

# Banking Regulation in Mexico: Overview

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# Banking Regulation in Mexico: Overview

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This **Banking Regulation** guide provides a high level overview of the governance and supervision of **banks**, including legislation, regulatory bodies and the role of international standards, licensing, the rules on liquidity, foreign investment requirements, liquidation regimes and recent trends in the **regulation** of **banks**.

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## Legislation and Regulatory Authorities

## Legislation

1. What is the legal framework for **banking regulation**?

The main laws governing **banks** and the **banking** sector in **Mexico** are the:

- Credit Institutions Law (*Ley de Instituciones de Crédito* (LIC)): regulates **banking** services and the incorporation, organisation and operation of **banks**.
- Securities Market Law (*Ley del Mercado de Valores*): regulates the securities market (debt, equity *and so on*).
- Law for the **Regulation** of Financial Groups (*Ley para Regular las Agrupaciones Financieras*): regulates the organisation and operation of financial groups.
- Law for the Transparency and Organisation of Financial services (*Ley para la Transparencia y Ordenamiento de los Servicios Financieros*): regulates transparency in financial services, especially regarding commissions and fees.
- Law of Transparency and the Promotion of Competition in Secured Credit (*Ley de Transparencia y de Fomento a la Competencia en el Crédito Garantizado*), regulates transparency in financial services competition and in secured credit.
- General Law of Auxiliary Organisations and Activities of Credit (*Ley General de Organizaciones y Actividades Auxiliares de Crédito*): regulates the organisation and operation of services and activities ancillary to financial services.
- Law for the **Regulation** of Credit Information Companies (*Ley para Regular las Sociedades de Información Crediticia*): regulates the organisation and operation of credit bureaux.
- Payment Systems Law (*Ley de Sistemas de Pagos*): regulates the operation of payment systems.
- Mexican Central **Bank** Law (*Ley del Banco de **Mexico***): regulates the organisation and operation of the Mexican central **bank**.
- Retirement Savings Systems Law (*Ley de Sistemas de Ahorro para el Retiro*): regulates financial services related to retirement.
- Popular Savings and Credit Law (*Ley de Ahorro y Crédito Popular*): regulates the protection of **bank** savings of the underserved gap of the population.
- **Banking** and Securities Commission Law (*Ley de la Comisión Nacional Bancaria y de Valores*): regulates the Mexican **Banking** and Securities Commission.
- Investment Funds Law (*Ley de Fondos de Inversión*): regulates investment funds.
- Credit Unions Law (*Ley de Uniones de Crédito*): regulates the organisation and operation of credit unions (groups of partners with special member benefits as authorised by the Mexican government).
- Securities and Credit Transactions Law (*Ley General de Títulos y Operaciones de Crédito*): regulates negotiable instruments and certain special credit transactions.

- Financial Services Consumer Protection Law (*Ley de Protección y Defensa al Usuario de Servicios Financieros*): regulates customer protection in the financial services sector.

There is also a large body of secondary **regulation** issued in connection with the laws listed above, which contains further and more specific provisions. The main comprehensive collection of secondary provisions is contained in the General Provisions Applicable to Credit Institutions (*Disposiciones de Carácter General Aplicables a las Instituciones de Crédito*) known as the General **Banking** Provisions (*Circular Única de Bancos*).

## Regulatory Authorities

2. What are the regulatory authorities for **banking regulation** in your jurisdiction? What is the role of the central **bank** in **banking regulation**?

## Lead **Bank** Regulators

The lead **bank** regulator in **Mexico** is the National **Banking** and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV), which is an independent agency of the Mexican Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) (SHCP). Among its many roles and functions, it serves as the primary supervisory authority over **banking** activity and regulates the incorporation, organisation and operation of **banking** institutions.

## Other Authorities

Other authorities include the:

- Mexican Institute for the Protection of Saving (*Instituto para la Protección del Ahorro Bancario*) (IPAB), which is the main supervisory authority for the protection of **bank** savings.
- National Commission for the Protection and Defense of Users of Financial Services (*Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*) (CONDUSEF), which mainly protects financial services customers.
- National Insurance and Sureties Commission (*Comisión Nacional de Seguros y Fianzas*), which is responsible for the operation, organisation and supervision of insurance and sureties activities.
- National Commission of the Retirement Saving System (*Comisión Nacional del Sistema de Ahorro para el Retiro*), which is in charge of regulating the Mexican retirement savings system.

## Central **Bank**

**Mexico's** central **bank** is *Banco de México*, (BdeM), also known as "*Banxico*". It is an autonomous constitutional body created by constitutional mandate. The BdeM's main purpose is to provide **Mexico's** economy with its national currency, preserve its value and contribute to the general economic welfare of the Mexican population.

Its primary objectives are to procure the purchasing power of the peso, to promote the healthy development of the financial system and ensure the correct functioning of payment systems in **Mexico**.

The BdeM also:

- Manages the international reserves of **Mexico**.
- Acts a lender to **banking** institutions.
- Advises the federal government on economic and financial matters.
- Is a member of various international bodies including the International Monetary Fund (IMF).

The role, authority, and obligations of the BdeM are set out in the **Bank of Mexico** Law (*Ley del Banco de México*).

