

THE INTERNATIONAL
CAPITAL MARKETS
REVIEW

TWELFTH EDITION

Editor
Jeffrey Golden KC (Hon)

THE LAWREVIEWS

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Editor
Jeffrey Golden KC (Hon)

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PREFACE

A year ago, we asked, ‘Is that light at the end of the pandemic tunnel?’

Yes, we had been caught unawares by the pandemic, lockdowns and working from home (WFH).

We also did not see and anticipate other challenges brought about by covid-19, 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?

And whether the pandemic itself was 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?

Yes, we may not have foreseen all that. However, even as the international capital markets (ICM) train emerged from pandemic tunnel darkness, there was more trouble on the tracks lurking round the bend. And we did not see all that coming either. Sanctions brought by Russia’s invasion of Ukraine, turmoil in the stocks and bonds markets, elevated inflation, increasing interest rates. Liquidity drying up, prices becoming increasingly volatile. At the time of writing, the S&P 500 has just suffered its worst one-day drop in months, global equity market issuance is down 68 per cent and there are reports that, at the current pace of things, 2022 could be the most difficult year for raising capital through IPOs since 1995.¹

ICM practice can be full of surprises. Challenges though there may be, however, the capital markets have a long track-record of resilience. International capital markets lawyers are still in business, still relevant. Global law firms are reporting record profits and are actively hiring more ICM lawyers.

But our *modus operandi* may have changed a bit. While financial institutions and law firms are cautiously encouraging a return to the office, 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.

1 SIFMA Smartbrief, 23 August 2022.

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 more and more 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.

A few years back, 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 the 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. And, 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 post-coronavirus pandemic challenges that have arisen and their impact on the global economy.

Is there a clearer track for the ICM train ahead and the ICM practitioners aboard it? Let's hope so.

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

Jeffrey Golden KC (Hon)

3 Hare Court

London

October 2022

MEXICO

*Julián Garza, Gunter A Schwandt and Nicolás Pacheco L*¹

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 (BMV) and Bolsa Institucional de Valores (BIVA) (jointly, the 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 – (the Central Bank) and the Stock Exchange, which include:

- a* General regulations applicable to issuers and other participants of the securities market (General Provisions);
- b* BMV 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, among other matters, securities, transactions with securities and securities holders’ meetings, and sets forth the rights and available remedies 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

¹ Julián Garza and Gunter A Schwandt are partners and Nicolás Pacheco L is an associate at Nader, Hayaux & Goebel.

that may be relevant to consider when working on 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, as well as 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 be applicable to public offerings.

The main finance regulator in Mexico is the Ministry of Finance and Public Credit (the 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 on 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 must be registered, the CNBV's powers to authorise, suspend or cancel securities registrations in the registry are particularly relevant).

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Covid-19 pandemic

The devastating effects of the covid-19 pandemic in the Mexican capital markets has decreased, leading to a slow but steady market growth. Despite uncertainty and volatility in the past 24 months, and despite interest rate hikes made by the Federal Reserve in order to tackle inflation, the strength of the Mexican peso has surpassed the global average as well as other emerging economies markets due to multiple factors such as vast international reserve, strong institutional response in order to counter rising inflation and market growth.

In addition, instruments and products in the Mexican capital markets continue to solidify their strength, and existing products have refined their sophistication by market participants, with over 88 equity development trust certificates (CKDs), 32 CERPIs (investment project trust certificates), 19 FIBRAs (the Mexican equivalent of a US REIT) and five FIBRA-Es (investment vehicles intended for energy and infrastructure projects that issue trust certificates (CBFEs)). Mexican capital markets have entered into a new stage of development that should set the path for future ventures in the years to come.

