

## **2008 FINANCIAL SYSTEM REFORMS**

This document is divided into two sections. The first is a brief description of the most important financial provisions issued by Banco de México in 2008. In order to facilitate their consultation these provisions were divided into the following headings: I.1 Banco de México monetary policy and foreign exchange provisions; I.2 provisions issued by Banco de México as a financial system regulator; I.3 Provisions issued by Banco de México as a financial agent of the Federal Government of the United Mexican States, and I.4 Provisions issued by Banco de México under the Financial Services and Transparency Regulation Law. The second paragraph is a brief summary of the most relevant reforms made to financial legislation during the period.

### **I. PROVISIONS ISSUED BY BANCO DE MÉXICO**

#### **I.1 Monetary and foreign exchange policy provisions issued by Banco de México**

##### **MONETARY REGULATION DEPOSITS**

- In order to regulate excess liquidity in the money market and to ensure that the distribution of monetary regulation deposits reflects the banking system's new conditions, Banco de México decided to end the monetary regulation deposits that banks had created, the principal of which amounted to \$278,981,126,756.00 (TWO HUNDRED AND SEVENTY EIGHT BILLION NINE HUNDRED AND EIGHTY ONE MILLION ONE HUNDRED AND TWENTY SIX THOUSAND SEVEN HUNDRED AND FIFTY SIX PESOS 00/100 M.N.).

As a result, August 21 and 28 and on September 4 and 11 of September 2008, the Central Bank credited banks' single accounts in the amount of \$69,745,281,689.00 (SIXTY NINE BILLION SEVEN HUNDRED AND FORTY FIVE MILLION TWO HUNDRED AND EIGHTY ONE THOUSAND SIX HUNDRED AND EIGHTY NINE PESOS) each day based on the percentage of the aggregate principal amount corresponding to each bank. The amount corresponding to interest accrued on the deposits during the last interest period was also credited.

Likewise, Banco de México decided that for an indefinite period of time banks would create new monetary regulation deposits amounting to \$280,000'000,000.00 (TWO HUNDRED AND EIGHTY BILLION PESOS 00/100 M.N.), by crediting \$70,000,000,000.00 (SEVENTY BILLION PESOS 00/100 M.N.) on each of the dates mentioned in the paragraph above.

The amount that each bank had to deposit on the days mentioned would be the result of a pro rata distribution of the aforementioned amounts in local currency and Investment Units (UDIS) as of May 31<sup>st</sup>, 2008.<sup>1</sup>

- Modifications to Bank Circular 30/2008 related to the procedure for ending monetary regulation bank deposits were subsequently made, in order to increase

the number of dates for returning the current deposits and creating new ones to foster adequate compliance. Likewise, loans received from: i) development banks (other than "Call"); ii) public trusts; iii) the Federal Government; iv) operations as financial agent of the Federal Government, and v) other organisms were not included in liabilities considered in the calculation of deposit amount. All of the foregoing headings were obtained from the "R10 A 1011 General Balance Sheet Reclassifications" sub report (column: Bank's Unconsolidated Financial Statement) of the National Securities and Banking Commission (CNBV).<sup>2</sup>

## **US DOLLAR SALE AUCTIONS**

- In order to comply with the July 25th, 2008 Exchange Commission resolution with respect to the August 1st, 2008 suspension until further notice of the US dollar sale model, Circular-Telefax 18/2003 was repealed in order to offset the decrease in the balance of the international asset reserve following the sale of \$8,000'000,000.00 (EIGHT BILLION US DOLLARS by Banco de México to the Ministry of Finance and Public Credit to cover the Federal Government's currency operating needs for the following month in advance.

The July 15th, 2008 announcement of the daily currency sale for August to October was also cancelled.<sup>3</sup>

- Given conditions prevailing in the foreign exchange market and in order to foster the sound development of the financial system, Banco de México renewed its US dollar sale auctions.

Every bank working day up to three dollar sale auctions were called for a total amount not exceeding \$400,000,000.00 (FOUR HUNDRED MILLION US DOLLARS). The auctions could be either traditional or interactive; in other words, the banks would offer their bids without knowing what the other bids were or being constantly aware of the auction's assigned margin price, respectively.

In each of the auctions the dollar assignment would be in descending order of prices corresponding to the bids in question without exceeding the amount auctioned. In the event of several tied bids in which the auctioned amount is reached, causing it to be surpassed, in the case of traditional auctions assignment would take place by pro rating the amount requested in the tied auctions and in the case of interactive auctions in the order in which bids were received.<sup>4</sup>

## **I.2 Provisions issued by Banco de México as financial system regulator**

- Circular 1/2006 directed at development banks and Financiera Rural was amended to take account of the fact the Financial Services and Transparency Regulation Law reassigned diverse powers of this Central Bank to other financial authorities and as a result it became necessary to adapt Banco de México regulations in diverse areas.<sup>5</sup>
- Amendments were made to circulars 2019/95 and 1/2006 directed at multiple and development banks, respectively, in order to:
  - i) Update diverse sub-regulations related to amendments to some financial laws and Banco de México's Internal Regulations. In particular, the redistribution of powers among the Ministry of Finance and Public Credit and the National Banking and Securities Commission with respect to bank capitalization requirement regulations as well as giving banks the possibility of being able to undertake previously prohibited transactions as long as they adhere to Banco de México's general provisions.<sup>6</sup>
  - ii) Enable the dollar deposits banks hold with Banco de México to be used to guarantee the latter's open market operations as well as overdrafts on their Single Accounts; and in the case of multiple banks the procedure for determining the Interbank Equilibrium Interest Rate (TIIE) was also modified.<sup>7</sup>
  - iii) Establish that Banco de México will pay interest on banks' daily balances in the Multiple Banking Institution US Dollar Deposit account at an annual interest rate that is the higher of deducting 1/8 percentage points from the average daily interest rate Banco de México obtains from investments in international markets in overnight deposits denominated in US dollars or zero.<sup>8</sup>

- iv) Specify the way and the terms under which a request for dollar deposits the Central Bank receives from banks for use as a guarantee can be made.<sup>9</sup>

