

MEXICAN WAREHOUSE RECEIPTS

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I. INTRODUCTION

Without a doubt, the evolution of any legal system must respond to social, political, and economic realities. It is essential that the legal framework continue to meet the purpose for which it was originally developed, while allowing reforms and changes to take place.

However, when it comes to commercial matters, trade dynamics, and technological advances, there is an almost automatic need for continual review and updating of the legal framework to match new realities and competitive forces.

This Article discusses the current situation in Mexico regarding a particular type of instrument called warehouse receipts.

II. BACKGROUND

The Mexican equivalent of a bonded warehouse is a general deposit warehouse (*almacén general de depósito*), which is authorized to receive merchandise destined for a special customs regime referred to as a *depósito fiscal*.

In Mexico, General Deposit warehouses have the function of storage, care, management, control, distribution, and/or marketing of goods or merchandise in their custody or in transit. “Warehouse receipts” protect the general deposit warehouses, and can also grant financing with guarantees.

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Bonded warehouses may also perform value-adding work such as processing, repair, and assembly of deposited goods to increase their value, as long as they do not substantially change the nature of the goods.¹

In 1884, the Commercial Code first regulated bonded warehouses.² The Bank of London, Mexico, and South America established the first warehouse in Mexico under the name of “General Warehouse Consignment and Deposit.” Later, in 1887, the federal government founded the “General Bonded Warehouses for Mexican Customs.”

The Commercial Code of 1889 was the first legal regime to authorize bonded warehouses to issue credit on warehouse receipts, and established their exclusive right to offer credit or guaranteed loans on the bonds that they themselves issued.³

On August 3, 1926, the warehouses were incorporated into the regulation of the General Law of Credit and Banking Institutions. In January 2014, the General Law of Organizations and Auxiliary Credit Activities recognized the warehouses as Auxiliary Organizations.⁴

The warehouses are part of the Mexican financial system as auxiliaries in the granting of credit; however, as discussed below, these institutions also do business that has little or nothing to do with credit needs.

III. LEGAL NATURE OF WAREHOUSE RECEIPTS

In accordance with Article 5 of the General Law on Negotiable Instruments and Credit Transactions, a negotiable instrument entitles the person in control to claim the performance of the obligation incorporated in the document.

Within this framework, the following question arises regarding warehouse receipts: Which rights are granted? According to the provisions of Article 229 of the General Law on Negotiable Instruments and Credit Operations, the warehouse receipts certify ownership of goods or assets deposited. But in practice, it is less clear since it is not always the owner who goes to a General Warehouse to make the deposit.

Moreover, in practice, it appears that the bonded warehouses perform various actions on/to the goods they receive, such as:

¹ Ley General de Organizaciones y Actividades Auxiliares de Crédito [LGOC] [General Law of Organizations and Activities Related to Credit], art. 11, Diario Oficial de la Federación [DOF] 14 de Enero de 1985, 20 de Agosto de 2008 (Mex.) [hereinafter LGOC].

² Código de Comercio [CCoM], Diario Oficial de la Federación [DOF] 13-12-1889, última reformas DOF 27-08-2009 (Mex.), formato HTML, http://dof.gob.mx/nota_detalle.php?codigo=5107094&fecha=27/08/2009.

³ LGOC art. 11 bis 2.

⁴ Comisión Nacional Bancaria y de Valores, *Annual Report 2014*, Mexican Federal Government 56 (2014).

- (1) Storage;
- (2) Protection;
- (3) Maintenance;
- (4) Management;
- (5) Control;
- (6) Technical tests;
- (7) Distribution; and
- (8) Marketing

While it is true that bonded warehouses operate as Auxiliary Credit Organizations, the commercial dynamic as it is today has stimulated diversification in the industry, and warehouses' receipts are not always used to establish a relationship between the warehouse and the customer.

Is it even necessary to issue warehouse receipts when many customers today only want logistics or the provision of value-added services? This would prevent fraud or counterfeiting of negotiable instruments that do not need to be in circulation.

If we take into account the provisions of Article 19 of the General Law on Negotiable Instruments and Credit Operations, establishing title to goods, the exclusive right to dispose of the goods is attributed to its rightful owner. This means that the right stated in a warehouses receipt refers in the strict sense to provision of certain goods.

In general terms, the warehouse receipt is an instrument of circulation and payment that has an economic value equivalent to that assigned in the title. It is said that warehouse receipts are financial instruments that offer financial institutions obligations against those that hold the goods, without the necessity of moving the goods, and with absolute security and legal certainty.

