

LATIN LAWYER REGULATORS 2020

National Banking and Securities Commission (Mexico)

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Useful pages on the regulator website

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Key individuals

- Juan Pablo Graf, President
- Mónica Brenda Villarreal Medel, Legal Vice President
- Margarita de la Cabada Betancourt, Regulatory Vice President
- Sandro García Rojas Castillo, Vice President of Supervision of Preventive Processes
- (Vacant), Securities Market Supervision Vice President
- Until the Securities Market Supervision Vice President is appointed, Leonardo Molina Vázquez, General Director of Issuers

Regulatory oversight

In general terms, activities related to the financial system are subject to prior authorisation to initiate operations; general and specific regulations depending on the sector; and supervision, compliance control and sanctions.

The authorities that oversee the financial system are:

- Secretaría de Hacienda y Crédito Público (SHCP): Ministry of Finance and Public Credit
- Banco de México: Bank of Mexico;
- Comisión Nacional Bancaria y de Valores (CNBV): National Banking and Securities Commission;
- Comisión Nacional de Seguros y Fianzas (CNSF): National Insurance and Bonding Commission;
- Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros (CONDUSEF): National Commission for the Protection and Defence of User of Financial Services;
- Comisión Nacional del Sistema de Ahorro para el Retiro (CONSAR): National Commission of the Retiring Saving System; and
- Instituto para la Protección al Ahorro Bancario (IPAB): Institute for the Protection of Bank Savings.

The CNBV oversees, among others, the entities listed below. Please note that the following classification is ours, and such distinction is for academic purposes, considering the degree or intensity of regulation to which the participants of the different areas of the financial system are subject to.

The intensity of regulation depends on a specific rationale or purpose: for example, for regulated financial entities, this is to protect members of the general public and their savings, and for securities issuers, this is to enforce disclosure in order to eliminate market information asymmetries.

- a Regulated financial entities:
 - financial and bank holding companies;
 - banking institutions;
 - brokerage firms; and
 - investment funds.
- b Securities issuers.
- c Securities-related activities:
 - stock exchanges;
 - securities depository institutions;
 - investment fund distributors; and
 - securities rating institutions.
- d Less regulated entities:
 - certain non-bank banks;

- credit auxiliary entities;
- FinTech companies;
- savings and loans institutions;
- credit bureaus; and
- certain public funds that participate in the financial system.

The CNBV's areas of oversight and its powers are found in the following main legal and regulatory framework (jointly referred to as the relevant financial framework):

- the National Banking and Securities Commission Law;
- the Financial Institutions Law (LIC)
- the Securities Market Law;
- the Anti-Money Laundering Law;
- the Investment Funds Law;
- the General Law of Auxiliary Credit Organisations and Activities; and
- the CNBV's General Rules.

Reporting and disclosure obligations

The main obligations of regulated financial entities are as follows:

- Obtaining authorisations to be incorporated and organised as such entities and initiate operations. Regulated financial entities must report to the CNBV the date of the start of their operations;
- Revocation: regulated financial entities shall comply with the obligations set forth in the relevant financial framework. For example, failure to meet capital adequacy standards, liquidity thresholds and other minimum conditions may see the revocation of a regulated financial entity's authorisation;
- Ownership control: among other things, individuals or entities must report to and obtain the approval of the CNBV to own 5% or more of a regulated financial entity's capital stock;
- Corporate governance: regulated financial entities must report their corporate governance measures to, and obtain the approval of, the CNBV. The CNBV must verify that an entity's board of directors meets the eligibility requirements – that is, at least 25% of the members of boards of directors must be independent directors – and entities must report the appointment of a chief executive officer. The CNBV shall then verify that such individual meets the standards of credit eligibility and creditworthiness.
- Capital stock regulation: the regulated financial entity shall report the status of its capital stock: that is, the minimum capital stock within the thresholds provided by law; and the regulatory capital stock (capital stock adequacy), substantially as set forth in Basel III, attending to the risks to which it is exposed.
- Activities and operations:
 - risk management: entities must report measures to mitigate the following risks:
 - credit risk: potential default;
 - market risks: economic and political conditions in the national market; and
 - operative risks: personnel control and operation failures;
 - the CNBV has powers to issue prudential regulations to protect the general public. Regulated financial entities must report their level of compliance with such regulations:
 - specific preventive actions to ensure regulated financial entities meet safety standards regarding net capital stock; and
 - operations can continue but are conditioned, for example, if an entity's capitalisation index is between 4% and 8%, among other parameters; and
 - money laundering and financing terrorism prevention: regulated financial entities have the obligation to set forth measures and procedures to prevent and detect acts or operations that could be considered operations using illegally obtained resources as per the wording of the Federal Criminal Code, as well as to identify, assess and report any unusual operations to the CNBV under the terms of the Anti-Money Laundering Law and the LIC.

