

THE INTERNATIONAL  
CAPITAL MARKETS  
REVIEW

ELEVENTH EDITION

Editor  
Jeffrey Golden

THE LAWREVIEWS

THE  
INTERNATIONAL  
CAPITAL MARKETS  
REVIEW

ELEVENTH EDITION

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# PREFACE

Well, is that light at the end of the tunnel?!

When the 10th edition of this volume appeared a year ago, it included an admission that we had been caught unawares by the pandemic, lockdowns and working from home (WFH).

Yes, there were then capital market challenges that had been anticipated, many of which continue. We knew, for example, that key interbank offered rates (IBORs), benchmarks on which so much financial market activity relies, would be undergoing a period of change and that market participants would have to face up to the adoption of alternative rates and consider adjustments to legacy transactions based on LIBOR or other previously used pricing sources. No one said LIBOR migration would be easy; and that challenge has not gone away. The message from many key regulators is that, pandemic and other operational complications notwithstanding, the shift remains on track. LIBOR, supporting as it does hundreds of trillions of dollars of market activity, is slated for replacement around the time that this edition is scheduled to appear!

However, we did not see and anticipate other challenges brought about by the covid-19 pandemic, basic as some of these may have been – hidden as they may have been also in notice provisions and other boilerplate buried in the back recesses of our transaction documents. How do you give effective notice to offices closed (often with the force of law) and with the decentralisation of WFH? If none of the methods contemplated by the parties' agreement can be used, may a different method be used instead?

Furthermore, is the pandemic itself an excuse for non-performance of financial market obligations? Does it trigger *force majeure* clauses in our contracts? Does it frustrate a relevant commercial purpose?

The global health – not to mention environmental – challenges around us at the moment beg a coordinated international strategy. However, the all-too-often fragmented response we have been seeing has been anything but encouraging. Fragmentation in the financial market regulatory arena also, including Brexit and other devolutionary pressures and juridical competition that have followed, now seems to be the order of the day.

Challenges though there may be, however, the capital markets continue to show their resilience. As I write this preface, share prices and indices are at, or have recently reached, record highs in leading global markets. IPOs for the likes of Robinhood Markets and Krispy Kreme continue to cause excitement and capture headlines.

International capital markets lawyers are still in business, still relevant, although, our *modus operandi* may have changed slightly. While financial institutions and law firms are cautiously encouraging a return to the office (at least for the fully vaccinated), technology and our recent experience by necessity of remote working has encouraged more self-sufficiency.

In a world of WFH, we keep company with the books on our shelves more than the other lawyers in the building. In such circumstances, there are ever more compelling reasons to keep this particular book on that shelf or otherwise remotely accessible through the digital platform maintained by *The Law Reviews*. We can expect to turn more often to published answers when we cannot as easily consult the practitioner in the office next door.

As I have written before, this book serves two purposes – one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based (even WFH), no longer enjoys the luxury – if ever it did – of focusing solely on a home market within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology increasingly permits a practitioner to tackle international issues.

Moreover, clients certainly may have multi-jurisdictional ambitions or, even if unintended, their activities often may risk multi-jurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could, or should, best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

Not long ago, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical aspects of our discussion and ground them in the specific example of capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited, that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives

market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

In such cases, with so much at stake given the volumes of financial market trading on standard terms, and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard, or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them, than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions. In that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration for our contributing experts, as I wrote in the preface to the last edition, continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid the growing interdependence of our professional world – and now the coronavirus pandemic and its impact on the global economy.

Is that light at the end of the tunnel? Let's hope so.

In the meantime, best wishes for this difficult period. Stay safe, stay well and stay alert.

**Jeffrey Golden**

Joint Head of Chambers

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October 2021

# MEXICO

*Julián Garza, Gunter A Schwandt and Fernando Quezada T<sup>1</sup>*

## I INTRODUCTION

The Mexican securities regulatory framework is comprehensive and includes federal regulations, general laws and specific administrative regulations applicable to capital market participants, specific corporate types, corporate governance requirements applicable to listed securities and public companies, specific Mexican instruments, public and private offerings, disclosure obligations, penalties and fines.

