

PANORAMIC

STRUCTURED FINANCE & SECURITISATION

Mexico



LEXOLOGY

Structured Finance & Securitisation

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GENERAL FRAMEWORK

Legislation

What legislation governs securitisation in your jurisdiction? Has your jurisdiction enacted a specific securitisation law?

In Mexico, securitisation transactions are mainly governed by the [Mexican Securities Market Law](#) (Securities Law) and its [regulations](#), as well as by the [General Law of Negotiable Instruments and Credit Transactions](#) (LGTOC). The Securities Law provides for the regulatory framework applicable to trust certificates, a financial instrument that allows for the securitisation of assets in the Mexican market. On the other hand, the LGTOC provides for the regulatory regime applicable to the Mexican trust, the main special purpose vehicle used in securitisations and participation certificates, and a security issued exclusively by trusts.

Mexico has not enacted a specific securitisation law, but there are certain provisions within the Securities Law and LGTOC that specifically apply to securitisation transactions. In addition, the Mexican National Banking and Securities Commission, which is the regulatory agency responsible for overseeing the securities market, has issued various regulations and guidelines that set forth certain requirements for public securitisation transactions intended to reduce information asymmetry by introducing several public disclosure requirements.

Law stated - 4 December 2023

Applicable transactions

Does your jurisdiction define which types of transactions constitute securitisations?

No. There is no specific definition of securitisation under Mexican law. Instead, the Securities Law and the LGTOC provides a general framework for the issuance of securities that may be applicable when dealing with a securitisation (eg, the issuance of trust certificates or participation certificates). As a result, the determination of whether a transaction constitutes a securitisation is based on a case-by-case analysis of the relevant transaction's characteristics.

Law stated - 4 December 2023

Market climate

How large is the market for securitisations in your jurisdiction?

The debt market in Mexico (including both direct and structured debt securities) is considerably larger than the equity market. The securitisation market in Mexico has been steadily growing in recent years. Notwithstanding the fact that the Mexican stock market faced major challenges due to continuous global financial and political instability in 2022, the securitisation market in Mexico remains an important financing tool for Mexican financial institutions, corporations and government entities.

Furthermore, in recent years, there has been growing interest and attention towards environmental, social and governance (ESG) components in the Mexican securities market. The foregoing has driven structured debt transactions to have a mandatory ESG component. The Mexican Stock Exchange launched the Sustainable and Responsible Investment Index (IPC Sustentable), which includes companies that meet certain ESG criteria. The index aims to provide investors with a tool to identify companies that are leaders in ESG practices.

Law stated - 4 December 2023

REGULATION

Regulatory authorities

Which body has responsibility for the regulation of securitisation?

There is no governmental authority specifically entrusted with the oversight of securitisation transactions. However, the Mexican National Banking and Securities Commission (CNBV) is the governmental agency in charge of overseeing the Mexican securities market (including public securitisation activities).

Law stated - 4 December 2023

Licensing and authorisation requirements

Must originators, servicers or issuers be licensed?

No. However, when dealing with a securitisation transaction, it is advisable that it is conducted through the issuance of securities registered with the National Securities Registry. The registration of securities with the National Securities Registry is subject to the fulfilment of various legal and regulatory requirements designed to protect investors from deceitful information and corporate malpractice.

Law stated - 4 December 2023

Licensing and authorisation requirements

What will the regulator consider before granting, refusing or withdrawing authorisation?

The CNBV will consider various factors before granting, refusing or withdrawing authorisation for public securitisation-related activities.

The primary objective of the CNBV is to ensure the safety, soundness and efficiency of the Mexican financial system, including the securities market. Therefore, the CNBV will evaluate the applicant's compliance with the applicable legal and regulatory requirements, as well as their ability to manage the risks associated with securitisation transactions.

Some of the factors that the CNBV will consider when evaluating an application for authorisation to engage in public securitisation activities include:

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compliance with the legal and regulatory requirements for securitisation transactions, including the requirements for asset eligibility, disclosure, rating and registration with the National Securities Registry;

- the issuer's creditworthiness, experience and reputation in the securities market;
- the adequacy of the applicant's risk management systems and internal controls, including their ability to identify, measure, monitor and control the risks associated with securitisation transactions;
- transparency and accuracy of the information provided by the applicant to the CNBV and to investors in securitisation transactions; and
- the capacity of the applicant to provide the necessary services related to the creation, management and distribution of the securitisation transaction, including the role of the manager or servicer.

If an applicant fails to meet the CNBV's requirements for public securitisation-related activities, the CNBV may refuse or withdraw authorisation to engage in these activities, or impose other sanctions as deemed necessary to protect the interests of investors and the Mexican financial system.

