Notes on Branchless Banking Policy and Regulation in Mexico
March 2009

Mexico has a relatively sophisticated banking sector and looks back on a decade of economic stability. However, only 30 percent of the adult population have access to formal financial services and the reach of electronic payments is low. But things seem to be looking up. Recently the country has seen a wave of market entrants targeting the lower income segment. The new players focus on cost-efficiency, alternative channels and scale, and have contributed to bring about a change in the Banking Law[1], which now permits banks to use agents, and assigns regulatory and supervisory powers to the National Banking and Securities Commission (CNBV). The CNBV has recently issued regulations on the use of agents by banks and other fully licensed financial institutions. Although few well-established commercial banks remain resistant, the use of agents will likely promote competition and increase access to financial services for people in Mexico.

At the moment non-banks in Mexico are not allowed to issue e-money, but the CNBV is currently preparing an e-money regulation. The present market dominance of one mobile network operator- Telcel – raises serious concerns about potential unfair competition, concerning the future provision of e-money by mobile network operators (MNOs).

Further issues affecting branchless banking and financial access are: lack of a national identification document, a new tax on cash deposits, low competition in banking and payments services, and weak enforcement of rules against digital crimes.

These notes summarize CGAP's findings and recommendations resulting from a branchless banking policy and regulatory diagnostic carried out in early 2008 in Mexico. CGAP has completed similar assessments in several other countries around the world[2]. An overall analysis and policy recommendations resulting from the seven first diagnostics can be found in CGAP Focus Note 43 *Regulating Transformational Branchless Banking: Mobile Phones and Other Technologies to Increase Access to Finance.*

Some Highlights

- Less than 30 percent of the adult population has a bank account.
- Legislation for the use of agents by banks was issued in January 2008, superseding a previous fragile legal framework that did not hold banks responsible for their agent's acts.
- A recent Circular regulates the use of agents by banks.
- Newly-licensed banks, such as Banco Wal-Mart and others that target low-income customers are eager to use agents.

[1] Ley de Instituciones de Crédito, Article 46, Bis 1.
[2] Reports can be found under http://www.cgap.org/p/site/c/template.rc/1.11.1772

Background: CGAP, Branchless Banking and Policy Diagnostics

CGAP is a global resource center for microfinance standards, operational tools, training, and advisory services. Its members—bilateral, multilateral, and private donors—are committed to building more inclusive financial systems for the poor. The CGAP Technology Program is a multiyear learning initiative co-funded by the Bill and Melinda Gates Foundation to find and test promising technology solutions to improve access to finance.

CGAP defines *branchless banking* as the delivery of financial services outside conventional bank branches using information and communications technologies and retail agents. Because of the potential to radically reduce the cost of delivery and increase convenience for customers, branchless banking can expand coverage to new, previously underserved segments of the population, which is defined as transformational branchless banking. Technology can help a range of market actors to push the boundaries of access to finance, including not only banks but also microfinance institutions, mobile phone operators, and technology companies.

Two models of branchless banking—bank-based and nonbank-based—can be distinguished. Both make use of retail agents such as merchants, supermarkets, or post offices to deliver financial services outside traditional bank branches. In the bank-based model, every customer has a direct, contractual relationship with a prudentially licensed and supervised financial institution—whether involving an account or a one-off transaction—even though the customer may deal exclusively with a retail agent who is equipped to communicate directly with the bank (typically using either a mobile phone or a point-of-sale (POS) terminal).

In the nonbank-based model, customers have no direct contractual relationship with a fully prudentially licensed and supervised institution.[3] Instead the customer exchanges cash at a retail agent (or otherwise transfers, or arranges for the transfer of, funds) in return for an electronic record of value. This virtual account is stored on the server of a nonbank, such as a mobile operator or an issuer of stored-value cards. The balance in the account can be used for making payments, storing funds for future use, transferring funds, or converting stored value back to cash at agents. If the system relies on a POS network and plastic cards, customers must visit a participating retail agent to conduct a transaction. If the system is mobile phone-based, customers need to visit a retail agent only to add value or to convert stored value back into cash. A more limited version of the nonbank-based model can be found in payment networks, which involve a technology provider or other nonbank institution offering a network of "payment points" (for example,

[3] Following the conventions used in CGAP's Focus Note 38 "*Use of Agents in Branchless Banking for the Poor: Rewards, Risks, and Regulation*", the term "banks" is used in this document to refer to fully prudentially licensed and supervised financial institutions (e.g. banks, credit cooperatives, microfinance institutions, exchange houses, etc.), whereas the term "nonbanks" is used to refer to entities which are not licensed or supervised by a financial authority (e.g. mobile network operators, retailers, financial entities outside the supervised spectrum, etc.).

payment terminals, ATMs, or retail agents equipped with POS devices) where a customer can make payments to third parties or a governmental entity can make payments to beneficiaries.