The main reporting and disclosure obligations of issuers of securities are as follows:

- Corporate matters: they must report to the CNBV and disclose to the general public (through the relevant stock exchange) the following:

- corporate actions, resolutions adopted by an issuer's corporate bodies and notices that must be given in connection with the foregoing, including notices regarding shareholders' rights (pre-emptive rights, dividends, etc); and
- corporate restructurings (mergers, spin-offs, acquisitions, sales of assets, etc).
- Operations and financial matters: this involves quarterly and annual reporting of issuers' operations, results and financial positions, including financial statements and an external auditor's opinion thereon.
- Relevant events: each issuer must report on any relevant changes or events regarding itself, its corporate structure, its business, its securities or its financial position that may have an impact on the market price of such issuer's securities.

The CNBV's authorisation is required for registration in the National Securities Registry and the public offering of any security. Tender or exchange offers of securities are also subject to CNBV authorisation.

The main obligations relating to securities-related activities in relation to the CNBV are as follows:

- Obtaining an authorisation, licence or concession to be incorporated and organised as such entity and begin operations.
- Reporting corporate governance and ownership to the CNBV.
- Complying with the rules of operation and the management conditions set forth in their authorisation, licence or concession title. The CNBV has powers to verify the foregoing and request information.

Monetary sanctions and recent behaviour

The CNBV has powers to impose sanctions on legal entities, shareholders, directors and officers, employees and, in general, any person or entity that holds operations in connection with those activities monitored by the CNBV, and that is directly (or indirectly) involved in, or instructs regarding, conduct that violates the banking or financial laws, as well as the rules and provisions issued by the CNBV itself.

CNBV sanctions are administrative in nature and may be challenged by sanctioned offenders before the administrative or judicial courts.

The amount of fine that the CNBV can impose ranges from 200 to 100,000 days' salary: the amount shall be determined taking into account the severity of the incident, whether it is a repetition of similar incidents by the same offender, and the negative impact of the incident on the general public.

The statute of limitations on the CNBV's powers to impose sanctions is a period of five years from the date of the infraction to the date of the formal notification of the administrative sanctioning procedure.

Under the Anti-Money Laundering Law, the CNBV has powers to impose fines for operations and activities that are potentially illicit as set forth therein.

In the past, the CNBV has imposed significant monetary sanctions on banking and investment firms, and on their respective directors and employees, for insider trading and non-compliance with reporting and disclosure obligations, and in connection with money laundering offences. In November 2019, the CNBV imposed numerous monetary sanctions on banking institutions – fines of over 3 million pesos in each case – for their failure to comply with money laundering prevention measures.

Finally, since the approach of the new government to preventing money laundering and illegal financial activities is more militant than that of the previous administration, it is foreseeable that the CNBV may be more aggressive in the imposition of sanctions without further and duly conducted investigations. This is of particular relevance considering that conducts derived from money laundering and illegal financial activities may be classified as crimes.

Non-monetary sanctioning powers and behaviour

The CNBV also has powers to impose non-monetary sanctions on legal entities, shareholders, directors and officers, employees and, in general, any person or entity that holds operations in connection with those activities monitored by the CNBV, and that is directly (or indirectly) involved in, or instructs regarding, conduct that violates the banking or financial laws, as well as the rules and provisions issued by the CNBV itself.

Non-monetary sanctions may be challenged before the administrative or judicial courts.

The CNBV has the following non-monetary sanctioning powers:

- Warnings, where offences do not have a negative impact on the financial system or the general public. The CNBV considers the background and severity of the misconduct, whether the misconduct affects the financial system or the

general public, if the damage caused has been repaired and the existence of mitigating factors, among other issues. Warnings may be considered in future assessments of offences.