Law stated - 4 December 2023

Sanctions

What sanctions can the regulator impose?

The CNBV has the power to impose various sanctions on parties that violate the legal and regulatory framework applicable to public securitisation transactions in Mexico. Under Mexican law, some of the sanctions that the CNBV may impose are as follows.

Fines

The CNBV may impose fines on parties that violate the legal and regulatory framework applicable to public securitisation transactions. The fine amount will depend on the seriousness and frequency of the violation; the range provided under the Securities Law is between 1.03 million and 15.56 million Mexican pesos.

Suspension or revocation of authorisation

The CNBV may suspend or revoke the authorisation of financial institutions or listings that fail to comply with the legal and regulatory requirements for public securitisation transactions.

Criminal liability

The Ministry of Finance, prior to an opinion from the CNBV, may pursue criminal actions against those individuals who breach certain provisions set forth in the Securities Law.

Incarceration penalties for criminal liability derived from breaches to the Securities Law range from two to 15 years in prison.

Law stated - 4 December 2023

Public disclosure requirements

What are the public disclosure requirements for issuance of a securitisation?

In Mexico, public disclosure requirements applicable to public securitisations are provided by the Securities Law and its regulations. The main purpose of such requirements is to ensure that investors have timely access to accurate information related to public securitisation transactions in all respects.

Disclosure requirements for public securitisations typically include the following information.

Information about the issue

This includes information about the issuer's legal name, financial, administrative, economic and legal situation, as well as, if applicable, information about the corporate group to which it belongs, business activities and the sector, the integration of the business group to which it belongs and, if any, the share capital structure, among others.

Information about the securities being issued

This includes information about the characteristics and terms of the securities being issued, such as the type of security, credit rating, yield, maturity, events of default and acceleration and coupon frequency (if applicable).

Information about the risks associated with the securitisation transaction

This includes information about the risks associated with the assets being securitised, the risks associated with the structure of the securitisation and the risks associated with the issuer or servicer of the respective assets.

Information about the transaction structure and legal documentation

This includes information regarding the legal documentation of the deal, such as the trust agreement, the servicing agreement, and the public disclosure documents (ie, the prospectus, placement supplements and public offering notices, etc).

Information about the use of proceeds

This includes information regarding the use of proceeds derived from a securitisation transaction.

The issuer and originator of a public securitisation transaction must periodically disclose the foregoing to the public through the National Securities Registry and the stock exchange in which the relevant securities are listed, in accordance with the requirements and deadlines set forth by the Securities Law and its regulations.

Failing to comply with periodic disclosure requirements or including deceitful or misleading information in such public disclosure bears a range of potential legal sanctions, including fines and possible criminal liability.

Law stated - 4 December 2023

Public disclosure requirements

What are the ongoing public disclosure requirements following a securitisation issuance?

Once the securities have been registered with the National Securities Registry, the issuer must file before the CNBV and the relevant Mexican stock exchange for the distribution of the following reports (non-extensive) to the general public:

- reports regarding relevant corporate acts;
- internal quarterly and annually audited financial statements, as well as the management's discussion and analysis on the issuer's results of operations and financial condition;
- disclosures of relevant events, which refers to the disclosure of material non-public information when practically feasible but, in any case, before the acts or facts of such material non-public information are consummated. Pursuant to the Securities Law, the scope of information subject to public disclosure is that which regards any events that could have an impact on the price of the relevant securities issued as per the public securitisation transaction; and
- reports on the positions held in financial derivative transactions.

Law stated - 4 December 2023

ELIGIBILITY

Originators

Outside licensing considerations, are there any restrictions on which entities can be originators?

Mexican law does not provide for specific legal restrictions on which entities can act as originators in securitisation transactions. However, when dealing in public securitisations, issuers shall observe and comply with registration and maintenance requirements before the National Securities Registry.

Law stated - 4 December 2023

Receivables

What types of receivables or other assets can be securitised?

In Mexico, a wide range of receivables or other assets can be securitised, as no restrictions regarding which goods can be subject to securitisation are provided under Mexican law. Mexican capital markets have witnessed a broad range of asset securitisations, including:

- mortgage loans, including residential and commercial mortgages;
- consumer loans, including credit card receivables, auto loans and personal loans;
- trade receivables, including accounts receivable and factoring receivables;
- leases and other contractual receivables, such as equipment leases and rental agreements; and
- infrastructure assets, such as toll roads and airports.

It is worth noting that certain types of assets may be subject to specific legal, regulatory and contractual requirements or restrictions that could affect their eligibility for securitisation.

