Global Financial Services Regulatory Guide - Mexico

5. What are the requirements to obtain authorization in your jurisdiction?

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# What are the requirements to obtain authorization in your jurisdiction?

In general, governmental authorization must be secured in order to become authorized.

**Banking and credit activities**

The Mexican Law of Credit Institutions (Ley de Instituciones de Créditoor LIC) provides that only Mexican banks authorized by the federal government, through the CNBV by means of the previous resolution of its governing board and the favorable opinion of Banxico, are authorized to engage in banking and credit activities in Mexico. This authorization is non-transferable.

In general, Mexican financial laws and regulations prohibit foreign financial institutions from engaging in solicitation activities of any form; from obtaining funds from the public, whether in the form of bank deposits, securities or through mutual funds; and from offering offshore investments to the public in Mexico.

**Representative office of foreign financial institutions**

Article 7 of the LIC provides that the CNBV, by means of the previous resolution of its governing board, is entitled to authorize foreign financial entities to establish a representative office in the national territory. This type of office shall not carry out any financial intermediation activity in the national market that requires authorization from the federal government. Moreover, it cannot participate, directly or through a third party, in transactions to receive funds from the public, either for themselves or for a third party.

However, such representative offices are allowed to provide, upon their clients’ request, information regarding transactions performed by the foreign financial entity in its country of origin, on the understanding that such representative offices cannot publicise or advertise to the general public regarding passive transactions.

**Securities brokerage houses and securities brokerage activities**

The Mexican Securities Market Law (Ley del Mercado de Valores or LMV) states that to operate as a securities brokerage house, the CNBV must grant its authorization by means of the previous resolution of its governing board.

Pursuant to Article 113 of the LMV, financial entities authorized to conduct securities brokerage activities in Mexico are duly licensed broker/dealers, banks, mutual fund managing companies (sociedades operadoras de sociedades de inversión), pension fund managers, and distributors of shares issued by mutual funds (sociedades distribuidoras de acciones de sociedades de inversión).

No other individuals or entities are authorized under Mexican law to engage in solicitation activities or brokerage activities within Mexican territory, except in certain specific cases (i.e., private offering of certain securities).

**Investment advisory services**

The provision of investment advisory services in Mexico is also governed by the LMV, which sets forth under its Article 225 that investment advisors may engage in the habitual and professional rendering of the following securities services:

Portfolio management – making investment decisions on behalf of third parties

Investment advisory – conducting analysis and issuing investment recommendations

The foregoing services are not deemed to be securities brokerage activities.

Only Mexican corporations may act as investment advisors, and they must be registered with the CNBV.

**Investment funds**

Pursuant to the Mexican Investment Funds Law (Ley de Fondos de Inversiónor LFI), prior authorization of the CNBV (not a previous resolution of its governing board) is required for the incorporation and operation of investment funds, which must be organized as Mexican stock companies (sociedades anónimas).

**Organization of management, distributor and appraisal companies**

Pursuant to Article 33 of the LFI, the prior authorization of the CNBV is required for the incorporation and operation of the following entities, all of which must be organized as Mexican stock companies:

Management companies of investment companies (sociedades operadoras de fondos de inversión), which provide asset management services to investment funds

Distributor companies of investment fund shares (sociedades distribuidoras de acciones de fondos de inversión), which engage in promotional, advisory, purchase and sale services to the investors in connection with the purchase of investment fund shares

Appraisal companies of investment fund shares (sociedades valuadoras de acciones de fondos de inversión), which determine the price of investment fund shares

**Establishment of a Mexican insurer**

Pursuant to the Insurance Law (Ley de Instituciones de Seguros y Fianzas), to establish a Mexican insurer, authorization from the federal government must be obtained through the CNBV by means of the previous resolution of its governing board.

**Establishment of an insurance broker**

The incorporation and operation of insurance brokers in Mexico require the obtainment of specific authorization from the CNSF, which is non-transferable. The CNSF is entitled to revoke the authorization granted to insurance brokers or suspend said authorization for a period of up to two years in case of violation or failure to comply with the provisions of the Insurance Law, the regulations, or circulars issued by the CNSF.

Only duly authorized Mexican insurance brokers or intermediaries, incorporated pursuant to the Insurance Law, are permitted to offer, within national territory, insurance products issued by Mexican insurers. Thus, no individual or entity is permitted to offer or intermediate within national territory in the sale of insurance products issued by foreign insurance companies.

**Establishment of an EPI and/or crowdfunding institutions (jointly referred to as "FTIs")**

With the prior approval of the Interinstitutional Committee (composed of two members of the CNBV, two members of Banxico, and two members of the SHCP), FTIs must obtain authorization from the CNBV in order to operate in Mexico.

FTIs must provide, among other requirements, the following information to the CNBV as part of their authorization process: (i) draft by-laws; (ii) business plan; (iii) corporate governance rules; (iv) account segregation policies; (v) risk disclosure policies; (vi) an anti-money laundering manual; (vii) information on the shareholders that directly or indirectly will have participation in the FTI; (viii) Appointment of Compliance Officer and its certification issued by the CNBV; (ix) Appointment of IT Compliance Officer; (x) Operational and Internal Manual; (xi) Manual for the Risks Administration;  and (xii) Manual for the Use of Electronic Media or Channels of Instruction.

Once the application is submitted, the CNBV may provide comments on the application, and as the case may be, changes must be implemented. Once the fintech authorization has been obtained from the CNBV, additional steps, such as the following, must be carried out: (i) request and obtain from the CNBV the necessary codes for electronic filings reports; and (ii) coordinate its registration before the different registries of the CONDUSEF, such asthe Financial Services Providers Registry (SIPRES),the Registry of Commissions (RECO), the Registry of Specialized Units (REUNE), the Financial Institutions Bureau (Buró de Entidades Financieras), andthe Adhesion Contract Registry (RECA).

Once the above steps are completed, FTI will be duly authorized and ready to operate from a regulatory perspective.

**Sandbox**

The Fintech Law provides for the regulation of a mechanism based on UK regulatory sandboxes, which grants a trial period for innovative companies to operate and provide new technology financial services to a limited number of clients within a certain geographic area and subject to the prior approval of the government authority whose rules will be affected by the innovative model (i.e.,the CNBV for the banking industry rules). During this period, which is limited to an initial term of up to two years and may be renewed for an additional year, innovative companies will be able to implement their business models and innovations, with the understanding that they will also be preparing to meet all the necessary requirements to obtain a permanent authorization to operate.

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