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Consumer Protection in the Mexican Financial System

Miguel Acosta-Romero*

I. Introduction

At the outset, a brief history about the way the consumer protection issue was introduced in the Mexican legislature is necessary for a fuller understanding of the development of consumer protection in the Mexican financial system. On December 22, 1975 the Mexican Congress of the Union, empowered by its constitutional authority,¹ enacted the Federal Consumer Protection Law, the first law of its kind in Mexico.²

This initial Mexican consumer protection law, however, extended no protection to users of banks, insurance and bond companies, auxiliary credit organizations, general deposit warehouses, or stock exchange agents.³ These omissions sparked a debate on whether the new law extended any practical consumer protections to the users of the Mexican financial system. Many observers concluded that the law did not provide any such protection because the users of these services constituted such a significant portion of Mexican consumers.

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1. "Constitución Política de los Estados Unidos de Mexicanos" [C.P.] art. 73 (X): "The Congress shall have power to: (X) Legislate for the entire Republic, on fossil fuels, mining, film industry, commerce, gaming, intermediation and financial services, electric and nuclear energy, and to enact laws relative to employment according to art. 123."

2. The Mexican Congress enacted the most recent version of the law on December 24, 1992.

3. "Ley Federal de Protección al Consumidor" [L.F.P.C.] art. 5 : "Services originated from a employment contract or relationship, services which are supervised by the National Banking and Securities Commission, Insurance and Bond Commission or the Pension Fund System, as well as services which do not have a commercial nature are not included in the scope of this law."

Six years after the Federal Consumer Protection Law was enacted, the Mexican government finally attempted to create a new law designed to protect consumers of financial services. It was not until September 1, 1982, soon after the debt crisis had exploded — prompting then-President Jose Lopez Portillo to nationalize the banks—that the Mexican legislature enacted a law regulating the public service of banking and credit. The Mexican legislature passed two laws, one in 1982 and one in 1985, aimed at banking and credit.⁴ Both laws created a legal framework establishing a protection procedure for the users of banking services and gave authority to the National Banking Commission (now known as the National Banking and Securities Commission) to mediate, and in some cases, arbitrate disputes.

Though a significant step towards the protection of financial services users, the limited scope of the consumer laws continued to leave unprotected the users of insurance and bond companies, general deposit warehouses, factoring and financial lease companies, and credit unions. Providers of these services remain outside the scope of both the General Law of Credit Organizations and Auxiliary Credit Activities and the Stock Market Law.

This situation did not change until the period between 1990 and 1992, when Mexico began to re-privatize the banks after the 1982 nationalization. Changes in the Mexican legal system introduced conciliation and arbitration procedures to be carried out by State institutions aimed at protecting financial system users. The law established the National Banking and Securities Commission as the office in charge of protecting consumers of bank and auxiliary organization services.⁵ Taking advantage of these changes to the Mexican legal system, the legislature enacted a new Law of Credit Institutions in July, 1990,⁶ and amended several laws during 1993,

4. Regulation of Public Service for Banking and Credit (1982), Regulation of Public Banking and Credit (1985). The objective of both laws was to adjust banking expropriation to the new reality. Both were very short-lived. The first law lasted three years and the second five. They are now repealed.

5. “Ley de la Comision Nacional bancaria y de Valores” [L.C.N.B.V.] art. 1 : “The Commission primary objective will be to supervise and regulate, in the scope of its competence, the financial entities, so as to procure their stability and correct functioning, as well as to maintain and stimulate the safe and equilibrated development of the financial system as a whole, protecting the public interest. Also it will be the Commission objective to oversee and regulate natural persons and other juridical persons, when they perform the activities foreseen in the laws relative to the financial system.”

6. “Ley de Instituciones de Credito” [L.I.C.] art. 1: “This law regulates the banking and credit service, the organization and operation of credit institutions; the transactions done by them, their safe and equilibrated development, the

including the General Law of Insurance Institutions and Mutual Companies, the General Law of Credit Organizations and Auxiliary Credit Activities, and the Stock Market Law. Other changes in Mexican law established the National Commission of Insurance and Bonds. More recently, the government created the Commission of Pension Fund Savings, charged with the goal of protecting the pension funds of Mexican workers.

The procedures employed by recent Mexican agency rulemaking are similar. The first step is a conciliation procedure between the consumer and the institution. If the parties reach a consensus, of course, the dispute is resolved. If the parties fail to agree, however, the matter is submitted to an equity or strict law procedure. The law prescribes the stages of this procedure and gives authority to the Commission to award damages; however, with one exception, the Commission's determination must be given an *exequatur* by a judge. The only exception to this general approach was given to the National Insurance and Bonds Commission, which has the authority to execute its award by selling insurance and bond company equities that act as a legal reserve in the Mexican stock market. The law provides that the damages won by successful claimants derive from the proceedings of such sales. Recent reforms permit the parties to name arbitrators from outside the Commission. Many experts laud the reforms as a significant advance in consumer protection.

