COMMENTS TO THE FINANCIAL REFORM

I. INTRODUCTION.

The Federal Official Gazette published the Decree amending, supplementing and repealing various provisions on financial matters and the Law to Regulate Financial Groups (the financial reform) on January 10th, 2014. Given the multiplicity of issues comprising said financial reform, the legislative technique observed in the Decree reflects a structure divided into 13 main sections formally divided as follows:

1. ON STRENGTHENING THE CONDUSEF[1]
2. POPULAR SAVINGS AND CREDIT CORRESPONDENTS
3. CREDIT UNIONS
4. DEVELOPMENT BANKING
5. AWARD AND EXECUTION OF WARRANTIES
6. BANKRUPTCY
7. WAREHOUSES AND SOFOMES
8. BANK SETTLEMENTS
9. INVESTMENT FUNDS
10. THE STOCK MARKET
11. FINES AND FOREIGN INVESTMENT[2]
12. FINANCIAL GROUPS
13. SECURED LOANS

It is important to note that given the above structure of the Decree, changes to the same Law are occasionally contained in one or more sections of the Decree itself and according to the subject matter of the financial reform, such as the Financial Institutions Law amended in paragraphs 1, 4 and 8.

II. COMMON MODIFICATIONS.

It is also important to note that common changes are observed with respect to several laws object of the reform, on the subjects set out below:

1. **Information.** The regime to share the information obtained from financial institutions between domestic and foreign financial authorities.

2. **Penalties.**[3] Incorporate or approve the power to refrain from imposing penalties, provided the cause of such abstention is justified and relates to events, acts or omissions

[1] National Commission for the Protection and Defense of Financial Service Users (CONDUSEF)
[2] This section also contains significant amendments to the Credit Information Companies Law (Regulation)

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that: a) are not serious; b) have no elements to prove that they affect third party interests or the financial system itself; c) are not recurrent, and d) do not constitute a crime.

Incorporate or homologate the power to simply admonish (without fines) by considering: a) the offender's background, b) the gravity of the behavior, c) the fact that the offense does not affect third party interests or the financial system itself, and d) the existence of extenuating circumstances.

Specifically establish which offenses shall be considered serious.

Increase the amount of the fines, except in the Law Regulating the Activities of Cooperative Savings and Loan Associations. It also homologates the criteria to assess and individualize infringements and, in some cases, provides specific details with regard to administrative procedures (notifications, stages, administrative recourses and others).

The reform considers the generation of financial losses as an aggravating offense and a situation that could be used to impose a fine in addition to the corresponding penalty, for up to one and a half times the equivalent of such damage or of the benefit obtained by the offender.

Incorporate self-correction programs, provided such: a) are presented before the offense is identified, which cannot be serious or constitute a crime; b) are undersigned by the CEO, with an opinion from the Audit Committee; [4] c) are reported to the Board of Directors, and d) have been approved by the authorities.[5]

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[3] As for the laws related to the National Banking and Securities Commission (CNBV) (Law to Regulate Financial Groups, if the parent company in the Financial Group supervises such, the Financial Institutions Law, the Securities Market Law, the Mutual Funds Law, the General Law of Auxiliary Credit Organizations and Activities, the Credit Union Law, the Popular Savings and Credit Law, the Law to Regulate the Activities of Cooperative Savings and Loan Associations, and the National Banking and Securities Law). The foregoing is without prejudice to the adjustments also observed with respect to the catalogs of other penalties related to other laws derived from the new obligations imposed on the institutions and persons subject to the financial laws, and even incorporate other homologation measures, such as the possibility of presenting self-correction programs in the case of the Financial Consumer Protection Law and the Law of the Central Bank of Mexico (BANXICO). It does not include self-correction programs for the insurance, bonds and pensions sectors, as they already have such plans in place.

[4] This requirement has several variants, depending on the applicable law, since there are times when the subscription responsibility is not attributed to the CEO, but speaks only of the audit committee (credit unions) and the review must not be obtained from this committee, but rather from the person in charge of the entity's oversight responsibilities, as in the case of mutual funds, among others.

[5] In the case of credit institutions, the authorization must be obtained from the competent authority established by the legal provision breached (CNBV, BANXICO, Institute for the Protection of Bank Savings (IPAB), and The National Commission for the Protection and Defense of Financial Service Users (CONDUSEF).

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Vest the authority with the power needed to disseminate information on the penalties imposed, whether firm or not, and always provide the name of the offender, the legal rule breached, the type of penalty imposed (reprimand, fine, suspension, removal, disqualification and others), the amount or term of the penalty and the status of the resolution, indicating whether it is firm or can be contested, and in the latter case, if a means of defense has been filed and its type, when there is knowledge of such circumstances.

3. Foreign governments. Allowances to the ban on holding capital stock in financial institutions, applicable to foreign governments:

- Official foreigners may not hold authority positions and justify the independence of their decision-making bodies from the foreign government concerned.
- Contemplate the exceptions established in the international treaties and agreements to which Mexico is a party, when a government is involved as a result of the application of prudential measures countries implement to face financial crises.
- Allow the participation of foreign governments, when they represent a minor portion of the capital stock of the financial institutions or in the case of investments, when intended only for financial gain and not seeking to effectively manage or control the entity.

4. AML/CFT. The reform introduces the concept of a list of blocked customers, stating that financial institutions must immediately suspend all acts, transactions or services provided for customers or users the Ministry of Finance and Public Credit (SHCP) reports through a list of blocked persons, which shall be considered confidential. The purpose of the list of blocked persons shall be to prevent and detect acts, omissions or transactions that could fall under money laundering or terrorist financing assumptions. The standstill obligation shall cease to be effective when the SHCP removes the customer or user from the list of blocked persons. The Ministry itself shall establish, in the general provisions, the parameters that shall be used to determine when to introduce and remove names from the list of blocked persons.

III. CHANGES BY SECTIONS OF THE DECREE.

SECTION 1. ON STRENGTHENING THE CONDUSEF.

This Section modifies four laws including: a) the Financial Consumer Protection Law, b) the Law on the Transparency and Order of Financial Services, c) the Financial Institutions Law, and d) the National Workers Consumer Fund Institute Law (INFONACOT). The following major changes are discussed under this section based on their relevance.

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A) THE FINANCIAL CONSUMER PROTECTION LAW.

1. Bureau of Financial Institutions. The National Commission for the Protection and Defense of Financial Service Users (CONDUSEF) shall establish and maintain a Bureau of Financial Institutions to consolidate information obtained from financial entities and users, and the information provided by the relevant authorities, in the exercise of their powers. Such information shall be public.

The information contained in said Bureau will be helpful to the general public, as it will provide them with relevant information needed to make the applicable decisions in choosing the financial institution and the products and services available in the market. In general terms, the information integrated by the referenced Bureau will refer to: a) financial products, b) commissions, c) supply and sale customs and practices, d) claims including those related to unsolicited services, e) recommendations (individualized or general), f) consultations, g) opinions, h) elimination of unfair terms, i) advertising, j) statements, and other relevant information.

It also states that financial institutions must post the information the Bureau has about them, on their websites and in their branches.

2. New powers. It adds or specifies the powers vested in the CONDUSEF that include: a) organizing the new System of Financial Arbitration and keeping a register of independent arbitrators; b) filing class actions or representing a community of users whose rights are infringed by act, fact or omission; c) sending recommendations to financial institutions and informing their agencies, unions and the general public of such, while also issuing general recommendations on matters under its competence; d) reviewing and ordering (this was changed from the former term "proposing") amendments to standard form contracts and account statements.

Participation in the System of Financial Arbitration is not mandatory, but rather voluntary for financial institutions, in all cases; however, should anyone seek to participate, they must do so through the plan to register public offerings associated with the system, since such offers would facilitate user processes in resolving disputes with regard to the established services and operations through arbitration. Such offers are indefinite; however, enrollment may be revoked at any time, at the request of the financial institution.

3. Unfair terms. Unfair terms are banned from standard form agreements and the CONDUSEF is vested with the power needed to assume the existence of such terms. In any case, such attribution shall not be able to refer to interest rates, commissions or concepts involving payments the institutions receive for related transactions. However, the

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CONDUSEF shall be able to publish its views, through the Bureau, with respect to the terms is deems unfair.

4. Marketing Practices. Issue general provisions defining the activities that deviate from sound practices and customs related to the offer and sale of operations and financial services by financial institutions, with the approval of its Governing Board.

5. Technical Opinion. When the parties do not submit to arbitration, the CONDUSEF may issue an opinion through a procedural agreement and in response to the written request submitted by a user, provided the file contains elements the CONDUSEF believes substantiate the validity of such claim. The opinion can only be issued in cases related to amounts lower than three million UDIS [the Mexican investment unit], except in the case of insurance claims, which amount must not exceed six million UDIS. When the opinion describes an unfulfilled contractual obligation that is certain, payable and liquid, it shall be considered a non-negotiable enforcement order. However, this shall only apply when the figure is lower than an amount equal to 50,000 UDIS in national currency, except in matters related to insurance and pension funds, which amounts must not exceed 100,000 UDIS. Both cases shall consider the principal and its related charges.

B) LAW ON THE TRANSPARENCY AND ORDER OF FINANCIAL SERVICES (LTOSF, acronym in Spanish).

1. Means of payment networks. The reform adds a new regulatory framework to establish the terms and conditions that shall regulate the services associated with the means of payment networks. The law defines that concept of networks as a series of agreements, protocols, tools, interfaces, procedures, rules, programs, systems, infrastructure and others related to use of the means of payment.

The law defines means of payment as the debit cards linked to demand deposit accounts, credit cards issued under a credit agreement, checks, money transfer orders including bill pay or direct debit payment services, any device or interface that serves to transfer funds or make payments, as well as those the National Banking and Securities Commission (CNBV) and BANXICO collectively describe as such in their general provisions.

The corresponding regulation for the means of payment must be issued jointly by the National Banking and Securities Commission and the Mexican Central Bank (BANXICO), and include the manner and terms of service, and the exchange fees and commissions directly or indirectly charged between network participants. Such regulation must be based on the following: a) promotion and expansion of infrastructure and service offerings, b) free access for participants, including the so-called means of payment purchasers, c) the principle of non-discrimination, and d) protection of the financial service users' interests.

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2. Commissions. These include the obligation to register with the CONDUSEF, the fees unregulated SOFOMES (Multiple Purpose Financial Institutions), SOFIPOS (a form of non-banking financial entity aimed at low-income sectors), SOFICOMS (Community Financial Entities), SOCAPS (Savings and Loan Cooperatives and Credit Unions) charge for the credit and payment services offered to the general public.

3. Account portability and certain selling practices. This allows customers to transfer their consumer loans, payroll account funds, pension payments and other employee benefits to another financial institution.

It prohibits conditioning the purchase of one product to the purchase of another ("tied" sales plans). However, the Law concedes the possibility of linking one product with another provided by a different financial institution, as long as this is done with the customer's express consent.

The Law also considers all acts to limit, restrict or inhibit equal opportunity in purchasing a product or service as discriminatory practices, which are therefore prohibited, in conformity with the prerequisites outlined by the financial institutions.

The reform introduces the new requirement by which BANXICO must authorize financial entities so they can waive the payment of commissions or set lower fees for account holders or other accredited institutions using their infrastructure.

4. Clearinghouses. BANXICO is expected to issue the secondary provisions referenced in Article 19 Bis of the LTOSF (operate as clearinghouses, a way to link their operating and processing system to the means of payment, and standards, conditions and procedures, in general) within 60 calendar days from the date on which this Decree goes into effect.

5. Debt collection agencies. Financial institutions must use their branches and electronic media to provide customers with sufficient information on the external debt collection agencies that call for payment of the loans granted, and those that support loan restructuring and negotiation operations.

6. Credit Bureau. The reform imposes an obligation on financial and commercial entities to belong to at least one credit bureau and periodically provide information on all credits, loans or financing granted under the terms set forth in the Credit Information Companies Law (Regulation).

7. Balance certifications. These are reduced to one year of transactions.

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C) THE FINANCIAL INSTITUTIONS LAW.

1. Account portability. This includes the obligation to provide customers with the procedure used to terminate or cancel their lending and borrowing transactions established through standard form contracts, even when the customer requests such through another bank it authorizes to this end. A three-day term is set to complete such arrangements.

D) INFONACOT (National Fund Institute for Worker Consumer Loans). The reform amends the regime of guarantees granted and the financing contracted, so these transactions are charged to the Fund.

E) PROVISIONAL ARTICLES.

This section includes the relevant transitional provision transcribed as follows:

"The Federal Competition Commission will have 180 calendar days from the date on which this Decree goes into effect to conduct an investigation on the conditions of competition in the financial system and markets. It must hear the non-binding opinion issued by the Ministry of Finance and Public Credit on the subject matter. As a result of this investigation, the Federal Economic Competition Commission may make recommendations to the financial authorities to improve competition in this system and its markets and exercise the powers conferred by the Federal Competition Law, if appropriate, to prevent monopolistic practices, concentrations and other restrictions that inhibit the efficient operation of the markets within the system, including, as appropriate, ordering measures to remove barriers to free competition; ordering the divestiture of assets, rights, partnership interests or shares of economic agents in the parts needed to eliminate anticompetitive effects and other measures authorized by the Constitution and the Law on the subject matter."

SECTION 2. POPULAR SAVINGS AND LOAN CORRESPONDENTS.

This section amends the following two laws: a) the Popular Savings and Credit Law, and the b) Law Regulating the Activities of Cooperative Savings and Loan Associations. The following major changes are discussed under this section based on their relevance.

A) THE POPULAR SAVINGS AND CREDIT LAW.

1. Social reserves. The social work fund is eliminated and the social reserve fund is maintained.

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2. Board of Directors. The composition of the Board of Directors is homologated with all other financial laws and the need to rotate board members every five years is eliminated. The authorities are also vested with powers to remove, suspend and debar board members and officers when they do not meet the requirements established for these positions.