## **Bank Licences**

3. What licence(s) are required to conduct **banking** services and what activities do they cover?

Under the LIC, **banking** services can only be rendered by private **banking** institutions (*instituciones de banca múltiple*) and development **banking** institutions (*instituciones de banca de desarrollo*).

A licence issued by the CNBV, with the prior favourable opinion of BdeM, is required to incorporate and operate a private **banking** institution.

Mexican **banking** licences are generally not transferable under the LIC.

Mexican private **banks** are authorised to conduct, among others, the following activities:

- Receiving funds as deposits from the general public.
- Accepting loans and credits.
- Issuing **bank** bonds.
- Issuing debentures.
- Making deposits in financial institutions abroad.
- Granting loans.

- Issuing credit cards.
- Borrowing money.
- Carrying out transactions with securities and commodities.
- Providing safe deposit box services.
- Issuing letters of credit on receipt of their amount.
- Providing trustee services.
- Acting as indenture trustees.
- Conducting appraisals.
- Conducting financial lease transactions.

(Article 46 bis, LIC)

4. What is the application process for **bank** licences?

## Application

An application, along with other supporting information, must be filed before the CNBV to be able to obtain a **bank** licence. Also, the granting of a licence requires a favourable opinion of BdeM.

The main documents required for the application are:

- Draft by-laws (which must consider the corresponding corporate purpose and expressly specify the operations that the institution intends to carry out).
- List of direct and indirect shareholders (including the equity to be contributed by each of them, their financial situation (in the case of individuals) and other details).
- List of probable directors, CEO and other relevant officers (together with the information that evidences that such individuals comply with the legal requirements to hold such titles, such as trustworthiness).
- General business and operation plan, which must include, among others:
  - security measures to preserve the integrity of information;
  - processes for the receipt of deposits and granting of loans showing the separation of the two activities,
  - geographic coverage,
  - a study regarding the financial viability of the proposed **bank**,

- basis of the **bank's** organisation, management and internal controls, among others.
- Security deposit equal to 10% of the minimum capital required to operate as a **banking** institution.

## Requirements

Additional requirements under Article 19 of the LIC include the subscription and payment of a minimum fixed capital stock of:

- 90 million UDIs (*unidades de inversion*, a measure of value created by the BdeM for commercial transactions) (currently about USD33 million) for full-service private **banks**.
- 54 million UDIs (about USD20 million) for private **banks** that limit their purpose to a narrower range of activities.

The CNBV has the discretionary authority to grant or deny such licences.

## Foreign Applicants

The licence to operate as a private **banking** institution can only be granted to Mexican corporations (*sociedades anónimas*), although such corporations can have up to 100% foreign investment, subject to certain limitations set out in the applicable law (for example, investments by foreign financial entities, see [Question 20](#))).

## Timing and Basis of Decision

It usually takes about two years to obtain a **banking** licence in **Mexico**. The precise time depends on the specific characteristics and range of **banking** and financial services to be rendered.

The process generally starts with the submission by the interested party of the application to the CNBV together with the information set out above under *Application*. The CNBV then forwards the application to the BdeM which will analyse it and render an opinion.

The CNBV has 180 calendar days to decide whether to approve or decline the application. This term can be extended for an additional 45-day term if the regulator requests additional information. The absence of a response implies a tacit denial by the regulator (*negativa ficta*).

Once the BdeM issues a favourable opinion, the CNBV must decide whether to approve the application and notify the applicant accordingly.

After notification, the applicant has a 90-day period to present the **bank's** by-laws to the CNBV for approval. Once approved, the applicant must then request authorisation to begin operations within 180 days.

Finally, the CNBV must authorise the start of operations within 180 days starting from the date of the request by the applicant.

## Cost and Duration

Three separate payments must be made for processing the authorisation as follows:

- Processing the application: about USD3,000.
- Granting the authorisation: about USD42,000.
- Implementation of the authorisation so that **banking** services can be offered: about USD135,000.

No renewal of the authorisation is required.

5. Can **banks** headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state **banking** licence?

**Banks** headquartered in other jurisdictions are not allowed to operate in **Mexico** on the basis of their home state **banking** licence. Under the LIC, the CNBV is entitled to authorise **banks** headquartered in other jurisdictions to act through a representative office in **Mexico**. The operations of the representative office must exclude, among others, fundraising activities.

Authorisations for representative offices can be revoked if their activities fail to comply with the applicable law, including the LIC.

## Forms of **Banks**

6. What forms of **bank** operate in your jurisdiction, and how are they generally regulated? Does the regulatory regime distinguish between different forms of **banks**? Are there any specific requirements for **banks** or **banking** groups in your jurisdiction in relation to the scope of business or ?

Under the LIC, two types of **banks** can be authorised to operate in **Mexico**:

- Private **banking** institutions.
- Development **banking** institutions, which are wholly owned and controlled by the Mexican federal government (although their licensing process is out of the scope of this article).

Legislation governing groups of Mexican entities providing financial services (including Mexican **banks** which are combined with other regulated entities under the Law for the **Regulation** of Financial Groups) provide for specific control requirements. The holding company of a **banking** group must always hold more than 50% of the capital stock of the legal entities comprising the **banking** group.

