Global Financial Services Regulatory Guide - Mexico

| Contents |
| --- |
| To generate table of contents, right-click here and select **Update Field.** |

To get started, select a topic from the list on the left side of the screen

# 1. Who regulates banking and financial services in your jurisdiction?

## Who regulates banking and financial services in your jurisdiction?

Mexico has six regulators responsible for the authorization and supervision of banks, insurers and other financial institutions. The regulators, and the allocation of their responsibilities, are as follows:

Ministry of Treasury and Public Finance (Secretaría de Hacienda y Crédito Público or SHCP): It is responsible for designing and conducting the policies of the federal government of Mexico on financial, tax, expenses, income and public debt. Within its responsibilities is the regulation of the organization and operation of banks and development banks, as well as the issuance of rules applicable to representative offices of foreign financial entities and the establishment of credit institutions and commercial bank affiliates.Additionally, the SHCP, through the Financial Intelligence Unit (Unidad de Inteligencia Financiera), is in charge of regulating banks and other financial entities in connection with anti-money laundering matters (however, compliance with these regulations is within the scope of authority of the CNBV, as such term is defined below).

National Banking and Securities Commission (Comisión Nacional Bancaria y de Valores or CNBV): It is an agency ascribed to the SHCP. Within its several functions, the CNBV is responsible for overseeing and regulating the organization, operation and regulatory compliance of banks, sociedades financieras de objeto múltiple (SOFOMs) and financial technology institutions.

National Insurance and Bonding Commission (Comisión Nacional de Seguros y Fianzas or CNSF):It is responsible for the operation, organization and supervision of activities of insurance and bonding companies. It also acts as an advisor to the SHCP in all matters concerning insurance and bonding activities.

Central Bank of Mexico (Banco de México or Banxico): It is, by constitutional mandate, the governments advisor in matters concerning economic and financial policy. Its principal function is to provide domestic currency to the Mexican economy, and its main priority is to ensure the stability of the domestic currency's purchasing power. It also aims to promote both the sound development of the financial system and the optimal functioning of the payment systems. Its responsibilities include the issuance of specific rules for certain banking and financial operations, as well as regulation and oversight of the services and operations performed by credit institutions.

Institute for the Protection of Banking Savings (Instituto para la Protección al Ahorro Bancario or IPAB): It is a decentralized entity responsible for the administration of the system for the protection of banking savings (insurance of deposits) of the general public. Therefore, it assumes and pays, on a subsidiary basis, the secured obligations (i.e., deposits, loans and credits) undertaken by credit institutions. It also undertakes obligations and funds programs for the benefit of credit institutions and companies in which the IPAB participates. The IPAB acts as the liquidator of banks in Mexico.

National Commission for the Protection of Users of Financial Services (Comisión Nacional para la Protección y Defensa de los Usuarios de los Servicios Financieros or CONDUSEF): It is responsible for the protection and defense of users of the services provided by banks and other financial institutions. In this respect, CONDUSEF reviews queries and complaints of users of financial services, conducts conciliatory and arbitration proceedings on disputes among users and financial institutions, and serves as legal advisor of users of financial services in the event of litigation against financial institutions.

# 2. What are the main sources of regulatory laws in your jurisdiction?

## What are the main sources of regulatory laws in your jurisdiction?

In Mexico, all laws are drafted, discussed and approved by the legislative branch of government (Mexican Congress) and issued and published by the Federal Official Gazette (DOF) executive branch. Meanwhile, the SHCP, Banxico, the CNBV, the CNSF and the IPAB are the governmental entities in charge of issuing secondary and delegated legislation that provides specific financial rules, guidelines and regulations to establish the legal framework for each financial activity. The federal government has issued a number of structural reforms in order to modernize the legal framework of the main economic industries in Mexico in order to adapt to global standards. In this regard, the Financial Reform was published in the DOF on 10 January 2014. The purpose of the Financial Reform is to allow the Mexican banking and financial sectors to support Mexico’s economic growth by increasing competition within the financial sector obtaining lower costs, better services and wider coverage of the credit facilities in Mexico. The Financial Reform impacted the main framework laws in the Mexican financial sector, including reforms to the banking, financial services and insurance industries.

The principal laws governing the financial sector in Mexico are as follows:

The Credit Institutions Law (Ley de Instituciones de Crédito) which, among others, sets forth the general framework governing credit institutions (instituciones de crédito) including their incorporation and authorization, governance, ownership, mergers, spin-offs, business activities, insolvency and resolution, and which also establishes the scope of authority of the different governmental entities that regulate and supervise banks and their activities

The Bank Savings Protection Law (Ley de Protección al Ahorro Bancario), which governs the bank savings protection system

The Financial Services User Protection and Defense Law (Ley de Protección y Defensa al Usuario de Servicios Financieros), which sets forth the general framework for the protection and defense of financial service users

The Insurance and Bonding Companies Law (Ley de Instituciones de Seguros y de Fianzas), which focuses on the regulatory aspects of insurers, reinsurers and bonding companies

The Law that regulates Financial Technology Institutions (Ley para regular las Instituciones de Tecnología Financiera), covers financial technology institutions in Mexico, such as crowdfunding institutions, institutions engaged in electronic fund payments and sandboxes regime.