Stored-value instruments are often referred to as *e-money*. There are various definitions of e-money, including the following from the European Commission in its proposal for a new E-money Directive[4]: Electronic money means a monetary value as represented by a claim on the issuer which is stored electronically and issued on receipt of funds, for the purpose of making payment transactions as defined in Article 4(5) of Directive 2007/64/EC[5], and is accepted by natural or legal persons other than the issuer. [6]

1 Introduction

From January 28 to February 8, 2008, CGAP conducted a mission in Mexico City to analyze the policy and regulatory environment for branchless banking.[7] The analysis of existing laws, regulations and other documentation was complemented by insights from meetings held with several stakeholders (see Annex 1), such as the National Banking and Securities Commission (CNBV), the Secretariat of Finance and Public Credit, the Ministry of Finance (SHCP), the Bank of Mexico (Banxico), the National Commission for Financial Consumer Defense and Protection (Condusef), the Communications and Transport Secretariat (SCT), the Financial Intelligence Unit (FIU), mobile network operators (MNOs), payment service providers, banks, and others. This document summarizes CGAP's findings and recommendations in areas affecting branchless banking and financial access.

2 State of Play: Government Authorities

The National Banking and Securities Commission (CNBV), Mexico's financial regulatory and supervisory body, is relatively advanced in its thinking about branchless banking and is aware of its potential to increase access to finance. CNBV's concern with financial inclusion is best illustrated by the fact that it has created a directorate specifically responsible for all related issues. CNBV has recently issued a secondary regulation on the use of agents by banks and other licensed financial institutions, which allows them to

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[4] COM(2008)627 final, 2008/0190 (COD) "Proposal for a Directive of the European Parliament and of the Council on the taking up, pursuit and prudential supervision of the business of electronic money institutions, amending Directives 2005/60/EC and 2006/48/EC and repealing Directive2000/46/EC

[5] "Payment transaction" is defined as: An act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

[6] http://ec.europa.eu/internal_market/payments/docs/emoney/com_2008_627_en.pdf

[7] Policy Advisory Consultants Ernesto Aguirre and Denise Dias and CGAP staff member Ignacio Mas conducted the field portion of the mission. Mrs. Dias, Mr. Aguirre and Mr. Klaus Prochaska authored these notes with substantial contribution from Mr. Mas. Mr. Carlos López-Moctezuma, of the National Banking and Securities Commission kindly provided substantial support to the team during the mission.

use agents to deliver an array of financial services. The content of this regulation will be discussed in greater detail in section 5.2 below. CNBV intends to allow nonbanks a more active role in small payment services, through bank-based branchless banking models. Furthermore CNBV is currently preparing a regulation, which will deal with the issuance of e-money by non-bank institutions.

Mexico does not have a formal financial inclusion government policy. However several regulatory bodies pursue according policies individually. Improved inter-agency coordination would not only increase policy certainty for both, industry actors and regulators, it could also be instrumental in designing and rolling out a financial education program for poor people. The creation of a dedicated inter-agency body to coordinate financial access initiatives could be one way to improve current shortcomings.

The Communications and Transport Secretariat (SCT), the country's telecommunications policy maker has not shown interest in mobile banking and has not talked to the financial regulators on the subject to date.

Banco de México (Banxico), the country's Central Bank, is among other things, in charge of promoting both the sound development of the financial system and the adequate functioning of the payment systems. As the regulator and supervisor of the payment system it has broad powers to intervene in the market and set prices, and an important role to play in increasing the growth of the electronic payments network, which will be laid out in section 5.3 on Payment Systems.

3 State of Play: Industry

3.1 The banking sector

In Mexico there are forty-two commercial banks which operate through some 8,400 branches. Banco Azteca alone owns 11.5 percent of the branch network and has the largest account base with over 12 million account holders.[8] Bank credit to the private sector in relation to GDP is at the low level of 15.4 percent,[9] as nearly 40 percent of the total bank assets are invested in government bonds.[10] Commercial banks manage 41.8 million demand deposit accounts for an estimated 25 million account holders.[11] Less than 30% of the adult population has a bank account. [12]

According to the CNBV, commercial banks compete with approximately 630 credit and savings organizations, generally known as popular financial entities.[13] A legislative

[8] Source: CNBV, Boletín Estadístico.

[9] Data provided by the CNBV.

[10] Banco de Mexico, "*Evolución y Perspectivas de la Economía y del Sistema Financiero",* Marzo 13, 2008. Available at www.banxico.gob.mx.