New challenges on the horizon for capital markets

New challenges arise, such as the soaring effects of the recent armed conflict in Ukraine, rising prices in the United States, as well as a general fear of recession, economic impact of impending and upcoming tensions amidst an environment of international conflict and political division, have thoroughly impacted international markets, Mexican markets have shown some resilience in comparison to other markets both regionally and internationally. In spite of impending market volatility, rise in commodities and increase in gas prices, Mexican listed companies have shown strength, rising more than 3 per cent in previous months.²

In an environment in which the covid-19 pandemic has drastically changed our world, and in the wake of monkey pox developments, there have been substantial changes regarding institutional procedures and methods that are here to stay, as it has been the case of the avant-garde electronic issuance introduced by SD Indeval in its Circular No. 19, which informs modifications and additions to its internal regulations, as well as its operating manuals. The aforementioned modifications have established landmark terms, requirements, procedures and actions in order to migrate from physical titles and vault, towards electronic versions of the aforementioned.

ESG trends

During the past year, new securities issuances have included environmental, social and governance (ESG)-oriented pipelines to satisfy institutional investors' interest and requirements. 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 yet mandatory under applicable Mexican law.

Climate change nowadays stands as an imminent issue, as greenhouse gases are causing temperature to increase and information in relation to its risks, effects and consequences are not yet entirely certain. As such, both investors and issuers reshaping their strategies in order to tackle climate change as well as to adapt their traditional practices towards risk management and the development of projects with such topics in mind.

During the United Nations Climate Change Conference (COP 26) held in Glasgow, Scotland during November 2021, the BMV pledged to reduce CO₂ emissions to zero, in the wake of a serious bet towards the goal of achieving net zero emissions. These commitments have been endorsed by their incorporation into the Net Zero Financial Providers Alliance. According to the BMV, green bonds have outstandingly expanded. Only in 2021, more than 30 per cent of funded debt has incorporated sustainable attributes.

Within this topic, the BIVA has established the first programme of its type in Latin America with its novel chief sustainability officer (CSO) programme. The aforementioned programme targets the increasing market trends to integrate sustainability and to migrate towards investments aligned with ESG criteria, in addition to helping and encouraging market issuers towards the implementation of business models with integrated sustainability factors via the incorporation of a CSO in companies that have the task of leading ESG transition goals within their boards of directors. In February 2022, the BIVA and Chapter

2 *El Financiero* Newspaper. 'México está comportándose muy bien': BMV 'presume' resistir volatilidad por guerra en Ucrania' Available at <https://www.elfinanciero.com.mx/economia/2022/03/08/mexico-est-a-comportandose-muy-bien-bmv-presume-resistir-volatilidad-por-guerra-en-ucrania/>. Last accessed on 19 August 2022.

Zero (a Mexican climate governance initiative), entered into a strategic alliance in the global economic forum to concentrate efforts towards vouching for climate governance inside technical committees, in a joint push towards generating a more sustainable, safe, trustworthy and transparent financial market.

Green bond issuances are on the rise

The rising costs and harrowing effects of climate change have imposed the necessity of finance environmentally-friendly projects such as ones concerning water, agriculture, energy, clean transport and sustainable infrastructure. These conditions have paved the way for the implementation by the BMV of green bond issuances, an instrument designed for financing and refinancing renewable energy projects, sustainable construction, energy efficiency, clean transport, water and water adaptation, forestation, agriculture, bioenergy and food supply chain changes. Green bonds may be issued by either private issuers or governmental entities so long as they meet the requirements in order to have the certification to become a green bond issuer. In addition, green bond issuances may be structured as new bonds or may be integrated into existing projects and refinancing projects.

Other new trends include the introduction of the sustainability-linked bond, created in order to finance ESG related objectives in a conjoint effort for investment, but with variable characteristics related to the success of their sustainability objectives.

New efforts towards equality

New efforts and calls regarding equality matters have also gained ground as markets have adopted and renewed policies and actions in their commitment towards promoting gender equality and eradicating gender discrimination in all its forms. Last year, the BIVA's letter of commitment alongside several investors regarding wage equality created a strong foundation towards this commitment with stakeholders. This year, in the frame of International Women's Day, the BIVA, alongside several women's associations, has endorsed and reiterated its commitment towards promoting wage equality. In the same way, the BMV has vied for gender equality and has adhered to the 'Ring The Bell for Gender Equality' movement, in order to establish visibility for the empowering of women, as well as equal opportunities in the financial sector, while reinforcing the UN Global Compact and the UN Women Empowerment Principles, to promote diversity as an element for innovation and growth of companies.

