

## **2003 FINANCIAL SYSTEM REFORMS**

This document describes the most important financial sector provisions issued in 2003. In order to facilitate their consultation, they were ordered by topics beginning with those issued by Banco de México to regulate monetary and foreign exchange policy followed by those the Bank issued as financial system regulator, and financial agent of the Federal Government and the Bank Savings Protection Institute (IPAB). It ends with a brief explanation of the most important financial legislation reforms.

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

#### **I.1 Monetary and Foreign Exchange Provisions issued by Banco de México**

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

In order to regulate excess money market liquidity derived from transactions undertaken by the Federal Public Sector in the first few months of 2003, Banco de México requested that banks create a new mandatory monetary regulation deposit amounting to an aggregate \$30,000'000,000.00 (THIRTY BILLION PESOS 00/100 M.N.). Consequently, daily amounts of \$10,000'000,000.00 (TEN BILLION 00/100 M.N.) were deposited on April 7, 8 and 9, 2003.

The terms of the new deposit are:

- a) An indefinite term and the amount to be deposited is determined on the basis of the local currency liabilities of each bank compared to the total liabilities of all banks. The concept of core deposits in accordance with National Banking and Securities Commission (CNBV) criteria was considered for this;
- b) The interest rate is referenced to the overnight funding rate published by Banco de México daily on its Web page. Interest is capitalized daily and is payable every 28 days.<sup>1</sup>

##### **MONETARY REGULATION BONDS (BREMS)**

The BREMS multiple security model was updated with respect to the tax regime for individuals in order to anticipate the regime applicable to such securities when they start being issued as of January 1st, 2003<sup>2</sup> in accordance with the Law on Income Tax and its Transitory Provisions published in the Official Federal gazette on January 1<sup>st</sup>, 2002.

## **DOLLAR AUCTION**

In order to implement the agreement made by the Foreign Exchange Commission concerning lowering the amount of international asset reserves by using a mechanism that channels a percentage of the foreign currency flows that have increased such reserves to the foreign exchange market, the Central Bank established the characteristics of the US dollar sale auctions to be undertaken for such purposes, details of how to undertake them as well as the amount of reserves to be sold.<sup>3</sup>

Regarding this the following was established:

1. Each quarter Banco de México will announce the amount of dollars for sale in the foreign exchange market. The amount that will be sold during the established sale periods will be equal to 50% of the net reserves accumulated during the previous sale period after considering sales made using this mechanism during the same period.
2. Based on the amount of dollars for sale, at 9:00am everyday Banco de México will call the respective auctions. The daily auction amount will be determined based on the number of working days in the corresponding sale period.
3. Only the country's banks may participate in the auctions.

The abovementioned daily auction procedure began on May 2nd, 2003 based on the accumulation of international reserves in the period between January 17th and April 16th of the same year.

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

#### **SINGLE ACCOUNT**

The accumulated daily balances regime governing the accounts that banks hold with Banco de México was replaced with the daily balances regime, as diverse improvements in the way the Central Bank operates have made financial programming more accurate, and so the flexibility that a 28-day period of accumulated balances had afforded was no longer necessary.

Regarding this it was established that if on any bank working or non-working day a bank had a balance of below zero, Banco de México will charge to the Single Account the amount resulting from applying to the overdraft the rate obtained from multiplying by 2 the Weighted Overnight Funding Rate and dividing it by 360. In the case of overdrafts not matched with guarantees

registered in relation to non-refutable transactions, interest will be charge at the referred Rate multiplied by 0.2. It should be pointed out that the CETES rate was previously used to calculate interest on such overdrafts.<sup>4</sup>

## **REPURCHASE AGREEMENTS (REOPS) AND SECURITIES PURCHASING**

Rules to be observed by banks, brokerage firms, mutual funds and mutual funds specializing in retirement funds respect to repo transactions were issued. The aim of such Rules is the subsequent standardization of the regime applicable to the repo transactions that financial entities regulated by Banco de México may undertake, as well as to update the regime and facilitate consultation by compiling a group of standards that contain all of the provisions related to repos issued by the Central Bank.

Among other changes the Rules state that: i) banks, brokerage firms and mutual funds specializing in retirement funds may act as repurchasers with Foreign Financial Entities if the latter comply with certain characteristics; ii) such financial entities and mutual funds may undertake repos with securities other than government and bank securities when they have a certain grade under the Rules; iii) precise provisions in relation to the contracts under which repo transactions with different types of clients should be formalized and receipts and confirmations should be issued, indicating that such confirmations must establish, among other concepts, the specific characteristics of the securities involved in the transaction; iv) the obligation of the respective financial entities to guarantee repo transactions undertaken between them and with Institutional Investors; and v) provisions related to the date on which the securities and cash arising from the repo transactions should be transferred.<sup>5</sup>

Consequently, provisions for banks related to securities purchases were modified in order to subsequently bring them into line with changes related to repos.<sup>6</sup>

It should be pointed out that owing to systems changes different entities must make stemming from the above-referred provisions, a transitory regime is established for the enforcement of such provisions.