We have derived from the French tradition that our legal system inherited through Article 229 of the General Law on Negotiable Instruments and Credit Transactions a type of pledged bond, which is an extension of the warehouse receipts and a way to obtain financing with a specific guarantee on the deposited assets.⁵

Although legally we have these instruments, according to Mexican law, warehouses must issue both the warehouses' receipts and the pledge bond regardless of whether a claim on the goods they represent is established. It has therefore lagged behind the operation and has been rendered useless.

Furthermore, financial institutions rarely use the pledge bond because they feel it does not provide the legal certainty they require. The process to make it enforceable is complex, and the rules are not adapted to the modern context.

⁵ LGOC art 11 ¶2.

IV. NATIONAL REGISTRY OF WAREHOUSE RECEIPTS AND MERCHANDISE

On May 8, 2013, President Enrique Peña signed the “Pact for Mexico,” which included thirteen initiatives amending, supplementing, and repealing thirty-four judicial orders to make up the so-called “Financial Reform” bill.

The reforms were published on January 10, 2014, and focused on the modernization of the system of bonded warehouses, incorporating actions of corporate governance, such as: auditing to coordinate with administration more effectively and monitoring Auxiliary Credit Organizations.

Similarly, the laws regulating the activity of bonded warehouses, consisting of the issuance of warehouse receipts and pledge bonds, were modernized. The law expressly states that these bonded warehouses will assume responsibility for the veracity, quality, and quantity of the goods they hold.⁶

Also, the Secretary of Economy created the National Registry of Warehouse Receipts and Merchandise (RUCAM), which includes the following characteristics:⁷

- (1) Public records
- (2) Digital media
- (3) Operating in one national database as opposed to one in each state

The Registry began operations in January 2015, and is the first major update in credit operations of this important Mexican industry—warehousing and distribution.

Today, the Registry is an important tool in providing greater legal certainty to the financial market participants that rely on certificates of deposit and pledge bonds. Within the new system, anyone can view the certificates, obtain the information electronically, and quickly record or document actions.

As of June 2015 there are 12,378 certificates of deposit with pledge bonds, among 1,814 bonded warehouses participating thus far; representing a reported market value of \$49 billion MXN (\$3.3 billion USD).

V. LOOKING FORWARD

According to the work done by the Working Group on Electronic Commerce at the United Nations, a “transferable title” is a financial security which contains an unconditional promise to pay a fixed amount of money to the holder of the title, or an order for a third party to pay such holder. Examples of

⁶ LGOC art. 11 ¶ 5.

⁷ SECRETARÍA DE ECONOMÍA, REGISTRO ÚNICO DE CERTIFICADOS, ALMACENES Y MERCANCÍAS, <http://www.rucam.gob.mx> (2015).

transferable securities include promissory notes, bills of exchange, checks, and certificates of deposit.⁸

For its part, the United Nations Commission on International Trade Law (UNCITRAL) notes that the development of a warehouse receipt system has improved the performance of agricultural marketing systems in Africa, and electronic warehouse receipts are becoming popular in some African states.⁹

In the case of Mexico, RUCAM was established to improve the transparency of the warehousing, distribution, and financial sectors, and constitutes the conceptualization, for the future, of transferable electronic certificates of deposit and other financial instruments.

We find it is essential to work on modernizing the legal framework to enable and facilitate the use of portable electronic documents and generate higher levels of confidence in the users of these instruments.

The challenge will be in the specific regulatory provisions giving rise to the concept of “ownership” of an electronic document as a functional equivalent of possession, as is currently the case with the delivery of the paper document today.

Taking into account the needs of traders, warehouses, and financial institutions, the electronic certificate of deposit may be the mechanism to resolve the problems of all sectors involved, and at the same time prevent the commission of offenses related to the storage of goods.

In this respect, the Registry and the legal framework we created in Mexico are ambitious initiatives. They significantly advance credit financing and should stimulate business development.



⁸ U.N. Comm'n on Int'l Trade L. Secretariat, Working Group IV, *Legal Issues Relating to the Use of Electronic Transferable Records*, ¶ 3(a), U.N. Doc. A/CN.9/WG.IV/WP.115 (Oct. 2011).

⁹ U.N. Comm'n on Int'l Trade L. Secretariat, Working Group IV, *Legal Issues Relating to the Use of Electronic Transferable Records*, ¶ 14, U.N. Doc. A/CN.9/WG.IV/WP.118 (Oct. 2012).

