



Update on Branchless Banking Policy and Regulation in Mexico
January 2010

Note: This update of CGAP's 2009 "Notes on Regulation of Branchless Banking in Mexico" 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.



Update on Branchless Banking Policy and Regulation in Mexico

January 2010

This update of CGAP's 2009 "Notes on Regulation of Branchless Banking in Mexico"¹ incorporates research conducted by CGAP in January 2010 regarding relevant legal and policy changes through the end of 2009.² It is one of 11 country updates produced by CGAP as a part of the G-20 Access through Innovation (ATI) Sub-Group's workplan.³

1. Introduction

Mexico has a sophisticated banking sector and looks back on a decade of economic stability. However, according to World Bank statistics, only 30 to 40 percent of the households in the country have access to bank accounts. About 65 percent of the municipalities in the country have no bank branches. But things are looking up. Recently the country has seen a wave of market entrants targeting the lower income segment, and financial regulators have been responding with a high degree of openness to policy and regulatory changes. The new players – banks focusing on low-income clients and cost-efficient, alternative channels - have contributed to bringing about legal reforms to permit banks to use agents. Wal-Mart Bank was the first to inaugurate the current regulatory framework, after a long authorization process by the Comisión Nacional Bancaria y de Valores (CNBV). Today, the agency model is being used by all major banks.

The CNBV recently issued regulations establishing limited scope banks (subject to lighter prudential requirements and supervision) that will be permitted to issue e-money and offer a limited range of services. Moreover, upcoming regulations that are expected to pass in February 2010 will allow mobile network operators to set up agent networks and manage mobile accounts on behalf of banks, based on outsourcing agreements. Such changes are likely to facilitate the emergence of new business models, with potential to reach millions of unbanked Mexicans more rapidly. Seeking to balance speed with safety, the CNBV has developed an extensive set of requirements that define several levels of security according to the inherent risks associated with different types of electronic accounts. Although the adoption of a risk-based framework is in principle highly desirable, it is still early to determine whether such requirements will create obstacles for emerging branchless banking models, or are adequate for the domestic context. Nonetheless, Mexico is giving a fine example of how regulatory action is informed by financial inclusion goals.

2. Sector Overview

The most commonly used estimate about the number of adult Mexicans who hold a bank account is 30 percent, which is based on rather outdated World Bank studies.⁴ About

¹ The 2009 "Notes on Regulation of Branchless Banking in Mexico" 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 list of persons interviewed is set forth in Annex 1. 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 The research involved (i) a review of new regulations and other government documents as well as significant secondary sources and (ii) interviews with the following people: Raul Enrique Hernandez Coss (Director General para el Acceso a Servicios Financieros) and Alejandro Vazquez Zavala (Director General Adjunto para el Acceso a Servicios Financieros).

³ 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.

⁴ According to the National Banking and Securities Commission (CNBV), only 25% of the population has a savings account, 36% has a debit account, 17% has a credit card and only 11% has a personal credit Interview with the CNBV, December 2009.

15 percent of the economically active population has access to government financial access programs (known as *banca social*), 13 percent to development banks, and 35 percent completely lack any type of financial service.⁵ Approximately 70 percent of the total population lives in urban areas, but one quarter is spread out in more than 190,000 locations with fewer than 2,500 inhabitants each.⁶ The informal sector employs about 30 percent of the available labor force and accounts for a similar percentage of the GDP.⁷ In 2008, an estimated 21.7 percent of the population had internet access.⁸

The potential use of the established networks of small merchants could be explored to increase financial access. For instance, Procampo, a government subsidy program for farmers, uses local merchants to pay subsidies by check. Using such networks to disburse government subsidies electronically through newly opened bank accounts can potentially cut costs for both the government and the recipient (since he would avoid the risk of holding a check and reduce travel costs). Banks could leverage such agents to offer additional services such as credit and savings to a dispersed population.

2.1 Financial Inclusion

The CNBV is at the forefront in its thinking about branchless banking and its potential to increase access to finance. CNBV has recently created a dedicated team to formulate and implement its financial inclusion strategy, which includes conducting research on the use of financial services by low-income people. In this context, Mexico represents a good example of how regulatory action has been informed and even shaped by financial inclusion goals in the last years. The country does not, however, have a good level of inter-agency coordination with regard to financial inclusion. Several government agencies (including the Ministry of Finance and Banxico) pursue related initiatives and research individually, without an overarching strategy or set of goals.