The National Banking and Securities Commission (CNBV) is the central securities and banking regulator in Mexico and oversees the two Mexican stock exchanges – Bolsa Mexicana de Valores (Bolsa) and Bolsa Institucional de Valores (BIVA) (jointly, Stock Exchange) – and all other capital market participants, such as underwriters, broker dealers, issuers and custodians. Key capital market statutes include the Securities Market Law, which provides the general operational framework for securities-related commercial acts, and the general rules and regulations issued by the CNBV, Mexico's Central Bank – Banco de México – (Central Bank) and the Stock Exchange, which include:

- a* general regulations applicable to issuers and other participants of the securities market (General Provisions);
- b* Bolsa internal regulations;
- c* BIVA internal regulations;
- d* Indeval (the central securities depository for the Mexican securities market) internal regulations;
- e* general regulations applicable to stock exchanges;
- f* general regulations applicable to broker-dealers; and
- g* general regulations applicable to entities and issuers regulated by the CNBV that contract external audit services for basic financial statements.

The General Law of Negotiable Instruments and Credit Transactions provides the regulatory regime applicable to securities, transactions with securities, securities holders' meetings and sets forth the rights and available actions for securities holders. The law also governs the special purpose vehicle that is most commonly used in securitisation transactions, the Mexican trust and trust certificates issued thereunder, which are securities used in many Mexican structured finance transactions and are also regulated under the Securities Market Law as fiduciary stock certificates. Separate legal frameworks that may be relevant to consider when working on

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<sup>1</sup> Julián Garza and Gunter A Schwandt are partners and Fernando Quezada T is an associate at Nader, Hayaux & Goebel.

a capital markets' transaction include the laws and regulations applicable to the Mexican pension funds and the General provisions applicable to securities transactions by directors, officers or employees of financial entities and other supervised persons.

Other legislative and regulatory regimes may apply, depending on the type of underlying assets involved, for example civil legislation when dealing with real estate, leases or mortgages, special requirements and formalities for the transfer of certain types of receivables.

The General Provisions, which also apply to securitisation transactions, are considered the most important secondary rules relating to securities. Further regulations enacted by the CNBV and the corresponding Stock Exchange may result applicable to public offerings.

The main finance regulator in Mexico is the Ministry of Finance and Public Credit (Ministry of Finance). The Ministry of Finance is responsible for facilitating transactions and promoting the development, expansion and competitiveness of the market. The Ministry of Finance acts through subordinated entities under its control, such as the CNBV, which is the main regulator of the securities market. The CNBV has broad supervision and enforcement powers in connection with publicly issued securities. Some of its most important powers include:

- a* the authorisation, supervision and regulation of market participants;
- b* the authorisation of public and private offerings;
- c* investigating, requesting information, issuing advice and warnings as well as imposing penalties and fines to market participants;
- d* issuing general regulations applicable to market participants and transactions with securities;
- e* approving the internal operating rules of the Stock Exchange; and
- f* managing and overseeing the National Securities Registry (bearing in mind that all publicly issued securities need to be registered, the CNBV's powers to authorise, suspend or cancel securities registrations in the registry are particularly relevant).

The Pension Funds System Commission (CONSAR) is particularly important in the securities market in Mexico as it oversees and authorises (together with the Ministry of Finance and the Central Bank) the investment regime, levels of liquidity and market risk for pension fund managers (known as AFOREs for their acronym in Spanish), which are the most active institutional investors that participate in these types of transactions.

## II THE YEAR IN REVIEW

### i Developments affecting debt and equity offerings

#### *Covid-19 pandemic*

As in other markets around the globe, the covid-19 pandemic has had a negative effect on the Mexican capital markets, which has slowed down as a result of widespread uncertainty, although this trend has started to reverse. Notwithstanding the adverse environment, during 2020, the Stock Exchange registered around 1,300 public securities issuances (both equity and debt instruments).<sup>2</sup>

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<sup>2</sup> *Expansión*. 'En medio de la pandemia, más empresas llegaron al mercado mexicano en 2020,' 21 December 2020. Available at <https://expansion.mx/mercados/2020/12/21/bolsas-mexico-cierran-2020-con-cerca-1300-colocaciones>. Last accessed on 26 August 2021.

Interestingly, the pandemic has also had some positive changes: remote working and mandatory shelter-in-place orders have caused the CNBV to adapt allowing – for the time being – all documents to be submitted electronically, whereas in the past all documents containing original signatures had to be physically filed.