- Suspension of operations and closure: if misconduct severely affects the financial system or the general public's interests, or is linked to money laundering or terrorism financing, the CNBV may immediately, temporarily or permanently suspend the operations of the offender. These powers to suspend activities as a sanction are different to the CNBV's powers related to prudential reasons: that is, to prevent a negative impact on the stability of the financial system or prevent manipulations of the stock market.
- Revocation of authorisations: if any of the causes of revocation set forth in the Mexican financial legal framework are met, the CNBV may revoke an offender's authorisation to impede it from continuing its operations.
- Blacklisting: offenders may be blacklisted by the CNBV, which prevents them from being involved in activities related to banking and investment.
- Criminal charges: in some cases, the CNBV will be entitled to file criminal complaints before the corresponding authorities. An offender may be subject to criminal charges for carrying out illegal activities within its operations in the financial system.

If the CNBV detects that an entity or individual is carrying out operations exclusively reserved for regulated financial entities (ie, banking) without being an authorised title holder, the CNBV may file a criminal complaint before the General Prosecutor's Office so that it can investigate and, if applicable, sanction the involved entity and individuals for being involved in a felony.

Recent and upcoming developments

Disincentives to working in the public sector

A change of government in December 2018 severely affected the CNBV's ability to work properly, since the new government issued amendments to the relevant laws in connection with public service. These amendments include:

- strict salary and wage limits for all below the Head of the Executive Power's self-imposed salary of approximately US\$8,000 per month;
- the elimination of positions and downsizing; and
- an ineligibility to work in private entities or to advise companies related to the supervised sector (ie, financial sector) for 10 years as of the date of leaving a position in the public sector.

The above caused many mid and high-level CNBV officials to resign or to be removed, leaving the CNBV with a diminished workforce, which has adversely affected its response times and its resolution of matters.

The CNBV historically was a seedbed of talent and an attractive place to grow professionally in the financial sector before positioning oneself in the private sector, but this is no longer the case.

Finally, except for the area of sanctioning, the areas supervised by the CNBV are not a priority for the new government; thus, it is foreseeable that the CNBV will suffer regular budget cuts within this administration, which will negatively affect its general function and operations.

Introduction of finance technology regulations and their implementation

The introduction of finance technology (FinTech) regulations became latent with the enforcement of the Law to regulate financial technology institutions (FinTech Law) in 2018.

The FinTech Law's objective is to regulate financial services provided by FinTech institutions, constraining and supervising transactions made through technological platforms with contact points in Mexico and promoting financial inclusion and innovation via new technologies.

The main areas regulated by the FinTech Law are, among others:

- payment and transfer means (payment, e-commerce and international transfer platforms);
- infrastructure for financial services (including customer and risk profile assessment, fraud prevention, identity verification, banking application programming interfaces and payment method aggregators);
- financial software solutions for companies (accounting, billing and financial management);
- cryptocurrency and blockchain developers, intermediaries and digital asset markets; and
- crowdfunding using web platforms.

As with any new regulation over a sector that has not been previously regulated, the CNBV faces challenges in imposing the provisions of the FinTech Law on already established and operating financial services platforms, which now face additional obligations. This involves the CNBV supervising a whole new sector, further burdening the already swamped CNBV workforce.

Asymmetric regulation initiative

At the 82nd annual convention of the Association of Mexican Banks (the private chamber of the banking industry), the President of the CNBV gave an opening speech in which he emphasised the importance of differentiated banking regulation. In response, the private banking sector presented an initiative to the CNBV to amend the banking regulation. The initiative proposes differentiating the regulatory costs for regulated financial entities by considering their size and the risks to which they are exposed.

Among others, the main regulatory topics they requested be modified are:

- regulatory reports;
- a differentiation instead of the current flat costs of operational risk through a consideration of the nature of the assets at risk;
- liquidity requirements;
- disclosure of information; and remuneration committee requirements.

The financial authorities have not reached a consensus about whether the asymmetric regulation should be applied on the basis of the assets at risk, the size of the regulated financial entities or another parameter. Thus, the asymmetric regulation initiative is currently on hold.

