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Chapter 3

Banking, Securities, and Finance

Introduction



The banking, securities, and **financial industry** is one of the fastest growing sectors in Mexico. It principally regulates and supervises the raising of funds from the general public; the prevention of transactions undertaken with illegally obtained resources; and the protection of information related to financial transactions, which involves the regulation of corporate matters.

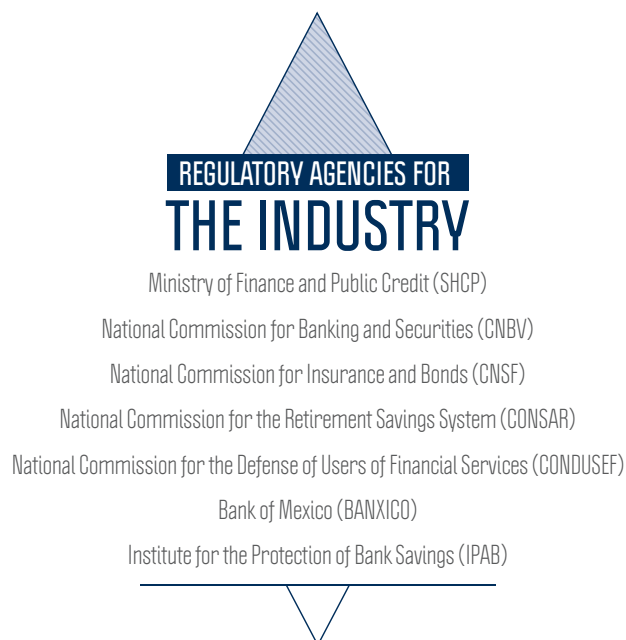
The raising of funds includes activities such as sale of securities, accepting bank deposits, and lending credit. Regarding the latter, however, factoring and capital leasing have been deregulated and do not require a license. These last three are activities engaged in by multipurpose financial companies, or SOFOMEs.

The regulation of the securities industry was reformed in 2005 with the passage of the Securities Market Law, which provides for three new types of joint stock companies: the Investment Promotion Corporations, both those that do and do not issue securities, and Stock Corporations.

The regulatory agencies for this sector are: (i) the Ministry of Finance and Public Credit (SHCP); (ii) the National Commissions: (ii.1) of Banking and Securities, (ii.2) of Insurance and Finance, (ii.3) for the Retirement Savings System, (ii.4) for the Defense of Users of Financial Services; (iii) the Bank of Mexico; and (iv) the Institute for the Protection of Bank Savings.

KEY POINTS

- All areas of financial activity are open to foreign investment through the establishment of an affiliate.
- These institutions require authorization to operate: (i) banks; (ii) brokerage firms; (iii) stocks and ratings agencies; (iv) institutions for depositing stocks; (v) insurers; (vi) bonding companies; (vii) general depository institutions; (viii) currency exchanges; and (ix) credit information companies.
- SOFOMEs do not require authorization to operate because they are funded by investors in the securities market, and do not attract resources from the general public.
- Money transfer companies do not require the issuance of a license or permit, but are subject to certain obligations to prevent transactions from being undertaken with illegal resources.
- Tender offers can be public or private.



QUESTIONS AND ANSWERS

- 1- Is it possible to offer financial products and services without authorization from the government?**

Only in leasing, factoring, credit, and money transfers.

- 2- What relevant laws and regulations should be considered in financial matters?**

The circulars published by the regulatory commissions examine various corporate and administrative requirements. Additionally, the SHCP has rules for preventing transactions from being undertaken with illegal resources. There are also consumer protection laws that provide rules for public information related to mortgage and consumer lending.

- 3- Under what circumstances is a securities offering considered public?**

Securities offerings are considered public when the purchase and sale of securities is announced to the general public through mass media communication.

- 4- Under what circumstances is a securities offering considered private?**

A securities offering is considered private when it is offered to less than 100 people, conducted pursuant an employee benefits program, carried out amongst members of a private organization, or conducted with an investor of high-net worth or an institutional investor.

- 5- Can a foreign insurer insure business conducted in Mexico?**

No, not if the person insured is in Mexico or the insured risk will happen in Mexico. An insurer also cannot insure financial transactions if the transactions to be insured are subject to Mexican law.

CASE STUDY

A company wants to enter the Mexican market to offer certain financial products and services, namely: (i) credit, debit, and prepaid cards; (ii) electronic payment services; (iii) stock investment advice; and (iv) credit information.

Do you need a license to provide the services mentioned in the previous paragraph?

Financing credit and offering securities investment advice does not require authorization, however, electronic payments and credit counseling are subject to the discretionary approval of financial authorities because they involve attracting resources from the general public or brokerage services.

Why is the granting of credit not subject to approval?

Credit is deregulated to the extent that the institution's own money is being lent or that it is obtained from investors as a result of prior transactions that were supervised by a regulatory authority, as in the case of negotiable instruments.

Why is the offering of stock investment advice not subject to prior approval by relevant financial authorities?

Such activity is considered "self-regulated" and is provided as a professional service. People who are engaged in offering investment advice are not subject to supervision by relevant authorities, but are forbidden from receiving their clients' money in order to invest it, prohibiting them from being intermediaries. Nor may they receive compensation from companies they recommend for investment since they depend on client fees.

