

GETTING THE
DEAL THROUGH 

Banking Regulation 2015

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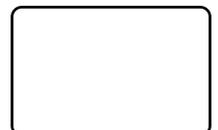


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CONTENTS

Austria	5	Luxembourg	82
Christoph Moser and Stefan Weber Weber & Co		Denis Van den Bulke Vandenbulke	
Brazil	12	Mexico	90
Rodrigo de Campos Vieira, Alexei Bonamin and Marcus Fonseca TozziniFreire Advogados		Andrés Nieto Von Wobeser y Sierra, SC	
Canada	16	Norway	95
Pat Forgione, Ahsan Mirza, Darcy Ammerman and Sean Brandreth McMillan LLP		Klaus Henrik Wiese-Hansen and Tore Jetmundsen Advokatfirmaet Steenstrup Stordrange DA	
Curaçao	21	Peru	100
Maike Bergervoet Spigt Dutch Caribbean		Juan Luis Avendaño Miranda & Amado Abogados	
Cyprus	24	Philippines	106
Elias Neocleous and George Chrysaphinis Andreas Neocleous & Co LLC		Rafael A Morales SyCip Salazar Hernandez & Gatmaitan	
Dominican Republic	30	Portugal	110
Mariángela Pellerano Pellerano & Herrera		Pedro Ferreira Malaquias and Hélder Frias Uría Menéndez - Proença de Carvalho	
France	35	South Africa	115
Pierre Casanova Darrois Villey Maillot Brochier		Ina Meiring Werksmans Attorneys	
Germany	43	Spain	120
Christoph Schmitt and Rainer Süßmann Beiten Burkhardt		Emilio Díaz Ruiz, Pilar Lluesma Rodrigo and Isabel Aguilar Alonso Uría Menéndez Abogados, SLP	
Hungary	49	Switzerland	128
Zoltán Varga and Balázs Baranyai Nagy és Trócsányi		Patrick Hünerwadel, Shelby R du Pasquier, Marcel Tranchet and Maria Chiriaeva Lenz & Staehelin	
Indonesia	56	Turkey	136
Emalia Achmadi, Robert Reid and Aziizah Soerjadi Soemadipradja & Taher		Hasan Tanyol Birsell Law Office	
Italy	62	Ukraine	141
Marcello Gioscia, Gianluigi Matteo Pugliese and Benedetto Colosimo Ughi e Nunziante - Studio Legale		Oleksander Plotnikov Arzinger	
Japan	70	United Arab Emirates	147
Yoshiyasu Yamaguchi, Hikaru Kaieda, Yoshikazu Noma, Tae Ogita and Ken Omura TMI Associates		Bashir Ahmed and Vivek Agrawalla Afridi & Angell	
Lebanon	76	United Kingdom	152
Souraya Machnouk, Hachem El Housseini and El Sayegh Abou Jaoude & Associates Law Firm		Isabel Paintin and Ben Kingsley Slaughter and May	
		United States	164
		Richard K Kim Wachtell, Lipton, Rosen & Katz	

Mexico

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Regulatory framework

1 What are the principal governmental and regulatory policies that govern the banking sector?

The oversight of the Mexican banking system is primarily the responsibility of the Ministry of Finance and Public Credit, the Bank of Mexico, the National Banking and Securities Commission, the Institute for the Protection of Bank Savings and the National Commission for the Protection and Defence of Users of Financial Services.

In 2014, a major financial reform was approved, with four main objectives: expanding credit through credit performance evaluations for banks; protecting and strengthening the stability of the banking sector by improving the legal framework of bank's bankruptcy; increasing competition with dispositions that promote transparency in the market and consumer protection; and strengthening governmental banking.

2 Summarise the primary statutes and regulations that govern the banking industry.

In Mexico credit institutions are governed primarily by the Credit Institutions Law, the Law for the Transparency and Order of the Financial Services, Law for the Transparency and Promotion of the Guaranteed Real Estate Credit, the general regulations applicable to credit institutions issued by the National Banking and Securities Commission, by the circulars issued by the Bank of Mexico, by the general regulations issued by the National Commission for the Protection and Defence of Users of Financial Services, the Law Regulating Financial Groups, Banks Savings Protection Law and in the case of development bank institutions (governmental banking institutions), also by their own organisational laws.

