

LEGAL ASPECTS OF ACTIVITIES OF FOREIGN FINANCIAL INSTITUTIONS IN MEXICO

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The importance of the activities of foreign financial institutions¹ to the Mexican economy and, conversely, the interest the institutions have in Mexico is obvious. This is evidenced by the fact that at least 650 such institutions are registered with the Ministry of Finance for tax purposes.² Moreover, there are approximately 100 representation offices of foreign banks in Mexico.³

The purpose of this article is to discuss the areas of Mexican law which are applicable to foreign banking operations in Mexico. This discussion will cover the general structure of Mexican banking legislation and regulation, restrictions placed on foreign banks in Mexico, a discussion regarding the acquisition of security interests by foreigners, and the function of representation offices.

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1. A working definition of the term "foreign financial institution" begins with the word "foreign". Foreign means non-Mexican. Constitution of Mexico (*Constitución Políticas de los Estados Unidos Mexicanos*) art. 33 (1917) as amended [O.A.S. transl. 1972] [hereinafter cited as MEX. CONST.]; Law of Nationality and Naturalization (*Ley de Nacionalidad y Naturalización*) art. 5-6 in Official Daily of Mexico (*Diario Oficial*), Jan. 20, 1934 [hereinafter cited as Nationality Law]. A foreign legal entity is one which is not organized under Mexican law. *Id.* art. 5. A Mexican legal entity is defined as one organized under Mexican law with its domicile in Mexico. *Id.*

Foreign financial institutions are institutions which engage in activities in their home countries and which the Banking Law, would require a concession were they to engage in financial activities in Mexico. General Law of Credit Institutions and Auxiliary Organizations (*Ley General de Instituciones de Crédito y Organizaciones Auxiliares*) art. 2 in Official Daily of Mexico (*Diario Oficial*) May 31, 1941 [hereinafter cited as Banking Law]. Additionally, for tax purposes, the Registration Rules state that a foreign entity is a financing institution if

they are authorized by the laws and authorities of their country of origin to carry out acts, in an habitual manner, by which they obtain funds which can be placed through loans or credits.

Rules Governing the Registration of Foreign Institutions Domiciled Outside the Republic (*Reglas el Registro de Instituciones Extranjeras Domiciliadas Fuere de la República*) in Official Daily of Mexico (*Diario Oficial*), Apr. 10, 1972 [hereinafter cited as Registration Rules].

2. See Official Daily of Mexico (*Diario Oficial*), Apr. 11, 1974.

3. Mexican Bankers Association (*Asociación de Banqueros de México*) July, 1976.

Before presenting the salient aspects of Mexican banking legislation and its application to foreign institutions, a brief overview of the principles concerning foreigners' rights while doing business in Mexico is appropriate. These basic precepts should be of interest to one planning commercial activities in Mexico and also should be helpful in understanding the subsequent discussion of restrictions placed on foreign financial institutions.

I. BASIC PRINCIPLES GUIDING FOREIGN BUSINESS' RIGHTS IN MEXICO

A. *Constitutional Rights of Foreigners*

It is a basic principle of Mexican law that foreigners enjoy the constitutional rights set forth in title I, chapter I, articles 1 to 29 of the Mexican Constitution.⁴ These articles contain the constitutional guarantees of freedom of speech and of assembly, and those covered by due process of law.

Due process under the Mexican Constitution means that no one may be deprived of life, liberty, or property except by proceedings before previously established courts and based on previously existing laws.⁵ It also prohibits a law from being applied retroactively to any one's detriment.⁶ Finally, due process requires legal decisions to be based on law, or on a proper interpretation thereof.⁷

The fact that foreigners are guaranteed essential civil rights by the Mexican Constitution does not mean that they have the same rights as Mexicans in all respects. For example, there are restrictions on foreigners in various areas, such as immigration laws,⁸ foreign investment legislation,⁹ and under the banking laws. Moreover, there are restrictions in the Constitution itself, such as those found in article 27 covering land ownership.¹⁰

B. *Mexican Commercial Law and Mercantile Activity*

Under the Mexican legal system, there are separate bodies of civil and mercantile law. Mercantile law is federal, being covered by one

4. MEX. CONST. art. 33.

5. *Id.* art. 14, para. 2.

