

# Debt capital markets in Mexico: regulatory overview

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Country Q&A | Law stated as at 01-Jul-2019 | Mexico

A Q&A guide to debt capital markets law in Mexico.

The Q&A gives an overview of legislative restrictions on selling debt securities, market activity and deals, structuring a debt securities issue, main debt capital markets/exchanges, listing debt securities, continuing obligations, advisers and documents, debt prospectus/main offering document, timetables, tax, clearing and settlement, and reform.

To compare answers across multiple jurisdictions, visit the debt capital markets [Country Q&A tool](#).

This Q&A is part of the global guide to debt capital markets law. For a full list of jurisdictional Q&As visit [www.practicallaw.com/debtcapitalmarkets-guide](http://www.practicallaw.com/debtcapitalmarkets-guide).

## Debt capital markets legislation

1. What are the main restrictions on offering and selling debt securities in your jurisdiction?

### Main restrictions on offering and selling debt securities

Restrictions regarding the offer of debt securities in Mexico depend on whether that offer is considered public or private. Private offerings do not require registration or authorisation by a government authority, whereas public offerings must be registered with the National Registry of Securities (*Registro Nacional de Valores*) (RNV).

Under the Securities Market Law, an offering of securities in Mexico is private if any of the following applies:

- The offer is made exclusively to institutional or qualified investors.
- The offer is made to less than 100 companies and/or individuals.
- The offer is made to employees of the entity offering the securities, or of entities controlled by it.
- The offer is made to shareholders or partners of companies whose corporate purpose is exclusively or mainly the same as the corporate purpose of the entity offering the securities.

All other offers of securities are considered public offerings.

The Securities Market Law defines institutional investors as any entity which, under federal law, is deemed as such or is a financial entity (that is, Mexican and foreign banks, broker-dealers, insurance companies, investment funds,

private pension funds, among others), including fiduciary divisions. Qualified investors are defined as any of the following:

- **Basic qualified investor:** any person holding investments in securities during the prior year in average of UDI1.5 million, or that has obtained, during the two previous years, an annual net income equal to or exceeding UDI500,000 (The Mexican Unidad de Inversion (UDI) is a unit of funds that reflects the value of Mexican pesos without considering the impact of inflation.)
- **Sophisticated qualified investor:** any person holding investments in securities during the prior year in average of UDI3 million, or that has obtained, during the two previous years, an annual net income equal to or exceeding UDI1 million.
- **For participation in restricted public offerings:** any entity or individual that held investments in securities during the prior year in average of UDI20 million.

Additionally, only authorised broker-dealers established in Mexico (and with certain limitations, Mexican banks) can offer and sell registered securities in Mexico. Broker-dealers in Mexico are supervised entities. Therefore, to incorporate and operate as a broker-dealer in Mexico, authorisation from the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) is required.

#### **Restrictions for offers to the public or professional investors**

Public offerings of securities in Mexico require registration with the RNV. To register such securities with the RNV, approval must be granted by the CNBV. Filing for approval by the CNBV includes producing, among other things, a prospectus, legal and financial information of the issuer prepared in accordance with Mexican or international accounting principles and a credit rating from a recognised credit rating agency. A prospectus must include:

- Financial, legal, accounting and business information of the issuer.
- A description of the transaction (that is, executive summary, business plan and historic information of the issuer).
- Risk factors.
- Management discussion and analysis.
- Applicable regulation, including tax treatment and corporate governance information.

Institutional investors are heavily regulated and subject to the supervision of regulatory authorities, including the CNBV and the Mexican Central Bank (*Banco de México*). Generally, institutional investors can only invest in those assets that the regulations explicitly permit.

2. What other legislation or guidelines do issuers and underwriters of debt securities need to be aware of in your jurisdiction?

The National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) rates the transparency of the information provided by issuers to their investors under the CNBV regulations. This rating is performed quarterly, granting:

- A green grade to such issuers that reveal 80% to 100% of their information.
- A yellow grade to such issuers who reveal 51% to 79% of their information.
- A red grade to such issuers who have deficient transparency to their investors.