[11] Condusef: "*Comportamiento de la Infraestructura y de las Transacciones a través de Diversos Medios de Pagos con Usuarios de la Banca a Diciembre 2006".*

[12] Idem, with data from Demirgüç-Kunt, Beck and Honohan (2006) and INEGI, ENIGH 2002-2006.

[13] The popular credit and savings sector is divided by credit cooperatives (*cajas*) and popular finance entities (*sociedades*

reform in 2001 gave CNBV the authority to license and supervise these institutions, which serve approximately 4.5 million low-income customers.[14] .

Inbursa and Banamex, both private banks, deliver an array of financial services through mini branches in retail chains[15]. In a similar scheme, Banco Azteca, a bank focused on low-income customers, has set up mini-branches inside Elektra stores.[16]

Telecomm, the national telegram service, offers an open agency platform to deliver services such as deposits, withdrawals, and remittances, to six major banks through its network of 1,566 points.[17] This platform has been operational since 2005 and processes approximately four million transactions per year. Telecomm plans to increase this agent network by partnering with entities such as the postal service, which has 4,000 offices throughout the country.

The newly licensed Banco Wal-Mart has been providing some financial services in Wal-Mart stores to 14,000 of the retailer's own employees[18]. With the issuing of the new agency regulations it intends to offer a full array of bank services through the retailer's 30,000 cashiers. Wal-Mart has 1,000 stores in 200 municipalities in which more than 3 million people shop every day. 70 percent of these customers are believed to be unbanked.

Bansefi, a state owned bank, uses a network of popular credit and savings entities to deliver banking services to lower-income customers. This network—known as *La Red de la Gente*—has 860 points, 500 of which are Bansefi's own branches, but is expected to grow considerably as more popular credit and savings institutions join it.

Several other banks have indicated to the CNBV their interest in working with agents provided that the new agency regulation would be issued.[19]

3.2 The mobile phone industry

With an adult population of 70 million[20] there are about 68 million active mobile phone accounts in Mexico[21]. However there is no official estimate on the actual number of subscribers. The mobile phone industry is highly concentrated in a single MNO- Telcel -

financieras populares).

[14] Data provided by the CNBV.

[15] Sanborns and Soriana respectively

[16] Both Banco Azteca and Elektra are part of one of the largest Mexican economic group, Grupo Salinas.

[17] Telelcomm 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.

[18] 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.

[19] The interviews were conducted before the agency regulation was issued.

[20] Source: Consejo Nacional de Población (www.conapo.gob.mx)

[21] Source: Comisión Federal de Telecomunicaciones (www.cofetel.gob.mx).

that has 85 percent of the market share.[22] Nonetheless, call and handset prices have been dropping considerably in the last few years. Prepaid accounts, which make up almost 92% of the market, can be recharged through bank ATMs, retail chains, and in some cases, the internet. Airtime balances can be transferred from one user to another.

A number of mobile banking initiatives are planned or under way. Telcel, the dominant MNO, has partnered with some banks to initially target higher-income bank clients for mobile balance inquiries, transfers, and payments. Telefonica envisions offering an electronic wallet that could be used for purchases and peer-to-peer transfers, with an eye to the remittance corridor from the USA to Mexico. Telefonica's 13,000 agents could be turned into agents for cash in/cash out transactions. The project has not been presented to the CNBV for evaluation from a regulatory standpoint.

3.3 Payment systems and payment instruments

3.3.1 The Mexican payment system

Banxico operates the main wholesale payment system: SPEI (*Sistema de Pagos Electónicos 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).[23] Banks are not only credit and debit issuers but also the acquirers. Banxico has been promoting electronic payments by (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 to a maximum of US$10,000.

Payment instruments and channels

Cash is the preferred medium for low-value transactions, although the usage of electronic payment instruments and channels has been increasing considerably. In the first quarter of 2008, 25.4 million credit cards and 51.8 million debit cards were issued.[24] In 2006 debit card transactions totaled the equivalent of US$146,256 million, 80.2 percent of which were conducted through ATMs (mostly withdrawals). POS terminals are not commonly used for bank account transactions, even though they are cheaper for the client than ATMs. "Cash-back" is allowed by regulation but is restricted to a few large retailers. Banks and a wide array of merchants receive bill payments in cash.[25] Approximately 7 million internet banking users conducted about 12 billion transactions in

[22] Data provided by SCT and MNOs.

[23] 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.

[24] Source: Banxico. www.banxico.gob.mx

[25] Bill payments in retailers are processed by private closed POS networks, based on a contractual relationship between retailers and utility companies.

2006.[26] According to Banxico, most internet banking users are private companies and government entities.