## **MANAGED SECURITIES DEPOSITS**

In response to requests from the Mexican Association of Securities Intermediaries (Asociación Mexicana de Intermediarios Bursátiles, A.C.) and some banks, and taking into account the document the National Banking and Securities Commission submitted to Banco de México concerning the need to update the regime applicable to managed deposits and transfer of bank and government securities and make it more flexible, the prohibition on bank and brokerage firm depository institutions concerning the transfer of third party

account securities deposits was lifted, as it was considered that keeping it could have an impact on the efficiency of such intermediaries, and the Securities Market Act already incorporates provisions for achieving what the prohibition was seeking, namely preventing securities transactions from taking place without the participation of an authorized financial intermediary, more efficiently and securely.<sup>7</sup>

## **STOCK CERTIFICATES**

Banco de México decided to make applicable to development banks provisions contained in Circular-Telefax 38/2002 (directed a commercial banks) related to the characteristics that stock certificates should meet when they issue them themselves; authorization for such certificates to be the object of repurchases and securities lending an exclusion from the investment regime for trusts created to securitize mortgage loans whose trustee issues ordinary participation certificates or stock certificates, the purpose being to ensure that provisions applicable to debt transactions, trusts, repurchase agreements and securities lending are the same for all banks.<sup>8</sup>

## **PUBLIC INFORMATION**

A provision was issued to specify the obligation of banks to inform clients about documents related to their transactions, whether the latter are guaranteed by the Bank Savings Protection Institute (IPAB) or not, and the guaranteed amounts and terms pursuant to the "Program under which obligations guaranteed by the Bank Savings Institute are disclosed in the period of transition".

It also added the requirement for these institutions to disclose the information referred to in the preceding paragraph in printed advertising related to products offered to the public or deposit transactions and make available a link to the IPAB's website describing the terms and conditions of the stated Program on its website on the worldwide web (Internet).<sup>9</sup>

## **PROVISIONS ANNOUNCED THROUGH ELECTRONIC MEDIA**

Continuing with the process of making the disclosure of provisions issued by Banco de México more efficient, secure and expedite, it was established that as of August 4th, 2013, the provisions applicable to mutual funds and mutual funds specializing in retirement funds (Siefors) will be disclosed directly by fax and email to the numbers and emails that mutual funds and Siefors provide for this purpose, these being the official media for communicating Central Bank provisions.

The aim of this was also to establish a direct line of communication between

Banco de México and such mutual funds, as they were previously announced by the National Banking and Securities Commission and the National Commission for Retirement Savings Systems, respectively.

To ensure the integrity of the provisions that will be transmitted via email and in turn establish the identity of the signatories, such provisions are signed by the competent officials using electronic signatures generated in the "Broad Infrastructure Security" (BIS) system.<sup>10</sup>

## **ELECTRONIC FUND TRANSFERS**

Deeming it appropriate for the solid working of payments systems, Banco de México issued a provision aimed at incorporating the use of the Standard Banking Code (CLABE) for receiving payments through the Broad use Electronic Payments System (SPEUA) and the Electronic Fund Transfers Service managed by CECOBAN, S.A. de C.V., forbidding the rejection of payments received through the system and service mentioned solely on the basis of the CLABE. To this end, as of March 10, 2013, the annotation banks must include on the back of account statements sent to their accountholders was changed to establish the account number under which their clients can receive such payments.<sup>11</sup>

## **VALUATION OF SECURITIES OFFERED TO BANCO DE MEXICO IN GUARANTEE**

In order to make the mechanism for valuing the Central Bank's securities proprietary position clearer and simpler along with the securities it receives in guarantee, the procedure for valuing them was eliminated and replaced by the use of prices provided by Price Suppliers (Suppliers) using the same valuation mechanisms as those different financial intermediaries must use.

Therefore it was established that Banco de México will undertake the valuation of the instruments indicated in the catalog that S.D. Indeval, S.A. de C.V., Securities Deposit Institute, sends it daily, using valuation prices submitted by Providers it has an agreement with. Likewise, in the case of instruments that will be used to grant guarantees to Banco de México and for entering into repo transactions through which brokerage firms exercise loans the Central Bank extends to Banks for such purpose, Banco de México reserved the right to apply a discount factor to the valuation price of each instrument which is obtained in accordance with the aforementioned procedure.

