



Update on Regulation of Branchless Banking in Colombia

January 2010

Note: This update of CGAP's 2008 "Diagnostic Report on the Legal and Regulatory Environment for Branchless Banking in Colombia" incorporates research conducted by CGAP in January 2010 regarding relevant legal and policy changes through the end of 2009. It is one of 11 similar country updates produced by CGAP as a part of the work plan of the Access through Innovation Sub-Group of the G-20 Financial Inclusion Experts Group. However, CGAP alone is responsible for its content. Corrections may be forwarded to yseltzer@cgap.org.



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1. Introduction

The Colombian Government is committed to increasing financial access for the country's population and has embarked on a number of regulatory reform and promotion initiatives. Recent reforms include (i) the creation of a fairly open regulatory framework for the use of agents by financial institutions, (ii) the use of financial incentives for banks to offer low-value savings accounts, (iii) improvements on the regulatory redefinition of microcredit, (iv) exemptions from the financial transaction tax that is imposed on bank customers, and (v) regulation of electronic accounts and mobile bank accounts.

Although much has been achieved, there is still a long road ahead. Only 40 percent of the total population has access to formal financial services. There were high hopes for two of the recent initiatives: the adoption in 2006 of regulation enabling banks' use of agents and the introduction of low-value accounts. Given the flexibility of the agent regulation (any type of legal entity can act as agent of a fully licensed financial institution and deliver financial services on its own premises), there was an expectation that banks would engage agents, thereby increasing considerably the number of financial service access points and the number of banked Colombians. However, for specific reasons, the model does not present an appealing business case for either side (banks or agents), and banks' use of agents has not played out as expected. In addition, notwithstanding the financial incentives provided by the central bank, banks do not consider low-value accounts as a profit center.

Another challenge is that branchless banking services are limited to banks. There is thus both a limited number of providers (banks, who provide services to their own customers and do not appear interested in the lower income market) and a lack of competition among them.

2. Sector Overview

Colombia has a population of approximately 46.1 million; 74 percent live in urban areas, and 64 percent are below the poverty line. A USAID study indicates that opening bank accounts is viewed as a difficult and complex process.³ Moreover, formal financial services are perceived to be linked to taxation and traceability and, therefore, are not always desirable for unregistered microentrepreneurs who prefer informality and anonymity.

¹ The 2008 "Diagnostic Report on the Legal and Regulatory Environment for Branchless Banking in Colombia" was based on an analysis of existing legislation and regulations relevant to branchless banking approaches and on the CGAP research team's insights from interviews with a range of stakeholders. The original diagnostic assessment was carried out under the auspices of CGAP's Technology Program, which is co-funded by the Bill & Melinda Gates Foundation.

² In September 2009, the G-20 called for the establishment of a Financial Inclusion Experts Group with two subgroups, one of which is the ATI Sub-Group. CGAP is a member of an experts group assembled to assist the ATI Sub-Group in its work, which includes updating information previously published on the policy and regulatory framework for branchless banking in various developing countries.

³ Econometrica Ltda/USAID, *Encuesta de Mercado de Crédito Informal en Colombia*, 2009.



The Telecommunications Regulatory Commission (CRT) reported that Internet penetration reached 13.2 percent of the population in mid-2006, although average Internet rates of US\$30 per month were relatively high for low-income segments. The International Communication Union calculates that in 2008, 38 percent of the population had access to the Internet, a significant increase in just two years.⁴

With regard to mobile banking and e-money issuance by nonbanks, it is anticipated that client adoption will not be enthusiastic due to a lack of trust in nonbanks as depositaries of client funds. The uptake of present models has been rather low.

Since the adoption of the National Development Plan 2006–2010, the Colombian Government has indicated its deep commitment to increasing access to finance for the country's population. The main obstacles for financial inclusion listed in the Plan's related documents are (i) limited points of access to the formal financial sector, (ii) high cost of formal financial services, (iii) lack of financial capability, and (iv) a preference for informality as a way to avoid taxation. Other obstacles include the interest rate ceiling on any form of credit (stipulated in the usury law), the financial transaction tax,⁵ and the rigidity of prior anti-money laundering (AML) controls, which negatively affected account opening (see section 3.2).

To address these obstacles, in 2006, the government created Banca de las Oportunidades (BDO)—long-term policy program aimed at expanding access to financial services for adult Colombians. BDO promotes regulatory changes, coordinates financial capability initiatives, and provides incentives, such as technical assistance, for financial institutions to tap the unmet demand for banking services.