6. *Id.* art. 14, para. 1.

7. *Id.* art. 14, para. 4.

8. The Population Law (*Ley General de Población*) in Official Daily of Mexico (*Diario Oficial*), Jan. 7, 1974.

9. The Law to Promote Mexican Investment and to Regulate Foreign Investment (*Ley Para Promover La Inversión Mexicana y Regular La Inversión Extranjera*) in Official Daily of Mexico (*Diario Oficial*), Mar. 9, 1973 [hereinafter cited as Foreign Investment Law].

10. MEX. CONST. art. 27, para. 8.

body of legislation in effect throughout the country.¹¹ Civil law, on the other hand, is a state matter with separate bodies of law for each state.¹²

The Commerce Code is the basic law covering mercantile matters.¹³ As various areas of mercantile law have increased in importance, they have been removed from the Commerce Code and have become the subject of special legislation. This has been the case with such laws as the General Law of Mercantile Companies,¹⁴ the General Law of Negotiable Instruments and Credit Transactions,¹⁵ the Law of Bankruptcy and Suspension of Payments,¹⁶ and the Law of Maritime Commerce and Navigation.¹⁷

The Civil Code for the Federal District in Local Matters and for the Entire Republic in Federal Matters supplements mercantile law. Thus, where there is no applicable provision in mercantile legislation, the Civil Code governs. An example of this principle lies in the subject matter of contract law which is covered briefly in the Commerce Code and more extensively in the Civil Code.¹⁸

Commercial law, then, governs mercantile acts which, for purposes of this discussion, can be divided into two types. First, there are those acts conducted by businessmen or merchants, known as *comerciantes*, on an habitual and regular basis.¹⁹ Second, there are those mercantile acts conducted on an occasional basis.²⁰ To do business in Mexico, the *comerciantes* must comply with certain requirements. These requirements include registering with the Commerce Registry

11. Commerce Code of Mexico (*Código de Comercio*) in Official Daily of Mexico (*Diario Oficial*) Oct. 7-13, 1889 [hereinafter cited as MEX. COM. C.].

12. Civil Code for the Federal District (*Código Civil para el Distrito Federal, en materia común y para toda la República en materia federal*); in Official Daily of Mexico (*Diario Oficial*) Aug. 29, 1932 [hereinafter cited as MEX. CIV. C.].

13. MEX. COM. C., *supra* note 11, art. 1.

14. The General Law of Mercantile Companies (*Ley General de Sociedades Mercantiles*) in Official Daily of Mexico (*Diario Oficial*), Aug. 4, 1934.

15. The General Law of Negotiable Instruments and Credit Transactions (*Ley de Títulos y Operaciones de Crédito*) in Official Daily of Mexico (*Diario Oficial*), Aug. 27, 1932 [hereinafter cited as Credit Law].

16. The Law of Bankruptcy and Suspension of Payments (*Ley de Quiebras y Suspensión de Pagos*) in Official Daily of Mexico (*Diario Oficial*), Apr. 20, 1943.

17. The Law of Maritime Commerce and Navigation (*Ley de Navegación y Comercio Marítimos*) in Official Daily of Mexico (*Diario Oficial*), Nov. 21, 1963 [hereinafter cited as Maritime Law].