Mexican **banks** are only allowed to conduct activities expressly provided under Mexican **banking** legislation, mainly the LIC.



Private **banks** are generally divided in two groups:

- **Banks** authorised to provide a full range of services under the LIC.
- **Banks** authorised to provide specific services (niche **banks**).

The LIC also allows private **banks** to conduct the activities listed in *Question 3* through third parties, subject to the relevant commitments including, among others, assuming liability for the activities of third parties representing Mexican **banks** under special agreements.

The LIC also provides for limitations on **banks** investing in other entities (*see Question 19*).

Investment **banking** and private **banking** advisory activities are not subject to any special authorisation from the Mexican Government.

### **Regulation of Systemically Important Financial Institutions (SIFIs)**

Special provisions for SIFIs are contained in the General **Banking** Provisions. SIFIs (*instituciones de banca multiple de importancia sistémica local*) are defined as private **banking** institutions, the failure of which would risk the stability of the Mexican financial system, payment systems or the economy.

The CNBV is in charge of determining periodically whether an institution constitutes an SIFI and grading them in terms of importance.

SIFIs are required to keep additional capital corresponding to the specific risk associated to them. Under the Single **Banking** Circular, the criteria to be considered in assessing the risk (each equally weighted in the overall assessment) are:

- Size with respect to the Mexican **banking** system as a whole.
- Interconnectivity with the Mexican financial system.
- Importance of the services and infrastructure rendered in the Mexican financial system and economy.
- Complexity of operations.

In line with the criteria, the assessment by the CNBV assigns one of five grades of importance (I to V) to each SIFI. The additional capital required for the SIFI depends on the grading assigned to it.

As of June 2022, six Mexican **banks** have been classified by the CNBV as SIFIs.

### **State-Owned Banks**

Development **banking** institutions (*see above*) are wholly owned and controlled by the Mexican Federal Government.

The main development **banks** in **Mexico** are:

- Nacional Financiera (NAFIN), Banco Nacional de Comercio Exterior (BANCOMEXT).

- Banco Nacional de Obras y Servicios Públicos (BANOBRAS).
- Banco Nacional del Ejército.
- Fuerza Aérea y Armada (BANJERCITO).
- Sociedad Hipotecaria Federal (SHF).
- Banco del Bienestar.

## Universal **Banks**, Commercial and Retail **Banks**

Private **banking** institutions can provide all the services set out in Article 46 bis of the LIC if they are authorised to do so.

Niche **banks** (*see above*) can request a licence to provide certain specific services under the LIC.

## Investment **Banks**

There is no specific **regulation** applicable to "investment **banks**" in **Mexico**. However, depending on the nature of the services and transactions involved, investment services are typically carried out by private **banking** institutions or authorised brokerage houses.

## Private **Banks**

See above.

## Other **Banks**

Certain financial institutions regulated under Mexican law are not strictly **banking** institutions and are prevented from providing the full range of services set out in the LIC, or subject to the same organisation and operation requirements.

These include, among others:

- Multiple purpose financial companies (*sociedades financieras de objeto multiple* or SOFOMs).
- Popular financial companies (*sociedades financieras populares*).
- Financial technology institutions (*instituciones de tecnología financiera*).
- Credit unions (*uniones de crédito*).

## Organisation of **Banks**

### Legal Entities

7. What legal entities can operate as **banks**? What legal forms are generally used to operate as **banks**?

Under Mexican **banking** law, only corporations with a fixed capital (*sociedades anónimas de capital fijo*) incorporated under the General Law of Commercial Companies (*Ley General de Sociedades Mercantiles*) can act as private **banking** institutions under the LIC.

Mexican development **banks** are incorporated as National **Banking** Corporations (*Sociedades Nacionales de Crédito*).

8. What requirements apply to the structure of **banking** groups?

**Banking** groups in **Mexico** can be organised as Financial Groups (*Grupos Financieros*). These are regulated by the Law for the **Regulation** of Financial Groups and are defined as groups integrated by a Controlling Entity (*Sociedad Controladora*) and the financial entities under its corporate umbrella (subsidiaries).

The financial entities that can be a part of a Financial Group are:

- General deposit warehouses (*almacenes generales de depósito*).
- Currency exchange offices (*casas de cambio*).
- Sureties institutions (*instituciones de fianzas*).
- Insurance institutions (*instituciones de seguros*).
- Securities brokerages (*casas de bolsas*).
- Private **banking** institutions.
- Investment fund operators (*sociedades operadoras de fondos de inversión*).
- Investment fund share distributors (*distribuidoras de acciones de fondos de inversión*).
- Retirement fund managers (*administradoras de fondos para el retiro*).
- Multiple purpose financial companies (*sociedades financieras de objeto múltiple*).
- Popular financial companies (*sociedades financieras populares*).
- Financial technology institutions (*instituciones de tecnología financiera*).

Financial Groups must be formed by the Controlling Entity and at least two of the financial entities listed above which can be of the same kind (except for multiple purpose financial companies). The Controlling Entity must hold, directly or indirectly, more than 50% of the capital stock of the Financial Group.