In the case of initial placement securities the prices or rates resulting from the respective auction would be used until Providers could provide them, while a special valuation procedure was established for securities with no secondary market. Likewise, it was decided that any instruments that could not be valued as stated may not be offered to Banco de México in guarantee or be the object

of repo transactions.<sup>12</sup>

## **SYSTEMS PAYMENTS**

In order to pursue reforms to Broad use Electronic Payments System (SPEUA) so said System continues to comply with recognized principles and generally accepted international ones and is also more efficient, stable and secure, as well as lower the credit and systemic risks that banks and the Central Bank itself can incur by participating in it, Banco de México determined the following:

Request that SPEUA participants guarantee compliance with the additional liquidity obligations they may have to face owing to defaults by banks in said system they have granted credit to. Such a guarantee must be granted in the form of government securities, Monetary Regulation Bonds (BREMS) or Savings Protection Bonds (BPAS) for up to 125% of the largest of the credit lines granted to a bank in SPEUA.

When a bank must comply with additional liquidity obligations in SPEUA but does not have enough funds or guarantees in its Single Account, Banco de México will transfer the corresponding SPEU guarantees to the Banco de México Accountholders Attention System (SIAC-BANXICO) so that additional liquidity obligations can be met through secured overdrafts in the debtor bank's Single Account.

Likewise, Banco de México was empowered to proportionally adjust the amount of loans that SPEUA Participants grant each other so they are constantly guaranteed.

A gradual regime was established so that the referred guarantees are created as of August 1st for an amount equivalent to 5 percent of the biggest loan that each Participating Bank grants to another Participating Bank in the SPEUA. The amount of such guarantees increases by 5 percent as of the first bank working day of the following month and so on until such guarantees represent 125 percent of the biggest loan.<sup>13</sup>

Furthermore, considering requests from the Mexican Bankers Association, the Mexican Association of Securities Intermediaries, and S.D. Indeval, S.A. de C.V., Securities Deposit Institution, diverse modifications were made to the schedules of payment systems SIAC-BANXICO, SPEUA and Interactive System for Securities Deposits (SIDV).<sup>14</sup>

This is related to the payment systems reform Project Banco de México decided to undertake by adopting guidelines for Systemically Important Payment Systems published by the Bank for International Settlements (BIS), which comprise diverse changes to be implemented between 2001 and 2006.

## **FEE REPORTS**

In order to achieve greater transparency with respect to fees applicable to diverse services provided by banks in payment systems as well as foster the sound working of such payment systems and protect the interests of the general public, commercial banks were asked to provide Banco de México with periodical information about such fees. Regarding this, and for comparison purposes, the Central Bank will publish information relative to the maximum fees applicable to each bank on its worldwide web (Internet) page.<sup>15</sup>

## **FOREIGN CURRENCY AND PRECIOUS METAL SPOT TRANSACTIONS**

Taking account of financial market conditions, Banco de México decided to allow brokerage firms to enter into foreign currency spot transactions with the general public. A regime similar to the one applicable to banks was established for brokerage firms. The following changes were also made to the regime for both banks and brokerage firms:

- a) The obligation to deliver the currency and counter currency on the same value date was eliminated, meaning they could be deferred within a period no greater than two bank working days, and
- b) The terms under which banks and brokerage firms must formalize these transactions were clarified to indicate that on the same day of the deal confirmation of it must include documentary proof, even in the case of electronic media, that the corresponding transaction took place and clients other than local and foreign banks must issue a receipt that will be given to the client when the transaction takes place over the counter or will be sent or kept if the transaction takes a different form.<sup>16</sup>

## **DERIVATIVE TRANSACTIONS**

At the request of the National Commission for Retirement Savings (CONSAR) and the Mexican Association of Retirement Fund Managers (AMAFORE), and based on amendments to section II article 106 of the Law on Credit Institutions published in the Official Federal Gazette on June 13th, 2003, Banco de México decided to broaden the range of guarantees banks can provide when entering into derivative transactions in stock and over-the-counter markets (cash, credit rights in their favor and portfolio securities) and enable such banks to grant said guarantees to the Siefores when entering into such transactions in OTC markets.<sup>17</sup>

The foregoing takes into account that the derivatives regime applicable to the Siefores enables them to request such guarantees from banks.

## **STRUCTURE BANK SECURITIES**

Provisions applicable to debt transactions whose return is determined based on variations in the prices of diverse financial assets in order to bring them more into line with instruments that commercial banks aim to place in the market, maintaining the premise of information transparency granted to clients that enter into such transactions and the protection of the interests of the general public.

In relation to this, two types of structured bank securities were established:

a) Fixed-term deposits, bank bonds and stock certificates with respect to which none of the invested capital must under any circumstances be lost. This circumstance must be indicated in the respective agreements and account statements; the minimum amount of such transactions will be equivalent to 10,000 investment units and banks may undertake propaganda related to such transactions using mass communication media as well as enter into them over the counter; and

b) Bank bonds and stock certificates in which there may be a loss of invested capital. In this case, the agreements and account statements should inform clients of the aforementioned characteristics; the minimum amount of such transactions will be 300,000.00 investment units, and banks may not undertake any publicity concerning them through mass communication media and deals must be conducted in places other than at branch counters.<sup>18</sup>

Banks are also under the obligation to provide clients with a description of the transaction and risks prior to entering into any such deals, as well as to keep written proof that the client was expressly aware of the risks and any possible losses resulting from the transaction.