- Credit Institutions Law: Regulates the incorporation, operation, supervision, liquidation and resolutions of banking institutions.
- Law to regulate banking groups: Regulates the functioning of banking groups and the liability of the holding controlling entity.
- Law for the Protection and Defence of Users of the Financial Services: Creates the National Commission for the Protection and Defence of users of the Financial Services and a decentralised entity for the protection of consumers, setting forth procedures that can be brought against banking institutions and prohibiting abusive clauses.
- Law for the Transparency and Order of the Financial Services: Regulates transparency of commissions, interest rates and other banking prices, adhesion agreements and payment systems of low transactions payment systems (debit and credit ATMs).
- Law for the Transparency and Promotion of the Guaranteed Real Estate Credit: Regulates credits guaranteed by real estate mortgages and transfer of mortgages.
- Regulations issued by the National Commission for the Protection and Defence of Users of Financial Services: Regulates transparency of financial services and abusive clauses.
- Banks Savings Protection Law: Creates a system to guarantee deposits in case of bankruptcy of financial institutions.

3 Which regulatory authorities are primarily responsible for overseeing banks?

In Mexico, the National Banking and Securities Commission, a decentralised body of the Ministry of Finance and Public Credit, is the primary authority responsible for the oversight and supervision of the credit institutions together with the Institute for the Protection of Bank Savings, in order

to ensure that they following the applicable rules and healthy practices in the area.

4 Describe the extent to which deposits are insured by the government. Describe the extent to which the government has taken an ownership interest in the banking sector and intends to maintain, increase or decrease that interest.

In Mexico, the Institute for the Protection of Bank Savings guarantees the payment of principal and financial charges of the full service banking institutions derived from bank deposits, up to an amount equivalent to 400,000 investment units (approximately 2 million pesos), per person, individual or entity, in the same full service banking institution.

Furthermore, regarding the participation of the state in the Mexican banking system, the Credit Institutions Law establishes the existence of development bank institutions, which form part of the federal public administration, in which the federal government has at least a 66 per cent share of the capital stock, and the fundamental purpose of which is to facilitate access to credit and financial services for individuals and entities, and to provide them technical assistance and training in order to promote economic development.

5 Which legal and regulatory limitations apply to transactions between a bank and its affiliates? What constitutes an 'affiliate' for this purpose? Briefly describe the range of permissible and prohibited activities for financial institutions and whether there have been any changes to how those activities are classified.

Full-service banking institutions require the agreement of at least three-quarters of the board members present at the board of directors meetings in order to approve engaging in operations with related persons, in which the latter are or may become debtors to the full-service banking institutions.

According to article 67 of the Law Regulating Financial Groups, the affiliates will be governed by corresponding international treaties or agreements, the provisions contained in the above-mentioned Law and those emanating from it, as well as the opinion of the Bank of Mexico and of the Commissions for National Banking and Securities, Insurance and Bonds and Retirement Savings System.

An affiliate is the Mexican company authorised to organise and operate like any of the financial entities that may form a financial group under the Law Regulating Financial Groups. It regulates operations carried out by foreign financial institutions, which are the financial entities incorporated in a country with which Mexico has signed an international treaty or agreement by virtue of which the establishment of affiliates in Mexico is permitted.

The affiliates may carry out the same acts as the bank holding company of full service banking institutions and they will have the same restrictions, unless the applicable international treaty or agreement establishes some restriction. The affiliates may acquire shares from financial entities in order to be incorporated into a financial group or for a foreign financial institution to acquire the shares of a bank holding company.

6 What are the principal regulatory challenges facing the banking industry?

As a result of the so-called 'financial reform' (published on 10 January 2014 in the Official Federal Gazette), the obligations of credit institutions have increased, which may be reflected in increases in the operating expenses

of such institutions. In Mexico, financial matters are regulated by the Federal Congress, by a decentralised body of the Ministry of Finance and Public Credit, which is the National Banking and Securities Commission, by a constitutionally autonomous body, which is the Bank of Mexico, and by the National Commission for the Protection and Defence of Users of Financial Services, which increases the charges of the credit institutions, such charges being established in different regulatory bodies.

7 Are banks subject to consumer protection rules?

The Law for the Protection and Defence of Users of Financial Services created the National Commission for the Protection and Defence of Users of Financial Services, the purpose of which is to protect and defend the rights and interests of public users of financial services. The Institute for the Protection of Bank Savings was also created to protect the resources of the public.

8 In what ways do you anticipate the legal and regulatory policy changing over the next few years?

The reforms made in 2014 allow the leaders of the financial institutions to confront and regulate the greatest risks that the financial entities currently face, such as business risks, business development and strategies for managing them to prevent future financial crises.

