

## Banking regulation in Mexico: overview

José Ignacio Rivero Andere, Juan Manuel Sancho Rodrigo and Jacinto Avalos Capin, Gonzalez Calvillo

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### LEGISLATION AND REGULATORY AUTHORITIES

#### Legislation

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

The main legislation governing the banking sector in Mexico is found in the following statutes:

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

- *Ley General de Títulos y Operaciones de Crédito* (Securities and Credit Transactions Law): regulates negotiable instruments and certain special credit transactions.
- *Ley de Protección y Defensa al Usuario de Servicios Financieros* (Financial Services Consumer Protection Law): regulates the financial services customer protection.

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 *Disposiciones de Carácter General Aplicables a las Instituciones de Crédito* known as the *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 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 of 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 (Central Bank). It is an autonomous body created by constitutional mandate. The main purpose of the Central Bank is to provide Mexico's economy with its national currency. In complying with such purpose, it also has as a primary objective to procure the purchasing power of the peso, as

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well as to promote the healthy development of the financial system and ensure the correct functioning of the payment systems within Mexico. The role, authority, and obligations of the Central Bank are set out in the *Ley del Banco de Mexico*.

## BANK LICENCES

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

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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 the Central Bank, is required to incorporate and operate a private banking institution.

As expressly provided in 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.

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

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#### Application

An application, along with required supporting information, is required to be filed before the CNBV to be able to obtain a bank licence. Also, the granting of the licence requires a favourable opinion of the Central Bank.

The main documents required for the application are:

- Draft bye-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.

- Security deposit equal to 10% of the minimum capital required to operate as a banking institution.

#### Requirements

Additional requirements include the subscription and payment of a minimum fixed capital stock of UDI90 million (equivalent to about USD30 million) for full-service private banks or UDI54 million (equivalent to about USD18 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.

The Mexican investment unit (*unidad de inversion*) (UDI) are index units regulated by the Central Bank which value varies depending on the inflation.

#### 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).

#### Timing and basis of decision

The CNBV has 180 calendar days to decide whether to issue or deny the banking licence. 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*).

#### Cost and duration

Three separate payments must be made to receive the authorisation as follows:

- For processing the application: about USD2,500.
- For granting the authorisation: about USD35,000.
- For the implementation of the authorisation so that banking services can be offered: about USD120,000.

No renewal of the authorisation is required.

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

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Banks headquartered in other jurisdictions are not allowed to operate in Mexico on the basis of their home state banking licence. In accordance with the LIC, the CNBV is entitled to authorise banks headquartered in other jurisdictions to act through a representative office in the Mexican territory. The operations of the representative office must exclude, among others, fundraising activities. Authorisations for representative offices can be revoked when their activities do not comply with the applicable law.

## FORMS OF BANKS

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### 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 organisation?

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In accordance with the LIC, two large groups of banks can be authorised to operate in Mexico:

- Private banking institutions (*instituciones de banca múltiple*).

- Development banking institutions (*instituciones de banca de desarrollo*), which are wholly owned and controlled by the Mexican federal government (although their licensing process is not covered in this article).

There is special legislation governing groups of Mexican entities providing financial services including Mexican banks which are combined with other regulated entities in terms of the applicable law (*Ley para Regular las Agrupaciones Financieras*), which provides for specific control requirements applicable to such entities. 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.

The LIC also allows private banks to conduct the activities listed in *Question 3* through third parties, subject to relevant commitments including, among others, the assumption of 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 21* and *Question 22*).

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 *Circular Única de Bancos*. These are known in México as *instituciones de banca múltiple de importancia sistémica local* and are defined as private banking institutions the failure of which would risk the stability of the Mexican financial system, the payment systems or the economy.

The CNBV is in charge of determining, periodically, whether an institution constitutes an SIFI and for assigning a grade of importance to those effectively considered SIFIs.

SIFIs are required to keep additional capital corresponding to the special risk associated to them. The *Circular Única de Bancos* provides for criteria to be considered in assessing the risk (each equally weighted in the overall assessment):

- 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 will place the corresponding SIFI on one of five grades of importance (I to V). The additional capital required to the SIFIs will depend on which grading it is given.

