



JONES DAY
COMMENTARY

FINANCIAL REFORM IN MEXICO

Mexican President Enrique Peña Nieto presented a reform bill before the Permanent Commission of Mexico's Federal Congress on May 15, which amends, adds, and repeals 34 statutes, primarily financial in nature (hereinafter, the "Financial Reform").

The Financial Reform presented by the President underwent diverse amendments in the Chamber of Deputies on September 10. The resulting bill, which amended, added, and repealed diverse provisions of the Financial Law and issues of the Law of Financial Groups, passed the Chamber of Deputies the same day. Additionally, on November 26, the Senate Chamber passed the bill without any amendments; therefore, to become enforceable, the modified statutes (hereinafter, "The Decree") need only to be promulgated and published in the *Official Federation Gazette*.

Details about the Financial Reform's diverse statutes and amendments, each of which has a different date of enforcement, are provided in this *Commentary*.

According to statements made by the executive branch, and on the grounds of legal pronouncements issued by the legislative branch, the Financial Reform is based on the following fundamental grounds:

- The creation of new incentives so that banks can provide more loans.
- Contributions toward fair competition with regard to the banking and financial system, so that rates and expenses are reduced.
- The fortification of the financial and banking system so that it may experience long-term, continuous growth.
- The establishment of a new chain of command for the development-banking sector that will contribute to the evolution of the financial sector.
- The strengthening of the financial authorities' legal power to impose penalties.
- The goal of ensuring that the relationship between debtors and creditors is properly rooted in equity.

The following sections describe the Decree's main proposals.

PRODUCTION OF NEW INCENTIVES FOR BANKS TO PROVIDE LOANS

In the area of loan provision, the Decree seeks to:

- Improve the loans provided by the banking sector to small and medium enterprises.
- Enable the Department of Treasury and Public Credit to evaluate bank performance, specifically regarding the banks' compliance with their obligation to support and promote the most productive sectors in the country.
- Enable the National Banking and Securities Commission to establish procedures and policies to be complied with by the banks, in order to funnel more resources to the funding of the most productive sectors in the country.

STRENGTHENING OF THE LEGAL FACULTIES OF THE NATIONAL COMMISSION FOR THE PROTECTION AND DEFENSE OF USERS OF FINANCIAL SERVICES

The goals of the Decree in this area are to:

- Provide the financial authorities with other means that allow them to advise consumers more efficiently with regard to financial products and services.
- Enact the Arbitral System on Financial Matters as a new procedure to resolve disputes between parties and guarantee the principles of impartiality, speed, transparency, efficiency, and effectiveness; the system will also maintain a registry of independent arbitrators who shall intervene in all arbitral procedures.
- Amend the regulation regarding the Correspondents of Popular Credit and Savings in order to allow popular financial companies, financial community companies, and savings and loan cooperative associations to enter into contracts or agreements with third parties that provide them with required services, as well as establish commissions for the carrying out of operations on behalf of these companies.

CREDIT UNIONS

The Decree seeks to expand:

- The range of individuals and legal entities who may become partners in credit unions, thus establishing new economic activities that had not been included in the statutes or regulations.
- The spectrum of operations that credit unions are lawfully able to offer their partners, including the leasing of assets.

GRANTING AND EXECUTING GUARANTEES

In this area, the Decree proposes the following:

- Expediting commercial lawsuits in order to shorten the period for accepting evidence and serving the parties with notice, with the objective of making the process more efficient.
- Establishing that agreements executed during the arbitration procedures before the Consumer Protection Agency and the National Commission for the Protection and Defense of Users of Financial Services are to be included on the list of documents required for the filing of a lawsuit.
- Allowing the use of cash pledged for the payment of principal debt, without the necessity of filing an executive lawsuit or judicial resolution.