The recent reforms in the Mexican legal system aimed at protecting consumers of the financial system appear to have filled the void created by the operation of consumer laws during the period from 1976 to 1982 and, to a secondary extent, until 1998. In my opinion, however, the operation of these laws does not provide an actual solution for at least two reasons. First, the different sets of laws that may apply in a single matter do not force financial institutions to resolve consumer problems. Second, institutions do not implement the procedures prescribed by the laws, in effect, turning them into dead letter laws. The end result is that such procedures are inefficient solutions because of the reluctance of the institutions to follow the procedures. This reluctance results in a waste of time for users, forcing them to sue before the courts of law.

In countries such as Mexico, where there is high annual inflation, those institutions who can delay trials for several years—while obtaining interest from money while the matter is in

litigation—ultimately pay damage awards with devalued money. In my opinion, this devaluation means that such damage awards do not adequately compensate Mexican consumers who have brought successful claims.

II. Recent Developments in the Mexican Financial System

Introduction

In response to the shortcomings of the previous laws, the Federal Government, on January 19, 1999, introduced a new system designed to protect Mexican consumers of financial services. Mexico has a vast financial system comprised of more than 700 financial intermediaries servicing more than twenty-five million credit card holders, more than two million bank debtors, over fifteen million checking and savings accounts and over seven million term deposits.⁷ Overall, more than half the population of Mexico participates in the Mexican financial system. It is important to note that this population does not include users of financial institutions such as insurance and bond companies, credit unions, leasing and factoring companies, general deposit warehouses and workers participating in the System of Savings for Pension Funds. Taking all of these institutions into account, the total number of financial services customers in Mexico tops fifty million. In an effort to better serve this population, the Mexican government sought to address the growing number of consumer complaints about Mexican financial institutions.

Mexico's most recent attempt to protect the rights of financial consumers began on January 18, 1999, when the Law for the Protection and Defense of Financial Services Users was published in the Official Gazette.⁸ The main purposes of this law are to

7. National Banking and Securities Commission data as of December 1999.

8. "Ley de Protección y Defensa al Usuario de Servicios Financieros" [L.P.D.U.S.F.] art. 4: "The protection and defense of the users rights and interests will be charged to a public decentralized organism, with its own juridical personality. This institution will be called the National Commission for the Protection and Defense of Financial Services Users, and will have its domicile in the Federal District. The protection and defense this law commends to the National Commission, have as a priority objective achieving equity in the relations between Users and Financial Intermediaries, giving the Users elements to strengthen the juridical security in the operations carried out with the latter." Art. 1 L.P.D.U.S.F.: "The main purpose of this law will be to protect and defend the interests of users of financial services, rendered by public, private and social institutions duly authorized to operate; as well as to regulate the organization, procedure and functioning of the public entity in charge of said functions."

protect and defend the rights of financial services users and to regulate the organization, procedures, and operation of the National Commission for the Protection and Defense of Financial Services Users (National Commission).⁹ The new law is of public order, social interest, and binding in the whole national territory. This new law grants absolute rights not subject to waiver or abrogation by private parties.¹⁰

The main purpose of the Law for the Protection and Defense of Financial Services Users is to strengthen the security in financial operations and in consumer relations with the financial institutions.¹¹ The goals of the National Commission are to promote, advise, protect and defend the interests of users, to act as an arbiter in the conflicts subject to its jurisdiction, and to assure fairness in the relationships between users and institutions. The by-laws of the National Commission provide full autonomy to dictate resolutions and awards and to impose the sanctions provided for in the law. The National Commission must maintain strict confidentiality about the information and documents that come into its possession, especially information related to the deposits, services, and operations performed by the financial institutions. The National Commission may disclose such information only if requested by a judicial authority, by virtue of a court order in a trial in which the holder is a party. The law dictates that National Commission employees will be held responsible for violating banking secrets and will be ordered to make restitution for any damages caused by such violations.

Conciliation Procedure

The conciliation procedure set forth in the Law for Protection and Defense of Financial Services Users is simple. It begins after submission of either a written claim or a claim made by any other means accepted by the National Commission or any of its regional delegations.¹² The National Commission assumes the role of a

9. *Id.*

10. Art. 3 L.P.D.U.S.F.: "This law is of public order, social interest and mandatory in the entire territory of the Republic, in accordance with the terms and conditions set forth herein. The rights granted by such law may not be given up."

11. *See supra* note 6.

