

Peru

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1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

In Peru, currently, there are no specific regulations for fintechs. Nevertheless, there are certain pieces of regulation that indirectly relate to technology applied to financial services (eg e-money, payment services providers, QR codes) which are detailed in the following answers. In the specific case of financial innovation, we have in place a sandbox regulation applicable to innovation models, as detailed in Question 4.

Notwithstanding the above, the Peruvian Banking, Insurance and Pension Fund Administrator Superintendence (SBS), in a recently published report, has stated that it seeks to ensure that the regulatory framework applicable to fintechs is:

- comprehensive, covering all relevant risks;
- focused on best risk management practices;
- balanced, so that regulatory requirements are proportional to the scale and complexity of the various institutions that make up the systems;
- dynamic, allowing it to adapt to changes in the economic and financial environment that imply a potential accumulation of risks; and
- prospective, promoting the use of tools so that supervised companies can achieve long-term sustainability.

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

Under the current Peruvian legal framework, there are no specific regulations on virtual currencies nor for crypto assets.

Since no specific local regulation exists, SBS and the Superintendence of Securities Market (SMV) have made certain public statements in connection to the collection of funds for the sale of virtual currencies and its offering in Peru, emphasising the risks involved when investing in those instruments. In addition, the Peruvian Central Bank (BCRP) has been upfront on its website and social media regarding the risks involved in dealing with virtual currencies (regarding the lack of support by a central bank or similar institution) and their pronounced value fluctuation.

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However, neither the SBS nor the SMV have made an official statement clarifying whether any local regulations are applicable in connection with crypto assets, nor have they expressed interest in regulating those instruments in the near future.

In addition, there have been recent initiatives by Peruvian congressmen to regulate the marketing and commercialisation of crypto assets; however, these initiatives (consolidated in a single proposal) are still under review by a specialised commission in Congress. No certainty exists whether they will be approved or not.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

Payment service providers

In Peru, the Payment Systems and Securities Settlement Act, Law No 29440 (Payment Systems Law) and the Regulations of the Payment Systems (Payment System Regulations), enacted by the BCRP by means of Circular No 012-2010-BCRP, set forth the legal framework for payment systems and payment agreements that involve systemic relevance under BCRP's view (eg, payment systems between financial institutions and banks; payment agreements among electronic money issuers, etc).¹

These regulations also include a definition of payment services providers (PSPs) as any legal entity that offers payment services to transfer funds through a variety of means, including payment cards, digital wallets, and payments through mobile devices and the internet.

By means of the foregoing regulations, the BCRP does not demand a specific licence to act as a PSP. Nevertheless, pursuant to the Payment Systems Law, PSPs shall comply with the remittance of certain information annually to the BCRP. This includes an annual questionnaire delivered by the BCRP, its annual report, the identity of the entities with whom it has entered into agreements as participant or entities that provide IT services, operational internal regulations and risk management policies; as well as remitting monthly information in relation to the amounts and volume of their transactions and incident reports.

Furthermore, in October 2022, the BCRP published Circular No 0024-2022-BCRP which approves the Regulation on Interoperability of Payment Services Provided by Payment Providers, Agreements and Systems (Interoperability Regulations). By means of these regulations, the conditions and opportunities for the interoperability of certain payment services (mainly, digital wallets) provided by specific local entities have been set forth.

On another note, the BCRP published Circular No 0003-2020-BCRP (QR BCR Circular), which contains

¹ A payment agreement is defined as an agreement to transfer funds between participants, in which at least three parties are involved and one of them is a Peruvian financial system entity; it needs BCRP acknowledgment as such. On the other hand, a payment system is defined as a payment agreement with 'systemic relevance', and is, therefore, subject to the supervision of the BCRP. The BCRP has acknowledged as Payment Systems of Peru: (1) the LBTR system (*Sistema de Liquidación Bruta en Tiempo Real*) for interbank payments; (2) the CCE system (*Sistema para la compensación y liquidación de cheques y otros instrumentos compensables*); (3) the SLMV system (*Sistema de liquidación multibancaria de valores*); and (4) the SLV-BCRP system (*Sistema de Liquidación de Valores BCRP*). Additionally, BCRP has acknowledged ADPE as a payment agreement (*Acuerdo de Pago de Dinero Electrónico*), an agreement for the transfer and settlement of digital currency entered into by financial institutions, a digital currency issuer and Peruvian telecom companies.

specific regulations for the payment services that are carried out with QR codes. The QR BCR Circular establishes: (1) standards for QR codes used for payments in Peru; and (2) regulatory requirements for payment services that are carried out with QR codes. This includes within its scope the providers of QR Codes, the providers of digital wallets, and the payment networks that participate in such service.