## **EXTENDED SECURITY INFRASTRUCTURE (ESI)**

Provisions related to Extended Security Infrastructure (ESI) managed by Banco de México were modified to indicate that besides banks other Mexican financial institutions and companies providing auxiliary or complementary services related to fund and securities transfers may obtain authorization from Banco de México to act as a Certification Agency (CA) and Registration Agency (RA) in ESI. The concept of Certification Agents was also included in the regime to assist entities that obtain Banco de México's authorization to act as CAs.

Finally, it was established that the document describing the characteristics and functions of ESI participants, user manuals and consultations directory provided by the Central Bank on its worldwide web (Internet) page, will be included in the regime applicable to said Infrastructure.<sup>19</sup>

## **MAXIMUM FUNDING LIMITS**



The provision whereby the Central Bank announced the maximum amount of funding commercial banks can grant to individuals and corporations under the Rules on Asset Transaction Risk Diversification referred to under article 51, Section II of the Law on Credit Institutions" and amendments to it issued by the Ministry of Finance and Public Credit (SHCP) was eliminated, as on April 30<sup>th</sup>, 2002 the Official Federal Gazette published "General Rules for risk lending and borrowing transaction risk diversification applicable to banks" issued by the National Banking and Securities Commission, which establish different funding limits, and as of July 24<sup>th</sup>, 2003, repeal the aforementioned SHCP Rules.<sup>20</sup>

### **AUTHORIZABLE EXCESSES TO DIVERSE REGIMES**

In order to maintain a regime that enables commercial banks, brokerage firms, money exchanges, financial leasing companies and financial factoring companies to make opportune corrections to administrative errors to encourage the development of internal controls, and having informed Banco de México, the possibility of authorizing excesses with respect to diverse regulatory limits was extended by up to five calendar days within a period of twelve months for each limit when such excesses stem from administrative errors and the conditions foreseen in the corresponding provisions are met.

It should be pointed out that given the special characteristics of development banks, in their case the regime was extended by one year and not indefinitely.<sup>21</sup>

### **FOREIGN CURRENCY DEMAND DEPOSIT TRANSACTIONS**

Provisions applicable to foreign currency denominated debit transactions were modified to enable commercial banks to undertake demand deposit transactions in said currency without them necessarily being associated with a checkbook but within the limits established by the regime in place for holders of such deposits. Provisions were issued to anticipate banks' obligation to include in contracts documenting such deposits, with or without a checkbook, the ways in which the funds can be withdrawn as follows: i) situations of funds in bank deposit accounts denominated and payable in Foreign Currency; ii) delivery of Foreign Currency-denominated demand documents charged to a foreign bank, or iii) the delivery of the respective Foreign Currency.<sup>22</sup>

### **RULES MONEY EXCHANGES WILL ADHERE TO FOR FOREIGN CURRENCY AND PRECIOUS METAL TRANSACTIONS**

Banco de México decided to allow money exchanges to offer third party payment reception services as long as they do not assume any direct or

contingent obligations so as to give the public more options for obtaining the above-referred services.<sup>23</sup>

## **RESOLUTION ESTABLISHING THE COMPONENTS, CALCULATION METHODOLOGY AND FREQUENCY OF THE TOTAL ANNUAL COST**

Based on articles 10 and transitory article two of the Law on Transparency and Guaranteed Credit Competition, as well as article 36 of its organic Law, Banco de México, acting as a technical body for such purposes and with the aim of making persons who request guaranteed housing loans from banks aware of and able to compare the direct costs inherent to such loans with similar characteristics, published the Resolution establishing the components, calculation methodology and frequency of the total annual cost (TAC) in the Official Federal Gazette on July 10<sup>th</sup>, 2003.

The Central Bank's Resolution establishes: i) the concepts banks should take into account when calculating the TAC; ii) the formula used to calculate it, indicating in the case of variable rate loans the fixed part of the rate used in the calculation; iii) the different notations banks should include in media used to communicate the TAC to the public depending on the loan denomination and rate so as to make how the TAC was calculated transparent for the client besides its use as a means of comparison; and iv) the frequency with which banks should update the calculation of the TAC for the different types of loans they offer and the loan amounts that the TAC announced on boards and in flyers applies to, so the public can use the TAC of the main products offered by different banks as a means of comparison.