## Market activity, trends and deals

3. Outline the main market activity and deals in your jurisdiction in the past year. Have any trends emerged in the last year?

The debt market in Mexico is far more active than the equity market. The main issuers are banks, non-bank banks, private companies, state governments and municipal governments. Some of the largest debt issuances in 2018 are the following:

- Grupo Lala, S.A.B. de C.V. for MXN13,000 million.
- Red de Carreteras de Occidente, S.A.B. de C.V for MXN8,304.9 million.
- Grupo Elektra, S.A.B. de C.V. for MXN7,500 million.
- BBVA Leasing México, S.A. de C.V. for MXN7,000 million.
- Fondo Especial para Financiamientos Agropecuarios (FEFA) for MXN5,375 million.
- Minera Frisco, S.A.B. for MXN5,000 million.
- Banco Mercantil del Norte, S.A., Institución de Banca Múltiple, Grupo Financiero Banorte for MXN4,533.28 million.

## Structuring a debt securities issue

4. Are different structures used for debt securities issues to the public (retail issues) and issues to professional investors (wholesale issues)?

The main types of debt securities depend on the type of issuer. Typically:

- Banks and other financial institutions issue short-term notes and commercial paper.
- Private companies and local governments issue long-term structured notes under programmes.

Debt can be issued under a short term (less than a year) or a long term (more than a year). It can be issued directly as:

- Corporate debt (*certificados bursátiles, pagarés, obligaciones*) (for example, an issue of bonds).
- Structured debt through a trust (*certificados bursátiles fiduciarios*).

Debt can be issued in a single series or under a programme.

5. Are trust structures used for issues of debt securities in your jurisdiction? If not, what are the main ways of structuring issues of debt securities in the debt capital markets/exchanges?

Trust structures are actively implemented to issue debt securities. However, companies can also issue corporate debt directly rather than issuing debt through trust structures.

## Main debt capital markets/exchanges

6. What are the main debt securities markets/exchanges in your jurisdiction (including any exchange-regulated market or multi-lateral trading facility (MTF))?

### Main debt markets/exchanges

The Ministry of Finance (*Secretaría de Hacienda y Crédito Público*) granted Central de Corretajes (CENCOR), in August 2017, the authorisation to organise and operate a new stock exchange called the Institutional Stock Exchange (*Bolsa Institucional de Valores*) (BIVA). BIVA commenced operations in July 2018.

The only regulated exchanges currently operating in Mexico are the Bolsa Mexicana de Valores (Mexican Stock Exchange) ([www.bmv.com.mx](http://www.bmv.com.mx)) and the BIVA ([www.biva.mx](http://www.biva.mx)). Companies have the option to list their debt or capital securities on just one of the two exchanges, and their securities will be quoted on both.

Foreign companies can be listed on any of the two exchanges together with local companies. In addition to the local exchange, the two exchanges manage the International Trading System (*Sistema Internacional de Cotizaciones*), which is an electronic conduit to trade shares listed in other stock exchanges. Non-Mexican companies list debt in the exchanges through local subsidiaries.

The most used MTF in Mexico is SIPO (*Sistema de Información de Posturas*) ([www.sipo.com.mx/sipo/indexe.html](http://www.sipo.com.mx/sipo/indexe.html)), which is principally used by financial intermediaries.

Securities listed in the National Registry of Securities (*Registro Nacional de Valores*) (RNV) can only trade in the two stock exchanges. However, the purchase and sale of securities that are not listed in the RNV are not regulated and can therefore be performed through any form of MTF.

### Approximate total issuance on each market

See [Question 3](#).

7. What legislation applies to the debt securities markets/exchanges in your jurisdiction? Who are the main regulators of the debt capital markets?

### Regulatory bodies

The National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) is the main regulator of the stock exchanges.