18. MEX. COM. C., *supra* note 11, art. 77-78; MEX. CIV. C., *supra* note 12, art. 1792-2943.

19. MEX. COM. C., *supra* note 11, art. 3, para. 1.

20. *Id.* art. 4.

and keeping records as provided in the Commerce Code.²¹ Additionally, in the case of a foreign entity, it must operate either through a Mexican company or through an authorized branch.²² The foregoing presentation of principles guiding foreign business rights in Mexico should help clarify the following discussion of the requirements and restrictions pertinent to the specific area of "doing banking business"

II. BANKING LEGISLATION AND REGULATION

A. *The "Banking Law"*

The basic law covering banking activities in Mexico is the General Law of Credit Institutions and Auxiliary Organizations.²³ Although this law became effective on June 1, 1941, several important modifications have been made subsequently.

Article 1 provides that the Banking Law applies to those enterprises whose purpose is the habitual exercise of banking and credit activities in Mexico, that is, doing banking business.²⁴ As shall be discussed, the Banking Law is quite broad in its application.

Article 2 states that to exercise habitual banking and credit activities, concessions must be obtained from the federal government. The types of banking activities which must comply with the concession requirement are deposit (commercial) banking, savings activities, finance or investment banking, or fiduciary or trust activities.²⁵ The Banking Law sets forth permitted activities and prohibitions for each type of concession.²⁶

Foreign governments or agencies, foreign financial institutions, and groups of foreign entities or individuals may not hold stock in Mexican banking institutions.²⁷ This wording seems to permit foreign individuals not constituting groups to own shares in Mexican banks.²⁸ Also, under the constitutional guarantee prohibiting retroactive laws, some foreign financial institutions which held shares of Mexican banks prior to the law's enactment may retain their shares.

21. *Id.* art. 16.

22. *Id.* art. 15.

23. Banking Law, *supra* note 1.

24. *Id.* art. 1.

25. *Id.* art. 2.

26. *Id.* art. 10-17 (deposit or commercial banking), art. 18-24 (savings), art. 26-33 (finance or investment banking), art. 34-39 (mortgage banking), art. 40-43 (capitalization companies), art. 44-46 (trust activities).

27. *Id.* art. 8.

28. Any acquisition of more than 25 percent of the shares of a Mexican bank must be authorized by the Ministry of Finance. Banking Law, *supra* note 1, art. 3(b).

B. Banking Authorities

The authorities with power over banking activities are the Ministry of Finance and Public Credit, the National Banking and Insurance Commission, and Banco de Mexico, S.A.²⁹ The Ministry of Finance and Public Credit is part of the executive branch of the Mexican federal government. According to article 31 of the Organic Law of the Federal Public Administration, the powers of the Ministry include the power to direct monetary and credit policy.³⁰ Article 1 of the Banking Law provides that the Ministry has power to issue regulations and to interpret the law for administrative purposes. Additionally, the Ministry is authorized to issue banking concessions and permits for the opening of representation offices of foreign banks.

The National Banking and Insurance Commission is a semi-independent agency of the Ministry of Finance and Public Credit. The Commission exercises powers of vigilance and inspection over banking institutions and representation offices of foreign banks.³¹ It is empowered to investigate and prosecute violations of the Banking Law, and also may "intervene", meaning to take over the management of financial institutions.³² In some cases, the Commission acts as advisor to the Ministry of Finance and Public Credit. The Commission's advice may guide the Ministry in their decision to grant or deny concessions for banking activities or to grant or deny permits for representation offices.³³

Banco de Mexico, S.A., was incorporated on September 1, 1925, and is presently governed by the Organic Law of May 31, 1941.³⁴ It is the central or reserve bank of Mexico, and has power to issue and regulate currency, to control foreign exchange transactions, to act as a reserve bank for Mexican banks, and to represent the Mexican federal government in international financial and monetary matters.³⁵ Addi-

29. Banking Law, *supra* note 1, art. 1. The last paragraph, translated, provides: In the application of this Law, the Ministry of Finance and Public Credit, the National Banking and Insurance Commission and Banco de Mexico, S.A., each within the sphere of its competence, shall seek a balanced development of the banking system and a healthy competition among the banking and auxiliary institutions which forms it.