22 The banking sector

In Mexico there are forty-two commercial banks which operate through more than 10,400 branches.⁹ By April of 2009, the largest six banks held 82% of all banking sector assets.¹⁰ In low-income segments, commercial banks compete with approximately 630 credit and savings organizations, known as popular financial entities (including financial cooperatives).¹¹

Bansefi, a state-owned development bank, has a network of over 500 branches (many in rural areas) to provide savings services to low-income Mexicans. In addition, it executes several government initiatives, such as cash transfer programs, provides assistance to financial cooperatives that want to become regulated entities, and offers a shared

⁵ World Development Indicators and Red de la Gente: www.lared-delagente.com.mx

⁶ Source: National Population Council (www.conapo.gob.mx).

⁷ Brambila Macias, Jose. (2008) "Modeling the Informal Economy in Mexico. A Structural Equation Approach". MPRA Paper No. 8504, April 2008 (<http://mpra.ub.uni-muenchen.de/8504>).

⁸ International Telecommunications Union, ICT Statistics 2010, Mexico.

⁹ Source: CNBV Presentation Marco Normativo Corresponsalías y Medios Electrónicos, January 2010. As of June 2009, there were 1.4 branches, 4 ATMs and 59 POS terminals per 10,000 adults. These are far below the average for developed countries, but above the average in developing countries. Financial Inclusion Report, CNBV, December 2009. Notwithstanding this, 64 percent of Mexico's 2,456 municipalities do not have bank branches and 63 percent of them do not have ATMs. Id.

¹⁰ Source: Banco de Mexico- Reports on the Financial System, June 2009.

¹¹ The popular credit and savings sector is comprised of credit cooperatives (*cajas*) and popular finance entities (*sociedades financieras populares*). In 2001, the CNBV was given authority to license and supervise these institutions, which currently serve approximately 4.5 million low-income people. The cooperative sector, which wants to remain outside the supervisory purview, has questioned the legality of the reform measure.



technology platform to the "popular financial entities" and operates remittance services through a network—known as *La Red de la Gente*—of approximately 200 of these nonbank entities.¹²

A major player in the agency business is Banco Wal-Mart. It has been providing limited financial services in Wal-Mart stores to the retailer's own employees since it started operations in Mexico few years ago.¹³ With the new agency regulations it now offers a full array of bank services to anyone who comes to one of the retailer's 30,000 cashiers. Account opening is still done at mini-branches installed at the stores, as the regulation does not allow it to be done automatically at the cashiers. Wal-Mart has 1,000 stores in 200 municipalities in which more than 3 million people shop every day. According to Banco Wal-Mart, 70 percent of these customers may be unbanked.

Inbursa and Banamex, both private banks, also deliver an array of financial services through mini branches in retail chains.¹⁴ In a similar scheme, Banco Azteca, a bank focused on low-income customers, provides financial services in its 1,300 mini-branches (i.e., a bank employee with a teller and a safe) inside Elektra stores.¹⁵

Telecomm, the national telegram service, offers a multibank agency platform to deliver services such as deposits, withdrawals, and remittances through its network of 1,592 points.¹⁶ This platform has been operational since 2005 and processes approximately four million transactions per year, for six major banks. Telecomm plans to increase this agent network by partnering with other networks such as the postal service, which has 4,000 offices in Mexico.