Aggressive approach to enforcing regulations

The new government's approach to the supervision and sanctioning of money laundering and illegal fiscal and taxation activities (which categorises illegal fiscal and taxation activities as organised criminal activities) is aggressive, which implies a joint effort by the CNBV and many other governmental entities to ensure the constant and thorough supervision of regulated financial entities.

Challenges

- Lack of workforce and operation capabilities: as part of the reorganisation of the CNBV by the new government, amendments to relevant laws in connection with public services were approved, setting salary limits and eliminating some positions, which in turn affects the CNBV's workload. In consequence, the CNBV has a diminished workforce, adversely affecting its response times and its resolution of matters. Furthermore, as per the new regulations, the CNBV may not be able to attract new talent.
- Economic certainty: it is essential that the regulators build an environment of confidence and stability for all participants in the financial system.
- Autonomy and strengthening of regulatory bodies to ensure that independent bodies and those in charge of regulating and supervising the financial system continue to operate with the necessary quality and independence.
- The rate of modernisation in the financial sector is undeniably fast. Authorities and institutions should take advantage of new technologies to be at the forefront and give greater mobilisation to the system, as well as to facilitate and accelerate the realisation of all economic exchanges.
- In the past 20 years there have been regular failures of savings and loans institutions due to fraud and abuse by governing bodies. This means that thousands of workers have suffered injustice deriving from insufficient regulation and lack of due supervision by the CNBV. This presents a great challenge for the authority to ensure that the savings of working people compromised through these vehicles are properly managed.

Interacting with the regulator

Interactions with the CNBV begin with the submission of a formal writ addressed to the director of the relevant CNBV area. It is advisable to identify the specific officials involved in a matter and to communicate with them via email or telephone on an ongoing basis.

Regular communications are usually held with mid-rank officials; nevertheless, it is possible to request meetings with higher rank officials, which may enable the process to move forward if a matter seems to be stalled.

Communications and meetings may be held informally, and opinions or studies provided by private entities are not binding before public officials. Nevertheless, this material may help public officials to duly study and resolve a matter.

Response times vary depending on the workload of the area responsible for the matter at hand. Typically, after a first review of a filing, the CNBV issues additional requirements and comments regarding the filing, which must be considered in terms of the timing of the resolution of a matter. The CNBV customarily takes the whole time period provided by law to render its resolution.

Generally, CNBV officials issue requests for information or resolutions through *oficios* (formal written communications). Nevertheless, continuous contact from an interested party may impact the timing and outcome: for example, weekly follow-up meetings with officials may guarantee the best result.

All communications with the CNBV must be held in Spanish. While most of its high-ranking officials speak fluent English, communicating in Spanish will avoid any misconceptions.

Notes for foreign investors

Generally, there are no restrictions on foreign private participation in banking and financing activities in Mexico involving regulated financial entities, securities issuers and lesser regulated entities.

Nevertheless, the Financial Institutions Law sets forth a prohibition on foreign governments holding, directly or indirectly (with no contact point limitations), any interests in regulated financial entities, except when such interests:

- derive from the execution of prudential or bailout measures regarding regulated financial entities;
- are held via governmental funds, through development or similar entities, and only if such entity does not exercise (governmental) authorities or functions, and their corporate organs are independent of such governments; or
- are held indirectly and exert no control of a regulated financial entity.

In any case, the participation of a foreign government is subject to the prior authorisation of the CNBV. In relation to the acquisition of securities issued by Mexican securities issuers, it is important to note that their tax regulation has certain benefits if investors are residents of countries with which Mexico has valid tax treaties. Therefore, investors should be cautious of any modification that may affect the taxation regime applicable to them.

Other regulators it works closely with

Domestic

- Banco de México: Bank of Mexico;
- Secretaría de Hacienda y Crédito Público (SHCP): Ministry of Finance and Public Credit;
- Ministerio de Economía: Ministry of Economy (in the area of foreign investment);
- Comisión Nacional de Seguros y Fianzas (CNSF): National Insurance and Bonding Commission;
- Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros (CONDUSEF): National Commission of Protection and Defence of Users of Financial Services;
- Instituto para la Protección al Ahorro Bancario (IPAB): Institute for the Protection of Bank Savings;
- Unidad de Inteligencia Financiera (UIF): Financial Intelligence Unit; and
- Fiscalía General: General Prosecutor's Office.