3. Transactions with related parties. These are used as a reference to cap net capital operations, setting individual and aggregate limits at 10 percent of such total equity. This regime is extended to include all SOFIPOS [a form of non-banking financial entity aimed at low-income sectors] and Community Financial Entities (SOFICOMS), regardless of their level. In the past, this only applied to Tier I and Tier II companies.

4. Operating Regime. Fiduciary transactions are authorized for secured operations, albeit only at the Tier III and Tier IV levels. It also suppresses a) the restriction that kept new institutions from collecting deposits before completing two years of operations, and b) the restriction that established that the securities issued could only be those offered to the investing public.

5. Correspondents. This includes the possibility of allowing SOFIPOS and SOFICOMS (only Tiers I through IV) to contract with third parties (brokers or commission agents) the provision of the services needed for their operations, and pay commissions to complete such transactions in the name and on behalf of such companies, as follows:

- Operations with customers or partners are done by the commission agents, in the name and on behalf of the entity.
- The following individual and aggregate limits are established for transactions completed through brokers: a) Individual (per client) withdrawals capped at 1,500 UDIS and at 4,000 UDIS for deposits; b) Listings (by commission agent) 50 percent of total transactions completed by the entities (capped at 75 percent for the first 18 months of operation); and c) These limits do not apply when the commission agent is a Federal Public Administration agency, lending institution, brokerage firm or Tier I through IV SOFIPO or SOCAP.

6. Customer Assistants. As in the case of the Financial Institutions Law (Article 92), the reform introduces the figure of customer assistants. This term should not be confused with brokers, since there are completely different. The former (assistants) represent the client when dealing with the entity and, therefore, the operations must invariably be documented in the name of the respective client while the latter (brokers), represent the SOFIPO when dealing with the client. Since the customer is strictly liable for contracting these assistants to support its SOFIPO operations, these third parties are subject to various restrictions, namely, that at no time shall they:

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- Carry out such operations on their own initiative;
- Determine the terms or operation rates they deal with;
- Obtain price differentials or fees for the transactions they are involved in; and
- In general, perform activities that require the Federal Government's authorization to operate as a financial institution.

7. **Net Capital.** The reform states that net capital cannot be lower than the minimum capital stock established.

8. **Use of technology.** Services are regulated by the use of computers and automated systems under the same terms contained in other financial laws.

9. **Fund Transfers.** The SOFIPOS may agree to the following terms with their clients:

- Restrict use of the funds held in the client's account for up to 15 business days, in order to conduct investigations when there are certain circumstances and elements to assume that the reciprocal use of electronic media is being used improperly. Where necessary, this period may be extended for 10 more business days, allowing the competent authorities to hear the facts.
- When the entities have evidence that an account was opened with false information or documentation, or that the electronic identification means to complete transactions are used improperly, they may, under their own responsibility, enter the corresponding amount to be deposited in the account from which the corresponding resources were obtained.
- When funds are mistakenly paid in any of their customers' accounts, they may charge the respective amount to the account in question in order to correct the mistake.

10. **Disaffiliation.** Any entity may withdraw from the Federation it belongs to and immediately join another Federation, provided it has an opinion from an independent external auditor confirming its viability as an entity.

B) LAW REGULATING THE ACTIVITIES OF COOPERATIVE SAVINGS AND LOAN ASSOCIATIONS.

1. **Capital stock.** Business corporations are allowed to participate in the capital stock.

2. **Corporate.** They can be exempted from incorporating secondary corporate bodies (committees) depending on their size and level of operations. The reform also includes the establishment of controls to the changes the Savings and Loan Cooperatives (SOCAPS) intend to make to their bylaws or incorporation charters, as they must obtain a prior favorable opinion from the Assistant Monitoring Committee. The decree also replicated the

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changes made with regard to the removal, suspension and disqualification of board members and directors, in the terms of the Popular Savings and Credit Law.

3. Operating regimes. They are allowed to receive credits from Federal and State Public Administration agencies. Their operating regimes are allowed to distribute insurance and bond agreements, and disperse Federal Government funds.

4. Correspondents. They are authorized to engage in this activity under the same terms established for the SOFIPOS, provided they are Tier I through IV SOCAPS. Basic level entities are, therefore, excluded.

5. Member assistants. They are regulated under the same terms the Popular Savings and Credit Law uses to refer to customer assistants.

SECTION 3. CREDIT UNIONS.

This section amends one law, the a) Credit Unions Law. The following major changes are discussed under this section based on their relevance.

1. Definition of the group of people. The definition is adjusted, as the last one covered persons related by consanguinity or affinity up to the fourth civil degree including spouses and concubines. The amendment limits kinship to the second degree.

2. Capital, shareholders and corporate governance. Credit unions are authorized to issue preferred stock up to an amount equal to 25 percent of its ordinary capital stock. The requirements people must meet to join a credit union are expanded to include those engaged in economic activities, except for individuals who receive their income from wages, salaries, pensions or social aid programs.

The maximum percentage credit union members can own is increased to 30 percent. The CNBV may also authorize an expansion of this percentage when the credit unions face liquidity or financial solvency problems.

The reform adds the concept of business experience in the knowledge profile established for members appointed to sit on a credit union's board of directors.

It states that the audit committee must be chaired by an independent director, to avoid potential conflicts of interest in carrying out the committee's duties.

3. Operating regimes. The reform adds the possibility of allowing credit unions to receive loans or credits from decentralized federal, state and municipal agencies, and the

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Federal District, and financial institutions and companies engaged primarily in issuing loans.
Pure leases are incorporated into the catalog of permitted operations. It is important to note that the total value of assets in these types of operations may not exceed 100 percent of the Stockholders Equity of the union concerned.

The reform states that the issuance of letters of credit, an activity currently allowed for credit unions may be done without the resources previously provided by the client.

It establishes the possibility of having union members designate their beneficiaries on loan or credit transactions, provided such are taken out with the related credit union, thus homologating the system with the rest of the Mexican Financial System laws.

- **Risk Diversification.** Risk operations shall not include the common operations credit unions conduct when made with a primary source of payment that is independent of the person or business group the borrower controls or, when payment of the credit by the individual or business corporation is not dependent on the financial position of the firm or business group the borrower controls.

  A maximum limit of up to 50 percent of net capital is established with respect to the direct and contingent responsibilities a given credit union may have with another.

- **Related credits.** The reform strengthens the regime of credit union operations with related parties as follows: a) they must be approved by at least 75 percent of the votes present and expressed by the Board of Directors, b) they may not be offered under terms more favorable to those offered to other partners, c) they shall be subject to a credit committee's prior approval, d) operations for amounts lower than 500,000 UDIS or five percent of the capital stock may be authorized by the credit committee, e) operations in an amount not exceeding the equivalent of two million UDIS in national currency, may be authorized by a special committee made up of board members, and f) the total sum of these credits may not exceed 100 percent of the stockholders equity.

4. Corrective actions in response to early warnings. In the event that a given credit union does not meet the established capitalization requirements as an additional and extra special remedy, the CNBV may ask the commissioner of the credit union concerned to convene a general meeting of shareholders to inform the partners about the entity's situation.

5. Revocation. The reform establishes that a recurrent breach of an additional and extra special remedy is sufficient reason to warrant revocation. On the other hand, it also

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establishes that the authorization could be revoked at the request of the credit union without the need for it to be dissolved and liquidated.

6. Provisional Articles. Credit unions shall have a period of 180 days from the date on which this Decree goes into effect to submit their bylaws to the CNBV, for its approval, to make sure their operations are aligned with their corporate charters.

SECTION 4. DEVELOPMENT BANKING.

This section amends the following 10 laws: a) the Financial Institutions Law; b) the Regulatory Law of Section XIII Bis of Paragraph B of Constitutional Article 123; c) the NAFIN [Mexico's largest development bank] Organizational Law; d) the Organizational Law of the National Foreign Trade Bank (BANCOMEXT); e) the Organizational Law of the National Bank of Public Works and Services (BANOBRAS); f) the Organizational Law of BANJÉRCITO [the Mexican military bank spanning the Army, Air Force and Navy]; g) the Organizational Law of the National Savings and Financial Services Bank (BANSEFI); h) the Law of the Federal Mortgage Association (SHF); i) the Law of Financiera Rural (which title amended to was read as the Organizational Law of the); and j) the General Law of Negotiable Instruments and Credit Operations.

The following major changes are discussed under this section based on their relevance.

A) THE FINANCIAL INSTITUTIONS LAW.

1. New mandate for development banking. The reform states that in fulfilling its mandate, it shall procure the institution's sustainability through the efficient, prudent and transparent channeling of resources and the adequate guarantees constituted on its behalf, without these being excessive. This new mandate leaves behind the principle that managing the equity of development banks included the obligation to "preserve and maintain the capital," which gave rise to the establishment of inflexible credit policies that were not aligned with its real purpose. Use of the phrases, "procure sustainability" and "adequate guarantees constituted on its behalf, without these being excessive" will allow the banks to open up their own lending activities to align them to their development vocation.

The reform also adds concepts aligned with the terms established in the preceding paragraph, to provide development banks with a social banking purpose, and assign specific objectives to fulfill their social purposes so they can create specific programs and products focused on priority areas for national development that promote financial inclusion, including micro, small and medium enterprises in each development bank, as appropriate, as well as small producers in the field, providing them with services, offering products, technical assistance and training, fostering innovation, patenting, generating other industrial

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property rights, and promoting environmental sustainability in their operational and financial programs. It is also determines that these institutions should promote equality between men and women while promoting financial inclusion of children and youth, and adopting a gender perspective in their products and services.

2. Composition of the Board of Directors and staff salaries. The reform grants powers to the Board so it can:

- Propose to the SHCP the deadlines and dates to pay the earnings obtained from the Federal Government's sovereign guarantees, and capital requirements.
- Approve the standards and bases used to transfer assets and liabilities.
- Approve, without the need for additional authorizations from Federal Public Administration agencies, the organizational structure, tabulators, special bonuses, benefits and other financial matters related to labor issues, following the recommendations of the Human Resources and the Institutional Development Committees. This produces the effect of a judicial economy, since the SHCP itself sits on both the Board and the referenced Committee (increasing its participation from two to three); hence, that the same unit will regulate these aspects through the general criteria each bank will have to observe. This also affords a certain level of autonomy (although not full, given the involvement of the Ministry of Finance), and ensures the system's flexibility in paying public servants who work in this sector while also improving job offers.

It also increases the number of SHCP public servants sitting on the Committee, to a total number of three.

3. Operating Regime. It removes, for development banking, the prohibitions referenced in Article 106, fractions XVI and XVII of the Financial Institutions Law, so they can now acquire shares from other credit institutions or receive them as collateral. The relevant rate of capitalization must meet the minimum requirements when granting secured loans on such shares from full service banking institutions.

The reform establishes that in order for development banks to maintain their production plant, and in situations that require immediate attention, they can complete the credit analysis established in Article 65, considering only the viability of their own credit with the proper and sufficient guarantees, which once approved by the bank's Board of Directors, which would imply a greater credit risk, *per se*, since the legal and traditional requirement establishes that in order to grant a loan, banks must estimate the feasibility of payment by the debtor, relying on an analysis based on the quantitative and qualitative information used to determine the debtor's credit and payment capacity based on its creditworthiness and not only on the credit guarantees.

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It eliminates the obligation to establish the trust to strengthen capital mentioned in Article 55 Bis, on the grounds that development banks currently have ample capitalization levels and the resources from such trusts are negligible in strengthening these institutions.

B) ORGANIZATIONAL LAWS OF THE DIFFERENT DEVELOPMENT BANKS AND OF THE NATIONAL RURAL CREDIT BANK FOR AGRICULTURAL, RURAL, FORESTRY AND FISHERY DEVELOPMENT.

1. **Common reforms.** The Board of Directors shall meet quarterly.

- **Operational overlaps.** It creates the obligation to inform the SHCP, once authorized by the appropriate authorities, of transactions that could be linked to the object of other development banks, with the clear purpose of avoiding potential duplication between such institutions. The Ministry of Finance and Public Credit (SHCP) shall determine the applicable policy in this regard.

- **Oversight.** Oversight of the development banking institutions shall be conducted by the entities and under the terms set forth in the Financial Institutions Law. This Law restricts the competence of the Ministry of Public Service to auditing government aspects (use of the budget, application of the Government Procurement, Leasing and Services Law and Public Works and Related Services thereof, the implementation of the administrative responsibilities regime and other administrative issues). This represents a step forward in terms of auditing and operational oversight related to banking activities, as it eliminates possible duplications since the latter function would correspond to the financial authorities, while each development bank's internal administration will now be authorized to appoint the person responsible for the internal audit and internal control functions, who shall report to the Board of Directors and the CEO, respectively, thereby moving forward in terms of improved corporate governance.

  However, and in this same regard, Article 21 of the Decree object of this analysis establishes that Congress shall create a special monitoring and evaluation system for development banks by issuing the regulatory laws referenced in paragraph two of Article 2 of the Decree that reforms, adds and repeals certain provisions of the Federal Public Administration's Organizational Law published in the Federal Official Gazette on January 2nd, 2013. Such system shall be in line with the development banks' nature and functions, avoid duplicate oversight and supervisory mechanisms, and help these institutions become more efficient.

- **Support and advocacy staff.** The reform states that all Board members and public servants who work or worked at the institution, shall have support and advocacy

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services as a means to further back the public servants working in these institutions, in their decision-making processes. This is in accordance with the guidelines the SHCP will issue.