## **DEBT OPERATIONS**

The procedure for modifying TIIE was changed in order to bring it into line with conditions prevailing in debt markets, so enabling multiple banking institutions that do not have enough deposits or securities to guarantee or undertake credit or repo transactions for the total amount of financing communicated by Banco de México to subsequently make them without rescinding the operation. In these cases, as a conventional penalty Banco de México will make a charge to the Single Account of the bank in question corresponding to the interest rate on the amount for which credit or repo transactions have not been formalized multiplied by the number of non-compliant calendar days.<sup>10</sup>

- Sub regulation M.13.1 of Circular 2019/95 was modified to incorporate the following Mexican financial entities in the definition "Foreign Currency Receivable" in the foreign exchange and derivative transactions headings: mutual funds, retirement mutual funds and insurance companies with a short-term rating equal to or higher than mxA-2 on Standard and Poor's Caval scale equivalent to what other prestigious international rating agencies grant.<sup>11</sup>

## **SECURITIES TRANSACTIONS**

- "Rules that banks, brokerage firms, mutual funds and retirement mutual funds and Financiera Rural must adhere to in repo transactions" were modified in order to broaden the universe of securities that may be subject to a repo, by modifying the definitions of "Securities" in order to consider secondary market debt securities -with the exception of subordinated debentures, other subordinated securities and Structured Securities- denominated in local currency that were issued abroad as long as they are registered, authorized or regulated by the Securities Commission or equivalent organisms of the Reference Countries and "Foreign Securities" to eliminate the requirement that they must be rated by at least two internationally prestigious rating agencies.

Also the requirement that they must be rated by at least two internationally prestigious rating agencies was eliminated from the definition of "Securities"; however, securities that are the object of a repo should have minimum ratings when banks or brokerage firms act as Reported with other entities of the same financial group they belong to, rated investors and individuals.<sup>12</sup>

## **PAYMENT SYSTEMS**

- Circulars 2019/95 and 1/2006 were modified in order to continue with the regulatory modernization process in relation payment systems, specifically the clearing of documents and transactions involved in fund transfers, direct credits

and the interchange and clearing of bank cash by banks.<sup>13</sup>

- Modifications were made to the above-mentioned Circulars to modify transaction times for banks and Financiera Rural related to payment systems in order to make them more efficient and in-keeping with their needs.<sup>14</sup>
- “Rules that managers of retirement funds must adhere to along with brokerage firms, money exchanges, banks, insurance institutions, mutual fund stock distributors, limited purpose financial companies and mutual fund operators that participate in the Interbank Electronic Payments System (SPEI)” were modified on the basis of the need to allow other financial entities to participate in said payment systems to increase and develop the use of SPEI. Some precisions were also made with respect to contingency plans applicable to the settlement of transactions with some financial entities that participate in the system.<sup>15</sup>
- Furthermore, in order to foster the sound working of the payments systems and given that SPEI’s operating hours were extended, precisions to the regulation were made with respect to:
  - a) The period within which banks must credit both the amount of the payment orders their clients request and reimbursements, and
  - b) The obligation of participants to provide Banco de México with information about the transactions they undertake as well as any other related to their participation in the System.<sup>16</sup>
- Likewise, modifications were made to the SPEI in order to allow securities deposit institutions to act as participants. Also, and considering the beginning of the operations of the Securities Deposit, Administration and Settlement System (DALI) and the termination of operations of the Interactive System for Securities (SIDV), the definition of Transfer was modified in order to eliminate transfers of funds between SPEI accounts and SIDV and vice-versa.<sup>17</sup>

## **GENERAL PROVISIONS**

- Circulars 2019/95 and 1/2006 were modified in order to adjust the operating hours of SIAC-BANXICO so that banks could settle transfer orders with each other and the Central Bank through a payments system with longer operating hours; also, an alternative payment settlement system procedure was established for transactions undertaken with CLS Bank International in the event of a SPEI operating contingency.<sup>18</sup>
- Circular 115/2002 was modified based on the need to establish a mechanism for newly created brokerage firms and ones that have recently increased their capital for calculating the limit on their foreign exchange risk position and for securities issued or guaranteed by the Federal Government to have investment grade.<sup>19</sup>

- Circulars 2019/95 and 1/2006 were modified in order to standardize debit card regulations in accordance with those established for multiple banking institutions; Annex 4 of Circular 2019/95, which contained "Rules to which multiple banking institutions and limited purpose financial companies should adhere with respect to credit card issuance and operation" published in the Official Federal Gazette on August 4th, 2004 and amended in the aforementioned Circular was eliminated.<sup>20</sup>
- Circulars 2019/95 and 1/2006 were modified in order to align the characteristics of the US dollar deposits banks maintain with Banco de México to enable them to receive monthly interest. The annual interest rate will be derived by subtracting 1/8 of a percentage point from the average daily interest rate Banco de México obtains from its investments in international markets in overnight deposits in US dollars.<sup>21</sup>
- The "Rules that banks must adhere to with respect to basic payroll accounts and accounts for the public in general" were modified in order to extend the provision of the "Basic Payroll Account" service to individuals that have a job, position or commission of any nature within the Federal Public Administration and have signed a contract with a bank so their wage and other employment benefits can be deposited there.<sup>22</sup>

## LIQUIDITY FACILITIES FOR INTERMEDIARIES

- “Rules applicable to the exercise of financing” were issued for Banco de México to provide financing to multiple banking institutions with temporary liquidity needs. The exercise of such financing will be at the choice of the institution by entering into guaranteed loan or repo contracts.

With respect to guaranteed loan transactions the liquidity facility will consist of monetary regulation deposits the borrower maintains with Banco de México which have no lien.

The term of the transactions would be one bank working day with automatic renewal for the same period. Following an initial drawdown the renewal of transactions would be obligatory for the institution for five working days.

