

## **2010 FINANCIAL SYSTEM REFORMS**

The document is divided into two sections. The first is a brief description of the most important provisions issued by Banco de México in 2010. In order to facilitate their consultation the provisions were divided into the following headings: I.1 Monetary and Foreign Exchange Policy; I.2 financial agent of the Federal Government of the United Mexican States; I.3 As a regulator of the financial system; and I.4 Issued under the Financial Services Transparency and Regulation Law. The second section is a brief summary of the more relevant amendments to financial legislation during the period.

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

#### **I.1 Monetary and Foreign Exchange Policy**

##### **UNITED STATES (US) DOLLAR AUCTION**

- a) In compliance with the Foreign Exchange Commission agreement released on February 22nd, 2010, "Rules for US dollar sale options" were issued on February 23<sup>rd</sup>, 2010.<sup>1</sup>

The Rules aim to facilitate the accumulation of international reserves in order to improve the country's credit profile. To achieve this objective, Banco de México will auction 600 million dollars in sell options among banks on the last working day of the month.

Banks that obtain the option have one month immediately following the date of the auction to exercise it at the reference interbank exchange rate (FIX) set the preceding working day, as long as said exchange rate is not above the average rate of the twenty working days prior to the exercise of the respective option.

Finally, the Rules establish that the aforementioned sell options will not be taken into account when calculating exchange rate risk positions or liabilities, and the latter will only apply to multiple banking institutions.

- b) The Rules were subsequently clarified to cover sell options, so they are not taken into account when calculating foreign exchange risk positions or liabilities, and the latter only apply to multiple banking institutions. It was also established that rules for undertaking derivative transactions are not applicable to said scheme.<sup>2</sup>
- c) Furthermore, in order to give dollar sell option auctions more depth, Banco de México modified Circular 8/2010 so that banks that had received an assignment in Banco de México's own Sell Option auctions could enter into parallel dollar sell options with the same characteristics as those assigned with clients; it was also envisaged that such transactions would enjoy

exception regimes applicable to transactions entered into with the Central Bank –not taken into account for calculating foreign exchange rate risk positions or in the case of Liability and Investment Admission Regimes or the application of derivative rules–.<sup>3</sup>

- d) In accordance with the Foreign Exchange Commission agreement released on April 9th, 2010, Circular 47/2008 on daily dollar sell auctions at a minimum exchange rate of two percent above the rate was suspended, as this mechanism implemented on October 8th, 2008, had been part of measures to tackle great uncertainty in markets during the international economic and financial crisis, but by 2010 conditions in both international and local markets had begun to stabilize, foreign exchange market liquidity had recovered, and international financial markets had become easier to tap.<sup>4</sup>

#### **RULES FOR GOVERNMENT SECURITIES AND MONETARY REGULATION BOND AUCTIONS UNDERTAKEN BY BANCO DE MÉXICO**

In order for brokerage firms, mutual funds and retirement investment funds to participate in the Government Securities and Monetary Regulation Bond Auctions the Bank undertakes for monetary regulation purposes, “Banco de México Rules for Government Securities and Monetary Regulation Bond Auctions” were issued, in which those applicable to banks are repeated.<sup>5</sup>

Consequently, in the Government Securities placement regime applicable to brokerage firms it was clarified that such intermediaries could participate in said auctions as long as they adhere to the Rules mentioned in the previous paragraph.<sup>6</sup>

Furthermore, in order to standardize the schedule used by Banco de México to publish auction results, a decision was made for them to become available 60 minutes after the time period for presenting bids pertaining to each auction had expired, both with respect to rules applicable to multiple banking institutions and those related to development banks.<sup>7</sup>

## **I.2 As the financial agent of the Federal Government of the United Mexican States**

### **SYNDICATED PLACEMENT OF GOVERNMENT SECURITIES**

In accordance with the Ministry of Finance and Public Credit (SHCP)'s instruction contained in Document number 305.- 016/2010 dated February 9<sup>th</sup>, 2010, Banco de México issued "Rules for the Syndicated Placement of Government Securities" as part of a Federal Government financing strategy called the syndicated placement method, comprising the following stages: a) SHCP's designation of market makers to act as leading and secondary distributors; b) distributors' signature of the contract with Banco de México; c) gathering buy expectations from distributors; d) preparation of the book by the leading distributors; and e) the SHCP's determination of the buy expectations it deems eligible and on which the syndicated placement will be based as per the terms of the Regulations issued by the Central Bank.