The formation of a Financial Group and the incorporation of a Controlling Entity are subject to the authorisation of the SHCP with the prior opinion of BdeM, and, depending on the members of the Financial Group, with the prior opinion of the CNBV, the National Insurance and Sureties Commission, and the National Commission of the Retirement Saving System. The integration of additional financial entities into an already-formed Financial Group also requires the authorisation of the SHCP.

For purposes of the foregoing authorisation, the parties requesting the formation of a Financial Group must, among others, file the draft by-laws of the Controlling Entity and a draft Responsibility Agreement (*Convenio de Responsabilidades*), both of which must be implemented within 90 days of the above authorisation.

Additional documents must also be filed as part of the authorisation request including those regarding the:

- Shareholders and directors of the Controlling Entity.
- Structure of the corporate group.
- Audited financial statements.
- Strategic financial programme.

## Corporate Governance

9. What are the legislative and non-legislative corporate governance rules for **banks**?

The LIC contains the main corporate governance rules for private **banks**. These focus mainly on the board of directors and committees, the appointment and authorities of the CEO and other officers, among others. The rules include:

- The board of directors must be comprised of between five and 15 members, of which at least 25% must be independent.
- Board members and relevant officers must have acceptable technical skills, trustworthiness and a satisfactory credit history.
- The CNBV can order the removal of members of the board of directors and relevant officers in certain cases.
- The merger or split up of a **bank** must be approved by the CNBV.

The General **Banking** Provisions also contains specific rules regarding the operation and authorities of the corporate governance bodies of private **banking** institutions.

10. What are the organisational requirements for **banks**?

Under the LIC, retail **banks** must be incorporated as corporations with fixed capital. Their main corporate purpose must be the rendering of **banking** and credit services, and their place of incorporation must be **Mexico**. The by-laws of **banking** institutions and amendments to them are subject to approval by the CNBV.

In addition, the following must be filed with and approved by the CNBV:

- Security measures to preserve the integrity of information.
- Programmes related to fundraising and loan granting reflecting the diversification of activities.
- Financial viability of the **bank**.

In general, **banking** institutions' capital structures are divided into two series of shares: Series "O" and Series "L". Subject to the specific **bank**, Series "O" shares will have full corporate and economic rights, while Series "L" shares will have limited corporate rights (voting restricted to certain specific matters like mergers, spin-offs, transformations, dissolutions and so on) but can also grant preferential dividends to their holders.

Finally, **banking** institutions are subject to minimum capitalisation requirements depending on the specific activities to be performed. This requirement allows for the existence of smaller "niche" **banks** that can be focused on one specific sector (such as trustee services) without having to meet a standardised capitalisation requirement.

11. What is the supervisory regime for management of **banks**?

The main requirement for management members and the CEO is to have a good and proven track-record in **banking** and finance and their related fields.

In addition, the:

- Board of directors must include at least 25% of independent members. Similarly, there are statutory mechanisms that preclude certain persons from acting as directors of **banking** institutions (for example, convicted felons for financial crimes) or that prohibit certain directors from voting when they have a conflict of interest.
- Board of directors is liable to the shareholders' meeting as the supreme corporate body of the **banking** institution and the statutory auditors will be in charge of evaluating the performance of the internal control system of the **banking** institution.

- Performance of the CEO is overseen by the board of directors, and they are required to provide all the information and data required to assist the board to make relevant decisions.
- **Banking** institutions must have a risk committee to manage and assess the risks to which they are exposed, as well as to ensure that the operations of the **bank** comply with the applicable internal **regulations** and statutes.
- The CNBV has the authority to determine, at any time, that a director, CEO, statutory auditor, among others, be removed or suspended from office when it deems that they do not have the technical, trustworthiness or satisfactory credit history standards required by the LIC.

12. Do any remuneration requirements apply?

Under the LIC, **banking** institutions must implement a remuneration system which will be overseen and managed by the board of directors. This system must consider all remunerations, whether in cash or through other methods, and must, among others:

- Establish the authorities of the corporate bodies in charge of implementing the remuneration structures.
- Set out policies and procedures that regulate ordinary and extraordinary remuneration.
- Ensure the periodic review of payment policies.
- Comply with any additional requirements set out by the CNBV.

For these purposes, the board of directors must form a remuneration committee, which will be in charge of implementing, maintaining and evaluating the remuneration system.

13. What are the risk management rules for **banks**?

The principal risk management policy for **banking** institutions in **Mexico** is the minimum capitalisation requirement set out in the LIC and its applicable **regulations**. This, combined with the requirement for **banking** institutions to have a fixed capital, ensures that **banking** institutions have an equity buffer to cope with risk. These safeguards are strengthened by legal requirements related to liquidity, leverage and so on.

Separately, **banking** institutions are required under the LIC to diversify their risks. The CNBV is authorised to, among others, set out the maximum percentage of liabilities that a **banking** institution can assume with respect to one same person or group and the maximum amount of all contingent and direct liabilities in one same person or group that constitute common risks for a **banking** institution.