With the exception of the obligatory renewals of the initial drawdown, banks may pay the financing in full or in part by informing Banco de México in writing.<sup>23</sup>

- These Rules were subsequently adapted in order to:
  - i) Adapt sub-regulation 1.2 in the heading “Repo Securities”, in order to eliminate the AA rating or equivalent requirement for local currency-denominated debt securities issued by Banks other than those reported or deposited in INDEVAL and registered in the National Securities Register in accordance with the Securities Market Act. The aim of this was to take into account the existence of diverse short-term securities of this type which under the terms of the Securities Market Act did not have said ratings.<sup>24</sup>
  - ii) Reduce the interest rate factor from 1.2 to 1.1, broaden the range of securities for use in repos and grant financing to banks with a portfolio of loans granted to federal states and/or municipalities whose source of payment or guarantee were federal funds or contributions covered in branches 28 or 33, as long as it was ceded to Banco de México as an alternate payment source.<sup>25</sup>
  - iii) Eliminate the requirement of not having US dollars to obtain access to Banco de México’s credit facility, foreseen in sub-regulation 3.1. of said Rules related to the loan portfolio.<sup>26</sup>
- “Rules that Retirement Funds (Siefores) must adhere to” were issued for securing loans to meet liquidity needs in accordance with the Savings System National Commission’s proposal that Siefores should be able to obtain financing to meet their liquidity needs.

In that regard it was established that the Siefores may obtain loans in local currency up to a maximum amount equivalent to 30% of average bi-monthly paid-in quotas and retirement, unemployment and old age insurance contributions for the last six months corresponding to each Retirement Fund Manager (Afore) .

It should be mentioned that the Siefiores may only receive the aforementioned loans from banks with whom they have no asset association or relationship with, and must amortize them with funds contributions destined for retirement and old age insurance received in the two-month period immediately after the loan was secured.<sup>27</sup>

- Modifications were also made to the Second Rule of Rules referring to Siefiores specifying that the maximum amount of loans be for the equivalent of 30% of bimonthly retirement and old age insurance quotas and contributions corresponding to the last six months in the case of each Afore.

With respect to this it was established that the 30% limit would be applicable to all mutual funds run by the same Afore and the percentage corresponding to them.<sup>28</sup>

- “Rules for Savings Protection Bonds (BPAS)” were issued in relation to the joint announcement of the Ministry of Finance and Public Credit and Banco de México made on October 27th 2008, concerning diverse measures to improve how local financial markets work including an IPAB instrument repurchase program for 150,000,000.00 (ONE HUNDRED AND FIFTY BILLION PESOS).

The rules foresee: i) persons able to present bids for the auctions; ii) the terms and conditions of the auction; iii) auction types; iv) types, limits, presentation, effects and assignation of the bids; v) the auction results; and vi) settlement of BPAS.<sup>29</sup>

- “Rules for Interest Rate Swap Auctions” were issued as part of measures to reestablish liquidity and the orderly working of local financial markets so that by entering into these transactions banks could lower the risks to which they might be exposed as a result of the interest rate structure of their borrowing and lending operations.

In these cash flow exchange transactions resulting from the comparison of fixed nominal interest rates and variable nominal interest rates, in their bids banks determined the fixed nominal interest rate at which they wanted to enter into swaps and Banco de México used the 28d TIIE reference rate. Banco de México set the minimum fixed nominal interest rate at which it was willing to trade swaps in the auctions.

The Central Bank determined the market value of the swaps entered into with banks on a daily basis. Based on the above-mentioned communiqué, the auctions took place on Wednesday November 14th and Friday November 28th, 2008.

The possibility of swaps maturing early at the request of Banco de México or banks following 180 calendar days as of their start date as long as it had no impact on market price formation was contemplated.<sup>30</sup>

## **PROVISIONS RELATED TO THE OPERATING RULES OF THE AGREEMENT ON RECIPROCAL PAYMENTS AND CREDITS BETWEEN BANCO DE MÉXICO AND THE CENTRAL BANKS OF OTHER MEMBERS OF THE LATIN AMERICAN INTEGRATION ASSOCIATION (ALADI) AND THE DOMINICAN REPUBLIC**

- In order to periodically update the catalog of institutions authorized to operate under the agreement on reciprocal payments and credits between Banco de México and the Central Banks of other members of the Latin American Integration Association, ALADI, this Central Bank made diverse modifications to the operating rules of the agreement on reciprocal payments and credits between Banco de México and the central banks of other members of ALADI and the Dominican Republic (Circular 2031/97).<sup>31</sup>

## **PROVISIONS SECURITIES CENTRAL COUNTERPARTIES MUST ADHERE TO OBTAIN LOANS IN RELATION TO THEIR BUSINESS OBJECTIVE AS WELL AS TO PROVIDE BANCO DE MEXICO WITH INFORMATION**

Banco de México deemed it appropriate to update regulations issued by Banco de México to Central Securities Counterparties, in accordance with the Securities Market Act that Banco de México must establish under the terms of the Act through general provisions, information and documents that Securities Central Counterparties must deliver to it. When it came into effect "Provisions central securities counterparties must adhere to when receiving loans in pursuit of their corporate objective" announced by the Central Bank on February 2nd, 2004 was repealed.<sup>32</sup>

## **GENERAL PROVISIONS SET FORTH IN ARTICLE 179 OF THE GENERAL LAW ON SECURITIES AND LOAN TRANSACTIONS TO DETERMINE THE AMOUNT AS OF WHICH CHEQUES MUST BE NOMINATIVE**

"General provisions referred to in article 179 of the General Law on Securities and Credit Transactions" were issued to determine nominative check amounts given that on February 1st, 2008, the General Law on Securities and Credit Transactions was amended through a Decree published in the Official Federal Gazette establishing that Banco de México will determine the amount as of which cheques must be nominative.<sup>33</sup>

## **RULES THAT MULTIPLE BANKING INSTITUTIONS AND BROKERAGE FORMS MUST ADHERE TO IN RELATION TO AUTHORIZATION AND CONSULTATION REQUESTS MADE TO BANCO DE MEXICO THROUGH THE ELECTRONIC ATTENTION MODULE**

- These were issued on the basis of Banco de México's interest in making attention to and resolution of authorization and consultation requests procedure more efficient. These rules resulted in the creation of the system called "Electronic Attention Module" (MAE), the aim of which is to exchange respective information electronically with a view to improving productivity and lowering

costs.

Multiple banking institutions and brokerage firms may use MAE to enter petitions and additional documentation related to authorizations and consultations; consult additional information requirements electronically and provide follow-up and know the response to their petition. These petitions are signed electronically with the help of the Extended Security Infrastructure (IES).