Some ATMs and POS terminals are interoperable allowing withdrawals and payments for cards issued by any bank. Deposits however can only be made at ATMs and branches of the bank where the account is held. According to Banxico about 12 percent of the commercial establishments in Mexico use POS devices to accept payments and conduct other financial transactions. On average, bank users conduct 17 million daily transactions, 22 percent of which are carried out in branches and 12 percent through POS terminals.[27]

Following a decree that created tax incentives to electronic financial transactions, in 2004 the Mexican banks formed a trust, Fimpe (*Fideicomiso para el Impulso de la Infraestructura de Medios de Pago Electronico*), to increase the number of POS terminals in the country and promote the use of card payments. Fimpe has installed more than 40,000 POS terminals since its creation charging a single fixed monthly maintenance fee from small merchants.[28] It also has recently created a platform for mobile banking transactions to serve clients from all banks.[29] Similarly, Banxico has created a model mobile banking platform with direct settlement at SPEI, which seems unlikely to strongly attract low income customers.[30] Only two banks have so far shown interest in using Banxico's platform.

A CLOSER LOOK AT FIMPE

According to a recent study[31], Fimpe has been underutilized with regards to deploying and managing POS terminals at small merchant locales. The study describes Fimpe's future as uncertain since it has become somewhat independent from banks in the acquiring and switching business, which might go against its members' interests. Recommendations of the study include:

1. Investigating competition in switching and acquiring businesses and taking necessary measures to reduce entrance obstacles and promote price competition.
2. Increasing public subsidy in targeted areas such as electronic instrument usage campaigns and financial infrastructure in underserved areas.
3. Increasing Fimpe's role in distributing government subsidies across the financial sector and encouraging it to continue efforts toward card usage and the acquiring business, specifically in niches such as bank agents.

[26] Source: Condusef, idem.

[27] Source: Condusef, idem.

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

[29] The platform, Nipper, is based on Movipay, a platform proved unsuccessful in Spain.

[30] 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.

[31] Bankable Frontier Associates, study commissioned by the CNBV.

3.4 Money transfers

Mexico is among the top remittance recipients in the developing world. Both in 2007 and 2008 it reported remittance inflows of about US$25 billion.[32] 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. 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 fast crediting of transactions (usually the following business day) at a 0.21 percent fee paid by the sender. Exchange rates are charged at the interbank rate. Given its benefits for immigrants and its potential to boost the opening of bank accounts *Directo a México* should be better advertised. The government and the banking sector should assume a more active role engaging in national campaigns to promote this service.

4 State of Play: Clients

The most commonly used estimate about the number of adult Mexicans who hold a bank account is 30 percent, which is based on World Bank studies. 15 percent of the economically active population has access to government financial programs (known as *banca social*), 13 percent to development banks, and 35 percent completely lack any type of financial service.[33] 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.[34] The informal sector employs about 30 percent of the available labor force and accounts for a similar percentage of the GDP.[35] An estimated 21 percent of the population has internet access.[36]

> ➢ ***Comments and recommendations***
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> *The potential use of the established networks of small merchants already connected to welfare transfers and other services should be explored to increase financial access. For instance, Procampo, a government subsidy program for farmers, uses agents 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 it avoids the risk of holding a check and reduces travel costs). It could also work as an economic development tool. Beneficiaries who receive the subsidy close to their home are more likely to*

[32] World Bank Migration and Development Brief 5. July 10, 2008

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

[34] Source: National Population Council (www.conapo.gob.mx).

[35] 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).

[36] Asociación Mexicana de Internet - AMIPCI.

spend the money in local commercial establishments, instead of the cities, where the cash previously was received. Banks could then leverage such agents to offer additional services such as credit and savings to a dispersed population.

5 The Regulatory Environment for Branchless Banking

5.1 Banking business, e-money, and deposit-taking

The banking law restricts banking business—characterized as deposit-taking—to licensed credit institutions (i.e., commercial and development banks and credit cooperatives). The Commercial Code defines "deposit" as repayable fund (i.e., the credit institution has the obligation to repay the funds and any interest). 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. These provisions clearly exclude nonbanks from the deposit-taking business. They can, however, issue prepaid cards that can be used for purchases in commercial establishments, which belong to the same business conglomerate than the issuer (e.g. gift cards). Banks may manage prepaid cards issued by nonbanks (*tarjetas no bancarias*) only if the services do not resemble deposit-taking.[37] A greater role for nonbanks in e-money issuance is expected to be permitted by CNBV's upcoming regulations on the matter.

There is a detailed regulation on prepaid cards that are issued by licensed credit institutions. The balance stored on such cards may earn interest, is returned to the clients in case of cancellation and may be transferred to another prepaid card.[38] Security features are freely defined by the issuer. The user must be informed by the issuer about fees, interest rate, security measures, complaint procedures, cancellation, and consultations.