The recent reforms follow the same trend in the sense of encouraging the review, verification, substantiation and evaluation of the operations, organisation, functioning, processes, internal control, risk management and information systems, and the assets, the adjustment of capital to the risks, the quality of the assets and, in general, everything that can affect the financial and legal position, so that the credit institutions follow industry best practice and thereby avoid systemic risks and future financial crises.

Supervision

9 How are banks supervised by their regulatory authorities? How often do these examinations occur and how extensive are they?

The supervision of the credit institutions is the responsibility of the National Banking and Securities Commission, which may carry out inspections of the credit institutions, in order to review, verify, substantiate and evaluate the operations, organisation, functioning, processes, systems of internal control, of risk management and of information, as well as the assets, the adjustment of capital to the risks, the quality of the assets and, in general, everything that can affect the financial and legal position, keeping records, in order to ensure that the credit institutions are in compliance with the provisions that govern them and the healthy practices in the industry.

In addition, the National Commission for the Protection and Defence of the Users of Financial Services will be responsible for the supervision of the entities regulated by the Credit Institutions Law, which may request the National Banking and Securities Commission to inspect the credit institutions in order to review, verify, substantiate and evaluate that the credit institutions are in compliance with the provisions referred to in this paragraph.

The oversight by the National Banking and Securities Commission will be done through the analysis of accounting, legal, economic, financial, administrative, process and procedures information obtained by such Commission under the applicable law, in order to evaluate the compliance with the regulations governing the credit institutions, as well as their stability and proper functioning.

Notwithstanding the information and documentation that the credit institutions must provide it periodically, the National Banking and Securities Commission may, within the scope of the applicable provisions, request from them the information and documentation it needs to fulfil its oversight duties.

10 How do the regulatory authorities enforce banking laws and regulations?

The National Banking and Securities Commission, as a result of its oversight powers, may make observations and order the adoption of measures to correct the irregular acts or omissions it has detected through its activities.

The National Banking and Securities Commission, in order to enforce its decisions, may make use of the following measures: advice with warning; fine from 2,000 to 5,000 days of minimum wage; additional fine of 100 days of minimum wage for each day the infringement persists; and the assistance of police force. If the warning is insufficient, it may request the

competent authority to proceed against the infringer for disobedience of a legitimate order of a competent authority.

11 What are the most common enforcement issues and how have they been addressed by the regulators and the banks?

The measures adopted by the National Banking and Securities Commission to correct the irregular acts or omissions will be preventative with the purpose of preserving the stability and solvency of the credit institutions, and regulatory in order to define criteria and establish rules and procedures that their operations must abide by.

12 How has bank supervision changed in response to the 2008 financial crisis?

As a result of the financial crisis of 2008 the law applicable to credit institutions in Mexico has been reformed in order to ensure the stability of the Mexican financial system through the adoption of prudent measures, evaluation periods of the full service banking institutions, sanctions and the establishment of obligations for them to comply with capitalisation indexes that permit them to cover their obligations, even in adverse situations and thus protect the rights of the public and creditors of the credit institutions.

Resolution

13 In what circumstances may banks be taken over by the government or regulatory authorities? How frequent is this in practice? How are the interests of the various stakeholders treated?

The National Banking and Securities Commission, with a resolution of its governing board, in protection of the interests of the public and creditors of a full service banking institution, may declare as a precautionary measure the intervention in the full service banking institution and order the closing of its offices and branches when any of the following situations occurs:

- in the space of one month, the capitalisation index of the full service banking institution diminishes to a level equal or inferior to the minimum capital requirements;
- it does not comply with the minimum required capitalisation index; or
- one of the premises of non-compliance established in section VI of article 28 of the Credit Institutions Law is present and, in the judgment of the Banking Stability Committee, it could generate, directly or indirectly, serious negative effects on other full-service banking institutions or other financial entities, such that it threatens their stability or solvency, provided that it could affect the stability or solvency of the financial system or could put at risk the functioning of the system of payments necessary for the development of economic activity.

In addition, the National Banking and Securities Commission may declare the intervention of a full service banking institution when in its judgment there are irregularities of any kind that could affect its stability and solvency, and put at risk the interests of the public or of the creditors of the institution in question.

14 What is the role of the bank's management and directors in the case of a bank failure? Must banks have a resolution plan or similar document?