It should be mentioned that the Rules established that as of January 2009, authorization or consultation requests and the delivery of additional information between multiple banking institutions and Banco de México, will be processed and dealt with exclusively through MAE.

However, an exception was made for banks unable to adapt to the Rules by that date, in which case they could continue to formulate their petitions through other means as long as they had notified and justified their situation with the Banco de México's Legal Control, Consultations and Authorizations Department by December 31<sup>st</sup>, 2008 at the latest.<sup>34</sup>

## **GENERAL RULES THAT CREDIT INFORMATION COMPANY OPERATIONS AND ACTIVITIES MUST ADHERE**

These rules were published in the Official Federal Gazette on July 1st, 2008, revoking the "General rules to which the operations and activities of credit information companies and their users must adhere" published in the Official Federal Gazette on March 18th, 2002 and amended on different occasions.

The new Rules were issued taking the following into consideration:

- a) The reforms to the "Law Regulating Credit Information Companies" published in the Official Federal Gazette on February 1st, 2008, mainly with respect to the erasure of balances below one thousand UDIS and residual balances of minimal amounts under which companies must eliminate negative information as well as the corresponding observation codes or prevention codes when the sum of the a Client's unpaid balances on the loan principal with respect to the same creditor is below the equivalent of four hundred thousand UDIS;
- b) The appropriateness of a thorough review of the previous rules, and
- c) A credit information company's request to consider the possibility of clients granting users authorization to obtain their credit report through ATMs and over the phone as long as they have agreed to the use of electronic ID media for accepting offers of credit and a record of said authorization is kept.<sup>35</sup>

The rules were subsequently adapted to:

- a) Specify that users must inform the companies in writing and in detail of the terms and conditions of the loan offers they make;
- b) Enable the companies to erase information taking into account all of the information related to the debt called "Current Balance" until users have made the corresponding changes to their systems in order to be able to send balances of unpaid principal to the aforementioned companies in accordance with Rule Twelve.<sup>36</sup>
- c) The elimination of credit information should generate bigger benefits for Clients and in the event of the erasure of information on balances of up to one thousand UDIS and residual minimum amounts not only is the negative information eliminated but the positive information as well.<sup>37</sup>
- d) Establish information Companies should provide Banco de Mexico with through the Financial System Research Department in the terms indicated by it. This information consists of databases, corporate special credit reports, indicators, indexes and other reports that have been generated.<sup>38</sup>

## **RULES TO BE ADHERED TO FOR THE ISSUANCE AND OPERATION OF CREDIT CARDS**

These Rules derived from the assignation of powers corresponding to the Central Bank set forth in the Financial Services and Transparency Regulation Law to other financial authorities as well as the importance of having rules that foster greater competition and transparency in the credit market and protecting those who request and use it.

### **Main additions:**

1. Maximum amounts of 70 UDIS per transaction and 500 UDIS per day were set for credit transactions not involving the signing of promissory notes, using optical appliances that produce the digitalized image of the client's signature or PI.
2. The obligation to reach an agreement with establishments that identify cardholders who undertake transactions by phone or through the Internet.
3. Collection fees are not allowed to be charged more than once a month and must include any type of charge in relation to a late payment.
4. The possibility of the cardholder requesting the cancellation of the direct debt service was envisaged within a period no greater than 10 working days in accordance with the Law on Credit Institutions.
5. The following was established in order to protect cardholders:
  - a) The issuer will only be able to issue and deliver credit cards following a

request from the holder or person that signed the contract.

- b) In the event of the card being stolen or lost, once notification is received the issuer may only make direct debit charges.
- c) The issuer must inform the holder of the scope of his or her responsibility in the event of the card being stolen or lost.
- d) The obligation to include in the credit card delivery correspondence a recommendation that the cardholder take care of it in order to avoid misuse or fraudulent use.
- e) In no case may they be considered solidary debtors or subsidizers of whoever the holder has authorized to use additional credit cards.
- f) Past due interest fees may only be applied to the past due minimum payment corresponding to the payment period and on the unpaid balance after 3 months have elapsed.
- g) Regulated Sofoles and Sofomes with respect to transactions that do not exceed the equivalent of 20,000 UDIS in local currency must adhere to a clarification procedures equivalent to the one applicable to banks.

The following topics are no longer included in the Rules:

- a) Contracts, account statements and advertising;
- b) Interest rates and the calculation of interest envisaged in Circular 14/2008, and
- c) The dates on which loan payments and the means of making them should be accredited, which is regulated in our Circular 22/2008.<sup>39</sup>

## **FOREIGN EXCHANGE RISK POSITIONS**

Regulations directed at multiple banking institutions and brokerage firms were updated to include: i) the need to establish a mechanism for newly created financial entities and those that have recently increased their capital to calculate the limit on their foreign risk position, and ii) the need for securities issued or guaranteed by the Mexican Government to have investment grade and that the position of securities of such financial entities issued or guaranteed by foreign governments not be great, and in accordance with capitalization rules be considered part of capital because of the risks they incur when taking positions in such securities; Banco de México did this by making changes to Circular 2019/95 and Circular 115/2002.<sup>40</sup>

### **I.3 Provisions issued by Banco de México as a financial agent of the Federal Government of the United Mexican States**

- Banco de México as a financial agent of the Federal Government of the United Mexican States at the request of the Ministry of Finance and Public Credit undertook the following actions:
  - a) Modifications to the "Rules for the exchange of Federal Government Development Bonds with a Fixed Interest Rate", (Circular 2/2005), in order to continue driving the development of the domestic market, which consisted of the inclusion of Federal Government Bonds denominated in Investment Units (UDIBONOS) as securities that can be the object of exchanges contemplated by said rules; and
  - b) Issuance of "Rules for purchase auctions of Federal Government Development Bonds with a Fixed Interest Rate and Federal Government Development Bonds denominated in Investment Units" to promote the healthy development of the financial system based on the importance of: i) easing the maturity schedule of the Federal Government's outstanding domestic debt; and ii) having tools that enable the Federal Government to improve the efficiency of the yield curve in the case of both nominal and real yields.<sup>41</sup>