> ➢ ***Comments and recommendations***
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> *Limitations imposed by the banking law and the lack of a clear framework for e-money issuance, currently prevent nonbanks from engaging in electronic payment services. The upcoming e-money regulation should allow the issuance of e-money to non-banks using a variety of storage instruments, while establishing minimum operational and technological standards, adequate reporting obligations to the CNBV as well as minimum conduct-of-business rules. Such regulations additionally need to consider whether collected public funds must be (i) held in a prudentially regulated institution, (ii) held separate from other issuer funds and in trust for the depositor, (iii) held immune from claims by the e-money issuer's creditors and (iv) protected by national deposit insurance for the benefit of the depositor. In order to mitigate the possibility that the public will use e-money accounts as an alternative to the*

[37] Banxico Circular-Telefax 25/2005.y

[38] If the card can be used by anyone in its possession, it is limited to $1,000 (2,500 Unidades de Inversión, or 2,500 x 3.98 Mexican Pesos, as of 03/28/08), otherwise there is no limit.

prudentially regulated banking system, regulators can consider whether (i) to cap or prohibit the payment of interest to the depositor on collected funds,[39] and (ii) to limit the amount of time funds may be stored electronically. To mitigate liquidity risk, e-money issuers could be required to hold a certain proportion of funds in liquid form.

5.2 Regulation of payment services and 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.[40] 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 other 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 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 policies (see Section 5.6.). The possible entrance of MasterCard and First Data in the switching business is expected to increase competition to a certain extent.

With regard to card transactions, Banxico requires that (i) debit card interbank fees must be lower than credit card fees and are capped both in absolute terms and relative to the transaction value (ii) credit card interbank fees are also capped relative to the transaction value. The interbank fee charged to a bank for using another bank's ATM is US$0.725 but there is no limit for the charges to clients. The interbank fees charged by a bank to process a payment for another bank (a deposit, for example) is $0.14. Banxico publishes all current fees in its Web site.

> ➢ ***Comments and recommendations***
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> *The payment system regulations do not form an obstacle for the development of branchless banking. However, competition and pricing in the switching and acquiring business will be a determining factor in the adoption and expansion of electronic means of payments, including branchless banking, by both merchants and clients. Banxico has an important role to play in carefully revising the rules governing access and sharing of the infrastructure, as well as the prices imposed by Prosa and E-Global. Clearer definitions should be pursued with regard to*

[39] Any interest paid to the e-money issuer should not be paid into the segregated account held in trust for customers so as not to co-mingle depositor and issuer funds.

[40] Ley de Transparencia y el Ordenamiento de los Servicios Financieros.

dominant positions in the payments sector, to enable the growth of the electronic payments network.

5.3 The use of agents by licensed financial institutions

Banks have been using agents for 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.[41] Nevertheless, they continued outsourcing services simply based on the fact that there is no legal obstacle for a *comisionista* to be an agent for a client. Legally, the agent had an implicit agency contract with the client, not with the bank (naturally, the client did not know that).[42] The bank held no responsibility for the agent's acts and the CNBV had no supervisory authority over agents. Moreover, the Financial Consumer Protection Code did not cover these agency relationships.[43]

To overcome the pitfalls of such a framework, the banking law was amended in February 2008.[44] It now 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 amended the Basic Banking Circular including the following provisions with regards to the use of agents: Credit institutions (banks and other fully licensed institutions) may hire legal entities and individuals[45] to deliver an array of services (including remittances), subject to a complex authorization process that includes the submission of a full business plan for the use of agents (alterations in the plan are subject to a new authorization). Agency agreements cannot be subcontracted to third parties nor have exclusivity clauses that may negatively impact competition for bill payment services. The CNBV also sets:

1. minimum provisions to be included in agency agreements;
2. basic eligibility criteria for agents;
3. several technical and operational requirements, e.g. data security principles,
4. limits for agent transactions,[46]
5. specific internal controls and reporting requirements for agency schemes to be observed by the bank;

The agent is required to have a current account with the contracting bank[47], and fully

[41] CNBV Basic Banking Circular, Chapter XI, Article 317.

[42] Ley de Instituciones de Crédito, Article 92.

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

[44] Ley de Instituciones de Crédito, Article 46, Bis 1.

[45] Some restrictions are imposed on the type of entity depending on the services to be provided.

[46] Providers may request authorization to surpass such limits.

accept and cooperate with inspections eventually conducted by the provider's auditor or the CNBV. The bank's general manager is held responsible for complying with the agency regulations.

Lastly the CNBV regulation imposes transactional limits to avoid misuse of the model. An agent may only receive monthly deposits up to the equivalent of 25% of the bank's average monthly deposits in the last 12 months. The CNBV may allow increases in this limit by request, if convinced that the bank has adequate liquidity risk mitigation procedures to deal with larger amounts of cash being handled by agents. This provision has the potential to become a limitation for the development of the agent business.