### **3 Provisions issued by Banco de México as federal government financial agent**

#### **PLACEMENT OF SAVINGS PROTECTION BONDS (BPAs)**

At the request of the Bank Savings Protection Institute (IPAB), the schedule for announcing the overall and individual results of SAVINGS PROTECTION BOND (BPAs) primary auctions was modified in order to bring them into line with government securities auctions. Thus it was established that at 11:00 o'clock on the day of the auction, through its Accountholders Attention System (SIAC-BANXICO) Banco de Mexico will inform each bidder individually of the amount of BPAs assigned to them and the total prices that should be met. It was also established that at 10:30 o'clock on the same day at the latest, the Central Bank would make the overall outcome of the auction available to all bidders<sup>24</sup>

#### **MARKET MAKER REGIME**

In order to continue making the participation of Market Makers more efficient in

terms of their right to undertake securities lending transactions with Banco de México, the Ministry of Finance and Public Credit resolved to allow variable-rate Federal Government Development Bonds, Monetary Regulation Bonds issued by Banco de México and Savings Protection Bonds issued by the Bank Savings Protection Institute to be used as guarantees in securities lending transactions.

Regarding this Banco de México released the corresponding official documents issued by the aforementioned Department stating that in order for Market Makers to be able to use said securities as a guarantee they must sign a new contract with Banco de México.<sup>25</sup>

## **CREDIT SUPPORT PROGRAMS**

Banco de México released to banks the official document issued by the Ministry of Finance and Public Credit complementing the operating rules of Federal Government credit support programs. The document in question includes diverse sections related to:

1. The content of annual audit reports concerning the proper application of the programs in question;
2. The procedure for undertaking adjustments and devolutions derived from any deviations to the operation of said programs;
3. The procedure for selling loans assigned to the respective trusts, and
4. The procedure for carrying out the liquidation of obligations upon maturity of such trusts.<sup>26</sup>

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

### **POPULAR SAVINGS AND LOANS LAW**

On January 27th, 2003, the Official Federal Gazette published the Decree amending, adding to and repealing diverse provisions of the Law on Popular Savings and Loans. The main amendments are described below:

- Civil associations, civil societies and individuals engaged exclusively in raising funds for their members for placement between them, may continue to perform such transactions without them being considered savings and loans transactions as long as they meet certain requirements, the most important being:
  - a) a member of the association, civil society or group of individuals places and delivers the funds raised by them;

- b) the maximum number of associates, partners or members is 250 and total assets do not exceed 350,000.00

Investment Units;

- c) may not communicate, inform or announce their transaction through any form of publicity or other media;
  - d) must register with a Federation for the exclusive purpose of providing certain information as well as operate in one or more municipalities of a State of the Mexican Republic or in two or more adjacent municipalities of up to three Mexican States, and
  - e) must establish in the documents they use to conduct transactions with the public that they are not popular savings and loans entities and not supervised by any financial authority or Federation.
- Some transactions that Popular Savings and Loans Companies can conduct depending on their level of business were added including: i) receive deposits withdrawable on pre-established days; ii) receive loans from public trusts; iii) grant loans to unaffiliated Entities; iv) receive foreign currency-denominated loans and maintain their positions in such currency balanced pursuant to the terms set forth by the National Banking and Securities Commission (CNBV); v) issued subordinated debentures; and vi) offer the direct debit service.
  - Savings and Loans Cooperatives may undertake transactions with the general public as long as they can participate as partners within the period established in their articles of incorporation and it does not exceed 12 months.
  - Companies that opt for the unaffiliated regime must lodge a request with a Confederation to participate in its Protection Fund. If no Confederation is willing to manage a Fund for the company it can make a direct request to the CNBV to designate the Federation that will issue the respective report, and if favorable, make the Federation the company's auxiliary supervisor.
  - Companies may avail themselves of the Protection Fund's resources as long as they have been making contributions for a minimum period of two years. They must also inform their Partners or Clients of the date as of which the respective Protection Fund will take effect, clearly establishing that they will not enjoy the protection of the Fund until the aforementioned assumption is complied with.
  - Rules with respect to the Oversight Committee are established and Federations and Confederations are allowed to appoint independent members.

- The coming into effect of diverse transitory provisions pertaining to the June 4th, 2001 Decree issuing the Popular Savings and Loans Law were postponed to make more time for the transformation of extant Popular Savings and Loans Companies in accordance with the Law.

## **THE LAW ON TRANSPARENCY AND GUARANTEED CREDIT COMPETITION**

On June 13th, 2003 the Official Federal Gazette published amendments to diverse provisions of the Law on Transparency and Guaranteed Credit Competition which was published in the same Gazette on December 29th, 2002.

The aim of the above-referred law was to make information related to loans, mainly mortgages, granted by banks and limited purpose financing companies as well as other lenders that is available to the public more transparent and clear so clients have accurate and complete information about the characteristics, cost and conditions of diverse credit products available in the market. At the same time the Law seeks to foster healthy competition between lending institutions in order encourage lower interest rates.