Law stated - 4 December 2023

Investors

Are there any limitations on the classes of investors that can participate in an offering in a securitisation transaction?

Generally, regarding public offerings, any person wishing to invest in the securities being issued will have the possibility of participating in the offering process on equal terms with other investors and of acquiring the securities, unless their investment regime does not allow it. However, in restricted public offerings, there are certain limitations on the types of investors to which the relevant public offering is addressed (ie, institutional and qualified investors). Conversely, private placements must comply with the private placement exemptions provided for under Mexican law, in order to legally avoid registration with the RNV and, therefore, satisfy legal and regulatory framework compliance.

Law stated - 4 December 2023

Custodians/servicers

Who may act as custodian, account bank and portfolio administrator or servicer for the securitised assets and the securities?

Securities depository services and securities settlement services of debt instruments issued by banks or corporations, as well as equities, warrants, certificates and other documents that are registered in the National Securities Registry, are provided by the SD Indeval. The SD Indeval is an authorised central securities depository responsible for the physical safekeeping of securities.

On the other hand, assets held in trust are controlled or managed either by the originator or a portfolio administrator (third party), or both, through the execution of a servicing and management agreement with the relevant trustee. The portfolio servicer is responsible for managing the securitised assets and ensuring that the cash flows generated by the assets are properly collected, reconciled and distributed to the trust.

Law stated - 4 December 2023

Public-sector involvement

Are there any special considerations for securitisations involving receivables with a public-sector element?

Yes. When securitising receivables with a public-sector element, the issuer and the investors must take into account various legal and regulatory considerations, including the following.

The legal framework

The issuer must ensure that the securitisation transaction complies with the legal and regulatory framework applicable to the asset class being securitised.

Sovereign immunity

Receivables payable by the government may be subject to sovereign immunity. The issuer and the investors must take into account the legal and practical implications of sovereign immunity when structuring the transaction and assessing the creditworthiness of the receivables.

Payment risk

The payment of the receivables by the government may be subject to various risks, including political, economic and fiscal risks. The issuer and the investors must evaluate these risks and incorporate them into the transaction structure, the credit rating assessment and the pricing of the securities.

Law stated - 4 December 2023

TRANSACTIONAL ISSUES

SPV forms

Which forms can special purpose vehicles take in a securitisation transaction?

Special purpose vehicles (SPVs) can take different forms in a securitisation transaction in Mexico, depending on the characteristics of the transaction and the preferences of the

parties involved. The most common types of SPVs used in securitisation transactions in Mexico include:

Trusts

A trust can hold and manage the securitised assets on behalf of the investors. The trust may issue securities backed by the assets and distribute the proceeds to the investors based on the terms of the trust agreement. A trust is the most common form of SPV in Mexico for securitisations. Although a trust does not have legal personality, the assets transferred to the trust estate are divested from the transferor's estate to become part of the trust's estate. The legal transfer of the assets to an isolated estate (the trust estate) is the characteristic that makes a trust the most attractive form of SPV because, if drafted properly, a true sale of assets can be achieved, making the securitised assets bankruptcy-remote (ie, not subject to attachment for the benefit of the originator's creditors upon the former's generalised default of payment obligations). Additionally, a trusts set-up for securitisation transactions is generally tax-transparent for Mexican tax purposes, and, hence, as long as the assignor holds residual rights over the trust estate, the transfer of assets would not be subject to income tax.

Corporations

A corporation is a separate legal entity that can issue securities backed by the securitised assets or bonds. The corporation may hold and manage the assets or may delegate this function to a third-party servicer.

The choice of SPV will depend on various factors, including the tax treatment, regulatory requirements, accounting treatment, bankruptcy remoteness, and operational considerations of the transaction.

Law stated - 4 December 2023

SPV formation process

What is involved in forming the different types of SPVs in your jurisdiction?

The process of forming different types of SPVs in Mexico may vary depending on the type of entity and the requirements of the relevant regulatory authorities. The following are general guidelines for forming some of the most common types of SPVs in Mexico.

Trusts

The formation of a trust for a securitisation transaction typically involves drafting a trust agreement that sets forth the economic and legal terms and conditions of the trust, including the powers and duties of the trustee, the rights and obligations of the beneficiaries, and the procedures for managing the securitised assets. The trustee must have a licence to operate as a fiduciary entity (generally speaking, only financial institutions are legally allowed to perform fiduciary services). The formation process typically takes several weeks to complete

(mainly due to the thorough know-your-customer process conducted by the trustee and the negotiation process with diverse transaction participants). The cost will depend on the fees charged by legal advisors and the administrative costs (eg, trustee fees) associated with drafting and managing the trust agreement. Additionally, when dealing with publicly offered securities as part of the securitisation transaction, additional costs will come into the picture, derived from the public placement and listing thereof (eg, underwriting fees, registration and listing fees and common representative fees).