### **MARKET MAKERS**

- Furthermore, as financial agent of the Federal Government, Banco de Mexico made the following announcements to banks and brokerage firms:
  - a) Official document number 305.-065/2008 and its appendices, dated April 30th, 2008, which came into effect on September 1st, 2008 and through which the Central Bank established the procedure that banks and brokerage firms acting as or with the intention to act as government securities market makers had to adhere to.<sup>42</sup>
  - b) Official document number 305.-106/2008, dated July 30th 2008, through which the Central Bank made changes to its Official document 305.-065/2008 in order to extend the coming into effect of provisions related to UDIBONO Market Makers, which would become effective as of December 1st, 2008.<sup>43</sup>
- In order to shorten the timetable for the delivery of securities purchase requests in writing, when electronic, computer or telecommunication media cannot be used the procedure was modified so that market makers could exercise the right to buy government securities and enter into loan transactions on said securities with Banco de México as financial agent of the Federal Government.<sup>44</sup>

### **I.4 Provisions issued by Banco de México under the Financial Services and Transparency Regulation Law**

- **LABOR BENEFITS PURSUANT TO ARTICLE 18 OF THE FINANCIAL SERVICES AND TRANSPARENCY REGULATION LAW**

The respective provisions were issued in order to foster the sound working of payment systems and to protect the interests of the public.

This was in consideration of the fact that article 18 of the said Law empowers Banco de México to issue general provisions in order to regulate how banks should transfer funds corresponding to wages and other labor benefits to the bank of the employee's choice without them being charged for this service.

They foresee the obligation of the bank making the transfer to make it on the same day the funds are received as well as to provide the format that should be used to request the service and inform clients of this right and how they can exercise it every six months.<sup>45</sup>

Modifications were subsequently made to these provisions based on a request formulated by banks through the Mexican Bank Association (Asociación de Bancos de México, A.C). to extend its coming into effect and make some adaptations given the operating issues involved in adjusting their systems and therefore complying with such provisions.

The main changes consisted of:

- a) Extending their coming into effect from August 4th to October 31st, 2008.
- b) Establishing that the funds would be available in the beneficiary's account the same day as they were deposited in the sender's account as long as this took place by no later than 15:00:00 hours on the same day. In the event of deposits being made after that hour the beneficiary's account would be credited at the start of the next banking working day.
- c) Eliminate the obligation of banks to include in their clients' bank statements in the months of October and April of each year, notification informing them of their right to request such transfers free of charge.

They must now make this notification in the months of January and July of each year, at their branches and on their web pages as well as in two newspapers of national circulation on the first working day of each week of said months.<sup>46</sup>

- "General rules referred to in article 8 of the Financial Services and Transparency Regulation Law in terms of total annual cost (TAC)" published in the Official Daily gazette on November 30th, 2007 were modified in order to make some precisions derived from diverse consultations formulated by different entities given that the aforementioned Law reassigned the powers of the Central Bank to other financial authorities".<sup>47</sup>

- Circular 2019/95 was modified in order to update the regulations directed at multiple banking institutions to take the following into account:
  - a) The Financial Services Transparency and Regulation Law assigned to other financial authorities diverse powers that corresponded to this Central Bank;
  - b) As a result of said allocation of powers it became necessary to adapt the regulations issued in diverse areas by Banco de México, and
  - c) It had become necessary to establish an expedite mechanism for newly created banks and those that had recently increased their tier 1 capital to calculate the limit to be observed in relation to the liability admission regime for foreign currency transactions.<sup>48</sup>
- "General provisions referred to in article 16 of the Financial Services Transparency and Regulation Law with respect to the accreditation of payments considering that said article conferred on Banco de México the power to issue general provisions with respect to the terms in which said entities should accredit payments they receive for the credits, loans and funding they grant."<sup>49</sup>

## **II. AMENDMENTS TO DIVERS FINANCIAL LAWS**

### **FINANCIAL SYSTEM REFORMS IN 2008**

#### **Decree of February 1st, 2008**

On February 1st, 2008, the Official Federal Gazette published a decree reforming, adding to and repealing diverse provisions of the Law on Credit Institutions, the General Law on Credit Instruments and Transactions and the Organic Law of the National Bank of Works and Utilities.

Below we describe the main amendments to the aforementioned laws:

#### **LAW ON CREDIT INSTITUTIONS**

- It is expressly established that the Law is a public order for general observance within the United Mexican States.
- The integration of the Mexican Banking System is modified in order to incorporate self-regulatory organisms and exclude the National Savings Institute and trusts managed by Banco de México.
- Terms set in days will consist of calendar days unless the use of working days is

expressly mentioned.

- Self-regulatory bank organisms are created in order to implement standards of conduct and operations among their members in order to contribute to the healthy development of banks.
- Development banks' boards must have a consultative audit committee.
- Development banks' boards were given more powers.
- Development banks must have a human resources and institutional development committee.
- A chapter is added on multiple banking institutions with business or asset links to for profit corporations.
- The text of diverse articles was modified in order to establish that when issuing provisions the financial authorities should take into account technical and operating aspects of the operation they are regulating. Likewise the redaction of certain prohibited conduct is modified so as to permit it as long as such transactions take place in accordance with general provisions issued for that purpose.
- Banks are allowed to reach an agreement with third parties, including other banks or financial entities with respect to the provision of the services required for them to operate as well as mercantile fees for undertaking transactions they are authorized to undertake. Only after being granted an exception from the Ministry of Finance and Public Credit may they hire the services of third parties or other banks for the provision of services or transactions.
- The concept of direct debits is included with respect to deposit accounts for the payment of goods or services as well as through credit cards.
- Additional requirements are established for loan granting, amending loan agreements and debt restructuring to guarantee the viability of loan recovery.
- The regime related to the issuance of credit cards is strengthened by the law establishing a definition, characteristics, obligations derived thereto, limits to the responsibility of the institutions that issue them and the applicable jurisdiction among other aspects.
- The obligation of banks to diversify investments they make in the terms of article 75 of said Law is established in order to avoid risk concentration.
- Banks must make available to the public corporate, financial, administrative, operational, economic and legal information determined by the National Banking and Securities Commission through general rules.

