



May 15th 2023

CLIENT ALERT

Initiative with Decree Draft (“*Initiative*”) reforming the Law for the Transparency and Regulation of Financial Services; Law for the Protection and Defense of Financial Services Users; Law of Credit Institutions; Law of the Securities Market; Law to Regulate Financial Groupings; General Law of Credit Organizations and Auxiliary Activities; Law to Regulate Credit Information Companies; Law of Investment Funds; Law of Savings and Popular Credit; Law to Regulate the Activities of Savings and Loan Cooperative Societies; Law of Credit Unions; Law to Regulate Financial Technology Institutions; Law of Insurance and Bonding Institutions; and Law of Retirement Savings Systems. (“*National Financial Laws*”)

BACKGROUND

- (i) On March 22, 2023, the initiative proposed by Senator Rafael Espino de la Peña, of the Morena Parliamentary Group, regarding administrative sanctioning procedures (the “*Initiative*”) was published in the Senate Gazette, which was referred directly to the United Commissions of Finance and Public Credit; and Legislative Studies, Second.
- (ii) The Initiative is presented with the purpose of correcting the administrative sanctioning procedure established in the National Financial Laws, since in various jurisprudential criteria of the Supreme Court of Justice of the Nation (“*SCJN*”) and of Collegiate Circuit Courts, several precepts of such Laws have been declared unconstitutional. The foregoing on the grounds that the principle of “legal certainty” that a person enjoys when being subject to a proceeding is being violated, due to the failure to grant reasonable time periods in the different National Financial Laws.
- (iii) Likewise, the National Financial Laws have established through lawsuits that certain principles such as legality, legal certainty and prompt and expeditious justice have been affected for persons who are subject to administrative sanctioning procedures by the supervisory authority (Comisión Nacional Bancaria y de Valores, the “*CNBV*”).

ANALYSIS OF THE INITIATIVE





The Initiative, which can be consulted [here](#), has as main purpose to modify the deadlines and terms established in each of the following stages of the administrative sanctioning procedure (the “*Procedure*”) indicated in the National Financial Laws.

- (i) Expiration of the sanctioning power;
- (ii) Right to a hearing and offer of evidence;
- (iii) Submission of evidence;
- (iv) Period for pleadings and closing of the preliminary investigation; and
- (v) Time period for resolution.

DESCRIPTION OF THE STAGES

- (i) **Expiration of the sanctioning power:** The authority will have a term of 5 years to initiate the Procedure once the sanctionable conduct has been carried out.

At this point it is necessary to distinguish two types of conducts, because the moment in which the computation of the term starts will depend on this.

- a. **Uninterrupted Conduct:** the computation of the period begins from the moment the conduct ceases; and
 - b. **Continuous Conduct:** the computation of the term begins from the consummation of the last conduct.
- (ii) **Right to a hearing and offer of evidence:** When the alleged offender is notified, a term of 10 business days will be granted with the possibility of an extension for an equal number of days, so that he may state what is in his interest and the possibility of offering evidence, in accordance with the right to a hearing.
 - (iii) **Submission of evidence:** Once the above term has concluded and, if applicable, the extension, the authority will have a maximum of 60 business days to present evidence.
 - (iv) **Period for pleadings and closing of the investigation:** For the following stage, the alleged infringer must be notified by the authority that, within a period of 5 business days, he/she must present pleadings.





- (v) **Time period for resolution:** The resolution of the Proceeding shall not exceed 180 business days, counted from the business day following the period for allegations and closing of the investigation.

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If you have any questions or comments on the matter, please contact us.

This document does not constitute legal advice.