The intervention of a full service banking institution will imply that the person that the governing board of the Institute for the Protection of Bank Savings designates will become a provisional administrator of the institution, who must prepare an opinion on the overall situation of the full service banking institution, which must include at least a detailed description of the financial situation of the full service banking institution, an inventory of assets and debts and, in addition, the identification of the obligations pending payment of the institution and it must have a legal and accounting opinion that the independent external auditors have prepared.

The designated provisional administrator will become the sole administrator of the institution, substituting the board of directors as well as the general shareholders meeting and for that he will have, among other things, the powers that corresponded to the board of directors and the general director, enjoying general powers for acts of dominion, of administration, of litigation and collections, with powers that require a special clause under the law, and to subscribe negotiable instruments, carry out credit transactions, present denunciations and complaints, withdraw from them, grant pardon and commit to arbitral proceedings. In no case

will the provisional administrator be restrained in his actions by any resolutions that the board of directors may have adopted.

15 Are managers or directors personally liable in the case of a bank failure?

The credit institutions will be liable directly and without limitation for the acts carried out by their officers and employees in the performance of their duties, as well as for the acts carried out by those who claim to hold some position, agency, commission or any other legal title that such institutions had granted to carry out its operations. This will be applicable notwithstanding the civil or criminal liabilities such person may incur individually.

16 How has bank resolution changed in response to the recent crisis?

Under Mexican law, the resolution of a full service banking institution now is appropriate when the National Banking and Securities Commission has revoked the authorisation that it had been granted to incorporate and operate as such, or when the Financial Stability Committee determines that serious negative effects can be generated on other full service banking institution(s) or other financial entities, such that it threatens their stability or solvency, provided that it may affect the stability or solvency of the financial system; or the functioning of the payments system is put at risk.

Capital requirements

17 Describe the legal and regulatory capital adequacy requirements for banks. Must banks make contingent capital arrangements?

According to the general regulations applicable to credit institutions, issued by the National Banking and Securities Commission, the minimum subscribed and paid in capital applicable to the full service banking institutions will be established in function of the operations they engage in. Their minimum capital will be the equivalent in Mexican currency to the value of 36, 54 or 90 million investment units (180, 270 or 450 million pesos, respectively), in function of the operations included in their corporate purpose.

In addition, the full service banking institutions must evaluate, at least once a year, whether the capital they have would be sufficient to cover possible losses derived from the risks such institutions could incur in different scenarios, including those in which adverse economic conditions prevail.

18 How are the capital adequacy guidelines enforced?

The capital requirements will be determined based on balances on the last day of the month. The institutions will make such calculation once a month and will provide that information to the Bank of Mexico. Notwithstanding the above, the Bank of Mexico will verify the calculation and may resolve that an institution make the calculation in order to determine compliance with the capitalisation requirements at any time when in the judgment of the Banking and Securities Commission it is considered that between the days when the calculation is made, the institution is assuming risks significantly greater than those shown with the figures of the close of the month.

19 What happens in the event that a bank becomes undercapitalised?

If the full service banking institution does not comply with the minimum capitalisation index required, the National Banking and Securities Commission, with approval of its governing board, after hearing from the banking institution affected, as well as the opinion of the Bank of Mexico and of the Institute for the Protection of Bank Savings, may declare the revocation of the authorisation that it has granted to it to incorporate and operate as such.

When the full-service banking institutions do not comply with the capitalisation index or with the basic part of the net capital, the National Banking and Securities Commission must order the application of minimum corrective measures such as:

- inform its board of directors of its classification based on its capitalisation index;
- present to the Commission a capital restoration plan that will result in an increase in its capitalisation index, which must be approved by its board of directors before being presented to the Commission;
- suspend, totally or partially, the payment to its shareholders of dividends;
- suspend, totally or partially, the stock buyback programmes;

- defer or cancel, totally or partially, the payment of interest and, if necessary, the payment of principal or convert into shares the subordinated obligations; and
- suspend the payment of the extraordinary compensation and bonuses additional to the salary of the general director and of the officers of the two levels below that.

20 What are the legal and regulatory processes in the event that a bank becomes insolvent?

The laws regulating the bank bankruptcy processes through the amendment published in the Official Federal Gazette on 10 January 2014 are: the Credit Institutions Law, the Commercial Bankruptcy Law, the Law for Protection of Bank Savings and the Securities Market Law. The process in the case of bank insolvency is governed by the Decree published in the Official Federal Gazette on 10 January 2014 and is the following:

When there is bank insolvency, extinction of its capital or the assets of the banking institutions are not sufficient to cover their debts, the judicial liquidation process will be initiated by the National Banking and Securities Commission or the Institute for the Protection of Bank Savings which will act as liquidator. The purpose of judicial bank liquidation includes the following among its essential elements:

- cause of revocation and initiation of the process: which involves the recognition of creditors and ranking of claims, the sale of assets, priority of payment, challenges without suspension of the process and reserves are established in case of pending lawsuits;
- modifications to the bank resolutions scheme;
- liquidity index and treatment of bank systems with liquidity problems;
- adoption of prudential measures;
- periodic evaluation of the full service banking institutions; and
- imposition of sanctions.