The board of directors is responsible for approving the objectives, guidelines and policies regarding loan origination and management, which must be consistent, compatible, and complementary to the risk management regime (*Administración Integral de Riesgos*). To that end, the board of directors of **banking** institutions must form a committee to manage risk exposure and ensure that the institution's operations adjust to the internal risk profiles, limits, and procedures.

Such committee must be comprised of at least two principal members of the board of directors, the CEO, the person in charge of the risk regime and the internal auditor of the company.

Additionally, **banking** institutions must have an internal department specialising in credit risk which must, among others, monitor quality and main trends regarding risk and profitability of the loan portfolio and set out guidelines to determine, at the assessing stage, the risk grade of every loan.

Additional rules and requirements regarding risk calculation, coverages, capitalisation, conversions, and grading are contained in the General **Banking** Provisions.

## Liquidity and Capital Adequacy

### Role of International Standards

14. What is the capital adequacy framework that applies to **banks**?

In compliance with Pillar 2 of the Basel II accords, the General **Banking** Provisions sets out the capital adequacy framework applicable to retail **banking** institutions, mainly through the implementation of a capital adequacy evaluation (*evaluación de la suficiencia de capital*). The evaluation is a process through which **banking** institutions evaluate whether their net capital is adequate to cover the potential losses arising from the risks to which such institutions are exposed, including where adverse economic conditions persist.

The capital adequacy evaluation must be carried out at least once a year on the dates set by the CNBV.

The main objectives of the capital adequacy evaluation are, among others:

- Promoting the active participation of the different corporate bodies in the risk decision-making process.
- Identifying, analysing, limiting, and controlling the risk to which the **banking** institution is exposed.
- Knowing the adequate capital level to operate within the desired risk profile.
- Evaluating the sufficiency and adequacy of the resources, policies, processes, and procedures of the risk management bodies of the **banking** institution.
- Preventing any situation which could put the financial institution's financial viability or solvency at risk.

## Main Prudential Requirements

15. What liquidity requirements apply?

The liquidity requirements applicable to retail **banking** institutions are mainly set out in the General Provisions regarding the Liquidity Requirements of Retail **Banking** Institutions (*Disposiciones de Carácter General sobre los Requerimientos de Liquidez para las Instituciones de Banca Múltiple*). This law contains various rules to calculate the applicable liquidity coverage ratio (LCR) which, subject to specific situations, is calculated as computable liquid assets (*activos líquidos computables*) over total net outward cashflow (*flujo neto total de salida de efectivo*). The purpose of this ratio is to require **banking** institutions to have sufficient liquid assets to cover the outward cashflow for a specific period and is similar to the requirement of Basel III.

In calculating the LCR, **banks** must include, among others, all transactions (individually and on a consolidated basis) including those carried out by financial subsidiaries; all transactions registered in the balance sheet, the expected cashflow arising from transactions with derivatives and so on.

The requirement also promotes transparency in the financial sector given that retail **banking** institutions must report their LCR to the BdeM.

16. What leverage requirements apply?

A leverage ratio is applicable with respect to retail **banking** institutions. The legally required leverage ratio in **Mexico** is 3% as set out in Article 172 bis 39a of the General **Banking** Provisions. This ratio must be calculated as basic capital over adjusted assets, without considering subsidiaries or SPVs, and considering operations within **Mexico** and abroad, in terms of the formulas provided in the statute.

## Consolidated Supervision

### Role and Requirements



17. What is the role of consolidated supervision of a **bank** in your jurisdiction and what are the requirements?

## Role

Mexican regulators have made significant efforts in recent years to comply with the Basel Accords, mainly Basel II and III (*see also Question 14*). This includes taking relevant steps towards the implementation of a consolidated supervision model, evidenced in the re-balancing and re-distribution of certain functions and authorities between the different regulators and in the internal reorganisation of these bodies.

However, there is still no single regulator with complete authority over financial conglomerates (including non-financial subsidiaries) in **Mexico**.

The authority is shared by several regulators, including the CNBV, BdeM, CONDUSEF, SHCP and others, which have different functions and attributions for regulating the financial sector and the **banking** industry specifically, although financial entities are principally the target of the **regulation** as opposed to full conglomerates including non-financial subsidiaries.

## Requirements

See above, *Role*

## Shareholdings/Acquisition of Control

18. What reporting requirements apply to the acquisition of shareholdings in **banks**?

Under the LIC, persons who acquire or otherwise transfer Series "O" shares (*see Question 10*) representing more than 2% of the paid capital stock of a retail **banking** institution must report the acquisition or transfer to the CNBV within three business days.

Similarly, a person who intends to acquire Series "O" shares representing 5% or more of the paid capital stock of a retail **banking** institution, in one or more transactions, must obtain prior discretionary authorisation by the CNBV, with the prior opinion of the BdeM. In this regard, the intended acquirer must evidence that it meets certain requirements and must provide the CNBV with any information requested for such purposes.

Finally, a person or group of persons, whether they are already shareholders or not, who intends to acquire Series "O" shares representing 20% or more of the capital stock or control of the **banking** institution must also request discretionary authority from the CNBV, with the prior opinion of the BdeM. The authorisation request addressed to the CNBV must include, among others, the details of the persons acquiring control, the names of the directors and officers appointed in case the intended percentage/control is acquired, the proposed general business plan of the **banking** institution and the proposed strategic organisation, management, and internal control programmes.