Furthermore, said decree foresees: i) the realignment of diverse powers conferred on the Ministry of Finance and Public Credit under the terms of said Law to the National Banking and Securities Commission; and ii) the assignment of new powers to said decentralized body, including:

- Authorization of the creation of a multiple banking institution with the favorable opinion of Banco de México.
- Authorize the beginning of operations of multiple banking institutions as well as any other operations they have been authorized to perform. The possibility of them undertaking all or only some of the operations permitted under the Law is foreseen, depending on the type of "niche" or "sector" they opt to serve and consequently the regulation that will apply to them.
- Issue through general provisions the amount of minimum capital multiple banking institutions must have.
- Authorize the merger of two or more multiple banking institutions or any company or financial entity with a multiple banking institution with the prior approval of the Federal Anti-Trust Commission and Banco de México as well as the spin-off of a multiple banking institution following the Central Bank's opinion.
- Revoke a multiple banking institution's authorization prior approval from Banco de Mexico and the Bank Savings Protection Institute when the institution is in one of the situations mentioned in article 28 of the Law.
- Grant and revoke authorization for foreign banks to establish offices of representation in Mexico. Banco de México's opinion is no longer envisaged.
- Recognize bank self-regulatory organisms and regulate how they work.
- Authorize the establishment of affiliates pursuant to the opinion of Banco de México.
- Order the partial or total, temporary or definitive suspension of services or commissions third parties provide banks with as a result of non-compliance with applicable provisions.
- Determine through general provisions the bases for rating banks' loan portfolios.
- Authorize the establishment, change of location and closure of multiple banking institution offices abroad as well as the cession of branch assets or liabilities.
- Authorize banks to invest in securities representing the capital stock of foreign banks.

- Inspect and monitor corporations that provide banks with external audit services.
- Publish its provisions in the Official Federal Gazette.
- Decide the seriousness of an administrative offense committed by a bank.
- Suspend or partially limit the celebration of lending, borrowing or service transactions.

### **THE GENERAL LAW ON CREDIT INSTRUMENTS AND TRANSACTIONS**

- It is established that blank endorsement will have no effect effect in the case of stocks, founder bonds, bonds, certificates of deposit and checks and should therefore be done in favor of a given person. However, it will not be applicable to checks issued for larger amounts than established by Banco de México in the Official Federal Gazette.
- Failure to pay the trustee in the terms stipulated in the agreement for a period equal to or greater than three years is foreseen as another way of ending trusts.

### **ORGANIC LAW OF THE NATIONAL BANK OF WORKS AND UTILITIES**

- The number of members of the Board of the National Bank of Works and Utilities increases; the President will appoint two external members representing the "B" series of the capital through the Ministry of Finance and Public Credit who will be considered independent board members.

### **Decree of February 6th, 2008**

On February 6th, 2008 a decree was published in the Official Federal Gazette that amends, extends and repeals diverse articles of the Law on Credit Institutions.

The main aim of the decree is:

- Make federal civil legislation, the Federal Law on Administrative Procedures and the Federal Fiscal Code supplementary rules with respect to the update of fines not accounted for in the Law on Credit Institutions and the Banco de Mexico Act.
- Empower the National Banking and Securities Commission in conjunction with its Governing Board to suspend members of the board, managing directors, statutory examiners, directors, managers, fiduciary appointees and officers for between three months to five years and force their signature in this respect. A

definition of suspension, removal and ineligibility is also provided and the power of other officers to vote on the decision is eliminated.

- Count the repetition of transactions that are prohibited under article 106 of the Law on Credit Institutions and sanctioned under article 108 Bis as a cause of revocation of the authorization to operate as multiple banking institutions.
- Establish that accounts opened by banks in order to capture funds to help communities, sectors or populations affected by natural catastrophes meet the requirements of the National Banking and Securities Commission in order to increase accountability transparency.
- Prohibit banks from setting up trusts to manage sums of money periodically contributed by consumer groups created through marketing systems destined for the acquisition of certain goods or services contemplated in the Federal Consumer Protection Law.
- Make detailed provision for offenses, administrative fines levied by the National Banking and Securities Commission as well as determine the minimum and maximum number of days of minimum wages effective in the Federal District for levying fines on offenses committed or cases of non-compliance.
- Establish that with respect to administrative procedures and the levying of fines all kinds of tests are admitted and that after five years have passed the regulator no longer has the power to impose administrative sanctions.
- Regulate the procedure for levying administrative fines and establish criteria the regulator should observe when levying the aforementioned administrative fines.
- Establish that the National Banking and Securities Commission must inform the general public through its web site of sanctions levied in relation to breaches of the Law once said resolutions are solemnized or have been judged.
- Establish the rules and terms of diverse notification media in relation to the following legal acts: requests, ordinary and special inspection visits, cautionary measures, requests for information and documentation, summons, services of summons, administrative fine resolutions or any act that ends suspension procedures, revocation of authorizations as well as acts refusing authorizations and administrative resolutions related to appeals for review and requests for remission lodged in accordance with the applicable laws.
- Incorporate new offenses as well as establish new fines and court orders so that the National Banking and Securities Commission can enforce its decisions with respect to legal regulations.

## **Decree of June 20th 2008**

On June 20th, 2008 a decree was published in the Official Federal Gazette adding article 39 of the General Mutual Insurance Company Law.

The main aim of the decree was:

- Establish the obligation of insurance companies to offer a basic standardized product that covers risks faced by the population, is compatible because of its common characteristics, and aims to meet the concrete needs of population protection.
- Furthermore, in order to guarantee comparison, through general provisions the National Insurance and Surety Commission must make the adhesion contract model that institutions must use for each type of coverage known.
- Finally, for comparison purposes and fee advertising, insurance companies must announce the product's premium to the National Commission for the Protection and Defense of Financial Service users.

### **Decree of August 20th, 2008**

On August 20th, the Law on Credit Unions was extended and the General Law on Credit Instruments and Transactions was amended.

Chapter III of the General Law on Credit Organizations and Auxiliary Activities in relation to the operating regime of credit unions was repealed to accommodate the regime applicable to said financial entities in a new law.