12. Art. 63 L.P.D.U.S.F.: "The National Commission will receive the users claims according to this law. Such claims may be filed by the aggrieved party personally, in written form or by any other ideal means. . ."

conciliator between the Financial Institution and the aggrieved party.¹³ The claim must include the following:

1. The Claimant's name and address;
2. The Representative's name and legal document;
3. A relation of the facts that originated the claim;
4. The name and address of the financial institution against which the claim is directed; and
5. Documents that help to identify the service that precipitated the claim.

In addition, the National Commission may ask for any further information it considers relevant to identify the financial institution. Once the claim is filed, the National Commission will notify the financial institution within five days of receiving the claim. This notification should include all the documents and information produced by the claimant and should schedule the time and date for the conciliation proceeding. The notification advises the financial institution that the National Commission will impose a pecuniary sanction for failure to appear at this meeting.

Arbitration Procedure

The arbitration procedure is initiated when the parties sign an arbitration agreement authorizing the National Commission to render an award based on equity, stating the points of dispute, and stating the stages, formalities or terms of the arbitration.¹⁴ The arbitration proceeds along the following timetable:

1. The claimant has five days following day the agreement was signed to file his claim;
2. The respondent has five days, starting from the day following the filing of the claim, to present any documents relevant to its defense;
3. Once the respondent has answered, the trial will be declared open for fifteen days to produce further evidence.

13. Art. 60 L.P.D.U.S.F.: "The National Commission is authorized to act as a conciliator, between Financial Institutions and Users, with the goal of protecting the latter's interest."

14. Art. 73 L.P.D.U.S.F.: "In the arbitration agreement, the parties will designate the National Commission or any of the arbiters proposed by it to consciously, truly and in good faith resolve the dispute, and will state in a common agreement the precise object of the arbitration, fixing the stages, formalities, terms and times to which the arbitration will be subject. For any matter not agreed upon, the Commercial Code will apply."

After a careful study of the evidence produced by the parties, the National Commission will render an arbitration award, and, if necessary, will dictate the measures needed to carry out the award. Once the award is given, the parties can ask for a formal explanation of the award within seventy-two hours following notification if either party believes mathematical or typographical errors exist. If the National Commission orders the financial institution to compensate the claimant, the institution will have five business days, starting from the day following the award, to do so.

Legal Counsel of the Users

The National Commission is authorized to offer free legal representation and counseling to consumers.¹⁵ Consumers seeking legal counsel from the National Commission must present an affidavit stating that they do not have sufficient funds to hire a counselor to assist them. In case of doubt, the National Commission performs a socio-economic study to verify the consumer's financial status. If the National Commission concludes that the user is not eligible for free counsel, it will provide one-time advice. There is no right of appeal from this ruling.

If the National Commission does provide legal counsel to the consumer, the consumer must furnish all relevant documents and information to the Counselor appointed by the National Commission. If for any reason the documents or information cannot be produced, the consumer must justify his or her inability to produce this information. If the consumer fails either to provide the pertinent information or to justify his lack of documentation, the National Commission will not render the legal defense.

Statistics of the First Year of Operation of the National Commission for the Defense of Users of the Financial System (CONDUSEF)

According to data provided by CONDUSEF, in the first year of operation the National Commission President reported to the newspaper "El Sol de Mexico" that the Commission had, in seventeen months, assisted 40,746 claims against banking and insurance companies and other financial intermediaries of the Pension Fund Savings System. Of the total amount of assistance,

15. Art. 85 L.P.D.U.S.F.: "The National Commission may, according to its criteria approved by the Board, render gratuitous legal counsel to the User. The National Commission will abstain to render said counsel in any case in which the parties are subject to the arbitration procedures set forth in this law."

8,032 were claims and 32,714 were guidance and counseling. These numbers show that the number of claims is very low in relation to the total number of users.

III. Conclusion

At the time of this writing (August 2000), CONDUSEF has been operating for too short a period of time to draw firm conclusions regarding its effect. The creation of CONDUSEF is relatively recent (January 19, 1999). The text is full of formalities and is written in a form that is very difficult for the user, and the majority of Mexicans, to understand. The result is inaccessibility, which undermines, in part, the law's objective of encouraging the development of a "financial culture" among the population.

We are dealing with an institution copied from the experience of other countries, with different traditions and legal frameworks. It is possible that in the future, the Mexican legislature will amend the law in order to adapt it to experience. One practice that may be strongly criticized in my opinion is that when there is only a small amount of money involved—that is to say quantities below the amount of the fine that CONDUSEF imposes—institutions invariably accept a quick solution to a conflict. When higher sums are involved, they do not submit to CONDUSEF's jurisdiction.