### Legislative framework

The main legal framework comprises the:

- Securities Market Law (*Ley del Mercado de Valores*).
- General regulations applicable to issuers of securities and other participants of exchange markets (*Disposiciones de carácter general aplicables a las emisoras y a otros participantes del Mercado de Valores*), issued by the CNBV (CNBV Regulations).
- Mexican Stock Exchange Internal Regulations (*Reglamento Interior de la Bolsa Mexicana de Valores*) (Mexican Stock Exchange Regulations).
- BIVA Internal Regulations (*Reglamento Interior de la Bolsa Institucional de Valores*) still pending authorisation from the CNBV.
- General regulations applicable to stock exchange (*Disposiciones de carácter general aplicables a las Bolsas de Valores*), issued by the CNBV.
- General regulations applicable to broker-dealers (*Disposiciones de carácter general aplicables a las Casas de Bolsa*), issued by the CNBV.

- General regulations applicable to entities and issuers of securities regulated by the CNBV that contract external audit services for basic financial statements (*Disposiciones de carácter general aplicables a las entidades y emisoras supervisadas por la Comisión Nacional Bancaria y de Valores que contraten servicios de auditoría externa de estados financieros básicos*), issued by the CNBV.

## Listing debt securities

8. What are the main listing requirements for bonds and notes issued under programmes?

### Main requirements

A registration statement must be in place for any debt securities to be publicly offered in Mexico. The relevant securities, as well as any other information documents such as a prospectus and the form of note, must be registered with the National Registry of Securities and one of the stock exchanges.

Companies that list debt in the stock exchanges do not need to be incorporated as a specific form of entity. However, companies that list debt in the stock exchanges must adopt corporate governance principles in accordance with applicable securities regulations.

### Minimum size requirements

There are no specific size limits.

### Trading record and accounts

No minimum trading record is required. No specific working capital is required.

### Minimum denomination

There is no minimum denomination required. The common practice is to place securities with a minimum denomination of MXN1.

9. Are there different/additional listing requirements for other types of securities?

Not applicable, as currently there is only one exchange operating in Mexico.

## Continuing obligations: debt securities

10. What are the main areas of continuing obligations applicable to companies with listed debt securities and the legislation that applies?

Long-term issuers have the same public company reporting and information obligations as applied in the context of equity securities. This includes an obligation to disclose to the public any relevant event that may affect the price or value of its debt (according to whether the specific event is equivalent in value to 5% of the company's assets, liabilities or consolidated capital, or 3% of the previous year's total sales).

In general terms, public companies have the following obligations:

- **Reporting obligations.** Public companies must provide annual reports. This information updates the prospectus and includes the company's annual audited financial statements. The annual reports also provide information about the company's:
  - capital structure;
  - board members that are holders of 1% or more of the company's capital shares;
  - investors that hold 5% or more of the company's capital shares;
  - ten principal stockholders.

Companies must also provide quarterly reports. This information is filed pursuant to certain forms provided by the National Banking and Securities Commission. These reports include the company's pro forma quarterly financial statements.

- **Information obligations.** Public companies have an obligation to inform investors, within specific time frames, about:
  - any shareholders' meetings;
  - corporate restructures;
  - mergers; and
  - any notices addressed to their shareholders.
- **Disclosure obligations.** Public companies must reveal to the general public any information that may affect the price or value of the shares (relevant events). Relevant events can include transactions such as those with related entities or individuals, the marketing of new products, the takeover of new businesses or the divestiture of assets. To determine if a specific event is relevant to investors, the company must consider if the event:
  - is equivalent in value to 5% or more of the company's assets, liabilities or consolidated capital;

- amounts to 3% or more of the previous year's total sales.

If it is not possible to determine, the company must consider if the event constitutes relevant information for investors to make an investment decision, so as to understand the real situation of the company or what may affect the value of the shares.

- **Shareholder voting restrictions.** Voting restrictions in Mexican public companies (*Sociedad Anónima Bursátil*) are included in each specific company's bye-laws. Therefore, they should be analysed on a case-by-case basis.

Short-term issuers are only required to file their financial statements quarterly.

11. Do the continuing obligations apply to foreign companies with listed debt securities?

Foreign companies must submit the same information as local companies if they do not have any securities listed in non-Mexican exchanges (see [Question 10](#)).