Corporations

The formation of a corporation for a securitisation transaction requires the incorporation of a new legal entity under Mexican law, which typically involves:

- obtaining authorisation from the Ministry of Economy for the corporate name;
- formalising the articles of incorporation before a notary public and filing before the local public registry;
- obtaining a tax identification number from the tax authorities;
- opening corporate books; and
- issuing stock certificates.

The timing and cost of the incorporation process will depend on various factors, such as the complexity of the corporate structure, the number of shareholders and the fees charged by the regulatory authorities, legal advisors and a notary public.

Law stated - 4 December 2023

Governing law

Is it possible to stipulate which jurisdiction's law applies to the assignment of receivables to the SPV?

Yes. Mexican law recognises the principle of parties' will autonomy, which allows the relevant parties of a contract to freely choose both the law that will govern their contractual relationship as well as the venue of jurisdiction for potential disputes arising thereunder. Notwithstanding the foregoing, securitisations involving mortgage receivables or real estate property shall be governed by the laws of the venue where the real estate is located.

However, it is important to note that the choice of law may have implications for the effectiveness and enforceability of the assignment of receivables and the related security interests in the jurisdiction where the assets are located. In general, if the assets are located in Mexico, the assignment and related security interests will be subject to Mexican law, and any choice of foreign law would need to be recognised and enforced by Mexican courts. In this regard, Mexican law provides for several pre-requisite components to be complied with in order for Mexican courts to recognise the choice of law and jurisdiction, as well as for the enforcement of any ruling issued by a foreign court.

Law stated - 4 December 2023

Asset acquisition and transfer

May an SPV acquire new assets or transfer its assets after issuance of its securities? Under what conditions?

In Mexico, the ability of an SPV to acquire new assets or transfer its assets after the issuance of its securities will depend on the terms and conditions of the securitisation transaction as specified in the transaction documents.

If the transaction documents allow or require the SPV to acquire new assets or transfer its assets after the issuance of the relevant securities, there are generally conditions and limitations that must be met. These conditions may include obtaining the consent of the holders of the securities or technical committees, complying with any applicable regulatory requirements and ensuring that the new assets meet the eligibility criteria specified in the transaction documents. The transaction documents may also specify any limitations on the type or nature of assets that the SPV may acquire or transfer.

It is important to note that any transfer of assets or issuance of new securities after the initial issuance of securities may affect the credit quality of the outstanding securities and the expectations of the investors. It is, therefore, important for the transaction documents to include clear and comprehensive provisions that govern any such changes to the securitised assets or the securities issued by the SPV, and to ensure that the investors are fully informed of the potential risks associated with any such changes.

Law stated - 4 December 2023

Registration

What are the registration requirements for a securitisation?

As a general rule, securitisation transactions done privately (ie, under a private placement exemption) are not required to be registered with the RNV (the originator may choose to conduct a registration of a private securitisation to adopt best corporate practices and afford the investors with robust legal certainty with regards to their investment in the relevant securities). However, if dealing with publicly offered securities, securitisations are subject to registration requirements with the National Securities Registry, which is maintained by the Mexican National Banking and Securities Commission. The following documents must be submitted to the National Securities Registry for the registration of a securitisation:

- an offering memorandum or prospectus for the securities to be issued in the securitisation;
- a trust agreement or other transaction documents establishing the securitisation trust or SPV;
- a legal opinion issued by an independent external legal counsel on the validity of the transaction documents and compliance with applicable laws and regulations;
- rating agency reports and other documents related to the credit quality of the securitised assets and securities to be issued;
- financial statements and other information regarding the issuer accompanied by the opinion issued by the external auditor; and

- any information of the guarantors and the guarantees thereunder.

Law stated - 4 December 2023

Obligor notification

Must obligors be informed of the securitisation? How is notification effected?

In most cases, notifying the obligors of a securitisation may be necessary to ensure that the SPV has the right to collect payments directly from the obligors. This may be particularly relevant if the receivables being securitised are contractual receivables as opposed to other types of receivables such as trade receivables or consumer loans. Transaction documents may include provisions requiring notification to obligors or setting out the obligations of the originator or servicer with respect to informing obligors of the assignment.

The general rule set forth by Mexican law with regards to the notice of receivables may vary depending on the transfer method used, as follows:

- If the transfer is carried out through assignment, the corresponding creditor must notify the obligors thereof through a Mexican notary public or before the presence of two witnesses for the purposes of enforceability of the same vis-à-vis the obligors.
- If the transfer is carried out through factoring, the corresponding creditor can make a number of choices provided by the statute for notifying the obligors of the transfer.

