

CLIENT ALERT

# Colombia Launches Regulatory Sandbox for Fintech Companies

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## AUTHORS

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On September 14, 2020, the Colombian Ministry of Finance and Public Credit (*Ministerio de Hacienda y Crédito Público*) issued Decree 1234 of 2020 (“Decree 1234”) to promote innovation in financial services through the establishment of a regulatory sandbox for companies dedicated to implementing financial technology innovation (“Fintech”). Decree 1234 permits interested participants to request from the Finance Superintendence (*Superintendencia Financiera*) certain exemptions from the general requirements of the General Finance Statute, Decree 2555 of 2010<sup>1</sup> (“Decree 2555”), including registration as a licensed company to pursue financial and credit-related activity in Colombia.

The creation of this regulatory sandbox reaffirms Colombia’s commitment to promote innovative financial solutions that contribute to the economic growth of the country, strengthen and reduce costs in the financial ecosystem and increase the efficiency and quality of and access to financial products and services. The support Colombia has shown for investments in Fintech is reflected in the consistent growth seen in the number of new startups since last year. With 124 startups registered so far in 2020, a 60% increase over last year, Colombia has achieved a third-place ranking in Latin America (after Mexico and Brazil).<sup>2</sup>

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<sup>1</sup> Part 2 of Decree 2555 sets forth general requirements for every type of corporate entity operating in the financial sector, i.e., credit establishments, insurance companies, pension, severance and trust funds, securities intermediaries, securities issuers, stock exchanges, financial cooperatives, securitizing entities, investment mutual funds, financial holdings, and centralized securities deposit management companies among others.

<sup>2</sup> According to the Colombian Fintech Association (*Asociación Colombiana de Fintech*).

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Colombia's latest Development Plan for 2018–2022<sup>3</sup> enabled Colombia's government to promote the entry of companies into the Fintech space through the issuance of temporary operating licenses from the Finance Superintendence for a period of up to two years during which the companies are permitted to test their innovative products or services without being subject to many of the traditional—and robust—regulations applicable to the financial sector.

Decree 1234 contains the requirements, proceedings, and conditions under which this temporary operating license will be granted. A summary of the main requirements and conditions for Fintech companies to apply for the license and participate in the regulatory sandbox is provided below.

### **Control Trial Environment for Fintech**

Decree 1234 establishes the regulatory sandbox, called the Control Trial Environment (*Espacio Controlado de Prueba*) (“CTE”), which is defined as the rules, requirements, proceedings and conditions under which Fintech projects or development programs can be tested. The goals of the CTE are to promote innovation for financial products, channels and services; protect financial consumers; encourage compliance with all laws and requirements intended to protect the stability of the financial system; and prevent regulatory arbitrage in new financial services and products.

### **Covered Projects and Services**

The CTE allows for the testing of Fintech projects that seek to accomplish any of the following:

- Increase efficiency in financial products or services;
- Solve a problem for financial consumers;
- Increase access and coverage of financial products and services;
- Facilitate or promote regulatory compliance; or
- Stimulate competitiveness in financial markets.

### **Timing and Geographic Limits**

The CTE permits a maximum testing period of two years and requires that all participating projects be tested in Colombia. The temporary operating license issued by the Finance Superintendence may be valid for an initial period of up to two years, and if shorter, may be renewed for a total period not exceeding two years.

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<sup>3</sup> Formalized and approved through Law 1955 of 2019.

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### Permitted CTE Participants

The CTE is available to both companies already under the control and supervision of the Finance Superintendence and to new companies. Decree 1234 provides for an expedited and more flexible procedure for new companies which requires them to provide the following documents and information:

- The company's bylaws and articles of incorporation;
- A general description of the Fintech project to be tested;
- The business and financial model, which shall identify and describe (among other items): the target market, the risk analysis and administration policies, the policies and measures in place to prevent conflicts of interest, the maximum capital to be collected from financial consumers and a detailed schedule for the implementation of the project;
- The tools or technology to be used in the project;
- A statement of the existing financial regulations that would hinder or prevent the implementation of the project under normal circumstances; and
- A statement of the requirements for registered entities from which the company is requesting an exemption (e.g., minimum capital requirements) and the reasons for the request.

### Requirements for Project Registration

To access the CTE, all participants must develop and submit to the Finance Superintendence the following documents and information:

- A "testing plan" describing the proposed project;
- An "adjustment plan" that describes the steps needed to be taken if the company decides to continue with the product or service once the trial period ends;
- A "clearance plan" that describes the steps needed to be taken in case the service or product is not going to be brought to market once the trial period ends;
- A certification that the company holds the minimum capital needed for participation in the CTE as authorized by the Finance Superintendence;
- The policies and measures adopted by the company for the prevention of money laundering and terrorist financing risks;
- Proof of the required insurance or guarantees put in place by the company to cover potential liabilities of its operations; and

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- A statement of the statutes or specific provisions from which the company is requesting an exemption for the implementation of the Fintech project.<sup>4</sup>

When the trial period ends, each participant will need to decide whether to obtain a permanent license and satisfy all the requirements under Decree 2555 for the particular activity or, instead, to proceed with the conclusion of the trial as set out in the approved clearance plan.<sup>5</sup>

### **Conclusion**

In a highly regulated environment like Colombia's financial and credit markets, Decree 1234 constitutes a major step forward in supporting and incentivizing innovation. The unprecedented flexibility allowed in the CTE, along with the potential business opportunities for financial products and services in the region, provides a robust environment for formally testing and launching Fintech projects.

Since the burden of identifying the necessary exemptions for participation in the regulatory sandbox falls on the participant, companies that wish to gain access to the new program should consider a focused and detailed legal analysis of the relevant laws and regulations. Our team is available to discuss and answer any questions on the issues raised herein and to liaise with our extensive contacts at law firms and institutions in Colombia.

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<sup>4</sup> Decree 1234, however, states that exemptions from certain laws regarding the protection of personal data, security exchange and tax regulations and monetary and credit regulations issued by the Central Bank cannot be granted.

<sup>5</sup> A participant may elect, at any time while the temporary license is in effect, to proceed with the clearance plan and terminate the trial period.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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