If a foreign company has listed securities in a non-Mexican exchange, it must:

- File in Spanish the following periodical information with the National Banking and Securities Commission and the relevant stock exchange:
  - **Foreign exchanges annual reports.** These reports are filed at the same time as the company delivers information to its own local exchange, along with a summary of the reports filed by the company's board of directors with its shareholders. These reports must include annual audited financial statements, and financial statements of any company that contributed 10% or more of its income, except for income deriving from investments through specialised investment companies.
  - **Annual and intermediate reports.** These must be filed at the same time as they are filed in the company's local exchange.
- Inform investors of the stock exchanges about any:
  - shareholders' meetings;
  - corporate restructures;
  - mergers;
  - any other notices addressed to its shareholders.

Additionally, foreign companies must send investors a summary of any corporate resolutions adopted.

12. What are the penalties for breaching the continuing obligations?

The penalties for breaching the continuing obligations range from suspension or cancellation of listed securities to personal liability of the individuals appointed to provide the information. If any relevant information is not disclosed, individuals aware of the information may face criminal liability, on the basis that existing information in the market could be considered false or misleading as a result of the omission.

## Advisers and documents: debt securities issue

13. Outline the role of advisers used and main documents produced when issuing and listing debt securities.

The main advisers in a debt offering are:

- **Placement agents.** These are Mexican broker-dealers, who structure the markets and securities and sign the prospectus.
- **Independent legal advisers.** The independent legal advisers issue the relevant legal opinion and sign the prospectus.
- **Independent accountants.** The independent accountants issue audited financial statements and sign the prospectus.
- **Rating agencies.** Financial ratings are required from rating agencies to list debt.

Listing debt requires the following documents:

- A registration request or statement.
- Copies of powers of attorney for all documents' signatories.
- Articles of incorporation and bye-laws of the issuing company or trustee (along with the trust agreement).
- Corporate resolutions approving the issue of debt (if applicable).
- Form of note or other debt instrument.
- Audited financial statements.
- Independence letters.

- A legal opinion.
- A placement agreement.
- Prospectus or programme (only for long-term issuances).
- Information memorandum (for short-term issuances).
- Financial ratings.
- Placement notices.
- Letter issued by the company addressed to the rating agency, informing about any other financial ratings that the company may have received during the preceding two months.

## Debt prospectus/main offering document

14. When is a prospectus (or other main offering document) required? What are the main publication/delivery requirements?

All public offerings of long-term debt instruments require:

- A prospectus.
- Additional offering information.

These documents must be filed with the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and the relevant stock exchange before any marketing of the relevant securities. After the filing, marketing is allowed but no actual transaction can be completed until the CNBV has issued a registration statement. Filing is made electronically until a final version is approved. The final versions are printed and initialed on every page and submitted to the CNBV and the relevant stock exchange. Finally, on the offering date, the issuer must publish an allocation announcement (*aviso de colocación*).

15. Are there any exemptions from the requirements for publication/delivery of a prospectus (or other main offering document)?

Private placements do not require any specific information. Generally, all public offerings require a prospectus, except for:

- Short-term offerings that require issuers to only file an information memorandum (*folleto informativo*), which unlike a prospectus, does not require a placement agreement, a securities certificate or a placement notice, among other information.
- Issuances under programmes, which only require an information memorandum because the prospectus was filed when the relevant programme was authorised.

16. What are the main content/disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The main information to be included in a prospectus to issue debt instruments is:

- General information about the terms of the transaction.
- Information on any:
  - guarantors, including their financial statements and any other relevant information (usually at the same level of disclosure as the issuer); and
  - collateral.
- An executive summary of the transaction.
- The risk factors.
- The main use of the funds to be obtained from the public offering.
- The distribution plan.
- Detailed information about the issuer company, such as:
  - a description of its businesses;
  - existing legal actions against the business;
  - its corporate structure.
- Financial information for the previous three years (or from the date of incorporation of the entity) concerning the issuer company and its group, as well as any other entity that contributed 10% or more to the issuer company's income or total sales in the previous year. The issuer can provide financial statements for the last fiscal year only (provided that the statements are not older than six months) in the following cases:
  - issuance of debt securities with a term equal to, or lower than, one year;
  - when the issuer is a limited liability corporation created to support new business and ventures (*Sociedad Anónima Promotora de Inversión Bursátil*);
  - issuance of a restricted public offer.