21 Have capital adequacy guidelines changed, or are they expected to change in the near future?

Recently the rules issued in Basel III were adopted and incorporated into Mexican law, with which minimum capitalisation indexes required for credit institutions were established in order to ensure financial stability and the liquidity of the institutions that make up the Mexican financial system.

Ownership restrictions and implications

22 Describe the legal and regulatory limitations regarding the types of entities and individuals that may own a controlling interest in a bank. What constitutes 'control' for this purpose?

The persons who acquire or transfer common stock that represents more than two percent of the capital stock of a full-service banking institution, must give notice to the National Banking and Securities Commission within the three business days following the acquisition or transfer.

Additionally, when it is intended to acquire directly or indirectly more than 5 per cent of the common paid in capital stock, the authorisation of the National Banking and Securities Commission must first be obtained, which authorisation may be granted discretionally, for which purpose it will entertain the opinion of the Bank of Mexico.

In the event that a person or group of persons, whether or not shareholders, intends to acquire 20 per cent or more of the common stock or obtain control of the institutions, it must request in advance the authorisation of the National Banking and Securities Commission, which it may grant discretionally, entertaining the opinion of the Bank of Mexico.

The Credit Institutions Law defines control as:

- the capacity to impose, directly or indirectly, decisions on the general shareholders meetings;
- to maintain title to the rights that permit, directly or indirectly, the exercise of the vote with respect to more than 50 per cent of the capital stock; or
- to direct, directly or indirectly, the administration, the strategy or the principal policies of the institution, whether through the ownership of securities or by virtue of any other legal act.

23 Are there any restrictions on foreign ownership of banks?

Foreign governments may not participate in, directly or indirectly, the capital stock of the full-service banking institutions, unless:

- they do so as temporary prudential measures such as financial support or rescue;
- the foreign government has control through official entities such as funds, governmental development entities, among others, with the prior discretionary authorisation of the National Banking and Securities Commission, with a resolution of its governing board; or
- the participation is indirect and the foreign government does not have control.

24 What are the legal and regulatory implications for entities that control banks?

According to the Law Regulating Financial Groups, a company intended to control a banking institution is created for the acquisition and administration of its stock.

The National Banking and Securities Commission supervises bank holding companies, the predominant entity of which is also supervised by the Commission, according to the applicable legal provisions. They must be fixed capital stock corporations, organised in accordance with the General Business Organisations Law, taking the following into account:

- their purpose will be to provide banking and credit services, in terms of this Law;
- the duration of the company will be indefinite;
- they must have the corresponding capital stock and the minimum capital established in this Law; and
- they must have their corporate domicile in Mexico.

The corporate by-laws, as well as any modification thereof, must be submitted to the approval of the National Banking and Securities Commission. Once the corporate bylaws or its amendments are approved, the public instrument recording them must be registered in the Public Registry of Commerce.

25 What are the legal and regulatory duties and responsibilities of an entity or individual that controls a bank?

Articles 119 and 120 of the Law Regulating Financial Groups provide that a bank holding company will sign an agreement establishing that it will be secondarily liable without limitation for compliance with the obligations of the financial entity and will also be liable without limitation for the losses of the full-service banking institutions.

The responsibilities of a bank holding company are regulated by the Institute for the Protection of Bank Savings, which must estimate and notify the bank holding company of the preliminary amount of the losses on the business day following their determination.

The bank holding company must create a reserve from its capital for an amount equivalent to the preliminary amount of the losses and it must establish a guarantee, within a term that will not exceed 15 calendar days from the date on which it receives the said notification.

The bank holding company will be subject to a special oversight programme of the Commission which supervises the entity the Ministry determines as predominant. Additionally, the bank holding company will receive inspection visits from the responsible authorities. Another of the restrictions on the bank holding company is that it cannot pay dividends to the shareholders or carry out any mechanism or act that involves a transfer

of economic benefits to the shareholders, as of the date on which the governing board of the Institute for the Protection of Bank Savings determines the method of resolution applicable to the full-service banking institution that suffered the losses.