**Banking** institutions will refrain from registering any share transfer carried out in violation of the foregoing and must alert the CNBV of such a situation.

19. What requirements or restrictions apply to the acquisition of shareholdings and of control of **banks**?

**Banking** institutions require approval by the CNBV to invest in, and hold title to, stock or equity interests in companies that render complementary or auxiliary services to those provided in the latter's corporate purpose. The same applies with respect to companies holding real estate for office purposes of the institution itself.

Similarly, the CNBV must authorise the direct or indirect investment by Mexican **banking** institutions in foreign financial entities. In this case, if the investment represents 51% of the paid capital stock or control, the Mexican **banking** institution must take all actions required for the foreign financial entity to comply with the applicable foreign law and with the provisions determined by Mexican financial regulators.

Finally, there are several rules contained in the LIC regarding the investments that can be made by **banking** institutions. These generally entail different approval thresholds depending on the nature of the investment as well as other requirements (for example, diversification). In addition, certain investments, for example, in stock issued by public companies, will be capped at a percentage of the total institution's investments.

20. Are there specific restrictions on foreign shareholdings in **banks**?

In most cases, foreign shareholdings in Mexican **banking** institution are allowed. However, if a foreign financial entity intends to participate in the capital stock of a Mexican **banking** institution, certain requirements must be met which include:

- The pre-existence of an international treaty that allows the incorporation of the affiliate **banking** institution.
- Authorisation by the CNBV with the prior opinion of the BdeM.

The capital stock of these affiliate institutions will be divided into Series F and B shares, with the latter having to represent at least 51% of the capital stock. Series F shares will be held by the corresponding foreign financial institutions.

The **banking** institution will be considered as an affiliate **banking** institution to the foreign entity to the extent 51% or more of its capital stock is held by that entity.

## Liquidation, Resolution and Transfer

21. What is the legal framework for liquidation of **banks**?

The legal framework for the liquidation and dissolution of **banking** institutions is set out in the LIC, the Financial Services Consumer Protection Law and the Payment Systems Law.

The CNBV before the beginning of the formal liquidation process for **banking** institutions, can generally be granted additional powers and authority over the distressed institution (including, in certain cases, being able to intervene in management decisions).

Various preventive measures to avoid liquidation and dissolution are provided.

If liquidation becomes inevitable, the IPAB will proceed with the liquidation through the foreclosure and sale of the institution's assets (and ultimately capital stock) under the rules and methodology set out in the applicable law, aiming for the least disruption of the institution's services for the benefit of the end-users.

22. What is the recovery and resolution regime for **banks**? Does your jurisdiction have any specific mechanisms for the transfer of **banking** business in a resolution scenario, for example to a bridge **bank** or a regulatory agency?

## Obligations to Prepare Recovery Plans

The resolution of a Mexican **banking** institution is allowed when, among others, the CNBV has revoked its **banking** licence. The resolution of a **banking** institution is carried out by one of the following methods:

- When the CNBV has revoked the **banking** licence of a **banking** institution, the board of the IPAB can determine the liquidation or judicial liquidation of the institution.
- When the Committee of **Banking** Stability resolves that the liquidation of the institution can, among others, generate negative effects in other **banking** institutions or may put at risk the functioning of the payment systems necessary for the development of economic activity, the IPAB can elect to proceed with the rescue of the **banking** institution subject to the specific rules in the LIC.

In general, the two methods for recovery imply either financial assistance (through an equity injection) or the granting of "rescue" loans.

## Powers of the Regulator

The CNBV, as the main regulator, has the authority to determine whether a **banking** institution faces solvency or liquidity problems affecting its financial viability and if so whether the revocation of the corresponding **banking** licence is appropriate in terms of the applicable law.

In a recovery/liquidation scenario, the IBAP is the authority which determines whether the liquidation or rescue of a **banking** institution applies as well as with overseeing the applicable process.

For these purposes, the BdeM and the CNBV can appoint additional personnel to temporarily assist the IPAB to promptly and effectively execute the chosen resolution method.

## Transfers of Business

The LIC sets out specific rules for the assignment, transfer, or discount of business (credit portfolio).

23. Are there any mechanisms for the transfer of **banks'** business?

The transfer of a **bank's** business is generally subject to prior approval by the CNBV, which must ensure the solvency and financial stability of **banking** institutions and the protection of the public interest.

The assignor must assume liability for the solvency of its debtors, grant financing to the assignee, or have agreements in place that allow for the assignor to re-purchase the credit portfolio, and the transfer will be subject to approval by the CNBV.

There are exceptions to the above which allow for unrestricted transfers if they are made to the BdeM, other **banking** institutions, federal trusts implemented by the government and issuer trusts.

24. Are there any requirements governing the continuity of **banks'** business?

In general, the CNBV and the IPAB, regulate the continuity of a **bank's** business in several scenarios, including in the event of the liquidation. The LIC contains the specific rules that must be complied with. These mainly require the transferee institution to comply with the:

- Legal capitalisation and capital sufficiency requirements.
- Prior approval by the IPAB.
- Consideration of the applicable geographic coverage, relevant market, infrastructure required to continue with the transferring institution and others.