Table 1: ***Use of Agents in Mexico: Regulatory Evolution***

	Before 1993	**From 1993 to 2008**	**After the new regulation December 2008**
Contractual relationship between	Bank-*comisionista*	Client-*comisionista*	Bank-*comisionista*
Responsibility	Bank	Client	Bank
Services	Any	Any	Payments (including remittances), cash-in/out services and loan repayment.
CNBV's authorization	For cash-in/cash-out	No	Yes, when it includes bill payments and deposits (cash and checks).
CNBV's supervision	Yes	No	Yes
Financial Consumer Protection Code	Applicable	Not applicable	Applicable

- ***Comments and recommendations:***

  The amendment of the Basic Banking Circular to allow the use of agents for banks is an important step to increase access to finance in Mexico. CNBV may want to reconsider the transactional limits set in this regulation and allow banks to manage their own risk in using agents.

5.4 Regulation of telecommunication services

While the Telecommunications Secretariat (SCT) is the telecommunications policy maker, Cofetel (*Comision 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

[47] 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.

considered value-added services (VAS).[48] 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.[49]

5.5 AML/CFT regulation

The anti-money laundering and combating financing of terrorism (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 procedures. All financial institutions, money transferors, and the third parties providing services on their behalf are covered by the law-[50] MNOs are not. Specific rules are set in SHCP[51] resolutions and the CNBV is responsible for evaluating compliance.

To open an 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 one informed in the identification document). Foreigners are required to prove legal presence in the country, as well as provide their address in the country of origin.[52]

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. 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 use this prerogative.

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[48] 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.

[49] Resolucion de Portabilidad and Ley Federal de Telecomunicaciones.

[50] 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.

[51] Secretaria de Hacienda y Credito Publico

[52] If such documentation is not available, the bank or financial entity is allowed to accept alternative documents.

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) relevant transactions (transactions in cash, equal or higher than the equivalent of US$10,000 or above US$3,000 in the case of money transferors), (ii) unusual transactions (transactions that do not fit the client's profile), and (iii) transactions with related parties (managers, employees, or others).

> ➢ ***Comments and recommendations***
>
> *The current AML/CFT framework does not create a major barrier for the development of branchless banking, since a good degree of flexibility is allowed for banks and other financial institutions to open accounts and conduct one-time transactions. However, greater flexibility may be considered with regard to remote account opening processes for small value accounts.*
>
> *Particularly with respect to IDs, it is important to find solutions to deal with reported large-scale counterfeiting. The government should accelerate its current plan to issue plastic cards as a substitute for paper-based identification documents.*
>
> *As more nonbanks engage in prepaid cards and other types of financial services, they will need to adopt some basic AML/CFT procedures as well. Consequently, regulators should consider integrating such entities into its reporting scheme.*

5.6 Consumer protection and competition

Condusef, the specialized financial consumer protection agency, is responsible for enforcing the financial consumer protection law[53] and the transparency law[54]. These laws establish basic consumer protection principles, conflict resolution procedures, and penalties for noncompliance. They require banks to provide all-inclusive price information as well as their customer service and Condusef's phone numbers by displaying fees and charges in branches, at ATMs and through the Internet. The new agent regulation explicitly extended this requirement to agents, i.e. all above mentioned information must be posted at 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.

Although Condusef can arbitrate disputes between banks and customers, this mechanism is rarely used. Unresolved disputes 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.

[53] Ley de Protección y Defensa a los Usuarios de Servicios Financieros, of 1999. The general consumer protection code does not apply to the regulated financial sector.

[54] Ley para la Transparencia y Ordenamiento de los Servicios Financieros, of 2007.

The mobile phone service sector is covered by the general Consumer Protection Code, which is enforced by Profeco (*Procuradoria Federal del Consumidor*). Both mobile phone and financial services are covered by the Competition Law[55], 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 SCT has taken no measures so far.

> ➢ ***Comments and recommendations***
>
> *The existence of a specialized entity to deal with complaints and provide legal assistance to financial consumers is very positive. However, there seems to be little awareness of Condusef's existence and role among the general population. There is a strong case for strengthening support to Condusef for implementing consumer awareness and capability efforts, particularly about agents.*
>
> *With the increasing use of retail agents by banks, it is important to improve information sharing and coordination among CNBV, Banxico, Condusef, and Profeco, with the purpose of providing updated information to the public and efficiently dealing with complaints.*
>
> *As mobile phones will increasingly be used for the delivery of financial services, it is important to improve coordination between Condusef, Profeco, and Cofetel to establish clear responsibilities and conflict-resolution procedures for potential failures and frauds involving mobile banking operations. The development of m-banking requires enhanced capability, which should be jointly pursued by the authorities.*
>
> *Given the dominant market position of one mobile phone operator, which also has intergroup relationships with banks, Mexican authorities should study the partnerships between banks and MNOs and their impact on competition in the mobile banking arena.*
>
> *Lastly, Cofetel should investigate and take the necessary measures against anti-competitive practices in the mobile phone industry and reduce the effects of the current concentration level by using its legal prerogative with regard to dominant positions. Better competitive conditions in the mobile phone sector would allow the move toward nonbank-based branchless banking, such as small mobile phone based payment and savings services.*