2. NAFIN (Mexico's largest development bank). The reform imposes a duty on the NAFIN Board of Directors to approve a yearly program focused on financing micro, small and medium enterprises, seeking to allocate at least 50 percent of the value of the bank's direct and guaranteed portfolio. It must also design and implement a support program to encourage the listing of corporations promoting investment in the National Registry of Securities in accordance with Article 19 of the Securities Market Law.

3. BANOBRAS (the Mexican Works and Public Services Bank). The reform expressly creates the possibility of providing financing to those projects directly or indirectly related to public or private investment in infrastructure and public services. It also eliminates the authorization the SHCP has had to grant so BANOBRAS can issue guarantees and sureties, in accordance with the rules established for other development banks.

4. BANJÉRCITO (the Mexican military bank). The reform considers the possibility of this bank being able to grant medium-term loans. On the other hand, it eliminates the maximum ceilings for short-term loans and the prohibition to lend to borrowers who have not paid off a previous loan.

It establishes that this bank's policy to offer discounts to the (military) borrowers' of work or savings funds to cover their loans, must be approved by the Board of Directors, and that such board is authorized to approve the policy used to determine the interest rates granted to military work and savings funds, which must be submitted to the SHCP for its approval.

5. BANSEFI (the National Savings and Financial Services Bank). The reform amends the definition of the "Sector" as follows: The Sector is comprised of individual and business corporations, according to the criteria established by the Board of Directors, which have limited access to financial services based on their socioeconomic status or geographic location, and the business corporations referenced in the Popular Savings and Credit Law and in the Law Regulating the Activities of Cooperative Savings and Loan Associations.

The reform states that BANSEFI can engage in social banking focused on promoting savings, financing and financial inclusion, fostering innovation, gender perspective and investments to offer first and second tier instruments and channel financial resources and technical support to ensure the sound development of the sector and the national economy.

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6. SHF (the Federal Mortgage Association). The reform states that the Federal Government will always respond for lending operations concerted by the SHF, with national individuals or business corporations, and with private, governmental and intergovernmental institutions abroad, thereby backing the SHF's solvency, given that its applicable internal rules and legal system stated that the institution would lose this benefit as of January 1st, 2014. Mindful of the above, and given the current statute, the SHF will indefinitely keep this guarantee under the terms set forth above.

7. The National Rural Credit Bank for Agricultural, Rural, Forestry and Fishery Development. This agency's internal loan authorization process is adjusted to become more flexible while its funding limits established by law are also eliminated and the organization shall now be bound to comply with the policies approved by its Board of Directors.

8. Provisional Article. This same Section of the Decree establishes a provisional article by which the Ministry of Finance has 90 calendar days to assess the subsidies, grants, programs, funds, and trusts granted and managed by Federal Public Administration agencies, in order to diagnose the feasibility of channeling them through a new and single agricultural and rural development financing system.

C) The General Law of Negotiable Instruments and Credit Operations.

An amendment to incidental clause h) of Article 228 breaks the Nafin-Banobras "duopoly" to assess the value of the assets held by trusts that issue common shares, and thereby establish the total amount of the corresponding issue, opening this possibility for all development banks, depending on the subject matter.

SECTION 5. AWARD AND ENFORCEMENT OF GUARANTEES.

This section amends the following three laws: a) the Code of Commerce, b) the General Law of Negotiable Instruments and Credit Operations, and the c) Federal Judiciary Organizational Law. The following major changes are discussed under this section based on their relevance.

A) CODE OF COMMERCE AND THE GENERAL LAW OF NEGOTIABLE INSTRUMENTS AND CREDIT OPERATIONS.

The reform aims to improve the guarantee enforcement procedure in order to: a) speed up the guarantee enforcement process and provide greater legal certainty to the parties, b) improve property appropriation mechanisms in commercial proceedings, and c) streamline

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executive commercial judgments by shortening deadlines. The most relevant changes include:

- **The means.** When the credit has a real guarantee, the plaintiff may choose to enforce it through ordinary commercial or special, mortgage or summary proceedings, or through the applicable means, conserving the real guarantee and its payment preference, even if the encumbered assets are labeled for inclusion in the enforcement proceeding.

- **Shorter deadlines.** The reform provides expeditious timelines to complete notice and subpoena activities and deliver files, within no more than one day following the date on which the resolutions ordering such actions are issued. It establishes a maximum 20 calendar-day deadline (this was formerly set at 30 days) for the public institutions or the administrative authorities to deliver reports on the person's domicile in response to the orders issued by the judicial authorities.

- **Competence.** Unless otherwise agreed to by the parties with regard to the court of competent jurisdiction, the reform defines competent judges as follows: A) the place appointed for the respondent to pay, b) designating, in the contract, the place where the obligation must be paid, c) the defendant's address, and if he or she has several homes, the judge will be chosen by the plaintiff. In the case of business corporations, their domicile shall be considered as the place where they carry out their management activities. In the absence of specific domicile or a known address for personal proceedings, the judge of the place where the contract was signed, shall be considered competent to hear the case, and in the case of real actions, it shall be considered as the place of the thing.

- **Provisional remedies or precautionary measures.** The reform states that only the following precautionary measures or provisional remedies shall apply in the case of commercial trials:

  a) Locate persons, and
  b) Garnish assets.

  In both cases, it establishes the grounds for filing the order and the penalties involved in breaking the order as dictated.

  In the case of individual filings, the requesting party must provide the guarantees in the event of a ruling issued against third parties. It also states that the judge will definitely order that the assets be garnished, when certain conditions are met, including a) the existence of a liquid and payable loan.

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These measures can be decreed in preparatory trial processes or during the proceeding. The reform also states that no exceptions will be allowed in implementing these measures, except in the case in which the defendant consigns the claimed value or object with a sufficient bond or guarantee, in which case the measure ordered will be dismissed.

- **Summary proceedings.** These are recognized as documents that are ready for the execution of public instruments, plus certified copies and transcripts issued by notary public, stating all types of liquid and payable obligations and the conciliatory agreements signed at the Federal Consumer Protection Bureau (PROFECO) or at the National Commission for the Protection and Defense of Financial Service Users (CONDUSEF), as well as the final rulings issued by such authorities. It also amends the terminology used to specify the parties involved in the process, thus replacing the terms "lender" with "plaintiff", and "debtor" with "defendant."

- **Pledge on money in the transfer of property.** If the obligation is breached, the reform states that the pledgee shall keep the cash, up to the amount or value of the secured obligation, without the need for a court ruling or proceeding and thereby extinguishing the obligation, since the law establishes that the parties consented and acted in conformity with the terms they agreed to follow.

- **Trusts as a means of payment.** This allows trust institutions granting loans to qualify as such and as trust beneficiaries in these trusts created on their behalf, without limiting the related type of credit or transaction, given that this exception was only allowed for loans related to business activities in the past.

B) FEDERAL JUDICIARY ORGANIZATIONAL LAW.

This includes topics that must be decided by Commercial District Judges, such as: a) bankruptcy, b) commercial matters if the parties did not opt for a local proceeding, c) trials involving the Federation or a state, d) recognition and enforcement of commercial arbitral awards regardless of the country in which they were dictated, and d) commercial class actions.

SECTION 6. BANKRUPTCY PROCEEDINGS.

This section amends one law: a) the Bankruptcy Law. The following major changes are discussed under this section based on their relevance.

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1. **Protection of creditors.** While the Law maintains the terms related to conserving the company as the guiding principle in a bankruptcy proceeding, it also establishes the protection of creditors and the estate as one of its objectives, stating that the judge and the parties to the proceedings, must base their actions on the principles of relevance, judicial economy, speed, advertising and good faith.

2. **Transparency in the process.** It establishes the principle of maximum disclosure, and the right of access to data about the documentation and information on the bankruptcy proceedings, as long as personal data and other proprietary and confidential information are protected.

3. **The bankruptcy process.**

- **Electronic Media.** The reform provides for the use of electronic signatures as an option to begin and move forward in the bankruptcy proceeding. It also provides the alternative of using forms developed by the Federal Institute of Insolvency Specialists (IFECOM) to expedite the filing of claims and other motions.

- **Application based on imminence.** The reform provides the possibility of allowing the corporation filing for bankruptcy to do so within 90 days after the petition is filed when faced with the imminent generalized breach of its payment obligations.

- **Petition requirements.** The reform establishes that once the corporation files the claim, it shall be bound to present certain exhibits along with the bankruptcy petition, including among others, the list of lawsuits the company is involved in, the proposed preliminary agreement drafted to pay its creditors and conserve the business, as well as the corporate insolvency agreements, in the case of business corporations.

  It is also considered as authorized to present the bankruptcy petition to one or more creditors, and even to request such directly during the bankruptcy stage.

- **Joint bankruptcy petition.** The reform introduces the figure of a joint insolvency petition without the accumulated estate, which allows the corporation or its creditors to file for bankruptcy for two or more holding companies or businesses that belong to the same financial group, under the same procedure. This is allowed, provided there is a link between the assets that justifies filing the joint proceeding in the interests of judicial economy.

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4. Other provisions.

- **Contracting essential loans.** The reform considers the possibility of contracting loans for everyday business operations or when needed to maintain the normal operations during the bankruptcy process, including the provision of guarantees. Except for certain cases, such loans shall be paid preferentially (for example, loans granted under terms unlike those authorized by the judge or the conciliator, or to defraud creditors or to the detriment of the estate).

- **Appointment of receivers.** The reform introduces aspects that allow creditors representing 10 percent of the liabilities charged to the corporation —based on the final list of credit recognition or judgment of recognition, classification and priorities issued—, to appoint a receiver, which must be an individual or business corporation with legal capacity to act as interlocutor with the creditors.

- **Duration of the conciliation stage.** The deadlines and extensions remain the same; however, the requirements for most creditors are reduced to signing the agreement, stating that the Judge is expressly forbidden to extend any deadlines (unless permitted by law). Once that period is over, the corporation's bankruptcy shall be automatically confirmed.

- **Replacing the receiver.** The reform states that the corporation and a group of creditors representing at least half of the total amount of the liabilities held may appoint an individual or business corporation, which may or may not be registered with the IFECOM, to act as receiver.

- **Divestiture of assets.** The reform limits the supposition of opposing enforcement of the guarantees, and states that during the first 30 calendar days of the bankruptcy phase, the receiver shall only be able to avoid the separate activation of a guarantee on assets that are linked to the corporation's ordinary operations, when it considers that it would benefit the estate to sell it as part of a set of assets, providing a special procedure for valuing such assets.

5. Creditor agreement.

- **Specific performance of the agreement.** The proposal establishes that any recognized creditor may request the specific performance of the agreement, by simply filing an incidental claim.

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- **Changes to the creditor agreement.** This possibility is provided in the event of a change of circumstances that seriously affect compliance with such agreement in order to conserve the company. This action must be jointly exercised between the corporation and the recognized creditors.

6. "Intercompany" credits.

- **Subordinated creditors.** The reform provides for the creation of subordinated creditors that could be those that agree to serve as such for the corporation and whose credits were not recognized under the terms set forth in Article 122, plus those creditors holding unsecured loans held by one of the parties related to the business corporation.

- **Enforceability of the agreement.** In order to enforce a creditor agreement, the reform establishes that any time recognized creditors that qualify as "intercompany debt" are involved, and such creditors, individually or jointly, represent at least 25 percent of the total credit amounts recognized, the agreement must also be signed by the rest of the creditors representing at least 50 percent of the amount of credits recognized when the holders are not related to the creditors.

7. Regime governing the insolvent company's officer and directors duties. The Decree proposes the creation of a civil liability regime and a new type of offense for the board of directors and relevant employees that work for the company filing for bankruptcy, on behalf of the insolvent estate, when these have unfairly caused material damage and the corporation is basically unable to pay its obligations. It also provides liability waivers similar to those the Securities Market Law has established for the board members and directors who act diligently.

SECTION 7. WAREHOUSES AND SOFOMES.

This section amends the following two laws: a) the General Law of Auxiliary Credit Organizations and Activities, and b) The General Law of Negotiable Instruments and Credit Operations. The following major changes are discussed under this section based on their relevance.

A) THE GENERAL LAW OF AUXILIARY CREDIT ORGANIZATIONS AND ACTIVITIES.

1. Bonded Warehouses.

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- **Capital stock.** Their amount of capital stock is determined by UDIS, as established by law, which is why the SHCP will no longer have to determine that capital amount every year.

- **Foreign investment and shareholding limits.** The reform eliminates foreign investment limits and opens capital stock to free subscription, [6] always subject to the individual or group ownership limits that include unlimited ownership up to 10 percent; more than 10 percent, 20 percent or control, which must be authorized by the SHCP, at its discretion. The encumbrance of 10 percent or more of the shares must be authorized by the SHCP.

- **Board members and directors.** The Decree establishes the regulatory system to add, appoint and remove board members and directors, in a way similar to the terms established by other financial laws.

- **Operations with agricultural and fishery goods (bonded warehouses).** Warehouses that operate agricultural and fishery goods must also seek to coordinate the provision of storage services based on the activities and programs related to sustainable development under the terms set forth in the Law of Sustainable Rural Development. In order to do so, the issue of certificates of deposit covering this type of goods, must be recorded in the title itself and include the following specific details:

  a) The product type (basic or strategic).

  b) The place of production (national or foreign), the year and agricultural cycle, and the quality of the product in conformity with the technical rules.

  c) Report the existence, or not, of hedging.

  d) The applicable unit of measure (kilo, liter or meter).

  e) The declared value of the depositor.

  f) Insurance, if any.

[6] Exception: The following are not allowed to hold capital stock: a) foreign governments, unless the exceptions discussed earlier in this document are updated (the application of prudential measures, whether individuals in authority roles or simply holding no control); b) Auxiliary Credit Organizations, c) Money exchange firms, d) Bonding institutions, and e) mutual insurance companies.