2.3 The mobile phone industry

There are approximately 77.9 million active mobile phone accounts in Mexico¹⁷ out of an adult population of 107.6 million.¹⁸ However there is no official estimate on the actual number of subscribers. It is a highly concentrated market: one single MNO- Telcel - has 74.2 percent of the market share,¹⁹ while the second largest – Telefonica/Movistar - has 15.5 percent. Nonetheless, call and handset prices have been dropping considerably in the last few years, hence the growth of mobile phone subscribers has surpassed 100% in the last five years. From 2007 to July of 2009, mobile phone subscriptions grew by 14.6%. Mobile phones are primarily used for text messaging: 74% of usage is for SMS.²⁰

A number of mobile banking initiatives are planned or are under way. Telcel has partnered with the large banks to provide mobile banking services to account holders (usually in the high-end segments). Telefonica, on the other hand, is ready to launch mobile banking services to lower-income segments of the population by partnering with the banks that focus on this market. Such partnership envisions a higher degree of outsourcing from the

¹² Source: Bansefi, January 2010. <http://www.bansefi.gob.mx/redgente/Paginas/Quees.aspx>

¹³ The accounts – opened by bank's employees located in Wal-Mart stores – have a minimum balance of \$5, are free of charges and pay interest. The average balance in the accounts started at \$5 and increased to \$1,000 two months after opening. The average deposit is \$25.

¹⁴ Sanborns and Soriana respectively

¹⁵ Both Banco Azteca and Elektra are part of one of the largest Mexican economic group, Grupo Salinas. Interviews by Ignacio Mas and Mireya Almazan, October 2009.

¹⁶ Telecomm covers 43% of the municipalities and 40% of the offices are in places without bank branches. Telecomm also has 3,740 mobile points (trucks) used for welfare payments.

¹⁷ Source: CNBV Presentation Marco Normativo Corresponsalías y Medios Electrónicos, January 2010

¹⁸ Source: Consejo Nacional de Población (www.conapo.gob.mx)

¹⁹ Source: CNBV Presentation Marco Normativo Corresponsalías y Medios Electrónicos, January 2010.

²⁰ Source: CNBV Presentation: Marco Normativo Corresponsalías y Medios Electrónicos, January 2010



bank to the MNOs, which will depend on the upcoming CNBV regulations that will allow MNOs to manage mobile accounts on behalf of a bank. Telefonica's roughly 13,000 agents could then be turned into agents for cash in/cash out points for bank transactions.

2.4 Payment systems and payment instruments

Banco de México (Banxico), the country's central bank, operates the main wholesale payment system: SPEI (*Sistema de Pagos Electrónicos Interbancarios*), where banks settle transactions among themselves and with clients (e-banking, branches, and more recently, mobile banking). Cecoban S.A. (owned by banks) clears checks and electronic transfers that are settled in the bank reserve account system in Banxico while card transactions are processed and settled by Prosa and E-Global (also owned by banks).²¹ Banks are not only credit and debit issuers but also the acquirers. Banxico has been promoting electronic payments by, among other measures (i) eliminating the interbank fee for deferred transfers in its own payment systems, (ii) reducing the bank fee for using SPEI, and (iii) limiting the interbank fee for electronic transfers.

Cash is the preferred medium for low-value transactions, although the use of electronic payment instruments and channels has been increasing considerably. From 2001 to 2009, the number of credit cards increased from 6.7 million to over 25 million.²² The number of debit cards issued by the end of 2008 was approximately 56.9 million. Cash-back is allowed by regulation but is restricted to a few large retailers with a special agreement banks. Banks and a wide array of merchants receive bill payments in cash.²³

Some ATMs and POS terminals are interoperable allowing withdrawals and payments with cards issued by any bank. However, deposits can be made only at ATMs and branches of the bank where the account is held. (This is due to the contractual arrangements; there is no legal or regulatory impediment to interoperability.) According to Banxico, the POS network in the country increased to 446,000 at the end of 2008, from a little over 200,000 in 2003. There has been an observed decrease in the average transaction amounts performed at POS in real terms. Banxico believes this is due to their reaching a higher percentage of the unbanked population and the expansion of the POS network.²⁴

Following a 2004 decree that created tax incentives for electronic financial transactions, Mexican banks formed a trust, Fimpe (*Fideicomiso para el Impulso de la Infraestructura de Medios de Pago Electronico*), to expand the POS network in the country and promote the use of card payments. A good portion of the total expansion of the POS network in the country is due to Fimpe's work.²⁵ However, after the termination of the tax incentives in 2009, the number of POS terminals has already decreased slightly, according to Fimpe.²⁶

²¹ Generally, only banks have direct access to the bank switches (Prosa and E-Global), although some popular finance entities (Sofomoles and Sofoles) have been recently granted access.