5.7 Regulation of electronic transactions, data privacy, and data security[56]

The legislation[57] provides for recognition of electronic signatures when the authenticity and integrity of the original electronic document is preserved according to specified basic parameters. Electronic documents can be used as proof in court and in complaints filed

[55] Ley Federal de Competencia Economica.

[56] 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.

[57] Commercial Code, Civil Code, the Civil Procedures Code, the Consumer Protection Code, the banking law and the Financial Consumer Protection Code.

in consumer protection agencies. CNBV requires electronic transactions to occur with end-to-end encryption[58], a provision that has been criticized by providers for limiting branchless banking models. The e-security measures put in place by banks are evaluated through the supervisory process. The new agent regulation holds banks responsible for ensuring that customer's data is safe and not misused by third parties.

Although incidence of digital crimes is high, penalization 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 legal provisions aimed at protecting one's 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 bureaus[59] 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.

> ➢ ***Comments and recommendations***
>
> *The framework for electronic transactions does not form an obstacle for branchless banking but suffers from some weaknesses such as the disparity between the federal penal code and state penal codes and the lack of international agreements for curbing e-crimes. Additionally, enforcement is poor. To foster the growth of electronically authorized financial transactions and branchless banking, it is crucial to combine an adequate legal framework and enforcement. It is also necessary to pass a data privacy law to regulate the use of client's information. (Provided that such law does not introduce obstacle to the flow of information in financial transactions and foreign remittances done by alternative channels such as agents and mobile phones).*

5.8 General banking and financial access

5.8.1 Low-value accounts

Following a 2007 law[60] requiring banks to offer free accounts, Banxico created two types of low-value accounts:[61]

[58] Encryption that cannot be broken when travelling from a delivery channel, such as a mobile phone, to the bank and vice-versa

[59] Ley de las Sociedades de Información de Crédito.

[60] Ley para la Transparencia y Ordenamiento de los Servicios Financieros, of 2007.

[61] Banxico Circular 06/2007.

1) *Salary account*: It is opened through agreements between banks and employers. No charges are allowed for withdrawals, consultations, and payments/transfers, and there is no obligatory minimum balance and no checks.

2) *Basic checking account*: Minimum balances are set by the bank, and there are no charges up to certain limits.

Banks are required to advertise these products on their internet sites and in their branches and cannot deny requests to open such accounts. However, given the low profits involved in such accounts, it is reported that banks are not aggressively promoting them.

> ➢ ***Comments and recommendations***
>
> *Low-value accounts are important for breaking one of the possible barriers to access to finance and to the sustainable development of branchless banking initiatives: cost to the customer. (Although there is no evidence that cost is a major barrier for access in Mexico due to lack of empirical research.) However, banks will not offer the product if it is not profitable and attractive. There should be a balance between costs and the fees charged to the client. Banxico should work with the banking sector to design the right incentives for these products, such as simplified know-your-customer requirements and more flexibility in the fee structure.*

5.8.2 Branch regulation

Due to rigid regulation of bank branches, especially with respect to costly physical security standards, the SHCP and the CNBV are currently creating differentiated security levels for branches according to the services provided and the location. This initiative is being pushed by banks that offer services inside retail stores through "mini-branches" staffed by their own personnel.

> ➢ ***Comments and recommendations***
>
> *Some industry actors have suggested that agents should also be subjected to physical security standards. However, there should be no correlation between branch regulation and agent regulation because of the fundamental difference between branches (bank property where client's money is stored) and agents (a third party who is limited to certain transactions—against its own bank account—on behalf of the bank and is not responsible for client funds). Applying physical security standards to agents would undermine its cost-cutting attractiveness for banks to use agents.*

5.9 Taxation

A 2007 law, effective from June 2008, introduced a tax on cash deposits. The tax is calculated as 2 percent of total deposits in a month in all accounts under the same name, for totals above the equivalent of US$2,500. The client can offset this tax against income tax. Although being a deductible tax, its impacts in the "bancarization" process sought by the Mexican authorities are potentially negative. This tax could create or

exacerbate an anti-formality preference by fueling perceptions of high banking costs.