30. Organic Law of the Federal Public Administration (*Ley Orgánica de la Administración Pública Federal*) in Official Daily of Mexico (*Diario Oficial*) Dec. 25, 1976.

31. Banking Law, *supra* note 1, art. 160.

32. *Id.* art. 171.

33. *Id.* art. 2, 6.

34. Organic Law of Banco de Mexico (*Ley Orgánica del Banco de Mexico*) in Official Daily of Mexico (*Diario Oficial*), May 31, 1944.

35. *Id.* art. 8.

tional powers concerning the regulation of gold, silver, and deposits from federal and local governmental authorities are within the bank's purview.³⁶ Moreover, Banco de Mexico, S.A., like the Commission, renders advisory services to the Ministry of Finance in such matters as the granting of concessions for banking activities and the granting of authorizations to open representation offices.³⁷

In summary, banking in Mexico is controlled by the federal government. The most important banking authority is the Ministry of Finance and Public Credit. The National Banking and Insurance Commission is a semiautonomous body, operating under the Ministry, which performs audit, inspection, and supervisory functions. Banco de Mexico, S.A., is the control or reserve bank, and has important powers over the banking system with regard to reserve requirements, interest rates, and foreign exchange. It is through the power and influence of these three federal authorities that banking is regulated in Mexico.³⁸

C. National Credit Institutions

The Mexican banking system includes a significant number of national credit institutions. Under article 1 of the Banking Law, the federal government controls these financial institutions through stock ownership, the right to appoint directors and the right to veto resolutions of the stockholders or the directors.³⁹ By law, three national credit institutions, Banco Nacional de Crédito Rural, S.A.,⁴⁰ Banco Nacional de Obras y Servicios Públicos, S.A.,⁴¹ and Nacional Financiera, S.A.,⁴² have a federal governmental guarantee backing their foreign obligations.

36. *Id.* art. 9, 15, 19, 22-23.

37. Banking Law, *supra* note 1, art. 2, 6.

38. *Anuario Financiero* (1974, *Asociación de Banqueros de Mexico*). The Mexican Bankers Association is a private organization whose members consist of Mexican financing institutions. Foreign banks may participate in the activities of the Association and are usually well represented at its annual meetings.

39. Banking Law, *supra* note 1, art. 1.

40. The General Rural Credit Law (*Ley General de Crédito Rural*), art. 14, in Official Daily of Mexico (*Diario Oficial*), Apr. 5, 1976.

41. Organic Law of Banco Nacional de Obras y Servicios Públicos, S.A., (*Ley Orgánica del Banco Nacional de Obras y Servicios Públicos, S.A.*), art. 66, in Official Daily of Mexico (*Diario Oficial*), Feb. 15, 1969.

42. Organic Law of Nacional Financiera, S.A., (*Ley Orgánica de la Nacional Financiera, S.A.*), art. 15, in Official Daily of Mexico (*Diario Oficial*), Jan. 2, 1975.

III. RESTRICTIONS PLACED ON FOREIGN BANKS IN MEXICO

Prior to changes published on January 3, 1974, the Banking Law provided that foreign banks could obtain authorization to open branches in Mexico, which would permit them to engage in local commercial banking.⁴³ First National City Bank was the only foreign bank with a branch in Mexico prior to the modification. Therefore, First National City Bank was exempt from the modification and has continued to operate as the only foreign owned branch in Mexico.⁴⁴

Banking operations in Mexico traditionally have been divided into active or asset transactions, known as *operaciones activas*, and passive or liability transactions, known as *operaciones pasivas*.⁴⁵ Asset transactions have been defined as those banking operations which appear on a bank's balance sheet as assets and essentially are loans. Liability transactions are those which appear on the balance sheet as liabilities and are typically deposits or fixed yield investments, such as financial certificates.⁴⁶

In Mexico, habitual or customary banking business, either asset or liability transactions, requires the appropriate concession from the Ministry of Finance and Public Credit, which may not be granted to foreign entities.⁴⁷ "Habitual or customary" refers to the continuous, open nature of the activity, and includes the offering of banking services to the public through an establishment. The authorities have given more attention to regulating or prohibiting liability transactions, that is, the taking of money from the public because it is within this type of transaction where most frauds have been committed by non-authorized institutions.