²² Financial Inclusion Report, CNBV, December 2009

²³ Bill payments received by commercial establishments are processed in private closed POS networks, based on a contractual relationship between merchants and utility companies.

²⁴ Source: Reporte sobre el sistema financiero: Banco de Mexico, July 2009.

²⁵ Larger merchants, with sales volumes above 4,000 transactions per month do not benefit from this fixed fee.

²⁶ Interview with Fimpe, December 2009.



In addition to its work on POS networks, Fimpe has created a platform for mobile banking to serve any bank, named Nipper.²⁷ Banxico also has created a model mobile banking platform with direct settlement at SPEI, which seems unlikely to support low value transactions in the short run.²⁸ Neither Nipper nor Banxico's model platform have so far attracted a considerable number of providers.

The government has plans to migrate the largest cash-transfer program - Oportunidades – to electronic payments that would be ultimately channeled into bank accounts. It is currently piloting with Bansefi (the government development bank) and a network of local shops known as Diconsa that function as cash-out points. Such efforts are still in the beginning stages.

2.5 Money transfers

Mexico is among the top remittance recipients in the developing world. It reported remittance inflows of about US\$25 billion in 2007 and US\$26.3 billion in 2008.²⁹ Several entities, including banks, international money transferors, and exchange houses offer foreign and domestic remittance services. Their transfers are conducted through a large network of retail establishments. There are no important mobile phone-based remittances services in this market.

In 2004, Banxico and the U.S. Federal Reserve banks interconnected their payment systems to allow Mexican immigrants to send money from their bank accounts in the USA to any bank account in Mexico. This service is known as *Directo a México*, which offers next-day settlement at a 0.21 percent fee paid by the sender. Exchange rates are charged at the interbank rate, (i.e. more beneficial to the remitter than the rates used by a money transferor). The service is not widely used as it requires bank accounts at both ends of the transfer. In addition, there have been insufficient communication efforts about it, both by banks and government at both sides of the border, and little interest from Mexican banks that already had strong partnerships (and revenues) with remitters in the US.

3. Current Legal Framework for Branchless Banking

3.1 Agents

Banks have been using agents for many years in Mexico, although the underlying regulatory framework has changed significantly over time. Until 1993, banks could use agents—known as *comisionistas*—to deliver a variety of services. The outsourcing was subject to the CNBV's supervision and the bank was held responsible for the agent's acts. From 1993 until early 2008 banks were prohibited from using agents.³⁰ Nevertheless, banks continued "outsourcing" services simply based on the fact that there is no legal obstacle for a *comisionista* to be an agent of a *customer*: the agent had an implicit agency contract with the client, not with the bank³¹ (although the client typically did not

²⁷ The platform, Nipper, is based on Movipay, a platform proved unsuccessful in Spain.

²⁸ The platform is Java based but only 30 percent of mobile phones in use are Java-enabled and are mainly owned by higher-income segments. Furthermore poor people are likely to perceive a Java platform as less user-friendly than simple text messages.

²⁹ World Bank Migration and Development Brief 5. July 10, 2008. As a result of the financial crisis, remittances to Mexico dropped by 11% in 2009 according to the World Bank Migration and Remittances team. Source: Dilip Ratha, Sanket Mohapatra, and Ani Silwal. Migration and Development Brief 10, July 2009. Migration and Remittances Team, Development Prospects Group, World Bank.

³⁰ CNBV Basic Banking Circular, Chapter XI, Article 317.

³¹ Ley de Instituciones de Crédito, Article 92.



know that). The bank held no responsibility for the agent's acts and the CNBV had no supervisory authority over the agency business. Moreover, the Financial Consumer Protection Code did not cover these agency relationships.³²

To overcome the pitfalls of such a framework, the banking law was amended in February 2008.³³ It gives ample regulatory and supervisory powers to the CNBV and holds banks fully responsible for the acts of their agents. In December 2008, the CNBV issued its agency regulation pursuant to which banks may hire legal entities and individuals³⁴ to deliver a wide array of services, subject to an authorization process that includes the submission of a full business plan for the agency business and the compliance with a suite of security and technological requirements set in complementary regulation applicable to electronic payments.³⁵ Agency agreements cannot be subcontracted to third parties and may not have exclusivity clauses. The regulation also establishes:

1. minimum provisions to be included in agency agreements;
2. basic eligibility criteria for agents;
3. technical and operational requirements;
4. limits for agent transactions, individually and globally;³⁶
5. internal controls and reporting requirements for a bank's agency businesses;
6. the requirement that transactions be conducted on-line and in real-time (each agent must have an account with the bank for real time financial and accounting settlement);³⁷
7. different transaction thresholds depending on the level of KYC conducted;
8. valid identification authenticity procedures of both clients and agents;
9. management of agents directly by the bank or through third parties, or network managers (a pending regulation will allow MNOs to be network managers).

CNBV has the prerogative to conduct onsite inspections of agents in case it deems it necessary. The bank's general manager is held responsible for complying with the agency regulations.

Lastly, the agency regulations impose a particular limitation: agents may only receive monthly deposits up to the equivalent of 50% of the bank's average monthly deposits in the last 12 months. This limit does not allow the emergence of a bank that primarily operates through agents, but so far has not proved a real obstacle for the current players.

Permission to use agents has not been extended to the popular finance sector (*cajas*).

³² Note that comisionistas are legally required to inform the customer that they are not agents for a financial institution, although this legal provision proved of little use in practice.

³³ Ley de Instituciones de Crédito, Article 46, Bis 1.

³⁴ Some restrictions are imposed on the type of entity depending on the services to be provided.

³⁵ The most relevant of them being the requirements of Chapter X of CNBV's Basic Banking Circular.

³⁶ Providers may request authorization to surpass such limits.

³⁷ In case a network manager is used to manage agents for a given bank, it will be required to have a bank account with the contracting bank.



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

The AML/CFT regulation is based on several laws that require a broad range of entities to have an AML/CFT policy, specialized personnel, training, systems, and controls. All financial institutions, money transferors, and the third parties providing services on their behalf are covered by the law,³⁸ MNOs are not. Specific rules are set in resolutions issued by the Ministry of Finance³⁹ and the CNBV is responsible for evaluating compliance. Financial institutions report to the Financial Intelligence Unit, an entity that analyzes information sent by various sectors and produces reports on suspicious activities. CNBV-licensed entities are required to report to the FIU (i) transactions in cash equal or greater than the equivalent of US\$10,000 (or above US\$3,000 in the case of money transferors), (ii) unusual transactions (i.e., transactions that do not fit the client's profile), and (iii) transactions with related parties (managers, employees, or others).

To open a traditional account, banks must produce a file on the client that includes:

- Name, address, birth date, nationality, profession, professional activity, and telephone
- Copies of the identification document, tax card, and proof of address (if address is different from the address noted in the identification document)⁴⁰

The files must be regularly updated and kept for at least 10 years. High-risk clients and users or those whose transactions exceed the equivalent of US\$100,000 per month should be subject to stricter monitoring. Account opening has to entail face-to-face interaction with a bank employee or a third party agent acting on behalf of the bank. Remote account opening without direct human contact (e.g., over the phone) is not allowed for traditional bank accounts. Although clients may use several identification documents to open an account, banks usually require the voting card and a passport, since they are less prone to counterfeiting, which seems to be a problem in the country. However, a large number of people may not have such documents. The regulation permits banks to use other means to identify a customer, such as asking for personal references, but banks do not usually exercise this prerogative.

Banxico issued a regulation on mobile accounts (accounts associated with a mobile phone number) that permits relaxed identification and information requirements, provided that the accounts are subject to caps on the number and value of transactions.⁴¹ Banks can open these accounts via agents (including MNOs), and must produce a file with the clients' name, birth date and address. Monthly deposits are limited to MXN 8,720 (2,000 UDI).⁴² The accounts are divided into three categories reflecting varying AML/CFT (and security) risk: low transaction accounts, low risk accounts and unlimited accounts (see table 1.) Mobile accounts may fall into one of the two lower-risk categories (i.e., "low transaction" and "low-risk" accounts). The new regulations on types of electronic accounts are supposed

³⁸ Ley General de Organizaciones y Actividades Auxiliares del Crédito, Ley de Instituciones de Crédito, Ley de Mercados de Valores, Ley de Ahorro y Crédito Popular, Ley de los Sistemas de Ahorro para el Retiro, Ley General de Instituciones y Sociedades Mutualistas de Seguros, Ley Federal de Instituciones de Fianzas. The Penal Code defines the crimes related to ML/FT in its articles 139, 148 Bis and 400 Bis.