Digital wallets

The provision of digital wallet services in Peru is mainly framed under the local e-money regulations. Pursuant to Peruvian law,² e-money is a representation of the local fiat currency that creates a credit in favour of its holder against the issuer of the e-money (ie, the company providing the e-money services, which is called *empresa de dinero electrónico* or EDDE). The legal features of e-money are:

- it is stored on an electronic medium. The devices that may be used include cell phones, pre-paid cards, equipment, or electronic devices that comply with the purposes of e-money regulations (this list of characteristics). Electronic wallets are included under this category provided that all features mentioned in this list are met;
- it is accepted as a means of payment by entities or people other than the issuer of the e-money and has cancellation effects;
- it is issued for the same value as the funds received by the issuer of the e-money;
- it is convertible into cash according to the monetary value of the holder at nominal value; and
- it does not constitute a deposit and does not generate interest.

Regarding the issuance of e-money, the SBS has established that it includes the transactions of e-money itself, as well as its redemption to cash, transfers, payments, and any transaction related to the monetary value of the user and necessary for the foregoing. In that sense, according to the regulations abovementioned, e-money shall have the same value ‘in’ and the same value ‘out’. EDDEs are regulated entities that are authorised and supervised by the SBS. To perform activities as an EDDE in Peruvian territory, these entities must obtain both an incorporation authorisation and an authorisation to operate from the SBS. In addition, EDDEs have to comply with several legal requirements (including minimum capital levels, the creation of trusts for all funds received for the issuance of e-money to back up the e-money accounts created, limits on the transactions that can be performed depending on the type of e-money account created, and others).

4. Special support to fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

Despite the lack of specific regulation related to fintechs and financial innovation, Resolution SBS No 02429-2021 – Sandbox Regulations (the Sandbox Regulations) was recently enacted by the SBS, which was effective as of 1 February 2022. The purpose of these regulations is to create

² See: Act No 26702, Act No 29985, Supreme Decree No 090-2013-EF, SBS Resolution No 6284-2013 and SBS Resolution No 6283-2013, as amended.

an environment for the temporary execution of innovation models by entities already supervised by the SBS, or those that are currently following an authorisation procedure under such entity's guidance/intervention, to improve the activities performed by entities supervised by the SBS.

Pursuant to the Sandbox Regulations, an innovation model is understood as a business or operating model that involves carrying out activities in a fashion different from the traditional way used by companies, and that requires pilot testing, regulatory flexibility or regulatory modifications.

Under the Sandbox Regulations, companies already authorised by the SBS, or in the process of obtaining an authorisation from the SBS, may carry out pilot testing of innovation models temporarily when they are based in activities already contemplated in current regulations and for which they are authorised by the SBS. Additionally, there are two special regimens of pilot testing innovation models:

- The flexible regime: to test activities linked to innovation models contemplated in current regulation that need temporal flexibility of legal requirements.
- The extraordinary regime: to test activities linked to innovation models not contemplated in current regulations which are the competence of the SBS.

Any pilot testing must comply with three general requirements:

- a 12-month maximum term, extendable up to 24 months;
- a maximum number of participants (clients or users) which must be justified; and
- have received no objections from the risk committee or equivalent body of the company prior to its realisation, after taking knowledge of the risk report associated with the pilot test.

Note that in case of the flexible and extraordinary regime, further requirements must be complied with, such as seeking to improve user experience, having a plan with specific objectives and providing sufficient resources for the pilot testing.

Companies interested in doing pilot testing must file for an authorisation before the SBS complying the requirements set forth in the Sandbox Regulations.

5. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

Except for what is explained in the following paragraph, there are currently no specific regulations for open banking.

Nonetheless, a group of Peruvian congressmen in March 2022 presented Bill No 1584/2021-CR (Bill) in order to declare the implementation of a public policy that promotes the massification of open banking to be of national interest and public necessity. The Bill is under study by the Economics, Banking, Finance and Financial Intelligence Commission of the Peruvian Congress.

Regarding this proposal, the SBS presented an institutional opinion suggesting an open finance

approach for the Bill instead of an open banking one,³ since it would be more beneficial in the long run for the users of financial services. Furthermore, it recommended that the BCRP and the Ministry of Economy join the SBS as the authorities participating in designing an open finance strategy.

Finally, as mentioned in Question 3, the only specific piece of regulation related directly to open banking is the BCRP Circular No 0024-2022, which establishes that specific PSPs offering payment services (mainly digital wallet services), must allow the initiation of payments from any virtual account or bank account, even if such account is opened at a different PSP.

3 The concept of open banking includes the sharing and leveraging of customer data (with their authorisation) by banks with developers and (third party) companies to create applications and services, such as real-time payments and increased financial transparency options for account holders. The open finance concept extends this, since it includes banking and financial institutions, but also reaches out to other institutions (financial services in the broadest sense). The open finance model has greater potential than open banking because, by incorporating more entities, the information sharing and interrelationships that exist make it possible to offer a wider range of products and services to users.