The SHCP announced that the mechanism aimed to continue boosting the liquidity of Federal Government bonds and to broaden the public investor base. The new debt schedule will also complement weekly government security auctions and permit an ongoing improvement in the efficiency of Mexico's debt market by including a larger number of securities in new bond issuances.<sup>8</sup>

## **I.3 As financial system regulator**

### **ANTI-MONEY LAUNDERING**

In view of the publication of the "Resolution to amend and insert the general provisions referred to in article 115 of the Law on Credit Institutions" published in the Official Federal Gazette by the SHCP on June 16<sup>th</sup>, 2010 aimed at limiting the cash transactions in US dollars that banks may receive from clients and users, Banco de México decided to adapt its regulations to enable banks to adjust their buy transactions, reception of deposits, reception of loan and services payments as well as fund transfers or situation to the results issued by said Ministry.

Consequently, “General rules banks should adhere to when receiving demand deposits in foreign currency with or without a checkbook” that are part of Annex 1 of Circular 2019/95 and Annex 2 of Circular 1/2006 were amended along with diverse numbers of Circular 2019/95 and 1/2006, so that the constitution of or increase in deposits with or without a checkbook denominated and payable in foreign currency that take place through the delivery of dollars in cash adhered to the “General provisions referred to in article 115 of the Law on Credit Institutions”.<sup>9</sup>

Subsequently, in view of the publication of amendments to the “General provisions referred to in article 95 of the General Law on Credit Organizations and Activities applicable to Money Exchanges” as well as the issuance of the “General provisions referred to in article 212 of the Securities Market Act” by the SHCP, as published in the Official Federal Gazette on September 9th, 2010 establishing the rules applicable to US dollar transactions in cash that money exchanges and brokerage firms may receive from clients and users, Banco de México decided to adapt its regulations in order for these entities to adjust their operations to the Ministry’s rules.<sup>10</sup>

#### **RULES RETIREMENT INVESTMENT FUNDS MUST ADHERE TO WHEN ENTERING INTO FINANCIAL TRANSACTIONS KNOWN AS DERIVATIVES**

Banco de México made amendments to derivative transaction regulations so that banks and brokerage firms could enter into these transactions with merchandise as underlying assets as long as settlement involves calculating differences in cash. The Central Bank decided to make this change because most of the countries where derivative transactions take place allow merchandise to be used as underlying assets.

Authorized underlying assets are: i) yellow corn, wheat, soya and sugar; ii) pork; iii) natural gas, and h) aluminum and copper. In the case of development banks gold and silver are also underlying assets.<sup>11</sup>

#### **CREDIT CARD RULES**

The Central Bank issued new credit card Rules on the understanding that in order to promote the healthy development of the financial system and protect the public’s interests it was necessary to:

a) Give credit card holders greater protection when their credit cards are stolen or lost by establishing simple and expedite rules that enable them to request the corresponding clarifications from issuers. Card holders must nevertheless follow the procedure set forth in Article 23 of the Financial Services Transparency and Regulation Law;

b) Establish incentives for credit card issuers to adopt additional measures for the benefit of card holders in order to reduce risks derived from their use in commercial transactions involving web pages (Internet); as well as to avoid the wrongful use of information contained in said credit cards ("cloning");

c) Standardize rules and formats enabling card holders to authorize recurrent payments of goods or services by linking them to their credit cards (direct debits) in order to facilitate the acquisition of this service, objections to erroneous charges, and the cancellation of the service quickly and securely;

d) Establish the way in which credit card issuers determine the minimum payment required of card holders in each period through the inclusion of a formula whereby each minimum payment amortizes part of the principal to ensure that debts are paid off within a reasonable period of time, and

e) Update regulations issued by the Central Bank in relation to credit cards to facilitate their consultation and application. That is why following the coming into effect of these Rules, Circular 29/2008 published in the Official Federal Gazette on July 11, 2008 was repealed, including amendments released through Circular 4/2010 published in the Official Federal Gazette on January 18<sup>th</sup>, 2010.<sup>12</sup>