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Additionally, and in order to ensure coordinated actions in the control of agricultural and fishery goods, the reform creates the **Integrated Information System on the Storage of Agricultural Products**[7] that shall contain a public national database comprised of the periodic reports that must be submitted by the bonded warehouses with respect to such goods. The system shall be managed by SAGARPA, the Ministry of Agriculture, Livestock and Rural Development, Fisheries and Food.

On the other hand, and in the case of the deposit of foodstuffs that are widely consumed, the reform establishes the obligation to bind the depositor of the goods to present the corresponding plant and animal health certificates, when required under the different applicable health provisions, and notify the SAGARPA of the presence of any plant or animal health risk factor.

- **Operating Regime.** The following activities are added to the catalog of authorized operations: a) fiduciary in guarantee trusts, b) repurchases, and c) financial derivative transactions.

- **Operating levels.** The reform provides a new classification for four-tier bonded warehouses (this number was formerly set at three), based on their activities. However, it does rank the specialization of the first level of operation in agriculture and fishery activities as follows:

  a) Tier I shall be dedicated exclusively to fisheries and agricultural storage operations, including the other activities established under this Law as directed to this sector, except for the customhouse deposit regime and financing, which minimum capital shall be 2,588,000 UDIS.

  b) Tier II includes those engaged in receiving any type of good or merchandise for deposit, and the other activities referenced in this Law, except for the customhouse deposit regime and financing, which minimum capital shall be 3,406,000 UDIS.

  c) Tier III includes those which in addition to being authorized under the terms stated in the previous section, are also authorized to receive goods under the customhouse deposit regime, which minimum capital shall be 4,483,000 UDIS.

[7]The Integrated Information System on the Storage of Agricultural Products will go into effect 360 calendar days from the date on which this Decree goes into effect, so the Ministry of Agriculture, Livestock and Rural Development, Fisheries and Food (SAGARPA) will have that same term to issue general regulations and have the system up and running. Articles 22 Bis 2, 22 Bis 3, 22 Bis 4, 22 Bis 7, 22 Bis 10 and 22 Bis 11 of the General Law of Auxiliary Credit Organizations and Activities added by the reform will go into effect 360 calendar days after this Decree goes into effect.

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d) Tier IV includes those authorized to operate under the terms of the preceding items, and also grant financing as established in this Law, which minimum capital shall be 8,075,000 UDIS.

Furthermore, and as a measure to help strengthen these companies, the reform further authorizes the SHCP to establish rules and minimum capitalization requirements (that is, in addition to the minimum amounts referenced above) to govern Tier IV bonded warehouses.

- **New issue limits.** The bonded warehouses must comply with the following certificate of deposit issue restrictions:

  a) The collective value of the certificates may not exceed 30 times its Stockholders Equity (formerly, 50 times), excluding those issued as non-negotiable.

  b) The SHCP shall be able to use its general rules, with the opinion of the CNBV and BANXICO, to temporarily raise the aforesaid limit, excluding in that computation the certificates that protect merchandise deposited in wholly owned warehouses, or those that are leased or loaned (under a *commodatum* agreement) and managed directly by the general deposit warehouse. These rules may relate to particular areas or localities in Mexico or to the entire nation. The SHCP may also temporarily raise the indicated limit by 30 times, without the ratio exceeding 60 times (formerly, 100 times), in individual cases.

  c) The SHCP itself shall use the general rules to determine the proportion of Stockholders Equity capped at the value of the certificates backing the goods stored in the equipped warehouses and issued on behalf of a same person, entity or group of persons, which shall be considered as one under the same rules and to this end, and specify the conditions and requirements they must meet to obtain the authorization needed to engage in transactions exceeding the limit.

- **Equipped warehouses.** The reform strengthens the bonded warehouse regime for equipped warehouses, as:

  a) It provides for inspection visits by personnel appointed by the General Warehouses, who shall be vested with certification powers, even in case of missing goods, while the Law also indicates that the inspection reports prepared by such individuals shall serve as full proof of evidence in case of a dispute. These visits shall be completed with the periodicity schedules established by the CNBV.

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b) The CNBV shall be able to determine the procedures or mechanisms used to qualify the warehouses, and the monitoring and inventory control activities, as well as the quality, storage conditions and other requirements needed to provide greater certainty to the depositors.

c) The SHCP shall use rules to determine the stockholders' equity ceiling ratio for the certificates supporting goods stored in the equipped warehouses and issued on behalf of the same person, entity or group of persons.

d) The Ministry of Finance and Public Credit (SHCP) may issue regulations on capitalization requirements applicable to warehouses issuing depositary receipts for goods or merchandise stored in equipped warehouses.

- **Self-Regulation.** The Decree establishes that the bonded warehouses may be divided into trade associations and, therefore, become self-regulating and engage —among other things— in the development and implementation of the standards of conduct and operation their members must meet, in order to contribute to the sound development of these warehouses.

- **RUCAM.** The reform creates the Single Registry of Certificates, Warehouses and Goods (RUCAM, acronym in Spanish), which shall be of the public domain and managed by the Ministry of Economy. When registering, the bonded warehouses must enroll or record the following data, as appropriate: [8]

  a) Enroll the certificates of deposit and pledge bonds they issue, as well as their cancellations.

  b) Register the goods or property deposited and covered by the certificates of deposit and the pledge bonds issued.

  c) Register the warehouses themselves, whether leased or equipped, with their respective addresses, location, size, storage capacity and type of goods they are able to store, as well as the name of the owner and qualified warehouseman, in the case of equipped warehouses.

[8] It is important to note that the omission or defect in registering the data will not affect the validity of the claim, or the holders' rights. According to the transitional provisions, the rules to run and operate the RUCAM must be issued and published within 360 calendar days after the date on which this Decree goes into effect. Also, the obligations related to the referenced Registry shall not be enforceable during the 360 calendar days following the date on which this Decree goes into effect. Once the Rules are issued, the records warehouses currently keep under the terms set forth in Article 11 Bis, may be replaced by RUCAM.

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d) Record the preventive notices, the judicial or administrative decisions, and the public certificates issued by reason of the goods or merchandise stored at the bonded warehouses.

2. MONEY TRANSMITTERS, EXCHANGE CENTERS AND SOFOMES.

- **Supervision.** The Decree establishes that the CNBV can hire auditors and other professional service providers to assist it in supervising money transmitters, exchange centers and unregulated SOFOMES in terms of ML/FT. Such suppliers must meet the requirements established by the CNBV in its general provisions.

- **Money transmitters (that can be).** In addition to the business corporation figure, they can adopt the limited liability business corporation regime to act as money transmitters. The reform also establishes that SOFOMES and Federal Public Administration agencies can act under the referenced nature, in conformity with the relevant provisions that regulate their transmission of rights or funds in national or foreign currencies.

- **Transmitter and center registrations.** On the registration of Money Transmitters and Exchange Centers under the CNBV:

  a) The reform establishes the obligation to process and obtain a technical opinion on ML/FT with the National Banking and Securities Commission (CNBV) before registering or renewing their registration.

  b) The CNBV is authorized to ask for additional documentation throughout the registration process.

  c) They must renew their registration every three years.

  d) The reform states that not all of the information included in the registry will be public, as the CNBV must determine which shall become of the public domain.

- **Multiple Purpose Financial Institutions (SOFOMES).** SOFOMES were allowed to freely incorporate before the reform. With the reform, the only legal SOFOMES shall be those business corporations that registered previously and hold a valid registration with The National Commission for the Protection and Defense of Financial Service Users (CONDUSEF). In this respect, the requirements needed to obtain this register include the following, among others:

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a) Their main purpose must be to conduct one or more credit, financial leasing or factoring operations professionally and on a regular basis.

b) Complementary to their social purposes, they could also engage in the following activities: manage other loan portfolios and sign pure lease agreements on real or personal property, limiting these activities to an amount equal to 30 percent of their total revenues.

c) In the case of unregulated SOFOMES, they must obtain a favorable technical opinion from the CNBV on the subject of ML/FT, before they are allowed to register. This opinion shall be renewable.

Several causes are also included as grounds for cancelling the referenced Registration, mostly associated with repeated breaches to the regime.

- **Regulated SOFOMES (who they are).** The reform expands the regulated SOFOMES concept to include:

a) Those that have equity ties with credit institutions, popular financial corporations (Tiers I through IV), community financial corporations (Tiers I through IV), savings and loans cooperatives (Tiers I through IV) or credit unions.

b) Those that issue debt securities they personally register in the National Securities Registry.

c) Those that voluntarily adapt to the regulations applicable to legal SOFOMES, upon obtaining the CNBV's discretionary approval. They must certify that they meet the following requirements, among other assumptions, in order to obtain this approval:

- They have 2,588,000 UDIS in capital stock,
- They have operated as a SOFOME for three years running, and
- Seventy percent of their revenues come from activities proper to their line of business.

- **Commission agents.** SOFOMES are expected to be able to act as commission agents for other financial institutions.

- **Credit bureau.** SOFOMES are bound to participate as users of a Credit Bureau.

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3. FOREIGN EXCHANGE BROKERS. The relevant regulatory change observed in this case basically includes the legal determination establishing that their minimum capital stock must equal 8,657,000 UDIS.

SECTION 8. BANK SETTLEMENTS.

This Section amends the following four laws: a) the Financial Institutions Law, b) the Bankruptcy Law, c) The Bank Savings Protection Law, and d) of the Securities Market Law. The following major changes are discussed under this section based on their relevance.

A) The Financial Institutions Law.

1. JUDICIAL SETTLEMENT OF MULTIPLE BANKS.

- **Introduction.** The part of the financial reform known as "bank bankruptcies" incorporates the last of the three stages aimed at reforming the Financial Institutions Law concerning the treatment of full service banking institutions or commercial banks with insolvency problems; that is to say, when their assets are not sufficient to cover their liabilities. These stages include a) the first stage that determined the early corrective actions (2004); b) the second stage that included the so-called bank resolutions system (2006), and c) the third and final stage was determined through this reform, to institute the new regime for bankruptcy of a commercial bank, which process was termed as the judicial liquidation of commercial banks (2014).

  The early corrective actions system allows the financial authorities to identify troubled full service banking institutions or commercial banks that call for preemptive actions. The CNBV, for instance, is therefore authorized to use the rules to determine the basis for classifying these institutions and ranking them according to their compliance with the capitalization requirements established by law, and apply a number of corrective measures in order to preserve their stability and solvency, according to the category assigned to each institution.

  With respect to the bank resolution regime, a framework was then incorporated to authorize the financial authorities to take the measures needed to implement the orderly and expeditious exit of the financial market, of those commercial banks that we not able to solve their liquidity and solvency problems. This was done in order to avoid the bank's further and unnecessary deterioration, minimizing the negative impact on the rest of the sector and reducing the potential fiscal cost.

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This included consideration of two bank resolution methods, overall. The first of these, and which constitutes the general rule, is to order the dissolution and liquidation of the corresponding commercial bank and revoke its license. This can be accomplished through different resolution operations, including the establishment of a temporary bridge bank operated by the Institute for the Protection of Bank Savings (IPAB), the transfer of assets and liabilities to other healthy banks or payment of the secured obligations mentioned in the Bank Savings Protection Law. The second bank resolution method, which is the exception, is the bank's financial restitution in an effort to safeguard the interests of depositors, the payment system and, in general, the stability of the Mexican financial system as a whole, which means that the decision has been made to cover 100 percent of the bank's liabilities, in which case its license would not be revoked.[9]

The reform object of this analysis, establishes a specific plan to treat banks in distress; that is to say, those that do not have sufficient assets to meet their payment obligations, and therefore, proposes the creation of a special process known as the judicial liquidation of commercial banks.

As a result of these three reforms (enacted in 2004, 2006 and 2014), the applicable regulation for these three stages is grouped under one single regulatory body (the Financial Institutions Law), and in order to provide an autonomous process that permits the application and comprehensive interpretation of the system object of this analysis. Hence, the reform's elimination of the special chapter on Bankruptcy Law, would no longer apply. In fact, the use of this legislative technique is consistent with international practices or trends while highlighting the inconvenience of dealing with a failed bank based on general business corporation law, since the effects it generates on the economy of any country is different than the effects produced by the bankruptcy of companies in general.

- **Grounds for revocation and beginning the liquidation process.** The reform adds the concept under which a bank runs out of cash, as grounds to revoke the authorization granted to a commercial bank. This assumption will be updated when the respective bank's assets are not sufficient to cover its liabilities. This determination is based on an opinion prepared by the CNBV, when the insolvency is unexpected, in which case the opinion must be approved by the Governing Board of the CNBV, or prepared by a qualified third party and approved by the Governing Board of the IPAB, since this is the Institute would act as liquidator in this case.

[9] The remediation is carried out by subscribing bank shares or credits extended by the IPAB.

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Once the situation confirming that the bank has run out of cash, has been updated, the IPAB would ask the competent district judge to issue a ruling to commence the judicial liquidation process of the corresponding full service banking institution.

The Decree establishes that the judge must issue its ruling within 24 hours (Article 231), since a bank's insolvency affects the economy in ways that vary from the impact produced by other corporate bankruptcies, and it involves depositor funds and a potential fiscal cost. The IPAB will serve as liquidator once the judicial process begins.

- **Recognition and classification of credits.** This tends to be the longest step in the process under the general bankruptcy regime. In this context, the new process provides a deadline to carry out and complete the process involved in recognizing credits, which term must not exceed 45 days as of the date on which the full service banking institution has been declared in liquidation (Article 239, sections I through III). Such recognition will be based on the bank's own accounting records and systems.

  The IBAP, acting as liquidator, will use this (accounting) information to issue a provisional list with the names of the creditors and the corresponding classification and priority of payment established under the Financial Institutions Law, publishing such list through different mass communication media. Potential creditors not included in the provisional list, will have the opportunity to demand recognition and request adjustments or changes to the list. Once this is done, the IPAB will issue the final list of creditors it must submit to the district judge so it can render a recognition, ranking and priority of payment judgment, which must be delivered within 10 days (Article 239 fraction IV).