The main amendments to the Law are described below:

- Obligatory insurance is included in the Total Annual Cost (TAC);
- Self-financing systems are excluded from the scope of the Law because they are regulated by the Federal Consumer Protection Law;
- The terms under which the Entity's acceptance of a substitute debtor should be included in the binding offer are stipulated;
- The Ministry of the Economy's involvement in the definition of the components, calculation methodology and frequency of the TAC corresponding to non-bank banks is established;
- It stipulates that in order for debtor subrogation to occur, the new debtor must submit a loan application to the Entity and comply with its lending requisites, including those foreseen in article 65 of the Law on Credit Institutions; and
- It confirms the beginning of non-retroactivity of the Law in order to clarify that it will not apply to loans taken out before it came into force.

## **LAW ON CREDIT INSTITUTIONS, STOCK MARKET ACT, GENERAL ACT ON MUTUAL INSURANCE INSTITUTIONS AND COMPANIES, FEDERAL LAW ON SURETY INSTITUTIONS, AND THE GENERAL LAW ON CREDIT**

## **ORGANIZATIONS AND AUXILIARY ACTIVITIES**

On June 13<sup>th</sup>, 2013 the Official Federal Gazette published amendments to the Law on Credit Institutions, the Stock Market Act, the General Act on Mutual Insurance Institutions and Companies, the Federal Law on Surety Institutions and the General Law on Credit Organizations and Auxiliary Activities in order to contemplate the following:

The amendments established that brokerage firms, insurance companies and surety companies may only act as fiduciaries in transactions linked to their purpose. Thus powers were conferred on the Ministry of Finance and Public Credit (SHCP) for determining other types of trusts that such entities may undertake with the Committee's prior opinion.

It was stipulated that with reference to general rules Banco de México must regulate the characteristics that trust transactions undertaken by insurance and surety companies must adhere to. Bank and brokerage firm laws contain similar provisions.

Likewise, it was determined that at the proposal of the National Insurance and Surety Commission, and after hearing Banco de México's opinion, the Ministry of Finance and Public Credit can instruct insurance and surety institutions to suspend transactions that violate the rules issued by the Central Bank. In the case of brokerage firms this power will be exercised by the National Banking and Securities Commission.

Some bans were established in relation to the fiduciary activity of diverse intermediaries, the main ones being:

- a) For banks, brokerage firms, insurance and surety companies:
  - i. Participate in trusts through which public funds are captured either directly or indirectly through any act causing direct or contingent liability, except as provided for banks, brokerage firms and insurance institutions in relation to those trust funds set up by the Federal Government through the Ministry of Finance, establishing a second provision for credit institutions and brokerage firms relative to those trusts through which securities registered in the National Securities Registry are issued;
  - ii. Act as fiduciary institutions in trusts through which constraints or bans contained in financial laws are evaded, and
  - iii. Create trusts in which activities reserved for mutual funds take place.
- b) In the case of brokerage firms, insurance and surety institutions, the possibility of acting as fiduciary institutions in trusts that manage sums of

money periodically contributed by consumer groups formed by marketing systems and destined for the acquisition of certain goods and services provided for in the Federal Consumer Protection Law, commonly called "self-financing" was banned.

- c) A ban on conducting transactions with the institution itself in order to comply with trusts was included with the exception of trusts authorized by Banco de México.
- d) Likewise the Law on Credit Institutions stipulated that banks may not offer in guarantee, including pledge, securities guarantee or collateral trust, cash, credit rights in their favor or portfolio securities, unless the transactions are conducted with Banco de México, development banks, the Bank Savers Protection Institute, public trusts created by the Federal Government for economic development or when they have been exempted for the purpose by Banco de México.

The Securities Market Act was also modified to establish the possibility of agreeing that the ownership of the securities subject to the securities guarantee can be transferred to the creditor who will be under the obligation to replace them for ones of the same type. The guarantee will be completed through the legal delivery of the securities to the creditor using the procedures applicable to securities deposit institutions when transferring securities.

The possibility of institutions acting as managers of collateral granted through a securities guarantee is contemplated.

With respect to amendments to the General Act on Credit Organizations and Auxiliary Activities, it was established that if in the event of default on an enforceable obligation in a financial leasing agreement a financial leasing company legally requests possession of the goods, the assets recovered in relation to said non-compliance can be offered for financial lease.

Finally, the Law on Credit Institutions and the General Act on Credit Organizations and Auxiliary Activities, respectively, establish requisites regarding the content of bank accountant-certified account statements for purposes of authentication in legal proceedings concerning borrowers' outstanding balances as well as requisites that certified account statements corresponding to financial leasing and financial factoring contracts should contain in order to be considered executory documents.

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

Published in the Official Federal Gazette on June 13th, 2003 the reforms were aimed at strengthen funding conditions for the benefit of the country's productive and commercial activities by modifying regulations applicable to diverse loan transactions and loan guarantees as well as rules related to the

resolution of disputes with a view to procuring a fair and efficient regulatory framework for borrowers and lenders.