2.1. Banking Sector

There are 18 banks in Colombia, with a total of 5,076 branches.⁶ Banks compete with deposit-taking commercial finance companies and an active nonregulated microfinance sector dominated by nongovernmental organizations (NGOs). There are approximately 34.9 million current and savings accounts,⁷ out of a population of approximately 46.1 million.⁸ There is no estimate on the actual number of account holders, but BDO estimates that 40 percent of the total population (or 57 percent of the adult population) have access to formal financial services.⁹ Of a total of 1,119 municipalities, 61 still lack access to formal banking services.¹⁰ There is limited product innovation and competition when it comes to low-income customers, although this segment has received more attention lately, including from large private commercial banks, such as Bancolombia and Banco AV Villas.

BDO successfully advocated for several recent regulatory changes, such as the agency regulation in 2006, and the creation of low-value savings accounts,¹¹ which has benefits for both clients and providers. These low-value savings accounts featured (i) simplified know-your-customer (KYC) requirements; (ii) fee exemption on a specified number of monthly

⁴ Colombia ICT Statistics 2010. <http://www.itu.int/ITU-D/icteye/DisplayCountry.aspx?countryId=53>, accessed 27 January 2010.

⁵ The financial transaction tax is a deduction of 0.4% from every debit in a bank account, including accounts held by banks in BRC. This tax was introduced by Law 633/2000. The exemption for debits up to the equivalent of US\$3,500 was introduced by Law 111/2006, Article 42.

⁶ Superintendencia Financiera, as of June 2009.

⁷ Asobancaria, November 2009.

⁸ World Development Indicators, World Bank, 2009.

⁹ As of March 2009. Banca de las Oportunidades, Metas, Resultados y Logros, Septiembre 2009, accessed January 2010. <http://www.bancadelasoportunidades.gov.co/contenido/contenido.aspx?conID=690&catID=300&pagID=377>.

¹⁰ *Ibid.*

¹¹ Decreto 1119, 11 April 2008.



transactions; and (iii) exemption from directed lending provisions.¹² Furthermore, monthly debits of up to US\$3,500 from all types of savings accounts (including electronic and mobile accounts) were exempted from the financial transaction tax (0.4%)—popularly known as *cuatro por mil*. BDO also pushed for a change in the regulatory definition of microcredit to make this market more attractive to banks.¹³ Reflecting the Superintendence’s view that such accounts represent low money laundering and terrorist financing risk and that the most powerful tool against these risks is a robust transaction monitoring system, customers need only present their official identification card at an agent or a bank branch to open a low-value savings account.

The Financial Superintendence of Colombia (SFC) is the financial regulatory and supervisory entity of Colombia. It is in charge of maintaining the integrity, efficiency, and transparency of the financial market while protecting its consumers. As such it plays a central role in Colombia’s efforts to increase access to finance for poor people and has been a central counterpart for BDO’s initiatives. SFC issued the 2006 agency regulations that permit financial institutions to use retail agents.

Three years after adoption of the agency regulations, there were 5,617 agents (most of them lottery agents) that handled an average of 1.1 million transactions per month, with a value of over US\$107 million.¹⁴ A majority of the transactions are utility bill payments. Only a few banks use agents to initiate account opening procedures (e.g., receiving customer applications and forwarding them to the institution) and disburse loans. Most agents are located in Bogota, the nation’s capital, although 763 municipalities now have at least one agent.¹⁵

Citibank alone accounts for over 75% of the country’s agents, uses them almost exclusively for bill payments and deposits from existing customers. It successfully renegotiated contracts with utility companies to improve profits from utility bill payments.

Bancolombia, one of the largest Colombian banks, had been working with agents for a few years before the agency regulation was issued. Its agents, known as PACs (Puntos de Atencion Cercana), promoted services and initiated account opening. (An agent would forward a client’s application; the client would then go to a branch to open the account and transact.) When the 2006 agency regulation came into force, 61 of the 240 PACs were transformed into agents. (Most likely, all will transform; however, the technology requirements are costly to implement.) Although this network is not as large as CitiBank’s network, in April 2009, 43 percent of all agent transactions were done through Bancolombia agents and approximately 64.7 percent of the aggregate amount of all agent-handled transactions were channeled through Bancolombia agents.¹⁶

The expansion of the agent banking model faces challenges that are generally related to costs and profitability. In remote areas where private banks were commonly absent, the few existing agents deposited their excess liquidity in Banagrario, a government bank that

¹² BRC External Circular 03/2000. They are compulsory investments in loans for certain sectors imposed on approximately 10% of demand deposit balances of banks.