  It is important to note that the competent district judge shall not be able to suspend the execution of the decisions issued in the liquidation process, under any circumstance at all, or in activities in which the Financial Institutions Law orders the liquidator to take action, with the sole exception of a request made by the IPAB, when such execution could produce damages and losses that would be hard to remedy. The reform also states that the resolution of a dispute arising from the liquidation process, must be resolved as an incidental cause by the same judge involved in the case while also noting that rebuttals do not produce suspension effects.

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- **Disposal of assets and liquidation.** As stated earlier, the speed in disposing of the insolvent bank's assets is crucial, as this prevents the accelerated impairment of the assets and helps abate the potential fiscal cost, and ultimately complies with its primary corresponding obligations. The Law, therefore, establishes a procedure within the judicial process itself, for the sale of the goods governed by the principles of economy, efficiency, fairness and transparency, always seeking to obtain the best conditions and shorter terms to recover the resources.

  With respect to the above, the Law retains the possibility of having the liquidator dispose of the assets by means of an auction and adds the option to sell them through a bidding process, or through different procedures that can improve the value of the goods, in very specific cases. It also includes a procedure to donate or destroy the troubled bank's personal property. This step must also include operations aimed at achieving the bank's total liquidation through the different banking transactions typically used in bank resolutions, such as payment of the secured obligations, the sale of assets and the assumption of liabilities by third parties, along with the establishment of a bridge bank, if appropriate, and the substitution of fiduciary duties and compensation operations.

  Finally, the IPAB would take the steps needs to complete the legal process; that is to say, prepare the final liquidation balance sheet and ask the judge to declare the termination.

- **Priority.** The reform modifies the payment order of priority that existed in terms of administrative liquidation, which shall also apply to the judicial liquidation process object of this analysis. Therefore, in both cases, and under the reform, payment preference is given to savers over other of the bank's unsecured creditors, and it amends the extent and priority corresponding to the IPAB with respect to the fees to be subrogated, if any, upon paying the secured payment obligations or the payment needed to prevent a systemic effect under the terms set forth in the Financial Institutions Law. The above will serve to reduce the fiscal cost for the Public Treasury, if access is obtained to the recovery based on the assets and the amount they are able to cover. The order of priority was, therefore, described as follows:

  a) The bank's equity will be used, first, to pay labor credits and expenses associated with the liquidation, according to the following the order of priority:

     - The wage claims mentioned in Section XXIII, paragraph A of Constitutional Article 123 (wages and salaries earned over the last year).
     - Those contracted to cover normal expenses to ensure the safety of the institution's estate assets and their repair, conservation and management.

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- Those obtained from judicial or extrajudicial proceedings on behalf of the bank's estate.
- The liquidator's fees and the expenses incurred.

b) All other funds, if any, shall be used to settle the bank's transactions, such as collateralized loans, tax and wage credits (over one year old), special credits, depositor savings and other obligations according to the following order of priority:

- Loans with collateral or security interests.
- Labor credits others than those mentioned in Section XXIII, paragraph A of Constitutional Article 123, and tax credits.
- Credits, which the applicable laws establishes as holding a special privilege.
- Credits derived from payment of obligations guaranteed under Article 6 of the Bank Savings Protection Law up to the limit established in Article 11 of that Law, and any other liability on behalf of the Institute itself.
- Credit derivative obligations guaranteed under Article 6 of the Bank Savings Protection Law, for the balance exceeding the limit mentioned in Article 11 of such Law.
- Credits derived from other than the aforementioned obligations.
- Credits derived from subordinated preferential obligations, according to the provisions set forth in Article 64 of this Law.
- Credits derived from subordinated non-preferential obligations, according to the provisions set forth in Article 64 of this Law.

- **Accountability and reserves for pending lawsuits.** In order to provide greater certainty to the process, the IPAB must submit bi-monthly reports to the judge describing: a) the procedures used to dispose of the bank assets during the corresponding period, b) the payments made, and c) the status of the reserves to be created to pay for the pending lawsuits.

  In this regard, the reform states that the liquidator should create reserves with the corresponding funds to cover potential contingencies, thereby providing certainty for all parties and confirming that the lawsuits will be attended once the liquidation process is completed. Such reserves must be invested in low-risk liquid instruments.

- **The Mexican State's patrimonial liability and the civil servants' administrative responsibilities.** The reform states that the financial authorities shall not be responsible for losses suffered by commercial banks arising from acts in which they are involved without malice during administrative or judicial settlements, when such

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acts are based on the information available, or are designed to maintain capitalization and liquidity levels, or intend to revoke a license or intervene or close a bank (Article 272), nor shall these actions give rise to the State's patrimonial liability, since they shall not constitute irregular administrative activities (Article 273), unless there is proof that such acts were ordered or performed illegally and produced a direct damage.

- **Crimes.** The reform includes the definition of new offenses that could be committed in connection with the alleged administrative liquidation or receivership, which sentences can range from one to 12 years in prison. Some of these behaviors include a) the alteration of the commercial bank's accounting data in order to keep from reflecting that it falls under the assumption in which a bank runs out of cash (Article 114 Bis 1-I); b) the performance of an act causing or worsening a bank's capital position as it runs out of cash (Article 114 Bis 1-II); c) request, within the liquidation proceeding, the recognition of a nonexistent credits or an amount surpassing the sum actually owed by the bank (Article 114 Bis 2); d) hide the true nature of the transactions, thereby affecting the composition of assets, liabilities, contingent accounts or results (Article 114 Bis 3); e) and engage in acts that could be declared invalid, knowing that the commercial bank will fall under the assumption mentioned in the Law (Article 114 Bis 4) when it runs out of cash.

2. BANXICO LIQUIDITY LOANS.

The reform creates a special regulation by which BANXICO can offer commercial banks with liquidity problems, a last resort loan based on the following elements: a) the procedure involved in enforcing the guarantees BANXICO would request, consisting of securities pledged on the commercial bank's shares, and b) it incorporates the measures the accredited institution must implement during their term, such as suspending dividend payments, agreeing to refrain from increasing the amount of the outstanding loans to related parties, suspending the payment of compensation and extraordinary bonuses to the CEO and senior bank officials, and holding back on raising wages.

In the event that a systemic bank that does not pay the cash credits, the reform establishes that the commercial bank's interim manager must contract a credit with the IPAB in the same amount, and in the full service banking institution's own name. The IPAB will therefore, subrogate BANXICO's rights has against the failed bank, including its guarantees, upon issuing the loan.

3. ADJUSTMENTS TO THE BANKING RESOLUTION SYSTEM.

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- **Revocation hearing deadlines.** The reform provides different periods to exercise the right to a hearing, based on the grounds for revocation. The purpose of these deadlines is to shorten the periods that could produce uncertainty among the saving public while worsening the institution's financial situation. It is also intended to safeguard the interested party's right to be heard in advance, and the essential formalities that are part of the procedure. The terms are set at three, seven and 15 days, depending on the grounds for revocation (Article 29 Bis).

- **Flexibility in the resolution methods.** The term in which the full service banking institutions organized and operated by the IPAB, called "Bridge Banks" shall operate, is extended to one year (this was formerly six months). It incorporated the option of transferring assets and liabilities to a Bridge Bank, when the Banking Stability Committee (CEB, acronym in Spanish) determines that a bank is systemic and agrees to pay a percentage equal to or less than 100% of the bank's payment obligations that are not hedged.

- **The COFECE or Federal Economic Competition Commission's participation.** A favorable resolution must be issued by the COFECE in order transfer assets and liabilities that might involve a concentration in terms of the Federal Law of Economic Competition. The reform establishes an expedited procedure prior to the COFECE's resolution, the calls for an opinion from BANXICO and the CNBV, with regard to the implications the concentration could produce on the financial system's stability and the smooth operation of the payments system. Nevertheless, it establishes that if the CEB determine that a bank is systemic, the aforesaid proceeding will be waived, as well as the provisions set forth in the Federal Law of Economic Competition.

- **Elimination of the request for payment.** The reform eliminates the requirement depositors had to submit to request payment for secured obligations, specifying that such payment will be made based on the information that banks are required to classify in their systems.

- **Name and powers of the CEB.** It proposes changing the name of the Financial Stability Committee for the Banking Stability Banking Stability Committee, in order to clarify the terminology and avoid any confusion that may exist between such Committee and the Financial Stability Council now established under the new Law to Regulate Financial Groups.

  It establishes that when one of the authorities comprising the CEB, learns that a bank's failure to pay its obligations could create a systemic risk, the Committee may meet for the second time to determine the payment of such obligations or increase the

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percentage initially determined, when satisfied that the payment will be lower than the damage that would be caused to depositors and society in general.

It establishes that the CEB can meet before a bank upgrades one of its grounds for revocation, when one of its members learns that the bank's financial deterioration could generate a systemic risk.

It also authorizes the CEB to determine that the IPAB should grant financial support aimed a restituting institutions had adopted the conditional operation system and could create a systemic risk.

- **Compensation for borrowing transactions and balances.** The reform provides a means to offset the lending balance guaranteed by the IPAB and balances due on the receivables payable to the institution itself derived from the deposits. It therefore, includes the obligation that binds the banks to have information related to such balances in their systems.

4. BASEL III.

It establishes that the capitalization requirements of lending institutions shall be referenced to: a) market, credit, operational and other risks incurred in their operations, and b) the relationship between assets and liabilities.

It clarifies that net capital will consist of several parts, including a basic part that will, in turn, will have two sections, one of which will be called critical capital, as established by the CNBV in its general provisions. In addition to the capitalization requirements, it recognizes the obligation binding credit institutions to hold a capital preservation supplement, which breach will only lead to the imposition of corrective measures (suspension of dividend payments and submission of a capital conservation plan).

It notes that the CNBV must take the following into account in determining the capitalization rate calculation: a) the capitalization requirements, b) the capital conservation supplement, and c) the recognition given to the different components of the net capital.

5. CONTINGENCY AND BANK RESOLUTION PLANS.

- **Contingency Plan.** Commercial banks must have a contingency plan describing the actions the institution must carry to restore its financial position when facing adverse scenarios that could affect their solvency or liquidity in terms of the rules established by the CNBV and approved by its Governing Board. The contingency plan must be

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approved by the CNBV, upon review of the IPAB, and BANXICO and the SHCP. This plan will be confidential.

The contingency plan requirements include the following:

- Executive Summary.
- Approval of the plan by the institution's own Board of Directors, and the appointment of the officials responsible for developing, implementing and monitoring preparatory measures and actions to implement the contingency plan.
- A strategic analysis identifying the institution's essential functions, and the functions whose suspension could produce adverse effects on other financial institutions.
- A description of the specific actions to be followed to ensure the timely implementation of the plan under each one of the scenarios considered, including the indicators that must be taken into account in deciding when to activate such actions.
- A description of the elements necessary and sufficient to implement the plan, as well as the legal documentation needed to prove the feasibility of implementing the plan.

These contingency plans must be periodically updated, as established by the CNBV, an authority that could also order simulation "fire drills" to execute the contingency plans, and request adjustments to the plan as it deemed appropriate to ensure its effectiveness, as a result of such simulations.

- **Resolution plan.** Moreover, the IPAB, with the participation of the CNBV, BANXICO and the SHCP may prepare resolution plans for commercial banks, describing the form and terms established to ensure an expeditious and orderly resolution. All resolution plans developed shall be confidential. In like manner, the IPAB may ask the full service banking institutions or commercial banks to simulate mock executions of the resolution plans.

  The resolution plans shall never, under any circumstances, determine the adoption of the resolution method, which shall be defined by the Governing Board of the Institute for the Protection of Bank Savings, as appropriate.

6. LIQUIDITY REQUIREMENTS.

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The reform establishes the liquidity requirements to be observed by commercial banks that may be expressed by an index, which calculation must be determined in the general provisions BANXICO and the CNBV issue jointly, to this end.

It also proposes the creation of a Bank Liquidity Regulation Committee that shall issue the guidelines used to determine the liquidity requirements to be met by commercial banks. The general provisions referenced in the preceding paragraph must always comply with those guidelines.

7. PERIODIC BANKING PERFORMANCE EVALUATIONS.

The reform adds a legal framework that authorizes the SHCP to periodically assess the performance of commercial banks, with respect to the degree of orientation and compliance of commercial banks in fulfilling their corporate purpose, the support and promotion of the country's productive forces, and the growth of the national economy, subject to healthy banking practices and any other aspects determined by the Ministry of Finance and Public Credit, SHCP. BANXICO, the CNBV and the IPAB, will assist in performing these evaluations at the request of the SHCP and within the scope of their respective powers.

The SCHP shall be authorized to issue guidelines establishing the frequency, methodology, evaluation parameters and other aspects required for the performance evaluations.

The evaluations are mainly intended to encourage the institutions to fulfill their roles and assume their rightful role as members of the Mexican banking system, and in no event shall they refer to the financial condition, liquidity or solvency of the institutions evaluated. These assessments shall be public and made available to the general public through the SHCP, CNBV, IPAB and BANXICO websites.

Furthermore, and based on the aforementioned periodic evaluations:

a) The SHCP, CNBV and BANXICO shall take the performance evaluations of the institutions into account when deciding on the issue of those permits they must grant within the scope of their respective powers.

b) The CNBV may establish measures the institutions must meet in order to encourage the channeling of resources to finance the productive sector, such as parameters to carry out transactions with securities the institutions complete on their own account, which can also be different for each type of security. Such measures must be established in the general provisions approved by its Governing Board, and may be temporary.

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8. TRANSACTIONS WITH RELATED PARTIES AND DETERMINATION OF PRUDENTIAL MEASURES.

The reform reduces the limit of transactions with related parties a credit institution may implement from 50% to 35%, and severely punishes those who breach this rule.