## ORGANISATION OF BANKS

### Legal entities

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

According to Mexican banking law, only corporations with a fixed capital (*sociedades anónimas de capital fijo*) incorporated under the applicable law (*Ley General de Sociedades Mercantiles*) can act as private banking institutions in terms of the LIC. Mexican development banks are incorporated as National Banking Corporations (*Sociedades Nacionales de Crédito*).

## Corporate governance

#### 8. 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 *Circular Única de Bancos* also contains specific rules regarding the operation and authorities of the corporate governance bodies of private banking institutions.

#### 9. What are the organisational requirements for banks?

As mentioned in *Question 7*, 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 one-size-fits-all capitalisation requirement.

#### 10. What are the rules concerning appointment of auditors and other experts?

The internal auditing functions of retail banking institutions in Mexico are the responsibility of a statutory body comprised of at least two statutory auditors (*comisarios*) each of which must be appointed by the Series O and Series L shareholders.

The statutory auditors must be appointed at a special shareholders meeting held by the holders of each series of shares.

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These individuals must have adequate technical skills, trustworthiness and a satisfactory credit history, as well as ample knowledge and experience in financial, accounting, legal, and administrative matters.

The board of directors must be aided by an audit committee for consultation purposes. As with the statutory auditors, the members of the audit committee must be selected for their aptitudes, experience and professional standing, and at least one of them must have experience in the fields of auditing and internal control. The members are selected by the board from the specific banking institution's directors by nomination of the chairman. The committee must comprise at least three members, of which a majority (including the chairman) must be independent. The rights, obligations, and authorities of the audit committee are contained in the *Circular Única de Bancos*.

Banking institutions must also engage an external auditor for auditing and certifying financial information (mainly financial statements). External auditors must be independent, must hold a degree in public accounting and must be partners in the auditing firm engaged by the banking institution, among other requirements.

The engagement of external auditors, the requirements they must meet and the services rendered by them, are governed by the General Provisions applicable to Entities and Issuers overseen by the National Banking and Securities Commission that Engage External Auditing Services (*Disposiciones de Carácter General Aplicables a las Entidades y Emisoras supervisadas por la Comisión Nacional Bancaria y de Valores que contraten servicios de Auditoría Externa de Estados Financieros Básicos- Circular Única de Auditores Externos*).

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

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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 he/she is 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.

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## 12. Do any remuneration requirements apply?

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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.

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

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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 *Circular Única de Bancos*.

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## LIQUIDITY AND CAPITAL ADEQUACY

### Role of international standards

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## 14. What international standards apply? How have they been incorporated into domestic law/regulation?

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In recent years, Mexican banking regulators have tried to align with international standards, in particular after the issuance of the Basel

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Accords. Mexico was one of the first countries to subscribe to Basel III and to gradually implement it into its financial system. In line with this, Mexico was declared compliant by the Basel Committee on Banking Supervision (BCBS) in March 2015.

### Main liquidity/capital adequacy requirements

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#### 15. What liquidity requirements apply?

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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 Requirimientos de Liquidez para las Instituciones de Banca Múltiple*). The foregoing statute contains various rules to calculate the applicable liquidity coverage ratio (LCR) which, subject to specifics, 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 Central Bank.

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#### 16. Is a leverage ratio applicable?

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A leverage ratio is applicable with respect to retail banking institutions. The legally required leverage ratio in Mexico is 3% as set out in the *Circular Única de Bancos*. 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.

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#### 17. What is the capital adequacy framework that applies to banks?

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The capital adequacy framework applicable to banking institutions is provided for in the LIC, and the specific rules and formulas for calculating the various ratios and scenarios are contained in the *Circular Única de Bancos*.

The LIC states that retail banking institutions must evaluate, at least annually, whether their capital would be enough to counterattack potential losses derived from the risks to which such institutions are subject to under different scenarios, including those arising from adverse economic conditions.

Banking institutions that do not pass the relevant tests (whose capital is not enough to cover potential losses) must present an action plan with the capital forecasts that would, as applicable, allow them to cover such losses.