¹³ Under the previous definition, a large number of microcredit operations were classified as commercial loans in bank books and consequently were subject to lower rate ceilings. The new regulatory definition of microcredit is expected to partially remedy this situation by increasing interest rate ceilings, thereby making microcredit a more commercially viable option for banks.

¹⁴ Banca de las Oportunidades, Metas, Resultados y Logros, Septiembre 2009, accessed January 2010, and Beatriz Marulanda and Lizbeth Fajury, “Evolucion y Perspectivas de los Correspondientes No Bancarios en Colombia,” August 2009.

¹⁵ Interview with Superintendencia Financiera de Colombia (as of January 2008) and Banca de las Oportunidades, Metas, Resultados y Logros, Septiembre 2009, accessed January 2010.

¹⁶ Beatriz Marulanda and Lizbeth Fajury, “Evolucion y Perspectivas de los Correspondientes No Bancarios en Colombia,” August 2009.



owns the largest branch network in the country. Banagrario then charged high fees for this service, adding excessive costs to the agent business in rural areas. Cash handling is costly in some urban areas, too, where agents often hire expensive private cash transport companies to manage security challenges in a country still struggling with high crime levels. As of April 2009, approximately 77 percent of all agent transactions were cash-in transactions (deposits and bill payments), which shows the importance of cash handling costs.

Another challenge is that some banks remain wary of using agents. Generally, the banking sector has limited experience with agents, particularly with respect to managing agent liquidity and mitigating the risk of agent fraud. Banks are concerned that selecting, equipping, and training agents will require significant investment of time, money, and equipment. This perception is further aggravated by “traditional” agreements between banks and utility companies to not charge for bill payments, thereby depriving banks of a potential source of revenue in the agent business. Other obstacles include the meager marketing support offered by banks to their agents and constant failure of the systems connecting banks and agents. Aware of such difficulties and perceptions, BDO has, since mid-2008, provided subsidies for banks to cover some aspects of the agent operation in the municipalities that lack financial services.¹⁷

Internet and mobile phones as delivery channels. Most banks offer Internet banking and some offer mobile banking to existing customers for payments, transfers, and account inquiries. Presently, mobile banking sees the least amount of transactional volume when compared to other channels, such as Internet banking, point-of-sale (POS) terminals, automated teller machines (ATMs), or agents.¹⁸

Banks, mobile network operators (MNOs), and the bank switches still disagree on the possible technological platforms for mobile banking as well as profit sharing arrangements among them. BDO is conducting several studies in partnership with international organizations to identify business opportunities and regulatory challenges for mobile banking targeting the unbanked.

2.2. The Mobile Phone Industry

Mobile phone penetration is very high: approximately 92 percent of the population has a mobile phone subscription.¹⁹ Three MNOs cover approximately 90 percent of the territory and 100 percent of the municipalities. Comcel has 67 percent of the market share, Movistar 22 percent and Tigo 11 percent.²⁰ Number portability is required by legislation.²¹

Both SFC and CRT have expressed interest in financial service delivery through mobile phones, provided that such delivery ensures customer data security and is open to the scrutiny of the respective regulator.

2.3. Electronic Commerce

¹⁷ As of March 2009. Banca de las Oportunidades, Metas, Resultados y Logros, Septiembre 2009, accessed January 2010. <http://www.bancadelasoportunidades.gov.co/contenido/contenido.aspx?conID=690&catID=300&pagID=377>.

¹⁸ Informe de transacciones enero, June 2009, Superintendencia Financiera de Colombia.

¹⁹ International Telecommunication Union, ICT Statistics 2010 (2008 estimate).

²⁰ Numbers provided by Catalina Diaz-Granados, Regulation Coordinator, CRT. Data from 2010. Comcel's dominant position was confirmed in February 2010. Numbers based on number of users.

²¹ Convergence Decree (Decree 2870/2007). A January 2010 CRT resolution established the portability implementation guidelines. Resolution 2355 at <http://www.crcm.gov.co/images/stories/crt-documents/Normatividad/ResolucionesCRT/00002355.pdf>.