#### **GENERAL RULES CREDIT INFORMATION COMPANIES AND THEIR USERS MUST ADHERE TO**

Banco de México amended the "General rules to which credit information companies and their users must adhere" to anticipate the possibility of such companies sending client credit reports to users when their fingerprint instead of their signature is used to obtain authorization, as long as users are able to provide reliable evidence that the fingerprint was taken exclusively for that purpose. Several precisions were also made to the rules in view of amendments to the Law for the Regulation of Credit Information Companies, published in the Official Federal Gazette on May 25<sup>th</sup>, 2010.<sup>13</sup>

## **PAYMENT SYSTEMS**

### **A. Interbank electronic payment system (SPEI)**

In order to continue to foster a solid payments system, Circular 1/2006 containing "Rules for interbank electronic payment systems (SPEI)" was modified so that Telecomunicaciones de México (Telecomm) could participate in it. As a result, changes were made to the "Third Party Counter" payment scheme whereby orders can be sent via SPEI to beneficiaries in receiving entities that do not have accounts, by modifying the length of time said entities must keep the orders available to the beneficiary the parties agree to without exceeding thirty days.<sup>14</sup>

### **B. New "Interbank electronic payment system rules"**

On June 15th 2010 the Official Federal Gazette published the new "Interbank Electronic Payment System (SPEI) Rules", repealing Circular 1/2006 issued on May 19th, 2006 which had regulated said system in order to foster transparency by including public security measures for sending Transfer Orders through SPEI; compile the current regime; make diverse precisions and continue to encourage the sound working of payment systems and protect public interests through the inclusion of measures that help boost SPEI efficiency by reducing the time it takes to deliver, credit and return Transfer Orders.<sup>15</sup>

Among other things these Rules require that participants send transfer orders within 30 seconds of receiving clients' instructions, that the funds be credited to the beneficiaries' accounts within 30 seconds of receiving them and that transfer orders that cannot be credited within a minute be returned. Rules were established to lengthen the hours during which the SPEI transfers service is available at their Internet portals and to make information that is sent to clients clearer and more homogeneous. This should improve the complaints and clarification process.

### **C. Deposit account direct debits**

"Rules for the direct debiting of bank deposit accounts"<sup>16</sup> were amended along with "General provisions concerning payment crediting"<sup>17</sup> and "Rules for credit card issuance and operations"<sup>18</sup>, respectively, in order to clarify that the payment of loans or funding, including revolving loans,

associated with credit cards can be made by directly debiting a demand or savings account.

Furthermore, modifications to "Rules pertaining to the direct debiting of bank deposit accounts", deal with how banks must comply with the obligation to announce and receive through their web sites diverse formats for formalizing, canceling and objecting to charges related to the direct debit service, either through the section the general public has access to or the electronic banking section.

#### **I.4 Provisions issued under the Financial Services Transparency and Regulation Law**

##### **A. Commissions**

Considering that on October 12th, 2009 the Official Federal Gazette published Circular 24/2009, modifying Circular 17/2009 relative to "General provisions related to commissions", which anticipates, among other aspects, the information ATM operators must display on their screens in relation to how fees are charged, diverse numbers of Circulars 2019/95 and 1/2006 which also contemplated normative aspects in relation to information banks should inform their clients about on the screens of the ATMs they operate were repealed.<sup>19</sup>

##### **B. Total Annual Gain (TAG)**

Banco de México issued the "General provisions establishing the calculation methodology, formula, components and assumptions of the Total Annual Gain (TAG)" in order to foster the healthy development of the financial system, protect the public's interests and encourage transparency and competition considering that on May 25th 2010 the Official Federal Gazette published a decree reforming, among others, the Financial Services Transparency and Regulation Law (LTOSF), empowering the Central Bank to establish through general provisions, the formula, components and methodology for calculating the TAG as well as for determining the rates and transaction amounts it would be applicable to.

With a uniform methodology for calculating TAG those interested in undertaking an investment or saving can easily compare financial returns, giving them more elements on which to make an informed decision, thus fostering competition between banks that receive the public's deposits and ultimately benefiting the population.

These provisions are applicable to transactions banks enter into for amounts below the equivalent in local currency of 400,000 UDIS, as indicated below:

- a) Deposits that can be withdrawn with prior notice; deposits withdrawable on preset days; savings deposits; fixed term deposits; and loans documented in promissory notes for settlement at maturity, and
- b) Other debit transactions whose name, publicity or propaganda include the words saving or investment or else lead the public to assume that they concern a savings or investment financial product.<sup>20</sup>

### **C. Transfers of Wages and Other Employment Entitlements**

Provisions related to Transfers of Wages and other employment entitlements contained in Circular 25/2008, as: i) some banks expressed the issue of there not being a uniform and efficient procedure for clients with a payroll account at one bank who wish to receive their wage and other employment entitlements at another to follow in order to request the respective transfer, and ii) amendments were made to the Financial Services Transparency and Regulation Law establishing that the right to request the transfer also apply to funds related to pension payments.

