



# **The Legal 500 Country Comparative Guides**

## **Mexico**

### **BANKING & FINANCE**

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Mexico.

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## MEXICO

### BANKING & FINANCE



#### 1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

The principal Mexican authorities for banking regulation, supervision and resolution are the following:

- The Ministry of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*) (the “**SHCP**”), which is responsible for designing and conducting the policies of the Federal Government of Mexico with respect to the financial system in general. The SHCP, through its Financial Intelligence Unit (*Unidad de Inteligencia Financiera*), is in charge of regulating banks and other financial entities in connection with anti-money laundering matters (although compliance with these regulations is within the scope of authority of the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (the “**CNBV**”), while the Banking, Securities and Savings Unit (*Unidad de Banca Valores y Ahorro*), is in charge of regulating, supervising and evaluating banking regulatory, corporate and financial matters;
- The Central Bank of Mexico (*Banco de México*) (the “**Central Bank**”), which is in charge, among others, of promoting the proper functioning of the financial and payment systems;
- The CNBV, which is in charge of regulating, inspecting and overseeing banks, among other financial institutions;
- The National Commission for the Protection and Defense of Financial Services Users (*Comisión Nacional para la Protección y Defensa de los Usuarios de Servicios Financieros*), which is in charge of the protection and defense of users of the services provided by financial institutions, including banks; and
- The Bank Savings Protection Institute (*Instituto para la Protección al Ahorro*

*Bancario*) (“**IPAB**”), which manages a deposit insurance available to account holders in case a bank becomes insolvent, and oversees and manages the failure or liquidation of banks.

#### 2. Which type of activities trigger the requirement of a banking licence?

The requirement of a banking license is triggered by the provision of “banking and credit services” which are defined as the raising of funds or deposit-taking activities from the public in the national market for their placement among the public, through acts that cause a direct or contingent liability where the intermediary is required to repay the principal and, if applicable, any financial return.

#### 3. Does your regulatory regime know different licenses for different banking services?

Banks can undertake all of the activities described in the Mexican Banking Law (*Ley de Instituciones de Crédito*) without needing different banking licenses. However, a bank may elect to perform a limited number of activities, or the full range of activities permitted to banks, which shall be reflected in the authorization received from the CNBV.

Depending on the type and number of permitted activities they perform, banks will be subject to differentiated capitalization requirements. *E.g.*, a bank conducting all the operations permitted in the law needs to have a minimum capitalization of ~USD 43 million. Meanwhile, banks who only perform a limited number of permitted activities require a minimum capital of ~USD 26 million.

Please note that there are other financial entities authorized for deposit-taking activities (*e.g.*, *sociedades financieras populares*), which have specific non-banking licenses, and are subject to their specific regulation and capitalization requirements.

#### 4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

A bank's license granted by the CNBV specifies the activities that the bank may conduct, pursuant to a list of permitted activities set out by the Mexican Banking Law, all of which are related to banking and credit services. Payment services are considered among these type of services. However, a banking license does not permit banks to operate –let alone automatically– as a broker-dealer, to issue e-money, or to conduct other activities that are reserved to other types of financial entities and subject to their particular regulation (e.g., insurance).

For example, the Mexican Fintech Law provides that the issuance to the public of e-money (*fondos de pago electrónico*) will be reserved to E-money Issuers (“**IFPE**”), which activities are subject to a license granted by an inter-institutional committee formed by the CNBV, the SHCP and the Central Bank.

#### 5. Is there a “sandbox” or “license light” for specific activities?

The Mexican Fintech Law does provide a sandbox, whereby banks, other financial entities, or even non-financial entities in certain instances, may be authorized by the CNBV, the Central Bank, or the SHCP, according to their respective authorities, to conduct operations or activities on a temporary basis related to their permitted corporate purpose, through technological devices or tools different from those already existing in the market (*Modelos Novedosos*).

The temporary authorization must indicate the exceptions, terms, and conditions related to the products to be offered. Said authorization remains valid only for a year (in the case of financial entities) or two years (in the case of non-financial entities), and may be extended for only another year.