### ***Maturity of first-generation CKDs***

In 2019, the first generation of equity development trust certificates (CKDs) began to reach their maturity. Between 2019 and 2022, a total of 16 instruments (representing almost 20 per cent of all CKDs in the market) are or will be liquidated. This uncharted territory has led to an increase in exit and asset sales and other divestiture transactions as sponsors find optimal ways to implement portfolio divestitures in a challenging market. As a result, it has been common for some maturing CKDs to transfer certain assets under management to other vehicles still in investment or stabilisation phase (such as FIBRAs or CERPIs). We expect such activity to increase in the following years as more first-generation CKDs mature.

### ***ESG trends***

During the past year, new securities issuances have included environment, social and governance (ESG)-oriented pipelines to satisfy institutional investors' appetite. Similarly, new instruments have begun to include ESG disclosures in their prospectus and offering documents, and it is common to see recent and pre-existing instruments, including such disclosures in their yearly and quarterly reports, even though ESG disclosures are not required under applicable Mexican law to date.

### ***Tax incentives for initial public offerings and interest payments to non-resident holders of corporate bonds***

Pursuant to a Presidential Decree that was passed in January 2019, a reduced 10 per cent income tax rate may be applied in 2021 by Mexican resident individuals, and by non-resident individuals or entities, on the profits obtained by those taxpayers from the sale of shares issued by Mexican companies that qualify as Mexican residents for tax purposes, provided that the sale takes place through an authorised stock exchange and with the compliance of other relevant conditions. The Decree also provides a tax incentive applicable to those Mexican residents who are required to apply a withholding tax on interest paid to non-resident holders of publicly traded bonds issued by Mexican-resident companies placed through an authorised stock exchange, consisting of a tax credit equivalent to 100 per cent of said withholding tax (which will be creditable only against the withholding tax). The credit will be available provided that no tax is withheld when making the payment to non-residents, who must reside in countries that have entered into a tax treaty or into a broad agreement for the exchange of information with Mexico; it is also established that the credit will not give rise to a refund or offset against other taxes.

### ***Relevant capital markets transactions***

Some of the most relevant recent capital market transactions include:

- a* Fibra IDEAL, an infrastructure-focused vehicle, of Impulsora del Desarrollo y el Empleo en América Latina was launched raising 25,827 million Mexican pesos in a fully-subscribed public offering;

- b* Cox Energy America launched its IPO raising 452.7 million Mexican pesos, ending the three-year IPO drought for BIVA;
- c* Fibra EXI of Mexico Infrastructure Partners raised US\$1,113.6 million;
- d* Equity International-sponsored Grupo Acosta Verde became public through a merger with Promecap's publicly-traded SPAC; and
- e* Grupo Elektra established a cross-border remittance securitisation programme and made its first Reg. S / 144-A Senior Notes international offering for US\$500 million.

## **ii Developments affecting derivatives, securitisations and other structured products**

Mexican pension funds are subject to a rigorous investment regime, which mandates a narrow list of permitted assets under management, including a specific amount of publicly-traded securities. Such restrictions that limit the ability of pension funds to acquire non-listed securities, together with the relevance of Mexican pension funds in the securities market, has fuelled innovation in the Mexican capital markets and has resulted in the introduction of novel instruments and the sophistication of existing instruments by market participants.

In this sense, the Mexican capital markets have entered into a new stage of complexity and regulatory challenge that will create interesting new ventures in the years to come, with over 86 CKDs; 25 investment project trust certificates (CERPIs); 18 real estate investment trusts (FIBRAs) and six energy and infrastructure projects investment trusts (FIBRAEs) all of which issue trust certificates listed on the Stock Exchange; as well as six special purpose acquisition companies (SPACs) listed on the Stock Exchange.

### **CKDs**

The first and most commonly used contemporary structured instrument in Mexico is the CKD. CKD funds resemble international private equity funds and they are incorporated through a Mexican trust agreement that issues trust certificates listed and traded on the Stock Exchange to invest in companies, as well as in infrastructure, real estate, private equity and industrial projects. CKDs grant their holders a right to participate in a portion of the proceeds, assets or rights that comprise the trust assets. The CKD trust carries a mandate of investing in projects or in equity of target companies.

CKDs are equity-like securities that do not provide an unconditional payment obligation of principal and interest. Applicable regulation imposes on CKDs certain corporate governance obligations similar to those of publicly traded companies. Provided that it is permitted under their respective investment regime, Mexican and foreign investors are allowed to invest in CKDs.

