

CREDIT INSTRUMENTS AND OPERATIONS GENERAL LAW

SECTION FIVE Auxiliary Credit Activities

CHAPTER II

On Regular and Professional Credit, Financial Leasing and Factoring Transactions

Article 87-B.- Granting credit, as well as the execution of financial leasing or factoring, may be carried out in a regular and professional manner by any person, without requiring authorization from the Federal Government for such activities.

Any corporations that in their by-laws, shall explicitly establish as their main corporate purpose the regular and professional performance of one or more of the activities indicated in the foregoing paragraph, shall be considered multiple purpose financial institutions. Such corporations shall be considered financial entities, which may be:

- I. Regulated multiple purpose financial institutions, or
- II. Non regulated multiple purpose financial institutions.

The corporations indicated in section I hereinbefore, are those which, in terms of this law, maintain financial links with credit institutions or holding companies of financial groups, of which credit institutions are part. These corporations must add to their corporate name the expression "multiple purpose financial institution", or its acronym "SOFOM", followed by the words "regulated entity" or its abbreviation "E.R." Regulated multiple purpose financial institutions are subject to the supervision of the National Banking and Securities Commission.

The corporations indicated in section II of this article are those in which capital there is no participation or shareholding by any of the entities mentioned in the foregoing paragraph. These corporations must add to their corporate name "multiple purpose financial institution", or its acronym "SOFOM", followed by the words "non regulated entity", or its abbreviation "E.N.R." Non regulated multiple purpose financial institutions are not subject to the supervision of National Banking and Securities Commission.

Article 87-C.- For purposes of the provisions in article 87-B of this law, a financial link shall be understood as the participation in the corporate capital of a multiple purpose financial institution, held by a holding company of a financial group to which a credit institution belongs or where:

- I. A credit institution exercises control over the multiple purpose financial institution, in the terms set forth by this article, or
- II. The corporation has common shareholders with a credit institution.

In respect to the provisions in section I hereinbefore, it shall be understood that control over a corporation is exercised whenever the holder has twenty per cent or more of the corporate capital stock thereof, or has control over the General Shareholders' Meeting, or is in possibility of appointing the majority of the members which constitute the Board of Directors, or controls the corporation in question by any other means.

Common shareholders shall be understood as a person or a group of persons who have agreements of any kind, to take decisions in a same sense, and who, directly or indirectly, maintain a majority interest in the corporate capital, and in the institution, or who may exercise control over the corporation and over the institution, in terms of the foregoing paragraph.

Article 87-D.- Regulated multiple purpose financial institutions shall be subject to the provisions established under articles 49, 50, 51, 73, 73 Bis, and 73 Bis 1, 93, 99, 101, 102 and 115 of the Credit Institutions Law as well as sections I to VI of article 4, and 6 of the National Banking and Securities Commission Law, for credit institutions and financial entities, as applicable. For such purpose, regulated multiple purpose financial institutions shall be subject to the provisions issued for said corporations, by the corresponding authorities indicated in the aforesaid articles, and in the same matters referred to therein.

The stipulation provided in this article must be explicitly set forth in the bylaws of regulated multiple purpose financial institutions.

The provisions in article 65-A of this Law shall be equally applicable to regulated multiple purpose financial institutions, in the case of any administrative acts indicated in the aforesaid article, which the aforementioned Commission shall issue in respect to such financial entities.

Article 87-E.- In financial leasing, factoring and credit agreements, executed by multiple purpose financial institutions and where it is agreed that the lessee, factoring beneficiary or debtor may dispose of an amount credited in his favor, or of the amount of the loan in partial withdraws, or if he is authorized to make reimbursements in advance to the maturity term stated in the agreement, the account statement, certified by the accountant of the respective corporation, shall be considered proof thereof, unless there is any evidence to the contrary in the respective action filed to establish the resulting balance in charge of the debtor.

Article 87-F.- The agreement which evidences the credit, financial leasing or factoring granted by any multiple purpose financial institution, provided such instrument has attached thereto, the respective certified account statement indicated in the foregoing article, shall be an executory instrument which shall not need to be validated by any further signature authentication or any other requirement.

In the case of financial factoring, besides the respective agreement, multiple purpose financial institutions must have documents which show the credit rights transferred under such transaction, as well as the notices to the debtor thereof, whenever such transmission must be carried out in accordance with applicable provisions.