As of the date of this chapter, the Mexican regulators have not granted any authorizations under the sandbox legal framework.

#### 6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

The Mexican Fintech Law provides that financial

institutions, including banks, may operate with crypto currencies as determined by the Central Bank through general regulations, and provided that they obtain the authorization from such entity. However, the Central Bank –through secondary regulations– disallowed banks from engaging with their clients in any transaction involving the exchange, transmission or custody of crypto currencies. Banks may operate with crypto only for “internal transactions” and provided they obtain the prior authorization from the Central Bank.

#### 7. Do crypto assets qualify as deposits and, if so, are they covered by deposit insurance and/or segregation of funds?

Crypto assets do not qualify as deposits. Mexican regulators have stated that the issuance of “Stablecoins” –considered as units of monetary value stored digitally in distributed ledger technologies, that generate collection rights against the issuer and are issued against the receipt of funds in fiat, with the purpose of carrying out payment transactions with persons other than the issuer– is not different from deposit-taking activities, which may only be carried out by Mexican financial entities authorized to engage in said activities (e.g. banks or SOFIPOs).

#### 8. If crypto assets are held by the licensed entity, what are the related capital requirements (risk weights, etc.)?

As of February 2024, there are no specific capital requirements in connection with crypto assets held by Mexican banks.

However, it is important to consider the following:

- a. Operations by Mexican banks with crypto assets have to be approved by the country's Central Bank and, as such, banks have to identify the risks they run when operating with crypto assets. In this regard, banks must identify credit, market, or operational risks in connection with their holdings of crypto and adopt policies for an adequate management of such risks.
- b. Crypto assets holdings are reflected in the banks' balance sheets, and income statements, and must be marked-to-market pursuant to specific guidelines contained in the regulation. Banks must disclose in their financial statements market and liquidity risks associated with the holding of crypto assets.

The recent publication in December 2022 of the standard titled *Prudential treatment of cryptoasset exposures* (<https://www.bis.org/bcbs/publ/d545.pdf>), by the Basel Committee on Banking Supervision of the Bank for International Settlements is likely to influence Mexican regulation in the near future.

## 9. What is the general application process for bank licenses and what is the average timing?

The bank-licensing timing may vary depending on the complexity of the business proposed to the authority. In any case, once the bank-license is obtained, the bank must file its bylaws with the CNBV (within 90 days) for the authority's approval and, thereafter, the bank must obtain the authorization from the CNBV to start its operations, within no more than 180 days.

## 10. Is mere cross-border activity permissible? If yes, what are the requirements?

No, mere cross-border activity is not permissible, since banking and credit services in Mexico may only be provided by licensed Mexican banks. However, as a general rule, Mexican residents are not prohibited from engaging financial services from foreign financial entities, provided those are not conducted within Mexican territory.

Care should be taken in the manner in which such foreign financial entities conduct these cross-border activities, to ensure that they do not conduct any activity that could be subject to sanctions by Mexican financial regulators.

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

Only limited liability stock corporations (*sociedades anónimas*) with fixed capital, incorporated pursuant to the laws of Mexico and having an authorization granted by the CNBV can be organized and operate as banks.

## 12. What are the organizational requirements for banks, including with respect to corporate governance?

Banks shall be incorporated as *sociedades anónimas* with at least 2 shareholders with the minimum equity

capital requirement applicable depending on the activities included in its by-laws.

The board of directors and the CEO will be in charge of the management of the bank.

5-15 statutory members shall integrate the board of directors. At least 25% of them must be independent – based on the independence requirements set forth in the Banking Law – and only one third of the board members can be officers of the bank, as long as they are either the CEO or officers within the two lower levels from the latter.

A bank must have at least the following auxiliary committees to the board of directors:

- audit committee;
- risk committee;
- compensations committee;
- communication and control committee; and
- related-party transactions committee.

Additionally, a *comisario* – which is an external individual – shall be in charge of overseeing the performance of the board of directors in connection with the internal control system.

