailed specifications so that the financial product and service offering can be developed for the digital environment and adapt the scope of the current regulatory framework to the landscape of the products and services on the market, their size and their transaction volumes.

Security mechanisms

The amendments introduced into the regulations over the management of the financial system's market behavior seek to make companies in the financial system increase their security mechanisms, so that they use some sort of authentication to validate the client's identity and record their onboarding. In addition, companies will have to demonstrate that they gave the client, whatever medium is used, the SBS resolution number approving the general clauses of the contract being held.

Communicating with the client

The regulation authorizes companies to use physical or digital means of communication with the client; easily accessible channels must be available for clients to terminate the contract, at the very least the same channels as those available when onboarding.

Other amendments

The resolution also amends the Investment Banking Regulation, releasing them from the Regulations over the management of market behavior, in view of the nature of their products and their client profile. Furthermore, the publication of Circular G-184-2015 includes the Regulatory Report containing complaints received through direct channels and through the professional association.

Money laundering and the financing of terrorism

Decree 15-2018 was published on 3 October, with the secondary legislation for the 977 Act combatting money laundering, financing of terrorism and financing the proliferation of weapons of mass destruction (ML/FT/PF), discussed in Progreso 16.

The regulation, setting out the regulatory provisions needed to enforce Act 977 and to create the institutional procedures required for the prevention, detection and reporting of ML/FT/PF, also covers:

New Regulated Parties

According to Article 4.18 of Act 977, any natural or legal person with the responsibility for implementing requirements concerning the prevention, detection and reporting of activities that are potentially linked to money laundering and the financing of terrorism and predicate offenses linked to money laundering will become a regulated party, in accordance with a Risk Based Approach (RBA).

The Decree empowers the President of the Republic to designate new categories of regulated parties based on recommendations made by the National AML/CFT/APF Commission. Furthermore, the regulation also extends to regulated parties' branch offices, subsidiaries and owned companies, the reporting obligation applicable to clients, accounts and transactions; in the areas of anti-money laundering and financing of terrorism actions, in those cases in which it is needed to develop risk management functions, regulatory compliance, auditing and anti-money laundering and financing of terrorism at financial group level.

Duties of regulated entities

As well as complying with the requirements outlined in Act 977, regulated parties must keep digitized copies of the identification documents* in conditions that ensure they are safe, readable, cannot be tampered with and are stored in a suitable location. To this end, regulated parties who keep records in this type of support must send copies of these to the Financial Analysis Unit (FAU) if they cease trading.

Documents describing regulated parties' compliance with their internal AML/CFT administration and risk mitigation measures and procedures must be stored for 5 years.

Non-profit organizations

The regulations have a chapter on non-profit organizations (NGOs), setting out measures that regulatory bodies should put in place to promote NGO transparency and integrity, together with the obligations they must meet:

To submit information to the regulatory body about the identity of all their donors and the annual financial statements with detailed breakdowns of the profit & loss statement, balance sheet, trial balance, breakdown of donations, plus the source of the funds and the use to which they are put.
To send their financial statements for the current fiscal period to the regulator.
To put into practice the recommendations in the manuals and internal control measures to mitigate AML and CFT risks.
Foreign NGOs that are legally authorized to operate in Nicaragua must guarantee that they will submit to the competent public regulatory body such legal and financial documents as they are asked for in the prevention of money laundering and countering terrorism financing.

United Nations' Security Council Resolutions

The Decree contains a section on implementing the United Nations' Security Council Resolutions to counter the proliferation of weapons of mass destruction and their financing. The FAU will share the contents of the lists drawn up by the Council with regulated parties so that they can act in consequence, freezing the funds and assets of those appearing on these lists.

* Documents provided for in Article 25.1 of Act 977: those relating to domestic or international transactions, online transfers, those obtained through client due diligence (CDD) and such others as are specified in administrative provisions issued by supervisory bodies

Payment services and urgent measures in the financial arena

Royal Decree 19/2018, on payment services and other urgent measures for the financial sector, was published on 24 November. This implements, among others*, EU Directive 2015/2366 on payment services, known as PSD2 (Payment Service Providers).

The regulation, the draft of which we discussed in Progreso 14, adapts existing regulations to new technology, providing greater security and reliability for consumers of new payment services.

Payment services

Defined as business activity that enables cash to be paid and withdrawn from a payment account together with all the transactions that may be needed to manage it, fund transfers, execution of payment transactions when the funds are covered by a line of credit and money orders. A new feature of the law is the widening of the scope of regulation to include two new payment services that drive innovation:

Payment initiation services: These allow a payment order to be initiated on the service user's request, in the case of an account that is open with another payment service provider. In other words, these services allow the payment initiation service provider to give the beneficiary of the payment order the certainty that the payment order has been activated.
Account information services: these enable payment service users to have a complete and instant view of their financial situation, providing them with online aggregate information about the payment accounts of which they are the title owners.