International

- International banking and securities commissions: international interactions regarding banking affiliates established in Mexico and securities issuances in other countries by Mexican entities; and
- America's Association of Bank Supervisors: maintains close communication between its members to facilitate cooperation and promote the improvement of their capacities.



**Luis Mancera
de Arrigunaga**
González Calvillo SC

Luis is a partner at Gonzalez Calvillo and has focused his legal practice in administrative law, including banking, telecom, anticorruption, anti-money laundering and tax-compliance regulation.

Prior to joining the firm, he held various high-level positions in the public and private sectors, serving as general counsel, Chief Tax Prosecutor and Chief of the Banking and Savings Unit at the Ministry of Finance in Mexico. In these capacities he was Mexico's representative to the Financial Action Task Force and supervised the Financial Intelligence Unit. While he served at the Ministry of Finance, he was a key player in the modernisation of the banking and securities legal framework.

Moreover, he was also a member of the governing bodies of the National Banking Commission (CNBV), the National Insurance and Bonding Commission (CNSF), the Bank Savings Protection Institute (IPAB) and the National Retirement Savings Commission (CONSAR), and represented the Ministry of Finance before the Bank Savings Protection Institute (IPAB).

His outstanding career allows him to actively advise in a wide range of matters related to new proposals for laws and regulations, government procurement and authorisations, among other highly regulated procedures.

His private sector experience includes working as vice president of legal and regulatory affairs at Grupo Televisa and general legal and regulatory counsel at Avantel.



Rafael Fuentes
González Calvillo SC

Rafael is an associate at Gonzalez Calvillo and has ample experience in regulatory consulting, strategic legal protection, and litigation. He has counselled leading financial institutions, telecom and infrastructure companies through regulatory advice, as well as represented such in administrative litigation and constitutional amparo procedures before Federal Courts and the Mexican Supreme Court of Justice (Suprema Corte de Justicia de la Nación).

He has been counsel in procedures before the Mexican Supreme Court of Justice which have resulted in ground-breaking constitutional and regulatory legal precedents for clients in highly regulated industries.

His recent work includes representing a financial institution regarding the validity of the parametric model used to analyse the solvency and viability of payment of its borrowers, obtaining a favourable ruling which impacted the financial system.

He holds a master's degree in Economic Law from the Universidad Panamericana in Mexico City and a law degree (J.D. equivalent) with honours from the Escuela Libre de Derecho in Mexico City.



**Francisco Javier
Alvarez Campos**
González Calvillo SC

Francisco is an associate at Gonzalez Calvillo with more than 10 years of professional experience. He is actively involved in domestic and cross-border transactions, mostly with respect to financings, debt and capital markets, project finance and M&A.

His experience includes advising in numerous structured financing transactions, both private and public offerings of securities and advising financial entities, such as private and public banking institutions, and other private companies on financial regulatory matters in Mexico, counselling lenders, borrowers, issuers, consultants and underwriters.

Among others, he has actively participated in the representation of the underwriters in the simultaneous syndicated credit facility and a Rule 144A / Reg. S bond offering to allow private equity fund Actis to successfully complete its acquisition of global power-generation company InterGen's business interests in Mexico, HIR CASA in the launch of its bond program and the first and second issuances in the Mexican Stock Exchange, and Southern Copper (Grupo Mexico affiliate) in its Rule 144A / Reg. S bond offerings.

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Our services are designed to help our clients solve the toughest and most complex legal issues while finding the best solution for each case. By understanding clients' business culture and strategy, we establish a close and strategic alliance to enable them to achieve more.

- Our client roster is well diversified, as we represent a blend of local and multinational corporations across regulated and non-regulated industries, such as domestic and international financial institutions, governmental entities and individuals, including a substantial number of Fortune 500 companies in a wide variety of legal matters.
 - We have been recognised by internationally renowned legal publications for our proficiency in several fields of law. These recognitions have been granted to both practice areas and lawyers individually.
 - It has been proven that our multidisciplinary approach reveals great insights and creates productive discussions that lead to smart strategic thinking and bold decision-making. That is why we have a broad offer of practice areas that act as one to deliver integrated solutions.
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