The majority of CKD issuances that have come to market in Mexico during the past few years have been aimed towards the infrastructure and real estate industries, although applicable law allows for the funds raised through CKDs to be invested in other areas. The success of a CKD fund is heavily dependent on the sponsor's (general partner's or GP's) management team in charge of identifying and carrying out the fund's investments as well as on the business plan set forth by the sponsor.

### ***CERPIs***

CERPIs funds (similar to CKDs) resemble the model of international private equity funds, with corporate structures that rely heavily on the expertise and track record of the general partner (GP) or fund manager. CERPIs funds typically invest in real estate, private equity, debt, energy and infrastructure, and potential sponsors are most commonly private equity funds, real estate developers, asset managers and energy services providers.

One of the key differences between CKDs and CERPIs is that CEEPIs funds may invest outside Mexico, so long as at least 10 per cent of the fund's maximum authorised amount is invested in Mexico. Similarly, CERPIs provide for less stringent corporate requirements and approvals of investors than those of CKDs, thus granting GPs and fund managers more flexibility to manage a fund. However, sponsors are required to make a 2 per cent co-investment in each sponsored project and should have a proven track record.

### ***FIBRAs***

FIBRAs are established as a Mexican trust agreement (similar to CKDs and CERPIs) and resemble the real estate investment trusts (REITs) of the United States. FIBRAs allow parties to benefit from a specially tailored tax stimulus intended to promote real estate investment in the country.

The purpose of a FIBRA is the acquisition or construction of real estate destined to be leased or the acquisition of rights to receive rental income, as well as to grant mortgage financing, and the trust estate should comprise at least 70 per cent of such assets. Under applicable tax regulations, a FIBRA is required to distribute to its certificate holders at least 95 per cent of its net taxable income on an annual basis.

The current legal structure of a FIBRA stems from a series of reforms enacted over the past several years to the following:

- a* various provisions of the Mexican tax laws and regulations;
- b* securities legislation;
- c* the investment regime of the Mexican pension fund administrators enabling tax-friendly investment in FIBRAs by Mexican pension funds; and
- d* annual omnibus tax regulations issued by the Ministry of Finance.

The main benefits of investment in a FIBRA (relative to other investments) are as follows:

- a* the potential for a high return on investment (on a cash basis) owing to the requirements for distribution of net taxable income, and the potential for capital appreciation of real estate trust certificates, commensurate with increases in value of the real properties held by the FIBRA;
- b* access to the Mexican real estate market as an investment option through a security that may be traded easily and has a readily identifiable market price;
- c* broader diversification with respect to geographic exposure and property type for investors seeking to invest in the Mexican real estate market or generally for their investment portfolio; and
- d* specific tax benefits.

A particularly positive aspect of FIBRAs (as opposed to CKDs and CERPIs) is that many of them have been structured with both a national listed tranche on a Stock Exchange and an

international tranche offered abroad (usually relying on Rule 144A and Regulation S of the US Securities Act of 1933). The foregoing has allowed the diversification of the investor base, which is otherwise dominated by Mexican pension funds.

Recently, investors have pushed for a change in the management structure of FIBRAs to internalise their external advisers and managers following the United States model of REITs, most of which have an internal management structure.

### ***FIBRA-Es***

FIBRA-Es are akin to US master limited partnerships. Under a FIBRA-E, a corporate sponsor securitises mature productive assets by contributing to the FIBRA-E equity interest in certain Mexican legal entities (promoted companies) that own and operate such assets for a specific set of activities, namely infrastructure, electricity (generation, distribution and transmission) and energy. The sponsor will receive cash or trust certificates (CBFEs) in return for its contribution to the FIBRA-E.

One of the key features of a FIBRA-E is the tax benefits that it provides to its investors, as the investment vehicle and the portfolio companies through which investments are held in such infrastructure and energy assets are deemed transparent from a tax perspective.

To structure the contribution of the applicable assets and the operation of the business of the FIBRA-E, relevant tax, legal and accounting issues must be taken into account. Regulatory and contractual approvals such as licences, permits, public grants and concessions, and debt covenants must also be taken into consideration.

### ***SPACs***

SPACs are publicly-traded vehicles that are formed to facilitate a business combination. SPACs – also called ‘blank cheque companies’ or ‘public shells’ – provide a sponsor with immediate access to funding to conduct a specific transaction (merger, acquisition or asset sale that requires shareholder approval) typically within a 12–24-month time frame, resulting in a new publicly traded company.