Electronic commerce in Colombia is embryonic compared to its development in other Latin American countries, such as Argentina, Brazil, Chile, and Mexico. This is mainly due to low computer and Internet penetration and concerns about security. ACH Colombia (the main payment clearing and settlement system) and Certicamara (a digital signature certifying authority) have created a certification process for electronic banking transactions to encourage the use of Internet banking, but uptake continues to be slow.

2.4. Payment Systems, Instruments, and Services

The retail payment system is comprised of two open interbank clearing and settlement systems (Cenit and ACH Colombia), two bank switches and clearinghouses (Redeban and Credibanco),²² three major ATM networks, and one check clearinghouse. The systems are interconnected and partially interoperable. Customers may use cards at any ATM or POS terminal, but may make deposits only in a bank where they have a bank account. With the exception of Cenit, all retail payment systems and components are owned by private banks.

Cash is the preferred medium for low-value payments and is also used by the government to deliver welfare payments. There are about 8,872 ATMs and 128,731 POS terminals in the country.²³ There are approximately 6.3 million credit cards and 17.2 million debit cards in use.²⁴ Debit cards are used primarily for withdrawing cash in ATMs, where most card transactions are conducted.²⁵

There are no examples of widespread nonbank electronic money issuance. Redeban (one of the bank switches and clearinghouses) recently launched a mobile banking scheme with the intention that electronic accounts would be accessed via mobile phones. Some merchants and banks that had already been connected to Redeban's network are using this platform. Although the objective is to substitute POS and plastic cards with phones and to convert all Redeban merchants into cash-in/cash-out points for the mobile banking service, the mobile platform is primarily used to access bank accounts and it remains unclear whether Redeban will launch its own electronic money product.

The largest remittance streams to Colombia come from the United States and Spain.²⁶ Some estimate that remittances—a US\$4.8 billion business in 2008—are the single largest source of foreign currency entering the country. Most receivers belong to high-income urban segments. The reach of remittance distribution networks is limited due to regulatory obstacles (see Section 3.4).²⁷ The size of the market for domestic money transfers is unknown since most transactions are done through informal channels (e.g., freight companies). Legally, the National Postal Service is the only entity that can offer domestic money transfers.

3. Current Legal Framework for Branchless Banking

3.1 Agents

According to agency regulation, any type of legal entity, including savings and credit cooperatives, may with prior SFC authorization be hired by a SFC-licensed institution as an

²² Redeban is associated with Mastercard and Credibanco with Visa.

²³ Fedesarrollo, *Medios de Pagos Electronicos en Colombia: Evolución y Perspectivas*, June 2006.

²⁴ Credit cards around the world: Colombia, www.creditcards.com, accessed 27 January 2010.

²⁵ Fedesarrollo, *Mercado de Tarjetas en Colombia y el Debate sobre la Tarifa de Intercambio*, May 2006.

²⁶ United Nations, www.un-instraw.org/index.php?option=com_content&lang=en&id=328&task=view.

²⁷ Kugler, Maurice, *Migrant Remittances, Human Capital Formation and Job Creation Externalities in Colombia*, 2005. www.banrep.gov.co/docum/ftp/borra370.pdf.



agent to deliver financial services either on its own premises or in other locations where its services/products are offered.²⁸ Agents may provide most banking services, including bill payments, transfers, deposits and withdrawals, disbursement or repayment of loans, receiving and forwarding account opening and loan applications for the bank's approval, and national wires.

The financial institution remains fully liable for services provided through agents and for the agent's actions. The financial institution must set up adequate internal controls to monitor their agents and may use a third party (e.g., a network manager) to manage the agent network. For purposes of SFC review, the contracting financial institution must keep all information and documentation related to agent activities. SFC may inspect agents. The agency regulation sets forth minimum contractual clauses that every agency contract must contain, such as reference to the financial institution's full liability and the description of risk-mitigation measures (AML and combating the financing of terrorism [CFT], transactional limits, financial settlement, insurance).

Agent transactions must be authorized online via dedicated terminals meeting minimum requirements set forth by SFC regulation.²⁹ Agents cannot (i) operate if the communication with the financial institution fails, (ii) grant loans without authorization of the financial institution, (iii) charge extra fees, (iv) offer any guarantee to bank clients, or (v) offer financial services without an agency contract with a financial institution.