³⁹ Secretaria de Hacienda y Credito Publico

⁴⁰ Foreigners are required to prove legal presence in the country, as well as provide their address in the country of origin. If such documentation is not available, the bank or financial entity is allowed to accept alternative documents.

⁴¹ Banxico, circulares 16/2009 and 1/2006 Bis 26

⁴² Equivalent to 2,000 Investment Units (*Unidades de Inversion* - UDI) in 23 January 2010 (1 UDI = MXN 4.36). UDI is a price-level-adjusting unit of account. Banxico maintains an UDI Index, which sets the Peso (MXN) value of an UDI daily. See www.banxico.gob.mx. Mexican regulations usually reference UDIs, not Pesos.



to support three main business lines that may cater to the unbanked⁴³: *mobile banking* (no limits on transactions, high value payments), *mobile payments* (low value payments, with two levels of AML/CFT and security controls), and *e-money* (micro-payments, up to a balance of MXN 305.2 or 70 UDIs, without security control).

Table 1. Three types of accounts according to AML/CFT Risk:⁴⁴

Low Transaction Accounts	Low Risk Accounts	Unlimited Accounts
Limit: 2,000 UDIs or 8,720 MXN in monthly deposits	Limit: 40,000 UDIs or 174.400 MXN in monthly deposits and withdrawals ^a	No transaction limit
<ul style="list-style-type: none"> Includes accounts that are limited to the purchase values, retrievable deposits, mobile banking operations or done through other types of technology for deposits. Also includes low transaction mobile accounts. 	<ul style="list-style-type: none"> Includes savings accounts, retrievable deposits. Also includes low transaction mobile accounts. 	<ul style="list-style-type: none"> Includes all accounts, including unlimited mobile accounts.
Files will: ^b <ul style="list-style-type: none"> Contain a client's full name (with no abbreviations), birth date and address. Be integrated and saved by agents in case operations are done through them. 	Files will: ^b <ul style="list-style-type: none"> Contain only complete data related to the client. Be integrated and saved by agents in case operations are done through them. 	Files will: <ul style="list-style-type: none"> Contain only complete data related to the client and copies of the documentation. Be integrated and saved by the bank.

^a This is the reference maximum value imposed by the CNBV. Providers are required to establish their own limits in accordance to their capacity to control the risks involved in such accounts.

^b To open low value and low risk accounts, the client is not required to have identification documents. He is required only to provide his personal information.

3.3 Banking Business, Deposit-taking, and E-money

The banking law restricts banking business—characterized as deposit-taking—to credit institutions (i.e., licensed commercial and development banks and credit cooperatives). The Commercial Code defines a deposit as repayable funds. Deposit-taking occurs when (i) the service is offered to unknown persons or through massive communication media and (ii) the service is offered in a habitual and professional manner.

A recent regulation identifies four types of banks according to minimum initial capital and types of operation. One type is categorized under the label “traditional banks” and three are categorized under the label “niche banks.” Traditional banks require higher minimum capitals and have broader operational scope, while niche banks benefit from lighter requirements (including much less complex prudential regulation) in exchange for a limited scope. This new regulation intends to create a more attractive entry door for nonbanks to

⁴³ The other lines of business treated in the CNBV regulation are Internet banking, phone banking, and client-server transactions, in addition to security requirements of ATM and POS transactions. See CNBV Basic Banking Circular, Chapter X.

⁴⁴ Source: CNBV Presentation: Marco Normativo Corresponsalías y Medios Electrónicos, January 2010



provide some financial services, such as e-money issuing, without having to apply for a full fledged bank license.

Although nonbanks are excluded from the deposit-taking business, they may issue prepaid cards that can be used for purchases in commercial establishments, that belong to the same business conglomerate as the issuer (e.g., gift cards).