Article 146 of the Banking Law embodies this concern. This article empowers the National Banking and Insurance Commission to review the records of a financial entity which is suspected of "habitually carrying out banking and credit activities" without a concession.⁴⁸

43. Banking Law, *supra* note 1, art. 6 (prior to Jan. 3, 1974).

44. *Id.* art. 5. See Official Daily of Mexico (*Diario Oficial*), Jan. 3, 1974.

45. J. RODRIGUEZ Y RODRIGUEZ, *DERECHO BANCARIO* 34 (3d ed. 1968, Mexico).

46. *Id.* at 35.

47. Banking Law, *supra* note 1, art. 1, 2.

48. *Id.* art. 146. For purposes of the article the "exercise of banking and credit" is defined as the

realization of acts of habitual mediation in financial markets, through which those who conduct them obtain resources from the public to be used for lucrative placement by them or through others.

If violations are found, the Commission may take over the management of the institution until the illegal transactions are liquidated.⁴⁹

There has been some discussion as to whether a pure asset transaction, that is, lending one's own money, is a banking activity. This singular activity of lending on an open, continuous basis does constitute banking, although little has been done to regulate it when the parties involved are Mexicans.

From the principles stated above, the conclusion emerges that both asset (loan) and liability (deposit) operations could be carried out in Mexico, on a noncontinuous basis, by those who do not have a concession to do banking business. However, this is not true with regard to foreign banks.

The shortage of capital in Mexico has led to certain policies which are reflected in laws and regulations. These policies oppose any activity which would take capital out of Mexico. As a result, foreign banks are discouraged and often prohibited from taking any steps in Mexico to obtain deposits.⁵⁰ Yet, a foreign bank can make loans in Mexico if the loans are made from abroad and not through the bank's establishment in Mexico.

IV. ACQUISITION OF SECURITY INTERESTS BY FOREIGNERS

Mexican law contains many restrictions on ownership of both real and personal property by foreigners. However, as a general rule, aliens may have security interests in property located in Mexico even though the holding of title is prohibited or limited.

A. *Real Property*

Article 27 of the Mexican Constitution, and the law and regulations issued under sections I and IV of article 27, contain the basic rules concerning foreign ownership of real property.⁵¹ Foreigners are categorized as foreign corporations and foreign individuals. In the case of foreign corporations, they may not acquire title to real property in Mexico except as a result of the enforcement of a security interest or through an authorized branch of a foreign bank.⁵² In the case of foreign

49. *Id.*

50. *Id.* art. 6; Rules for Representation of Foreign Financing Entities (*Reglas Sobre Representación de Entidades Financieras del Exterior*) art. 6, in Official Daily of Mexico (*Diario Oficial*), Apr. 11, 1972 [hereinafter cited as Representation Rules]; Registration Rules, *supra* note 1.

51. MEX. CONST. art. 27.

52. O. RAMOS GARZA, *MEXICO ANTE LA INVERSION EXTRANJERA* (3d ed. 1974, Mexico).

individuals, foreign immigrants and foreign permanent residents are exempt from the general rule that only Mexicans have the right to own real property.⁵³ Foreign immigrants may obtain real property for the purpose of residence and foreign permanent residents, known as *inmigrados*, may purchase real property without limitation.⁵⁴ The exception to the foregoing is the "prohibited zone" which encompasses one hundred kilometers along the borders and fifty kilometers along the coasts of Mexico. Foreigners may not own real property in those areas. In areas where property may be owned, permits are required by the Ministry of Foreign Relations and the Ministry of Interior.⁵⁵

1. *Security Interests in Real Property.* The two basic types of security interests in real property under Mexican law are the mortgage and the security trust. The mortgage is defined in article 2893 of the Federal District Civil Code as follows:

The mortgage is a [security interest] created with regard to property which is not delivered to the creditor, and which gives the creditor the right, in the event of default under the secured obligation, to be paid with the value of the property, with the priority established by law.⁵⁶

The mortgage as a security interest grants no title or other real property interest to the mortgagee. Therefore, foreign lending institutions may hold mortgages on Mexican real property.⁵⁷

A security trust involves the transfer of title of real property to a trustee, who holds it for the purpose of guaranteeing payment to the foreign bank. Only an authorized Mexican trust institution may act as trustee. The Mexican institution must obtain a permit from the Ministry of Foreign Relations⁵⁸ and from Banco de Mexico, S.A.,⁵⁹ to act as trustee for this type of security trust.

53. MEX. CONST. art. 27.

54. Regulations to the Population Law (*Reglamento de la Ley General de Población*) art. 127, in Official Daily of Mexico (*Diario Oficial*), May 3, 1962.

55. Foreign Investment Law, *supra* note 9, art. 7, para. 3; Population Law, *supra* note 8, art. 66; Emergency Presidential Decree of 1944, art. 1 (*Decreto que establece la necesidad transitoria de obtener permiso para adquirir bienes a extranjeros, y para la constitución modificación de sociedades Mexicanas que tengan o tuvieren socios extranjeros*) June 29, 1944, in Official Daily of Mexico (*Diario Oficial*), July 7, 1944 [hereinafter cited as Emergency Presidential Decree of 1944].

56. MEX. CIV. C., *supra* note 12, art. 2893.

57. H. WRIGHT, FOREIGN ENTERPRISE IN MEXICO, LAWS & POLICIES 121 (1971).

58. Emergency Presidential Decree of 1944, *supra* note 55.

59. Banking Law, *supra* note 1, art. 94, § 2; Circular of July 31, 1973, issued by the Banco de México, S.A.

2. *Enforcement in Case of Default.* Mortgages are enforced through court proceedings.⁶⁰ Article 6 of the Organic Law, authorized through article 27 of the Constitution, has been interpreted to provide that on the foreclosure of a mortgage, the Ministry of Foreign Relations may grant permits to foreign corporations to acquire title to the real property involved, with the obligation to dispose of the property within a period of five years.⁶¹ This interpretation goes beyond the limitation of the Constitution, which states that foreign corporations cannot hold title to real property.⁶² In practice, the permits have been given for only two years.

The foreign bank beneficiary may not acquire title to property subject to security trusts because of the restrictions that are in the required permits.⁶³ Security trusts have traditionally provided for private sales and have given power to the beneficiary, even though the beneficiary may be a foreign financial institution, to approve the conditions of the sale. As a result of procedural problems and internal regulations of the banking authorities, the current trend is to provide the grantor of the trust, who is usually the debtor, the same legal protections and due process considerations that he would have had in a mortgage foreclosure proceeding.⁶⁴

B. *Personal Property*

Security interests in personal property related to mercantile transactions are created basically through a pledge or a security trust. The requirements for the creation of a pledge interest or lien are set forth in article 334 of the Credit Law.⁶⁵ A pledge can be created by delivery of the pledged property to the pledgee. Creation of a pledge may also result from endorsement of nominative negotiable instruments. If the law requires that a registry be kept, the endorsement must be annotated in the respective registry. A third method of creating a pledge occurs in

60. Civil Procedure Code for the Federal District (*Código de Procedimientos Civiles para el Distrito Federal*), art. 468-88, in Official Daily of Mexico (*Diario Oficial*) Sept. 1-20, 1932.

61. Organic Law of Section I, Art. 27 of Constitution (*Ley Orgánica de la fracción I del artículo 27 de la constitución general*) art. 6, in Official Daily of Mexico (*Diario Oficial*), Jan. 21, 1926; Regulations to the Organic Law (*Reglamento de la Ley Orgánica de la República*) art. 2-4, in Official Daily of Mexico (*Diario Oficial*), Mar. 29, 1926.