The regulation requires banks to design their marketing and visual publicity around agents to inform the customer that the service is being provided on behalf of a licensed financial institution. Every transaction must produce an automatically generated receipt with the name of the bank. The bank is required to install mechanisms to receive customer complaints against agents. In addition, an agent is required to post various requirements on visible signs at its premises.³⁰

To avoid double incidence of the cuatro por mil tax in agent transactions, Banca de las Oportunidades successfully coordinated with the tax authority to exempt agent accounts (with their banks) from this tax (i.e., the transactions between the agent and its bank are considered part of a single taxable bank transaction).³¹

3.2 Anti-Money Laundering/Combating Financing of Terrorism (AML/CFT)

The AML/CFT framework is spread throughout various laws.³² SFC has regulatory and supervisory authority over financial entities regarding AML/CFT, including payment service providers. All supervised entities are required to implement AML/CFT systems known as SARLAFT (*Sistema de Administración del Riesgo de Lavado de Activos y de la*

²⁸ Decree 2233/2006 allows banks and commercial finance companies to use agents. Decree 303/2007 and Decree 2965/2006 extended the permission to brokers and credit cooperatives, respectively. Decree 1121/2009 clarified and expanded the types of services that can be rendered through agents.

²⁹ SFC Basic Circular, Chapter 9.

³⁰ The statements that must be posted are: (i) the financial institution is responsible for the services, (ii) the agent is not allowed to provide financial services on its own behalf, (iii) the agent's status as correspondent and the name of the contracting financial institution(s); (iv) the bank fees for each service provided; (v) notice that withdrawals will be processed only if the agent has available cash; (vi) the agent's business hours for providing financial services; and (vii) the ombudsman's phone number

³² Law 356/1997, Penal Code (Law 599/2000), Financial System Bylaws (Law 510/1999 amended by Law 795/2003), Law 747/2002, Law 793/2002, Capital Markets Law (Law 964/2005), Law 1121/2006, and Law 1108/2006.



Financiación del Terrorismo).³³ SARLAFT requires financial institutions to report the following transactions directly to the Financial Intelligence Unit (FIU):³⁴

- Cash transactions above US\$5,000 (exchange houses must report transactions above US\$500) except payments to MNOs, public utilities, and government; provided that the financial institution must report information monthly on all exempted transactions;
- Transactions using foreign-issued credit or debit cards, if the monthly total is more than US\$5,000;
- Foreign exchange over the equivalent of US\$200

Know-your-customer (KYC) procedures for account opening and one-time transactions include obtaining customer information through an application form and verifying such information.³⁵ To send/receive foreign remittances, an additional application form must be completed.³⁶ The account opening process requires a personal interview and generally must be conducted by a bank employee. SFC allows the interview to be conducted remotely (e.g., by phone) or by third parties, provided that the bank outlines the reasons for the exception in its AML/CFT policy and implements stricter ex-post monitoring. SFC distinguishes different levels of risk for AML/CFT depending on the geographic region. In high-risk regions, the personal interview must be conducted by a bank employee.

A 2009 modification of the SFC Basic Banking Circular simplified AML/CFT procedures for low-value electronic accounts and mobile accounts that are opened via agents (who receive and forward the application materials). People opening such accounts are not required to complete the application form nor have an interview with a bank employee. Instead, they must provide identification information such as their name, identification number, and place and date of birth. Accounts opened remotely are to be subject to stricter AML/CFT monitoring by the bank.

Banks have also been exempted from the need to conduct KYC procedures for recipients of welfare transfers (Familias en Acción and Familias Guardabosques) and pension and wage payments, so long as the accounts are used exclusively for these transfers.³⁷

3.3 Banking Business, Deposit-Taking, and Electronic Money

The banking law defines credit institutions³⁸ as those able to take demand or time deposits for financial intermediation. They are the only entities authorized to take deposits from the public. SFC is legally required to sanction others engaging in “massive and habitual collection of funds from the public.”

A deposit is defined as repayable funds (other than loans).³⁹ Massive and habitual deposit taking is defined as cash or virtual money kept by the “collector” with no obligation of

³³ The main regulations (SFC Circular-Letter 062/2005, SFC Circular-Letter 037/2006, and SFC External Circular 022/2007) are compiled in Chapter XI of SFC Basic Circular.

³⁴ SFC External Circulars 040/2004 and 061/2007.