26 What are the implications for a controlling entity or individual in the event that a bank becomes insolvent?

It is liable secondarily and without limitation for compliance with the obligations and losses of the banking institution, whether acquired prior or subsequent to its state of insolvency. The bank holding company will be obligated to create a reserve and provide a guarantee for the payment of the amount of the losses.

The person or persons who have powers to administer the company must deliver the administration to the liquidator or the representative the latter designates, in terms of article 167 of the Credit Institutions Law. The delivery referred to in this article will include all the assets, books and documents of the insolvent full service banking institution.

Changes in control

27 Describe the regulatory approvals needed to acquire control of a bank. How is 'control' defined for this purpose?

The Credit Institutions Law defines control as the capacity to impose, directly or indirectly, decisions on the general shareholders meetings; to maintain title to the rights that permit, directly or indirectly, the exercise of the vote with respect to more than 50 per cent of the capital stock; to direct, directly or indirectly, the administration, the strategy or the principal policies of the institution, whether through the ownership of securities or by virtue of any other legal act.

Persons that acquire or transfer common stock representing more than 2 per cent of the capital stock of a full service banking institution must give notice to the National Banking and Securities Commission, within three business days from the acquisition or transfer.

Additionally, when it is intended to directly or indirectly acquire more than 5 per cent of the common paid in capital stock, the authorisation of the National Banking and Securities Commission must be obtained first, which it may grant discretionally, for which it must entertain the opinion of the Bank of Mexico.

In the event that a person or group of persons, whether or not shareholders, intends to acquire 20 per cent or more of the common stock or to obtain control of the institution, it must request the prior authorisation of the National Banking and Securities Commission, which may grant it discretionally, with the prior opinion of the Bank of Mexico.

28 Are the regulatory authorities receptive to foreign acquirers? How is the regulatory process different for a foreign acquirer?

The Credit Institutions Law establishes a restriction on foreign government which may not participate, directly or indirectly, in the capital stock of the full-service banking institutions, unless:

- they do so as temporary prudential measures such as financial support or rescue;
- the foreign government has control through official entities such as funds, governmental development entities, among others, with the



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prior discretionary authorisation of the National Banking and Securities Commission, with a resolution of its governing board; or

- the participation is indirect and the foreign government does not have control.

29 What factors are considered by the relevant regulatory authorities in an acquisition of control of a bank?

According to Mexican law, the authority will determine if a person or group of persons has control of a credit institution based on the capacity it has to impose, directly or indirectly, decisions on the general shareholders meetings of the institution; to maintain title over the rights that permit it, directly or indirectly, to exercise the vote with respect to more than 50 per cent of the capital stock of the institution; or to direct, directly or indirectly, the administration, strategy or principal policies of the institution, whether through ownership of securities or by virtue of any other legal act.

30 Describe the required filings for an acquisition of control of a bank.

The request presented to the National Banking and Securities Commission to obtain its authorisation must contain:

- the list or information on the person or persons who intend to obtain control of the institution;
- the list of the board members and directors who would be appointed;
- a general operating plan; and
- a strategic programme for the organisation, administration and internal control of the institution.

31 What is the typical time frame for regulatory approval for both a domestic and a foreign acquirer?

By provision of articles 8 and 9 of the Law Regulating Financial Groups, the term for the administrative authorities to hear the opinion of other authorities, and those related to the authorisations regarding the organisation, merger, spin-off and liquidation of the bank holding company will have a maximum term of 180 days for the administrative authorities to issue their ruling.

Getting the Deal Through

Acquisition Finance	Dispute Resolution	Licensing	Public Procurement
Advertising & Marketing	Distribution & Agency	Life Sciences	Real Estate
Air Transport	Domains & Domain Names	Mediation	Restructuring & Insolvency
Anti-Corruption Regulation	Dominance	Merger Control	Right of Publicity
Anti-Money Laundering	e-Commerce	Mergers & Acquisitions	Securities Finance
Arbitration	Electricity Regulation	Mining	Securities Litigation
Asset Recovery	Enforcement of Foreign Judgments	Oil Regulation	Ship Finance
Aviation Finance & Leasing	Environment	Outsourcing	Shipbuilding
Banking Regulation	Foreign Investment Review	Patents	Shipping
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Climate Regulation	Gas Regulation	Pharmaceutical Antitrust	Structured Finance & Securitisation
Construction	Government Investigations	Private Antitrust Litigation	Tax Controversy
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