These amendments were established in a single format so that clients can request the transfer of the funds. Also, in addition to the request, banks may only ask to see an official ID, and at the client's discretion, the contract, account statement or debit card related to the account where the funds are to be transferred; banks' obligation to publish the format on the Internet and at their branches. The obligation to transfer funds related to wages and other employment entitlements includes pensions.

The obligation of banks offering the payroll service to allow employers to deposit employment entitlements directly in the accounts they have designated through the same electronic dispersal process used to deposit them in the payroll account.<sup>21</sup>



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

**DECREE through which diverse provisions of the Financial Services Transparency and Regulation Law, the Law on Credit Institutions, the Law for the Regulation of Credit Information Companies, the Law for the Transparency and Promotion of Guaranteed Loan Competition and the Banco de Mexico Act are amended, extended and repealed (May 25, 2010).**

### **Financial Services Transparency and Regulation Law**

- Banco de México is empowered to regulate any charge concept other than interest rates and commissions with respect to transactions entered into by banks with clients and may request the opinion of the National Banking and Securities Commission (CNBV), the National Commission for the Protection and Defense of Financial Service Users (CONDUSEF) or the Federal Anti-Trust Commission (COFECO).
- Banco de México will ensure that banks, limited purpose non-bank banks (sofoles) and regulated multiple purpose non-bank banks (regulated sofomes) grant loans or credit in accessible and reasonable conditions. In order to do this it must take into account financing conditions prevailing in the local market, the cost of deposits, costs related to loan granting and administration, the likelihood of non-compliance and expected losses, capital adequacy and other pertinent aspects.

Regarding this Banco de México is empowered to ensure that banks, sofoles and regulated sofomes grant loans or credit under accessible and reasonable conditions, and to take the corresponding corrective measures pursuant to transactions taking place in the above-mentioned terms, including establishing limits on interest rates applicable to specific transactions, in which case it may avail itself of the right to make relevant comparisons. The application may differ by credit type, market segment or any other pertinent criteria, and the Bank must also ensure that low income segments of the population are not precluded from credit schemes.

- Banco de México must include rules that limit or prohibit commissions that distort healthy trading practices or undermine transparency and clarity when they are charged in provisions specifically related to them, and is also empowered to sanction failure to comply.

- Criteria is established that entities must comply with so that commissions are clear and transparent. Such criteria are: i) the use of simple and understandable language; ii) the obligation to inform the commission amount or the calculation method; iii) clear identification of the development, act or event generating it; indication of the date on which the development that generated it took place and the date on which payment must be made as well as: iv) the obligation to anticipate the period covered or in the event of a single charge, indicate this circumstance and its enforceability date.
- Every two months Banco de México agrees to publish information and indicators about interest rate behavior and the commissions corresponding to different market segments, of the transactions that banks, sofoles and regulated sofomes undertake.
- Banco de México has the power to veto new commissions or increases by institutions in the event of observations having been formulated and published during the incorporation in the record of commissions it manages.
- Banco de México has the power to regulate the formula, components and methodology for calculating the Net Total Annual Gain (TAG) and must establish the types and amounts of the transactions to which it will apply as well as the power to sanction failure to comply.
- New powers are conferred on Banco de México in the area of payment systems, in particular to: i) grant authorizations to organize and operate as a clearing house; ii) issue provisions on information and documents those interested must present for that purpose; iii) impose fines for non-compliance with provisions directed at the houses foreseen in the law and in regulations thereto as well as iv) suspend or partially limit clearing house transactions in the event of repeat non-compliance.
- Banco de México may issue general provisions on terms, standards, conditions and procedures clearing houses must adjust to when linking their systems.

### **Law on Credit Institutions**

- Banco de México is empowered to regulate the terms and conditions of basic products to ensure that banks offer two products, a payroll deposit or savings product and another with the same characteristics for the general public.
- The credit card basic product is included.