3.4 Payment Systems

The Payment System Law (PSL) designates Banxico as the regulator and supervisor of the payment system, with broad powers to intervene in the market and set prices and an important role to play in promoting or stimulating electronic payments.⁴⁵ Specifically with regards to the retail payment system, Banxico may examine the competition level among service providers and set consumer-oriented rules. A payment system will only be subject to the PSL if at least three licensed financial institutions participate and if it processes the equivalent of US\$37 billion or more per year. However, all existing payment systems are required to provide information to Banxico.

Any licensed financial institution may have access to Banxico's SPEI. On the other hand, Prosa and E-Global, the bank switches, have only few entities other than banks connected to them, which may be related to their access rules and pricing policies. By excluding smaller industry players from access to their systems, Prosa and E-Global may slow down the growth of the POS networks, the use of payment cards and ultimately the development of branchless banking. Banxico has issued regulations on the pricing of card transactions and is currently investigating Prosa's pricing and entrance policies.

With regard to card transactions, Banxico requires that debit card interbank fees must be lower than credit card fees and are capped both in absolute terms and relative to the transaction value. Credit card interbank fees are also capped relative to the transaction value.⁴⁶ The interbank fee charged to a bank for using another bank's ATM is fixed by Banxico but there is no limit for the charges to clients. The interbank fees charged by a bank to process direct debt and checks for another bank area also fixed by Banxico.⁴⁷

3.5 Consumer protection and competition

Condusef, the specialized financial consumer protection agency, is responsible for enforcing the financial consumer protection law⁴⁸ and the transparency law⁴⁹. These laws establish basic consumer protection principles, conflict resolution procedures, and penalties for noncompliance. They require banks to provide all-inclusive price information by displaying fees and charges in branches, at ATMs and through the Internet. Banks are also required to provide phone numbers for their customer service and for Condusef. The new agent regulation explicitly extended these disclosure requirements to agents. In addition, the regulation prohibits agents from charging additional fees and tying the provision of service to the purchase of its own products or services. The CNBV

⁴⁵ Ley de Transparencia y el Ordenamiento de los Servicios Financieros.

⁴⁶ See <http://www.banxico.gob.mx/sistemas-de-pago/informacion-general/sistemas-de-pago-de-bajo-valor/cuotas-intercambio.html>

⁴⁷ Idem.

⁴⁸ Ley de Protección y Defensa a los Usuarios de Servicios Financieros, of 1999, altered in June 2009. The general consumer protection code does not apply to the regulated financial sector.

⁴⁹ Ley para la Transparencia y Ordenamiento de los Servicios Financieros, of 2007, altered in June 2009.



regulations⁵⁰ on electronic transactions also set many requirements with a consumer protection focus, including several related to data security and privacy to avoid misuse of clients' information. Such requirements are risk-based, differentiating between types and sizes of transactions. In addition, banks cannot bundle services offered through agents (tied sales), and each transaction must produce automatic receipts with minimum information that could then be used for complaints.

A recent change in the legal frameworks for financial consumer protection gave Condusef much clearer and broader powers to set regulatory requirements focusing on protecting consumers, and solving conflicts between clients and provider. As a consequence, Condusef is currently working on a new set of regulations.

Within its new responsibilities, Condusef must promote portability of bank accounts, responsible finance, and competition. It now has investigation, regulation and sanctioning powers. Several of CNBV's responsibilities prior to the legal reforms have now been transferred to Condusef, including the authority to supervise financial institutions specifically in the area of consumer protection. With regard to recourse mechanisms, Condusef's previous arbitration process was rarely used, so this will be a major area of reform. Nowadays, disputes that are not solved by Condusef's arbitration typically enter the court system, where they may take years to be adjudicated, since there are no specialized courts for small value cases with simplified procedures. Condusef will also be responsible for designing and implementing financial education programs.

The mobile phone service sector is covered by the general Consumer Protection Code, which is enforced by Profeco (*Procuraduría Federal del Consumidor*). Both mobile phone and financial services are covered by the Competition Law⁵¹, which sets basic rules and procedures against anti-competitive practices. One provision allows the SCT to impose special price, quality, and disclosure requirements on dominant MNOs to promote competition. Despite complaints against Telcel's pricing practices and its dominant position, the Telecommunications Secretariat (SCT) has taken no measures so far.