SPACs issue units that are listed on a Stock Exchange, which consist of shares and warrants (or portions of warrants). Warrants have the shares of a public company as underlying assets. Each warrant entitles the holder to purchase one share of common stock upon a business combination at a preferential price. Warrants act as compensation for investors.

Primarily institutional (including Mexican pension funds) and retail investors participate in these kinds of offerings. A SPAC public offering may be carried out globally (Mexican public offering plus an international tranche, usually under Rule 144 A/Regulation S of the US Securities Act of 1933). Sponsors acquire founder or insider units, typically resulting in the ownership of a percentage of common stock of the company.

Some of the advantages of SPACs include:

- a* timing: the time period for listing a SPAC is considerably faster than for listing an IPO (which can take around 10 months);
- b* flexibility: the regulatory requirements for SPACs are more flexible and less restrictive than those of IPO, so SPAC managers have more flexibility in conducting their business; and
- c* tax structure: contributions for future capital increases are treated as debt for Mexican tax purposes, which facilitates reimbursement to investors in the event that the SPAC is not successful.

### iii Cases and dispute settlement

From a statutory standpoint, the Ministry of Finance has final authority over securities markets, interpretation of the Securities Market Law and international treaties. In practice, the CNBV has the main direct jurisdiction regarding oversight and regulation of the activities of all capital market participants. Its supervisory authority includes powers to carry out investigations and to impose penalties and fines in cases of non-compliance, as well as powers to enforce them. Any resolution entered into by the CNBV may be appealed before federal administrative courts using a writ for *amparo* proceedings. However, any disputes that arise between financial firms and consumers must be first resolved by CONDUSEF, the National Commission for the Defence of Users of Financial Services, Mexico's financial ombudsman.

#### *Increased antitrust oversight*

As a result of relatively recent reforms to the antitrust law, COFECE, the Mexican Antitrust Commission, now has enhanced powers, and has increased its oversight and investigative activity, with a number of investigations that have concluded with record fines. In 2017, COFECE launched an investigation against banks and other financial intermediaries for potential collusion and manipulation of the primary and secondary markets. The investigation prompted the CNBV to commence a similar investigation. In January 2021, the COFECE investigation led to fines imposed on seven banks and 11 individual traders for a total amount in excess of 35 million Mexican pesos (approximately US\$1.75 million) in the aggregate.<sup>3</sup>

To date, this antitrust momentum has continued. In October 2020,<sup>4</sup> in the middle of the covid-19 pandemic, COFECE announced an investigation into the non-residential real estate lease market caused by the granting of pandemic-driven discounts and benefits to landlords triggered by recommendations made by a national association of real estate developers to its members, while offering an immunity programme for cooperating parties (which is provided for in the antitrust law).<sup>5</sup> This investigation could be particularly relevant to Mexican FIBRAs, which have probably become the most relevant individual landlords of real estate properties in the county.

### iv Relevant tax and insolvency law

There are very specific rules that apply to Mexican trusts that should be carefully analysed when implementing a securitisation or a structured finance transaction. In the case of securitisations, it is generally intended that the transfer of assets into a trust is treated as a sale for legal but not for tax purposes, inasmuch as the settlor of the assets retains a right

3 Comisión Federal de Competencia Económica. 'Sanciona COFECE a bancos y personas físicas que establecieron acuerdos ilegales en el mercado secundario de intermediación de valores de deuda gubernamental,' COFECE-001-2021. Available at <https://www.cofece.mx/sanciona-cofece-a-bancos-por-acuerdos-ilegales-en-mercado-de-deuda-gubernamental/>. Last accessed on 26 August 2021.

4 Official Gazette (*Diario Oficial de la Federación*). 'Aviso por el que la Autoridad Investigadora de la Comisión Federal de Competencia Económica inicia la investigación de oficio identificada bajo el número de expediente IO-004-2020, por la posible comisión de prácticas monopólicas absolutas en el mercado del arrendamiento de espacios inmobiliarios no residenciales en el territorio nacional,' 22 October 2020.