User protection

The law increases protection of payment service users' rights, enables transactions to be carried out more securely and provides access to a growing offering of innovative services, to which end:

It cuts to fifteen working days the maximum response time acceptable for resolving complaints made by payment service users.
It raises the service levels required of payment service providers: in the case of fraudulent payments the user's liability threshold is EUR 50, except in cases of negligence.
It cuts from EUR 150 to EUR 50 the upper threshold of the payer's liability for losses resulting from unauthorized payment transactions deriving from the use of a lost or stolen payment instrument.
It makes the identification process of clients for online access more rigorous.
It submits the activities regulated under this law to Spanish and EU legislation on data protection, data processing and transfer.
It contains a set of penalties that may be applied to payment institutions.

Transparency for the user

The law regulates the arrangements for transparency insofar as they have a bearing on the conditions and information requirements applicable to payment services, respecting in turn the principle of contract freedom when the payment service user is neither a consumer nor a micro-enterprise. The payment service provider must give the user all the information and conditions about the payment

service provision free of charge and in an easily accessible format; but may set charges for further communication.

Operating and security risks

The legislation has a chapter on regulating the management of operating and security risks. So, it requires payment service providers to set a framework with control mechanisms for managing operating and security risks associated with their provision of payment services. In addition, they will have to give the Bank of Spain regular assessments of operating and security risks associated with their provision of payment services and an evaluation of whether the palliative measures are fit for purpose. They will also have to notify the Bank of Spain immediately in the case of any serious operating or security incident.

Adaptation to the Securities Market Law

This Royal Decree adapts domestic regulations to several pieces of EU legislation that improve the legal certainty of market operators and their working efficiency. These include Regulation 596/2014 on market abuse, Regulation 2016/1011 on benchmark indexes, and Regulation 2015/2365 on the transparency of transactions to finance and reuse securities; the provisions necessary to grant the National Securities Market Commission (CNMV) the authority to supervise, inspect and impose sanctions have been added to the Securities Market Act, laying out the breaches and the penalties applicable.

It also contains a channel in the Bank of Spain for whistleblowers to report on credit institutions' liquidity and increases the information-sharing obligations incumbent on the CNMV and the Bank of Spain to improve cooperation and coordination between the various EU authorities involved in these issues.

* The publication of this Royal Decree completes the transposition into Spanish law of EU Directive 2014/57 by the European Parliament and the Council, of 16 April 2014, on the criminal sanctions applying in the event of market abuse and EU Directive 2013/36, on capital requirements, known as CRD IV.

Regulations governing Collateral Security

Legislative Decree 1400 was published on 10 September, approving the regulations for collateral security and information system for collateral security, to promote more productive business development of MSMEs and of the sectors with a major impact on the national economy, improving the environment for financing, granting collateral and similar.

Act 28677 has been in force over collateral security since 2006. This decree revokes the former act, although current collateral securities already filed in public registers will remain in force and effective until they are canceled; any amendments made to these in the future will be subject to the provisions in the new system. The main changes include the following:

Collateral-security information system

Online platform specially designed for filing and reporting collateral securities, linked to a public, remote-access database, where the digital reports of collateral securities being set up, amended, canceled and executed are all kept on file.
The register rating has been suppressed, given that the new filing system is digital.
There will be a standard charge for each digital data entry, whatever the number or value of the goods being used as collateral or the amount of the levy.

Digital data entries

This refers to each of the digital forms input into the Collateral Security Information System (SIGM in its Spanish acronym), which are generated, filled out, sent and stored in digital format
The system handles the reporting of the constitution, changes, cancellation and foreclosure of the collateral.
It is separate from the actual constitution of the collateral security, so it does not ratify legal acts or contracts; nor does it check whether these indeed exist, are effective or valid, nor does it check the accuracy of the information published.
It contains the identification of the obligor or guarantor and the creditor in the case, a description of the collateral goods and the maximum sum of the debt guaranteed.
Any digital data entry containing information other than about the legal act constituting the collateral that is not corrected within 3 working days of having been reported, will constitute a breach of this regime and may be penalized by the National Public Records Authority, with sanctions ranging from a warning to a fine of up to 100 tax units (UIT).

Act constituting or amending a collateral security

Unlike the earlier law, which allowed acts to be unilateral, these will be bilateral, and may consist of any written medium that specifies the will of the parties under penalty of being voided; the act can be formalized by means of a public document, with certified, digital or handwritten signatures, as the parties decide.
This provision will take precedence over the regulations in article 176 of the General Financial System Act, indicating that contracts can have certified signatures if they contain an act of up to 40 tax units; and that, for higher sums, it must be a public document.

Senior collateral security for purchase transactions

This is a new legal figure by virtue of which a secured loan guarantees the financing of the purchase of one or several goods on the part of the collateralized debtor.
It can provide collateral for the purchase of movable goods in the present or the future and/or the costs of their acquisition.
It takes priority over any other concurrent collateral security set up by the obligor that does not have the aim of purchase, provided that the secured creditor who is financing the purchase is in possession of the equipment, or files an online entry of the priority collateral in the Secured Lending Information System before the obligor takes possession of the goods.