BANKRUPTCY PROCEDURE

The aims of the Decree with regard to bankruptcy are to:

- Include certain provisions that expedite the bankruptcy procedure.
- Facilitate the contracting of "emergency loans" in order to preserve the economic unit throughout the procedure and maintain the value of the company.
- Clarify that the duration of the conciliation stage is not subject to extension and that, once the conciliation stage has ended, the company's bankruptcy stage must commence.

PUBLIC BONDED WAREHOUSES

In this area, the Decree seeks to:

- Update the regulations applicable to secondary financial institutions, specifically the regulation regarding bonded warehouses, multiple-purpose financial entities, currency exchange houses, money-transmitting companies, and currency exchange centers.
- Establish a more modernized regulation of public bonded warehouses' corporate governance.

BANKING LIQUIDATION

The aims of the Decree in this area are to:

- Provide a special procedure in the Law of Banking, supervised by the judicial branch, that regulates insolvent banks.
- Establish that the liquidation procedures must not be suspended at any stage, while limiting the disputes that shall be resolved through ancillary procedures.

THE STOCK MARKET

With respect to the stock market, the Decree seeks to:

- Impose additional obligations upon brokerage firms that participate in the public placement of securities.
- Extend the statutory presumption that specifies the people who shall act as financial advisors.

PENALTIES AND FOREIGN INVESTMENT

With regard to penalties and foreign investment, the goals of the Decree are to:

- Empower the National Banking and Securities Commission to publish the resolutions it has issued in administrative procedures by which any kind of penalty has been imposed, as well as the names of the offender and his company and the means of defense that he is lawfully entitled to file.

- Reduce the limitations on foreign investment to which various financial entities are subject, in order to complement the current regulation of investment via affiliated companies.
- Establish within the Federal Code of Criminal Procedures a catalogue of crimes that shall be considered serious or grave offenses.

FINANCIAL GROUPS

In this area, the Decree seeks to:

- Issue a new Statute of Financial Groups.
- Consider a more flexible corporate structure so that the financial group holding company might invest, permitting the possibility of carrying out indirect investments, not only in its subsidiaries but also in entities over which it has no control by means of subcontrollers.

SECURED LOANS

With respect to secured loans, the Decree aims to:

- Introduce a more flexible procedure so that creditor subrogation can be carried out, including reasonable periods and penalties that might be imposed upon the entities that do not comply with the regulation.
- Specify that the document in which the subrogation is formalized must be recorded in the Public Registry of Commerce in order to guarantee its enforceability upon third parties or other subrogated creditors.

MUTUAL FUNDS

In connection with mutual funds, the Decree seeks to:

- Introduce a more flexible regulation of mutual funds by eliminating shareholders' meetings and board of directors, leaving the duties performed by these corporate bodies to the management investment company.
- Facilitate the authorization, incorporation, and operation procedures for these funds.

LAWYER CONTACTS

For further information, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our “Contact Us” form, which can be found at www.jonesday.com.

Mauricio Castilla

Mexico City

+52.55.3000.4014

mcastilla@jonesday.com

Antonio González

Mexico City

+52.55.3000.4051

agonzalez@jonesday.com

Iván Pérez Correa

Mexico City

+52.55.3000.4033

iperez@jonesday.com

Alejandro Chico

Mexico City

+52.55.3000.4000

achico@jonesday.com

Silvia Malagón

Mexico City

+52.55.3000.4011

silviamalagon@jonesday.com

Nicholas E. Rodríguez

New York

+1.212.326.3608

nerodriguez@jonesday.com

Fernando de Ovando

Mexico City

+52.55.3000.4010

fdeovando@jonesday.com

Héctor Tinoco

Mexico City

+52.55.3000.4086

htinoco@jonesday.com

Paulina Bracamontes of the Mexico City Office assisted in the preparation of this Commentary.

Jones Day publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information purposes only and may not be quoted or referred to in any other publication or proceeding without the prior written consent of the Firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our “Contact Us” form, which can be found on our website at www.jonesday.com. The mailing of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship. The views set forth herein are the personal views of the author and do not necessarily reflect those of the Firm.