62. Nationality Law, *supra* note 1, art. 34, refers to the possibility of an exception to the rule.

63. See text accompanying notes 58 and 59 *supra*.

64. See note 60 *supra*.

65. Credit Law, *supra* note 15, art. 334.

cases where rights are not covered by negotiable instruments. The respective documents covering the rights must be delivered in addition to registration of the documents with the appropriate registry. Delivery of the property to a third party who holds it at the pledgee's disposal is a fourth method of creating a pledge. Merely depositing the goods in premises to which the pledgee has the keys is legally sufficient to create a pledge. Endorsement of warehouse receipts and the recording of fixed asset and raw materials financing contracts are effective pledge creating activities. Finally, in the case of Mexican banks, compliance with special rules under the Banking Law will create a pledge. To summarize, in order for a valid pledge to be created that is effective against third parties, such third parties must be on notice either by delivery of the pledged property or by recording the property in the Public Registry of Property.⁶⁶

Restrictions on foreign ownership of personal property relate principally to investment in Mexican companies through stock or similar equity interests. Under the Foreign Investment Law, foreign investment in Mexican companies generally is limited to a maximum ownership of forty-nine percent.⁶⁷ Specific instances exist where foreign investment is subject to greater limitations; there are even cases in which foreigners may not hold any stock.⁶⁸ Nevertheless, transactions which do create security interests in rights representing equity investments in Mexican companies must be registered with the National Registry of Foreign Investments.⁶⁹

A stock pledge is similar to a real property mortgage in that it creates a lien or security interest, though it does not transfer title, which would constitute a chattel mortgage. The distinguishing characteristic is that a pledge can be possessed by the secured party. Therefore, foreign banks may receive pledges of stock which they could not own.

The general rule that chattel mortgages are not available in Mexico does not apply to aircraft and ships. Aircraft mortgages are covered by the Law of General Means of Communications.⁷⁰ Ship mortgages are covered by the Law of Maritime Commerce and Navigation.⁷¹ In

66. In light of these rules, special problems exist when creating pledge interests in areas such as receivables and inventories.

67. Foreign Investment Law, *supra* note 9, art. 5.

68. *Id.* art. 4.

69. *Id.* art. 23.

70. The Law of General Means of Communication (*Ley de Vías Generales de Comunicación*) art. 362-66, in Official Daily of Mexico (*Diario Oficial*), Feb. 19, 1940.

71. Maritime Law, *supra* note 17, art. 121-23.

both cases foreign banks could be mortgagees even though they could not hold title to either the ship or the aircraft.

The same principles which govern security trusts of real property apply to security trusts of personal property. A permit from Banco de Mexico, S.A., is required in the case of personal property.

Mexican banks enjoy some preferences over foreign banks and other lenders. In the case of bankruptcy or receivership of a Mexican entity, unsecured Mexican banks have priority over other unsecured creditors.⁷² Also, Mexican banks enjoy certain exceptions which give them greater flexibility in creating security interests. For example, they can hold a security interest in consumer goods by merely holding the invoice,⁷³ and they may obtain liens on a customer's receivables without notifying the account debtor.⁷⁴ Furthermore, through the industrial mortgage loan structure, a Mexican finance or investment bank can obtain a floating lien on practically all present and future property of the borrower, including current assets.⁷⁵

V. REPRESENTATION OFFICES

Despite severe restrictions on branch banking, the financial interest and activity of foreign banks in Mexico has prompted the need for a physical presence therein. More than 100 foreign financial institutions have met this need through the use of representation offices.⁷⁶

Prior to 1972, the rules for the authorization and operation of representation offices originated and developed through custom and the general principles regarding "doing banking business". These rules were not mentioned in laws or regulations. On April 11, 1972, Rules on the Representation of Foreign Financial Entities, issued by the Ministry of Finance, were published in the Official Daily.⁷⁷

Article 6 of the revised Banking Law speaks of representation offices.⁷⁸ In many respects article 6 of the Banking Law and the Rules confirmed previous practices, and the following summary indicates current requirements.