The CNBV, as a preventive measure and in order to protect the solvency and liquidity of a full service bank, could eventually order the establishment of additional capitalization requirements set at the minimum regulatory ceiling established at 50% more, or partially or totally suspend credit operations by related parties, and even suspend the transfer of funds, the distribution of dividends or any other equity interest when such transactions are intended for persons having or exercising significant influence over the bank, as long as these individuals are subject to a corrective measure procedure due to capitalization or liquidity problems, intervention, dissolution and liquidation, reorganization, resolution, bankruptcy or insolvency or, receive government support due to capitalization or liquidity problems, or any other equivalent type.

It also provides for regulation regarding full service banking institutions or commercial banks that are members of financial groups, business groups or consortia, or that maintain business or equity ties with entities engaged in business activities, in order to ask for information about their members, or partially suspend or limit the operation with these companies.

9. PROVISIONAL ARTICLES.

- **Bylaws.** The commercial banks will have a period of 120 days from the date the Decree becomes effective, to amend their bylaws and securities representing their capital stock, as provided herein. In the case of amended bylaws, they must be submitted for approval by the CNBV.

  Additionally, and with respect to the last resort liquidity loans granted by BANXICO, the full service banking institutions or commercial banks must implement the corporate actions needed to expressly establish in their bylaws and representative capital stock shares, the provisions set forth in Articles 29 Bis 13 through 29 Bis 15 of the Financial Institutions Law, within a maximum period of 60 calendar days from the date the Decree becomes effective.

- **Labor contracts.** The full service banking institutions or commercial banks must establish in the contracts they sign as of the date on which the Decree becomes effective, the restrictions set out in sections IV) and V) of Article 29 Bis 14 of the

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Credit Institutions Law (restrictions on compensation payments and special bonuses, and refrain from agreeing to wage increases, when the bank contracts last resort loans with BANXICO).

- **Related credits .** The reform of Article 73 Bis of the Credit Institutions Law (reduction of 50% to 35% of the basic net capital) shall not apply to the amount of the transactions or credits provided by related parties before the Decree became effective, until these are renewed or restructured.

  In view of the above, once the Decree becomes effective, the commercial banks shall only be able to contract operations with related parties for an amount not to exceed this percentage, after considering the transactions mentioned in the preceding paragraph.

  As indicated in the first paragraph of this section, this only applies to the amount provided by the borrower before the Decree becomes effective, in the case of revocable loans or credits, or to the full amount of such loan or credit in the case of irrevocable loans or credits contracted before the Decree becomes effective.

B) BANKRUPTCY, BANK SAVINGS PROTECTION AND SECURITIES MARKET LAWS.

Since the judicial liquidation process of commercial banks is fully incorporated into the Credit Institutions Law, the changes observed in this section on the **Bankruptcy Law** are consistent with this, since it is no longer the applicable legal system.

As for the reforms made to the **Bank Savings Protection Law**, considering that the rules for the procedures therein included on the payment of secured obligations and the sale of goods are transferred to the Credit Institutions Law, the changes (revocations) observed in the first-mentioned Law are consistent with this.

Regarding the **Securities Market Law**, the changes are intended to establish that the Federal Government will provide resources to the Asset Management and Disposition Agency (SAE), within the liquidation or insolvency procedures established for financial institutions that are regulated under that Law.

SECTION 8. MUTUAL FUNDS.

This section modifies two laws: a) the Mutual Fund Companies Law, which actually changed its name to Mutual Funds Law, and b) the Securities Market Law. The following major changes are discussed under this section based on their relevance.

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1. INTRODUCTION.

The law dates back to 2001, and the legislature at the time, believed that financial institutions authorized to operate as mutual fund operators responsible for managing investment funds, should incorporate outside of the full service banking institutions or commercial banks and brokerage firms, as the latter used to be authorized to trade live funds. This modification intended to eliminate the potential conflict of interest that could arise within a bank or brokerage firm, by simultaneously managing the resources of others and holding securities on their own account.

Also, along with the establishment of the investment fund operators with their higher level of autonomy and managerial independence, the legislature then looked at a new legal regime to contract specialized financial services for the fund itself, which economies of scale generated benefits from the yields obtained by the investors.

2. PRIMARY OBJECTIVES OF THE REFORM.

The propounded reform primarily intends to ensure the sector's further growth and development, encouraging greater participation among the population through better and greater access channels, more competition and innovation while continuing to move forward in terms of the adequate protection for the interests of mutual fund investors. Some of its most notable objectives include the following four adjustments to the legal framework:

a) The creation of a new corporate figure created with a great deal of flexibility to allow mutual funds to legally incorporate through expeditious and less costly processes.

b) Establish the foundations to ensure greater competition in the sector by designing an open market architecture to allow the investing public to have access to all existing mutual funds in the industry, as relevant to their investment profiles.

c) Increase activities in the authorized mutual fund operating regime and for the financial institutions that provide their specialized services, to thereby encourage innovation of new products.

d) Improve the investor protection system.

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3. LEGAL REFORMS.

- **New corporate figure.** In order to streamline, expedite and lower the cost of incorporating and operating investment companies, the reform presented intends to create a new subtype of business corporation called "investment funds" that does not demand all of the formalities established for new businesses, such as having their meeting minutes formalized by a public or commercial notary and registering in the Public Registry of Commerce. Furthermore, they would not have the traditional entities found in a business corporation, such as shareholders, board of directors and commissioner. Instead, the mutual funds would be created by providing the National Banking and Securities Commission with evidence of their incorporation and corporate charter, and the roles assigned to such entities would be assigned to third party service providers.

  In this sense, it intends to recognize the reality under which mutual funds actually operate, where the shareholders only exercise their economic rights and the board of directors of each mutual fund is not actively engaged in the fund's decisions (given the statutory regime established for delegated administration), nor does it maintain control over the direct supervision of the fund, given its nature as an eminently temporary investment vehicle for the investor and not as a company. Therefore, the reform proposes appointing an operating company to manage the fund, which could actually be the only people that could create a mutual fund (created with only one partner, and then diversify ownership of the capital in the hands of the investing public). It also entrusts the Compliance Officer of these operating companies with the surveillance tasks, such as making sure they meet the terms established in the prospectus, verifying the existence of assets, making sure the valuation is done properly and that the accounting records are kept on the Mutual Funds, among other activities.

  In the absence of an assembly and administration for the funds, the Law establishes that the operating company must, among other responsibilities, keep a separate book for each mutual fund it manages in which all corporate acts related to such fund are recorded.

  Based on the responsibility that comes with the proper management and protection of the resources managed by the funds, the reform establishes that the operators must be loyal and diligent in managing the funds, and include at least 40% of independent directors on their respective board compositions. It also establishes new responsibilities for the Compliance Officer in terms of oversight, to ensure the proper management of the resources entrusted to the mutual funds.

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The economic rights of market investors are clearly defined in the Law; however, additional rights could be established in the fund's corporate charter. It notes that market shareholders would not have the rights traditionally considered for business corporations (Articles 132, 144, 163, 184, 201, 206 and 220 of the General Business Company Law). These rights are suppressed, by virtue of the characteristics of the investment made in the fund, given that they were not considered necessary, such as not having the preemptive right to subscribe capital increases, as the variable capital of a mutual fund is intended to be placed in the hands of public investors and not in firm hands. Moreover, investors are not allowed to separate or withdraw their contributions, as this is replaced by the right to repurchase their shares as a means to withdraw their investments. Regarding the right to require liability, it establishes a better right, given that it can be exercised by whoever holds 0.5% of the outstanding capital stock or an investment equal to 100,000 UDIS or more.

It also establishes the possibility to exempt mutual funds from other existing requirements, such as listing on the stock exchange, and where warranted, obtaining a rating from a rating agency, contracting auditing services and the possibility of outsourcing more services, provided they are authorized by the CNBV under the terms set forth in the relevant provisions, generating cost savings on behalf of the investing public.

Additionally, the new corporate figure, in protecting the investors' best interests, will allow for expedited mutual fund mergers and splits, in light of crisis scenarios and in conformity with the applicable provisions.

- **Increased competition and open architecture.** Mutual funds are bound to hire services to distribute the representative shares of their capital stock and in fulfilling that obligation, shall not be able to contract such services exclusively with any institution or company.

  In this regard, it is important to note that it is a common practice to have investment company shares distributed only by entities in the financial group the operator belongs to; however, in order to increase competition in the sector and improve and expand access channels to benefit depositors, the Law raises the following measures: a) empower the CNBV to authorize the creation of e-trading systems for the funds' capital stock shares, thereby giving all investors access a wider range of products through one single access channel; b) bind the operators of investment funds to accept orders to buy shares in the funds they manage, even if such requests come from entities not related to these operators, provided such entities comply with the applicable regulations; c) empower the CNBV to regulate the fees charged by the

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fund and its service providers, and d) provide the possibility for an operator called "limited operating company" to provide administrative services only.[10]

- **More activities and products.** In order to modernize and improve the sector's development, the reform raises the possibility that the mutual funds could engage in new operations and invest in a wider range of products. In this sense, mutual funds can now act as reported in repo transactions, which is a common activity in most developed markets while also distributing its shares abroad and having their assets held by the operator itself. This is done to improve the integration of their portfolios, reach a wider investor base and reduce operating costs, all of which efforts collectively produce better returns for their shareholders.

  Moreover, the operating companies were also authorized to engage in trust activities, provided that the purposes of the trust itself is to engage in business directly connected with the activities in their own system, including security trusts and some trust issues, as in the case of indexed trust bonds.

- **Investor protection.** The information given to investors must be sufficient and appropriate for them to make informed investment decisions. Such information must also comply with standards of quality and content, in keeping with international best practices. Therefore, it includes the obligation of operators submitting a document containing key information to the CNBV for its authorization. This document must include the most important aspects customers must be informed of, when promoting and selling the shares.

  In this same vein, the reform proposes empowering the CNBV to regulate the content of statements received by the investor, establishing the possibility of developing standardized methodologies for calculating risk and the yields earned on the funds.

  In the same line of thoughts, it establishes the new requirements that must be met by the entities distributing the funds, when advising their customers or offering them the mutual funds. These obligations relate to the need to analyze the products, profile the clients and provide transparency to customers regarding risks, when describing the products and services offered and the commissions charged, binding them to act in the best interest of the client.

10 These services consist of: a) control, monitoring and treasury operations; b) sending statements; c) the development and implementation of operational and technological processes for the transmission, storage, processing, protection and custody of the information and management of the databases on the mutual funds themselves or others; d) the generation and distribution of reports; e) the overall risk management; f) the development, distribution and publication of statistical and analytical information on the mutual funds or others, and g) the provision of information related to investment assets, except for information related to their current valuation prices.

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On the other hand, it is important to clearly describe the responsibility held by each service provider contracted by the mutual fund, thereby intending to strengthen the corporate governance regime applicable to the three major service providers the mutual funds must contract (operator, distributor and appraiser), and the rules on the composition of the Board of Directors, and the diligence and loyalty duties. The Law also allows operators to provide other services such as: a) distribution, accounting and custody of assets, b) enables the valuators to provide accounting services, c) trust d) empowers the CNBV to regulate the provision of their services. The price vendor services are remitted to the Securities Market Law.

Investor protection is accompanied by appropriate and timely penalties, which inhibit intermediaries from acting out of line with sound market practices or in clear breach of the applicable regulations.

Lastly, new powers are vested in the CNBV, which allow it, among other things, to issue general rules to regulate internal controls and comprehensive risk management.

4. PROVISIONAL ARTICLES.

- **Bylaws.** Investment companies authorized in terms of the legislation existing before the Decree goes into effect, shall have an 18-month period from the date on which the Decree goes into effect, to request authorization from the CNBV to reform their bylaws to include the social clauses established by this Decree applicable to mutual funds, as related to management roles, conducting business and oversight of the mutual funds, and shareholder rights. In submitting such applications, the investment companies must attach details on their founding partners and information on their authorization to incorporate as mutual funds.

  Until the investment companies obtain permission to become mutual funds, they shall be subject to the applicable provisions in force before the Decree goes into effect. The CNBV shall have an 18-month term to decide on the transformation of investment companies into mutual funds under this Decree. Such period shall be calculated as of the date on which respective companies submit their corresponding applications.

  Companies that do not obtain the permission to convert into mutual funds or that have not submitted an application within the established period, shall enter, by operation of law, into a state of dissolution and liquidation, without the need for an agreement issued in a general shareholders meeting.

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- **Prospects.** The mutual funds that receive their transformation authorization, will have six months as of the date on which they receive the notice of such authorization, to notify the CNBV of the changes made to their prospectus offered to the investing public and documents containing key investment information. Any other changes to the prospectus they offer the investing public must be previously authorized by the CNBV.

- **Shareholder exits.** The shareholders of investment companies that do not wish to stay in such, because of the new transformation rules, shall be entitled to have the company acquire all of their shares at market value and without the application of any differential, and have a maximum period of 30 business days to request such, from the date on which they are notified of the change. The provisions of this Article shall apply even in the case of closed investment companies.

- **Operators, distributors and appraisers.** The operating companies of the investment companies, the companies that distribute the shares of investment companies, and the companies that appraise the shares held by the investment companies, shall have one year from the date the Decree becomes effective to comply with the provisions set forth in the same.

SECTION 10. THE STOCK MARKET.

This section amends one law: a) the Securities Market Law. The following major changes are discussed under this section based on their relevance.

1. OFFER OF SECURITIES.

- **Restricted public offerings.** The reform incorporates the concept of restricted public offerings (directed only to a certain class of investors), which will serve to establish regulatory burdens on the different disclosure requirements established by the general system that will most likely result in lower costs in placing the securities object of such offerings. The CNBV shall be responsible for determining the regime for this type of offerings.