5 Comisión Federal de Competencia Económica. 'Previene COFECE a la Asociación Nacional de Desarrolladores Inmobiliarios para que evite posibles acuerdos entre competidores de este Mercado,' COFECE-015-2020. Available at <https://www.cofece.mx/previene-cofece-a-la-asociacion-nacional-de-desarrolladores-inmobiliarios/>. Last accessed on 26 August 2021.

to reacquire the transferred assets once payment of the corresponding securities has been made. The trust should not be classified as a separate entity for tax purposes. Intermediaries and brokers must determine and withhold the income tax applicable on income earned by securities holders.

In general, the tax regime applicable to securitisations and structured finance transactions is defined by the terms and nature of the securities being issued, and tends to be the same as or similar to the regime applicable to the assets underlying the securities or type of structure.

## **v Role of exchanges, central counterparties and rating agencies**

### ***Role of exchanges***

Any stock exchange operating in Mexico requires approval by the Ministry of Finance and the favourable opinion of the Central Bank and the CNBV. To date, two stock exchanges and one derivatives' exchange system operate in Mexico: the traditional Bolsa and the relatively new BIVA (the stock exchanges) and MexDer (the Mexican OTC derivatives exchange), all based in Mexico City.

As mentioned above, both stock exchanges are supervised by the CNBV and their own independent committees, and they each have the ability to sanction their members and even delist certain securities, subject to prior opinion of the CNBV.

The two exchanges have issued their own internal regulations that establish their internal procedures for listings of all kinds of instruments, along with terms and conditions for trading, record-keeping, information publishing, and listing and maintenance fees.

In addition to the local exchange, Bolsa operates the international quotation system (SIC), which is an electronic conduit to trade shares listed on certain foreign stock exchanges recognised by the CNBV. The SIC, which allows foreign companies to be listed alongside local issuers in both Stock Exchanges, has been hugely successful with a threefold increase in the last five years, driven mainly by ETFs.

### ***Central counterparties***

The service of central counterparty (CCP) is considered a public service under Mexican regulations; therefore, a public concession granted by the Ministry of Finance and the favourable opinion of the Central Bank and the CNBV are required. Only securities exchanges, securities depositories, broker-dealers and credit institutions (commercial and development banks) may be shareholders of a CCP.

Only two concessions by the federal government have been granted to operate CCPs in Mexico; Contraparte Central de Valores, which clears transactions on Bolsa and BIVA, and Asigna, Compensación y Liquidación, which is the CCP for the Mexican Derivatives Exchange (MexDer), for derivatives transactions. The Central Bank has exclusive powers to supervise all CCPs in Mexico, as well as approving the operations of any CCP.

### ***Rating agencies***

Rating agencies in Mexico must be incorporated as Mexican companies and require authorisation from the CNBV to operate as such. Their main purpose is the habitual and professional rendering of services consisting of the analysis, opinion, evaluation and reporting of the credit quality of securities. The authorisation granted by the CNBV is non-transferable under any circumstances.

Rating agencies are supervised by the CNBV and are subject to relevant provisions of the Securities Market Law and the applicable general rules issued by the CNBV applicable to rating agencies.

According to public information from the CNBV, seven rating agencies operate in Mexico, most of which are local branches of international rating agencies.<sup>6</sup>

### III OUTLOOK AND CONCLUSIONS

Mexican capital markets have developed exponentially over the past decade, particularly in terms of regulation and novel instruments designed to attract investment to projects and add value for both companies and investors. Currently, Mexican capital markets are innovative, thoroughly regulated and operate systematically. However, debt markets that are by far more active than the equity markets and Mexico's stock market capitalisation lag behind comparable economies, dragged by a low number of IPOs and a few public companies going private, owing to low valuations and low liquidity and operation volumes, among other issues.

Pension fund managers remain the main investors in the type of transactions described in this chapter, driving the innovation and sophistication of the Mexican capital markets, which have continued to improve and reach new standards in the past few years. Nevertheless, heightened policy uncertainty has slowed (and in some cases stopped) new issuances in the Stock Exchange. While tax, infrastructure and economic reforms over the past several years and the entry into force of the United States–Mexico–Canada Agreement (USMCA) in 2020 have helped stabilise the country after the 2008 financial crisis, international and local investors face uncertainty from some of the current federal administration's policies that have hindered infrastructure and energy projects and numerous related investments.