Pre-filed collateral security

This is published in the SIGM before the corresponding legal act takes place, and by publishing it, establishes the seniority of the collateral security.
This voids the figure of the pre-constituted collateral security.

The law will come into force on the next working day after the SIGM starts operating, to which end the following must be acted upon:

Publication of the system's regulations – 120 calendar days after 11 September 2018.
Onboarding of the supplier to develop the SIGM – 90 calendar days after the regulations are published.
SIGM goes live – 270 calendar days after the supplier is taken on. This deadline may be extended once.

CRECER Fund to be set up

Legislative Decree 1399 was published in September, creating the CRECER Fund, to finance, provide collateral and similar guarantees and other financial products. The purpose is to support the productive and entrepreneurial development of micro, small and medium-sized enterprises and export companies, because of their major impact on the Peruvian economy.

The Fund will be managed by Corporación Financiera de Desarrollo, S.A. (COFIDE); the micro, small and medium-sized enterprises covered in the TUO in the Law to Support Productive Development and Entrepreneurial Growth will be the beneficiaries, as well as the export firms referenced in the Urgent Decree 050/2002 and the Supreme Decree 171-2002-EF.

The CRECER Fund has been set up to develop and implement the financial instruments/activities listed below, using companies that are regulated and/or authorized by the Banking & Insurance Authority or the Securities Market Authority:

The granting of loans to acquire fixed assets and/or working capital.
The granting of collateral and/or cover to guarantee credits originated by companies in the financial system, including when these have been transferred in any form to independent asset managers.
The re-bonding of transactions carried out by bonding and collateral companies, and by others authorized to carry out bonding transactions as established in the regulation.
The granting of credits, collateral and/or cover for factoring transactions or for discounting credit instruments.
Investment in independent management companies, shares in which are placed through public offerings; as well as granting guarantees and cover for these equity stakes. On an exceptional basis, other placing mechanisms can be considered in the regulation, once they have been underwritten by the entity proposing the investment.
Other financial instruments set out in the CRECER Fund legislation.

The creation of the CRECER Fund also consolidates the following funds: (i) The MSME Fund; (ii) The Fund to support Small & Medium-sized Enterprises; (iii) The Enterprise Guarantee Fund; (iv) The "FORPO" Fund for the Productive Reinforcement of SMEs.

The CRECER Fund will be set up for 30 years, starting from the day after the law is published.

Fintech regulation

The Fintech regulation bill was tabled in Congress on 18 September.

The preamble to the bill states that while Fintech can provide users with many benefits, such as quicker and easier access to new financial products and services, it also brings with it certain risks that are intrinsic to its operating model, such as cyber fraud, the possibility that products can be used for crimes such as money laundering, among others.

This posits major challenges for regulators, since they must ensure that Fintech and its consolidation in the market will not affect the financial system's stability and integrity, while guaranteeing appropriate market behavior and social protection.

Against this backdrop, the draft bill will develop supporting legislation to minimize financial fraud, money laundering, the financing of terrorism, and also provide users with a regulatory landscape that protects their activity on these digital platforms.

Law to support micro and small enterprises

The National Congress of Honduras passed a law to promote micro and small enterprises on 6 November. The hope is to support this kind of undertaking with incentives that promote economic growth, welfare and free-market enterprise by creating new employment opportunities.

The regulation, amending the legislation on promoting and developing the competitiveness of micro, small and medium-sized companies*, covers the following areas:

Recipients of the incentives

Both micro and small enterprises that have just been set up can be beneficiaries, as well as micro and small companies that already exist that have been operating in the informal sector before the passing of the law, provided that they come into the formal sector within 12 months of the law's passing. So that those in this second category can receive the tax breaks provided for in the law, they must meet the following requirements:

Demonstrate by 31 December 2019 that they have invested or reinvested capital, expanded their operations or any expansion in activity that has involved an increase of at least 30% in their payroll since September 2018
Be authorized by the Work & Social Security Department
Have gross annual income of less than 3 million lempiras** in the previous tax period
Be filed on the Exemption Register

Tax advantages

The tax advantages offered by the law for micro and small enterprises meeting the legal requirements are as follows:

Exemption from paying income tax, net asset tax and temporary solidarity contribution, as well as the 1% advance income tax payment
Exemption from paying registry and municipal stamp duties when setting up their enterprise, the charges for issuing administrative deeds, licenses and other paperwork needed in order to do business, for a 3-year period
Exemption from the personal tax and also from the municipal corporations' industry, trade & services tax

The law also includes the transfer of 13 billion lempiras to the sector by amending the Financial Support law for Honduras' productive sectors***. 40% of this sum will be spent on financing the housing sector; 20%, on supporting the productive units affected by natural phenomena or crises that have had a negative impact on the national economy; while the remaining 40% will be targeted on microlending and other productive sectors.

* Legislative Decree 135-2008, published in the Official State Gazette on 14 January 2009, passed the Promotion & Development Act for the Competitiveness of Micro, Small and Medium-sized Enterprises

** Lempira = EUR 0.036

*** Act 57-2013, 31 May 2013