3.6 Regulation of telecommunication services

While the Telecommunications Secretariat (SCT) is the telecommunications policy maker, Cofetel (*Comisión Federal de Telecomunicaciones*) is responsible for regulating, licensing, and supervising providers, including the sharing and interconnectivity of networks and equipment. A different license is required for each type of service provided and prices are not subject to regulation (although they must be reported to the SCT). No provision regulates joint-ventures or partnerships between banks and MNOs. According to the SCT, mobile phone services used during mobile banking transactions are considered value-added services (VAS).⁵² VAS can be provided without authorization after a one-time registration in Cofetel is cleared. Number portability is currently being implemented following regulations issued in mid- 2007.⁵³

⁵⁰ CNBV Basic Banking circular, Chapter X.

⁵¹ Ley Federal de Competencia Económica.

⁵² VAS are defined as those using a public telecommunications network and being characterized by their format, content, code, protocol, storing or other aspects of the information transmitted by a user and that carry additional, different or restructured information, or those requiring the user's interaction.

⁵³ Resolución de Portabilidad and Ley Federal de Telecomunicaciones.

3.7 Regulation of electronic transactions, data privacy, and data security⁵⁴

The legislation⁵⁵ provides for recognition of electronic signatures when the authenticity and integrity of the original electronic document is preserved according to specified parameters. Electronic documents can be used as proof in court and in complaints filed in consumer protection agencies. CNBV has issued extensive regulation on security requirements for electronic transactions.⁵⁶ Given its complexity and strictness, such regulation may eventually create obstacles for emerging branchless banking models, as described by some industry actors.⁵⁷ E-security measures and policies put in place by banks are evaluated by the CNBV's supervisory process. The agency regulation holds banks responsible for ensuring that customer data is safe and not misused by agents.

Penalization of digital crimes is reportedly slow and difficult. State penal codes are not in line with the federal code and judges are resistant to accept electronic documents as evidence in court. Also, there is a lack of international agreements for crimes committed in a foreign country affecting customers in Mexico and vice-versa. There is a specialized police unit for digital crimes, but experts advocate for the creation of a specialized unit in the judiciary to accelerate the conviction process.

Although there is no specific data privacy law yet (there is a draft law in Congress) generic provisions in different legal documents aimed at protecting privacy and personal information do exist. Customers must authorize the use and sharing of credit information by banks and credit bureaus, which is typically done through small print in the adhesion contract for account opening and other products. The law governing credit bureaus⁵⁸ and entities obliged to provide credit information to the bureaus was recently reformed but introduced limited data protection provisions mostly related to the consumer's right to be excluded from mailing databases.

38 Taxation

A 2007 law, effective since June 2008, introduced a tax on cash deposits. The IDE (*Impuesto a los Depósitos en Efectivo*), is a 2% withholding tax that applies to all cash deposits in the banking system that accumulate above 25,000 pesos (US\$1,947.6) within a month period for a single bank customer.⁵⁹ This tax has a significant effect on agents: each agent's operating account is subject to the IDE. Even though this tax is creditable towards annual income tax, many agents are likely to be informal, in which case this tax would represent a cost. In any case, this tax introduces complexity to the agent business.

⁵⁴ CGAP thanks Mrs. Fredes Montes, Legal and Regulatory Consultant to The World Bank Group, Western Hemisphere Credit Reporting Initiative for kind contribution on this section.

⁵⁵ Commercial Code, Civil Code, the Civil Procedures Code, the Consumer Protection Code, the banking law and the Financial Consumer Protection Code.

⁵⁶ CNBV Basic Banking Circular, Chapter X

⁵⁷ Interviews with telcos and technology providers, December 2009.

⁵⁸ Ley de las Sociedades de Información de Crédito.

⁵⁹ Source: Servicio de Administración Tributaria: Ley del Impuesto a los Depósitos en Efectivo (LIDE). URL: http://www.sat.gob.mx/sitio_internet/informacion_fiscal/reforma2008/137_10564.html#8