### **Law for the Regulation of Credit Information Companies**

- Powers are transferred to the CNBV to determine the standards and

amounts payable to exchange the primary databases of the Credit Information Companies (SICS).

- The obligation of SICS to issue credit reports and special credit reports with information from all credit bureaus.
- Minimum required information for the above-referred credit reports with the CNBV being empowered to issue provisions to make exceptions, embellish on or clarify the requisites set forth in the law.
- CNBV is empowered to suspend or partially limit SIC activities.

### **Law for the Transparency and Promotion of Guaranteed Loan Competition**

- Banks that grant loans with a mortgage guarantee face new obligations: i) present before a notary public the deed evidencing the cancellation of the respective lien, and ii) make the first title deed available to the borrower sixty working days following cancellation of the loan or, if a public document is not required, deliver proof of release from the obligation to record it in the Public Property and Commerce Register within twenty days, the bank then being responsible for signature certifications or ratifications before a notary in relation to the corresponding cancellation.

### **Banco de México Act**

- Banco de México shall regulate commissions, lending and borrowing rates as well as any other concept (charge) related to transactions between banks with clients and may also request the opinion of the CNBV, CONDUSEF or COFECO pursuant to the Financial Services Transparency and Regulation Law.

- The Governor of Banco de México must appear before Senate committees each year during the second ordinary period of sessions to inform on compliance with the mandate.
- Every quarter Banco de México shall send a report to the Congress of the Union on inflation, the evolution of the economy and the behavior of the country's economic indicators.
- Civil servants that fail to comply with the provisions of the Banco de México Act may be subject to impeachment in accordance with articles 108 and 110 of the Constitution of the United Mexican States.

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- 1 Circular 8/2010, directed at banks, dated February 23rd, 2010.
  - 2 Circular 9/2010, directed at banks, dated February 24th, 2010.
  - 3 Circular 13/2010, directed at banks, dated April 14th, 2010.
  - 4 Circular 12/2010, directed at banks, dated April 13th, 2010.
  - 5 Circular 40/2010, directed at brokerage firms, mutual funds and investment funds specializing in retirement funds, dated December 13th, 2010.
  - 6 Circular 41/2010, directed at brokerage firms, dated December 14th, 2010.
  - 7 Circulars 42/2010, directed at multiple banking institutions and 1/2006 Bis 37, directed at development banks, both dated December 15th, 2010.
  - 8 Circular 7/2010, directed at banks and brokerage firms, dated February 10th, 2010.
  - 9 Circular 18/2010, directed at banks dated June 15th, 2010 and Circulars 19/2010 and 1/2006 BIS 32, directed at multiple banking institutions and development banks dated June 16th, 2010.
  - 10 Circular 27/2010, directed at credit companies and Circular 28/2010, directed at brokerage firms, both dated September 30th, 2010.
  - 11 Circular 32/2010, directed at multiple banking institutions, brokerage firms, mutual funds and limited purpose companies dated October 21st, 2010, as well as Circular 1/2006 Bis 36, directed at development banks dated October 25th, 2010.
  - 12 Circular 34/2010, directed at multiple banking institutions, limited purpose non-bank banks and regulated multiple purpose non-bank banks dated November 11th, 2010.
  - 13 Circular 39/2010, directed at credit information companies dated December 8th, 2010.
  - 14 Circular 11/2010 directed at popular savings and loans companies; banks, insurance companies, securities deposit institutions; companies that distribute mutual fund stock; Limited purpose non-bank banks; multiple purpose non-bank banks, companies that operate mutual funds and Telecomm, dated April 12<sup>th</sup>, 2010
  - 15 Circular 17/2010, directed at participating entities dated June 14th, 2010.
  - 16 Circular 2/2010, directed at banks dated January 13th, 2010.
  - 17 Circular 3/2010, directed at banks, limited purpose non-bank banks and regulated multiple purpose non-bank banks dated January 13th, 2010.
  - 18 Circular 4/2010, directed at banks, limited purpose non-bank banks and regulated multiple purpose non-bank banks dated January 13th, 2010.

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- <sup>19</sup> Circulars 5/2010 and 1/2006 Bis 30, directed at multiple banking institutions and development banks, respectively, both dated January 15th, 2010.
- <sup>20</sup> Circular 35/2010, directed at banks, popular financial companies and savings and loans cooperatives dated November 11th, 2010.
- <sup>21</sup> Circular 16/2010, directed at banks dated June 1st, 2010.