Relevant capital markets transactions

Some of the most relevant recent capital market transactions include:

- a* Lease for U, a company specialising in financing private medical technology as well as leasing medical equipment, issued Stock Certificates in an amount of 250 million Mexican pesos;
- b* Stepstone Group, an investment firm of global renown in private markets, issued trust certificates placed on the BIVA for an amount of US\$102.5 million; and
- c* Xinfra Fe, a company focused on sustainable development, launched its IPO through the BIVA, raising 1.477 million Mexican pesos.

Oaktree, a leading company focusing on alternative investments, has introduced itself to the Mexican capital markets, by issuing its first CERPI on the BMV.

FIRA, a group of four public trusts focused on agriculture, and Banxico have also made efforts to promote inclusion and equality in the Mexican market through the issuance of the first social bonds for financial inclusion on the BMV.

ii Developments affecting derivatives, securitisations and other structured products

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 at 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 CERPIs 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, has enhanced powers, and has increased its oversight and investigative activity, with a number of investigations that have concluded with record fines.

To date, COFECE has initiated market studies regarding digital financial services and fintech companies, with the purpose of analysing the structure, operation and regulatory framework, along with recommendations towards authorities in the financial sector.

Regarding this subject, antitrust and fintech companies may well see some relevant changes in the future, depending on the findings and reports of the Mexican Antitrust Commission arising from its ongoing investigation.³

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 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 BMV 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, the BMV 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.

3 Comisión Federal de Competencia Económica. 'Inicia Cofece estudio de mercado sobre servicios financieros digitales', Cofece-018-2022. Available at <https://www.cofece.mx/inicia-estudio-sobre-servicios-financieros-digitales/> Last accessed on 19 August 2022.

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 the BMV and the 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.⁴

vi Other strategic considerations

There are no other strategic considerations of note.

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.

As we approach a post-covid pandemic era, new challenges arise towards overcoming the effects of inflation and international conflict. Even with global circumstances showing adversity, Mexican institutions and markets – as well as their framework – have shown

4 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.

strength and adaptability in order to withstand and evolve, while at the same time including necessary aspects of social and environmental development into the Mexican financial and market system.

A new, contemporary approach towards environmental development, sustainable projects, gender equality and ESG criteria – and their newfound familiarity in structured instruments as well as investment vehicles – forecast a new tendency towards the harmonisation of financial markets, market inclusion and the protection of the environment. The rise of green bonds and sustainability-linked bonds have created strong ripples in Mexican markets, shifting the focus and scope of current and future investments towards aligning themselves alongside sustainable and environmentally friendly policies in line with global trends.

ABOUT THE AUTHORS

JULIÁN GARZA

Nader, Hayaux & Goebel

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

Nader, Hayaux & Goebel

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.

NICOLÁS PACHECO L

Nader, Hayaux & Goebel

Nicolás Pacheco L specialises in capital markets, real estate, banking, finance, mergers and acquisitions, private equity and general corporate matters. Nicolás has experience representing local and foreign public and private companies, investors, banks and other financial entities in different local and cross border transactions, including securities offerings in Mexico, financings, mergers and acquisitions, and corporate governance matters, as well as securities and financial regulatory matters.

As an associate at Nader, Hayaux & Goebel, Nicolás has been involved in high-level transactions, including advising Fibra Storage with the establishment of its first capital markets debt program for 3 billion Mexican pesos and the first and second issuances of notes issued as green bonds thereunder and advising Elementia, SAB de CV on the creation and registration of its first capital markets debt programme for 3 billion Mexican pesos.

Nicolás obtained his law degree from the Ibero-American University in 2020.

NADER, HAYAUX & GOEBEL

Paseo de los Tamarindos
No. 400-B, Piso 7 Bosques de las Lomas
05120 Mexico City
Mexico
Tel: +52 55 4170 3000
Fax: +52 55 2167 3099
jgarza@nhg.com.mx
gschwandt@nhg.com.mx
npacheco@nhg.com.mx
www.nhg.com.mx

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