1. Authorizations must be obtained from the Ministry of Finance and Public Credit, which takes into account the opinions of the

72. Banking Law, *supra* note 1, art. 109.

73. *Id.* art. 111.

74. Credit Law, *supra* note 15, art. 288-90.

75. Banking Law, *supra* note 1, art. 124.

76. *See* note 3 *supra*.

77. Representation Rules, *supra* note 50.

78. Banking Law, *supra* note 1, art. 6.

National Banking and Insurance Commission and Banco de Mexico, S.A.

2. The application for the authorization must state a) the reasons for establishing the office, b) the program of activities to be carried out, c) the commitment that operations in Mexico will be carried out in accordance with financial policy as set by the Ministry or Banco de Mexico, S.A.

3. Supporting documentation must be included and should contain a) a text of legal provisions covering activities of the financial institution in its country of origin,⁷⁹ b) financial statements for the past three years need to be supplied,⁸⁰ c) copies of informational material used to advertise services, and to inform the public of its financial status should accompany the application, d) a certified copy of the corporate resolution appointing the representative, and e) information on the background of the proposed representative.

4. Representation offices, which are authorized and operating must advise the Ministry, the Commission, and Banco de Mexico, S.A., of changes in governing laws or in their legal status. Copies of their annual financial statements also should be presented.

5. The actual operations of representation offices are subject to a variety of regulations. For example, they cannot realize any activity requiring a concession under the "Banking Law"; that is, they cannot do banking business in Mexico.⁸¹ They may give information on and negotiate the granting of loans, but may not obligate the bank represented. This means they may make all arrangements for loans, but the loan agreement should be signed by the bank abroad. The representation office must not deal with such liability transactions as deposits. Publications in Mexico must be approved by the Banking Commission and changes of representatives or domiciles must be approved by the Ministry of Finance and Public Credit. Representation offices must present monthly reports using forms prepared for such purpose by the Commission. The names used by the offices must be exactly those authorized by the Ministry. Offices are subject to inspection and supervision of the National Banking and Insurance Commission.

6. Finally, authorizations may be revoked for violation of the Rules, noncompliance with tax obligations or any violation of existing laws.

79. This could be a copy of the respective state banking laws or title XII of the United States Code, in the case of United States national banks.

80. Annual reports are acceptable for this purpose.

81. Banking Law, *supra* note 1, art. 6.

Therefore, the main function of a representation office of a foreign bank is the transmission of information regarding the placement of loans by foreign banks in Mexico. The representation office may not commit the bank to a loan by signing loan documentations and may not receive income from Mexican sources. However, it does have authority to carry out all acts necessary to perform its functions, which includes the rental of office space and the hiring of employees.⁸² The representative is the agent of the foreign bank in all matters relating to the representation office. Thus, in practice, representation offices act as liaison with customers, providing information and assistance. By keeping close contact with the banking authorities, the banks they represent constantly receive current information regarding official policies. These offices also provide a valuable service by disseminating information pertaining to Mexico within their home countries. These informational functions are beneficial not only to the foreign bank, but to its Mexican customers as well.

VI. CONCLUSION

It is likely that banking relations between Mexico and foreign countries, particularly the United States, will continue to increase because as restrictions on direct investment increase, the need for indirect investment through financing arises.

82. Although the representation office receives no taxable income, it is registered with the Mexican tax authorities as a withholder of taxes on salaries of its employees. Some attorneys and accountants have held the erroneous position that the rental of office space and the contracting of employees must be accomplished in the name of the representative. However, authorization by the Ministry of Finance provides a sufficient basis for the representation office to be opened in the name of the foreign bank and to contract employees, even though doing banking business is not allowed.