Notwithstanding the foregoing, it is important to bear in mind that the relevant receivable documents may set out the process for serving notice to the obligors thereof, in which case such specific requirements must be complied with for the purpose of enforceability vis-à-vis the relevant obligors.

Law stated - 4 December 2023

Obligor notification

What confidentiality and data protection measures are required to protect obligors in a securitisation? Is waiver of confidentiality possible?

In Mexico, securitisations are subject to data protection regulations that protect the personal data of obligors and other individuals involved in the transaction. Any processing of personal data must comply with the provisions of the Federal Law on Protection of Personal Data Held by Private Parties, which regulates the collection, use, disclosure, storage and other processing of personal data by private entities.

As a general rule, personal data must be collected and processed only with the consent of the data subject and must be used only for the purposes for which it was collected. Personal data must also be kept confidential and secure, and appropriate measures must be taken to prevent unauthorised access or disclosure.

If a waiver of confidentiality is desired, this must be explicitly set out in the transaction documents and must comply with applicable data protection regulations. The waiver must

be voluntary and informed, and the data owner must be informed of the consequences of the waiver. If a data owner withdraws consent or revokes a waiver, the data controller must stop processing the data.

It is important to note that the specific data protection and confidentiality measures required will depend on the nature of the securitisation and the types of assets being securitised. Careful consideration should be given to these issues as part of the transaction structuring and documentation process.

Law stated - 4 December 2023

Credit rating agencies

Are there any rules regulating the relationship between credit rating agencies and issuers? What factors do ratings agencies focus on when rating securitised issuances?

In Mexico, the relationship between credit rating agencies and issuers is not specifically regulated. However, rating agencies are regulated entities subject to the provisions set forth by the Securities Law and ancillary regulations. Such provisions tend to eliminate issues deriving from conflicts of interest and set forth different requirements for the purpose of ensuring the independence of the credit rating agencies from the entities for which a credit rating service is provided. For instance, the Securities Law provides that partners, members of the board of directors, chief executive officers, statutory examiners and managers of rating agencies may not hold, directly or indirectly, shares of entities to which they grant ratings, nor may they act as partners, board members, commissioners or managers. Likewise, rating agencies may not enter into contracts with respect to securities issued by issuers with which their shareholders, directors or executives involved in the process of assessing the credit quality of the securities have conflicts of interest.

Credit rating agencies focus on a variety of factors when rating securitised issuances, including the characteristics of the underlying assets, the performance of the servicer, the legal structure of the securitisation, and the credit enhancement mechanisms in place to protect investors. Rating agencies will also assess the creditworthiness of the originator and the issuer of the securities, as well as the macroeconomic and market conditions that may affect the performance of the assets.

Law stated - 4 December 2023

Directors' and officers' duties

What are the chief duties of directors and officers of SPVs? Must they be independent of the originator and owner of the SPV?

In Mexico, the duties of directors and officers of SPVs are to ensure compliance with the provisions of the trust agreement and the securities offering documents, as well as to act in the best interests of the investors. The directors and officers are also responsible for managing the assets of the SPV and for ensuring that the rights of the investors are protected. In general, there is no legal requirement that directors and officers of SPVs be independent of the originator and owner of the SPV.

Law stated - 4 December 2023

Risk exposure

Are there regulations requiring originators and arrangers to retain some exposure to risk in a securitisation?

In Mexico, there is currently no specific regulation that requires originators or arrangers to retain some exposure to risk in a securitisation (skin in the game). However, depending on the nature of the securitisation and the assets thereunder, the originator may provide collateral over certain assets or guarantees (eg, parent guarantees) to retain certain risk exposure along with investors.

Law stated - 4 December 2023

SECURITY

Types

What types of collateral/security are typically granted to investors in a securitisation in your jurisdiction?

Typically, no collateral is granted to investors in a securitisation. However, this would depend on the specific terms and conditions of the transaction, including the nature of the underlying assets.

However, the securitisation transaction can be structured so that the assets transferred to the special purpose vehicle (trust) serve as collateral for the benefit of the investors. The security interest in the securitised assets is intended to provide the investors with a priority claim to the securitised assets in the event of the default or insolvency of the originator. The security interest may also be structured to provide the investors with certain remedies in the event of a breach of the transaction documents, including the right to accelerate the payment of the securities or to take possession of the securitised assets, although this is not typical due to the complexity of the foreclosure of the assets and the non-existence of subordination or priority rights among the holders of the security.

Law stated - 4 December 2023

Perfection

How is the interest of investors in a securitisation in the underlying security perfected in your jurisdiction?