The account statement indicated in the first paragraph of this article must contain data concerning the identification of the agreements or covenants, evidencing the credit, financial leasing or factoring that has been extended; the initial capital which has been disposed of, or, if applicable, the amount of certain earnings; the capital or, if applicable, any past due unpaid earnings; the capital or, if applicable, any pending to be due earnings; interest rates of the credit or, if applicable, any variations applicable to the earnings to be determined for each payment period; any past due interests earnings accrued; applicable interest rate on past due interests and the amount of any ancillary items earned.

Article 87-G.- Mortgages created in favor of multiple purpose financial institutions over a complete unit of an industrial, agricultural, or livestock enterprise, or an enterprise dedicated to primary, industrial, commercial or services activities, must include the respective concession or concessions, if any, all material elements, personal property or real estate property, devoted to the regular exploitation, considered as a unit; and also, they may include cash from current exploitation and credits in favor of the company, originated directly from its operations, regardless of the possibility of disposing of them and replacing them, in the normal movement of operations, without requiring consent from the creditor, unless otherwise agreed.

Multiple purpose financial institutions who are the creditors of the mortgages referred to in this article, must allow the exploitation in the regular course of business, of the assets devoted thereto,

in accordance with their corresponding purpose, and may not, in case of property corresponding to a public utility concession, oppose to any alterations or changes made to them during the term of the mortgage, provided such changes or alterations are required for the better rendering of the respective public service.

The foregoing paragraph notwithstanding, multiple purpose financial institutions, as creditors, may oppose the sale or disposal of part of the property, and the merger with any other companies, if such event could represent a risk for the security of financial leasing, factoring and mortgage credit operations.

The aforesaid mortgage may be created as second in preference, provided the exploitation's net earnings, free of any other liens or charges, is sufficient to cover the interests and amortizations of the respective credit.

The mortgages referred to in this article must be registered in the Public Registry of the place or places where the property is located.

The provisions of article 214 of the Credit Instruments and Operations General Law shall be applicable to the mortgages set forth in this article.

Article 87-H.- The judge shall decide without further investigation the possession of the property which is subject to the financial leasing contract, as requested according to the provisions of article 416 of the Credit Instruments and Operations General Law, by multiple purpose financial institutions who have executed such agreement as lessors, provided that, besides such financial leasing agreement, dully certified before notary public or commercial notary public, said companies attach to their request, the certified account statement provided in article 87-E of this Law.

Article 87-I.- In credit, financial leasing and factoring operations carried out by multiple purpose financial institutions with their clients:

- I. Interests may only be capitalized if, before or after they are accrued, the parties shall have agreed on it. In this case, the corresponding corporation must provide its client a monthly account statement. Any collection contravening the provisions of this section is not allowed, and
- II. (Repealed).

Article 87-J.- In financial leasing, factoring and credit agreements executed by multiple purpose financial institutions, such corporations must explicitly indicate that, in order to be organized and to operated as such, they do not require authorization by the Secretariat of the Treasury and Public Credit. The same mention must be indicated in information of any kind used by such multiple purpose financial institutions for promoting their services and operations.

In addition to the foregoing, non regulated multiple purpose financial institutions must indicate in the documents and information established in the foregoing paragraph that to carry out the operations set forth in such paragraph, they are not subject to the supervision of the National Banking and Securities Commission.

Article 87-K.- The protection and defense of the rights and interests of the public who uses such services which, by the performance of the operations indicated in article 87-B of this Law, are provided by multiple purpose financial institutions, shall be in charge of the National Protection and Defense of the Users of Financial Services Commission, in the terms set forth by the Protection and Defense of the Users of Financial Services Law. In respect to the services indicated hereinbefore, multiple purpose financial institutions are subject to the aforesaid Law, in the terms set forth in such Law concerning the financial institutions defined therein. Therefore, the National Protection and

Defense of the Users of Financial Services Commission may exercise over said multiple purpose financial institutions, in respect to the rendering of the services indicated therein, the powers and authorizations vested upon it by such Law, and the corresponding penalties established therein shall be applicable to said institutions.

Multiple purpose financial institutions, when organized as such, must communicate such event in writing to the National Protection and Defense of the Users of Financial Services Commission no later than ten days after the registry of the respective articles of incorporation in the Public Registry of Commerce.

Article 87-L.- The provisions of this Chapter notwithstanding, the faculties and powers which the **Transparency and Fostering of Competition in Guaranteed Credit Law** vests on the National Banking and Securities Commission, in respect to financial entities who extend secured credit in the terms of such provisions, shall be understood as conferred upon the National Protection and Defense of the Users of Financial Services Commission in respect to non regulated multiple purpose financial institutions.