Other exemptions may apply depending on the type of security.

- A description of the issuer's management structure.
- A description of the issuer's main assets.
- A description of the responsible parties and individuals that must provide information to the National Banking and Securities Commission and the relevant stock exchange.
- If any report, statistics or other information contained in the prospectus was prepared by an expert, a statement of this expert must be included, indicating that:
  - this information has been included; and
  - the expert consented to the inclusion of the information.

The generally accepted accounting standards in Mexico are the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board. All financial statements must be audited by an independent auditor in accordance with the International Standards on Auditing issued by the International Auditing and Assurance Standards Board of the International Federation of Accountants. These standards are also applicable to financial statements of issuer companies where subsidiaries perform activities subject to the supervision of Mexican regulators.

The financial statements of non-Mexican issuer companies that are submitted to Mexican regulators must be prepared according to one of the following standards:

- IFRS issued by the International Accounting Standards Board.
- US Generally Accepted Accounting Principles (GAAP), including a complementary note explaining the differences between these principles and the IFRS.
- Accounting standards applicable in the country of the issuer company, including a complementary note explaining the differences between these standards and the IFRS.

17. Who is responsible for the prospectus (or other main offering document) and/or who is liable for its contents?

The placement agent usually prepares the prospectus, on the basis of information provided by the issuing company. Other advisers then review the prospectus. The following are liable for the content of the prospectus within their scope of expertise:

- **Company officers.** At least two members of the board of directors, the chief executive officer, the chief financial officer, and the general counsel (or any of their equivalents) must attest that all relevant and material information contained in the prospectus has been disclosed.
- **Placement agent.** The placement agent is liable for information it provides about the business and operations of the company.
- **Guarantor (if any).** The guarantor is liable for financial information it provides concerning the guarantee.

The financial rating agencies review and comment on the prospectus and their comments are usually included. However, rating agencies are not liable for the content of the prospectus.

The following are liable for the contents provided within the scope of their professional expertise:

- The placement agent.
- Certain officers of the issuer, such as the managing director, the chief financial officer and/or any other officer signing the prospectus.
- The independent accountant.
- The independent legal adviser.

Other advisers may be liable, for example, for studies concerning a specific kind of asset or valuations of the company's assets.

The prospectus must contain all the "relevant information" of the issuer. The Securities Market Law and the CNBV Regulations define relevant information as all information required for investors to know the current and correct financial, economic and legal situation of the issuing company. The publication of a prospectus that either contains misleading information or does not contain all the relevant information of the issuer company is considered to be a distribution of misleading information, which can result in civil and criminal liability including:

- Imprisonment for five to ten years.
- Prohibition from working in the financial industry.
- Fine of 100 to 5,000 times the amount of the minimum wage in Mexico City (MXN102.68).

Civil liability includes payment of compensatory damages and loss of future earnings.

## Timetable: debt securities issue

18. What is a typical timetable for issuing and listing debt securities?

A typical timetable is as follows:

- The parties meet for the first meeting where they discuss the general terms of the transaction (week one).
- The placement agent meets with the National Banking and Securities Commission (*Comisión Nacional Bancaria y de Valores*) (CNBV) and the relevant stock exchange to explain the terms of the deal (week three).

- Several versions of documents are prepared before a first filing version is agreed. First filing is made with the CNBV and the relevant stock exchange (week three).
- The rating agencies issue their prospective rating to be included with the offering documents (week three).
- The placement agent starts the road show and receives comments and questions from potential investors that will be included in or clarified by the second version of the offering documents (between weeks three and six).
- Depending on the complexity of the deal, the CNBV and the relevant stock exchange take three to four weeks to comment on the offering documents (week seven).
- The parties include in the offering documents acceptable comments from rating agencies, the CNBV and the relevant stock exchange, as well as comments and questions from investors, and perform a new filing (week eight).
- The CNBV and the relevant stock exchange authorise the final version of the documents, and after filing final versions, the relevant securities are registered at the National Registry of Securities (week ten).
- Securities are traded in the relevant stock exchange (week ten).