Below we include the decree's main provisions:

### **LAW ON CREDIT UNIONS**

- The National Banking and Securities Commission is empowered so that with the prior agreement of its Board of Governors the creation, merger and spin-off of credit unions can be authorized.
- The minimum capital required from unions for their creation and operation.
- Minimum capital will be established based on the level of operations they intend to undertake.
- Direct participation is permitted in the capital stock of credit unions of individuals or foreign companies, as long as the sum of the direct participation of foreigners

does not exceed 10% of the capital.

- The requisites and characteristics of government bodies are established. The concept of independent board member is also created in order to bring this Law into line with other financial laws in the area of corporate governance.
- The catalog of transactions that can be undertaken is broadened depending on the level, such as leasing, financial factoring, acting as trustees in guaranteed trusts and distributing mutual fund stock.
- Capital requirements will be defined on the basis of exposure to certain risks. There are also loan portfolio rating rules. A prudential regulation chapter is also incorporated and provisions in relation to risk diversification are contemplated.
- Changes to accounting regulations, inspection and oversight are included.
- Rules related to corrective measures are incorporated along with the revocation and liquidation of credit unions. The participation of the Asset Management and Sale System is permitted as a settler or credit union syndicate.
- Special rules are established in relation to credit cards where the General Law on Credit Instruments and Transactions will not be applied.
- Credit unions may cede or discount their loan portfolio with anyone. In the case of Banco de México, banks, trusts created by the Federal Government to drive the economy or trusts that issue securities will not be subject to any restrictions; other credit unions or persons must request authorization from the National Banking and Securities Commission before undertaking the transaction.
- The trusts in which they participate will be subject to that set forth in the General Law on Credit Instruments and Transactions and the Law on Credit Institutions.
- A chapter on sanctions and offenses is included.
- The Ministry of Finance and Public Credit may seek the opinion of Banco de México, the National Banking and Securities Commission, the National Insurance and Surety Commission, and the National Retirement Savings Systems Commission in the performance attributes in accordance with this law.

### **General Law on Credit Instruments and Transactions**

Sections V and VI are amended and section VII of article 395 of the General Law on Credit Instruments and Transactions is extended to include Multiple Purpose Financial Companies and Credit Unions as companies authorized to act as trustees in guaranteed trusts.

## **Decree by which diverse provisions of the Law for the Regulation of Credit Information Companies are amended, added to and revoked.**

The decree was published in the Official Federal Gazette on February 1st, 2008 and its main aim was to establish provisions to provide greater legal certainty and protection to both users and clients and establish a regulatory framework through which to provide greater transparency with respect to the operations of and information provided by credit information companies (SICs) to make the regulation more efficient.

The main amendments consist of:

- Standardize the concept of past due loans referred to in the definition of Primary Database with provisions applicable to banks issued by the National Banking and Securities Commission.
- Include multiple purpose financial companies as users.
- Add corporate regulations: i) establishment of the minimum and maximum number of board members and that at least twenty five percent should be independent; ii) empower the Commission to determine the requirements and conditions that independent board members must comply with by making provision for several restrictions; iii) the minimum number of times the board must meet; iv) granting rights to minorities; and v) prohibiting the participation of board members in deliberations with respect to which they have a conflict of interest.
- Include verification of identity or confirmation of identity or general data as services SICs can provide and letting their clients know when users consult their credit history as well as when they send information related to the lack of punctual payment of any enforceable obligation.
- Grant powers to Banco de México and the Commission to determine through general provisions the information and documents SICs should provide them with.
- Ensure that in the case of corporations the main shareholders or owners of capital stock are included in the database record when they own ten or more percent of the capital stock.
- Let clients who pay off a past due payment ask the creditor to update their

definitive payment information with the SIC in advance and eliminate the corresponding prevention or observation code.

- Establish prevention and observation codes and standardized operating manuals that must be used by different types of users and the codes and manuals must be approved by SIC boards and the keys and their amendments by the Commission.
- Lower from eighty four to seventy two months the obligatory period of time for preserving credit histories; the date begins as of when a loan is defaulted on for the first time. Also SICs are allowed to keep positive information and eliminate corporate credit information.
- Make provision for the erasure of information in cases of both non-compliance and non-payment as well as the corresponding prevention and observation codes.
- Banco de México is empowered to issue general provisions determining the amount and reference term for eliminating residual balances of minimum amounts. This term may not be greater than forty eight months.
- Establish an exception to the elimination of information when default on an enforceable payment is subject to legal proceedings.
- Include the regulation with respect to past due or ceded loans so that: i) the corresponding information continues to be updated through the same assigned number either by the buyer or the assignee if a user, or by the seller or assignor when not; ii) users inform the SICs of the loan portfolio they sell or cede; iii) in their special credit reports SICs include a note indicating the name of the buyer or assignee, and iv) SICs have information about the domicile of the portfolio acquirers or assignees.
- Strengthen provisions related to financial secrecy for SICs, their employees or officers as well as for commercial companies.
- Make it compulsory for companies to provide users who request them with consolidated credit reports that include clients' credit history with other SICs.

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<sup>1</sup> Circular 30/2008, directed at banks. Issued on July 9th, 2008.

<sup>2</sup> Circular 36/2008, directed at banks. Issued on August 1st, 2008.