(The second paragraph is repealed).

Article 87-M.- In credit, financial leasing and factoring operations, multiple purpose financial institutions shall:

- I. Inform their clients previously on the consideration; amount of partial payments, form and settlement periods, financial charges; ancillaries; amount and detail of any charge, if any, number of payments to be made, their periodicity; if applicable, the right of the clients to early settle the transaction and the conditions theretofore, and the interests, including past due interests, the manner to calculate them and the rate type, and if applicable, any discount rate.
- II. In case of using a fixed rate, the clients shall also be informed on the amount of the interests to be paid in each period. In case of using a variable rate, the client shall be informed of the rule to adjust the rate, which may not depend on unilateral decisions by the respective multiple purpose financial institution, but on variations registered by an interest rate representative of the cost of the operation for the client, which must be easily verifiable by such client;
- III. Inform the client on total the amount to be paid for the operation in question, if any, the number and amount of individual payments, corresponding interests, fees and charges, including the ones fixed for advanced payments or for cancellations; providing the client, in due detail, the respective items;
- IV. (Repealed).

The National Protection and Defense of the Users of Financial Services Commission may issue recommendations to multiple purpose financial institutions to achieve the performance of the provisions set forth in this article.

Article 87-N.- In addition to the provisions in articles 87-K, 87-L and 87-M of this Law, the National Protection and Defense of the Users of Financial Services Commission shall be in charge of the supervision and surveillance of the performance by multiple purpose financial institutions, of the provisions set forth in articles 87-I, 87-M and 87-N of this Law, in accordance to the criteria established by said Commission to exercise of such faculties.

The aforesaid Commission may exercise such faculties in the places where multiple purpose financial institutions operate, in terms of the procedure provided by the Federal Administrative

Procedure Law. Likewise, such Commission may exercise said faculties through inspections, information or document requirements. For purposes of the provisions in this articles, multiple purpose financial institutions, as well as their representatives or employees, are required to allow credited personnel from the Commission, access to the place or places subject to verification.

Article 87-Ñ.- Regarding the guaranty trust operations they manage, multiple purpose financial institutions shall be subject, in accordance with Section II of Chapter V of Title II of the Credit Instruments and Operations General Law, to the provisions of articles 79 and 80 of the Credit Institutions Law for such institutions. In any guaranty trust agreements referred under article 395 of the Credit Instruments and Operations General Law, and in the performance thereof, multiple purpose financial institutions are prohibited to:

- I. To act as trustees in any other trusts than guaranty trusts;
- II. To use cash, property, rights or securities of such trusts, to carry out operations through which any of its trust delegates; managers, incumbent or alternate members of its board of directors, either in office or not acting; its directing officers or employees; its incumbent or alternate examiners, either in office or not in office; its independent auditors; the members of the technical committee of the respective trust; the ascendants or descendents in first degree of kinship or the spouses of aforesaid persons; or the corporations in which shareholders meetings, such persons or multiple purpose financial institutions hold the majority of votes, become or may become debtors or beneficiaries .
- III. To enter into and to execute any operations in their own behalf;
- IV. To act in any trusts through which the restrictions or prohibitions contained in this or other laws are avoided;
- V. To be liable, for the default of debtors in respect to assets or property, titles or securities of the trust, before trust settlor or beneficiaries, unless it is their own fault, according to the provisions of the final portion of Article 391 of the Credit Instruments and Operations General Law.

If at the term of the trust, the properties, rights or securities have not been paid by the debtors, the trustee shall transfer them, along with the cash, assets, and any other rights, or securities which comprise the assets of the trust, to the trust settlor or to the beneficiary, as applicable, abstaining itself from covering their amount.

In the trust agreements, the provisions of this section shall be inserted in a notorious manner, as well as a statement of the trustee indicating that it reported its contents in an unquestionable manner to the persons from whom it received such cash, property, rights, or securities, to be devoted to the trust;

- VI. To act as trustees in trusts through which resources from the public are directly or indirectly obtained, through any act which causes direct or contingent debt;
- VII. To act in any trusts though which any restrictions or prohibitions, contained in this or other laws, are avoided;
- VIII. To act as trustees in the trusts referred in the second paragraph of Article 88 of the Investment Companies Law, and
- IX. To manage rural properties, unless it has received its management to secure, before the trustee, the satisfaction of an obligation and its preference in payment, with the value of such property or its products.

Any agreement to the contrary of the provisions set forth in the foregoing section shall be null and void.