- **GENERAL LAW ON CREDIT INSTRUMENTS AND TRANSACTIONS**

**a) Trusts in general**

In order to ensure that the trust benefits the parties as much as possible, the fiduciary institution may make full use of its assets and rights, on the understanding that as a trust, ownership of one or more of the assets or rights, as applicable, is transferred to it for lawful and specific purposes, which are entrusted to the fiduciary institution.

In accordance with the above and in order to effectively guarantee that the assets or rights held in trust are put to the exclusive use indicated by the trust itself, the fiduciary institution must keep an accounting record of the assets and rights involved in the operation which must be separate from assets that can be freely disposed of.

It is stipulated that in cases in which the law also allows the fiduciary institution to be a trustee, the parties must agree on the mechanisms for resolving possible conflicts of interest.

In order to maintain congruence with provisions contained in other laws under which entities other than banks can be fiduciary institutions, it is stipulated that those entities the law so determines may act as such.

The trust may be terminated at the express wish of the trustor, trustee and the trust.

Once the trust fund has been extinguished the remaining assets can be delivered to the trustor or trustee, whichever is appropriate, and any doubts or disagreements will be resolved by the competent judge corresponding to the fiduciary institution's domicile.

Furthermore, the term of the trusts was extended to 50 years and current exceptions with respect to public trusts, charitable trusts or not-for-profit trusts set up to maintain museums were kept.

**b) Non possessory pledge and collateral trust**

With respect to the non-possessory pledge the possibility of an agreement under which the creditor or a third party other than the debtor take material possession of the goods was eliminated in order to clearly indicate that this type of pledge is based on the assumption that the debtor retains ownership



rights with respect to such assets.

Furthermore, in order to boost the use of the collateral trust under more accessible conditions for debtors, give trustors and creditors more legal certainty and give parties more room to agree on stipulations of their interest and thereby reactivate credit, diverse clarifications were made to the regime that are applicable to it.

Regarding this it is clearly indicated that the trustee will have preference with respect to the payment of the guaranteed debt. Likewise, brokerage firms are allowed to act as fiduciary institutions for such trusts.

Furthermore, and under terms similar to those foreseen for the trust in general, the parties must agree to the terms and conditions for resolving any possible conflicts of interest when banks, insurance companies, surety companies, brokerage firms, limited purpose financial companies and general deposit warehouses become fiduciary institutions for trusts whose purpose is to guarantee obligations in their favor.

Finally, it is established that if the trustor as depositor of the assets or owner of them refuses to return them to the trustee, the procedure for their replacement will be the one set forth in Book Five Title Three Bis of the Code of Commerce related to procedures for executing the non-possessory pledge and collateral trust. This means that in the first instance of non-compliance in which the trustor refuses to return the asset, a prior and legally established procedure for recovering it is activated.

One of the most important developments with respect to changes related to the collateral guarantee is the possibility of parties being able to freely agree on how in the event of debtor default, the trust assets will be disposed of out of court, in compliance with minimum procedural requirements, which include four fundamental debtor rights: a) the right to be notified of the trustee's decision to sell the trust assets following receipt of the trustor's decision not to comply; b) their right of opposition, either by exhibiting the debt amount, complying with the collateral obligations or submitting a document confirming the extension of the term or novation of the obligation; c) their right that this out-of-court sale agreement be included in a special section of the guaranty trust's constituent instrument, with their signature and a ratified acceptance in addition to the one given when the agreement was entered into; and d) their right that said instrument stipulate the timeframes that have been agreed on for undertaking the above-referred acts.

Furthermore, in the event of no out-of-court sale agreement, the procedures established in Book Five of Title Three Bis of the Code of Commerce for the sale of trust asset will come into effect, which, if appropriate, the Fiduciary must undertake, or initiation of the suit to oppose the trust's execution.

- **CODE OF COMMERCE**

Amendments to the Code of Commerce were made to expedite business lawsuits, especially at the verdict stage. Clearer and more balanced rules are established with respect to the rights of parties to agreements and business lawsuits.

The current supplementary provisions in the area of commercial procedures pursuant to articles 1054, 1063, 1393, 1401 to 1414 of the Code of Commerce were amended, so that the Civil Procedures Federal Code could be applied instead of the respective Law on local procedures should the parties fail to reach an agreement about the Court procedure to follow, or when no special or supplementary procedure is expressly stated. This establishes a single series of rules for all business lawsuits filed in any Mexican state.

With respect to third party proceedings the lawsuit and assets auction will continue if the opposing party produces a document which satisfies the judge that he has ownership or rights associated with the legal action that is being brought and in the case of property, unless the third party produces the public or equivalent document registered in the Public Registry of Commerce.

They are included in the documents which entail implementation of the testimonies and certified copies of public documents issued by notaries.