Mexican companies are tapping international capital markets to fund their operations through private offerings. Investors' liquidity prompts the possibility of deploying major infrastructure and real estate developments that may lead to substantial benefits for the Mexican economy. Furthermore, the private equity sector remains very active in Mexico in a large variety of industries. The organisation of private equity investments is getting more sophisticated and diversified, including through the use of both local and foreign capital and securities offerings structures. SPAC transactions are a good example. Overall, while there is access to resources for Mexican companies and projects, there is still significant room for improvement and additional opportunities to explore, particularly in the local markets.

The post-covid pandemic era, a changing economic, and political environment and pressures from the Mexican pension system are likely to result in changes to the existing capital markets regulatory framework in Mexico that will require the design and structure of novel alternatives for the Mexican Securities Market to face and tackle such challenges.

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6 Comisión Nacional Bancaria y de Valores. 'Instituciones Calificadoras de Valores,' 9 October 2017. Available at <https://www.gob.mx/cnbv/articulos/instituciones-calificadoras-de-valores-icvs?idiom=es#:-:text=La%20CNBV%20supervisa%20en%20M%C3%A9xico,las%20Disposiciones%20en%20la%20materia>. Last accessed on 26 August 2021.

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Julián J Garza is partner at Nader, Hayaux & Goebel. His practice areas include banking and finance, mergers and acquisitions, capital markets, telecom and structured and project finance.

Julián has worked in some of the largest structured finance and capital market transactions, representing both sponsors and financial intermediaries. His most recent cases include securitisation deals related to infrastructure projects, and local and cross-border issuances of securities, including FIBRAs and CKDs. Julián also regularly works in financing transactions, as well as specialised banking and financial and telecom regulatory work, debt restructurings, structuring and implementation of equity funds, including in the real estate and infrastructure markets. His mergers and acquisitions practice expands to a variety of industries, including real estate, telecom, financial intermediaries and infrastructure facilities, advising on foreign investment acquisitions and joint venture transactions.

Julián is a graduate of the Panamerican University (attorney at law 1997, *summa cum laude*). He has a master of law degree from the University of Texas at Austin (1999), where he was awarded a fellowship. He worked as foreign associate at Mayer Brown LLP (Chicago, 2002–2003). He is a professor of international financial law and financial intermediaries at the Panamerican University in Mexico City and has been a lecturer of Mexican business and commercial law at the University of Texas in Austin.

## **GUNTER A SCHWANDT**

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Gunter A Schwandt specialises in capital markets, mergers and acquisitions, structured finance, secured transactions, cross-border lending and fintech. Gunter is an expert in highly complex public issuances and securitisations and has developed in-depth expertise in CKDs (development capital certificates) and FIBRAs (the Mexican equivalent of a US REIT), advising sponsors and underwriters alike.

To date, he has advised the sponsors on the structuring and launch of a total of seven CKD funds placed in the Mexican Stock Market, focused on the real estate industry and the energy and infrastructure sectors, as well as on four FIBRA transactions, focused on the retail and hotel industries.

On the corporate M&A side, Gunter advised MetLife in the sale of its Mexican pension fund business to Principal Financial Group and Pemex in the sale of its 50 per cent stake in Gasoductos de Chihuahua to IEnova for US\$ 1.325 billion.

Gunter also advised Grupo Salinas in its joint venture with Televisa in Iusacell, the later unwinding of that joint venture and the ultimate sale of Iusacell to AT&T for US\$2.5 billion, which constituted a major milestone for the Mexican telecoms sector as it signified the entry of one of the major global telecom operators into the Mexican market.

Gunter spent a year working at international law firm Mayer Brown LLP in Chicago. He graduated as an attorney (with honours) from the Ibero-American University. He later received his LLM (with honours) from the Northwestern University School of Law and a certificate in business administration from the Kellogg School of Management. Majdalany in Doha, Qatar.

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Fernando Quezada T joined the Firm in 2011. His practice focuses on capital markets, mergers and acquisitions and structured finance. He regularly represents leading domestic and international clients in high profile and complex transactions, and has advised various international clients in cross-border transactions in Mexico.

Fernando has broad international experience. Between 2017 and 2018, he worked as international associate at Debevoise & Plimpton LLP in New York, working on transactions in the United States and Latin America; and subsequently at Mori Hamada & Matsumoto in Tokyo, representing clients on cross-border transactions in Japan, Southeast Asia and the United States.

Fernando holds an LLM degree in corporate governance and practice from Stanford Law School. He graduated as an attorney from Anahuac University in 2013, where he was editor of the law review. He also completed a master's degree in corporate law in the same University.

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