Specific antitrust clearance may also be required.

## Conduct of Business

25. What conduct of business standards apply to **banks**' deposit-taking and lending activities?

As a general rule, deposit-taking (*captación*) from the public for its placement with the public can only be carried out by certain authorised institutions, mainly by retail and development **banks**.

Other entities that can carry out deposit-taking from the public for different purposes include:

- Electronic payment fund institutions (*instituciones de fondos de pago electrónico*).
- Popular financing companies (*sociedades financieras populares*).
- Co-operative savings and lending companies (*sociedades cooperativas de ahorro y préstamo*).

With respect to lending activities, the sector became open as part of certain amendments to the overall financial **regulations** in **Mexico** a few years back and, under Article 87-B of the General Law of Auxiliary Organisations and Activities of Credit, lending can be carried out by any person without the need of further authorisation by the federal government.

The specific framework governing passive and active regulated activities, among other activities, by retail and development **banks** is set out in **Regulation** 3/2012 (Circular 3/2012) issued by the BdeM.

## Complaints Handling

26. Do any requirements apply to the handling of complaints to **banks** concerning their deposit-taking or lending activities?

The handling of complaints to financial entities (including **banks**) concerning their business conduct falls within the authority of the CONDUSEF. However, lending activities can be carried out in **Mexico** by any person without the need of authorisation (*see Question 25*). Therefore, any complaints relating to lending activities carried out by a non-financial entity fall within the jurisdiction of the Federal Consumer Protection Prosecutor's Office (*Procuraduría Federal del Consumidor*).

The CONDUSEF's main purpose is to promote, advise, protect, and defend the rights and interests of the users of services or products offered by financial institutions, including retail and development **banks**.

In general, the CONDUSEF is in charge of:

- Receiving and filtering complaints filed by financial services users.
- Overseeing and implementing mediations and arbitration procedures between such users and financial institutions.
- Regulating marketing and offerings of financial products or services.
- Reviewing and setting guidelines for the contracts used by financial institutions.
- Providing guidance and advice to users.
- Issuing recommendations to relevant authorities on the matter.

## Regulatory Developments and Recent Trends

27. What are the regulatory developments and recent trends in **bank regulation**?

Amid growing domestic and global macro-economic concerns, including record high inflation rates supply chains disruption and geopolitical instability, the Mexican **banking** sector continues to prove solid and has regained some footing.

**Mexico's** economy, the second highest in Latin America by GDP, largely depends on its **banking** industry, which reached total assets of about MXN9.8 trillion in 2021 ([www.statista.com](https://www.statista.com)).

In April 2022, Mexican **banking** deposit-taking (*captación*) grew by 1.5% (<https://www.bbvaresearch.com/en/>).

As of August 2021, 50 companies were operating as licensed **banking** institutions in **Mexico**.

As the Mexican **banking** sector continues to thrive, one important trend is a larger number of **banks** using technology solutions to reach a bigger customer base and substitute the bricks-and-mortar model.

**Mexico** still has a large untapped market for provision of formal **banking** services to its population. About 63% of its citizens have never used **banking** services, which puts **Mexico** as one of the most under-**banked** countries in the world ([www.gfmag.com](https://www.gfmag.com)).

One driver for the increase in **banking** provision was the COVID-19 pandemic that prompted companies to focus on technology. Another important driver is the bolstering of the Fintech sector in **Mexico** which included the enactment of the Law to Regulate Financial Technology Institutions (Fintech Law) in 2018. As more Fintech companies enter the market with attractive financial alternatives, "traditional" **banks** have had to step up their efforts.

Another development was the announcement by Citigroup of its intention to sell Citibanamex (formerly Banamex), **Mexico's** fourth largest **bank**, founded in 1884 and acquired by Citigroup in 2001. While there is still uncertainty about when the sale will occur and who the buyer will be, it is clear this move will reshape the Mexican **banking** landscape in the short-term.

On the regulatory side, there are some indications that the CNBV is looking to crack down on **banking** institutions that do not comply with the applicable **regulation**. This was seen last year with the revocation of Accendo Banco's **banking** licence, which this year entered wind-down processes. Whether other **banks** will follow the same fate is yet to be seen.

Finally, there has been a push in recent years for reforms to **banking regulation** in **Mexico** to lower or eliminate a series of **banking** fees and commissions. While these reforms have lost momentum, the members of the Mexican Congress that originally proposed them have stated that they will continue to promote these until they are discussed. If/when these reforms become law, they will have a significant impact on **banks'** revenue streams.

## Contributor Profiles

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**Professional and academic qualifications.** Co-managing partner; over 15 years of experience providing legal and business advice to domestic and foreign clients, actively representing individuals and companies from a wide range of sectors in multi-million local and cross-border transactions; member of the board of directors of several companies; founder and Chairman of the Fundación Dr. José Ignacio Rivero Cosme-Más allá del cancer, a non-profit organization that helps low income patients fight cancer; Certificate in Structural Issues in Law Firm Management from the School of Law of Fordham University, New York (2021); LLM, School of Law of Northwestern University, Chicago, Illinois (2008); Business Administration degree, Kellogg School of Management of Northwestern University, Chicago, Illinois (2008); JD (law degree equivalent), Escuela Libre de Derecho, **Mexico** City (2005).