With respect to anti-money laundering laws and regulations, there are two general regulatory frameworks  ̶  the AML Law for Financial Entities, which is applicable to financial institutions[[1]](file:///C:/Users/BMSGDG/Downloads/Mexico%20-%20FSR%20Guide%20-%20RP%20Comments.docx#_ftn1) (i.e., banks, non-bank banks, warehouses, money transmitters, investment companies, credit unions, Fintech Entities,[[2]](file:///C:/Users/BMSGDG/Downloads/Mexico%20-%20FSR%20Guide%20-%20RP%20Comments.docx#_ftn2) etc.). Secondly, the Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources, otherwise known as the AML Law, which regulates individuals or entities engaged in non-financial “vulnerable activities.”  The purpose of the regulation is to protect the financial system and the national economy by establishing measures and procedures to prevent and detect acts or operations involving illegal resources.

[[1]](file:///C:/Users/BMSGDG/Downloads/Mexico%20-%20FSR%20Guide%20-%20RP%20Comments.docx#_ftnref1) Please bear in mind that within the AML Regulation for Financial Entities, the SHCP has issued specific regulation per type of financial institution.

[[2]](file:///C:/Users/BMSGDG/Downloads/Mexico%20-%20FSR%20Guide%20-%20RP%20Comments.docx#_ftnref2) According to the Fintech Law, fintech entities are: a) crowdfunding institutions (instituciones de financiamiento colectivo); and electronic funds payments institutions *(*instituciones de fondos de pago electrónico).

# 3. What types of activities require a license in your jurisdiction?

## What types of activities require a license in your jurisdiction?

Mexico regulates a broad range of activities, including the following:

Receiving deposits by credit institutions and foreign financial entities – This covers typical retail banking activities involving the operation of current and deposit accounts.

Accepting loans and credits by credit institutions

Issuing electronic money on foreign currency – Electronic money is a prepaid electronic payment product in the foreign currency that can be card- or account-based.

Performing payment services – This covers a broad range of activities involving matters such as money remittance, card issuance, acquisition of card transactions, issuance of checks, and the operation of payment accounts.

Consumer lending

Carrying out insurance and bonding activities (effecting and carrying out contracts of insurance and bonds)

Investment advisory services (engaging in a habitual and professional manner in the rendering of portfolio management and investment advisory)

Managing financial intermediaries trading in investments securities – Trading in securities and other investments as principal or as agent; this covers brokers as well as most firms engaged in proprietary trading.

Arranging transactions in investments – This activity covers the role of intermediaries in investment transactions.

Facilitating insurance activities (insurance brokerage activities)

Providing investment management – Managing investments on behalf of another person is a regulated activity.

Providing custodial services of cash and securities

Entities engaged in crowdfunding activities.

E-money entities that will issue, manage, transfer and redeem e-money through electronic applications, interfaces, websites or any other electronic or digital means of communication Electronic Payment Institution (EPI).

There is still no regulation in Mexico that establishes the obligation to request authorization from a government agency to operate with virtual assets. However, in accordance with the Law that Regulates Financial Technology Institutions, Banxico will publish a list of the virtual assets accepted in Mexico. Once the list is published, and if an entity wants to operate with any of the virtual assets contained in the list, it must request and obtain authorization from the CNBV to operate as an EPI. Moreover, engaging in virtual assets is considered a "vulnerable activity," and as such certain obligations related to money laundering under the AML Law will apply.

# 4. How do the licensing requirements apply to cross-border business in your jurisdiction?

## How do the licensing requirements apply to cross-border business in your jurisdiction?

Mexican law is territorial and thus, all transactions/business done within Mexican territory are subject to Mexican law.

If a firm outside Mexico deals with a client or a counterparty located in Mexico those activities will typically be subject to Mexican laws and regulations. The service provider will need to consider whether they are triggering a Mexican licensing obligation and complying with Mexican marketing rules.

Mexican financial laws and regulations prohibit, in general, non-licensed financial institutions engaging in any solicitation activities tending to or promoting the offering of financial services or products within Mexico. Meetings with prospective clients in Mexico, cold calls to Mexican residents, distribution of promotional materials, and the organization of seminars and presentations in Mexico with the purpose of selling the products or services would be considered as solicitation activities by Mexican authorities.

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

## 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 Crédito*orLIC) 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 and 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 disseminate publicity 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 rendering 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 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 Inversión*or LFI), prior authorization of the CNBV (no 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) anti-money laundering manual; (vii) information of 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 Manual; Internal; (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 to the application, and as the case may be, changes must be implemented. Once the fintech authorization has been obtained from the CNBV, additional steps must be followed, such as: (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**

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.

# 6. What is the process for becoming authorized in your jurisdiction?

## What is the process for becoming authorized in your jurisdiction?

To obtain authorization, an applicant must undergo a formal process, which involves completing required application forms and submitting supporting information.

In relation to timing, in most cases, the regulator will have three to six months from receipt of a completed application to determine whether or not to approve the application.

The particular forms that must be completed for submission to the corresponding regulator will depend on the regulated activities nature.

In general terms, regulators request the following information:

Draft bylaws

Information of the shareholders

Information of relevant officers

Operational plan

Manual of conduct

Anti-Money Laundering Manual

Financial viability study

In the case of banks, a deposit in guarantee, and in the case of FTIs, a minimum capital must be included as equity.

# 7. What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

## What financial services passporting arrangements does your jurisdiction have with other jurisdiction?

Mexico does not have any financial services “passporting” arrangements with any other country.

# 8. Authors and contact information

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