Finally, amendments and additions were made in order to establish a series of procedures that clarify and expedite the asset auction stage. Likewise, similar reforms were made to expedite the final stage of the execution of the collateral granted via the non-possessory pledge and collateral trust according to which: i) if the value of the collateral is lower than the amount of the debt, the creditor or fiduciary, whichever is appropriate, may dispose freely of them and the credit will be fully settled; ii) if the value of the assets is lower than required, the creditor or fiduciary may freely dispose of them and retain their rights to request the remaining amount of the debt via the appropriate legal means, with the exception of home loan guarantees with certain characteristics; and iii) if the sale price of such assets is above the debt amount, the creditor must deliver the remaining amount to the debtor. In the latter case the sale of collateral assets will take place in the presence of a judge and follow an expedite process.

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<sup>1</sup> Circular-Telefax 10/2003 directed at the country's banks.

<sup>2</sup> Circulars-Telefax 6/2003 and 7/2003 directed at commercial and development banks, respectively, Circular 1/2003 directed at brokerage houses as well as Circular 1/2003 directed at mutual funds, including Siefoses.

<sup>3</sup> Circular-Telefax 18/2003 directed at the country's banks.

<sup>4</sup> Circulars-Telefax 14/2003 and 15/2003 directed at commercial banks and development banks, respectively.

<sup>5</sup> Circulars 1/2003 and 1/2003 Bis directed at banks, brokerage firms, mutual funds and mutual funds specializing in retirement funds.

<sup>6</sup> Circulars-Telefax 28/2003 and 29/2003, directed at commercial and development banks, respectively.

- <sup>7</sup> Circulars-Telefax 3/2003 and 4/2003 and Circular 10-245 BIS 1 issued jointly with the National Banking and Securities Commission directed at commercial banks, development banks and brokerage firms, respectively.
- <sup>8</sup> Circular-Telefax 2/2003 directed at development banks.
- <sup>9</sup> Circular-Telefax 1/2003 directed at commercial banks.
- <sup>10</sup> Circulars 3/2003, 4/2003 and 5/2003 directed at mutual funds and Circulars 1/2003, 2/2003 and 3/2003 directed at mutual funds specializing in retirement funds.
- <sup>11</sup> Circular-Telefax 8/2003 directed at the country's banks.
- <sup>12</sup> Circulars-Telefax 19/2003 and 20/2003 directed at commercial banks and development banks, respectively, and Circular 3/2003 directed at brokerage firms.
- <sup>13</sup> Circulars-Telefax 21/2003 and 22/2003 directed at commercial and development banks, respectively.
- <sup>14</sup> Circular-Telefax, 30/2003, and 31/2003 and 32/2003, directed at commercial and multiple banks, respectively.
- <sup>15</sup> Circular-Telefax 23/2003 directed at commercial banks.
- <sup>16</sup> Circulars-Telefax 24/2003 and 33/2003 directed at commercial banks and Circulars 4/2003 and 6/2003 directed at brokerage firms.
- <sup>17</sup> Circular-Telefax 25/2003 directed at commercial banks.
- <sup>18</sup> Circular-Telefax 16/2003 directed at commercial banks.
- <sup>19</sup> Circular-Telefax 19/2002 Bis directed at the country's banks.
- <sup>20</sup> Circular-Telefax 26/2003 directed at commercial banks.
- <sup>21</sup> Circulars-Telefax 9/2003 and 17/2003 directed at commercial and development banks, respectively; Circular 2/2003 directed at brokerage firms; Resolution indefinitely extending the validity of Rule NINETEEN of the Rules to which Money Exchanges will adhere in their transactions, which was added through the resolution published in the Official Federal Gazette on March 28th, 2011 and the Resolution that indefinitely extends the validity of Rule EIGHT of the Rules to which the foreign exchange risk positions of financial leasing and factoring companies that form part of financial groups that include insurance companies will adhere and in which commercial banking institutions and brokerage firms do not participate added through the resolution published in the Official federal Gazette on March 27<sup>th</sup>, 2003.
- <sup>22</sup> Circular-Telefax 34/2003 directed at commercial banks and Resolution modifying the general Rules to which banks receiving foreign-currency denominated deposits will adhere published in the Official Federal Gazette on December 10th, 2003.
- <sup>23</sup> Resolution modifying the Rules money exchanges will adhere to with respect to foreign currency and precious metal transactions published in the Official Federal Gazette on March 11<sup>th</sup>, 2003.
- <sup>24</sup> Circulars-Telefax 11/2003 and 12/2003 directed at commercial and development banks, respectively, Circular 10-238 Bis directed at brokerage firms and Circular 2/2003 directed at mutual funds, including funds specializing in retirement funds, respectively
- <sup>25</sup> Circular-Telefax 27/2003 directed at the country's banks.
- <sup>26</sup> Circular-Telefax 5/2003 directed at the country's banks.