The CNBV takes more time to analyse documents from first time issuers (such as in the case of IPOs), as they have no background concerning the companies' financial information or market behaviour.

## Tax: debt securities issue

19. What are the main tax issues when issuing and listing debt securities?

Payments made to holders of debt securities are considered interest for income tax purposes. Taxes vary depending on whether the investor is:

- A legal entity.
- An individual.
- A Mexican or non-Mexican resident.

## Clearing and settlement of debt securities

20. How are debt securities cleared and settled and what currency are debt securities typically issued in? Are there special considerations for holding, clearing and settling debt securities issued in foreign currencies?

Debt securities are usually denominated in Mexican pesos or UDIs (the Mexican *Unidad de Inversion*). UDI is a unit of funds that reflects the value of Mexican pesos without considering the impact of inflation. However, there is no restriction or special considerations for holding, clearing and settling debt securities issued in foreign currencies listed in the stock exchanges.

Debt securities listed in the stock exchanges are cleared in Mexican pesos considering the exchange rate at the clearance date.

## Reform

21. Are there any proposals for reform of debt capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

On March 2018, the Congress approved the initiative of the Law to Regulate Financial Technology Institutions (also known as the Fintech Law). The Fintech Law will regulate, among other things:

- The organisation and operation of financial technology institutions, which may be collective financing institutions (known as crowdfunding platforms, or better known as electronic payment funds institutions such as e-money platforms, such as "e-wallet").
- Virtual assets or cryptocurrency.
- The obligation of financial entities to establish programming interfaces for applications, or application programming interfaces (APIs).
- Temporary authorisations to carry out operations of financing through "novelty models".

Within the following months the CNBV, the Ministry of Finance and the Central Bank of Mexico (*Banco de Mexico*) will issue the secondary legislation to the Fintech Law meant to regulate the crowdfunding and electronic payment entities.

On January 2018, new investment regulations to pension funds were issued allowing pension funds to invest (subject to certain requirements):

In warrants and shares issued by special purpose acquisition companies (SPACs).

In project investment certificates (*certificados de proyectos de inversión*) (CERPI) holding investments outside on the Mexican territory, as long as such CERPI invests at least 10% of its funds in the Mexican territory.

## Contributor profiles

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**Professional qualifications.** Mexico, 1995

**Areas of practice.** Banking and finance; capital markets; mergers and acquisitions; private equity.

#### Recent transactions

- Represented Prudential (insurance companies) in the acquisition of notes issued by different clients, either in secured or unsecured private placements.
- Represented Axis in the issuance of several hybrid securities (CKDs) for total capital commitments of MXN8,450 million, MXN4,000 million and MXN2,500 million.
- Represented Bulltick Casa de Bolsa as placement agent in the IPO of Proteak Uno, which was the first SAPIB to publicly issue equity.

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**Professional qualifications.** Mexico, 2003

**Areas of practice.** Banking and finance; capital markets; real estate finance; mergers and acquisitions; private equity.

### **Recent transactions**

- Represented Desarrollos Delta and O'Donnell in the issuance of structured notes (CKDs) in 2008. First public offering for both companies.
- Represented BBVA Bancomer, as placement agent, in the issuance of Fibra Nova (REIT Nova).
- Represented Prudential (insurance companies) in the acquisition of notes issued by different clients, either in secured or unsecured private placements.
- Represented Axis in the issuance of several hybrid securities (CKDs) for total capital commitments of MXN8,450 million, MXN4,000 million and MXN2,500 million.
- Represented Desarrolladora y Operadora de Infraestructura de Oaxaca, S.A.P.I. de C.V. in the securitisation of collection rights stemming from a public-private partnership services agreement for the amount of MXN5,000 million.

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