In Mexico, perfection of a security interest depends on the type of security interest being created. The most common forms of security interests granted are mortgages for real estate assets and pledges (commercial pledges and non-possessory pledges) for movable assets (eg, bank accounts, receivables and intellectual property, etc).

In the context of securitisations, title over assets is transferred to a trust. For a valid and enforceable transfer, formalities for real estate assets and movable assets differ. Transfer of real estate assets requires the trust agreement to be formalised in a public deed before a notary public and registered in the Public Registry of Property of the jurisdiction in which the assets are located; standard and best practice in transfers involving real estate assets is to, prior to closing, file a precautionary notice of the possible transfer to the trust before the Public Registry of Property. On the other hand, when dealing with movable assets, the mere execution of the trust perfects the transfer between the parties, and for enforceability purposes vis-à-vis third parties, the trust must be registered in the Registry of Movable Security Assets. Thorough due diligence is required as certain assets (particularly movable assets) may require further steps to perfect the transfer (eg, receivables may require authorisation or notification to debtors).

Law stated - 4 December 2023

Enforcement

How do investors enforce their security interest?

The process for enforcing a security interest in a securitisation in Mexico will depend on the specific terms of the transaction and the governing law. In general, the security interest of investors in a securitisation is typically enforced through the appointment of a security agent, the common representative of the holders or the trustee who acts on behalf of the investors. The security agent, common representative or trustee would typically have the power to take various actions to enforce the security interest, including the power to foreclose (judicially or extrajudicially) on the underlying assets or other actions to recover amounts owed to investors.

Law stated - 4 December 2023

Commingling risk

Is commingling risk relating to collections an issue in your jurisdiction?

Commingling risk relating to collections can be an issue in Mexico. To address this risk, the trust agreement constituted for the securitisation transaction creates and maintains separate bank accounts and sub-accounts for collections of transferred receivables and implements controls to ensure that there is no commingling of funds. These bank accounts are owned and managed by the trustee pursuant to the terms and conditions set forth in the trust agreement. In addition, the trustee may dispose of the funds exclusively as provided for in the trust agreement's waterfall or the instructions of the party entitled thereunder.

Law stated - 4 December 2023

TAXATION

Originators

What are the primary tax considerations for originators in your jurisdiction?

In general, securitisation transactions in Mexico are subject to several tax considerations, including income tax and value added tax (VAT), among others. The specific tax implications for a securitisation transaction will depend on the particular facts and circumstances of the transaction. However, originators typically use fiscally transparent vehicles to structure the securitisation transaction.

For instance, the transfer of assets to a special purpose vehicle (SPV) could trigger income tax consequences for the originator, depending on the structure of the SPV and tax treatment of the transferred assets. Moreover, there are certain tax requirements for the issuance of securities, such as the obligation to withhold income tax on interest payments made to foreign investors, among others.

Law stated - 4 December 2023

Issuers

What are the primary tax considerations for issuers in your jurisdiction? What structures are used to avoid entity-level taxation of issuers?

The tax considerations for issuers in Mexico will depend on the specific structure and characteristics of the securitisation. In general, to avoid entity-level taxation of the issuer in a securitisation, a passthrough structure is commonly used. In this structure, the issuer is typically a trust that is tax-transparent for Mexican tax purposes, meaning that it is not subject to income tax. Instead, the income and expenses of the trust are allocated to the beneficiaries of the trust (ie, the holders of the securities issued by the trust), who are then subject to income tax on their pro rata share of the income earned by the trust. This allows for the income from the securitised assets to pass through to the investors without being subject to entity-level taxation.

Law stated - 4 December 2023

Investors

What are the primary tax considerations for investors?

In Mexico, investors in securitisations may face several tax considerations, including the following.

Withholding tax

The interest paid to foreign investors may be subject to withholding tax. Depending on compliance with the applicable requirements, reduced rates might apply in terms of the tax treaty between Mexico and the investor's country of residence.

VAT

The transfer of securitised assets may be subject to VAT, depending on the nature of the assets and the specific rules of the tax law.

Capital gains tax

If an investor sells their securitised assets for a profit or obtains yields or dividends, they may be subject to capital gains tax.

Law stated - 4 December 2023

BANKRUPTCY

Bankruptcy remoteness

How are SPVs made bankruptcy-remote?

Securitisations in Mexico are mainly structured through trusts as, under Mexican law, they are generally considered a bankruptcy-remote vehicle. The legal nature of a trust is that of a contract and, hence, a trust does not hold legal personality. Notwithstanding the foregoing, the transfer and conveyance of assets from the originator to the trust estate disincorporates the transferred assets from the originator's estate and incorporates the same to that of the trust, constituting (in most cases) a true sale of property.