The *Circular Única de Bancos* requires additional capital for SIFIs, which vary based on their importance grade (see *Question 6*).

## CONSOLIDATED SUPERVISION

### Role and requirements

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

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##### 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 divided among several regulators, including the CNBV, Central Bank, CONDUSEF, SHCP and others, which have different functions and attributions when it comes to 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*.

##### International co-ordination and co-operation

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#### 19. To what extent is there co-operation with other jurisdictions?

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The CNBV has the authority to co-operate, assist, and share information to and from its foreign counterparts, as well as to participate in consultation forums and international financial bodies. To do so, it must enter into international co-operation agreements (memoranda of understanding) (MOUs) based on a reciprocity principle. Such agreements can be as wide as necessary for the signatories to them and can be classified in several ways (including by the number of participating authorities, matter and others).

One recent example is the CNBV's incorporation into the Global Financial Innovation Network which is an international network with the purpose of creating a global regulatory framework or sandbox comprised of 38 regulators and international authorities. Please refer to <https://www.thegfin.com/> for more information.

## SHAREHOLDINGS/ACQUISITION OF CONTROL

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#### 20. What reporting requirements apply to the acquisition of shareholdings in banks?

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Under the LIC, persons who acquire or otherwise transfer Series O shares (see *Question 9*) 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 Central Bank. 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 Central Bank. 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.

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## 21. What requirements or restrictions apply to the acquisition of shareholdings and of control of banks?

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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.

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## 22. Are there specific restrictions on foreign shareholdings in banks?

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In most cases, foreign shareholding in Mexican banking institution is 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 Central Bank.

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

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### 23. What is the legal framework for liquidation of banks?

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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. In general, prior to the beginning of the formal liquidation process for banking institutions, among others, the CNBV may be extraordinarily granted with additional powers and authorities over the distressed institution (including, in certain cases, being able to intervene in management decisions), likewise several preventive measures are set out in the statute, both of which have the purpose of trying to avoid such liquidation and dissolution if possible. If it becomes inevitable, the IPAB will then 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, looking for the least disruption of the institution's services in benefit of the end-users.

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## 24. 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?

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### Obligations to prepare recovery plans

The resolution of a Mexican banking institution will be allowed when, among others, the CNBV has revoked its banking licence. The resolution of a banking institution will be 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 (via 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.

Likewise, in a recovery/liquidation scenario, the IBAP will be the authority tasked with determining if the liquidation or rescue of a banking institution applies as well as with overseeing the applicable process. For such purposes, the Central Bank and the CNBV can appoint additional personnel to temporarily assist the IPAB to promptly and effectively execute the resolution method elected.

### Transfers of business

The LIC sets out specific rules for the assignment, transfer or discount of business (credit portfolio). In general, and to the extent the assignor assumes liability for the solvency of its debtors, to grant financing to the assignee, or if there are agreements in place that allow for the assignor to re-purchase the credit portfolio, such a transfer will be subject to prior approval by the CNBV, which must ensure the solvency and financial stability of banking institutions and the protection of the public's interest.

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

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## REGULATORY DEVELOPMENTS AND RECENT TRENDS

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### 25. What are the regulatory developments and recent trends in bank regulation?

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Mexico is now going into the second year of its new administration under left-wing president Andrés Manuel López Obrador. It is no secret that the Mexican economy and political sectors have been marked by uncertainty as a result of this and the banking industry and regulation is no different.

In recent years, credit activity in Mexico has decreased, however, internal credit to private sector index as a percentage of GDP grew between 2017 and 2018. While it is yet to be seen if any growth occurred between 2018 and 2019, financial experts have positive expectations that the banking industry may start displaying consistent growth in the years to come.

That said, since last year there has been a push by MORENA (the President's political party with a majority in both houses of congress) to regulate banking commissions. This reform would be likely to lead

to the elimination of several commissions charged by retail banking institutions in Mexico. The impact of such reform would be a huge blow to the Mexican banking industry, particularly given that, according to CONDUSEF, 30% or so of retail banking institutions' income originates from banking commissions.