- **Offers abroad.** The reform eliminates the fact that only public offerings abroad must notify the CNBV of such, therefore resulting in the need to inform the CNBV of any securities offered abroad, for statistical purposes. This information will be contained in the National Securities Registry for statistical purposes, and shall not constitute a public record or entry.

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2. ISSUERS.

- **INVESTMENT PROMOTION COMPANIES (SAPIS) .** The term to convert stock exchange investment promotion corporations to publicly-traded companies, is extended from three to ten years. It also considers the amount of equity as a factor that could advance the conversion of such companies when their net worth exceeds an amount equal to 250 million UDIS. Additionally, the transition shall be completed in conformity with the terms set forth by the CNBV as general provisions.

- **PUBLICLY-LISTED COMPANIES (S.A.B.).** They must specify that the issuers' CEO and relevant senior management are responsible for disseminating relevant information and the events that must be disclosed to the public, and for the content and timing, even when diffusion has been delegated to third parties, except for the inexcusable negligence of such third parties.

- **Relevant information.** Issuers are bound to keep track of people who have access to information that could be considered as a relevant event. The Law also establishes that the issuers must immediately report any information they have explaining unusual movements in the market or changes in supply or demand or in the price of securities that are not consistent with historical performance (the former law established this at the request of the CNBV or Stock Exchange). The reform also establishes that the CNBV or Stock Exchange may order issuers to publish the relevant event or additional information.

- **Insider information.** Include as subjects of those presumed to have insider information, including the issuers' board members and managers, intermediaries and independent service providers, and the people who have had a relationship with the issuer to whom the relevant event is attributed for somehow participating in the event.

- **False or misleading information.** It specifies the prohibition applicable to issuers on spreading false and misleading information, and extends said prohibition the securities market intermediaries and investment advisers. The precision consists of defining the term "misleading," updating this assumption to include omissions in the disclosure of information or even when it contains mistakes, while false information is literally applied.

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3. SECURITIES.

- **Trust certificates, structured equity securities (CKDs), Real Estate Investment Trusts (REIT or FIBRAS in Spanish) and Exchange Traded Funds (ETFs).**

  The reform establishes that the trust certificates can be included in different series, and their holders shall have equal rights, in all cases. Each series can, therefore, have its own characteristics. It also establishes the possibility that the property and rights for each series remain assigned to their corresponding accounts or sub-accounts, to be used only to fulfill the obligations of the series itself.

  With respect to the Certified Trust Bonds, three new types of these securities are regulated: a) development of (CKDs), b) Real Estate (REITs), and c) those indexed, which seek to replicate the performance of indexes, financial assets or reference parameters, which are commonly known as passive management ETFs. However, the Law also provides for the possibility of issuing a further variant of indexed stock certificates, through which explicitly seek higher yields at a given index, financial asset or benchmark, which are known as management assets, in which case, the Law provides that in such cases the trustee must necessarily be an operating company of funds.

  Additionally, as the equity manager of the trust that issues certified indexed trust bonds, the Law prohibits: a) there being some link with those who generate indexes or reference assets, and b) keep custody of the trust equity.

  With respect to the legal regime of CKDs and REITs, special rights of the holders (similar to a stock corporation), include: powers of the assembly, the technical committee and contents of the trust agreement, the above, because it considered by the legislature that these instruments will resemble, by their nature, something more akin to the behavior of the shares than the debt securities. Additionally, the mechanism for capital calls was incorporated into the CKDs.

- **Appreciation Guarantees.** The range of underlying assets of the appreciation guarantees are extended to those determined by BANXICO, by means of general provisions.

- **Rnv (National Securities Registry).** Specify that the update of the emissions will only be made by changes to the number, class, series, amount, term or rate and other characteristics of the securities. Also, the possibility was extended of obtaining the registration of placement programs for any type of security, being that this was only previously allowed for debt securities.

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- **Common Representative.** The CNBV is empowered to determine by general provisions which other emissions in addition to those of the debt instruments must have a common representative.

- **Rating.** Specify, in the case of the residual trust debt securities requiring credit risk rating of the issue, at the time they provide that such securities are defined as those that only give the right to demand payment of principal and interest.

- **Prospectus information fort the investing public.** Add the power of the CNBV to require by general provisions: a) the requirements that a document must contain with key information attached to the prospectus, b) other aspects which must be covered by the opinion of the attorney at law, and c) determine that other persons must sign the placement prospectus or supplementary information about a public offering. On the other hand, what is incorporated as a legal requirement, is that the prospectus be accompanied with the opinion of an independent third party on tax matters that shall make a pronouncement on the tax treatment revealed in the prospectus.

4. SALES PRACTICES.

Known sales practice standards are incorporated into the Law and applied to the whole new legal framework, always focused on fulfilling the principle or duty of acting in the client's best interest. Some of the most important aspects included in this regimen are described as follows:

- **Compensation system.** Having a compensation system with its respective committee.

- **Place limits on the securities.** The power to be able to regulate limits on the placement of securities, particularly with their own clientele to prevent potential conflicts of interest and thereby promote better price formation in securities placement.

- **Reasonableness.** The principle of reasonableness in the formulation of personalized or advised recommendations, that is, that the recommendation keep consistency with:

  a) The customer profile or account.

  b) The product being invested in with the customer's profile or account.

  c) Compliance with a healthy diversification in the investment of client resources.

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- **Customer profile or account.** The obligation to establish a profile for each customer or of their accounts, assigning a level of risk tolerance in each case.

- **Product Analysis.** The obligation of analyzing the characteristics of the financial product and determine its profile, including in said analysis the level of investment risk and rate of complexity.

- **Product analysis committee.** The creation of a committee responsible for analyzing financial products, and appoint a person responsible for monitoring that the advised investment services or do not meet the applicable regulation (this person would report to the board).

- **Commissions.** The obligation to give greater transparency to its committees.

- **Statements.** Include statements in the calculation result yields the investment portfolio with their customers.

- **Saving files.** The obligation to maintain five years of communications with their customers, including those related to notices on services and promotions.

The CNBV may regulate aspects Contents related to the above concepts.

Moreover, the obligation of financial institutions participating in the international system referenced guarantees that the system values are only acquired by qualified or institutional investors, as such securities may or may not be subject to investment by anyone removed from the customer profile list.

5. INVESTMENT ADVISERS.

- **Registration and oversight CNBV.** It includes investment advisers in the supervision and regulation of the CNBV. Must obtain registration with the CNBV, These activities can be conducted individuals or entities. In the latter case, they can be anonymous or civil partnerships or limited liability companies.

  In the case of the partners or shareholders of these entities are not themselves, shareholders or directors or have dependency relationship with financial institutions that can provide investment advisory service, should they add to their name the word independent.

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- **Information Practices.** Must adjust their activities to the rules applicable to sales practices with respect to your customers. Therefore, and since it is the consultant who implements the scheme in question, the market intermediaries are relieved from performing that task (customer profiling).

- **Prohibitions.** Prohibitions that already existed (not receive remuneration from issuers for promoting values or market intermediaries bring customers, enters the most important) is maintained. Regard with respect to issuers, this prohibition extends to persons related to the issuer, and for intermediaries required for in loco exempting these advisers. It also adds new ban, and to act against the interests of his client and act as co-owners of the accounts of their customers.

6. TRADING SYSTEMS.

- **Stock Exchange**. Is added to the authorized operation of the bags legal regime, the possibility of entering into agreements with other exchanges in domestic or foreign securities. Prior authorization from the CNBV and the market in question must comply with principles similar to those now established for the international system of contributions will be required.

- **Companies that manage systems to facilitate transactions in securities.** Reform the legal framework is extending the range of entities that can operate in those companies, considering both lending institutions, brokerage firms and other institutional, domestic or foreign investors. Additionally, in the case of derivative financial instruments and foreign exchange, may provide their services to foreign financial institutions the same type as those listed. In any case, they must always have as a counterpart to a bank or brokerage firm. The parties may only operate on their own initiative.

  Case of fund managers for retirement and investment companies operating companies, means operating on their own, when carrying out transactions on behalf of the mutual funds they manage.

  The CNBV is empowered to issue prudential standards applicable to companies that manage systems to facilitate transactions in securities.

7. SECURITY DEPOSIT INSTITUTIONS.

- Anticipating the possibility that titles “dematerialized” settle.

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8. MISCELLANEOUS ITEMS.

- Powers include the CNBV to issue prudential securities rating institutions and regulation price providers.

- It specifies that the ban on operations of simulation is in the volume or value of securities.

- Severe penalties are incorporated on sales practices.

- It may proceed as stock offense and federalizing the behavior in the case of the trading mismanagement, not only the directors and executives of SAPIs "b" and Sabs already contemplated in such crime, but also to the participants of emissions certificates trust bonds.

9. PROVISIONAL ARTICLES.

- **Investment advisers.** Investment advisers will within 1 year from the publication of the decree to adjust to the new regime. From the date on which investment advisers made with the Securities Registry, shall be exercised exclusive supervisory powers of investment advisers on ML/FT.

- **Fund repurchases.** The reforms set out in Articles 366, second and third paragraphs (have policies related to people, before operating, to consult with the repurchase fund whether or not active in the market) will take effect 6 months after publication Decree.

- **Brokerage firms and Companies Administer Systems to Facilitate Securities Transactions.** Have a period of one year from the date of entry into force of the decree, to present to the CNBV manual of conduct to address potential conflicts of interest that fractions IV of Article 115, and IV of Article 254 of the Securities Market Law.

- **Brokerage firms.** Brokerage firms have a period of 9 months from the date on which this Decree goes into effect to amend its bylaws as provided in Article 135 of the Securities Market Law (implementation of corrective actions associated with the category that the brokerage firm is located, according to the capitalization index that apply), and subject to the approval of the CNBV.

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SECTION 11. PENALTIES AND FOREIGN INVESTMENT.

This section amends the following nine laws: a) Law of the National Banking and Securities Commission, b) Law to Regulate Credit Information, c) Mexico Bank Law, d) Systems Law Retirement Savings e) General Law of Institutions and Mutual Insurance Societies, f) Federal Bonding Institutions, g) Law of Insurance Institutions and Bonds, h) Foreign Investment Law, i) Federal Code of Criminal Procedure.[11] For its relevance then referred to major changes in this section.

A) LAW OF THE NATIONAL BANKING AND SECURITIES COMMISSION.

- **New powers:**

a) ML/FT certificate renewed every five years, independent external auditors and other professionals who provide services to regard financial institutions (for instance, official compliance) or when you contribute to the CNBV.[12]

b) To assist the SHCP and PGR, when requested, in research for detection and retrieval of information resources under the Federal Law on the Prevention and Identification of Operations Illicit Resources, or, for the prosecution crime of money laundering or terrorist financing. The results of such activities, the CNBV will report.

c) Develop and publish statistics on financial institutions and markets, indicators of solvency, stability and liquidity, make and disseminate studies and estimates of market scenarios that allow the comparability of information, and to publish a representative sample database operations and services entities or segments of the market, provided that the information does not contain privileged or confidential information.

d) Spread through its website that imposes sanctions, and even when they are not strong, revealing the state to save the process.

- **Other provisions:**

a) The legal framework for self-correction programs that may be attached to the supervised entities and others for violations of the provisions of the Laws which govern it are included.

[11] Reforming the Federal Code of Criminal Procedure is intended to qualify as felonies, certain criminal conduct under the laws relating to the Mexican financial system.
[12] Enter into force on 1 January 2015, with respect to those who serve in financial institutions.

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b) The regime of exchange of information with foreign financial authorities is strengthened.

c) He was empowered to transfer resources to the SAE effect to conduct liquidation or bankruptcy procedures of entities subject to its supervision.

d) To improve coordination between authorities, it is expected that at the request of the CNBV, the CNSF, CONSAR, CONDUSEF BANXICO and IPAB, must communicate with each other in November of each year, those financial entities that intended practice visits the following year, as well as arranging visits to be practiced together.

e) It is established that the infringements to the regulations issued by other financial authorities must inform the competent authority.

f) As for the development banks, the possibility of approving annual economic stimulus programs CNBV staff, depending on the evaluation of their performance, adjusting to the limitations and expenses that are approved for such concepts is contemplated in the Budget Federal Expenditures.

B) COMPANIES ACT TO REGULATE THE CREDIT INFORMATION.

- **Parastate Bureau.** The possibility that the federal government constitutes a company credit information is expected.

- **Credit rating or risk.** The scheme of this service provided by credit bureaus, which are very useful to credit grantors during their promotional campaigns and offer credit to customers who already have or your potential customers is required.

- **Controls to enforce the right to forget.** Credit bureaus must delete the credit history they have in their databases, when it has an age of 6 years. To give effect to the right to forget the credit history, which they established particularly for those who might come to have negative antique background, are allowed to retain the credit bureaus that database with the sole purpose of preventing remittances with new information, any user try to add this background. Additionally, the faculty of the CNBV to require a quarterly report on the status of the process contemplated deleting records.

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- **Ban.** Users are prohibited from reporting to the bureau unsolicited or contracted by customer credits. In this case, the bureau must delete the credit, when there customer complaint. They have a period of five days to clear those debts. It is understood that no contract has been requested or credit, unless proven otherwise, when not disposed of the line and there are only charges fees.

C) THE CENTRAL BANK LAW.

- **Regulation.** Empower the BANXICO to issue rules not only when they intended to monetary or exchange regulation, the development of the financial system, the proper functioning of the payment system or the protection of the public interest;, but also in matters that are brought in laws other than the Law

- **Supervision.** Expressly provided BANXICO faculty to supervise the subject to this regulation issued financial institutions, subject to the rules issued for such purpose the Board of Governors. Such allocation shall include the inspection and supervision functions.