In a bankruptcy proceeding, most assets transferred to the trust estate should not be considered part of the bankruptcy estate. Nonetheless, the Mexican Bankruptcy Law provides that in cases of fraud of creditors and fraudulent conveyance of the assets, the transfer may be declared null and void. It is worth mentioning that there have been certain isolated criteria (not jurisprudential and, consequently, not of general application) that have jeopardised the legal certainty of a true sale when dealing with future rights securitisations (in contrast to the contribution of existing assets at the time of contribution to the special purpose vehicle (SPV)).

Legal due diligence of the relevant assets is necessary to confirm if such assets can be legally assigned and are free from liens, ownership or transfer limitations. On the other hand, depending on the nature of the trust (administration, source of payment or guarantee) and the transferred assets, the trust agreement shall be filed before the local public registry or the Registry of Movable Security Assets Security Interests.

Law stated - 4 December 2023

True sale

What factors would a court in your jurisdiction consider in making a determination of true sale of the underlying assets to the SPV (eg, absence of recourse for credit losses, arm's length)?

Under Mexican law, the assignment from the originator to the trust through an assignment agreement, purchase agreement or factoring agreement, duly registered before the

applicable public registry (local Public Registry of Property for real estate and the Registry of Movable Security Assets), constitutes a true sale of the underlying assets to the SPV.

Law stated - 4 December 2023

Consolidation of assets and liabilities

What are the factors that a bankruptcy court would consider in deciding to consolidate the assets and liabilities of the originator and the SPV in your jurisdiction?

The Mexican Bankruptcy Law presumes that the originator was insolvent during the 270-day period prior to the judgment declaring insolvency (the retroactive period). The judge may extend the retroactive period in certain circumstances upon the reasonable request of the conciliator or any creditor.

In general terms, all transactions carried out prior to the commencement of insolvency that are essentially fraudulent transactions can be set aside, whereby all other types must occur within the retroactive period.

The transactions subject to avoidance can be grouped into four categories: (1) per se fraudulent transactions; (2) cases of constructive fraud; (3) objective preferences; and (4) subjective preferences.

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UPDATE AND TRENDS

Key developments of the past year

Are there any rules governing securitisations pending in your jurisdiction or reforms under way, such as prohibitions on financial firms betting against the securities they package, improved disclosure and oversight of the asset-backed securities market, rules limiting bank compensation structures that incentivise risk, etc?

Amendments to Securities Market Law

On 15 November 2023, the plenary session of the Mexican Chamber of Deputies approved an initiative previously approved by the Senate (Reform) to amend, repeal and add various provisions of the Mexican Securities Law and the Mutual Funds Law (MFL), with the main purpose of providing greater depth, as well as increasing the competitiveness and dynamism of the Mexican securities market for both, issuers and investors.

The Reform proposes, among other things:

- the introduction of a simplified regime for the registration of securities in the National Securities Registry with the primary objective of providing access to the securities market to small and medium-sized companies and, thus, expanding their capitalisation capacities and sources of financing;

- the legal strengthening of the recognition of the principle of autonomy of will of the shareholders, in general, and the implementation of corporate decisions, in particular, through amendments related to the issuance, transfer and scope of share certificates, as well as the elimination of certain restrictions and, notably, current minority rights;
- new rules and requirements for obtaining the registration of investment advisers and the expansion of the Securities Law's regulatory regime; and
- the expansion of collective investment mechanisms through the introduction of a new legal type of investment fund, better known in the US market as hedge funds.

Key components of the Reform include the following:

- Simplified Regime for Registration of Securities in the National Securities Registry. A simplified securities registration regime is introduced to streamline the securities registration procedure in the National Securities Registry (RNV), and thus allow small and medium-sized companies to have easier and more efficient access, both operationally and in terms of costs, to the stock market and alternative sources of financing.
- Amendments to the Securities Market Corporations Regime. The Reform introduces important amendments to provisions related to the regime applicable to Stock Exchange Corporations (SAB) and Stock Investment Promotion Corporations (SAPIB).

With respect to the SAB, the Reform proposes to eliminate the prohibition on issuing shares representing their capital stock with differentiated rights, thus allowing the establishment of any rights or restrictions per series or class of shares other than common shares, without any additional requirements (eg, not exceeding a certain percentage of the capital stock placed with the investing public), in order to guarantee the preservation of control and the continuity of the fundamental decisions of the business.