- <sup>3</sup> Circular 32/2008, directed at banks. Issued on July 29th, 2008.
- <sup>4</sup> Circular 47/2008, directed at banks. Issued on October 8th, 2008.
- <sup>5</sup> Circular 1/2006 Bis 18, directed at development banks and Financiera Rural. Issued on May 20th, 2008.
- <sup>6</sup> Circulars 45/2008 and 1/2006 Bis 20, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on September 23rd, 2008.
- <sup>7</sup> Circular 59/2008 and Circular 1/2006 BIS 22, directed at multiple banking institutions, development banks and Financiera Rural, respectively. Issued on December 1st, 2008.
- <sup>8</sup> Circular 62/2008 and Circular 1/2006 BIS 23, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on December 9th, 2008.
- <sup>9</sup> Circular 64/2008 and Circular 1/2006 BIS 24, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on December 24th, 2008.
- <sup>10</sup> Circular 41/2008, directed at multiple banking institutions. Issued on September 2nd, 2008.
- <sup>11</sup> Circular 43/2008, directed at multiple banking institutions. Issued on September 23rd, 2008.
- <sup>12</sup> Circular 55/2008, directed at banks; brokerage firms; mutual funds, retirement mutual funds and Financiera Rural. Issued on November 6th, 2008.
- <sup>13</sup> Circulars 4/2008 and 1/2006 Bis 14, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on February 13th, 2008.
- <sup>14</sup> Circulars 16/2008, 1/2006 Bis 17, 17/2008 and 18/2008, directed at multiple banking institutions, development banks and Financiera Rural, brokerage forms and mutual funds, respectively. Issued on May 5th, 2008.
- <sup>15</sup> Circular 5/2008, directed at retirement fund managers, brokerage firms, money exchanges, banks, insurance companies, companies that distribute mutual fund stock; limited purpose financial companies and companies that operate mutual funds. Issued on February 19th, 2008.
- <sup>16</sup> Circular 15/2008, directed at retirement fund managers, brokerage firms, money exchanges, popular credit and savings entities; banks; insurance companies; companies that distribute mutual fund shares; limited purpose financial companies; multiple purpose financial companies and companies that operate mutual funds. Issued on May 2nd, 2008.
- <sup>17</sup> Circular 58/2008 directed at retirement fund managers, brokerage firms, money exchanges, popular credit and savings entities, banks, insurance companies, companies that distribute mutual fund stock; limited purpose financial companies; multiple purpose financial companies and mutual fund operators. Issued on November 13th, 2008.
- <sup>18</sup> Circulars 6/2008 and 1/2006 Bis 15, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on February 19<sup>th</sup>, 2008.
- <sup>19</sup> Circular 11/2008, directed at brokerage firms. Issued on March 28th, 2008.
- <sup>20</sup> Circulars 31/2008 and 1/2006 BIS 19, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on July 14th, 2008.
- <sup>21</sup> Circulars 50/2008 and 1/2006 BIS 21, directed at multiple banking institutions and development banks and Financiera Rural, respectively. Issued on October 21st, 2008.
- <sup>22</sup> Circular 46/2008, directed at banks. Published in the Official Federal Gazette on September 26th, 2008 and came into effect on October 1st, 2008.
- <sup>23</sup> Circular 48/2008, directed at multiple banking institutions. Issued on October 13th, 2008.
- <sup>24</sup> Circular 49/2008, directed at multiple banking institutions. Issued on October 16th, 2008.
- <sup>25</sup> Circular 61/2008, directed at multiple banking institutions. Issued on December 8th, 2008.
- <sup>26</sup> Circular 63/2008, directed at multiple banking institutions. Issued on December 18th, 2008.
- <sup>27</sup> Circular 51/2008, directed at retirement mutual funds. Published in the Official Federal Gazette on

October 30th, 2008, it came into effect the following date and will be effective for six months as of that date.

- 28 Circular 53/2008, directed at retirement mutual funds. Published in the Official Federal Gazette on November 4<sup>th</sup>, 2008, which came into effect the following day.
- 29 Circular 52/2008, directed at banks, brokerage firms, mutual funds and retirement mutual funds. Issued on October 30th, 2008.
- 30 Circular 56/2008, directed at banks. Issued on November 10th, 2008.
- 31 Circulars 2/2008, 3/2008, 7/2008, 12/2008, 19/2008, 24/2008, 28/2008, 37/2008, 38/2008, 42/2008, and 54/2008 and directed at banks. Issued on January 4th, February 7th, March 5th, April 3rd, May 5th, June 4th, July 2nd, August 4th, August 14th, September 3rd and November 3rd, all in 2008, respectively.
- 32 Circular 14/2008, directed a central securities counterparties. Issued on April 21st, 2008.
- 33 Circular 23/2008, directed at banks. Issued on May 29th, 2008.
- 34 Circular 26/2008, directed a multiple banking institutions and brokerage firms. Issued on June 20th, 2008.
- 35 Circular 27/2008, directed at credit information companies. Issued on June 26<sup>th</sup>, 2008, it came into effect the day following its publication in the Official Federal Gazette with the exception of the erasure of prevention and observation codes which will come into effect as of the date on which they must use those approved by the National Banking and Securities Commission.
- 36 Circular 34/2008, directed at credit information companies. Published in the Official Federal Gazette on August 4th, 2008, it came into effect the day following its publication.
- 37 Circular 44/2008, directed at credit information companies. Published in the Official Federal Gazette on September 25th, 2008, it came into effect on September 29th, 2008.
- 38 Circular 60/2008, directed at credit information companies. It was published in the Official Federal Gazette on December 3rd, 2008 and came into force on December 4th, 2008.
- 39 Circular 29/2008, aimed at multiple banking institutions, limited purpose financial companies and regulated multiple purpose financial companies. Issued on July 9th, 2008 it came into effect on July 28th, 2008, expect for new obligations for issuers requiring adjustments to their systems which came or will come into effect on November 28th, 2008 and July 27th, 2009, respectively.
- 40 Circular 10/2008, directed at multiple banking institutions and Circular 11/2008 directed at brokerage firms. Issued on March 28th, 2008.
- 41 Circulars 1/2008 and 9/2008, directed at banks, brokerage firms, mutual funds and retirement mutual funds. Issued on January 4th and March 13th, 2008, respectively.
- 42 Circular 20/2008, directed at banks and brokerage firms. Issued on May 7<sup>th</sup>, 2008.
- 43 Circular 35/2008, directed at banks and brokerage firms. Issued on July 31<sup>st</sup>, 2008.
- 44 Circulars 39/2008 and 40/2008, directed at banks and brokerage firms, respectively. Issued on September 1st, 2008.
- 45 Circular 25/2008, directed at banks. Issued on June 9th, 2008.
- 46 Circular 33/2008, directed at banks. Published in the Official Federal Gazette on July 31st, 2008.
- 47 Circular 8/2008, directed at banks; limited purpose financial companies; multiple purpose financial companies, popular credit and savings companies; entities that act as trustees in trusts that grant loans to the public as well as companies that habitually grant loans. Issued on March 12th, 2008.
- 48 Circular 21/2008, directed at multiple banking institutions. Issued on May 19th, 2008.
- 49 Circular 22/2008, directed at banks, limited purpose financial companies and regulated multiple purpose financial companies. Issued on May 19th, 2008.