- **Reports to the President and Congress**. Periodicity increases with the BANXICO must inform the President of the Republic and Congress on the conduct of monetary policy, semiannually to quarterly. Additionally must submit an annual report to Congress on the exercise of the powers conferred by Law for Transparency and Ordering of Financial Services report.

- **Penalties.** Incorporate the elements BANXICO must consider for imposing fines, as long as the penalization procedure refers back to the rules, and create an updated penalizations catalog.

D) RETIREMENT SAVINGS SYSTEM LAW; GENERAL MUTUAL INSURANCE COMPANIES AND INSTITUTIONS LAW; FEDERAL BONDING INSTITUTIONS LAW, AND INSURANCE AND SURETY COMPANY LAW.

- As with development banking, this section includes the possibility of annually approving financial bonus plans for CONSAR and CNSF employees, based on their performance evaluations, and adjusting the limits and expenditures approved for such concepts in the Federal Expense Budget.

- Administrative penalties on participants in systems of retirement savings increase.

E) FOREIGN INVESTMENT LAW.

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- Concludes reform to liberalize foreign investment in the Mexican financial system whole.

SECTION 12. FINANCIAL GROUPS.

In this section, a new law was issued: a) Law to Regulate Financial Groups. For its relevance then referred to major changes in this section.

1. <u>ORGANIZATION AND OPERATION</u>.

The corporate structure of holding companies is modernized. According to the preamble of the new law, one of the main contributions is to provide more flexible corporate structure for investment holding companies of financial groups.

In this respect, the previous law only contemplated the possibility that the holding company invested directly and at least fifty-one percent in the financial institutions group members. Now, the new law allows the Parent Company may make indirect investments in mainstream financial institutions through Sub-controllers or even through other financial institutions, to integrate a Financial Group, which enable them to invest in other financial institutions over which they have majority and therefore are not considered as members of the respective Financial Group. In no case may have more clustered than grouped entities.

Article 12 is central to respect the above that letter states:

> *"The Financial Groups referenced in this Law shall be comprised of a Holding Company and by some of the following financial institutions considered members of the Financial Group: bonded warehouses, foreign exchange brokers, bonding companies, insurance companies, brokerage firms, full service banking institutions or commercial banks, mutual fund management companies, mutual fund share distributors, managers of pension funds, financial institutions and popular multi-purpose finance companies.*
>
> *The Financial Group must be formed with at least two of the financial institutions mentioned in the previous paragraph, which may be the same type. Notwithstanding the foregoing, a Financial Group cannot be formed with only two multiple purpose financial corporations.*
>
> *Only be members of Financial Group financial entities in which the Parent Company holds directly or indirectly more than 50 percent of the shares of its capital stock.*

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Also, the Holding Company, through Sub-controllers or other financial institutions may indirectly maintain the shareholding of the members of Financial Groups, as well as those financial institutions that are not members of the Financial Group and Service Providers and estate, subject to the prohibitions provided by the respective special laws.

The financial institutions whose capital stock, with more than 50 percent, commercial bank, brokerage firm or institution member of a Financial Group insurance will also be members of the financial group. "

Moreover, important aspects of the joint offer of financial services are provided, to allow members of a financial group financial institutions offering financial products and services of other financial institutions that are linked to financial products and services offered by the financial institution concerned, requiring only have the express consent of the client.

Additionally, authorizing or prohibiting conducting fundraising offices and branches of the public from other members of the group financial institutions, which must be subject to rules issued by the SHCP effect is eliminated.

2. CHANGES TO THE CORPORATE STRUCTURE.

The new law decided to establish a similar set to the Securities Market Law for stock corporations' regime in the same direction redefining the roles of social bodies, and also establishing the system of minority rights, duties (diligence and loyalty) and liability for acts or wrongful acts for this type of companies referred to in the Securities Market Law.

The objective of the new corporate governance is holding companies streamline the resources of these groups, improve their management and customer relations, to the effect that at that level business strategies Financial Group as a whole are designed.

However, consistent with international practice, the possibility of creating one or more integrated to support independent directors to the board impartially in their monitoring committees were introduced. The basic functions of these committees are the accounting and internal control monitoring, and monitoring of good corporate practices.

3. INVESTMENTS.

As noted, in addition to the shareholding of the Parent Company Financial Group members financial institutions, can make the investments that are listed below:

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- Securities representing the capital of financial institutions that are not members of the Financial Group.

- Securities representing the capital and Real Estate Service Providers.

- Securities representing at least fifty-one percent of the share capital of Sub-controllers, provided you have the same control and prior authorization from the SHCP, listening to the views of BANXICO and as appropriate, the CNBV, the Committee National Insurance and Bonding Commission and the National Savings System for Retirement.

- Premises and equipment strictly necessary for the fulfillment of its object.

- Securities by the Federal Government, instruments and savings deposits and other investments authorized by the SHCP referred.

- Securities representing the capital stock of foreign financial institutions prior authorization from the SHCP, the terms and the latter determine proportions.

Investments in the moral to the preceding items that are made in terms of this article refer persons are not considered members of the financial group in question.

4. IMPROVEMENTS IN ADMINISTRATIVE PROCEDURES .

With this initiative the acts that can be performed in a Financial Group are strengthened, such as incorporation, separation, merger and demerger to clarify the requirements for obtaining the corresponding authorizations, and regulate important aspects thereof.

In addition to the above, there is the possibility that the Parent Company may request the revocation of his release, bringing with this innovation, there will be two forms of revocation:

a) The first would be a voluntary revocation when so you remember the very Holding Company to suit its interests, provided that: there are no obligations to his office or losses that must be satisfied of the members of Financial Group concerned financial institutions; submitted to the Supervisory Commission, as appropriate, approved by the shareholders' meeting, accompanied by the opinion of an external auditor financial statements, and members of the financial group financial institutions meet the capitalization requirements under applicable provisions.

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b) The second would be a forced withdrawal stated by the SHCP, when the Group Financial Controller or the concerned Company, are located in any of the grounds for revocation under the Law itself

Finally, update and regulate important aspects of the dissolution, liquidation and bankruptcy of the holding companies, by providing who may fall in the office of liquidator must meet the requirements and responsibilities, providing agility to the process same dissolution and liquidation.

5. CONVENTION AND CONTROLLER RESPONSIBILITIES AND REMEDIES.

- **Convention responsibilities.** In this regard, the Controlling Company's responsibilities before the financial entities comprising the respective Financial Group, maintains the regime established in the former law establishing that the Controlling Company must sign an agreement by which the first will response in a joint and several unlimited manner in complying with the obligations held by the companies comprising the Financial Group, and in an unrestricted manner for the losses suffered by each and every one of such financial entities.

  Furthermore, and with respect to the referenced responsibilities regime, the new Law also maintains the principle establishing that the referenced responsibilities shall be previously established in the Controlling Company's bylaws, and in the agreement that must specifically state that none of the Financial Group's financial entities shall respond for the Controlling Company's losses, or for the losses suffered by the other companies comprising the Financial Group.

  In the case of non-members of the Financial Group, or Service Providers or financial institutions Developments, the Parent Company shall not additional responsibilities that states the financial and commercial law applicable, which shall be stated in the bylaws of the Parent Company's own.

  On the other hand, the reform establishes payment priorities in the event that the Controlling Company does not have sufficient funds to guarantee its responsibilities with respect to the financial entities comprising the Financial Group, as they appear simultaneously, thereby establishing that such liabilities will initially be covered for the bank that belongs to such Financial Group and, then prorated to cover the other entities comprising such Financial Group until the Controlling Company depletes its equity. In effect, we consider the relationship that exists between the percentages they represent, in the capital of the Parent Company, its participation in the capital of financial institutions concerned.

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In the event that the entity that belongs to the Financial Group and reports losses is a full service bank, the IPAB shall determine the preliminary amount of all member commercial comprising the Group, and require that the Controlling Company: a) submit to a special oversight program, b) create a reserve charged to its capital up to the amount covering the bank's losses, and c) constitute a guarantee (shares) on behalf of the IPAB.

In addition to the above, the reform establishes the possibility that the SHCP might issue general provisions setting out the corrective measures to be carried out by the Controlling Companies, in order to make sure the financial entities comprising the corresponding Financial Group, meet he capital requirements established in their respective special laws, so they can consequently maintain, a net consolidated capital, thereby taking strong steps towards the concept of consolidated supervision of the Financial Group's risks. Among the corrective measures that could be implemented, include the following:

a) Suspend the payment of dividends, buy back shares and any other mechanism that involves a transfer of economic benefits to shareholders.

b) Suspend payment of compensation and additional special bonuses to salary of the CEO and staff of the two hierarchical levels below it.

c) Suspend the payment of interest on subordinated debentures.

d) Refrain from investment in Financial Group members of financial institutions and securities representing the capital of financial institutions that are not members of it.

e) Sort the sale of assets owned by the Parent Company or owned by members of the financial group financial institutions.

This, aims to prevent and if necessary correct the problems that may arise and that may affect the financial stability or solvency of the Parent Company or financial entities comprising the Financial Group.

6. CONSOLIDATED SUPERVISION AND CONCEPT OF ECONOMIC UNIT.

The financial group subject to a regime of supervision on a consolidated basis. To this end the Parent Company and the members of the Financial Group entities will be considered as a single economic unit in terms of disclosure, accounting and holding events with related

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parties, unusual or non-recurring transactions, transactions representing 20% or more of the consolidated assets and investments and real estate service providers.

The Parent Company and Sub-controllers be subject to the supervision of the CNBV, the National Insurance and Bonding Commission or the National Commission Savings System for Retirement. In effect, the Ministry of Finance will have the power to determine for each group who will be the Financial Supervisory Commission, for which take into account, among other criteria, the equity of the entities concerned.

Notwithstanding the provisions of the preceding paragraph, the financial institutions Financial Group will integrate the individual subject to monitoring by the Commission as appropriate in accordance with the rules applicable to each financial institution.

7. TIPS OF COORDINATION BETWEEN AUTHORITIES.

- **Background.** The Council of Financial System Stability, was originally created by agreement published in the Official Gazette on July 29, 2010, as an instance of assessing, analyzing and coordinating authority on financial matters, whose main function identify opportunity potential risks to domestic financial stability and to propose and coordinate policies, relevant measures and actions to address them. Similarly, by agreement published in the Official Gazette on October 3, 2011 the National Council of Financial Inclusion was created, whose purpose is to propose measures for planning, formulation, implementation, execution and monitoring of a Policy of Inclusion Financial.

- **Coordinating councils.** As set forth in the preamble of this new law, since it is enshrined in the Constitution of the United Mexican States, corresponding to state stewardship of national development, guarantee that this is comprehensive and sustainable, to strengthen sovereignty of the nation and its democratic regime, as well as plan, conduct, coordinate and guide national economic activity and conduct regulation and promotion of activities that requires the general interest in the freedoms granted under the Constitution, proposed to strengthen the power of the President to establish councils to serve as a forum for coordination of measures and actions in the scope of their respective powers, must perform or implement the SHCP, the departments or agencies of the Federal Public Administration respective BANXICO and, with this law, given its own target, the right to establish the existence of the Councils referred place, according to the following:

a) Consider the power of the President of the Republic may be tips that serve as a forum for coordination of measures and actions within the scope of their powers, must perform or

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implement the SHCP, the departments or agencies of the Federal Government and respective BANXICO.

b) Include a title in the on coordinating councils financial framework and the authorities stating that such advice may be established to address issues related to the development and stability of the financial system requiring coordination is expected involved, this coordination does not involve invasion of the powers and duties as the legal framework gives each called authorities.

c) Some of the tips may reference other transient and permanent and will be chaired by one determined by the President.

d) Expressly provide for the establishment of the Council of Financial System Stability, in order to preserve it as a permanent coordination body, and to act as the coordinating, evaluation and risk analysis on financial stability between authorities within it, to effect of avoiding interruptions or substantial alterations in the functioning of the financial system and, where appropriate, to minimize their impact when they occur. Additionally, the National Council of Financial Inclusion was created as a forum for consultation, advice and coordination, which is to propose measures for planning, formulation, implementation, execution and monitoring of a National Policy on Financial Inclusion.

8. PROVISIONAL ARTICLE.

- **Bylaws.** The holding companies have a period of 180 days from the date on which this Decree goes into effect to amend its bylaws and securities representing its capital stock, as provided herein. In the case of the amendment of the bylaws, they must be approved by the SHCP.

SECTION 13. SECURED LOANS.

A) Transparency Law and Promotion of Competition in the Credit Guarantee: This law amending paragraph 1. For its relevance then referred to major changes in this section.

- **Subrogation of creditor.** In order to further promote the portability of Guaranteed Loans (including Guaranteed Housing loans), it establishes a special procedure for the subrogation of creditor is expected.[13]

[13] The Law defines the Credit Guarantee as one conferring institutions secured either by mortgage, pledge securitized collateral, collateral trust or otherwise, for the acquisition, construction, remodeling or refinancing on property properties. For purposes of this definition, the operations performed by entities subject to the mode of sale with reservation of ownership, lease-purchase, installment sale, are equated with the concept. In addition, the Housing Credit Guarantee, Guaranteed Credit is that housing-related grants.

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In this regard, when the subrogated creditor is a credit institution, a linked SOFOME INFONAVIT, FOVISSSTE or ISSFAM suffice only that the new entity enroll, without charge, at the Public Registry of Commerce: a) the document stating the net amount of the total debt, b) the document evidencing full payment of the debt of the secured claim, and c) the document attesting the subrogation of creditor. Also, you need to ask why the original creditor take its registration in the Public Registry of Property or corresponding special registers in order to recognize the new creditor for legal purposes that may be required.

Additionally, it is expected to be stated explicitly consent and the cost of insurance provided, where appropriate, the debtor in the recruitment of secured credit. As if such insurance is set by the contracting authority as a condition of the loan, the debtor shall be informed that his contract with the entity is optional.

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