

Legal memo

Mexico City, September 14, 2022

Public Fundraising: Myths or Realities

An essential legal aspect in financial matters, is the collection of resources. It is generally thought that banks and other financial intermediaries are strictly regulated because they lend money to the public; however, this is not the case.

However, **the strict regulation of banks is mainly because, through demand deposits, they collect money from the public, with which they grant loans. These entail a potential risk on the money collected.**

The general rule is that no one, whether an individual or a legal entity, may "directly or indirectly collect funds from the public in Mexican territory, through the execution of deposit, loan, credit, mutual or any other act causing a direct or contingent liability, being obliged to cover the principal and, if applicable, the financial accessories of the collected funds."

The collection of funds from the public is an activity reserved to companies that have obtained authorization from the National Banking and Securities Commission and are regulated as well as supervised in terms of the relevant laws.

Banks are not the only ones authorized by law to raise funds, either from the public or from a particular and specific sector. The law also authorizes other financial intermediaries to carry out such activity, such as:

Multiple banks and development banks, Fintechs, Savings and Loan Cooperative Societies (SOCAPs), Popular Financial Societies (SOFIPOs) and Credit Unions. These financial intermediaries are regulated by the following regulations:

a) Banks

They are governed by the Credit Institutions Law. They are authorized to collect resources from the general public through the operations mentioned above, including sight deposits, causing liabilities for them.

b) Fintechs

They are governed by the Law to regulate Financial Technology Institutions (LITF). They are only authorized to collect resources through

- i) receiving money for the issuance of electronic payment funds (in the case of this specific type of Fintechs),
- ii) issuance of debt securities in public offering,



- iii) loans and credits from individuals, however, in no case such loans and credits may be obtained from an unspecified person or through mass media or in a regular or professional manner, in accordance with the LITF.

For more information on these types of companies, please [access the Fintech series prepared by ECIJA Mexico, by clicking here.](#)

c) SOCAPs

They are governed by the General Law of Cooperative Societies. They are authorized to collect resources from their partners in the form of contributions.

d) SOFIPOs

They are governed by the Popular Savings and Credit Law. They are authorized to collect resources in the form of deposits, including demand deposits, and loans and credits from credit institutions, among others.

e) Credit Unions

They are governed by the Credit Union Law. They are authorized to collect resources via: loans and credits, exclusively from their partners, from private financing and investment funds, from financial entities, from companies whose main activity is the granting of credit, from decentralized governmental agencies whether federal, of the States, municipal and of Mexico City, or foreign financial entities, as well as their suppliers.

The collection of funds from the public, without proper authorization, may result in the application of severe fines and criminal penalties, both for the company that carries them out as well as for its officers and employees.

In recent years, the National Banking and Securities Commission has issued several communiqués to alert the public of companies that carry out operations involving the collection of funds from the public without the necessary authorization.

The latest case of irregular fund raising, which is being investigated by the competent authorities, is the case of **a real estate company in Jalisco that invited investors to participate in the acquisition of real estate in exchange for attractive returns.** The fraud was detected when investors began to report the non-payment of their returns and the lack of response from the real estate company. The most recent estimate indicates that the damages exceed one billion Mexican pesos.

This case demonstrates the **importance of restricting fundraising to companies that are legally authorized to assume the risks involved in managing the public's resources** and that have mechanisms to respond to such risks.

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