Likewise, SABs are authorised to acquire shares representing their capital stock without any restriction whatsoever. On the other hand, with respect to the SAPIB, the Reform provides for the repeal of the obligation to (1) adopt the SAB modality within 10 years from its registration in the RNV or before such period if the stockholders' equity exceeds 250 million Investment Units (approximately 1,944 million pesos) and (2) establish a programme for the progressive adoption of the regime applicable to SABs, for purposes of listing their shares in the exchanges.

- Clauses to prevent hostile takeovers. Strengthening of existing legal mechanisms to allow controlling shareholders of public companies to retain such control (eg, allowing the issuance of shares with differentiated rights by series or classes). Another of the amendments aimed at achieving this objective is the increased number of people needed for a quorum for voting against resolutions adopted at the general shareholders' meeting, to incorporate in the by-laws of SABs clauses aimed at preventing the acquisition of shares that grant control of the SABs (better known as poison pills), by third parties or the shareholders themselves, from 5 per cent to 20 per cent.

In addition, the Reform proposes eliminating two sections of article 48 of the Mexican Securities Market Law, allowing for (1) the exclusion of one or more shareholders (other than the one who intends to take control) from the economic benefits resulting from the adoption of the corresponding poison pill and (2) an absolute ban on hostile takeovers or the establishment of criteria to be met by third parties attempting to acquire control of the respective company.

Amendments to the Mutual Funds Law

The main proposed change for the MFL consists of the phasing out of Limited Purpose Investment Funds and the creation of hedge funds. Hedge funds will be able to operate with any investment asset that they indicate in their prospectus to potential investors, and their investment strategies may be subject to change according to market circumstances or the needs of the hedge fund. Some of the peculiarities of the hedge funds are as follows:

- The shares representing the share capital of hedge funds may only and exclusively be offered to qualified and institutional investors; therefore, they may not be offered to the general investing public.
- Hedge funds are exempt from the obligation to establish maximum holding limits per shareholder.
- Hedge funds can be formed and operated by investment advisors authorised under the terms of articles 225 and 225-bis of the Securities Law, in which case they are exempted from the obligation to have an investment fund operating company.

In addition to the creation of hedge funds, the Reform also proposes:

- that operators be obliged to annually evaluate the performance of contracted service providers and communicate the results to shareholders;
- to expand the reporting obligations to shareholders to include the requirement to inform them about the value of their shareholdings;
- empower Banco de México to establish maximum limits on the amounts of repurchase agreements, securities lending, loans and credits, securities issuance, derivative financial transactions and foreign currency transactions;
- allow mutual fund operating companies to carry out, exceptionally, certain transactions for which the intermediation of a brokerage firm is typically required; and
- allow mutual fund operating companies to carry out, exceptionally, certain transactions for which the intermediation of a brokerage firm is typically required.

Finally, the Reform also provides for expanding the list of parties that may incur civil liability, which may be sanctioned through an administrative infraction or be considered as officers or employees of a hedge fund to include mutual fund share distribution companies, entities that provide the service of distribution of hedge fund shares and investment advisers authorised under the terms of the Securities Law.

Amendments to the General Law of Commercial Companies

On 20 October 2023, the decree amending several provisions of the General Law of Commercial Companies was published in the Mexican Federal Official Gazette. The reform is characterised by three main aspects that represent a turning point in the mechanisms and operations of Mexican commercial companies:

- the use of electronic media for the holding of meetings of partners or shareholders, as well as meetings of the board of directors;
- the use of electronic signatures in the minutes of meetings, minutes and other corporate documents; and
- the holding of meetings without the need to be physically present at the company's registered office.

The amendments to the above law became effective on 21 October 2023. Notwithstanding the foregoing, the amendment to the second paragraph of article 81 will come into force within six months from the date of its publication in the Official Gazette of the Federation (ie, in April 2024).

In view of the foregoing, it is advisable for companies incorporated in Mexico to amend their articles of incorporation in order to adapt them to the new applicable legal regime.

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Key developments of the past year

What legislation or government or industry initiatives are in place or contemplated to address the termination of LIBOR and transition to a substitute rate?

In Mexico, the government and industry initiatives are in line with global efforts to address the termination of LIBOR and the transition to a substitute rate. The Mexican authorities have been monitoring the situation and assessing the potential impact on the Mexican financial market.

In addition, the Mexican financial authorities have been working with industry stakeholders to ensure a smooth transition to alternative reference rates. Mexico's Central Bank established a working group to address the transition and provide guidance to market participants. Mexican financial institutions have also been preparing for the transition by identifying and assessing their LIBOR exposures, updating their systems and processes and developing strategies to manage the transition.

Overall, the Mexican authorities and market participants are closely monitoring the situation and taking steps to ensure a smooth transition to alternative reference rates.

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