All directors of a bank must have technical capabilities, honorability, satisfactory business and credit history and ample financial, legal or administrative knowledge, and a majority must be Mexican-residents, while officers of a bank, including the CEO and all officers within the two hierarchy levels below the CEO, must be Mexican-residents with evidence of at least 5 years of previous professional experience in positions of high decision-making.

## 13. Do any restrictions on remuneration policies apply?

Banks are required to have a remuneration system that considers all remuneration, whether in cash or otherwise, and shall be consistent with effective risk management. The remuneration system must be flexible enough to allow the bank to reduce or suspend the payment of extraordinary remunerations whenever the bank faces losses or whenever the risk impacts are greater than expected.

If a bank does not comply with minimum capital requirements, the CNBV may impose corrective measures including the suspension of bonuses to senior management and distribution of dividends.

**14. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?**

Yes, Mexico has implemented the Basel III framework. According to the *Regulatory Consistency Assessment Programme (RCAP)*, the latest issued by the Basel Committee on Banking Supervision, in March 2015, which is the most recently available compliance report, Mexico was found "...compliant with the minimum Basel capital standards".

12 out of 15 criteria were found to be compliant, two largely compliant (regarding capital buffers and disclosure requirements), and one of them was not applicable (the internal models approach to determine market risk capital requirements), although Mexico has further continued its implementation of Basel III.

**15. Are there any requirements with respect to the leverage ratio?**

Yes, in Mexico as a general rule the leverage ratio must be less than 3%.

Banks shall calculate such ratio with information at the closing of every month, without consolidating its subsidiaries or special purpose vehicles, taking into account their operations in Mexico, as well as those of their overseas branches. However, the CNBV may determine that a given bank shall estimate such leverage ratio with more frequency, and said authority may also verify the calculations made by banks and instruct to perform adjustments.

**16. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?**

As discussed above, Mexico has implemented the Basel III liquidity requirements, including the Liquidity Coverage Ratio ("LCR") and the Net Stable Funding Ratio ("NSFR"). According to the *Regulatory Consistency Assessment Programme (RCAP)* issued by the Basel Committee on Banking Supervision in March 2015 "...the final LCR requirements in Mexico are assessed as compliant with the minimum Basel liquidity standards".

**17. Do banks have to publish their financial**

**statements? Is there interim reporting and, if so, in which intervals?**

Yes, banks must publish their financial statements on an annual basis. These are filed within the first three months of the subsequent year.

Banks are also required to publish their interim reports with information as of March, June, and September of each year.

**18. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?**

Consolidated supervision, namely the "...comprehensive approach to banking supervision which endeavors to evaluate the strength of an entire group, taking into account all the risks which may affect a bank", does exist in Mexico, particularly in connection with financial groups.

Under Mexican law, a corporate group comprised of two or more financial entities can be organized in the form of a financial group (*grupo financiero*). Financial groups in Mexico must be comprised by a controlling holding entity, and no less than two financial institutions. For regulatory purposes, the controlling entity and the financial institutions will be considered one single economic unit regarding information revelation, accounting, among others.

Financial groups are subject to the supervision of the financial authorities. Particularly: **(i)** the controlling entity will be subject to the supervision of the SHCP, **(ii)** each financial entity part of the financial group will be subject to the supervision of the relevant surveillance commission (in the case of banks, the CNBV); and **(iii)** the financial group as a whole will be supervised by one of the financial regulators, depending on the type of financial entities that comprise the financial group. Typically, if the financial group includes a bank, the surveillance authority of the financial group as a whole will be the CNBV.

**19. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?**

The acquisition and transfer of the shares of a bank are subject to the following requirements:

- Acquisition or sales of less than 2% of the common shares do not trigger any regulatory

requirement;

- Acquisition of transfer of 2%-5% of the common shares require both parties to give notice to the CNBV within three business days of completing the transfer;
- Direct or indirect acquisition of (or the creation of collateral over) 5%-20% of the common shares require the prior authorization from the CNBV, which shall take into consideration the opinion of the Central Bank; and
- Direct or indirect acquisition of 20% or more of the common shares or the acquisition of control of a bank requires prior authorization from the CNBV, and the prior favorable opinion of the Central Bank.