**Areas of practice.** Corporate finance; mergers and acquisitions; capital markets and debt securities; **banking** and finance **regulation**; private equity and fund formation.

#### Recent transactions.

- Counsel to Rappi, Latin America's first unicorn, in its USD400 million joint venture with Banorte, incorporating a new entity that will seek to become the largest digital **bank** in **Mexico**.
- Counsel to IFM, an Australian global funds manager, in its USD2.6 billion global acquisition of OHL's infrastructure concessions division, as well as in the mandatory acquisition tender offer launched by it in the Mexican Stock Exchange.

- Counsel to Metalsa, one of the leading suppliers of structural components for the automotive light vehicle and commercial vehicle markets, in its sustainability linked USD300 million 144A/Reg.S. offering of notes.
- Counsel to JA Mitsui, the financial arm of Mitsui, in the financing to Metalsa of USD98 million to fund the construction and operation of a manufacturing plant in Guanajuato for Toyota.

**Languages.** Spanish, English, French.

**Professional associations/memberships.** International Bar Association (IBA); Asociación Nacional de Abogados de Empresa; Colegio de Abogados (ANADE - Mexican Association of Business Lawyers).

Publications

- *Thought Leader Firm Management 2022, Q&A Edition, published by Who's Who Legal*
- *Fintech 2022 Global Practice Guide, Mexico Chapter, published by Chambers and Partners*
- *Thought Leader Firm Management 2021, Q&A Edition, published by Who's Who Legal*
- *Lending & Secured Finance Guide 2021, Mexico Chapter, published by International Comparative Legal Guides (ICLG)*
- *Private Equity Guide 2021 and 2020, Mexico Chapter, published by Legal 500.*
- *Corporate and M&A Guide 2020 and 2019, Mexico Chapter, published by Chambers and Partners.*
- *Banking & Finance Guide 2020, 2019 and 2018 Mexico Chapter, published by Chambers and Partners.*
- *Banking Regulation Guide 2021, Mexico Chapter, published by Global Legal Insights.*
- *Banking Regulation in Mexico Global Guide 2020 and 2019 Mexico Chapter, published by Thomson Reuters.*
- *Lending & Secured Finance, Mexico Chapter for 2021, 2020, 2019, 2018, 2017 and 2016, published by International Comparative Legal Guide (ICLG).*

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**Professional and academic qualifications.** Involved in domestic and cross-border transactions related to mergers and acquisitions, banking and finance, private equity, and capital markets; experience as an international associate at Latham & Watkins LLP in New York, NY; LLM, University of Pennsylvania Law School, Philadelphia (2017); Business and Law Certificate, The Wharton School, University of Pennsylvania, Philadelphia (2017); Law Degree (JD equivalent), Universidad Anáhuac México Norte, Mexico City (2014).



**Recent transactions.** Representing:

- MSD Capital in the USD29.7 million acquisition by Fortem Capital of 50 lots located in Los Cabos, Baja California, destined for the development of luxury residential real estate.
- Rappi **Mexico** - a leading global technology company and Tarjetas del Futuro in the MXN3 trillion second tranche of a large-scale financing granted by Banorte to continue to fund the credit operations of Tarjetas del Futuro.
- JA Mitsui Leasing in the USD98 million financing for the construction, operation, and leasing of a manufacturing plant in Guanajuato, **México**, to be operated by Metalsa for the manufacturing of automobile components for Toyota.
- Metalsa, S.A. de C.V. in the international offering of senior notes due 2031 for USD300 Million, pursuant to Rule 144A and **Regulation S** of the US Securities Act.

**Areas of practice.** Corporate finance; mergers and acquisitions; capital and debt markets – securities, **banking** and finance **regulation**.

**Languages.** Spanish, English.

**Professional associations/memberships.** Asociación Nacional de Abogados de Empresa, Colegio de Abogados (ANADE) (National Corporate Counsel Association).

Publications

- *Fintech 2022 Global Practice Guide, **Mexico** Chapter, published by Chambers and Partners.*
- *Lending & Secured Finance Guide 2021, **Mexico** Chapter, published by International Comparative Legal Guides (ICLG).*
- *Private Equity Guide 2021, **Mexico** Chapter, published by The Legal 500.*
- ***Banking** & Finance Guide 2020, **Mexico** Chapter, published by Chambers and Partners.*
- ***Banking Regulation in Mexico** Global Guide 2020, **Mexico** Chapter, published by Thomson Reuters.*
- *Corporate/M&A Guide 2020, **Mexico** Chapter, published by Chambers and Partners.*
- *Private Equity Guide 2020, **Mexico** Chapter, published by The Legal 500.*
- ***Banking** and Finance Guide 2019, **Mexico** Chapter, published by Chambers and Partners.*
- *Lending & Secured Finance Guide 2019, **Mexico** Chapter, published by International Comparative Legal Guides (ICLG).*
- *Creating collateral in **Mexico, Mexico** Chapter, published by Financier Worldwide.*

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