³⁵ SFC Basic Circular, Chapter XI, 5.

³⁶ *Declaración de Cambio—Servicios, Transferencias y Otros Conceptos—Formulario 5* and *Declaración de Cambio por Compra y Venta de Manera Profesional de Divisas y Cheques de Viajero—Formulario 8*. The regulation expressly permits financial intermediaries to fill out these forms on behalf of the remitter/receiver and also substitute the paper version by electronic document whose signature has been certified.

³⁷ The client information is provided by the government body or company responsible for the payments. SFC Circular 01/2007.

³⁸ Namely, banking institutions, financial corporations, commercial finance companies, and financial cooperatives.

³⁹ Decree 410/1971.



providing a service or good in exchange when at least one of the following conditions is met:

- There are more than 20 depositors or more than 50 obligations (deposits), or
- In a period of three consecutive months, the collector incurs more than 20 contracts to manage funds from the public or sells credit instruments with a resell obligation.

In addition, deposit taking requires one of the following conditions to be true: (a) the value of the funds collected surpasses 50 percent of the collector's equity or (b) the operations result from offers to unknown people.⁴⁰

There is no regulation on e-money. Nonbanks can issue e-money provided that it does not constitute deposit-taking (i.e., repayable funds). Regulations that explicitly allow nonbanks to issue electronic money could end legal uncertainty around this issue.

3.4 Payment Systems, Payment Instruments, Remittances and Foreign Exchange Regulation

BRC supervises and regulates payment systems.⁴¹ A variety of nonbanks (such as public utilities) have access to the large-value payment system (which is a real-time gross settlement system) operated by BRC. However, access is not open to all types of institutions.⁴²

SFC regulates, licenses, and supervises low-value payment system managers (LVPSMs).⁴³ To obtain a license, each LVPSM must fulfill the same requirements imposed on commercial finance companies⁴⁴ and subject its internal rules to SFC scrutiny. Financial institutions may adopt any new electronic payment instrument provided that they previously submit a business plan to SFC and comply with strict standards for information security set in the regulation.⁴⁵

BRC issues the foreign exchange regulation and licenses entities to operate in this market, while SFC supervises them.⁴⁶ Since there is no regulatory definition of money transfer as a payment service, foreign remittances are considered exchange transactions.⁴⁷ Domestic money transfers are a legal monopoly of the National Postal Service,⁴⁸ although in practice they are offered by a wide array of unlicensed entities, such as freight companies and gas stations. International money transferors, such as Western Union, offer remittances in partnership with SFC-licensed institutions, most of which are exchange houses.

For prepaid cards that are issued by nonbanks and that can be used abroad, BRC requires the issuers to partner with a deposit-taking institution abroad.⁴⁹ The operation is subject to BRC's prior approval and the acquiescence of the foreign financial authority. The nonbank must provide information on users and balances to BRC twice a month.

⁴⁰ Decree 2920/1982, Decree 3227/1982, and Decree 1981/1988.

⁴¹ Payment system regulation comprises Law 964/05, Decree 1400/05, and Decree 1456/07.

⁴² BRC Resoluciones Internas 03/1 997 and 03/2003.

⁴³ Law 031/1 992 and Bylaws, Article 48. A low-value payment systems is defined as a payment system that has accumulated daily transactions of less than US\$1 million.

⁴⁴ Decree 1400/2005 and Bylaws, Article 80.

⁴⁵ SFC Circular 052/2007.

⁴⁶ Decree 2116/1992.

⁴⁷ Decree 1735/1993, Article 1, item 5.

⁴⁸ Decree 2854/2006. Reportedly, the Postal Service is not in full operation due to an ongoing restructuring process.

⁴⁹ BRC Circular DCIN-83/2007.



3.5 Consumer Protection

Financial consumer protection. The Colombian Consumer Protection Code applies to all customer-provider relationships, including financial services, and is enforced by the Superintendencia de Industria y Comercio (SIC).⁵⁰ The code sets general principles for disclosure, fairness, and quality of services, as well as sanctions in the case of noncompliance. Draft laws also intend to give powers to SIC to regulate bank and credit card fees.⁵¹

SFC is legally required to ensure that financial activities are carried out with quality, transparency, and efficiency.⁵² Consequently, SFC has implemented a complaint-filing mechanism for disputes up to US\$13,000. Licensed entities are required to have an ombudsman to hear complaints up to US\$26,000 only.⁵³ Complaints above this threshold are treated by the bank's customer service only. Financial institutions must inform the public about the ombudsman's functions and procedures.⁵⁴ If the ombudsman's decision is not satisfactory to consumers, they have recourse to SFC or the court system. A draft law in Congress⁵⁵ intends to modify the Consumer Protection Code to require alternative conflict resolution and complaint filing mechanisms for electronic financial transactions.