Note that if the bank's shares are publicly traded, additional requirements may apply pursuant to securities regulations. Merger control authorizations under Mexican antitrust laws may also be required.

## **20. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?**

Yes, the Mexican regulatory regime imposes conditions for eligible owners of banks. The persons aiming to acquire, either directly or indirectly, more than 5% of the shares of a bank, or to obtain the control of said financial entity, shall file an application for authorization with the CNBV.

This includes filling official forms indicating their personal information; the current participation that such person may have (if applicable) in the bank's equity; the source of funds to purchase the bank's stock; filing of tax returns; professional information of the applicable person; as well as representations on that person's character and fitness requirements to acquire the shares.

These requirements apply both to direct and indirect shareholders that meet the applicable thresholds under the regulation.

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

There are no restrictions for foreign private investment in banks. Foreign governments are only allowed to participate (directly or indirectly) in the capital of private banks in Mexico if (i) the investment is made pursuant to temporary financial relief programs; (ii) the participation is indirect with no controlling interest; and (iii) the

acquisition involves an indirect shareholding interest that will not result in control. If the bank is organized under the "foreign financial entity affiliate" regime, particular corporate requirements would apply.

## **22. Is there a special regime for domestic and/or globally systemically important banks?**

There is a special regime for domestic systemically important banks. Every year, the CNBV assesses the banks operating in Mexico to determine whether they should be considered as domestic systemically important banks. The qualification as such, as well as the loss of a systemically important bank characterization, must be notified by the CNBV to the applicable bank.

The systemic importance of banks in Mexico is assessed through a methodology estimating the size of the bank relative to the whole system, its interconnectedness, the complexity of its operations, and the importance of the services it provides to the economy.

Such banks are required to comply with additional capital requirements proportionate to their credit, market, and operation risks.

## **23. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?**

Depending on the type of violation, sanctions can range between the following:

- Admonitions;
- Fines;
- The suspension, removal or disqualification for persons to undertake banking operations and services, or to occupy positions in legal entities operating in the financial sector,
- The revocation of licenses or authorizations to operate in the banking sector; and
- Prison for up to 15 years.

## **24. What is the resolution regime for banks?**

The Mexican Banking Law sets forth a number of cases in which a bank resolution process may be initiated. "Bank resolution" is deemed to be either a liquidation



process in order to extinguish such bank or, in exceptional cases (because of the systemic importance or relevance of the bank) a series of alternative procedures to financially rehabilitate the institution.

The type of bank resolution technique depends on the determination by the Banking Stability Committee (which is formed by high-ranking officers from the SHCP, the Central Bank, CNBV and IPAB) on whether a bank is systemically important and what percentage of the bank's non-IPAB-insured liabilities are susceptible to systemic repercussions. Systemically important banks would be subject to bank restructuring (*saneamiento*) (which includes payment of liabilities or purchase-and-assumption techniques). Non-systemically important banks would be subject to a winding-up process and liquidation.

Restructures can be through equity capital provided by the IPAB, provided that the bank applied for a conditioned operation regime, or through loans granted by the IPAB if the bank did not. When the IPAB makes equity contributions, it will initiate the sale of the bank's shares. If the IPAB provides a loan to the relevant bank, all of the shares issued by the bank will secure the loan until the shareholders of the bank subscribe and pay a capital increase to pay for said loan. If the shareholders do not make this contribution, the IPAB will automatically acquire the shares and will sell them thereafter.

If the bank is subject to a purchase-and-assumption transaction, all of its assets and liabilities will be transferred to another commercial bank by either the incorporation of a "bridge bank" (a financial institution incorporated ad hoc and operated by IPAB for the compliance of the bank's obligations and the transfer of such assets and liabilities) and/or the direct transfer of such assets and liabilities to another commercial bank.