On another note, there has also been a rise in non-banking financing alternatives, specifically in the Fintech sector, which was regulated for the first time in 2018 with the issuance of the Law to Regulate Financial Technology Institutions (*Ley para Regular las Instituciones de Tecnología Financiera*) and its secondary regulation. This has allowed several smaller corporations to provide financing to both entities and individuals. While this development has, to some extent, levelled the playing field, the true impact of this in the banking sector is yet to be seen.

Another development was the implementation in 2019 of a new electronic payment system through the use of QR (Quick Response) codes, through a joint effort by the Central Bank, the SHCP and the CNBV. This system, known as CoDi (Digital Collection) represents an important effort by Mexican regulators to increase financial inclusion and reduce the cash economy.

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## Practical Law Contributor profiles

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### José Ignacio Rivero Andere, Partner

Gonzalez Calvillo

**T** +52 (55) 5202-7622  
**E** jrivero@gcsc.com.mx  
**W** www.gcsc.com.mx

### Juan Manuel Sancho Rodrigo, Partner

Gonzalez Calvillo

**T** +52 (55) 5202-7622  
**E** jsancho@gcsc.com.mx  
**W** www.gcsc.com.mx

**Professional and academic qualifications.** LL.M, School of Law of Northwestern University, Chicago, Illinois, United States (2008); Business Administration, Kellogg School of Management of Northwestern University, Chicago, Illinois, United States (2008); J.D. (law degree equivalent), Escuela Libre de Derecho, Mexico City, Mexico (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 Resuelve tu Deuda in its financing with Alloy Merchant Partners, a cross-border financial company with operations in Mexico and the US, for MXN360 million for, among others, the refinancing of existing debt, working capital, and the acquisition of its own stock held by Crédito Real.
- Counsel to Nokia and Huawei, in the structuring of a USD1,800 billion financing to Altan Redes, the multinational consortium in charge of the design, construction, operation and maintenance of one of the largest telecommunications projects in the history of México "Red Compartida". This transaction was bestowed with the "Best Loan (LATAM)" and "Best Infrastructure Financing: Mexico" awards by Latin Finance.

**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

- *Private Equity Guide 2020, Mexico Chapter, published by Legal 500.*
- *Corporate and M&A Guide 2019, Mexico Chapter, published by Chambers and Partners.*
- *Banking & Finance Guide 2019, Mexico Chapter, published by Chambers and Partners.*
- *Lending & Secured Finance, Mexico Chapter for 2019, 2018, 2017 and 2016, published by International Comparative Legal Guide (ICLG).*

**Professional and academic qualifications.** J.D. (law degree equivalent), Universidad Iberoamericana, Mexico (1996)

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

**Recent transactions.** Advised various banks in regulatory matters in the form of advisory assignments or in the context of transactions, including Banco Mexicano de Comercio Exterior, S.N.C. (BANCOMEXT), BBVA Bancomer, Citibanamex, Genera, Deutsche Bank, and Nacional Financiera, S.N.C. (NAFIN).

**Languages.** Spanish, English

**Professional associations/memberships.** Asociación Nacional de Abogados de Empresa, Colegio de Abogados (ANADE – Mexican Association of Business Lawyers).

#### Publications

- *Corporate M&A Guide 2019, Mexico Chapter, published by Chambers & Partners*
- *Contributed to various legal publications, including Financier Worldwide*



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### Jacinto Avalos Capin, Senior associate

Gonzalez Calvillo

**T** +52 (55) 5202-7622

**E** jrivero@gcsc.com.mx

**W** www.gcsc.com.mx

**Professional and academic qualifications.** LL.M., University of Pennsylvania Law School, Philadelphia, PA, United States (2017); Business and Law Certificate, The Wharton School, University of Pennsylvania, Philadelphia, PA, United States (2017); Law degree (J.D. equivalent), Universidad Anáhuac México Norte, Mexico City, Mexico (2014)

**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

- *Private Equity guide 2020, Mexico Chapter, published by Legal 500.*
- *Mexico Chapter of the Global Banking and Finance Guide published by Chambers and Partners 2019.*
- *Lending & Secured Finance, Mexico Chapter for 2019 published by International Comparative Legal Guide (ICLG).*