SFC has issued regulations to improve price transparency and security levels for electronic channels and requires institutions to educate customers about the safe use of such channels. These measures must be fully implemented by July 2010,⁵⁶ but some banks consider them too costly.

Mobile phone user's rights. Consumer protection in mobile phone services is shared between SIC and CRT. Based on regulation from 2007,⁵⁷ CRT requires MNOs to disclose the phone number and address of their customer care units in statements sent to the user. Consumers may file complaints both with CRT and SIC.

3.6 Regulation of Telecommunication Services

CRT regulates and supervises mobile phone services. SIC oversees compliance with the general Consumer Protection Code, and CRT checks compliance with its own consumer protection framework. The Convergence Decree issued in mid-2007 confirmed CRT's authority to create and enforce competition rules and simplified the licensing process by requiring only one license for the provision of all types of telecommunication services. The provision of voice services is compulsory for any provider, meaning that MNOs cannot engage exclusively in the business of prepaid cards. An enabling framework for value-added services was recently created to stimulate use of SMS offerings and increase competition.⁵⁸ The new decree also requires CRT to take actions with respect to branchless banking, such as defining the terms on which dominant players will be required to grant others access to its infrastructure.

⁵⁰ Estatuto de Protección del Consumidor (Decree 3466/1982). The Code is partially regulated by Decrees 863/1988, 1490/1993, 1485/1996, and 147/1999. SIC's powers are set in Law 446/1998, Article 145.

⁵¹ Proyecto de Ley 022/2007 and Proyecto de Ley 043/2007.

⁵² Ley Orgánica del Sistema Financiero.

⁵³ SFC Basic Circular, Chapter 6, and Law 446/1998, Art. 146. Decree 690/2003 and SFC External Circular 15/2007.

⁵⁴ SFC Letter-Circular 021/2007.

⁵⁵ Proyecto de Ley 115/2000 (Estatuto del Consumidor y el Usuario).

⁵⁶ SFC External Circular 052/2007.

⁵⁷ CRT Resolution 1732/2007.

⁵⁸ Decreto 2870/2007.



3.7 Electronic Transactions and Data Security

Legislation⁵⁹ provides for adequate recognition of electronic documents and creates the root certification authority within a public key infrastructure. According to the law, electronic commerce involves any commercial transaction using electronic messages to effect agreements. A digital signature will have legal value and binding force only if it incorporates the attributes dictated by international best practices.⁶⁰ All certifying authorities are licensed and supervised by SIC.⁶¹ Digital certificates issued abroad may be recognized by Colombian certifying authorities.

There are no laws criminalizing acts such as “spamming, pharming, phishing” and similar acts that are considered one of the main constraints for electronic commerce. There is a draft law that is expected to reform the penal code with regard to this matter.⁶²

Electronic security is a component of SFC’s operational risk review. Supervised institutions are required to design and implement electronic security policies and contingency plans. SFC establishes minimum requirements for security and quality of information transmitted through electronic channels.

3.8 Taxation

One of the most debated obstacles for expanding financial services is the existence of the *cuatro por mil* tax on financial transactions. Although it has recently been abolished for debits up to US\$3,500 from savings accounts, withdrawals from checking accounts are still taxed. The existence of the *cuatro por mil* tax is believed to discourage individuals from using formal financial services, since many customers are not aware of the exemptions, and to complicate agency schemes more generally.

Also, implementing the exemptions is not easy: (i) banks reportedly do not always apply the exemption, (ii) informed customers are required to present a written declaration to banks stating that there is only one account benefiting from such exemption, and (iii) accounts held by more than one person cannot be exempted.

⁵⁹ Law 527/1999, partially regulated by Decree 1747/2000.

⁶⁰ Uncitral Model Law on Electronic Commerce (www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce.html).

⁶¹ Digital certification is the process through which the legal requirements for digital signatures to be accepted in lieu of physical signatures are confirmed.

⁶² Proyecto de Ley 042/2007.