In the event of liquidation, the IPAB will act as the liquidator of the bank and will generally be responsible for terminating and concluding all pending business of the bank, including the settling of accounts and the disposition of assets.

## 25. How are client's assets and cash deposits protected?

The IPAB is in charge of providing a guaranty to bank liabilities, including demand and term deposits, savings accounts and revolving deposits associated with debit accounts, through the savings protection fund. Liabilities are guaranteed up to the amount of 400,000 inflation-adjusted units (UDIs) per person per bank (approximately USD 190,000).

The deposit insurance will be paid upon determination of the resolution of a bank and any amount not paid by the IPAB can be claimed directly by the depositor from the relevant bank.

## 26. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered? Does it apply in situations of a mere liquidity crisis (breach of LCR etc.)?

Yes. In June 2021 (and effective as of March 1, 2022), the CNBV issued regulations establishing the Total Loss Absorption Capacity ("TLAC") standard, which had been adopted by the Financial Stability Board, the purpose of which is to establish a portion of equity and bail-in subordinated debt of domestic systemically important banks that can be passed to investors, without the need of support from the government (bail-outs) or loans.

Instruments eligible for bail-in comprise no less than 6.5% of the total risk-weighted assets of the banks operating in Mexico (e.g. equity, among others), in addition to any other applicable regulatory capital requirements. This means that Mexican banks must have equity and subordinated debt that could absorb losses.

CNBV regulations establishing TLAC focus on managing credit, market, and operational risks (not liquidity risk) for domestic systemically important banks. Such rules also provide specific rules to determine the types of instruments that can be counted towards meeting TLAC requirements, such as certain instruments qualifying for AT1 capital, and shares or subordinated debentures complying with certain specific rules.

## 27. Is there a requirement for banks to hold gone concern capital ("TLAC")? Does the regime differentiate between different types of banks?

Yes. According to rules issued by the CNBV on June 18, 2021, domestic systemically important banks must have a Total Loss Absorbing Capacity (TLAC) equal to no less than 6.5% of their risk-weighted assets. The regime does differentiate between different types of banks, as the TLAC requirements only apply to domestic systemically important banks, as classified by the CNBV.

These requirements to supplement the net capital of the subject banks became effective in December 2022. Domestic systemically important banks will be required to comply with the totality of this new regulatory framework by December 2025.

## 28. In your view, what are the recent trends in bank regulation in your jurisdiction?

Due to the increase of technological developments in Mexico, the recent trends in bank regulation are mainly focused in the use of technology by Mexican banks, especially in connection with (i) electronic money, digital assets and other financial technology products; (ii) open banking; (iii) the enhancement of cybersecurity and AML controls for digital banking; (iv) third-party risk management; (v) remote provision of services and execution of contracts, and (vi) digital agents.

As a result of the above, banks and regulators have focused their attention and resources to improve the management of operational risks derived from cyber-attacks and other potential technology risks.

Banks and regulators have also increased their focus on permitting remote means to identify clients and comply with know-your-customer rules taking advantage of technological developments.

Mexico will hold federal and local elections in 2024 which, among others, will include the election of the Mexican President and of all members of the Federal Congress. It is not envisioned that banking regulation is or will become a major issue as part of the election process and the next administration.

## 29. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

There are various factors that could be categorized as impeding a full development of the financial sector in Mexico. Importantly, the lack of financial inclusion of a significant portion of the population is one of the most relevant adverse factors for the banking industry. While the Fintech industry has been buoyant in Mexico in the past few years, which has helped access to financial services to a large number of persons, there are still great challenges for banks to develop their full potential to foster the Mexican economy.

The increased interest of international players to enter the Mexican financial sectors and the growing participation of Fintech entities should continue to be instrumental in the following years to increase financial inclusion, particularly in low-income sectors and in small and medium businesses. The timing for enforcement of security interests should also be shortened to provide additional certainty to lenders to increase the offer of lending products and decrease costs.

The development of a clear regulatory framework for the participation of technological companies in the financial services industry is also paramount for the strengthening of a more competitive financial sector in Mexico.

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