Annex 1: List of persons interviewed

Entity	Name	Title
CNBV	Mr. Guillermo Babatz	President
CNBV	Mr. Carlos López-Moctezuma	Advisor to the President
CNBV	Mr. Miguel Angel Garza	Vicepresidente de Supervisión Financiera
CNBV	Mr. Pablo Gómez del Campo	Director General de Prevención de Operaciones Ilícitas
CNBV	Mr. Marco Antonio Marquet	Gerente de Desarrollo de Sistemas Preventivos 2
CNBV	Mr. Yerom Castro Fritz	Vicepresidente de Supervisión de Instituciones Financieras 2
CNBV	Mr. Jorge González García	Vicepresidente de Normatividad
CNBV	Mr. Enrique Barrera	Gerente – Direccion General Tecnica
CNBV	Mr. Pablo Escalante	Vicepresidente de Supervisión de Instituciones Financieras 1
CNBV	Mrs. Martha Navarrete	Director General de Regulación
CNBV	Mr. Carlos Marmolejo Trujillo	Director General de Supervisón de Sistemas Informáticos de Instituciones Financieras
CNBV	Mr. Benjamin Bernal Diaz	Supervisor en Jefe – Dirección General de Supervisión de Sistemas Informáticos de Instituciones Financieras
SHCP	Mr. Alejandro Werner	Subsecretário de Hacienda y Crédito Público
SHCP	Mr. Guillermo Zamarripa	Titular de la Unidad de Banca, Valores y Ahorro
SHCP	Mr. José Christian Carreón	Director General Adjunto de Análisis Financiero y Vinculación Internacional
FIU	Mr. Luis Urrutia Corral	Titular de la Unidad de Integridad Financiera
FIU	Mrs. Neus Peniche Sala	Director for Policy and International Liaisons
Bansefi	Mr. Jaime González Aguadé	Director General
Bansefi	Mr. Pedro Guazo	Director General Adjunto de Banca Institucional
Bansefi	Mr. Alejandro Ríos Camarena	Director General Adjunto de Administración Corporativa
SHF	Mr. Javier Gavito Mohar	Dirección General
SHF	Mr. Allan Seidman Fainchtein	Dirección de Promoción de Negócios
Banco de Mexico	Mr. Javier Cárdenas	Director – Intermediarios Financieros de Fomento
Banco de Mexico	Mr. Jorge Lara Pérez	Proyectos Especiales – Intermediarios Financieros de Fomento
Banco de Mexico	Mr. Ricardo Medina Alvarez	Director de Sistemas Operativos y de Pagos
Banco de Mexico	Mr. Alberto Mendonza Hernández	Líder de Especialidad – Gerencia de Sistemas de Pagos
Banco de Mexico	Mrs. Sara Gabriela Pascacio	Investigadora – Dirección de Sistemas Operativos y de Pagos
SCT	Mr. Rafael del Villar	Subsecretario de Comunicaciones
SCT	Mrs. Arcelia Rodríguez Aguirre	Subdirectora de área – Subsecretaria de Comunicaciones
SCT	Mrs. Jessica Serrano Bandala	Coordinador – Subsecretaria de Comunicaciones
Telecomm	Mr. Rafael Diaz Infante	Director Comercial
Telecomm	Mr. José Peralta Cambranys	Director de Operación de la Red de Oficinas
Telcel	Mr. Alejandro Magaña	Subdirector of Productivity Services Development
Telcel	Mr. Luis Comba	VAS Corporate & E-Commerce
Telcel	Mr. Emmanuel López Barrón	E-Commerce Chief VAS
Fimpe	Mr. Roberto Isaac Rodríguez	Director General
Fimpe	Mr. Alberto Alcaraz Ortega	Planeación Estratégica
E-Global	Mr. Pedro Zago	Director General
Prosa	Mr. José Santiago Cruz	Director Ejecutivo de Administración y Finanzas
Prosa	Mr. José Luis Andrade	Comercial
Prosa	Mr. Mario Ernesto Dalma León	Operación-Sistemas
Prosa	Mr. Miguel A. Peralta	Abogado
Fincomún	Mr. Vicente Fenoll	Director General
Condusef	Mr. Luis Fabre	Vicepresidente Técnico
Condusef	Mr. José María Aramburu	Director General de Análisis de Servicios y Productos Financieros
Telefonica	Mr. Miguel Calderón	Vice Presidente de Planeación Estratégica, Sinergia & Alianzas
Telefonica	Mr. Juan Carlos Espinosa	Sub-Director Desarrollo de Nuevos Negocios e Innovación
Banco Wal-Mart	Mr. Júlio Bosco Gómez Martínez	Director General
Banco Wal-Mart	Mr. Javier Villazon Salem	Director Comercial